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New Jersey State Library

(Filed April 6, 1923.)

New Jersey Supreme Court

The Acquackanonk Water Company,
Petitioner-Appellant,
vs.
Weidmann Silk Dyeing Company,
Defendant-Respondent.

NOTICE OF APPEAL

To Messrs. Griggs and Harding, Attorneys of Weidmann Silk Dyeing Company.

Take notice, that the petitioner-appellant appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals in the last resort of all causes on the following grounds:

1. Because the Supreme Court erred in giving judgment for the Weidmann Silk Dyeing Company, defendant-respondent, instead of for the petitioner-appellant.

2. Because it so erred for one or more of the grounds of appeal set forth in the notice of appeal to the New Jersey Supreme Court and brought up with the record.

Humphreys & Sumner,
Attorneys of petitioner-appellant.

Service acknowledged the 4th day of April, 1923.
Griggs & Harding,
Attys. for Defendant-Respondent.

II

Notice of Appeal

(Filed April 6, 1923.)

NEW JERSEY SUPREME COURT

The Acquackanonk Water Company,

Petitioner-Appellant,

vs.

National Silk Dyeing Company,

Defendant-Respondent.

NOTICE OF APPEAL

To William I. Lewis, Esquire, Attorney of National Silk Dyeing Company.

Take notice, that the petitioner-appellant appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals in the last resort of all causes on the following grounds:

1. Because the Supreme Court erred in giving judgment for the National Silk Dyeing Company, defendant-respondent, instead of for the petitioner-appellant.

2. Because it so erred for one or more of the grounds of appeal set forth in the notice of appeal to the New Jersey Supreme Court and brought up with the record.

Humphreys & Sumner
Attorneys of Petitioner-Appellant.

Service acknowledged the 5th day of April, 1923.
Wm. I. Lewis,
Atty. for Defendant-Respondent.

III

Notice of Appeal

(Filed April 6, 1923.)

NEW JERSEY SUPREME COURT

The Mayor and Aldermen of Jersey City,
Petitioner-Appellant,
vs.
Weidmann Silk Dyeing Company,
Defendant-Respondent.

NOTICE OF APPEAL

To Messrs. Griggs and Harding, Attorneys of Weidmann Silk Dyeing Company.

Take notice, that the petitioner-appellant appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals in the last resort of all causes on the following grounds:

1. Because the Supreme Court erred in giving judgment for the Weidmann Silk Dyeing Company, defendant-respondent, instead of for the petitioner-appellant.

2. Because it so erred for one or more of the grounds of appeal set forth in the notice of appeal to the New Jersey Supreme Court and brought up with the record.

Humphreys & Sumner,
Attorneys of Petitioner-Appellant.

Service acknowledged the 4th day of April, 1923.
Griggs & Harding,
Attys. for Defendant-Respondent.

IV

Notice of Appeal

(Filed April 6, 1923.)

NEW JERSEY SUPREME COURT

The Mayor and Aldermen of Jersey City,
Petitioner-Appellant,

vs.

National Silk Dyeing Company,
Defendant-Respondent.

NOTICE OF APPEAL

To William I. Lewis, Esquire, Attorney of National Silk Dyeing Company.

Take notice, that the petitioner-appellant appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals in the last resort of all causes on the following grounds:

1. Because the Supreme Court erred in giving judgment for the National Silk Dyeing Company, defendant-respondent, instead of for the petitioner-appellant.

2. Because it so erred for one or more of the grounds of appeal set forth in the notice of appeal to the New Jersey Supreme Court and brought up with the record.

Humphreys & Sumner,
Attorneys of Petitioner-Appellant.

Service acknowledged the 5th day of April, 1923.
Wm. I. Lewis,
Atty. for Defendant-Respondent.

V

Judgment in the Supreme Court

NEW JERSEY SUPREME COURT

The Acquackanonk Water Co.,
Plaintiff-Appellant,

vs.

The Weidmann Silk Dyeing Co.,
Defendant-Respondent.

RULE FOR JUDGMENT

This cause having been duly argued on an appeal from the judgment of the Circuit Court of the County of Passaic, at the November Term 1922 of this Court, by counsel for the above named Plaintiff-Appellant and the above named Defendant-Respondent respectively, and the questions brought up by said appeal and the reasons assigned for reversal of said judgment having been duly considered by the Court, and the Court finding no error in the record or said judgment:

It is on this 2nd day of April Nineteen Hundred and Twenty-three, ordered and adjudged that the said judgment of the Circuit Court of Passaic County in this cause which is appealed from by the said Plaintiff-Appellant be and the same is hereby in all things affirmed, with costs of appeal to be paid by the said Plaintiff-Appellant to the said Defendant-Respondent, to be taxed.

And it is further ordered that the record be remitted to the said Circuit Court of Passaic County to proceed further thereon according to law and the practice of said Court.

Entered April 2, 1923. On motion of Griggs & Harding, Attorneys of the Defendant-Respondent.

A true copy, Edward J. Kelleher, Clerk.

VI

Judgment in the Supreme Court

NEW JERSEY SUPREME COURT

The Acquackanonk Water Co.,
Plaintiff-Appellant,

vs.

National Silk Dyeing Co.,
Defendant-Respondent.

RULE FOR JUDGMENT

This cause having been duly argued on an appeal from the judgment of the Circuit Court of the County of Passaic, at the November Term 1922 of this Court, by counsel for the above named plaintiff-appellant and the above named defendant-respondent respectively, and the questions brought up by said appeal and the reasons assigned for reversal of said judgment having been duly considered by the Court, and the court finding no error in the record of said judgment:

It is on this day of Nineteen Hundred and Twenty-three, Ordered and Adjudged that the said judgment of the Circuit Court of Passaic County in this cause which is appealed from by the said plaintiff-appellant be and the same is hereby in all things affirmed, with costs of appeal to be paid by the said plaintiff-appellant to the said defendant-respondent, to be taxed.

And it is further ordered that the record be remitted to the said Circuit Court of Passaic County to proceed further thereon according to law and the practice of said court.

Entered March 29, 1923. On motion of, Wm. I. Lewis, Attorney of the Defendant-Respondent.

A true copy, Edward J. Kelleher, Clerk.

VII

Judgment in the Supreme Court

NEW JERSEY SUPREME COURT

The Mayor and Aldermen of the City of Jersey City,
Plaintiff-Appellant,

vs.

The Weidmann Silk Dyeing Company,
Defendant-Respondent.

RULE FOR JUDGMENT

This cause having been duly argued on an appeal from the judgment of the Circuit Court of the County of Passaic, at the November Term 1922 of this Court, by Counsel for the above named plaintiff-appellant and the above named defendant-respondent respectively, and the questions brought up by said appeal and the reasons assigned for reversal of said judgment having been duly considered by the Court, and the Court finding no error in the record or said judgment.

It is on this 2nd day of April Nineteen Hundred and Twenty-three, ordered and adjudged that the said judgment of the Circuit Court of Passaic County in this cause which is appealed from by the said plaintiff-appellant be and the same is hereby in all things affirmed, with costs of appeal to be paid by the said plaintiff-appellant to the said defendant-respondent, to be taxed.

And it is further ordered that the record be remitted to the said Circuit Court of Passaic County to proceed further thereon according to law and the practice of said Court.

Entered April 2, 1923. On motion of, Griggs & Harding, Attorneys of the Defendant-Respondent.

A true copy, Edward J. Kelleher, Clerk.

VIII

Judgment in the Supreme Court

NEW JERSEY SUPREME COURT

The Mayor and Aldermen of the City of Jersey City,
Plaintiff-Appellant,

vs.

National Silk Dyeing Co.,
Defendant-Respondent.

RULE FOR JUDGMENT

This cause having been duly argued on an appeal from the judgment of the Circuit Court of the County of Passaic, at the November Term 1922 of this court, by counsel for the above named plaintiff-appellant and the above named defendant-respondent respectively, and the questions brought up by said appeal and the reasons assigned for reversal of said judgment having been duly considered by the court, and the court finding no error in the record of said judgment:

It is on this day of Nineteen Hundred and Twenty-three, ordered and adjudged that the said judgment of the Circuit Court of Passaic County in this cause which is appealed from by the said plaintiff-appellant be and the same is hereby in all things affirmed, with costs of appeal to be paid by the said plaintiff-appellant to the said defendant-respondent, to be taxed.

And it is further ordered that the record be remitted to the said Circuit Court of Passaic County to proceed further thereon according to law and the practice of said Court.

Entered March 29, 1923. On motion of, Wm. I. Lewis, Attorney of the Defendant-Respondent.

A true copy, Edward J. Kelleher, Clerk.

IX

Opinion in the Supreme Court

(Filed March 13, 1923.)

NEW JERSEY SUPREME COURT

November Term 1922

The Acquackanonk Water Co.,
Plaintiff-Appellant,

vs.

The Weidmann Silk Dyeing Co.,
Defendant-Respondent.

OPINION

Argued November 9th and 10th, 1922: Decided March 13, 1923.

I

Under the condemnation Statute, P. L. 1900, p. 79, par. 6; 2 Comp. Sts. 2181; an appraisement and an assessment are to be made, "as of the date of filing of the petition and order."

II

On an appeal from an assessment made by Condemnation Commissioners, to the Circuit Court, the compensation to be awarded by a jury is limited to the time of filing the petition and order. Interest on the verdict at the lawful rate from the date of filing the petition may be allowed by the trial court, when the condemnors have been in possession of the property condemned and the interest is a mere mechanical process of calculation. Metler v. Eastern etc. R. R. Co., 37 N. J. L. 225 distinguished.

X

Opinion in the Supreme Court

III

The alleged trial errors examined in this case and found to be without legal merit.

Before Justices Kalisch, Black and Katzenbach.

For the Appellant, Messrs. Humphreys & Sumner and Mr. William B. Gourley.

For the Respondent, Messrs. Griggs & Harding.

The opinion of the Court was delivered by Black, J.

The record in these cases contains the proceedings (1) the City of Jersey City (2) the City of Newark (3) the Acquackanonk Water Company to condemn rights of diversion of water from the Passaic River against two riparian owners, namely the Weidmann Silk Dyeing Company and the National Silk Dyeing Company, six cases. The cases were by consent tried together, before the Commissioners and on the appeal before the Court and jury at the Passaic Circuit Court. The proceedings were brought in consequence of an injunction granted by the Chancellor in the case of Weidmann Silk Dyeing Company v. East Jersey Water Co., 88 N. J. Eq. 397; affirmed, 89 ib. 541; ib. 578; ib. 579.

The appellants file nine grounds of appeal from the verdict of the jury, which are discussed under seven heads in the brief. The seventh is alleged error in allowing and calculating interest by the Court on the verdicts from the time of filing the petitions. The charge to the jury limited the compensation to be awarded by the jury to the time the petitions were filed.

The statute P. L. 1900, p. 79, par. 6; 2 Comp. Sts. 2181; provides, "an assessment of the amount to be paid by the petitioner" etc. is "as of the date of the filing of the petition and order thereon."

Judge Silzer the trial judge allowed and calculated interest at the lawful rate on the verdicts, from

the date of the filing the petitions. The basis of the Court's action was founded on the fact, that the condemnors have been in possession of the property i. e. the water since that time. The award made and the amount found by the jury as compensation was the amount due, as of the time of filing the petitions. It was to be paid under the statute, as of that time. The interest was a mere mechanical process of calculation. We think, the action of the trial court was founded upon a firm basis of reason. It was not error. Interest is by general principles allowed from the time of the appropriation of the property. But it is now urged, under the case of Metler v. Easton, etc. R. R. Co. 37 N. J. L. 225, the allowance of interest in any given case is a question for the jury, and not for the court. See Kilgus v. Wayne Company, 85 ib. 351. We fail to see where any right of the appellant has been taken away in this case, as, the interest is a mere matter of calculation. Whether it shall be made as a matter of course by the jury, instead of by the court, seems to be quite immaterial. In either case it would be the same. In the case cited, it was said, the allowance of interest is liable to be controlled by the circumstances of each case. In that case, there was, it is true, a separate item for interest in the verdict found by the jury. But that was for the purpose of permitting the court to determine the equities that existed between the parties. That case is distinguished from the case under discussion on the facts. It was in that case said interest from the date of the Commissioner's award to the time of trial, or the coming in of the postea, should as a general rule, be allowed. If the owner has not been disturbed in the possession, and has had a profitable use of

the premises, or has received the rents for them pending the appeal, these circumstances, should be taken into account and the interest abated accordingly.

The other grounds of appeal all refer to trial errors. An extended discussion of these points is not called for. They are without legal merit. The first is, error in excluding from the jury the diversion of water from the Passaic River of the Morris Canal and Banking Co., and the Passaic Water Co. These companies have prescriptive rights to divert water from the Passaic River. This point was involved, and inferentially decided, at least, by this court, adverse to the appellants in the cases of Weidmann Silk Dyeing Co. v. Jersey City Water Supply Co., 91 Atl. p. 337, 338. This is irrelevant and immaterial.

Second, refusing to charge the jury, that the contracts between the defendants, i. e., the dyers and other companies for water supplied necessarily fixed, as against themselves etc., are the basis upon which the damages are to be recovered. This was some evidence, a question of fact for the jury to consider and so stated in the charge of the trial judge to the jury. This was not error.

Third, refusing to charge the fifteenth request, as modified by the court in reference to the use of artesian well water and then putting it back into the river.

The charge as modified in this respect is sustained by the case of Society etc. v. Morris Canal Co., 1st N. J. Eq. 157, 189. The opinion in that case was by Chancellor Vroom.

Fourth, refusing to charge, except as charged, in reference to polluted water, viz: a public nuisance is committed. This was a question of fact, which

it was the duty of the jury to determine under all the circumstances and under all the evidence. The request was properly refused.

Fifth, refusing to charge request No. 51 in reference to the Dyers pipe being subject to the regulation of the Board of Public Utility Commissioners, as to the quantity of water used therefrom and the price paid. This was charged by the trial judge in substance and as favorable to the appellants as they could ask. See Vol. 4, p. 63, 54, of the charge.

Sixth, refusing to charge request No. 37 in reference to other sources of water supply, to take the place of the water diverted, that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply; the jury could not take this into consideration. This is essentially a question of fact. What the reasonable probabilities were was a question for the jury to determine and not for the court. We find no error here.

Finding no error in the record, the judgment of the Passaic Circuit Court is affirmed.

XIV

Opinion in the Supreme Court

(Filed March 13, 1923.)

NEW JERSEY SUPREME COURT

November Term 1922

The Acquackanonk Water Co.,
Plaintiff-Appellant,

vs.

National Silk Dyeing Co.,
Defendant-Respondent.

OPINION

Argued November 9 & 10, 1922: Decided March 13th, 1923.

Before Justices Kalisch, Black & Katzenbach.

For the Appellant, Messrs. Humphreys & Sumner, and Mr. William B. Gourley.

For the respondent Messrs. Griggs & Harding, Mr. Wm. I. Lewis.

Per Curiam:

The judgments in these cases No. 25 The Acquackanonk Water Co. v. National Silk Dyeing Co., No. 26 The Mayor and Aldermen of the City of Jersey City v. National Silk Dyeing Co. and No. 28 The Mayor and Aldermen of the City of Jersey City v. The Weidmann Silk Dyeing Co., will be affirmed for the reasons expressed in the opinion of No. 27 The Acquackanonk Water Co. v. Weidmann Silk Dyeing Co.

The judgments in the Passaic Circuit Court are affirmed.

The following appeals are brought up to the New Jersey Supreme Court by notices of appeal filed in the Passaic Circuit Court, in which the grounds of appeal appear.

(Filed August 7, 1922)

Passaic County Circuit Court

The Acquackanonk Water Co., Petitioner, against Weidmann Silk Dyeing Co.	*In Condemnation.*

NOTICE OF APPEAL

To Messrs. Griggs & Harding, Attorneys of Weidmann Silk Dyeing Company,

Take notice, that the petitioner appeals from the whole of the judgment entered in this cause to New Jersey Supreme Court on the following grounds:

1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

2. The refusal of the court to charge, as requested by counsel for the Acquackanonk Water Company, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the

New Jersey State Library

basis upon which the damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

3. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

4. The refusal of the court, to charge, as requested by counsel for the Acquackanonk Water Company (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

5. The refusal of the court to charge request No. 45, as requested by counsel for the Acquackanonk Water Company (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would

appreciably impair the quality of the water, and a public nuisance would be committed.

6. The refusal of the court to charge request No. 51, as requested by counsel for the Acquackanonk Water Company (except as it had already charged) that since the Dyers' Pipe was in actual use, and was laid under the streets of the city the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

7. The refusal of the court to charge request No. 37 as requested by counsel for the Acquackanonk Water Company, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

8. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river, as a source of supply for the purposes of their

business, and so might be considered in arriving at the depreciation in the value of the land.

9. Because the Court allowed interest on the amount of the award by the jury to be added to said last mentioned amount.

HUMPREYS & SUMNER,
Attorneys of Petitioner.

PASSAIC COUNTY CIRCUIT COURT

The Ackquackanonk Water Co., vs. Weidmann Silk Dyeing Co.	*On Condemnation*

JUDGMENT RECORD

The Acquackanonk Water Company above named presented to the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

To the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey:

The petition of The Acquackanonk Water Company respectfully shows:

1. That your petitioner is a corporation of the State of New Jersey, duly so created under a special act of the Legislature of New Jersey entitled "An Act to incorporate The Acquackanonk Water Company", approved March 9, 1871; the term of existence of the corporation is unlimited, and the purposes of the formation of the company are (among others) the constructing, maintaining and operating of water works for the purpose of supplying what at the time of the incorporation of said company was known as the Village of Passaic, covering territory now comprising the Cities of Passaic and Clifton, with water; and your petitioner has the power to take water rights and property for its said purposes.

2. Your petitioner has constructed its water works and is engaged in supplying water to the said cities of Passaic and Clifton (which are co-

incident with what was formerly known as the Village of Passaic) and their inhabitants for public water supplies, and has for several years past been taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls in Passaic County through the dams, filtration works and pumping station located at that place, and such continued taking and diversion thereof is required and necessary for the public purposes aforesaid; and your petitioner has therefore determined to acquire for public use for the purposes aforesaid and under its charter rights and the authority conferred by the aforesaid act and the several supplement thereto and amendments thereof, and the general laws of this State, the rights and property of which the following is a particular description, to wit:

The right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the

East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River; on the south by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the North by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the East by East Twelfth Street, and on the West by East Eleventh Street and containing 30-1/2 City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract:Bounded on the North by the Passaic River; on the South by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on the West by lands formerly of James Bell. The easterly line of said tract intersects the north-westerly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100 acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the South by the Passaic River; on the East by lands of the New York, Susquehanna and Western Railroad Company, and on the West by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands of the Erie Railroad Company, and on the West by lands of the Hawthorne Development Co., and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water warks which consist of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies. The lands of the owners hereinafter mentioned lie upon the said Passaic River, and the diversion is made above their

said lands of water which would otherwise flow past and over their said lands by reason whereof they claim compensation and damages.

Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is Weidmann Silk Dyeing Company which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The Acquackanonk Water Co.,
By Humphreys & Sumner, Attorneys,
First National Bank Bld.,
Paterson, N. J.

State of New Jersey, }
County of Passaic, } ss.

Richard Rossiter, being duly sworn, on his oath, says: That he is the agent of The AcquackanonkWater Company petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of

Directors of said Company, that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same but has not been able to agree upon the price, and damages, and the petitioner can not acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with Weidmann Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. August J. Hunziker of said Company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said August J. Hunziker indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agreement with him, or with said Weidmann Silk Dyeing Company.

Richard Rossiter.

Subscribed and sworn to this 24th day of January, 1919, before me.

James Feeney,
M. C. C. of N. J.

which petition was filed on the Twenty-eighth day of January, Nineteen Hundred and Nineteen.

Upon said petition the said Justice made and filed the following order:

Application having been made to me, James F. Minturn a Justice of the Supreme Court, of the State of New Jersey, by the Acquackanonk Water Company, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the first day of March nineteen hundred and nineteen at the hour of ten o'clock in the forenoon, at the Court House in the City of Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this twenty-fifth day of January, Nineteen Hundred and Nineteen.

James F. Minturn,
Justice of the New Jersey Supreme Court.

which order was filed on the Twenty-eighth day of January, Nineteen Hundred and Nineteen.

Thereupon the said Justice made and filed the following order Appointing Commissioners:

Upon this first day of March, Nineteen hundred and nineteen, being the date fixed by me for the hearing upon the petition in this matter, and upon filling in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants

and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Humphreys & Sumner of counsel with the petitioner, and Griggs & Harding appearing on behalf of Weidmann Silk Dyeing Company.

I, James F. Minturn, Justice of the Supreme Court for the State of New Jersey, do hereby appoint:

Jacob W. DeYoe
Clifford L. Newman
James L. Brown

three disinterested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the first day of October next.

James F. Minturn,
Justice of the SupremeCourt of the
State of New Jersey.

which order was made on the First day of March Nineteen Hundred and Nineteen and filed on the Tenth day of March Nineteen Hundred and Nineteen.

Thereupon the said Commissioners made and filed the following report and award:

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above proceedings by an order made therein on March 1, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey on the application of the above named The Acquackanonk Water Company, a corporation of New Jersey, made in writing, by petition, to the said Justice, to examine and appraise certain property of the Weidmann Silk Dyeing Company, being the right to take water described in the said petition filed in said proceedings, and to assess the damages, if any, by reason of the taking of said property so described as aforesaid, on at least six days' notice, to be given as in said order directed, and that said Commissioners should file their report with the Clerk of Passaic County on or before the first day of October then next; and the said time to file said report having been extended by said Justice of the Supreme Court made upon good cause shown to the first day of September, 1920; we do respectfully report as follows:

We, the said Commissioners, having on the 24th day of March, A. D. 1919, first duly taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Co., said owner of said property, that we would meet at the best of our skill and understanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, said owner of said property, that we would meet at the meeting rooms of the Board of Freeholders in the Court House in

the City of Paterson, N. J., on April 14, 1919, at 10 o'clock in the forenoon, which said notice was given and served pursuant to the statute in such case provided; and the said petitioner and the said owner having been represented before us, we the said Commissioners, did meet at the time and place aforesaid, and we thereafter viewed and examined the said property described in said petition as aforesaid; we further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner for said property and the damage aforesaid to be paid by said petitioner, The Acquackanonk Water Company, to the said the Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of the said petition and order aforesaid, and that said just and equitable appraisement and said assessment of the amount to be paid by said petitioner for said property and said damage so made by us as aforesaid, is the sum of $5400.00, which we award to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid.

Jacob W. DeYoe
Clifford L. Newman
James L. Brown
Commissioners.

which report and award was filed on the Twenty-sixth day of August, Nineteen Hundred and Twenty.

Thereupon an appeal was taken from said award by The Acquackanonk Water Company above named to the said Passaic County Circuit Court, which appeal was taken and filed on the Tenth day

of September, Nineteen Hundred and Twenty and was as follows:

To the Circuit Court of the County of Passaic in the State of New Jersey, and to the Weidmann Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having, on the application of your petitioner, The Acquackanonk Water Company, filed in the Passaic County Circuit Court on the 28th day of January 1919 by his order made March 1, 1919, and filed in said Passaic County Circuit Court on March 10, 1919, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown, of the County of Passaic, commissioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to Regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900; and having directed by said order that the said commissioners should file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by order of said Justice of Supreme Court made September 23, 1919 and filed on same date in the Passaic County Circuit Court until December 31, 1919; and said time having been again extended by order of said Justice of Supreme Court made December 6, 1919 and filed December 22, 1919 in said Passaic County Circuit Court until February 20, 1920; and

said time having been again extended by order of said Justice of Supreme Court made June 18, 1920 and filed June 19, 1920 in said Passaic County Circuit Court until August 1st, 1920; and said time having been again finally extended by order of said Justice of Supreme Court made July 28, 1920 and filed July 30, 1920 in said Passaic County Circuit Court until September 1, 1920; and the said commissioners having by their report filed on the 26th day of August, 1920 in the Clerks Office of said County of Passaic, appraised the lands and rights in land of the said Weidmann Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition described, and having assessed the damages to be paid therefor by your petitioner at the sum of Five Thousand Four Hundred Dollars (5,400); and your petitioner feeling dissatisfied and aggrieved by the decision of the commissioners aforesaid, and desiring an appeal therefrom to this court please take notice that an appeal from said award and report of said commissioners has been, and is hereby, made by your petitioner, the said The Acquackanonk Water Company, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10:30 o'clock in the forenoon, at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic to frame the issue and to fix a day for striking a jury and a view of the premises and a day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for

public use (Revision of One Thousand Nine Hundred)", approved March 20, 1900.

Humphreys & Sumner,
Attorneys for Petitioner.

Dated September 10th, 1920.

Thereupon on the Eleventh day of April, Nineteen Hundred and Twenty-one an order was made by the Judge of said Passaic Circuit Court framing the issue, ordering that a jury be struck, and fixing the time and place for the trial of said appeal as follows:

The Acquackanonk Water Company, having given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the Acquackanonk Water Company, and the appellant having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court, at the Court House in the City of Elizabeth, New Jersey on October 9, 1920, at 10:30 o'clock in the forenoon of that day, to frame the issue on said appeal and to fix a day for the striking of a jury and a day for the trial of said appeal; and the hearing of said notice of said motion having been postponed from time to time to the 1st day of March, 1921, at the Court House in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order;

And it appearing that the said Weidmann Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that

the said The Aquackanonk Water Company are taking by condemnation certain property of said Weidmann Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously until January 1st, 1925 from the Passaic river at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic river; on the South by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River on the South by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the North by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the East by East Twelfth Street, and on the West by East Eleventh Street and containing 30-1/2 City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the North by the Passaic River; on the South by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on the West by lands formerly of James Bell. The easterly line of said tract intersects the north-westerly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue.. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100 acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the South by the Passaic River; on the East by lands

of the New York, Susquehanna and Western Railroad Company, and on the West by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands of the Erie Railroad Company, and on the West by lands of the Hawthorne Development Co., And the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

Said property and rights are necessary for and are taken for and form part of your petitioner's water works which consist of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies.

The lands of the owners hereinafter mentioned lie upon the said Passaic River, and the diversion is made above their said lands of water which would otherwise flow past and over their said lands by reason whereof they claim compensation and damages."

It is on this Eleventh day of April, 1921, on motion of Humphreys & Sumner, Attorneys for the appellant, the said The Acquackanonk Water Company in the presence of and with the consent of Griggs & Harding, Attorneys for the Weidmann Silk Dyeing Company, ordered, that Monday the Sixteenth day of May 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the

time for the trial of the said appeal before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the value of and assessment of the amount which the said The Acquackanonk Water Company should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic, New Jersey, and Clifton, New Jersey, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purpose of said municipal corporations, as against the said lands and property of said Weidmann Silk Dyeing Company as in said petition described and also for the damages to be sustained by the said Weidmann Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said land and property by the said the Acquackanonk Water Company.

And it is further ordered that a jury be struck for the trial of said appeal at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

Geo. S. Silzer,
Judge.

Thereupon the said appeal on said issue was tried before George S. Silzer, Judge of said Passaic County Circuit Court with a struck jury at the said Passaic County Circuit Court on the 16th, 17th, 18th, 19th, 20th, 23rd, 24th, and 25th days of May, 1921 said jury having been duly struck and empannelled and having viewed the premises pursuant to the order of said Court and having been duly sworn and having proceeded to trial and the evidence offered by the respective parties and the respective counsel having been heard, and said appeal on said issue having been heard and submitted to the jury as aforesaid, they returned their verdict on the Twenty-fifth day of May, Nineteen Hundred and Twenty-one as follows:

They find that said Acquackanonk Water Company is to pay to said Weidmann Silk Dyeing Company the sum of Nine thousand eight hundred and sixty-four dollars ($9864).

Thereupon upon application of said Acquackanonk Water Company a rule to show cause why said verdict should not be set aside and a new trial granted was made and filed and entered on June 18, 1921, as follows:

A verdict being entered in favor of the Weidmann Silk Dyeing Company in the above entitled matter and against the Acquackanonk Water Co., for $9,864, and application having been made within six days after the rendering of said verdict, now, on motion of Humphreys & Sumner, of counsel with the Acquackanonk Water Company, and in the presence of Griggs & Harding, of counsel with the Weidmann Silk Dyeing Company, it is ordered that the Weidmann Silk Dyeing Company show cause before our Passaic Circuit Court at the present term upon a day to be fixed by the court for that

purpose why the verdict in this cause should not be set aside, and a new trial granted.

And it is further ordered that the granting of this rule to show cause shall not operate, as or be, a bar against the Acquackanonk Water Company taking or prosecuting an appeal from the judgment which shall be entered upon said verdict upon the following points, which are hereby expressly reserved by this rule, provided that the argument of the points so reserved be brought on for hearing at the fall term, 1921, of the court to which same may have been appealed.

Point 1. The exclusion by the court from the jury's consideration of the diversions from the Passaic river or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

Point II. The refusal of the court to charge, as requested by counsel for the Acquackanonk Water Company, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from the Aquackanonk Water Company, Jersey City and Newark must be calculated.

Point III. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City

of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

Point IV. The refusal of the court to charge, as requested by counsel for the Acquackanonk Water Company (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

Point V. The refusal of the court to charge request No. 45, as requested by counsel for the Acquackanonk Water Company (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

Point VI. The refusal of the court to charge request No. 51, as requested by counsel for the Acquackanonk Water Company, (except as it had already charged) that since the dyers' pipe was in actual use, and was laid under the streets of the

city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

Point VII. The refusal of the court to charge request No. 37 as requested by counsel for the Acquackanonk Water Company, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

Point VIII. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business and so might be considered in arriving at the depreciation in the value of the land.

Point IX. If, on the hearing of the rule to show cause, the Circuit Court shall decide the question of allowance or non-allowance of interest on the amount of award, that question may also be re-

served by both parties and be the subject of appeal.

Geo. S. Silzer,
Judge.

The said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard, the court on the Second day of August Nineteen Hundred and Twenty-two, made an order herein that said rule to show cause should be discharged, which order is as follows:

A rule to show cause why the verdict heretofore rendered in the above stated cause should not be set aside and a new trial granted, having been made by this court, and the said rule to show cause having been duly set down for argument and the arguments of the counsel for the respective parties having been heard thereon and the court having duly considered the same and being of the opinion, that said verdict should not be set aside and a new trial granted and that the said rule to show cause should be discharged.

It is hereby, on this 2nd day of August, 1922, on motion of Griggs & Harding, attorneys for Weidmann Silk Dyeing Company, above named, ordered, that said verdict shall not be set aside and a new trial granted and that said rule to show cause be and hereby is discharged, vacated and for nothing holden, with costs to be taxed.

Geo. S. Silzer,
Judge.

Thereupon on the Second day of August Nineteen hundred and Twenty-two, the Court made the following rule:

The Acquackanonk Water Company above named

having given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey on the petition of the Acquackanonk Water Company aforesaid, to examine and appraise certain property of the said Weidmann Silk Dyeing Company, situate in the City of Paterson, Passaic County, New Jersey, being the right to take water described in said petition which said petition and order thereon were filed in said matter on the 28th day of January, 1919, and to assess the amount to be paid and the damages for the taking of said property sustained by said Weidmann Silk Dyeing Company, the owner thereof, which award of said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920, wherein and whereby the said commissioners did award and report that they made a just and equitable appraisement of the value of said property. and the assessment of the amount to be paid by said The Acquackanonk Water Company for said property and the damage aforesaid to be paid by said The Acquackanonk Water Company to said Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filling of said petition and order thereon, as aforesaid, which was the sum of Five thousand four hundred dollars ($5400.00) awarded to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid:

And an order having been made by the above court wherein it was ordered that the issue for the trial of the question therein involved between the said parties was thereby framed and that the issue

was the value of and assessment of the amount which the Acquackanonk Water Company should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert said waters as therein mentioned as against the said lands and property of said Weidmann Silk Dyeing Company as therein mentioned and also for the damages to be sustained by said Weidmann Silk Dyeing Company, owner as aforesaid in consequence of the taking of said water rights as against said lands and property of said Weidmann Silk Dyeing Company by the said The Acquackanonk Water Companw as aforesaid;

And the above cause upon said issue having been tried before the above stated court with a jury at the April, 1921 term of this court and witnesses having been produced and sworn and counsel heard for the respective parties, and the jury having rendered a verdict on the 25th day of May, 1921, in favor of the said Weidmann Silk Dyeing Company and against the said The Acquackanonk Water Company and found that the value of and the assessment of the amount which The Acquackanonk Water Company should pay to said Weidmann Silk Dyeing Co., for said right to take said water as aforesaid and also for the damages as aforesaid, was the sum of Nine thousand eight hundred and sixty-four dollars ($9,864.00); and the judge having instructed the jury to find said compensation to be paid as aforesaid as of the date of filing of said petition and order.

And upon the application of said The Acquackanonk Water Company a rule to show cause why the said verdict should not be set aside and a new trial granted, having been granted herein, and said rule to show cause having been duly set down for

hearing and the arguments of the counsel for the respective parties having been heard thereon and the court having by its order filed herein ordered that said rule to show cause should be discharged;

And the said Weidmann Silk Dyeing Company having duly given notice in writing to the said The Acquackanonk Water Co., of a motion that a rule be entered herein ordering that judgment final be entered herein adjudging that said Weidmann Silk Dyeing Company recover of said The Acquackanonk Water Company the said sum of Nine Thousand Eight Hundred and Sixty-four Dollars ($9,864.00) with costs and legal interest on said sum from the time of filing the said petition and order thereon for the appointment of commissioners in the above stated matter, and said motion having been duly made pursuant to said notice and the argument of the counsel of the respective parties having been heard and considered thereon, and the court being of the opinion that said last named motion should be granted,

It is, therefore, on this 2nd day of August 1922, ordered that judgment final be and hereby is entered in favor of said Weidmann Silk Dyeing Company and against the said The Acquackanonk Water Company in the sum of Eleven Thousand Two Hundred and Forty-one Dollars and Sitxy-five Cents ($11,241.65), being the said sum of Nine Thousand Eight Hundred and Sixty-Four ($9,864) dollars with One Thousand Three Hundred and Seventy-seven Dollars and Sixty-five Cents ($1,377.-65) legal interest on said sum of Nine Thousand Eight Hundred and Sixty-four Dollars ($9,864) from the 28th day of January, 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated

matter until the 25th day of May, 1921, together with costs of said suit to be taxed, nunc pro tunc, as of the 25th day of May, 1921.

Let this rule be entered in the minutes of the Court.

Geo. S. Silzer,
Judge.

On motion of

Griggs & Harding,
Attys. of Weidmann Silk Dyeing Co.

Whereupon it is adjudged and considered that said Weidmann Silk Dyeing Company do recover against said The Acquackanonk Water Co., the sum of Eleven thousand two hundred and forty-one dollars and sixty-five cents ($11,241.65) being said sum of nine thousand eight hundred and sixty-four dollars ($9,864.) with One thousand three hundred and seventy-seven dollars and sixty-five cents, ($1,377.-65) legal interest on said sum of Nine thousand eight hundred and sixty-four dollars ($9864.) from the 28th day of January, 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated matter until the 25th day of May, 1921, and the costs of said Weidmann Silk Dyeing Company, which are taxed at the sum of Fifty Dollars ($50.00), making in the whole the sum of Eleven thousand two hundred and ninety-one dollars and Sixty-five cents, ($11,291.65). Judgment entered and signed August 8th, A. D., 1922, at 2.50 P. M. Action No. 6724, Docket G, pages 491 &c.

John McCutcheon,
Clerk.

Judgment Record

State of New Jersey, }
County of Passaic, } ss.

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, Do Hereby Certify, That the foregoing is a Transcript of the Judgment Record, in re: The Acquackanonk Water Company, vs. Weidmann Silk Dyeing Company, as the same is taken from and compared with the original entry thereof in Book "Z" of Circuit Court Judgments for said County.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Ninth day of September, A. D. Nineteen Hundred and Twenty-two.

John McCutcheon,
Clerk.

Notice of Appeal

(Filed August 12, 1922.)

PASSAIC COUNTY CIRCUIT COURT

The Acquackanonk Water Company, Petitioner, against National Silk Dyeing Company.	*In Condemnation.*

NOTICE OF APPEAL

To William I. Lewis, Esquire, Attorney of National Silk Dyeing Company,

Take notice, that the petitioner appeals to New Jersey Supreme Court from the whole of the judgment entered in this cause on the following grounds:

1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

2. The refusal of the court to charge, as requested by counsel for the Acquackanonk Water Company, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

3. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

4. The refusal of the court to charge, as requested by counsel for the Acquackanonk Water Company (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

5. The refusal of the court to charge request No. 45, as requested by counsel for the Acquackanonk Water Company (except at it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

6. The refusal of the court to charge request No. 51, as requested by counsel for the Acquackanonk Water Company (except as it had already charged) that since the Dyers' Pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

7. The refusal of the court to charge request No. 37 as requested by counsel for the Acquackanonk Water Company, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

8. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be con-

sidered in arriving at the depreciation in the value of the land.

9. Because the Court allowed interest on the amount of the award by the jury to be added to said last mentioned amount.

Humphreys, & Sumner,
Humphreys & Sumner,

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Judgment Record

PASSAC COUNTY CIRCUIT COURT

The Acquackanonk Water Company vs. National Silk Dyeing Company.	*On Condenmnation*

JUDGMENT RECORD

The Acquackanonk Water Company above named presented to the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

The petition of The Acquackanonk Water Company respectfully shows:

1. That your petitioner is a corporation of the State of New Jersey, duly so created under a special act of the Legislature of New Jersey entitled "An Act to incorporate The Acquackanonk Water Company", approved March 9, 1871; the term of existence of the corporation is unlimited, and the purposes of the formation of the company are (among others) the constructing, maintaining and operating of water works for the purpose of supplying what at the time of the incorporation of said company was known as the Village of Passaic, covering territory now comprising the Cities of Passaic and Clifton, with water; and your petitioner has power to take water rights and property for its said purposes.

2. Your petitioner has constructed its water works and is engaged in supplying water to the said Cities of Passaic and Clifton (which are coincident with what was formerly known as the

Village of Passaic) and their inhabitants for public water supplies, and has for several years past been taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls in Passaic County through the dams, filtration works and pumping station located at that place, and such continued taking and diversion thereof is required and necessary for the public purposes aforesaid; and your petitioner has therefore determined to acquire for public use for the purposes aforesaid and under its charter rights and the authority conferred by the aforesaid act and the several supplements thereto and amendments thereof, and the general laws of this State, the rights and property of which the following is a particular description, to wit:

The right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the Westerly line of East Fifth Street

and runing thence (1) westerly along the northerly line of said Branch Street two hundred and seventy eight feet and thirty four hundredths of a foot, thence (2) northerly at right angles from Branch street one hundred feet, thence (3) westerly, parallel with Branch street one hundred and fifty five feet more or less to the Passaic River, thence (4) northeasterly, along the same down stream the various courses thereof to the westerly line of said East Fifth street thence (5) southerly along the westerly line of East Fifth street five hundred and seventy seven feet more or less to the place of beginning, containing fifty seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods street, on the south by Lowe street and on the westerly side by the Passaic river as it runs in its course being lots numbers 2, 4, 6, 8, 10, 12, 14 and 16 Woods street, 1 and 3 Lowe street, and numbers 62, 64, 66, 68, 70, 72, 74, and 76 Shady St., as laid down on the map of the City of Paterson and being known as the Wood street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main St., at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty four and seventy seven hundredths feet to the westerly line of lands conveyed by

Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic river; thence (3) up said river to the easterly line of East Main St., and thence (4) northerly along said easterly line of East Main St., one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly, an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing oCmpany and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company dated Jan. 2d 1909 and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds pp. 60 &c. and is now known as the Valley Works of the National Silk Dyeing Company.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works which consist of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies. The lands of the owners hereinafter mentioned lie upon the said Passaic River and the diversion is made above

their said lands of water which would otherwise flow past and over their said lands by reason whereof they claim compensation and damages.

Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is National Silk Dyeing Company which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

By Humphreys & Sumner, Attorneys,
First National Bank Bldg.,
Paterson, N. J.

State of New Jersey,
County of Passaic. } ss.

Richard Rossiter being duly sworn, on his oath, says: That he is the agent of The Acquackanonk Water Company petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Directors of said Company, that the matters stated

in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with National Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. Chas. A. Auger of said Company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said Chas. A. Auger indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agreement with him, or with said National Silk Dyeing Company.

Richard Rossiter

Subscribed and sworn to this 17 day of February 1919, before me, Filbert L. Rosenstein, An Attorney at Law of New Jersey.

which petition was filed on the Twentieth day of February, Nineteen Hundred and Nineteen.

Upon said petition the said Justice made and filed the following order:

Application having been made to me, James F. Minturn a Justice of the Supreme Court, of the State of New Jersey, by the Acquackanonk Water Company, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages, (if any) by reason of the taking of the same, I do hereby assign the first day of March nineteen hundred and nineteen at the hour of ten o'clock in the forenoon, at the Court House in the City of Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this eighteenth day of February, Nineteen Hundred and Nineteen.

James F. Minturn,

Justice of the New Jersey Supreme Court.

which order was filed on the twentieth day of February Nineteen Hunded and Nineteen.

Upon reading the consent at foot hereof, and it appearing that the above named petitioner has determined to take for public use the right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not ex-

ceeding an average quantity in any year of nine million gallons of water per day for the purposes of said municipal corporation as against the lands described in the schedule hereto annexed and hereby made a part hereof as well as against the lands described in said petition; and it further appearing that the said petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price;

It is thereupon, on this first day of March, 1919, upon motion of Humphreys & Sumner, attorneys for the petitioner, ordered that the petition heretofore filed in this matter be, and the same hereby is, amended by adding to the description therein contained of the land and property against which the right to take said water is required, the land and property described in said schedule hereto annexed, to the end that said petition shall, for all purposes, have the same force and effect as if the land and property described in said schedule had, at the time of the filing of said petition, been inserted therein immediately following the description of the lands therein contained.

James F. Minturn,
J. S. C.

I hereby consent to the entering of the above order.

Wm. I. Lewis,
Attorney for the National Silk
Dyeing Company.

All those tracts or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGray's to Paterson and in

the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hopper's thence (2) along said road south 53 degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty five minutes west five chains and forty one links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line be-

tween the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same southeasterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) north-easterly along the same to the place of beginning; excepting and reserving out of the above described tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwesterly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet and forty five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly

of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

which amended order was filed on the Tenth day of March, Nineteen Hundred and Nineteen.

Thereupon the said Justice made and filed the following order appointing commissioners:

Upon this first day of March Nineteen Hundred and nineteen, being the date fixed by me for the hearing upon the petition in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Humphreys & Sumner of counsel with the petitioner, and William I. Lewis appearing on behalf of National Silk Dyeing Company,

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint

Jacob W. DeYoe
Clifford L. Newman
James L. Brown

three disinterested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested

in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the first day of October, next.

James F. Minturn,
Justice of the Supreme Court of
the State of New Jersey.

which order was made on the First day of March Nineteen hundred and nineteen and filed on the Tenth day of March, Nineteen hundred and nineteen.

Thereupon the said Commissioners made and filed the following report and award:

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above stated proceeding by an order made therein on March 1st, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise the property, being the right to take water in the petition in said proceeding described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days notice, to be given by the petitioner as in said order directed, and that said commissioners should file their report with the Clerk of the County of Passaic, on or before the first day of October, then next; and said time to file our report having been extended by order of said Justice of the Supreme Court, made upon good cause shown, to the first day of September, 1920, we do respectfully report as follows:

We, the said Commissioners having, on the 24th day of March, A. D. 1919, first taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding did, on April 4th, 1919, give notice to said National Silk Dyeing Company that we would meet at the meeting rooms of the Board of Freeholders in the Court House, in the City of Paterson, on April 14th, 1919, at ten o'clock in the forenoon to proceed with our duties and to appraise the said property so to be taken as aforesaid, and to make an impartial estimate and assessment of the damages to be sustained by its taking; which said notice was in writing, and, on April 4th, 1919, was given to William I. Lewis, the attorney appearing for said National Silk Dyeing Company on said application, and to said petitioner.

We do further report that at the time and place appointed as aforesaid we did meet and in the presence of the respective attorneys of the petitioner and said National Silk Dyeing Company proceeded to view and examine the said property being the right to take water in said petition described, and to make a just and equitable appraisement of the value of the same, and an assessment of the amount to be paid by the petitioner for such property and damage aforesaid, as of the date of the filing of the petition and order thereon.

And we do further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by the petitioner for said property and the damage aforesaid to be paid by said petitioner, for the said taking and damage aforesaid as of the date

of the filing of the petition and order aforesaid, and that such just and equitable appraisement and said assessment of the amount to be paid by the petitioner for said property and such damage so made as aforesaid is the sum of $5,400.00, to be paid by said petitioner to said National Silk Dyeing Company.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners,

which report and award was filed on the Twenty-sixth day of August, Nineteen Hundred and Twenty.

Thereupon an appeal was taken from said award by The Acquackanonk Water Company above named to the said Passaic County Circuit Court, which appeal was taken and filed on the Tenth day of September, Nineteen hundred and twenty and was as follows:

To the Circuit Court of the County of Passaic in the State of New Jersey, and to The National Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having on the application of your petitioner, The Acquackanonk Water Company, filed February 20, 1919, which petition was amended by an order of said Justice of Supreme Court made March 1, 1919, and filed March 10, 1919, by his order dated March 1, 1919, and filed March 10, 1919, with the Clerk of the Passaic County Circuit Court, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown of the County of Passaic, Commissioners to examine and appraise the lands in the petition described, to wit, the

right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900; and having directed by said order that the said commissioners should file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by order of said Justice of Supreme Court made September 23, 1919, and filed same day in the Passaic County Circuit Court until December 31, 1919; and said time having been again extended by order of said Justice of Supreme Court made December 6, 1919, and filed December 22, 1919, in said Passaic County Circuit Court until February 10, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920, and filed June 19, 1920, in said Passaic County Circuit Court until August 1st, 1920; and said time having been again finally extended by order of said Justice of Supreme Court made July 28, 1920, and filed July 30, 1920, in the Passaic County Circuit Court until September 1st, 1920, and the said commissioners having by their report filed on the 26th day of August, 1920, in the Clerk's Office of said County of Passaic appraised the lands and rights in land of the said National Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition

described, and having assessed the damages to be paid therefor by your petitioner at the sum of Five Thousand Four Hundred Dollars ($5,400); and your petitioner feeling dissatisfied and aggrieved by the decision of the commissioners aforesaid, and desiring an appeal therefrom to this court, please take notice that an appeal from said award and report of said commissioners has been, and is hereby, made by your petitioner, the said The Acquackanonk Water Company, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10.30 o'clock in the forenoon at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic to frame the issue and to fix a day for striking a jury and a view of the premises and a day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)", approved March 20, 1900.

Dated September 10, 1920.

Humphreys & Sumner,
Attorneys for Petitioner.

Thereupon on the Eleventh day of April, Nineteen Hundred and Twenty-one an order was made by the Judge of said Passaic Circuit Court framing the issue, ordering that a jury be struck, and fixing the time and place for the trial of said appeal as follows:

The Acquackanonk Water Company having given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L.

Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the Acquackanonk Water Company, and the appellant having given notice of a motion to be heard before Honoroble George S. Silzer, Judge of said Circuit Court, at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day, to frame the issue on said appeal and to fix a day for the striking of a jury and a day for the trial of said appeal; and the hearing of said notice of said motion having been postponed from time to time to the 11th day of April, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said National Silk Dyeing Company is the owner of certain lands and property described in the petition and the order amending said petition, filed in the above entitled matter, and hereinafter described and that the said The Acquackanonk Water Company is taking by condemnation certain property of said National Silk Dyeing Company particularly described in said petition as follows:

The right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz.:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street and running thence (1) westerly along the northerly line of said Branch Street two hundred and seventy eight feet and thirty four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and fifty five feet more or less to the Passaic river, thence (4) northeasterly, along the same down stream the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred and seventy seven feet more or less to the place of beginning, containing fifty seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods Street, on the south by Lowe Street and on the westerly side by the Passaic river as it runs in its course, being lots numbers 2, 4, 6, 8, 10, 12, 14 and 16

Woods Street, 1 and 3 Lowe Street, and numbers 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main St., at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty four and seventy seven hundredths feet to the westerly line of land conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic river; thence (3) up said river to the easterly line of East Main St., and thence (4) northerly along said easterly line of East Main St. one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly, an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company dated Jan 2d, 1909, and recorded in the office of the Register of Pas-

saic County in Book Y-19 of Deeds, pp. 60 &c. and is now known as the Valley Works of the National Silk Dyeing Company.

And, also, all those tracts or parcels of land and premises hereinafter particularly described situate, lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGrays to Paterson and in the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers thence (2) along said road south fifty three degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson, thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty five minutes west five chains and forty one links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty

four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne in the County of Passaic and state of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same southeasterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) northeasterly along the same to the place of beginning; excepting and reserving out of the above described tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to

Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwesterly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet and forty five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

It is on this eleventh day of April, 1921, on motion of Humphreys & Sumner, Attorneys for the appellant, the said The Acquackanonk Water Company, in the presence of and with the consent of William I. Lewis, Attorney for the National Silk Dyeing Company, Ordered, that Monday the 16th day of May 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeal before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further Ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the value of and the assessment of the amount which the said The Acquackanonk Water Company should pay to said National Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously until January 1st, 1925, from the Passaic River at Little Falls, in

Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic, New Jersey, and Clifton, New Jersey, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purpose of said municipal corporations, as against the said lands and property of said National Silk Dyeing Company as in said petition described, and also for the damages, to be sustained by the said National Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The Acquackanonk Water Company.

And it is further ordered that a jury be struck for the trial of said appeal at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further Ordered that a view of the premises and the property be had.

Geo. S. Silzer,
J.

We consent to the making of this order,
Humphreys & Sumner,
Attorney for The Acquackanonk
Water Company.
Wm. I. Lewis,
Attorney for National Silk
Dyeing Company.

We hereby consent and agree to the making of the foregoing order and that the provision of the statute that the day agreed for striking of the jury in the foregoing order be at least ten days

before the day agreed for trial of the appeal shall be and hereby is waived and that the day fixed for striking of the jury in said order shall be the day fixed for the trial of said appeal.

Humphreys & Sumner,
Attorney for the Acquackanonk
Water Company.

Wm. I. Lewis,
Attorney for National Silk
Dyeing Company.

Thereupon the said appeal on said issue was tried before George S. Silzer, Judge of said Passaic County Circuit Court with a struck jury at the said Passaic County Circuit Court on the 16th, 17th, 18th, 19th, 20th, 23rd, 24th and 25th days of May, 1921, said jury having been duly struck and empanelled and having viewed the premises pursuant to the order of said Court and having been duly sworn and having proceeded to trial and the evidence offered by the respective parties and the respective counsel having been heard, and said appeal on said issue having been heard and submitted to the jury as aforesaid, they returned their verdict on the 25th day of May, 1921, as follows:

They find that said The Acquackanonk Water Company is to pay to said National Silk Dyeing Company the sum of Four Thousand One Hundred and Ten Dollars, ($4,110).

Thereupon upon application of said The Acquackanonk Water Company a rule to show cause why said verdict should not be set aside and a new trial granted, was made and filed and entered on June Eigthteenth, Nineteen Hundred and Twenty-one, as follows:

A verdict being entered in favor of the National Silk Dyeing Co. in the above entitled matter and against the Acquackanonk Water Co. for $4110 and application having been made within six days after the rendering of said verdict, now, on motion of Humphreys & Sumner, of counsel with the Acquackanonk Water Company, and in the presence of Griggs & Harding, of counsel with the National Silk Dyeing Company, it is ordered that the National Silk Dyeing Company show cause before our Passaic Circuit Court at the present term upon a day to be fixed by the court for that purpose why the verdict in this cause should not be set aside and a new trial granted.

And it is further ordered that the granting of this rule to show cause shall not operate as, or be, a bar against the Acquackanonk Water Company taking or prosecuting an appeal from the judgment which shall be entered upon said verdict upon the following points, which are hereby expressly reserved by this rule, provided that the argument on the points so reserved be brought on for hearing at the fall term, 1921, of the court to which same may have been appealed.

Point I. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

Point II. The refusal of the court to charge, as requested by counsel for the Acquackanonk

Water Company, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

Point III. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

Point IV. The refusal of the court to charge, as requested by counsel for the Acquackanonk Water Company (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

Point V. The refusal of the court to charge request No. 45, as requested by counsel for the Acquackanonk Water Company (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

Point VI. The refusal of the court to charge request No. 51, as requested by counsel for the Acquackanonk Water Company (except as it had already charged) that since the dyer's pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

Point VII. The refusal of the court to charge request No. 37 as requested by counsel for the Acquackanonk Water Company, that the evidence being that the Dyeing Companies had in fact, at sources of water supply to take the place of the the present time secured for themselves other water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

Point VIII. The instructions by the court to the jury as requested by counsel for the property

owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

Point IX. If, on the hearing of the rule to show cause, the Circuit Court shall decide the question of allowance or non-allowance of interest on the amount of award, that question may also be reserved by both parties and be the subject of appeal.

Geo. S. Silzer,
Judge.

The said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard, the court on the Ninth day of August, Nineteen Hundred and Twenty-two, made an order herein that said rule to show cause should be discharged, which order is as follows:

A rule to show cause why the verdict heretofore rendered in the above stated cause should not be set aside and a new trial granted, having been made by this court, and the said rule to show cause having been duly set down for argument and the arguments of the counsel for the respective parties having been heard thereon and the court having duly considered the same and being

of the opinion, that said verdict should not be set aside and a new trial granted and that the said rule to show cause should be discharged.

It is hereby, on this 9th day of August, 1922, on motion of Wm. I. Lewis, attorney for National Silk Dyeing Company above named, Ordered, that said verdict shall not be set aside and a new trial granted and that said rule to show cause be and hereby is discharged, vacated and for nothing holden, with costs to be taxed.

Geo. S. Silzer,
J.

Thereupon on the Ninth day of August, Nineteen Hundred and Twenty-two, the Court made the following rule:

The Acquackanonk Water Co. above named, having given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the petition of the Acquackanonk Water Company aforesaid, to examine and appraise certain property of the said National Silk Dyeing Company, situate in the City of Paterson, Passaic County, New Jersey, being the right to take water described in said petition, which said petition was filed in said matter on February 20, 1919, and to assess the amount to be paid and the damages for the taking of said property sustained by said National Silk Dyeing Company, the owner thereof, which award of said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920, wherein and whereby the said commissioners did award and report that they made a just and equitable appraisement of the value of said property and the

assessment of the amount to be paid by said Acquackanonk Water Company for said property and the damage aforesaid to be paid by said Acquackanonk Water Company to said National Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of said petition which was the sum of $5,400 awarded to be paid by said petitioner to said National Silk Dyeing Company as aforesaid;

And an order having been made by the above court wherein it was ordered that the issue for the trial of the question therein involved between the said parties was thereby framed and that the issue was the value of and the assessment of the amount which the Acquackanonk Water Company should pay to said National Silk Dyeing Company owner of said lands and property for the said right to take and divert said waters as therein mentioned as against the said lands and property of the said National Silk Dyeing Company as therein mentioned and also for the damages to be sustained by said National Silk Dyeing Company owner as aforesaid in consequence of the taking of said water rights as against said lands and property of said National Silk Dyeing Company by the said Acquackanonk Water Company as aforesaid:

And the above cause upon said issue having been tried before the above stated court with a jury at the April, 1921, term of this court and witnesses having been produced and sworn and counsel for the respective parties, and the jury having rendered a verdict, on the 25th day of May, 1921, in favor of the National Silk Dyeing Company, and against the said Acquackanonk Water Company and found that the value of and the assessment of the amount which the Acquackanonk Wa-

ter Company should pay to said National Silk Dyeing Company for said right to take said water as aforesaid and also for the damages as aforesaid, was the sum of $4,110.

And the Judge having instructed the jury to find said compensation to be paid as aforesaid as of the date of the filing of said petition.

And upon the application of said Acquackanonk Water Company a rule to show cause why the said verdict should not be set aside and a new trial granted, having been granted herein, said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard thereon and the court having by its order filed herein ordered that rule to show cause should be discharged;

And the said National Silk Dyeing Company having duly given notice to the said Acquackanonk Water Company of a motion that a rule be entered herein ordering that judgment final be entered herein adjudging that said National Silk Dyeing Company recover of said Acquackanonk Water Co. the sum of Four Thousand and one hundred and ten dollars ($4110) and legal interest on said sum from the time of filing the said petition for the appointment of commissioners in the above stated matter, and said motion having been duly made pursuant to said notice and the arguments of the counsel of the respective parties having been heard and considered thereon, and the court being of the opinion that said last named motion should be granted.

It is, therefore, on this 9th day of August, 1922, ordered, that judgment final be and hereby is entered in favor of said National Silk Dyeing Company and against the said Acquackanonk Water

Company in the sum of four thousand six hundred and fifty eight dollars and twenty seven cents ($4658.27) being said sum of Four thousand one hundred and ten dollars ($4110) with five hundred and fifty eight dollars and twenty seven cents ($558.27) legal interest on said sum of Four thousand one hundred and ten dollars ($4110) from February 20, 1919, the time of filing the said petition until the 25th day of May, 1921, nunc pro tunc as of May 25, 1921. Let this rule be entered in the minutes of the court.

On motion of

Wm. I. Lewis,
Attorney of National Silk
Dyeing Company.

Geo. S. Silzer,
J.

Whereupon it is adjudged and considered that said National Silk Dyeing Company do recover against said The Acquackanonk Water Company the sum of Four Thousand Six Hundred and Sixty-eight Dollars and Twenty-seven Cents, ($4668.27), being said sum of Four Thousand One Hundred and Ten Dollars, ($4110), with Five Hundred and Fifty-eight Dollars and Twenty-seven Cents, ($558.27) legal interest on said sum of Four Thousand One Hundred and Ten Dollars ($4110) from February 20, 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated matter until the 25th day of May, 1921, and the costs of said National Silk Dyeing Company which are taxed at the sum of Fifty Dollars, ($50.00) making the whole sum of Four Thousand Seven Hundred and Eighteen Dollars and Twenty-seven Cents ($4718.27).

Judgment Record

Judgment entered and signed August 11th A.D., 1922 at 1.50 P. M. Action No. 6738, Docket G, pages 497 &c.

John McCutcheon,
Clerk.

State of New Jersey
County of Passaic. } ss.:

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, Do Hereby Certify, That the foregoing is a Transcript of the Judgment Record, in re: The Acquackanonk Water Company, vs. National Silk Dyeing Company, as the same is taken from and compared with the original entry thereof in Book "Z" of Circuit Court Judgments for said County.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Ninth day of September, A. D., Nineteen Hundred and Twenty-two.

John McCutcheon,
Clerk.

Notice of Appeal

(Filed August 9, 1922)

PASSAIC COUNTY CIRCUIT COURT

In the matter of the application of the Mayor and Aldermen of Jersey City, a municipal corporation, to acquire the right to divert and take water as against lands of Weidmann Silk Dyeing Company.	*In Condemnation.*

NOTICE OF APPEAL

To Messrs. Griggs & Harding, Attorneys of Weidmann Silk Dyeing Company,

Take notice, that the petitioner appeals from the whole of the judgment entered in this cause to New Jersey Supreme Court on the following grounds:

1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

2. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not

as against the condemnors, the basis upon which the damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

3. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

4. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter iin their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

5. The refusal of the court to charge request No. 45, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would

be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

6. The refusal of the court to charge request No. 51, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that since the Dyers' Pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

7. The refusal of the court to charge request No. 37 of Jersey City, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being on evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

8. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the

usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

9. Because the court allowed interest on the amount of the award by the jury to be added to said last mentioned amount.

Humphreys & Sumner,
Attorneys of Petitioner.

Judgment Record

PASSAIC COUNTY CIRCUIT COURT

The Mayor and Aldermen of Jersey City vs. Weidmann Silk Dyeing Company.	*On Condemnation.*

JUDGMENT RECORD

The Mayor and Aldermen of Jersey City above named presented to the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

To the Honorable James F. Minturn, Justice of the Surpeme Court of New Jersey:

The petition of the Mayor and Aldermen of Jersey City respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the North by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the East by East Twelfth Street, and on the West by East Eleventh Street and containing 30-1/2 City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the North by the Passaic River; on the South by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on West by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant

about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet, also

All those certain tracts of land and premises, situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100 acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the the South by the Passaic River; on the East by lands of the New York, Susquehanna and Western Railroad Company, and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands of the Erie Railroad Company, and on the West by lands of the Hawthorne Development Co., and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works, which consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages.

Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is Weidmann Silk Dyeing Company which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damage (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The Mayor and Aldermen of Jersey City.
By Collins & Corbin, Attorneys,
243 Washington Street,
Jersey City, N. J.

State of New Jersey, }
County of Passaic. } ss.

Richard Rossiter being duly sworn, on his oath, says: That he is the agent of The Mayor and Aldermen of Jersey City, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Commissioners of said City that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree on the price, and, damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with Weidmann Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. August J. Hunziker of said Company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said August J. Hunziker indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any

agreement with him, or with said Weidmann Silk Dyeing Company.

Richard Rossiter

Subscribed and sworn to this 24 day of January, 1919, before me. James Feeney, M. C. C. of N. J. which the petition was filed on the Twenty-eight day of January, Nineteen Hundred and Nineteen.

Upon said petition the said Justice made and filed the following order:

Application having been made to me, James F. Minturn a Justice of the Supreme Court, of the State of New Jersey, by the Mayor and Aldermen of Jersey City by petition, for the appointment of three Commissioners to fix the compensation to be paid by said municipality for the property in said petition described, and the damages, (if any) by reason of the taking of the same, I do hereby assign the first day of March nineteen hundred and nineteen at the hour of ten o'clock in the forenoon, at the Court House in the City of Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this twenty-fifth day of January, Nineteen Hundred and Nineteen.

James F. Minturn,

Justice of the New Jersey Supreme Court.

which order was filed on the Twenty-eighth day of January, Nineteen Hundred and Nineteen.

Thereupon the said Justice made and filed the following order appointing Commissioners:

Upon this first day of March, Nineteen Hundred and Nineteen, being the date fixed by me for the hearing upon the petition in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins & Corbin of counsel with the petitioner, and Griggs & Harding appearing on behalf of Weidmann Silk Dyeing Company.

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint

Jacob W. DeYoe,
Clifford L. Newman
James L. Brown

three disinterested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the first day of October, next.

James F. Minturn,
Justice of the Supreme Court of the State of New Jersey.

which order was made on the First day of March Nineteen Hundred and Nineteen and filed on the Tenth day of March Nineteen Hundred and Nineteen.

Thereupon the said Commissioners made and filed the following report and award:

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above proceedings by an order made therein on March 1, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey on the application of the above named The Mayor and Aldermen of Jersey City, a municipal corporation of New Jersey, made in writing, by petition, to the said Justice, to examine and appraise certain property of the Weidmann Silk Dyeing Company, being filed in said water described in the said petition filed in said proceedings, and to assess the damages, if any, by reason of the taking of said property so described as aforesaid, on at least six days notice, to be given as in said order directed, and that said Commissioners should file their report with the Clerk of Passaic County on or before the first day of October then next; and the said time to file said report having been extended by said Justice of the Supreme Court made upon good cause shown to the first day of September, 1920; we do respectfully report as follows:

We, the said Commissioners, having on the 24th day of March, A. D., 1919, first duly taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and un-

derstanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, said owner of said property, that we would meet at the meeting rooms of the Board of Freeholders in the Court House in the City of Paterson, N. J., on April 14, 1919, at 10 o'clock in the forenoon, which said notice was given and served pursuant to the statute in such case provided; and the said petitioner and the said owner having been represented before us, we, the said Commissioners, did meet at the time and place aforesaid, and we thereafter viewed and examined the said property described in said petition as aforesaid; we further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner for said property, and the damage aforesaid to be paid by said petitioner, The Mayor and Aldermen of Jersey City, to the said the Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of the said petition and order aforesaid, and that said just and equitable appraisement and said assessment of the amount to be paid by the said petitioner for the said property and of said damage so made by us aforesaid, is the sum of $97,350.00, which we award to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid.

Jacob W. DeYoe
Clifford L. Newman
James L. Brown,
Commissioners.

which report and award was filed on the Twenty-sixth day of August, Nineteen Hundred and Twenty.

Thereupon appeals were taken from said award by both Weidmann Silk Dyeing Company and The Mayor and Aldermen of Jersey City above named to the said Passaic County Circuit Court, which appeals were respectively taken and filed on the Ninth day of September Nineteen Hundred and Twenty and the Tenth day of September Nineteen Hundred and Twenty and were respectively as follows:

To the Mayor and Aldermen of Jersey City, its attorneys and agents:

Gentlemen:

Take notice, that Weidmann Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the Weidmann Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said Weidmann Silk Dyeing Co., the owner thereof; which report and award of the said commissioners was filed in the County Clerk's office of the County of Passaic, on the 26th day of August, 1920.

And take further notice that the said Weidmann Silk Dyeing Company, on the 9th day of October, 1920, at 10:30 o'clock in the forenoon, at Court House, in the city of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a

day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Respectfully yours,
Griggs & Harding,
Attorneys of the Weidmann Silk
Dyeing Company.

Dated Sept. 7, 1920.

To the Circuit Court of the County of Passaic in the State of New Jersey, and to the Weidmann Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having, on the application of your petitioner, The Mayor and Aldermen of Jersey City, a municipal corporation, filed January 28, 1919, by his order made March 1st, 1919, filed March 10, 1919, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown of the County of Passaic commissioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900, and having directed by said order that the said commissioners file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by an order made by said Justice of the Supreme Court on September 23, 1919, filed on the same day in the Passaic County Circuit Court until December 31, 1919, and said time having been again extended by order of said Justice of Supreme

Court made December 6, 1919 and filed December 22, 1919, in said Passaic County Circuit Court until February 10, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920, filed June 19, 1920, in said Passaic County Circuit Court until August 1, 1920; and said time having been again finally extended by order of said Justice of Supreme Court made July 28, 1920, and filed July 30, 1920, in said Passaic County Circuit Court until September 1, 1920; and the said commissioners having by their report filed on the 26th day of August, 1920, in the Clerk's Office of said County of Passaic appraised the lands and rights in land of the said Weidmann Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition described, and having assessed the damages to be paid therefor by your petitioner at the sum of Ninety-Seven Thousand Three Hundred and Fifty Dollars ($97,350); and your petitioner feeling dissatisfied and aggrieved by the decision of the Commissioners aforesaid and desiring an appeal therefrom to this court, please take notice that an appeal from said award and report of said commissioners has been, and is hereby, made by the petitioner, the said The Mayor and Aldermen of Jersey City, a municipal corporation, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10.30 o'clock in the forenoon, at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue and to fix a day for striking a jury and a view of the premises, and a

day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900.

Collins & Corbin

Attorneys for Petitioner

Dated September 10th, 1920.

Thereupon on the Eleventh day of April Nineteen Hundred and Twenty-one an order was made by the Judge of said Passaic Circuit Court framing the issue, ordering that a jury be struck, and fixing the time and place for the trial of said appeals as follows:

Both The Mayor and Aldermen of Jersey City and Weidmann Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of The Mayor and Aldermen of Jersey City, and each of the appellants having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the 1st day of March, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said Weidmann Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that the said The Mayor and Aldermen of Jersey City are taking by condemnation certain property of said Weidmann Silk Dying Company particularly described in said petition as follows:

The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths City Lots or 7-56/100ths Acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and con-

taining 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the North by the Passaic River; on the South by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the East by East Twelfth Street, and on the West by East Eleventh Street and containing 30-1/2 City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the North by the Passaic River; on the South by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on the West by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100 acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Sus-

quehanna and Western Railroad Company; on the South by the Passaic River; on the East by lands of the New York, Susquehanna and Western Railroad Company; and on the West by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands of the Erie Railroad Company, and on the West by lands of the Hawthorne Development Co., and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

Said property and rights are necessary for and are taken for and form part of your petitioner's water works, which consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway river the water needed for the supply. Said river is a tributary of Passaic river upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages.

It is on this eleventh day of April, 1921, on motion of Collins & Corbin, Attorneys for the appellants, The Mayor and Aldermen of Jersey City, and on like motion of Griggs & Harding, attorneys for the appellant, Weidmann Silk Dyeing Company, ordered, that Monday the Sixteenth day of May 1921, at ten o'clock in the forenoon, be and the

same hereby is fixed as the time for the trial of said appeals before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the value of and the assessment of the amount which the Mayor and Aldermen of Jersey City should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously and perpetually from the Rockaway River at Boonton, in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation as against the said lands and property of Weidmann Silk Dyeing Company as in said petition described, and also for the damages, if any, to be sustained by the said Weidmann Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The Mayor and Aldermen of Jersey City.

And it is further ordered, that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

Geo. S. Silzer,
Judge.

Thereupon the said appeals on said issue were tried before George S. Silzer, Judge of said Passaic County Circuit Court with a struck jury at the said Passaic County Circuit Court on the 16th, 17th, 18th, 19th, 20th, 23rd, 24th and 25th days of May, 1921, said jury having been duly struck and empanelled and having viewed the premises pursuant to the order of said Court and having been duly sworn and having proceeded to trial and the evidence offered by the respective parties and the respective counsel having been heard, and said appeals on said issue having been heard and submitted to the jury as aforesaid, they returned their verdict on the 25th day of May 1921 as follows:

They find that said The Mayor and Aldermen of Jersey City is to pay to said Weidmann Silk Dyeing Company the sum of one hundred forty nine thousand and forty dollars, ($149,040.)

Thereupon upon application of said The Mayor and Aldermen of Jersey City a rule to show cause why said verdict should not be set aside and a new trial granted, was made and filed and entered on June 18, 1921, as follows:

A verdict being entered in favor of the Weidmann Silk Dyeing Company in the above entitled matter and against the Mayor and Aldermen of the City of Jersey City for $149,040, and application having been made within six days after the rendering of said verdict, now, on motion of Humphreys & Sumner, of counsel with the Mayor and Aldermen of the City of Jersey City, and in the presence of Griggs & Harding, of counsel with the Weidmann Silk Dyeing Company, it is ordered that the Weidmann Silk Dyeing Company show cause before our Passaic Circuit Court at the present term upon a day to be fixed by the Court for that purpose why

the verdict in this cause should not be set aside and a new trial granted.

And it is further ordered that the granting of this rule to show cause shall not operate as, or be, a bar against the Mayor and Aldermen of the City of Jersey City taking or prosecuting an appeal from the judgment which shall be entered upon said verdict upon the following points, which are hereby expressly reserved by this rule, provided that the argument on the points so reserved be brought on for hearing at the fall term, 1921, of the court to which same may have been appealed.

Point 1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking oCmpany and the Passaic Water Company, and the instructions by the Court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

Point II. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

Point III. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of

Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

Point IV. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

Point V. The refusal of the court to charge request No. 45, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

Point VI. The refusal of the court to charge request No. 51, as requested by counsel for the Mayor and Aldermen of the City of Jersey City,

(except as it had already charged) that since the dyer's pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

Point VII. The refusal of the court to charge request No. 37 as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

Point VIII. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

Point IX. If, on the hearing of the rule to show cause, the Circuit Court shall decide the question of allowance or non-allowance of interest on the amount of award, that question may also be reserved by both parties and be the subject of appeal.

Geo. S. Silzer,
Judge.

The said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard, the court on the Second day of August Nineteen Hundred and Twenty-two, made an order herein that said rule to show cause should be discharged, which order is as follows:

A rule to show cause why the verdict heretofore rendered in the above stated cause should not be set aside and a new trial granted, having been made by this court, and the said rule to show cause having been duly set down for argument and the arguments of the counsel for the respective parties having been heard thereon and the court having duly considered the same and being of the opinion, that said verdict should not be set aside and a new trial granted, and that the said rule to show cause should be discharged.

It is hereby, on this 2nd day of August 1922, on motion of Griggs & Harding, attorneys for Weidmann Silk Dyeing Company above named, ordered, that said verdict shall not be set aside and a new trial granted and that said rule to show cause be and hereby is discharged, vacated and for nothing holden, with costs to be taxed.

Geo. S. Silzer,
Judge.

Thereupon on the Second day of August Nineteen Hundred and Twenty-two, the Court made the following rule:

Both the Mayor and Aldermen of Jersey City and Weidmann Silk Dyeing Company, above named, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey on the petition of the Mayor and Aldermen of Jersey City, aforesaid, to examine and appraise certain property of the said Weidmann Silk Dyeing Company, situate in the City of Paterson, Passaic County, New Jersey, being the right to take water described in said petition, which said petition and order thereon were filed in said matter on the 28th day of January, 1919, and to assess the amount to be paid and the damages for the taking of said property sustained by said Weidmann Silk Dyeing Company, the owner therof, which award of said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920, wherein and whereby the said commissioners did award and report that they made a just and equitable appraisement of the value of said property and the assessment of the amount to be paid by said Mayor and Aldermen of Jersey City, for said property and the damage aforesaid to be paid by said Mayor and Aldermen of Jersey City to said Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of said petition and order thereon as aforesaid, which was the sum of Ninety-seven thousand three hundred and fifty ($97,350.) dollars, awarded to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid;

And an order having been made by the above court wherein it was ordered that the issue for the trial of the question therein involved between the said parties was thereby framed and that the issue was the value of and the assessment of the amount which the Mayor and Aldermen of Jersey City should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert said waters as therein mentioned as against the said lands and property of said Weidmann Silk Dyeing Company as therein mentioned and also for the damages to be sustained by said Weidmann Silk Dyeing Company owner as aforesaid in consequence of the taking of said water rights as against said lands and property of said Weidmann Silk Dyeing Company by the said Mayor and Aldermen of Jersey City as aforesaid;

And the above cause upon said issue having been tried before the above stated court with a jury at the April, 1921, term of this court and witnesses having been produced and sworn and counsel heard for the respective parties, and the jury having rendered a verdict on the 25th day of May, 1921, in favor of the said Weidmann Silk Dyeing Company and against the said Mayor and Aldermen of Jersey City and found that the value of and the assessment of the amount which the Mayor and Aldermen of Jersey City should pay to said Weidmann Silk Dyeing Co., for said right to take said water as aforesaid, and also for the damages as aforesaid, was the sum of One hundred forty-nine thousand and forty dollars ($149,040) and the Judge having instructed the jury to find said compensation to be paid as aforesaid, as of the date of filing of said petition and order thereon;

And upon the application of the Mayor and Aldermen of Jersey City a rule to show cause why the said verdict should not be set aside and a new trial granted, having been granted herein and said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard thereon and the court having by its order filed herein ordered that said rule to show cause should be discharged;

And the said Weidmann Silk Dyeing Co., having duly given notice in writing to the said Mayor and Aldermen of Jersey City of a motion that a rule be entered herein ordering that judgment final be entered herein adjudging that said Weidmann Silk Dyeing Company recover of said Mayor and Aldermen of Jersey City the said sum of One Hundred Forty-Nine Thousand and Forty Dollars ($149,040) with costs and legal interest on said sum from the time of filing the said petition and order thereon for the appointment of commissioners in the above stated matter, and said motion having been duly made pursuant to said notice and the arguments of the counsel of the respective parties having been heard and considered thereon, and the court being of the opinion that said last named motion should be granted,

It is, therefore, on this 2nd day of August 1922, ordered, that said judgment final be and hereby is entered in favor of said Weidmann Silk Dyeing Company and against the said Mayor and Aldermen of Jersey City in the sum of One Hundred Sixty-nine Thousand Eight Hundred and Fifty-five Dollars and Eighty-six cents ($169,855.86) being said sum of One Hundred Forty-nine Thousand and Forty Dollars ($149,040) with Twenty Thousand Eight Hundred and Fifteen Dollars and

Eighty-six Cents ($20,815.86) legal interest on said sum of One Hundred Forty-nine Thousand and Forty Dollars ($149,040) from the 28th day of January, 1919, the time of filing the said petition and order thereon for the appointment of commissioners in the above stated matter until the 25th day of May, 1921, together with costs of said suit to be taxed, nunc pro tunc as of the 25th day of May, 1921.

Let this rule be entered in the minutes of the Court.

Geo. S. Silzer,
Judge.

On motion of

Griggs & Harding,
Attys. of Weidmann Silk Dyeing Co.

Whereupon it is adjudged and considered that said Weidmann Silk Dyeing Company do recover against said The Mayor and Aldermen of Jersey City the sum of One hundred sixty-nine thousand eight hundred and fifty-five dollars and eighty-six cents, ($169,855.86) being said sum of One hundred forty-nine thousand and forty dollars ($149,040) with twenty thousand eight hundred and fifteen dollars and eighty-six cents ($20,815.86), legal interest on said sum of One hundred forty-nine thousand and forty dollars ($149,040.) from the 28th day of January 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated matter until the 25th day of May, 1921, and the costs of said Weidmann Silk Dyeing Company, which are taxed at the sum of Fifty Dollars ($50.00), making in the whole the sum of One Hundred Sixty-nine Thousand Nine Hundred and Five Dollars and Eighty-six cents ($169,905.86.)

Judgment Record

Judgment entered and signed August 8th, A. D., 1922 at 2.50 P. M. Action No. 6725, Docket G. pages 492 &c.

John McCutcheon,
Clerk.

State of New Jersey, }
County of Passaic. } ss.

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, do hereby certify, that the foregoing is a Transcript of the Judgment Record, in re: The Mayor and Aldermen of Jersey City, vs. Weidmann Silk Dyeing Company as the same is taken from and compared with the original entry thereof in Book "Z" of Circuit Court Judgments for said County.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Ninth day of September, A. D. Nineteen Hundred and Twenty-two.

John McCutcheon,
Clerk.

Notice of Appeal

(Filed August 12, 1922)

PASSAIC COUNTY CIRCUIT COURT

In the matter of the application of the Mayor and Aldermen of Jersey City, a municipal corporation, to acquire the right to divert and take water as against lands of National Silk Dyeing Company.	*In Condemnation*

NOTICE OF APPEAL

To William I. Lewis, Esquire, Attorney of National Silk Dyeing Company,

Take notice, that the petitioner appeals to New Jersey Supreme Court from the whole of the judgment in this cause on the following grounds:

1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

2. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield, and Nutley, they necessarily fixed as against themselves, but not as against the condemnors, the basis upon which the

damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

3. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they abstracted, then the lower riparian owners could not make any complaint.

4. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

5. The refusal of the court to charge request No. 45, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable

riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

6. The refusal of the court to charge request No. 51, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that since the Dyers' Pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

7. The refusal of the court to charge request No. 37 as requested by counsel for the Mayor and Aldermen of the City as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

8. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under

these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

9. Because the court allowed interest on the amount of the award by the jury to be added to said last mentioned amount.

Humphreys & Sumner,
Attorneys of Petitioner.

PASSAIC COUNTY CIRCUIT COURT

The Mayor and Aldermen of Jersey City, vs. National Silk Dyeing Company.	*On Condemnation*

JUDGMENT RECORD

The Mayor and Aldermen of Jersey City above named presented to the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

To the Honorable James F. Minturn, Justice of tht Supreme Court of New Jersey:

The petition of the Mayor and Aldermen of Jersey City respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per

day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street and running thence (1) westerly along the northerly line of said Branch Street two hundred and seventy eight feet and thirty four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and fifty five feet more or less to the Passaic River, thence (4) northeasterly, along the same down stream the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred and seventy seven feet more or less to the place of beginning, containing fifty seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods Street, on

the south by Lowe Street and on the westerly side by the Passaic River as it runs in its course, being lots numbers 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street, 1 and 3 Lowe Street, and numbers 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main St., at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty four and seventy seven hundredths feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main St., and thence (4) northerly along said easterly line of East Main St., one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly, an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by

the last mentioned company to the National Silk Dyeing Company dated Jan. 2d, 1909, and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pp. 60 &c, and is now known as the Valley Works of the National Silk Dyeing Company.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works, which consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages. Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is National Silk Dyeing Company which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefor prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages

(if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

Tht Mayor and Aldermen of Jersey City,
By Collins & Corbin, Attorneys,
243 Washington Street,
Jersey City, N. J.

State of New Jersey,
County of Passaic. } ss.

Richard Rossiter, being duly sworn, on his oath, says: That he is the agent of The Mayor and Aldermen of Jersey City, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Commisioners of said City that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with National Silk Dyeing Company for the taking of property and

rights required as aforesaid, consisted of a personal application to Mr. Chas. A. Auger of said Company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said Chas. A. Auger indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agreement with him, or with said National Silk Dyeing Company.

Richard Rossiter.

Subscribed and sworn to this 17th day of February, 1919, before me,

Filbert L. Rosenstein,

An Attorney at Law of New Jersey.

which petition was filed on the Twentieth day of February, Nineteen Hundred and Nineteen.

Upon said petition the said Justice made and filed the following order:

Application having been made to me, James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, by the Mayor and Aldermen of Jersey City by petition, for the appointment of three Commissioners to fix the compensation to be paid by said municipality for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the first day of March nineteen hundred and nineteen at the hour of ten o'clock in the forenoon, at the Court House in the City of Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk o fthe County of Passaic and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this eighteenth day of February, Nineteen Hundred and Nineteen.

James F. Minturn,
Justice of the New Jersey
Supreme Court.

which order was filed on the Twentieth day of February, Nineteen Hundred and Nineteen.

Upon reading the consent at foot hereof, and it appearing that the above named petitioner has determined to take for public use the right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation as against the lands described in the schedule hereto annexed and hereby made a part hereof as well as against the lands described in said petition ; and it further appearing that the said petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

It is thereupon, on this first day of March, 1919, upon motion of Collins & Corbin, attorneys for the petitioner, ordered that the petition heretofore filed in this matter be, and the same hereby is, amended by adding to the description therein con-

tained of the land and property against which the right to take said water is required, the land and property described in said schedule hereto annexed, to the end that said petition shall, for all purposes, have the same force and effect as if the land and property described in said schedule had, at the time of the filing of said petition, been inserted therein immediately following the description of the lands therein contained.

James F. Minturn,
J. S. C.

I hereby consent to the entering of the above order.

Wm. I. Lewis.
Attorney for the National Silk Dyeing Company.

All those tracts or parcels of land and premises hereinafter particularly described situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGrays to Paterson and in the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers thence (2) along said road south fifty three degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from

Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson, thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty-six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty-five minutes west five chains and forty one links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line

of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same southeasterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) northeasterly along the same to the place of beginning: excepting and reserving out of the above described tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwesterly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet and forty five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

which amended order was filed on March 10th, 1919.

Thereupon the said Justice made and filed the following order appointing Commissioners:

Upon this first day of March Nineteen hundred and nineteen, being the date fixed by me for the hearing upon the petition in this matter, and upon

filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins & Corbin of counsel with the petitioner, and William I. Lewis appearing on behalf of National Silk Dyeing Company,

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint

Jacob W. DeYoe
Clifford L. Newman
James L. Brown

three disinterested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is ordered, that the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the first day of October, next.

James F. Minturn,
Justice of the Supreme Court of
the State of New Jersey.

which order was made on the First day of March, Nineteen Hundred and Nineteen and filed on the

Tenth day of March, Nineteen Hundred and Nineteen.

Thereupon the said Commissioners made and filed the following report and award:

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commisioners appointed in the above stated proceeding by an order made therein on March 1st, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise the property, being the right to take water in the petition in said proceeding described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days notice, to be given by the petitioner as in said order directed, and that said commissioners should file their report with the Clerk of the County of Passaic, on or before the first day of October, then next; and said time to file our report having been extended by order of said Justice of the Supreme Court, made upon good cause shown, to the first day of September, 1920, we do respectfully report as follows:

We, the said Commissioners having, on the 24th day of March, A. D., 1919, first taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding did, on April 4th, 1919, give notice to said National Silk Dyeing Company that we would meet at the meeting rooms of the Board of Freeholders in the Court House, in the City of Paterson, on April 14th, 1919, at ten o'clock in the forenoon to proceed with our duties and to appraise the said property so to be taken as aforesaid, and to make an impartial estimate and assess-

ment of the damages to be sustained by its taking; which said notice was in writing, and, on April 4th, 1919, was given to William I. Lewis, the attorney appearing for said National Silk Dyeing Company on said application, and to said petitioner.

We do further report that at the time and place appointed as aforesaid we did meet and in the presence of the rspective attorneys of the petitioner and said National Silk Dyeing Company proceeded to view and examine the said property being the right to take water in said petition described, and to make a just and equitable appraisement of the value of the same, and an assessment of the amount to be paid by the petitioner for such property and damage aforesaid, as of the date of the filing of the petition and order thereon.

And we do further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by the petitioner for said property and the damage aforesaid to be paid by said petitioner, for the said taking and damage aforesaid as of the date of the filing of the petition and order aforesaid, and that such just and equitable appraisement and said assessment of the amount to be paid by the petitioner for said property and such damage so made as aforesaid is the sum of $97,350.00, to be paid by said petitioner to said National Silk Dyeing Company.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commisioners.

which report and award was filed on the Twenty-sixth day of August, Nineteen Hundred and Twenty.

Thereupon appeals were taken from said award by both National Silk Dyeing Company and The Mayor and Aldermen of Jersey City above named to the said Passaic County Circuit Court, which appeals are respectively taken and filed on the Ninth day of September, Nineteen Hundred and Twenty, and the Tenth day of September, Nineteen Hundred and Twenty, and were respectively as follows:

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey.

To the Mayor and Aldermen of Jersey City, its attorneys and agents.

Gentlemen:

Take notice, that National Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the National Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said National Silk Dyeing Company, the owner thereof; which report and award of the said commissioners was filed in the County Clerk's Office of the County of Passaic, on the 26th day of August, 1920.

And take further notice that the said National Silk Dyeing Company, on the 9th day of October,

1920 at 10.30 o'clock in the forenoon, at the County Court House in the City of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Respectfully yours,
Wm. I. Lewis,
Attorney of the National Silk Dyeing Company.

Dated Sept. 7, A. D. 1920.

To the Circuit Court of the County of Passaic in the State of New Jersey, and to the National Silk Dyeing Company, its Attorneys and Agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having on the application of your petitioner, The Mayor and Aldermen of Jersey City, a municipal corporation, filed February 20, 1919, which petition was amended by an order dated March 1, 1919, filed March 10, 1919, by his order made March 1, 1919, filed March 10, 1919, with the Clerk of the Passaic County Circuit Court, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown of the County of Passaic, commissioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900, and having di-

rected by said last mentioned order that the said commissioners should file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by order of said Justice of Supreme Court made September 23, 1919, and filed the same day in the Passaic County Circuit Court until December 31, 1919, and said time having been again extended by order of said Justice of Supreme Court made December 6, 1919, and filed December 22, 1919, in said Passaic County Circuit Court until February 10, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920 and filed June 19, 1920, in said Passaic County Circuit Court until August 1st, 1920; and said time having been again finally extended by order of said court made July 28, 1920, and filed July 30, 1920, in said Passaic County Circuit Court until September 1, 1920; and the said commissioners having by their report filed on the 26th day of August, 1920, in the Clerk's Office of said County of Passaic appraised the lands and rights in land of the said National Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition described, and having assessed the damages to be paid therefor by your petitioner at the sum of Ninety-seven Thousand Three Hundred and Fifty Dollars ($97,350); and your petitioner feeling dissatisfied and aggrieved by the decision of the commissioners aforesaid, and desiring an appeal therefrom to this court, please take notice that an appeal from said award and report of said commis-

sioners has been, and is hereby, made by your petitioner, the said The Mayor and Aldermen of Jersey City, a municipal corporation, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10.30 o'clock in the forenoon, at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue and to fix a day for striking a jury and a view of the premises and a day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)", approved March 20, 1900.

Collins Corbin,
Attorneys for Petitioner.

Dated September 10th, 1920.

Thereupon on the Eleventh day of April, Nineteen Hundred and Twenty-one, an order was made by the Judge of said Passaic Circuit Court framing the issue, ordering that a jury be struck, and fixing the time and place for the trial of said appeals as follows:

Both The Mayor and Aldermen of Jersey City and National Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable Jas. F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of The Mayor and Aldermen of Jersey City, and each of the appellants having

given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the 11th day of April, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said National Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that the said The Mayor and Aldermen of Jersey City are taking by condemnation certain property of said National Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City

of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street and running hence (1) westerly along the northerly line of said Branch Street two hundred and seventy eight feet and thirty four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and fifty five feet more or less to the Passaic River, thence (4) northeasterly, along the same down stream the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred and seventy seven feet more or less to the place of beginning, containing fifty seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods Street, on the south by Lowe Street and on the westerly side by the Passaic River as it runs in its course, being lots numbers 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street, 1 and 3 Lowe Street, and numbers 62, 64, 66, 68, 70, 72, 74, and 76 Shady Street, as laid down on the map of the City of Paterson and being known as the -Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main St., at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty four and seventy seven hundredths feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main St., and thence (4) northerly along said easterly line of East Main St., one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company dated Jan. 2d, 1909 and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pp. 60 &c., and is now known as the Valley Works of the National Silk Dyeing Company.

And also all those tracts or parcels of land and premises hereinafter particularly described situ-

ate lying and being in the Borough of Hawthorne in the County of Passaic and State af New Jersey:

Tract One: Beginning in the middle of the road leading from Richary DeGray's to Paterson and in the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers thence (2) along said road south fifty three degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty-six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty five minutes west five chains and forty one links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Haw-

thorne, in the County of Passaic and State of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870; and recorded in the Clerk's Office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same southeasterly to the Passaic River; thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) northeasterly along the same to the place of beginning; excepting and reserving out of the above described tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwester-

ly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet and forty five hundreds of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

It is on this eleventh day of April, 1921, on motion of Collins & Corbin, Attorneys for the appellants, The Mayor and Aldermen of Jersey City, and on like motion of William I. Lewis, attorney for the appellant, National Silk Dyeing Company, ordered, that Monday the 16th day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of said appeals before the Passaic County Circuit Court, at the Court House at Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the value of and the assessment of the amount which the Mayor and Aldermen of Jersey City should pay to said National Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously and perpetually from the Rockaway River at Boonton, in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the

purposes of said municipal corporation as against the said lands and property of National Silk Dyeing Company as in said petition described, and also for the damages, if any, to be sustained by the said National Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The Mayor and Aldermen of Jersey City.

And it is further Ordered that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further Ordered that a view of the premises and the property be had.

Geo. S. Silzer,
J.

We consent to the making of this order.
Collins & Corbin,
Attorneys for The Mayor and Aldermen of Jersey City.
Wm. I. Lewis,
Attorney for National Silk Dyeing Company.

Thereupon the said appeals on said issue were tried before George S. Silzer, Judge of said Passaic County Circuit Court with a struck jury at the said Passaic County Circuit Court on the 16th, 17th, 18th, 19th, 20th, 23rd, 24th and 25th days of May, 1921, said jury having been duly struck and empanelled and having viewed the premises pursuant to the order of said Court and having been duly sworn and having proceeded to trial and the evidence offered by the respective parties

and the respective counsel having been heard, and said appeals on said issue having been heard and submitted to the jury as aforesaid, they returned their verdict on the 25th day of May, 1921, as follows:

They find that said The Mayor and Aldermen of Jersey City are to pay to said National Silk Dyeing Company the sum of Sixty-two Thousand, One Hundred Dollars, ($62,100.)

Thereupon upon application of said The Mayor and Aldermen of Jersey City a rule to show cause why said verdict should not be set aside and a new trial granted, was made and filed and entered on June Eighteenth, Nineteen Hundred and Twenty-one, as follows:

A verdict being entered in favor of the National Silk Dyeing Company in the above entitled matter and against the Mayor and Aldermen of the City of Jersey City for $62,100, and application having been made within six days after the rendering of said verdict, now, on motion of Humphreys & Sumner, of counsel with the Mayor and Aldermen of the City of Jersey City, and in the presence of Griggs & Harding, of counsel with the National Silk Dyeing Company, it is ordered that the National Silk Dyeing Company show cause before our Passaic Circuit Court at the present term upon a day to be fixed by the court for that purpose why the verdict in this cause should not be set aside, and a new trial granted.

And it is further ordered that the granting of this rule to show cause shall not operate as, or be, a bar against the Mayor and Aldermen of the City of Jersey City taking or prosecuting an appeal from the judgment which shall be entered upon said verdict upon the following points, which are

hereby expressly reserved by this rule, provided that the argument on the points so reserved be brought on for hearing at the fall term, 1921, of the court to which same may have been appealed.

Point I. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

Point II. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from the Acquackanonk Water Company, Jersey City and Newark must be calculated.

Point III. The instructions which the court gave to the jury in charging the 15th request to charge, made by the Acquackanonk Water Company and the Mayor and Aldermen of the City of Jersey City, that the jury had the right to take into consideration in the problem involved in the request to charge that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to, or greater than, the amount which they

abstracted, then the lower riparian owners could not make any complaint.

Point IV. The refusal of the court to charge, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz.: 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

Point V. The refusal of the court to charge request No. 45, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that if the dyers diverted water from the river in the future, and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

Point VI. The refusal of the court to charge request No. 51, as requested by counsel for the Mayor and Aldermen of the City of Jersey City (except as it had already charged) that since the dyer's pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom, and the price paid therefor.

Point VII. The refusal of the court to charge request No. 37 as requested by counsel for the Mayor and Aldermen of the City of Jersey City, that the evidence being that the Dyeing Companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies might be cut off from these substituted sources of supply.

Point VIII. The instructions by the court to the jury, as requested by counsel for the property owners in request No. 12, that if the jury found that the owners needed for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

Point IX. If, on the hearing of the rule to show cause, the Circuit Court shall decide the question of allowances or non-allowances of interest on the amount of award, that question may also be reserved by both parties and be the subject of appeal.

Geo. S. Silzer,
Judge.

The said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard, the court on the Ninth day of August, 1922, made an order herein that said rule to show cause should be discharged, which order is as follows:

A rule to show cause why the verdict heretofore rendered in the above stated cause should not be set aside and a new trial granted, having been made by this court, and the said rule to show cause having been duly set down for argument and the arguments of the counsel for the respective parties having been heard thereon and the court having duty considered the same and being of the opinion, that said verdict should not be set aside and a new trial granted and that the said rule to show cause should be discharged.

It is hereby, on this 9th day of August 1922, on motion of Wm. I. Lewis, attorney for National Silk Dyeing Company above named, Ordered, that said verdict shall not be set aside and a new trial granted and that said rule to show cause be and hereby is discharged, vacated and for nothing holden, with costs to be taxed.

Geo. S. Silzer,
J.

Thereupon on the Ninth day of August, Nineteen Hundred and Twenty-two, the Court made the following rule:

Both the City of Jersey City and National Silk Dyeing Company above named, having respectively given notice of appeal from the award of Jacob W. De Yoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the

petition of the City of Jersey City aforesaid, to examine and appraise certain property of the said National Silk Dyeing Company, situate in the City of Paterson, Passaic County, New Jersey, being the right to take water described in said petition, which said petition was filed in said matter on February 20, 1919, and to assess the amount to be paid and the damages for the taking of said property sustained by said National Silk Dyeing Company, the owner thereof, which award of said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920, wherein and whereby the said commissioners did award and report that they made a just and equitable appraisement of the value of said property and the assessment of the amount to be paid by said City of Jersey City for said property and the damage aforesaid to be paid by said City of Jersey City to said National Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of said petition which was the sum of $97,350 awarded to be paid by said petitioner to said National Silk Dyeing Company as aforesaid;

And an order having been made by the above court wherein it was ordered that the issue for the trial of the question therein involved between the said parties was thereby framed and that the issue was the value of and the assessment of the amount which the City of Jersey City should pay to said National Silk Dyeing Company owner of said lands and property for the said right to take and divert said waters as therein mentioned as against the said lands and property of said National Silk Dyeing Company as therein mentioned and also for the damages to be sustained by said National

Silk Dyeing Company owner as aforesaid in consquence of the taking of said water rights as against said lands and property of said National Silk Dyeing Company by the said City of Jersey City as aforesaid.

And the above cause upon said issue having been tried before the above stated court with a jury at the April, 1921, term of this court and witnesses having been produced and sworn and counsel heard for the respective parties, and the jury having rendered a verdict, on the 25th day of May, 1921, in favor of the said National Silk Dyeing Company, and against the said City of Jersey City and found that the value of and the assessment of the amount which the City of Jersey City should pay to said National Silk Dyeing Company for said right to take said water as aforesaid and also for the damages as aforesaid, was the sum of $62,100.

And the Judge having instructed the jury to find said compensation to be paid as aforesaid as of the date of the filing of said petition.

And upon the application of said City of Jersey City a rule to show cause why the said verdict should not be set aside and a new trial granted, having been granted herein, and said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard thereon and the court having by its order filed herein ordered that said rule to show cause should be discharged;

And the said National Silk Dyeing Company having duly given notice to the said City of Jersey City of a motion that a rule be entered herein ordering that judgment final be entered herein ad-

judging that said National Silk Dyeing Company recover of said City of Jersey City the sum of Sixty-two thousand one hundred dollars ($62,100) and legal interest on said sum from the time of filing the said petition for the appointment of commissioners in the above stated matter, and said motion having been duly made pursuant to said notice and the arguments of the counsel of the respective parties having been heard and considered thereon, and the court being of the opinion that said last named motion should be granted,

It is, therefore, on this 9th day of August, 1922, Ordered that judgment final be and hereby is entered in favor of said National Silk Dyeing Company and against the said City of Jersey City in the sum of Seventy thousand five hundred and thirty-five dollars and twenty-five cents, ($70,535.25) being said sum of Sixty-two thousand one hundred dollars ($62,100) with Eight thousand four hundred thirty-five dollars and twenty-five cents ($8435.25) legal interest of said sum of Sixty-two thousand one hundred dollars ($62,100) from Feb. 20, 1919, the time of filing the said petition until the 25th day of May, 1921, nunc pro tunc, as of May 25, 1921.

Let this rule be entered in the minutes of the Court.

Geo. S. Silzer,
Judge.

On motion of
Wm. I. Lewis,
Attorney of National Silk
Dyeing Company.

Whereupon it is adjudged and considered that said National Silk Dyeing Company do recover

against said The Mayor and Aldermen of Jersey City the sum of Seventy Thousand Five Hundred and Thirty-five Dollars and Twenty-five Cents ($70,535.25), being said sum of Sixty-two Thousand One Hundred Dollars, ($62,100) with Eight Thousand Four Hundred and Thirty-five Dollars and Twenty-five Cents, ($8435.25) legal interest on said sum of Sixty-two Thousand One Hundred Dollars ($62,100), from February 20, 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated matter until the 25th day of May, 1921, and the costs of said National Silk Dyeing Company, which are taxed at the sum of Fifty Dollars, ($50.00), making in the whole the sum of Seventy Thousand Five Hundred and Eighty-five Dollars and Twenty-five Cents ($70,585.25).

Judgment entered and signed August 11th, A. D., 1922, at 1.50 P. M. Action No. 6739, Docket G, pages 497 &c.

John McCutcheon,
Clerk.

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

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, Do Hereby Certify, that the foregoing is a Transcript of the Judgment Record, in re: The Mayor and Aldermen of Jersey City, vs. National Silk Dyeing Company, as the same is taken from and compared with the original entry thereof in Book "Z" of Circuit Court Judgments for said County.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Ninth day of September, A. D., Nineteen Hundred and Twenty-two.

John McCutcheon,
Clerk.

PASSAIC CIRCUIT COURT

The City of Newark, Appellant, vs. Weidmann Silk Dyeing Company, Defendant.	*In Condemnation*

NOTICE OF APPEAL

To Messrs. Griggs & Harding, attorneys of Weidmann Silk Dyeing Company.

Take notice that the above named petitioner, The City of Newark, appeals from the whole of the judgment entered in this cause to the New Jersey Supreme Court, on the following grounds:

1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the Court to the jury that in apportioning the damages among the various diverters, the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

2. The refusal of the court to charge, as requested by counsel for the City of Newark, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from the Acquacka-

nonk Water Company, Jersey City and Newark must be calculated.

3. The instructions which the court gave to the jury in charging the fifteenth request to charge made by The City of Newark, that the jury had the right to take into consideration in the problem involved in the request to charge, that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to or greater than the amount which they abstracted, then the lower riparian owners could not make any complaint.

4. The refusal of the court to charge, as requested by counsel for the City of Newark (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

5. The refusal of the court to charge, Request No. 26 as requested by counsel for the City of Newark (except as it had already charged) that if the dyers diverted water from the river in the future and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

6. The refusal of the court to charge Request No. 32 as requested by counsel for The City of Newark (except as it had already charged), that since the Dyer's Pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom and the price paid therefor.

7. The refusal of the court to charge Request No. 54 as requested by counsel for The City of Newark, that the evidence being that the dyeing companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the dyeing companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the dyeing companies might be cut off from these substituted sources of supply.

8. The instructions by the court to the jury, as requested by counsel for the property owners in Request 12 that if the jury found that the owners need for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

9. Because the court allowed interest on the amount of the award by the jury to be added to said last mentioned amount.

Jerome T. Congleton,
Attorney of Petitioner.

PASSAIC COUNTY CIRCUIT COURT

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.	*On Condemnation*

JUDGMENT RECORD

The City of Newark above named presented to the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The petition of the City of Newark respectfully shows:

1. Your petitioner is a municipal corporation of the State of New Jersey, having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply, for which purpose it is required and necessary; and your petitioner has not been able to acquire said property after negotiation, by agreement, with the owner by reason of failure to agree upon the price.

2. The following is a particular description of the property required:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City

of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the south by Fifth Avenue, on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Company. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street, and on the west by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street, and on the west by East Eleventh Street; and containing 30-1/2 City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the

east by lands now or formerly of Cornelius D. Vreeland, and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River St., at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certains tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune, and on the west by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Development Co., and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths

acres, and having a frontage along the Passaic River of about 1664 feet.

3. Said property and rights are necessary for and are taken to form part of your petitioner's water works, the supply part of which consists in general of impounding reservoirs located in Sussex, Morris and Passaic Counties on the Pequannock River, a branch of the Passaic River, including the area tributary to and above the Macopin Intake, approximately 63 square miles of drainage area, said impounding reservoirs being known as the Oak Ridge, Clinton and Canistear Rerservoirs and the use of a natural lake called Echo Lake with a small reservoir at Macopin Intake and two main conduit lines leading from said Macopin Intake to the City of Newark with the rights of way for said conduits and the water rights to divert from the Pequannock River, the water needed. Said impounding reservoirs have a capacity of over 10,000,000,000 gallons of water and are designed to hold the flood flows in times of heavy rainfall and are sufficient in themselves to supply The City of Newark for a period of 200 days; the impounding of the flood waters being necessary to make it possible to maintain the necessary supply for the works since the natural low flow of the Pequannock River for the portion embraced above Macopin Intake is less than an average of 7,000,000 gallons of water per day. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which in part would otherwise flow past and over their said lands by reason whereof they claim compensation and damages. Your petitioner has been for 26 years past and

is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is Weidmann Silk Dyeing Company, Paterson, New Jersey, which is the only person or corporation appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The City of Newark,
By Thomas L. Raymond,
Director of the Department of Streets and Public Improvements of the City of Newark.

State of New Jersey }
County of Essex. } ss:

Jerome T. Congleton, being duly sworn according to law, upon his oath deposes and says: I am City Counsel of The City of Newark; that by resolution of the Board of Commissioners of the City of Newark, adopted January 16, 1919, I was duly authorized by said The City of Newark to negotiate for the purchase of the property and right of diversion of waters described in the petition, and have in good faith endeavored to agree with the owners for the same, but have not been able to agree upon

the price and damages, and the petitioner cannot acquire such right by agreement with the owners thereof because unable to agree with them as to the price and damages; that petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition; and the said water is required and the taking thereof is necessary for the water supply of The City of Newark.

My efforts to agree with the Weidmann Silk Dyeing Company for the taking of property and rights required as aforesaid consisted of a personal application to John W. Griggs, Esquire, Secretary and general counsel of said company, to whom I made a cash offer for the rights required and described in the petition, which offer was rejected; and deponent cannot nor can the petitioner make any agreement with him or with said Weidmann Silk Dyeing Company.

Jerome T. Congleton.

Subscribed and sworn to before me this 30th day of January, 1919. Geo. E. Carpenter, a Master in Chancery of New Jersey.

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

Thomas L. Raymond, of full age, being duly sworn according to law, on his oath says: I am Director of the Department of Streets and Public Improvements of The City of Newark, New Jersey; that the charge of the water system in The City of Newark has been placed by the Board of Commissioners of The City of Newark in said Department of Streets and Public Improvements; that I have read the foregoing petition; that the matters and things therein contained, insofar as I have

personal knowledge thereof, are true, and as to these matters of which I have no personal knowledge, I believe them to be true.

Thomas L. Raymond

Subscribed and sworn to before me this 30th day of January, 1919. Geo. E. Carpenter, a Master in Chancery of New Jersey.

which petition was filed on the Thirty-first day of January, Nineteen Hundred and Nineteen.

Upon said petition the said Justice made and filed the following order:

The foregoing petition being presented to me, one of the Justices of the Supreme Court of the State of New Jersey, on this thirtieth day of January, 1919,

It is ordered, that the hearing on said petition for the appointment of three commissions to fix the compensation to be paid for the right and property described in said petition, be held at the Court House, in the City of Paterson, New Jersey, on Saturday, the First day of March, 1919, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and I do hereby direct that notice thereof, not less than six days, be given to Weidmann Silk Dyeing Company, the owner, occupant and person interested in the property described in said petition, in the manner directed by an act entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of one thousand, nine hundred)" approved March 20, 1900.

James F. Minturn,
J. S. C.

which order was filed on the First day of February, Nineteen Hundred and Nineteen.

Thereupon the said Justice made and filed the following order appointing Commissioners:

Application having been made to this Court by William J. Kearns, Esquire, Attorney for the City of Newark, for the appointment of three commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, the owner and corporation interested in the hereinafter described property for the water supply of said The City of Newark; and an order having been made assigning the 1st day of March, 1919, at 10 o'clock in the forenoon, as the time, and the Court House in the City of Paterson, as the place, for the hearing of said application; and a notice of such hearing having been served according to law and the directions of said order on the owner and other persons interested therein,

It is, on this 1st day of March, 1919, on motion of William J. Kearns, Esquire, Attorney for The City of Newark, ordered that

J. Willard DeYoe,
Clifford L. Newman and
James L. Brown

three disinterested freeholders, residents of the County of Passaic, be, and the same are hereby appointed commissioners, to examine and appraise the following described right and property:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right

to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by lands of the Erie Railroad Company; and on the west by lands of the National Silk Dyeing Company. Containing 131-72/100ths City Lots or 7-56/100ths acres, and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street; and on the west by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street; and on the west by East Eleventh Street; and containing 30-1/2 City Lots or 1-75/100ths acres; and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland; and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly

line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune; and on the west by lands of the New York, Susquehanna and Western Railroad Company. Containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Westerin Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company; and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagarow Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Development Co., and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

And to assess the damages and fix the compensation to be paid to the owners and persons interested therein;

And it is further ordered, that six days' notice shall be given to said Weidmann Silk Dyeing Company, the owner and corporation interested in said property, of the time and place of the meeting of the said commissioners, which notice shall be in writing and shall be served upon said Weidmann Silk Dyeing Company by delivering the same to the proper officer thereof;

And it is further ordered, that the said Commissioners shall file their report with the Clerk of the County of Passaic on or before the First day of October, 1919.

James F. Minturn,
J. S. C.

which order was made on the First day of March Nineteen Hundred and Nineteen and filed on the Nineteenth day of April, Nineteen Hundred and Nineteen.

Thereupon the said Commissioners made and filed the following report and award:

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above proceedings by an order made therein on March 1, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey on the application of the above named The City of Newark, a municipal corporation of New Jersey, made in writing, by petition, to the said Justice, to examine and appraise certain property of the Weidmann Silk Dyeing Company, being the right to take water described in the said petition filed in said proceedings, and to assess the damages, if any, by reason of the taking of said property so described as aforesaid, on at least six days notice, to be given as in said order directed, and that said Commissioners should file their re-

port with the Clerk of Passaic County on or before the first day of October then next; and the said time to file said report having been extended by said Justice of the Supreme Court made upon good cause shown to the first day of September, 1920; we do respectfully report as follows:

We, the said Commissioners, having on the 14th day of April, A. D., 1919, first duly taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, said owner of said property, that we would meet at the meeting rooms of the Board of Freeholders in the Court House in the City of Paterson, N. J., on April 14, 1919, at 10 o'clock in the forenoon which said notice was given and served pursuant to the statute in such case provided; and the said petitioner and said owner having been represented before us, we the said Commissioners, did meet at the time and place aforesaid, and we thereafter viewed and examined the said property described in said petition as aforesaid; we further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner for said property, and the damage aforesaid to be paid by said petitioner, The City of Newark, to the said, the Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of the said petition and order aforesaid, and that said just and equitable appraisement and said assessment of the amount to be paid by the said petitioner for the said property and said damage so

made by us as aforesaid, is the sum of $48,675.00, which we award to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

which report and award was filed on the Twenty-sixth day of August, Nineteen Hundred and Twenty.

Thereupon appeals were taken from said award by both Weidmann Silk Dyeing Company and The City of Newark above named to the said Passaic County Circuit Court, which appeals were respectively taken and filed on the Ninth day of September Nineteen Hundred and Twenty and the Tenth day of September Nineteen Hundred and Twenty and were respectively as follows:

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey.

To the City of Newark, its attorneys and agents:
Gentlemen:

Take notice, that Weidmann Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners hertofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the Weidmann Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said Weidmann Silk Dyeing Co. the owner thereof; which report and award of the

said commissioners was filed in the County Clerk's office of the County of Passaic, on the 26th day of August, 1920.

And take further notice that the said Weidmann Silk Dyeing Company, on the 9th day of October, 1920 at 10.30 o'clock in the forenoon, at Court House in the City of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Respectfully yours,
Griggs & Harding,
Attorneys of the Weidmann Silk Dyeing Company
Datew Sept. 7, 1920.

Notice is hereby given that an appeal has been taken by The City of Newark to the Passaic County Circuit Court from the award of J. Willard DeYoe, Clifford L. Newman and James L. Brown, Esquires, who were duly appointed by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, under the provisions of an act of the legislature of the State of New Jersey, entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use", approved March 20, 1900, and the acts amendatory thereof and supplemental thereto, Commissioners to examine and appraise the following described right and property:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the

same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by lands of the Erie Railroad Company; and on the west by lands of the National Silk Dyeing Company. Containing 131-72/100ths City Lots or 7-56/100ths acres, and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street; and on the west by lands of the Erie Railroad Company; and containing 17-3/10ths City Lots or 1-00/100ths acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street; and on the west by East Eleventh Street; and containing 30-1/2 city lots or 1-75/100ths acres; and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland; and on the west by lands formerly of James

Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune; and on the west by lands of the New York, Susquehanna and Western Railroad Company. Containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company; and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Development Company and the American Silk Dyeing and Finishing Co. Containing about 42-

44/100ths acres and having a frontage along the Passaic River of about 1664 feet.

Respectfully,
William J. Kearns,
City Attorney.

Dated September 9, 1920.

Thereupon on the Eleventh day of April, Nineteen Hundred and Twenty-one an order was made by the Judge of said Passaic Circuit Court framing the issue, ordering that a jury be struck, and fixing the time and place for the trial of said appeals as follows:

Both the City of Newark and the Weidmann Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the City of Newark, and each of the appellants having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court, at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day, to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the 1st day of March, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said Weidmann Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that

the City of Newark is taking by condemnation certain property of said Weidmann Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the south by Fifth Avenue; on the east by lands of the Erie Railroad Company, and on the west by lands of the National Silk Dyeing Company. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street, and on the west by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant

175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street, and on the west by East Eleventh Street; and containing 30-1/2 City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland, and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune, and on the west by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company and on the west by lands of the Erie Railroad Company. Containing about 6 acres,

and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Development Co., and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

Said property and rights are necessary for and are taken to form part of your petitioner's water works, the supply part of which consists in general of impounding reservoirs located in Sussex, Morris and Passaic Counties on the Pequannock River, a branch of the Passaic River, including in the area tributary to and above the Macopin Intake, approximately 63 square miles of drainage area, said impounding reservoirs being known as the Oak Ridge, Clinton and Canistear Reservoirs and the use of a natural lake called Echo Lake with a small reservoir at Macopin Intake and two main conduit lines leading from said Macopin Intake to the City of Newark with the rights of way for said conduits and the water rights to divert from the Pequannock River, the water needed. Said impounding reservoirs have a capacity of over 10,000,000,000 gallons of water and are designed to hold the flood flows in times of heavy rainfall and are sufficient in themselves to supply The City of Newark for a period of 200 days; the impounding of the flood waters being necessary to make it possible to maintain the necessary supply for the works since the natural low flow of the Pequannock River for the portion embraced above the Macopin Intake is less than an average of 7,000,000 gallons of water per day.

Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which in part would otherwise flow past and over their said lands by reason whereof they claim compensation and damages."

It is on this eleventh day of April, 1921, on motion of William J. Kearns, attorney for the appellant, The City of Newark, and on like motion of Griggs & Harding, attorneys for the appellant, Weidmann Silk Dyeing Company, ordered, that Monday the 16th day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeals before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is the value of and the assessment of the amount which the City of Newark should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake as are necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation, as against the said lands and property of Weidmann Silk Dyeing Company as in the said petition described, and also for the damages, to be sustained by the said Weidmann Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands

and property by the said The City of Newark.

And it is further ordered that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

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

Geo. S. Silzer,
Judge.

Thereupon the said appeals on said issue were tried before George S. Silzer, Judge of said Passaic County Circuit Court with a struck jury at the said Passaic County Circuit Court on the 16th, 17th, 18th, 19th, 20th, 23rd, 24th and 25th days of May, 1921, said jury having been duly struck and empanelled and having viewed the premises pursuant to the order of said Court and having been duly sworn and having proceeded to trial and the evidence offered by the respective parties and the respective counsel having been heard, and said appeals on said issue having been heard and submitted to the jury as aforesaid, they returned their verdict on the 25th day of May, 1921, as follows:

They find that said The City of Newark is to pay to said Weidmann Silk Dyeing Company the sum of Seventy-seven thousand, seven hundred and sixty dollars ($77,760.).

Thereupon upon application of said The City of Newark a rule to show cause why said verdict should not be set aside and a new trial granted, was made and filed and entered on June 20, 1921, as follows:

A verdict having been entered in favor of the Weidmann Silk Dyeing Company in the above entitled matter and against the City of Newark for

seventy seven thousand seven hundred and sixty dollars ($77,760.00) and application having been made within six days after the rendering of said verdict, now, on motion of Thomas F. McCran, of counsel with The City of Newark, and in the presence of Griggs & Harding, of counsel with the Weidmann Silk Dyeing oCmpany, it is ordered that the Weidmann Silk Dyeing Company show cause before our Passaic Circuit Court at the present term, upon a day to be fixed by the court for that purpose, why the verdict in this cause should not be set aside and a new trial granted.

And it is further ordered that the granting of this rule to show cause shall not operate as, or be, a bar against The City of Newark taking or prosecuting an appeal from the judgment which shall be entered upon said verdict upon the following points, which are hereby expressly reserved by this rule, provided, that the arguments on the points so reserved, be brought on for hearing at the Fall Term, 1921, of the Court to which the same may have been appealed.

Point I. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters, the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

Point II. The refusal of the court to charge, as requested by counsel for the City of Newark, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen

Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from The Acquackanonk Water Company, Jersey City and Newark must be calculated.

Point III. The instructions which the court gave to the jury in charging the fifteenth request to charge made by The City of Newark, that the jury had the right to take into consideration in the problem involved in the request to charge, that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to or greater than the amount which they abstracted, then the lower riparian owners could not make any complaint.

Point IV. The refusal of the Court to charge, as requested by counsel for the City of Newark (except as it had already charged) that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz: 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events to no greater extent than the amount of water they would put into the trunk sewer.

Point V. The refusal of the Court to charge, Request No. 26, as requested by counsel for the City of Newark (except as it had already charged) that if the dyers diverted water from the river in the future and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned

it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

Point VI. The refusal of the court to charge Request 32, as requested by counsel for The City of Newark (except as it had already charged), that since the dyer's pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom and the price paid therefor.

Point VII. The refusal of the court to charge Request 54 as requested by counsel for The City of Newark, that the evidence being that the dyeing companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being on evidence of a reasonable probability that the dyeing companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at sometime in the future the dyeing companies might be cut off from these substituted sources of supply.

Point VIII. The instructions by the court to the jury, as requested by counsel for the property owners in Request 12 that if the jury found that the owners need for their business a steady and dependable supply of water instead of an uncertain and intermittent supply and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their

business, and so might be considered in arriving at the depreciation in the value of the land.

Point IX. If on the hearing of the rule to show cause, the Circuit Court shall decide the question of allowance or non-allowance of interest on the amount of the award, that question may also be reserved by both parties and be the subject of appeal.

Geo. S. Silzer,
Judge.

The said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard, the court on the Second day of August, 1922, made an order herein that said rule to show cause should be discharged, which order is as follows:

A Rule to Show Cause why the verdict heretofore rendered in the above stated cause should not be set aside and a new trial granted, having been made by this court, and the said rule to show cause having been duly set down for argument and the arguments of the counsel for the respective parties having been heard thereon and the court having duly considered the same and being of the opinion, that said verdict should not be set aside and a new trial granted and that the said rule to show cause should be discharged,

It is hereby on this Second day of August, 1922, on motion of Griggs & Harding, attorneys for Weidmann Silk Dyeing Company above named, ordered, that said verdict shall not be set aside and a new trial granted and that said rule to show cause be and hereby is discharged, vacated and for nothing holden, with costs to be taxed.

Geo. S. Silzer,
Judge.

Thereupon on the Second day of August, 1922, the Court made the following rule:

Both the City of Newark and Weidmann Silk Dyeing Co., above named, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Hon. James F. Minturn, Justice of the Supreme Court of the State of N. Jersey, on the petition of the City of Newark aforesaid, to examine and appraise certain property of the said Weidmann Silk Dyeing Company, situate in the City of Paterson, Passaic County, New Jersey, being the right to take water described in said petition, which said petition and order thereon were filed in said matter on Jan. 30th, 1919, and to assess the amount to be paid and the damages for the taking of said property sustained by said Weidmann Silk Dyeing Company, the owner thereof, which award of said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920, wherein and whereby the said commissioners did award and report that they made a just and equitable appraisement of the value of said property and the assessment of the amount to be paid by said City of Newark for said property and the damage aforesaid to be paid by said City of Newark to said Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of said petition and order thereon as aforesaid, which was the sum of $48,675. awarded to be paid by said petitioner to said Weidmann Silk Dyeing Co., as aforesaid:

And an order having been made by the above court wherein is was ordered that the issue for the trial of the question therein involved between the said parties was thereby framed and that the issue

was the value of and the assessment of the amount which the City of Newark should pay to said Weidmann Silk Dyeing Company owner of said lands and property for the said right to take and divert said waters as therein mentioned as against the said lands and property of said Weidmann Silk Dyeing Company as therein mentioned and also for the damages to be sustained by said Weidmann Silk Dyeing Company owner as aforesaid in consequence of the taking of said water rights as against said lands and property of said Weidmann Silk Dyeing Company by the said City of Newark as aforesaid;

And the above cause upon said issue having been tried before the above stated court with a jury at the April, 1921, term of this court and witnesses having been produced and sworn and counsel heard for the respective parties, and the jury having rendered a verdict, on the 25th day of May, 1921, in favor of the said Weidmann Silk Dyeing Company, and against the said City of Newark and found that the value of and the assessment of the amount which the City of Newark should pay to said Weidmann Silk Dyeing Co., for said right to take said water as aforesaid and also for the damages as aforesaid, was the sum of $77,760;

And the Judge having instructed the jury to find said compensation to be paid as aforesaid as of the date of the filing of said petition and order.

And upon the application of said City of Newark a rule to show cause why the said verdict should no be set aside and a new trial granted, having been granted herein, and said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard thereon and the court having by its order filed

herein ordered that said rule to show cause should be dicharged;

And the said Weidmann Silk Dyeing Company having duly given notice in writing to the City of Newark of a motion that a rule be entered herein ordering that judgment final be entered herein adjudging that said Weidmann Silk Dyeing Company recover of said City of Newark the sum of Seventy-seven thousand seven hundred and sixty dollars, ($77,760) with costs and legal interest on said sum from the time of filing the said petition and order thereon for the appointment of commissioners in the above stated matter, and said motion having been duly made pursuant to said notice and the arguments of the counsel of the respective parties having been heard and considered thereon, and the court being of the opinion that said last named motion should be granted,

It is, therefore, on this 2nd day of August, 1922, ordered that judgment final be and hereby is entered in favor of said Weidmann Silk Dyeing Company and against the said City of Newark in the sum of Eighty-eight thousand five hundred and ninety-four dollars and fifty-six cents ($88,594.56) being said sum of Seventy-seven thousand seven hundred and sixty dollars ($77,760) with ten thousand eight hundred and thirty-four dollars and fifty-six cents ($10,834.56) legal interest on said sum of Seventy-seven thousand seven hundred and sixty dollars ($77,760) from the 30th day of Jan., 1919, the time of filing the said petition and order thereon for the appointment of commissioners in the above stated matter until the 25th day of May, 1921, together with costs of said suit to be taxed, nunc pro tunc as of the 25th day of May, 1921.

Let this Rule be entered in the minutes of the Court.

Geo. S. Silzer,
Judge.

On Motion of
Griggs & Harding,
Attys. of Weidmann Silk Dyeing Co.

Whereupon it is adjudged and considered that said Weidmann Silk Dyeing Company do recover against said The City of Newark the sum of Eighty-eight thousand five hundred and ninety-four dollars and fifty-six cents, ($88,594.56) being said sum of Seventy-seven thousand seven hundred and sixty dollars ($77,760.) with ten thousand eight hundred and thirty-four dollars and fifty-six cents ($10,834.-56) legal interest on said sum of Seventy-seven thousand seven hundred and sixty dollars ($77,760.) from the 30th day of January, 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated matter until the 25th day of May, 1921, and the costs of said Weidmann Silk Dyeing Company, which are taxed at the sum of Fifty Dollars ($50.) making in the whole the sum of Eighty-eight thousand and Six hundred and forty-four dollars and fifty-six cents $($88,644.56)

Judgment entered and signed August 8th, A. D., 1922, at 2.50 P. M. Action No. 6726, Docket G. pages 492 &c.

John McCutcheon,
Clerk.

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

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, do hereby

certify, That the foregoing is a Transcript of the Judgment Record. In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River, as the same is taken from and compared with the original entry thereof in Book "Z" of Circuit Court Judgment for said County.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Ninth day of September, A. D. Nineteen Hundred and Twenty-two.

John McCutcheon,
Clerk.

PASSAIC CIRCUIT COURT

The City of Newark, Appellant, vs. The National Silk Dyeing Company, Defendant.	*In Condemnation*

NOTICE OF APPEAL

To: William I. Lewis, Esq.,
Attorney of National Silk Dyeing Company.

Take Notice that the above named petitioner, The City of Newark, appeals from the whole of the judgment entered in this cause to the New Jersey Supreme Court, on the following grounds:

1. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal and Banking Company and the Passaic Water Company, and the instructions by the court to the jury that in apportioning the damages among the various diverters, the diversions by the Morris Canal and Banking Company and the Passaic Water Company must be disregarded.

2. The refusal of the court to charge, as requested by counsel for the City of Newark, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against them-

selves, but not as against the condemnors, the basis upon which the damages to be recovered from The Acquackanonk Water Company, Jersey City and Newark must be calculated.

3. The instructions which the court gave to the jury in charging the fifteenth request to charge made by The City of Newark, that the jury had the right to take into consideration in the problem involved in the request to charge, that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to or greater than the amount which they abstracted, then the lower riparian owners could not make any complaint.

4. The refusal of the court to charge, as requested by counsel for the City of Newark (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz., 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other sources; at all events, to no greater extent than the amount of water they would put into the trunk sewer.

5. The refusal of the court to charge, Request No. 26, as requested by counsel for the City of Newark, (except as it had already charged), that if the dyers diverted water from the river in the future and so used it that it became polluted to the extent that it would be unfit for domestic or other reasonable riparian uses, and then returned it in such condition to the river, it would appre-

ciably impair the quality of the water, and a public nuisance would be committed.

6. The refusal of the court to charge Request 32, as requested by counsel for the City of Newark (except as it had already charged) that since the Dyers' Pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commisioners of New Jersey as to the quantity of water used therefrom and the prices paid therefor.

7. The refusal of the court to charge request No. 54 as requested by counsel for the City of Newark, that the evidence being that the dyeing companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the dyeing companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the dyeing companies might be cut off from these substituted sources of supply.

8. The instruction by the court to the jury, as requested by counsel for the property owners in request No. 12 that if the jury found that the owners need for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for

the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

9. Because the court allowed interest on the amount of the award by the jury to be added to said last mentioned amount.

Jerome T. Congleton,
Attorney of Petitioner.

Judgment Record

PASSAIC COUNTY CIRCUIT COURT

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid the National Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.	*On Condemnation*

JUDGMENT RECORD

The City of Newark above named presented to the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The Petition of The City of Newark respectfully shows:

1. Your petitioner is a municipal corporation of the State of New Jersey, having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply, for which purpose it is required and necessary; and your petitioner has not been able to acquire said property after negotiation, by agreement, with the owner by reason of failure to agree upon the price.

2. The following is a particular description of the property required:

The right to take and divert continuously such of the waters of the Pequannock River above the

Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet; thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet, more or less, to the place of beginning. Containing 57.19 city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street; on the north by Woods Street; on

the south by Lowe Street; and on the westerly side by the Passaic River as it runs in its course. Being lots Nos. 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street; 1 and 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74 and 76 Shady St. as laid down on the map of the City of Paterson, and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street; and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2, 1909, and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pages

60, etc., and is now known as the Valley Works of the National Silk Dyeing Company.

3. Said property and rights are necessary for and are taken to form part of your petitioner's water works, the supply part of which consists in general of impounding reservoirs located in Sussex, Morris and Passaic Counties on the Pequannock River, a branch of the Passaic River, including in the area tributary to and above the Macopin Intake, approximately 63 square miles of drainage area, said impounding reservoirs being known as the Oak Ridge, Clinton and Canistear Reservoirs and the use of a natural lake called Echo Lake with a small reservoir at Macopin Intake and two main conduit lines leading from said Macopin Intake to the City of Newark with the rights of way for said conduits and the water rights to divert from the Pequannock River, the water needed. Said impounding reservoirs have a capacity of over 10,000,000,000 gallons of water and are designed to hold the flood flows in times of heavy rainfall and are sufficient in themselves to supply The City of Newark for a period of 200 days; the impounding of the flood waters being necessary to make it possible to maintain the necessary supply for the works since the natural low flow of the Pequannock River for the portion embraced above the Macopin Intake is less than an average of 7,000,000 gallons of water per day. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which in part would otherwise flow past and over their said lands by reason whereof they claim compensation and damages. Your petitioner has been for 26 years past and is now receiving

its water supply from said source through said works.

4. The name and residence of the occupant of said property is National Silk Dyeing Company, Paterson, New Jersey, which is the only person or corporation appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The City of Newark,
By Jerome T. Congleton,
City Counsel.

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

Thomas L. Raymond, of full age, being duly sworn according to law, on his oath says: I am Director of the Department of Streets and Public Improvements of The City of Newark, New Jersey; that the charge of the water system in The City of Newark has been placed by the Board of Commissioners of The City of Newark in said Department of Streets and Public Improvements; that I have read the foregoing petition; that the matters and things therein contained, insofar as I have personal knowledge thereof, are true, and as

to those matters of which I have no personal knowledge, I believe them to be true.

Thomas L. Raymond.

Subscribed and sworn to before me this twenty-first day of February, A .D., 1919.

Geo. E. Carpenter.
A Master in Chancery of New Jersey.

State of New Jersey,
County of Essex. } ss.

Jerome T. Congleton, being duly sworn according to law, upon his oath deposes and says: I am City Counsel of the City of Newark; that by resolution of The Board of Commissioners of The City of Newark I was duly authorized by said The City of Newark to negotiate for the purchase of the property and right of diversion of waters described in the petition, and have in good faith endeavored to agree with the owners for the same, but have not been able to agree upon the price and damages, and the petitioner cannot acquire such right by agreement with the owners thereof because unable to agree with them as to the price and damages; that petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition; and the said water is required and the taking thereof is necessary for the water supply of The City of Newark.

My efforts to agree with the National Silk Dyeing Company for the taking of the property and rights required as aforesaid consisted of a personal application to William I. Lewis, Esquire, counsel of said company, to whom I made a cash offer for the rights required and described in the petition, which offer was rejected; and deponent cannot nor

can the petitioner make any agreement with him or with said National Silk Dyeing Company.

Jerome T. Congleton.

Subscribed and sworn to before me this 21st day of Feb., 1919.

Geo. E. Carpenter.

A Master in Chancery of New Jersey.

which petition was filed on the Twenty-fourth day of February, Nineteen Hundred and Nineteen.

Upon said petition the said Justice made and filed the following order:

A petition in the above matter being presented to me, one of the Justices of the Supreme Court of the State of New Jersey, on this 21st day of February, 1919;

It is ordered, that the hearing on said petition for the appointment of three commisioners to fix the compensation to be paid for the right and property described in said petition, be held before the Hon. James F. Minturn, a Justice of this Court at the Court House, in the City of Paterson, New Jersey, on Saturday the eighth day of March, 1919, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and I do hereby direct that notice thereof, not less than six days, be given to National Silk Dyeing Company, the owner, occupant and person interested in the property described in said petition, in the manner directed by an act entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of one thousand, nine hundred)," approved March 20, 1900.

Charles W. Parker,
J. S. C.

which order was filed on the Tewtny-fourth day of February Nineteen Hundred and Nineteen.

Thereupon the said Justice made and filed the following order appointing Commissioners:

Application having been made to this Court by William J. Kearns, Esquire, Attorney for The City of Newark, for the appointment of three Commissioners to fix the compensation to be paid to National Silk Dyeing Company, the owner and corporation interested in the hereinafter described property for the water supply of said The City of Newark; and an order having been made assigning the 8th day of March, 1919, at 10 o'clock in the forenoon, as the time, and the Court House in the City of Paterson, as the place, for the hearing of said application; and a notice of such hearing having been served according to law and the directions of said order on the owner and other persons interested therein;

It is, on this 8th day of March, 1919, on motion of William J. Kearns, Esquire, Attorney for The City of Newark, ordered that J. Willard DeYoe, Clifford L. Newman and James L. Brown, three disinterested freeholders, residents of the County of Passaic, be, and the same are hereby appointed commissioners, to examine and appraise the following described right and property:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz.:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet; thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet, more or less, to the place of beginning. Containing 57.19 City Lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street; on the north by Woods Street; on the south by Lowe Street; and on the westerly side by the Passaic River as it runs in its course. Being lots No. 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street; 1 and 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74, and 76 Shady Street, as laid down on the map of the City of Paterson, and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning

in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street; and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street; and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main St. Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2d, 1909, and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pages 60 etc., and is now known as the Valley Works of the National Silk Dyeing Company.

And to assess the damages and fix the compensation to be paid to the owners and persons interested therein;

And it is further ordered, that six days' notice shall be given to said National Silk Dyeing Company, the owner and corporation interested in said property, of the time and place of the meeting of

the said commissioners, which notice shall be in writing and shall be served upon said National Silk Dyeing Company by delivering the same to the proper officer thereof;

And it is further ordered, that the said Commissioners shall file their report with the Clerk of the County of Passaic on or before the First day of October, 1919.

James F. Minturn,
J. S. C.

which order was made on the Eighth day of March, Nineteen Hundred and Nineteen, and filed on the Nineteenth day of April, Nineteen Hundred and Nineteen.

Upon reading the consent at foot hereof, and it appearing that the above named petitioner has determined to take for public use the right to take and divert continuously the quantity of waters of the Pequannock River above the Macopin Intake, necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or in the future may be supplied from the municipal water plant of said City of Newark, as against the lands described in the schedule hereto annexed and hereby made a part hereof as well as against the lands described in said petition; and it further appearing that the said petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price;

It is thereupon, on this Tenth day of May 1919, on motion of William J. Kearns, Esquire, attorney for the petitioner,

Ordered, that the petition and the order appointing commissioners, heretofore filed in this

New Jersey State Library

matter, be and the same hereby are amended by adding to the description therein contained of the land and property against which the right to take said water is required, the land and property described in schedule hereto annexed, to the end that said petition and order shall, for all purposes, have the same force and effect as if the land and property described in said schedule had, at the time of the filing of said petition, been inserted therein immediately following the description of the lands therein contained.

James F. Minturn,
J. S. C.

I hereby consent to the entering of the above order.

Wm. I. Lewis,
Attorney for National Silk
Dyeing Company.

All those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGray's to Paterson and in the line of said DeGray and running thence (1) north 24 degrees west along the line of said DeGray 5 chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers; thence (2) along said road south 53 degrees west 2 chains; thence (3) south 24 degrees east to the middle of the first mentioned road leading to Paterson; and thence (4) north 38 degrees east along said road 2 chains and 20 links to the beginning.

Tract Two: Beginning at the southwest corner

of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty, his wife, and on the middle of the public road leading from Morrow's factory to Oldham; running thence (1) along the lands of Henry A. Zabriskie south 15 degrees east 6 chains and 54 links to the middle of the public road leading from Morrow's factory to Paterson; thence (2) along the same north 39 degrees and 30 feet east 3 chains and 26 links to a corner of the lands of Thomas Morrow; thence (3) along the same north 23 degrees and 46 feet west 5 chains and 41 links to the middle of the aforesaid public road leading to Oldham; thence (4) along the same south 54 degrees and 45 feet west 2 chains and 3 links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills, where it is intersected by the dividing line between the lands hereby conveyed and the lands vonveyed to James H. Peterson by Cornelius B. Peterson and wife, by deed dated April 30, 1870, and recorded in the Clerk's Office of Passaic County in Book X 3 of Deeds on pages 122, etc., said beginning point being 76 feet and 2 inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same, and running from thence (1) south 40 degrees and 30 feet east 96 feet and 9 inches along the line of

said lands of James H. Peterson (now of Kievit); thence (2) north 51 degrees and 36 feet east 18 feet and 7 inches to the lands of Richard DeGray; thence (3) along the same southeasterly to the Passaic River; thence (4) southerly up the stream thereof 1 chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road; and thence (6) northeasterly along the same to the place of beginning. Excepting and reserving out of the above described tract the following tract of land: beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills 50 feet southwesterly from the beginning point of the whole tract above described; and running thence (1) southeasterly at right angles from said road 120.46 feet; thence (2) southwesterly deflecting 85 degrees and 46 feet to the right from the first course 92.45 feet to the line of lands formerly of John Earl; thence (3) northwesterly along the line of lands formerly of John Earl 127.37 feet to the easterly line of said road; and thence (4) northeasterly along same 105.78 feet to the place of beginning.

which order was filed on May Fourteenth, Nineteen Hundred and Nineteen.

Thereupon the said Commissioners made and filed the following report and award:

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above stated proceeding by an order made therein on March 1st, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise the property being the right to take water in the petition in said proceeding described, and to assess the

damages, if any, by reason of the taking of the same by the petitioner, on at least six days notice, to be given by the petitioner as in said order directed, and that said commissioners should file their report with the Clerk of the County of Passaic, on or before the first day of October, then next; and said time to file our report having been extended by order of said justice of the Supreme Court, made upon good cause shown, to the first day of September, 1920, we do respectfully report as follows:

We, the said Commissioners having, on the fourteenth day of April A. D. 1919, first taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding did, on April 4th, 1919, give notice to said National Silk Dyeing Company that we would meet at the meeting rooms of the Board of Freeholders in the Court House, in the City of Paterson, on April 14th, 1919, at ten o'clock in the forenoon to proceed with our duties and to appraise the said property so to be taken as aforesaid, and to make an impartial estimate and assessment of the damages to be sustained by its taking; which said notice was in writing, and, on April 4th, 1919, was given to William I. Lewis, the attorney appearing for said National Silk Dyeing Company on said application, and to said petitioner.

We do further report that at the time and place appointed as aforesaid we did meet and in the presence of the respective attorneys of the petitioner and said National Silk Dyeing Co. proceeded to view and examine the said property being the right to take water in said petition described, and to make a just and equitable appraise-

ment of the value of the same, and an assessment of the amount to be paid by the petitioner for such property and damage aforesaid, as of the date of the filing of the petition and order thereon.

And we do further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by the petitioner for said property and the damage aforesaid to be paid by said petitioner, for the said taking and damage aforesaid as of the date of the filing of the petition and order aforesaid, and that such just and equitable appraisement and said assessment of the amount to be paid by the petitioner for said property and such damage so made and aforesaid is the sum of $48,675.00, to be paid by said petitioner to said National Silk Dyeing Company.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

which report and award was filed on the Twenty-sixth day of August, Nineteen Hundred and Twenty.

Thereupon appeals were taken from said award by both National Silk Dyeing Company and the City of Newark above named to the said Passaic County Circuit Court, which appeals were respectively taken and filed on the Ninth day of September, Nineteen Hundred and Twenty, and the Tenth day of Sept., Nineteen Hundred and Twetny, and were respectively as follows:

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey.

To the City of Newark, its attorneys and agents.

Gentlemen:

Take Notice, that National Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the National Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by said National Silk Dyeing Company, the owner thereof; which report and award of the said commissioners was filed in the County Clerk's Office of the County of Passaic, on the 26th day of August, 1920.

And take further notice that the said National Silk Dyeing Company, on the 9th day of October, 1920, at 10.30 o'clock in the forenoon, at the County Court House, in the City of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Dated Sept. 7th, A. D., 1920.

Respectfully yours,
Wm. I. Lewis,
Attorney of National Silk
Dyeing Company.

Notice is hereby given that an appeal has been taken by The City of Newark to the Passaic County Circuit Court from the award of J. Willard DeYoe, Clifford L. Newman and James L. Brown, Esquires, who were duly appointed by the Honor-

able James F. Minturn, Justice of the Supreme Court of the State of New Jersey, under the provisions of an act of the legislature of the state of New Jersey, entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use," approved March 20, 1900, and the acts amendatory thereof and supplemental thereto, Commissioners to examine and appraise the following described right and property:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz.:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet; thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down

stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet, more or less, to the place of beginning. Containing 57.19 city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street; on the north by Woods Street; on the south by Lowe Street; and on the westerly side by the Passaic River as it runs in its course. Being lots Nos. 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street; 1 and 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson, and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street; and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street; and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs

for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2, 1909, and recorded in the office of the Register of Passaic County in Book Y 19 of Deeds, pages 60, etc., and is now known as the Valley Works of the National Silk Dyeing Company.

Dated, September 9, 1920.

Respectfully,
William J. Kearns,
City Attorney.

Thereupon on the Eleventh day of April, Nineteen Hundred and Twenty-one an order was made by the Judge of said Passaic Circuit Court framing the issue, ordering that a jury be struck, and fixing the time and place for the trial of said appeals as follows:

Both the City of Newark and the National Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the City of Newark, and each of the appellants having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court, at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30

o'clock in the forenoon of that day, to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the eleventh day of April, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said National Silk Dyeing Company is the owner of certain lands and property described in the petition and in the order amending said petition filed in the above entitled matter, and hereinafter described, and that the City of Newark is taking by condemnation certain property of said National Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously such of the waters of the Pequannock River above the Macopin intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz.:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet; thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet, more or less to the place of beginning. Containing 57.19 city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street; on the north by Woods Street; on the south by Lowe Street; and on the westerly side by the Passaic River as it runs in its course. Being lots No. 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street; 1 and 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson, and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street; and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler

and Christian Mennel; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street; and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2, 1909, and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pages 60, etc., and is now known as the Valley Works of the National Silk Dyeing Company.

And, also, all those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGray's to Paterson and in the line of said DeGray and running thence (1) north 24 degrees west along the line of said DeGray 5 chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers; thence (2) along said road South 53 degrees west

2 chains; thence (3) south 24 degrees east to the middle of the first mentioned road leading to Paterson; thence (4) north 38 degrees east along said road 2 chains and 20 links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty, his wife, and on the middle of the public road leading from Morrow's factory to Oldham; running thence (1) along the lands of Henry A. Zabriskie south 15 degrees east 6 chains and 54 links to the middle of the public road leading from Morrow's factory to Paterson; thence (2) along the same north 39 degrees and 30 feet east 3 chains and 26 links to a corner of the lands of Thomas Morrow; thence (3) along the same north 23 degrees and 45 feet west 5 chains and 41 links to the middle of the aforesaid public road leading to Oldham; thence (4) along the same south 54 degrees and 45 feet west 2 chains and 3 links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey:

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills, where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's Office of Passaic County in Book X-3 of Deeds on pages 122, etc., said beginning point being 76 feet and 2 inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the

dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same; and running from thence (1) south 40 degrees and 30 feet east 96 feet and 9 inches along the line of said lands of James H. Peterson (now of Kievit;) thence (2) north 51 degrees and 36 feet east 18 feet and 7 inches to the lands of Richard DeGray; thence (3) along the same southeasterly to the Passaic River; thence (4) southerly up the stream thereof 1 chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road; thence (6) northeasterly along the same to the place of beginning. Excepting and reserving out of the above described tract the following tract of land; beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills 50 feet southwesterly from the beginning point of the whole tract above described; and running thence (1) southeasterly at right angles from said road 120.46 feet; thence (2) southwesterly deflecting 85 degrees and 46 feet to the right from the first course 92.45 feet to the line of lands formerly of John Earl; thence (3) northwesterly along the line of lands formerly of John Earl 127.37 feet to the easterly line of said road; and thence (4) northeasterly along same 105.78 to the place of beginning.

It is on this eleventh day of April, 1921, on motion of William J. Kearns, attorney for the appellant, The City of Newark, and on like motion of William I. Lewis, attorney for the appellant, National Silk Dyeing Company, ordered, that Monday, the 16th day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeals be-

fore the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is the value of and the assessment of the amount which the City of Newark should pay to said National Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake as are necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation, as against the said lands and property of National Silk Dyeing Company as in said petition described, and also for the damages to be sustained by the said National Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The City of Newark.

And it is further ordered that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

Geo. S. Silzer,
J.

We consent to the making of this order.

Wm. J. Kearns,
Atty. for the City of Newark.
Wm. I. Lewis,
Atty. for National Silk Dyeing Company.

We hereby consent and agree to the making of the foregoing order and that the provision of the statute that the day agreed for striking of the jury in the foregoing order be at least ten days before the day agreed for trial of the appeal shall be and hereby is waived. And that the day fixed for striking of the jury in said order shall be the day fixed for the trial of said appeal.

Wm. J. Kearns,
Atty. for the City of Newark.
Wm. I. Lewis,
Atty. for National Silk Dyeing Company.

Thereupon the said appeals on said issue were tried before George S. Silzer, Judge of said Passaic County Circuit Court with a struck jury at the said Passaic County Circuit Court on the 16th, 17th, 18th, 19th, 20th, 23rd, 24th and 25th days of May, 1921, said jury having been duly struck and empanelled and having viewed the premises pursuant to the order of said Court and having been duly sworn and having proceeded to trial and the evidence offered by the respective parties and the respective counsel having been heard, and said appeals on said issue having been heard and submitted to the jury as aforesaid, they returned their verdict on the 25th day of May, 1921, as follows:

They find that said The City of Newark is to pay to said The National Silk Dyeing Company,

the sum of Thirty-two Thousand Four Hundred Dollars ($32,400.)

Thereupon upon application of said The City of Newark a rule to show cause why said verdict should not be set aside and a new trial granted, was made and filed and entered on June Twentieth, Nineteen Hundred and Twenty-one as follows:

A verdict having been entered in favor of the National Silk Dyeing Company in the above entitled matter and against the City of Newark for Thirty two thousand four hundred dollars ($32,400.-00) and application having been made within six days after the rendering of said verdict, now, on motion of Thomas F. McCran, of Counsel with The City of Newark, and in the presence of William I. Lewis, of counsel with The National Silk Dyeing Company, it is ordered that The National Silk Dyeing Company show cause before our Passaic Circuit Court at the present term, upon a day to be fixed by the court for that purpose, why the verdict in this cause should not be set aside and a new trial granted.

And it is further ordered that the granting of this rule to show cause shall not operate as, or be, a bar against The City of Newark taking or prosecuting an appeal from the judgment which shall be entered upon said verdict upon the following points, which are hereby expressly reserved by this rule, provided, that the argument on the points so reserved, be brought on for hearing at the Fall Term 1921 of the court to which the same may have been appealed.

Point I. The exclusion by the court from the jury's consideration of the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and the instructions by the court to the jury

that in apportioning the damages among the various diverters, the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

Point II. The refusal of the court to charge, as requested by counsel for the City of Newark, that when the dyers entered into the contracts (which were offered in evidence) with the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily fixed, as against themselves, but not as against the condemnors, the basis upon which the damages to be recovered from The Acquackanonk Water Company, Jersey City and Newark must be calculated.

Point III. The instructions which the court gave to the jury in charging the fifteenth request to charge made by The City of Newark, that the jury had the right to take into consideration in the problem involved in the request to charge, that the owners, if they were using artesian well water and putting that back into the river, and if they put in an amount that was equal to or greater than the amount which they abstracted, then the lower riparian owners could not make any complaint.

Point IV. The refusal of the court to charge, as requested by counsel for the City of Newark (except as it had already charged), that if, as the dyers claimed, after separating the waste water and the polluting matter in their waste waters, viz: 10% thereof, and discharging it into the trunk sewer, what remained would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other sources; at all events to no greater

extent than the amount of water they would put into the trunk sewer.

Point V. The refusal of the court to charge, Request No. 26, as requested by counsel for the City of Newark (except as it had already charged), that if the dyers diverted water from the river in the future and so used it that it became polluted to the extent that it would be unfit for domestic or other reosonable riparian uses, and then returned it in such condition to the river, it would appreciably impair the quality of the water, and a public nuisance would be committed.

Point VI. The refusal of the court to charge Request 32, as requested by counsel for the City of Newark (except as it had already charged), that since the dyers' pipe was in actual use, and was laid under the streets of the city, the contracts made for its use were subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom and the price paid therefor.

Point VII. The refusal of the court to charge Request No. 54, as requested by counsel for the City of Newark, that the evidence being that the dyeing companies had in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the dyeing companies would not be able to continue to obtain such substituted supply in the future, the jury could not take into consideration the conjecture or possibility that at some time in the future the dyeing companies might be cut off from these substituted sources of supply.

Point VIII. The instructions by the court to the jury, as requested by counsel for the property owners

in Request 12 that if the jury found that the owners need for their business a steady and dependable supply of water instead of an uncertain and intermittent supply, and the takings under these proceedings would render the supply so uncertain and intermittent that it would be of no value for their business, they were entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so might be considered in arriving at the depreciation in the value of the land.

Point IX. If on the hearing of the rule to show cause, the Circuit Court shall decide the question of allowance or non-allowance of interest on the amount of the award, that question may also be reserved by both parties and be the subject of appeal.

Geo. S. Silzer,
Judge.

The said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard, the court on the Ninth day of August, Nineteen Hundred and Twenty-two, made an order herein that said rule to show cause should be discharged, which order is as follows:

A rule to show cause why the verdict heretofore rendered in the above stated cause should not be set aside and a new trial granted, having been made by this court, and the said rule to show cause having been duly set down for argument and the arguments of the counsel for the respective parties having been heard thereon and the court having duly considered the same—being of the opinion, that said verdict should not be set aside and a new trial granted and that the said rule to show cause should be discharged.

It is hereby, on this 9th day of August, 1922, on motion of Wm. I. Lewis, attorney for National Silk Dyeing Company above named, ordered, that said verdict shall not be set aside and a new trial granted and that said rule to show cause be and hereby is discharged, vacated and for nothing holden, with costs to be taxed.

Geo. S. Silzer,
Judge.

Thereupon on the Ninth day of August, Nineteen Hundred and Twenty-two, the Court made the following rule:

Both the City of Newark and National Silk Dyeing Company above named, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the petition of the City of Newark aforesaid, to examine and appraise certain property of the said National Silk Dyeing Company, situate in the City of Paterson, Passaic County, New Jersey, being the right to take water described in said petition, which said petition was filed in said matter on February 24, 1919, and to assess the amount to be paid and the damages for the taking of said property sustained by said National Silk Dyeing Company, the owner thereof, which award of said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August 1920, wherein and whereby the said commissioners did award and report that they made a just and equitable appraisement of the value of said property and the assessment of the amount to be paid by said City of Newark for said property and the damage aforesaid to be

paid by said City of Newark to said National Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of said petition which was the sum of $48,675 awarded to be paid by said petitioner to said National Silk Dyeing Company as aforesaid;

And an order having been made by the above court wherein it was ordered that the issue for the trial of the question therein involved between the said parties was thereby framed and that the issue was the value of and the assessment of the amount which the City of Newark should pay to said National Silk Dyeing Company owner of said lands and property for the said right to take and divert said waters as therein mentioned as against the said lands and property of said National Silk Dyeing Company as therein mentioned and also for the damages to be sustained by said National Silk Dyeing Company owner as aforesaid in consequence of the taking of said rights as against said lands and property of said National Silk Dyeing Company by the said City of Newark as aforesaid;

And the above cause upon said issue having been tried before the above stated court with a jury at the April, 1921, term of this court and witnesses having been produced and sworn and counsel heard for the respective parties, and the jury having rendered a verdict, on the 25th day of May, 1921, in favor of the said National Silk Dyeing Company, and against the said City of Newark and found that the value of and the assessment of the amount which the City of Newark should pay to said National Silk Dyeing Company for said right to take said water as aforesaid and also for the damages as aforesaid, was the sum of $32,400.

And the Judge having instructed the jury to find said compensation to be paid as aforesaid as of the date of the filing of said petition;

And upon the application of said City of Newark a rule to show cause why the verdict should not be set aside and a new trial granted, having been granted herein, and said rule to show cause having been duly set down for hearing and the arguments of the counsel for the respective parties having been heard thereon and the court having by its order filed herein ordered that said rule to show cause should be discharged;

And the said National Silk Dyeing Company having duly given notice to the said City of Newark of a motion that a rule be entered herein ordering that judgment final be entered herein adjudging that said National Silk Dyeing Company recover of said City of Newark the sum of Thirty-two thousand four hundred dollars ($32,400) and legal interest on said sum from the time of filing the said petition for the appointment of commissioners in the above stated matter, and said motion having been duly made in pursuance of said notice and the arguments of the counsel of the respective parties having been heard and considered thereon, and the court being of the opinion that said last named motion should be granted.

It is, therefore, on this 9th day of August 1922, ordered that judgment final be and hereby is entered in favor of said National Silk Dyeing Company and against the said City of Newark in the sum of Thirty-six thousand seven hundred and seventy-nine dollars and forty cents ($36,779.40), being said sum of Thirty-two thousand four hundred dollars ($32,400) with Four thousand three hundred and seventy-nine dollars and forty cents ($4379.40)

legal interest on said sum of Thirty-two thousand four hundred dollars ($32,400) from February 24, 1919, the time of filing the said petition until the 25th day of May, 1921, nunc pro tunc, as of May 25, 1921.

Let this rule be entered in the minutes of the Court.

Geo. S. Silzer,
Judge.

On Motion of

Wm. I. Lewis,
Attorney of National Silk Dyeing Company.

Whereupon it is adjudged and considered that said National Silk Dyeing Company do recover against said The City of Newark the sum of Thirty-six Thousand Seven Hundred and Seventy-nine Dollars and Forty Cents, ($36,779.40), being said sum of Thirty-two Thousand Four Hundred Dollars ($32,400) with Four Thousand Three Hundred and Seventy-nine Dollars and Forty Cents ($4379,40) legal interest on said sum of Thirty-two Thousand Four Hundred Dollars ($32,400) from the 24th day of February, 1919, the time of filing the said petition and order thereon for the appointment of Commissioners in the above stated matter until the 25th day of May, 1921, and the costs of said National Silk Dyeing Company, which are taxed at the sum of Fifty Dollars, ($50.00) making in the whole the sum of Thirty-six Thousand Eight Hundred and Twenty-nine Dollars and Forty Cents, ($36,829.40).

Judgment entered and signed August 11th A. D., 1922 at 1:50 P. M. Action No. 6742, Docket G. pages 498 &c.

John McCutcheon,
Clerk.

Judgment Record

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

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, do hereby certify, That the foregoing is a Transcript of the Judgment Record, in the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid the National Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River, as the same is taken from and compared with the original entry thereof in Book "Z" of Circuit Court Judgments for said County.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Ninth day of September, A. D. Nineteen Hundred and Twenty-two.

John McCutcheon,
Clerk.

PASSAIC COUNTY CIRCUIT COURT

Acquackanonk Water Co.,
The City of Newark,
The City of Jersey City,

v.

The Weidmann Silk Dyeing Co.,
The National Silk Dyeing Co.

On Motion To Allow Interest

OPINION OF JUDGE SILZER

Messrs. John W. Griggs,
J. W. Harding,
Wm. I. Lewis,
For the Motion

Messrs. William B. Gourley
Thos. F. McCran,
J. B. Humphreys,
C. K. Corbin,
Contra.

Findings of the Court, by,

Silzer, J.: The usual proceedings in condemnation were had, including an award by Commissioners, and an appeal. Upon trial by jury, an award was made. Counsel for the owners now ask that interest be added to the award, from the date of the filing of the petition and order thereon. Their insinstment is, that this is necessary in order that just compensation be made, since the petition in condemnation was filed several years before the jury's award, and the property appropriated by the condemnors during that time.

The proceeding to fix compensation is statutory,

being had under the provisions of the laws of 1900 p. 79 (2 C. S. 2181).

If the statute does not make provision for giving just compensation, it violates the constitutional requirements and is ineffective.

Just compensation means that the land owner must be made whole for the loss of his land. (Bowers v. Bloomfield, 81 Eq. 165.)

It must be quite evident that if a man's land is taken, and years thereafter the jury awards a sum representing its value etc., as of the date of the filing of the petition and order thereon, that he has been out of the use of his land, or the interest on its value during such period. If he had sold his land on the date of filing the petition, he would have invested his money and he would have had his interest thereon. If he does not get this he is not "made whole."

Is the act unconstitutional, or does it provide for making compensation? It must be one or the other.

If possible, the act will be construed to be constitutional. (Colwell v. Mays Landing W. P. Co. 19 N. J. Eq. 245.)

The former act did not establish a time for fixing the valuation. The present act does. Sec. 6 provides that the Commissioners shall:

(a) Make a just and equitable appraisement of the value of the land or other property; and

(b) make an assessment of the amount to be paid by the petitioner for such land or other property and damages aforesaid, as of the date of the filing of the petition and order thereon.

It was, of course, important that a definite time be fixed for valuing the property, for property values may change from day to day.

The statute also says that "the amount of the

assessment is to be paid as of the date of filing the petition and ordered."

This may mean that the Commissioners make an assessment of an amount, thereafter to be paid, which shall represent the value of the land and damages as of the date of filing the petition; or, it may mean, that the Commissioners make an assessment of the value of the land and damages, as of the date of filing the petition, and to be paid as of that date.

If one of these constructions provides for just compensation and the other does not, necessarily the former construction must be adopted, provided it does not do violence to the words used.

Where the condemnors have been in possession of the land since the time of filing the petition, and the award is made several years later, surely the owners are entitled to interest on the amount of the award since the taking; and it follows then that we must accept that construction of the act which requires not only fixing the amount, but also paying it as of the time of filing the petition. This does no violence to the words of the statute.

In Metlar v. Easton & Amboy R. R. 37 L. 222, it was held that where the owner has been out of the use of his property, he was entitled to interest, if he was to have just compensation.

How then can interest be allowed? Is there statutory provision therefor? If not, does the whole proceeding fail?

The condemnors concede that since Metlar v. Amboy it is settled that interest can and must be allowed, but insist that it should have been done by submission to the jury, and included in their finding; and if not so done, that there is no statutory authority for such action by the Court.

The jury was definitely instructed to find as pro-

vided by the statute; namely, to assess the amount to be paid for the property and damages, as of the date of filing of the petition. This they did. They were not allowed to, nor did they consider the adding of interest.

The only effect of now submitting it to a jury would be to have them go through the mechanical process of figuring six per cent., on the amount awarded. It would not involve any dicsretion or finding on their part. No controverted facts are to be determined in such a procedure.

Where such discretion is a part of the jury's function the Court cannot mould the verdict and add interest. (Kilgus v. Wayn Co., 85 Law 354.)

Where, however, all the legal requirements have been fulfilled and the mere mechanical process to calculating interest is the only thing necessary to fulfill the constitutional requirement, and where no other result could possibly be reached, if re-submitted or if it had been submitted, to grant a new trial for the sole purpose of adding six percent., interest would be a senseless and useless thing.

In a case where the property is not in the condemnor's possession at the time of the filing of the petition, there would be no necessity of either submitting the question of interest to a jury or having the court calculate it.

Counsel has suggested in the argument that there was no such possession here. This, however, is begging the whole question. The Chancellor directed that condemnation suits be brought because of that very possession, and on the trial there was no dispute as to possession, the only question being the amount of compensation to be awarded.

If the Court's construction be not correct, then no method exists for condemning this property and

awarding just compensation, and the condemnors have no right to undertake these proceedings.

I am convinced that the statute is open to the construction that the award is to be made as of the date of filing the petition and that interest runs from that time; and, being so, interest may be added by the Court, under the facts in this case.

The Jury's finding means that it fixed the amount due as of the time of filing petition etc., and that it is to be paid as of that time. It necessarily follows, then, that the jury means that the owners were to have their money as of that day. If this be so, then they also meant that interest was to be had from that time.

Under such circumstances the Court may mould the vedict to meet the Jury's findings. (Kilgus v. Wayne Co. 95 L. 351.)

If this be not so, it still remains that the Jury's finding was of a certain sum as of a certain day, and that the Court in entering that judgment does not interfere with the finding, but permits interest to run on the finding so as to comply with the statutory requirement, just as interest runs on an ordinary judgment from the time of entry. Here it does the same, except that the time is of a different date, as required by constitutional mandate.

Interest at the lawful rate will be allowed on the verdicts from the date of the filing petition, since which time condemnors have been in possession.

The testimony taken in the Circuit Court will be found in Volumes 2 and 3 of the State of the Case, and the charge of the Honorable George S. Silzer, Judge of the Passaic Circuit Court, in Volume 4, and the Exhibits in the cause will be found in Volume 5.

PASSAIC COUNTY CIRCUIT COURT

The Acquackanonk Water Company,
vs.
The Weidmann Silk Dyeing Company,

The Acquackanonk Water Company,
vs.
The National Silk Dyeing Company,

The Mayor and Aldermen of Jersey City,
vs.
The Weidmann Silk Dyeing Company,

The Mayor and Aldermen of Jersey City,
vs.
The National Silk Dyeing Company,

The City of Newark,
vs.
The Weidmann Silk Dyeing Company,

The City of Newark,
vs.
The National Silk Dyeing Company,

Paterson, N. J. March 18, 1921.

It is hereby stipulated among the attorneys of the respective parties in the above stated actions, that said actions be tried together, by one and the same Jury, and that verdicts be rendered separately in each case; all parties reserving their rights of exception in other respects in the same manner as if said actions were tried separately.

Paterson, N. J. May 16, 1921.

Appearances:

Messrs. Humphreys & Sumner,
For the Acquackanonk Water Company,

Appearances

Messrs. Collins & Corbin,
Messrs. Humphreys & Sumner,
William B. Gourley, Esq.,
For the Mayor and Alderman of Jersey City,
William J. Kearns, Esq.,
Hon. Thomas F. McCran,
For the City of Newark,
Messrs. Griggs & Harding,
For the Weidmann Silk Dyeing Company,
William I. Lewis, Esq.,
For the National Silk Dyeing Company.

(A Jury being empanelled and found satisfactory to all parties, they were sworn.)

(Mr. Griggs then opens for the Weidmann Silk Dyeing Company and the National Silk Dyeing Company.)

(Mr. Humphreys then opens for the Acquackanonk Water Company.)

(Mr. McCran then opens for the City of Newark.)

(Mr. Corbin then opens for the Mayor and Aldermen of Jersey City.)

It is agreed by all parties, that objections and exceptions taken by any of the Condemnors shall apply to all three unless there are special circumstances in connection with it making it applicable only to one; and the same rule shall apply in respect to objections and exceptions taken on behalf of the Property Owners.

(The Court then ordered a recess until two o'clock and after recess the Court, the Jury and Counsel visited and made an inspection of the properties in question.)

(The Court thereupon adjourned to Tomorrow,

Tuesday, May 17th, 1921, at 10:00 o'clock A. M.)
Second Day.

Paterson, N. J., May 17, 1921.

The trial was continued pursuant to adjournment.

JAMES E. TORREY, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Harding:

Q. You are a civil engineer and surveyor? A. Yes, sir.

Q. Are you familiar with the property of the Weidmann Silk Dyeing Company in Paterson? A. Yes, sir, and I have been ever since 1908.

Q. Have you a map that was made by you and under your supervision showing the Weidmann property and where all the buildings are? A. Yes, sir.

Q. Are you connected with the John W. Ferguson Company? A. I am the Chief Engineer.

Q. How long have you been connected with them? A. For fourteen and a half years.

Q. You say you are familiar with the Weidmann property? A. Yes, sir.

Q. For how many years have you known that property? A. Since 1908.

Q. Have you had to do with the construction of some of the buildings? A. Yes, sir, the construction of all of the buildings that have been erected at that plant during the period that I have been connected with it.

Q. What have you had to do personally with them? A. The design and the supervision of the design.

Q. Have you recently examined all of their different buildings for the purpose of forming an estimate of their value? A. Yes, sir. This past week.

Q. Have you been engaged during most of the time this last week in going over the buildings and making that estimate? A. Practically all of the last week.

Q. I show you a paper and ask you if that is a paper prepared by you showing the estimate of the different buildings? A. It is.

Q. In what method did you make your estimate?

The Court—That is an estimate of what?

Mr. Harding—Of all of the buildings of the Weidmann Silk Dyeing Company.

The Court—The cost do you mean?

Mr. Harding—The replacement value, the present value.

Mr. Gourley—If the Court please, what significance has the value of the buildings, the cost of the buildings?

The Court—I suppose it shows the value of the property.

Mr. Gourley—I understand the point is to show the cost as constructed. Is it material in this case as to the value of the property that it should be done in this way?

The Court—It seems so to me. It makes a big difference in condemnation proceed-

ings whether the property is worth a million dollars or thirty cents.

Mr. Gourley—The question is as to the method of proving the value of the buildings.

Q. What value did you put upon these buildings?

Mr. Gourley—Objected to, what value he put on them. It is not of any significance. The question is what is their value under certain conditions? And we know nothing about his experience, even if it were material.

The Court—He seems to be qualified.

Mr. Harding—I can qualify him further.

The Court—Do you object to the qualifications?

Mr. Gourley—I don't know much about it. I think they ought to proceed in the regular way.

The Court—I understand he is connected with a construction company and has been for twelve years, he has been connected with the construction of some of these buildings and has been familiar with the cost of construction during that period. Is that so ?

The Witness—Yes, sir.

Q. Have you taken into consideration the cost of the material, the labor etc., at the present prices in forming your estimate for these buildings? A. Yes, sir.

Q. Did you estimate the value upon the cost that would be required to replace these buildings after taking out a proper amount for depreciation? A. Yes, sir.

Q. You have made out a schedule of the different buildings, have you not, consisting of how many different buildings? A. I will have to count those up, there are four pages.

The Court—That includes all of them?
The Witness—Yes, sir; all of them.

Q. Will you state what you estimate the present value of all of these buildings that are contained in this schedule? A. The present value of all the buildings is $1,324,220.20.

Q. In this schedule I see that you have in different columns given the number and designated the building and in another column given the size of the building and the area of square feet and the replacement cost and depreciation and present value. Are those correctly stated in your schedule? A. To the best of my knowledge and belief they are.

Mr. Griggs—To save going into detail we offer to submit this schedule in evidence.

Mr. Gourley—What is the difference between this and the other schedule?

Mr. Griggs—I cannot tell you. You can find that out after you get this in. The question is whether this is lawful evidence.

The Court—It does differ from the other schedule, does it?

Mr. Griggs—Yes.

The Court—Did this witness make the other one?

Mr. Gourley—Mr. Schneeweiss testified before.

Mr. Griggs—Mr. Schneeweiss is dead.

Mr. Gourley—And his figures are also dead, apparently. We want to hurry the case as fast as we can, but I don't think it is technically formal to do it this way.

The Court—It will be admitted in evidence if there is no objection.

Mr. Griggs—If I knew just what the difference was I would tell Counsel, but I don't know.

Mr. Harding—I can tell counsel just what the difference is.

The Court—It may save time to state what the difference is.

Mr. Harding—Mr. Schneeweiss having died it was necessary to produce Mr. Torrey who made the first estimate, in a general way, with Mr. Schneeweiss. He has taken practically Mr. Schneeweiss's figures that he helped make with Mr. Schneeweis, two years ago, with a few changes where his judgment did not correspond exactly with that of Mr. Schneeweiss, in matters that are immaterial; the difference in price, however, is due to the fact that a large number of separate buildings have been built since Mr. Schneeweiss died, and the fact too, that the replacement price is

about twelve per cent. higher now than it was then.

Mr. Gourley—That is, subsequent to the taking.

Mr. Harding—It was since Mr. Schneeweiss's death, in the last two years.

Mr. Gourley—What period does this computation date to?

The Court—I understand this is a schedule dealing with the buildings as they exist now.

Mr. Gourley—To-day?

The Court—Yes.

Mr. Harding—There is one other circumstance which I forgot to mention; the building that is called the Chemical Building is included in the computation. It was not included for some reason in the former computation. It was an omission when it was tried before the commissioners; now we have put the value of that building in. It is the Chemical Building. That is down near the Johnson & Cowdin mill.

Mr. Gourley—So far as the evidence relates to the value of it, your Honor will allow an exception to an estimate of that character.

The Court—Why do you say that it is not admissible?

Mr. Gourley—My recollection is based on the former computation and it is that the statute provides that the value shall be fixed as of the time of filing the petition.

The Court—This illustrates the reasonable use the property may be put to.

Mr. Gourley—The period of time in which the damages go.

The Court—That goes to the question of the damages but not to the admissibility of the evidence.

Mr. Gourley—I am speaking of the condemnation, my recollection is the statute says something about the time of the filing of the petition.

The Court—It does, but this, nevertheless, is admissible as evidence. The question of damages may be dealt with later.

Mr. Harding—That is the statute, that they have to be dealt with as of the time of the filing of the petition and the making of the offer, and we are merely offering this to show what the property consists of.

Mr. Gourley—I understand your Honor permits this testimony about these new buildings to go in at this time.

The Court—Yes, merely as one of the elements of the present situation.

Mr. Gourley—Will your Honor allow us an exception to that ruling?

The Court—Yes.

Mr. Griggs—I don't want an exception entered here on a misconception. Counsel for the Owners do not claim that this is anything more than showing the present value, and we show at the same time that on these buildings that were there at the time of the condemnation there was twelve

per cent. less of value than there is now. We supply the whole facts and it is for the jury to deal with them.

The Court—In order that they may ascertain the value at the time of the taking, you are giving an estimate of the value now?

Mr. Griggs—Yes, and I am correcting it by what existed before.

Mr. Gourley—Will your Honor allow us an exception still?

The Court—Yes, I thought I made that clear. I will allow an exception.

Mr. McCran—The exception applies to us also.

The Court—Yes, that goes to all three.

Mr. McCran—May it be understood when Mr. Gourley or anyone on our side makes an objection and exception that it will apply to each one of the condemnors?

The Court—Unless it applies to only one, yes.

Mr. McCran—Unless it is stated to the contrary when the objection is made by the condemning parties it will apply to all the condemning parties, unless particularly stated.

Mr. Corbin—That includes Jersey City, Newark and Acquackanonk?

The Court—Yes, all three.

Mr. Harding—We offer this estimate in evidence.

Admitted and Marked "Weidmann Exhibit No. 1" of this date.

Cross Examination by Mr. Gourley:

Q. Have you your schedule there? A. Yes, sir.

Q. Have you also before you the schedule of Mr. Schneeweis? A. I have.

Q. How many buildings are there, first, so that the Jury will understand? A. The total number of buildings?

Q. Yes. Have you them numbered? A. There are forty-five in his schedule, I mean buildings and other things on which he estimated, some of them are numbered, but they are simply for convenience in reference, some of the buildings are numbered merely for convenience of reference, they are not all numbered.

Q. Have you taken the same numbers Mr. Schneeweiss did? A. No, sir. That is, I think so, if I understand your question.

Q. I mean, have you taken the same numbers Mr. Schneeweiss did in his estimate or exhibit? A. The numbered buildings refer to the same buildings in every case.

Q. Number two is the boiler house, is that your number? A. That is.

Q. Number three is the black and white shop? A. That is the same building.

Q. Number four is the receiving department? A. The same.

Q. When do you depart from his numbers, run down the list? A. Number twenty-one.

Q. That is the material shed? A. That is no longer in existence.

Q. That was a four hundred and eighty dollar item replacement cost? A. Yes, sir.

Q. That is not in? A. No, sir.

Q. What is the next number of difference? A. That is the only change from the previous numbering.

Q. What is the total of Schneeweiss? A. Mr. Schneeweiss's present value that is, two years ago, $1,027,392.39.

The Court—Was the date of the filing of the petition in all these cases February twentieth 1919, were all cases alike?

Mr. Humphreys—I think so.

Q. That statement of his was on May twenty-second, about two years ago, April and May 1919, is that right? A. That schedule is dated May twentieth 1919.

Q. And your schedule which you have given us is dated when? A. Is dated May sixteenth 1921.

Q. You said that some new buildings were erected? A. Yes, sir.

Q. What new buildings are where are they located? A. Foundation, trenches and house for oil tank on Fifth avenue; foundation for three oil tanks on the Hawthorne side of the river; railroad spur on the Hawthorne property; partitions in the main office on Fifth avenue plant; a new roof over the soda recovery building; storehouse forming a second story on building number three; roof between office and shipping room; addition to power house number fourteen; addition to color shop number twenty-six; new turbine house; pump house on the Hawthorne property; bridge across

the Passaic River; oil pipe trenches throughout the plant; partitions in receiving department, building number four; suction intake on the Hawthorne property; new flumes and improvement of pond on Hawthorne property; alterations on boiler house number seven; drying rooms on second floor of number sixteen.

Q. What is the additional replacement cost you have put on these additional improvements? A. The additional replacement cost on the additional improvements, that is the work done during 1920 and 1921 is approximately $204,000.

Q. Was this work all done under your direction? A. All of it.

Q. All of these improvements of which you speak? A. Yes, sir.

Q. What is the total amount of your replacement cost as compared with the Schneeweis estimate? A. The replacement cost or the present value?

Q. Well, I will take either; give us the present value, as you gave us that before, give us the present value of the same items of the Schneeweiss exhibit? A. Of the same items? You mean excluding these additional items? (Figuring) The replacement value in the schedule for the items covered by Mr. Schneeweiss's schedule—I beg your pardon, I mean the present value is, $1,118,-213.20.

Q. This estimate covers how many days' work? A. It covers six days' work and some nights.

Q. Of how many persons? A. Four or five assisted me.

Q. Who assisted you to do this work? A. Var-

ious of our draftsmen and engineers. Do you wish their names?

Q. Who assisted you on the ground, on the premises? A. Mr. Lang and Mr. Doran assisted me on the premises.

Q. Who are they? A. They are both of them draftsmen in the employ of our company.

Q. How long did they work with you there? A. On the premises?

Q. Yes? A. Only about a half day.

Q. Did you get any other assistance on the premises than as you mention? A. I required no other assistance on the premises.

Q. You did not get any? A. No, sir.

Q. You did not need any? A. I did not need any.

Q. Were all of these measurements taken by you? A. None of these measurements were taken by me.

Q. What did you accept as the measurement then? A. All of the measurements were taken under my supervision.

Q. You said you had only a half day's aid in that? I ask you who made the measurements for all of these various buildings? A. A great many of them were made by Mr. Schneeweis and others were made by various of our engineers at various times, by our other engineers.

Q. In other words, you took Schneeweis's figures? A. Very largely. My work has been based on that.

Q. Mainly so, now, isn't that the fact? A. Mainly is correct.

Q. That is what you are testifying to now?

Take the machine shop number eighteen for example, as an illustration, do you mean to say you measured that building? A. The machine shop number eighteen I did not measure personally.

Q. Do you know when it was built? A. It was built in 1908.

Q. You say so, do you know it? A. Certainly I know it. The building was built in 1908.

Q. How do you know, that is my question? A. How do I know it was built then?

Q. Is not my question a simple one, to an intelligent man like you? How do you know? A. I beg your pardon, I did not quite hear your question.

Q. How do you know it was built in 1908? A. Because I actually was on the ground and saw it in course of construction and supervised the design of the building, in fact did most of the work on it myself.

Q. So that you know from that fact the precise year? A. I most certainly do.

Q. Then how true is that of these other buildings? A. All of those built since 1908 I know.

Q. And all of those built before 1908? A. Those built before 1908 I depend upon the measurements that have been taken.

Q. In other words, you made no measurements of these various buildings built before 1908? A. No, sir, I did not.

Q. You took Schneeweiss's statement for the fact? A. I took Schneeweiss's figures, which conformed to our records, which formed a part of our office records, with which I am familiar. I worked with Schneeweiss on it.

Q. Then you made the measurement at the time Schneeweiss was there, do you say that? A. I made no measurements.

Q. You made no measurements at all? A. Practically none, no, sir.

Q. So that the point I am trying to arrive at or what I am trying to discover is whether this statement of yours is not mainly based upon what Schneeweiss had in his statement? A. I have already said that I used that as a ground work to build up on.

Q. Used it as to values as well as to size? A. The values I used my own judgment on, but I will say that in the majority of cases I agreed with Mr. Schneeweiss's estimate of values.

Q. If you did not make the measurement as to size and know that, how could you make the values? A. The taking of the measurement is a minor detail, a very minor detail.

Q. If you did not make them it was not important? A. No, sir.

Q. A large house is more expensive than a small one of the same material? A. Certainly.

Q. I ask you, if you did not make these measurements yourself, how you can testify to the values? A. The measurements were made under my supervision. I know the men who were making the measurements, knew that they could be depended upon to take them accurately.

Q. Did you take Schneeweiss's estimate of value? A. I did not.

Q. Did you first put down Schneeweiss's estimate and then add what you thought was proper for the difference in cost between 1919 and 1921?

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A. Before I made any estimate of values I personally inspected every building on the Weidmann property.

Q. Did you hear my question? A. I thought I answered it.

Q. Did you first put down Schneeweiss's estimate and then add what you thought was proper for the difference in cost between 1919 and 1921? A. I did not.

Q. Did you make up your own estimate on cost, replacement value or present value, without looking at the Schneeweiss' figures? A. I most certainly looked at them.

Q. And you have agreed, over these buildings, this vast collection of buildings, you have agreed within one hundred thousand dollars with Schneeweiss in the estimate of $1,027,000. in the value of the buildings, is that what you mean us to understand? A. That is correct.

Q. What did you add on the average between 1919 and 1921 in the cost or the present value? A. An average of twelve per cent.

Q. That is six per cent. each year? A. No, sir.

Q. Twelve per cent. for the two years? A. Twelve per cent. difference between now and May 1919.

Q. What is the depreciation during that period? A. The depreciation varies according to the buildings and the use to which they were put.

Q. Can you give us the average of depreciation, the percentage for all these buildings we have spoken about? A. For that plant the average can be one per cent. for the first ten years

and two per cent. each year thereafter.

Q. I mean between 1919 and now, just exactly two years, what depreciation has taken place in percentage, in average percentage for those buildings? A. For buildings over ten years old the depreciation would be four per cent.

Q. Four per cent. depreciation and twelve per cent. increase? A. Yes, on all over ten years old.

Q. Take the average building, my question was, now, of that plant, what do you say the average depreciation was from May 1919 to the present time, or, are you able to say? A. For the buildings?

Q. Take the plant as an average now——

Mr. Griggs—One moment. I insist that this witness should answer the question in an intelligent way according to his understanding of it, and he started to do that and counsel asked him something else.

The Court—I understand he states the depreciation by a certain fixed method. Now you are asking for the average and I understand this witness does not take the average. He fixed it according to certain rules.

Mr. Gourley—There is a certain depreciation recognized covering a long period of time, and I want to get a statement of the depreciation for the period he takes. He has given us the increase.

The Court—He may answer the question.

Q. Take the average building, my question

was, now, of that plant, what do you say the average depreciation was from May 1919 to the present time, or are you able to say? A. The average depreciation would be slightly less than four per cent.

Q. The depreciation four and the increase twelve would be the standard for the two years for buildings of that character? A. Is that a question?

Q. Yes, sir. A. That is correct.

Q. Did you take four per cent. off first before you added the twelve per cent.? A. No, sir.

Q. You added the twelve per cent. first and took the four per cent., off after? A. In cases where I added the twelve per cent. I had to add the twelve per cent. to get the replacement value as of to-day, then the depreciation is figured on that.

Q. You put on the twelve per cent. first? A. Yes, sir.

Q. Of course, this twelve per cent. is based upon the additional cost of labor and material? A. That is correct. The greater part of it——

Q. The greater part of it is labor, I presume? A. To-day that is true.

Q. Can you tell us, roughly, what percentage of the twelve per cent. is labor? A. It is rather hard to distribute it quite as closely as that.

Q. You could not quite say? A. I could not care to try to split that up quite as closely.

Q. Is there any difference between the labor cost now and two years ago? A. Yes, sir.

Q. Is the labor cost higher or lower than two years ago? A. It is higher.

Q. What percentage higher? What are bricklayers and masons getting now to-day as compared with two years ago? A. To-day I believe they are getting nothing.

Q. Are they working free? A. They are not working.

Q. There is a strike on, is there? A. Yes, sir.

Q. When they are working at this season of the year what is the difference between their pay when they were working last compared with two years ago? A. I don't want to answer that question from memory.

Q. What is the cost of material now, the same kind as this, has the material market in 1921 risen or fallen? I mean, brick, lumber and material of this character? A. Between to-day and two years ago the average material is still a little bit higher. It is falling, but still it has not quite reached the 1919 level.

Q. That is so of lumber too? A. I am not quite sure of lumber, the market is changing very rapidly and it is hard to keep right up to date.

Q. I won't hold you of course to the week or day, or two weeks, but I want it generally, I am not so particular as that, I mean as a general statement now between May 1921 and May 1919 what do you say is lumber higher or lower than it was at that time? A. I would prefer not to try to answer that from memory.

Q. How in the world can you give us an estimate of values at the present time if you do not know that simple problem? A. (No answer.)

Redirect Examination by Mr. Harding:

Q. You spoke of omitting something from your estimate that was included in Mr. Schneeweiss's, what was that which you omitted? A. Building number twenty-one, the mason material shed.

Q. That is number twenty-one in Mr. Schneeweiss's? A. Yes, sir.

Q. Was that a thing that went with the construction or equipment? A. That was a building which had been torn down, there was some equipment items which had been omitted also.

Q. I just wanted to ask you what those were? A. Under the heading building number thirteen.

Q. Just state generally what they amounted to in value? A. Two reservoirs, under building number twenty two, tank enclosure and outside tin pits.

Q. Why did you omit those? A. Because they were considered as forming properly a part of the equipment rather than of the buildings.

Q. And somebody else, is, as you understand it, making an estimate of those? A. Yes, sir.

Q. How much did those amount to that were omitted? I mean in Mr. Schneeweiss's estimate what did they amount to?

The Court—Mr. Schneeweiss's report should be admitted in evidence at this time? Will it be offered?

Mr. Griggs—We have no objection to it, but we do not think we can offer it without consent.

The Court—There is hardly any use of wasting time with the comparisons.

Mr. Griggs—That is what it seemed to us.

The Court—There was no use wasting time with the comparison. That was only for the purpose of informing Mr. Gourley so that he might be able to save time in getting his information as to what the difference was.

Mr. Griggs—We are perfectly willing to have in evidence the evidence of Mr. Schneeweiss taken before the commissioners, read in evidence here. We were in doubt, however, whether it came within the rule that the testimony of a deceased witness might be read on a re-trial of the cause, so we had an independent valuation made. If they agree to that we are willing and will read Mr. Schneeweiss's testimony.

Mr. Gourley—This was a witness produced by them; he admitted that the comparison was made by that testimony and we are not bound to put in that testimony. We d not think it was correct at the time.

The Court—You do not consent to Mr. Schneeweiss's testimony going in?

Mr. Gourley—No, sir.

The Court—Then there is no use wasting time with these comparisons, the references to Mr. Schneeweiss's report were permitted so as to facilitate Mr. Gourley's examination.

Mr. Harding—The only thing I can say

now is that another witness was making a report on that.

The Witness—There were two more items.

Mr. Harding—About what do they amount to in Mr. Schneeweiss's report?

The Witness—The total according to Schneeweiss's present value was $23,743.

Q. Now, I understand you to say that these items which you characterize as equipment have been omitted in your report? And they were included in Mr. Schneeweiss's report? A. Yes, sir, that is correct.

Q. And then you stated didn't you the value that you estimated the buildings that had been built since Mr. Schneeweiss made his report? A. Yes, sir.

Q. I did not get the amount of it? A. Approximately two hundred and four thousand dollars.

Q. When Mr. Schneeweiss made his estimate did you cooperate with him in making it? A. Yes, sir.

Q. Tell just what you did, including your consultations with him, and if so whether you made any estimate of value with him? A. I went over it in a general way with him while he was working on it and when questions as to construction or value came up he discussed a great many of them with me but the detail work in connection with it, I did not do.

Mr. Griggs—We also offer in evidence

this blue print of the Weidmann property showing the buildings.

Admitted and Marked—"Weidmann Exhibit No. 2" of this date.

FELIX G. PETTIT, sworn as a witness on behalf of the National Silk Dyeing Company, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live and what is your age? A. Midland Park, fifty two years of age.

Q. What is your business? A. General contracting.

Q. How long has that been your business? A. Twenty years or more.

Q. What work have you done as a general contractor? A. Principally mill construction.

Q. In what neighborhood ? A. I believe the majority of my work has been in Paterson.

Q. About how many mills have you built in Paterson? A. A hundred and fifty or more.

Q. Are you familiar with the plants of the National Silk Dyeing Company in the City of Paterson? A. Yes, sir.

Q. How many are there? A. Four.

Q. Will you please name them to the jury and describe their location? A. One plant, known as the East Fifth street plant, is located on East Fifth street along the Passaic River; the other is located on Wood street, also along the Passaic River; another is on North Straight street bound-

ed by, I don't remember, I think it is East Main street, facing also on the River, the other plant is the Valley Works, called the Valley Works, on Ryle avenue, along the River, near the S.U.M. yards.

Q. I hand you a roll of maps and ask you to pick out from the maps of the various plants that you have referred to, and, first, pick out those that show the ground plans if they are there? A. This map is the property map showing the East Fifth street property.

Mr. Lewis—We offer it in evidence.

Admitted and Marked "National Exhibit No. 1" of this date.

Q. The next one? A. The next sheet I have in my hand is the block plan showing the buildings on the map which I just showed you, which are numbered, the different buildings, making the group of the East Fifth street plant of the East Fifth street works.

Mr. Lewis—We offer this map in evidence.

Admitted and Marked "National Exhibit No. 2" of this date.

Q. What is the next one? A. The next map I have is the East Main street plant, a combination plan showing the property and the buildings.

Mr. Lewis—We offer it in evidence.

Admitted and Marked "National Exhibit No. 3" of this date.

Q. What is the next one? A. The next one is the plan of the Wood street plant showing the property and the buildings.

Q. How does it differ from the one just offered and marked National Number three? A. There is no difference.

Q. We had better withdraw that then if there is no differnce, had we not? A. I said that was the East Main street plant, this is the Wood street plant.

Mr. Lewis—We offer it in evidence.

Admitted and Marked "National Exhibit No. 4" of this date.

Q. What is the next? A. The next plan I have here is the Geering plant, the Ryle avenue plant, what is known as the Valley Works.

Mr. Lewis—We offer it in evidence.

Admitted and Marked "National Exhibit No. 5" of this date.

Q. Have you made an estimate of the value of the buildings on those various plants? A. About two years ago I did, yes, sir.

Q. Are those buildings shown upon these maps that you have just presented? A. Yes, sir.

Q. Have you prepared a table showing the value of the various buildings on those various plants? A. I have.

Q. Have you such table with you? A. Yes, sir.

Q. What do you value the buildings at the

East Fifth street works at? A. At a total of $234,734.00.

Q. What do you value the buildings at the East Main street plant at? That is the one mentioned as North Straight street? A. At $89,700.

Q. What do you value the buildings at the Valley Works at? A. $179,357.

Q. What do you value the buildings at the Wood street plant at? A. $63,902.

Q. In your judgment are those correct values of those plants? A. Yes, sir.

Q. At what period? A. Two years ago this month.

Q. Has there been any increase or decrease in values at those plants in the last two years? A. There has been a slight increase in the cost of construction between two years ago and this year.

Q. Would it be equivalent to the depreciation or would it exceed or be less than the depreciation? A. I have not gone into that but I think it would be pretty close.

Q. Have you made a footing of those figures? A. I have not, no, but it is five hundred and some odd thousand dollars.

Q. Can you figure the total and state it? A. Yes, sir, it is $565,693.

Q. Are you familiar with dye house construction? A. Yes, sir.

Q. What has been your experience, generally speaking? What plants have you constructed? A. It is hard to enumerate each single plant.

Q. Give us some idea of what you have done? A. I have constructed possibly forty per cent. of

the National buildings and done some work for—you mean right in Paterson here?

Q. Anywhere? A. I have done some work—I built the Alfred Crew plant, the old Gaede plant, the old Vermoral plant, that is here, and I did some work in Boston and some work in Pawtucket, dye house work, cotton dyeing.

Q. Is dye house construction different from ordinary mill construction? A. Yes, sir.

Q. Just tell the jury what the difference is? A. The difference is that a dye house is very much in a class by itself in construction, it covers a large area of ground, mostly one story buildings, the elevations are higher than for most other work, for manufacturing purposes, the roof construction is different, built to meet the conditions such as ventilation and steam, the underground work is a very important factor, the pipes and gutters and sewers and settling pits and that class of work.

The Court—What about that underground work? Would that all be useful in anything else except a dyeing plant?

The Witness—I don't know anythink it could be used for other than for a dye house.

Q. Now, go right on with your answer? A. The floor construction is usually either flagstone, cement or brick built on a concrete foundation; in those cement floors the surface is usually treated with some special treatment to withstand the different temperatures and acids to which the floor is exposed, and the sewer system is a big item, to

take care of the enormous amount of water that flows away through those tubes and ducts from the branches, and ditches, for pipes, water pipes and other pipes, conveying other things, and depressions for machinery such as extractors, foundations for machinery, precipitating pits and other beds and pits for that work, I cannot tell you just what it is for. The amount of work involved in a dye house floor is approximately fifty per cent. of the entire cost or value of the dye plant. That is my answer.

Q. Have you made an estimate of what those buildings would be worth for any other purpose if the dye house or dyeing business was abandoned? A. What do you mean? Estimates as to the values?

Q. Yes? What they would be worth if the dyeing business was abandoned in them?

Mr. Gourley—The question is what would these buildings be worth if they went out of business? Of course, we would have to know what business it was adaptable for, for what particular kind of business.

The Court—For any other business, I understand?

Mr. Lewis—Yes.

Mr. Gourley—We object to that unless the business is indicated.

The Court—In other words, have they any other use, that is the purpose of the question as I understand.

Mr. Gourley—If your Honor keeps on, that will be the purpose, of course.

Q. Answer that? A. The buildings could be used for other purposes by making necessary changes to meet whatever conditions the buildings might want to be put to, which would cost no doubt a lot of money; if I were to figure that, which I have not, the first thing I would do would be to sum up the kind and amount of work that is done in a dye house building and then—

Mr. Gourley—I don't think the process of this is interesting.

The Court—I think the method of arriving at it is proper.

Mr. Gourley—He has not arrived.

proceed.

The Witness—I would figure the amount

The Court—He is arriving and he may of work which is used only for dye house, such as I have mentioned a while ago, particularly the floors and what is under the floors, roughly speaking, and I would answer your question by saying that a dye house for any other purpose than a dye house would not be worth any more than forty per cent. of the part which I figured on.

Q. Have you made any calculation to show the amount that is involved in the value of the dye house floors, sewers, gutters and underground work such as foundation for machinery and pits and beds at the East Fifth street works? A. I have.

Q. What does that amount to? A. It amounts to somewhere between thirty-five and forty-five or fifty per cent. of the entire cost of the buildings.

Q. Have you calculated the amount in dollars and cents? A. Yes, I have.

Q. Please turn to your table there? A. The amount involved in the dye house floor, the sewers, gutters, underground work such as foundations, footings for machinery and fittings and pits etc., amounts to $98,500.

Q. The other part that would be affected by a change in the use, what are those worth? A. The other parts consist of such as the heigth of the elevation of the building, the size of the power plant in the property, the floor area, the size of the pumping and other things which are not needed for any other class of work than dye house work.

Q. How much would that amount to? A. Forty-five thousand dollars.

Q. So, I understand you to say, in your opinion, the value of that plant, if it were abandoned as a dye house, would be a difference between $234,734, and $143,500? A. Yes, sir.

Q. And that refers to the buildings and those things appurtenant to the buildings alone? A. Yes, sir.

Q. Have you made a like calculation as to the East Main street works? A. Yes, sir. I have.

Q. What do you find the value of that to be? What did you find the value of the amount involved in abandoning that to be as a loss? A. $13,500. and $32,000.

Q. Making $45.500.? A. Yes, sir.

Q. And the difference is what you regard as the salvage in the buildings? A. Yes, sir.

Q. How about the Valley Works? Tell us about the loss on that works if they were abandoned for a dyeing plant? A. That is $74,000. and $23,000. Making a total of $97,000.

Q. And the difference would be the salvage? A. Yes, sir.

Q. How about the Wood street works? A. That would be $24,000 and $8,500. Making a total loss on that of $32,500.

Q. Have you a table of that in your hand? A. Yes, sir, producing.

Mr. Lewis—We offer the table, merely as a matter of convenience.

Mr. Gourley—It is not evidential in the case at all.

Mr. Lewis—No. I merely offer it as a matter of convenience to refer to.

Mr. Griggs—Do you object to their being used?

Mr. Gourley—We want to hurry the thing along.

The Court—Then they may be admitted for convenience of reference.

Admitted and Marked "National Exhibit No. 6" of this date.

Q. Does this table correctly set forth the items which go to make up the total value in each plant? A. Yes, sir.

Q. And you made an examination of the buildings for that purpose, I understood you to say? A. I have, personally, yes, sir.

Cross Examination by Mr. Gourley.

Q. What is the East Fifth street plant, what is done there? A. Skein dyeing.

Q. Do you know anything about the quantities, the business done at the plant? A. The quantity of silk?

Q. Yes? A. I do not.

Q. The size of it? A. I don't know anything about the dyeing business.

Q. What is the Wood street plant? A. The Wood street plant is a chemical manufacturing plant just now.

Q. There is no dyeing done there? A. Not as I know of, no, sir.

Q. The next is the East Main street plant, what is done there? A. Skein dyeing and some ribbon finishing.

Q. Which is the old Kearns plant? A. That is the Wood street plant.

Q. That is no longer used for dyeing? A. No, I don't believe it is.

Q. The East Fifth street plant is still in use, is it? A. Yes, sir.

Q. The Geering plant is where? A. That is in the Valley of the Rocks.

Q. That is the one you described as the Valley Works? A. The Valley Works, yes, sir.

Q. Where is the old Gaede plant? A. The old Gaede plant is the East Main street plant.

Q. Is there any difficulty in converting these one story buildings of a dye shop into other uses? A. No, sir.

Q. That has been done, hasn't it, again and

again in Paterson? A. Not very often to my knowledge.

Q. Don't you know during this silk period we have had for a couple of years here that they have converted even tenement houses into silk weaving plants? A. Yes, sir.

Q. Every old thing, they have done the work under sheds even, isn't that the fact? A. I guess it is.

Q. Do you remember the Murray Mill, dye shop was converted into a silk mill? A. Yes, sir.

Q. That could be done again? A. Of course, very readily, yes, sir.

Q. And I presume it could be done with one story buildings better than the others? Or, am I wrong in that? A. I don't think it would be as profitable in one story buildings as it would be in four stories, on account of the light. Light is a big factor in weaving. A good many of the silk establishments put up recently have been having special arrangements for light.

Q. A good many of the silk establishments put up recently have been one story, in Paterson? A. For weaving?

Q. Yes? A. I don't know of any just recently, no, sir.

Q. By "recently" you mean what? A. In the last five years.

Q. What are the one story silk mills used for, winding? A. Throwing, and, I know of one plant where they use the one story building for throwing, and possibly one or two for other work, I don't know just what it might be.

Q. All these, at any rate, all these one story

buildings are adaptable for that purpose, aren't they? A. With proper changes.

Q. Do you notice that they have not only lights about the buildings but they have the lights overhead, that is, roof and street windows? A. Yes, sir.

Q. I don't know what you call that particular form of building? A. Monitors, monitor lights, we call those ventilators in dye houses for the purpose of leaving out the fumes mostly.

Q. They also furnish light to the buildings? A. The elevation is too high to get proper light in those big broad buildings, that is the main trouble for silk weaving—

Q. They are adaptable and it is only a question of the cost of doing it? A. The cost of transformation.

Q. How many have you converted? A. None.

Q. So that your estimate is based on calculation rather than fact? That is so, is it not? A. Yes, sir.

Q. What life did you give these buildings in the depreciation on which you computed? A. That would depend upon the use of the buildings.

Q. First let me ask you, did you build any of these National Silk buildings? A. I did.

Q. How many did you actually build? A. At least forty per cent., of the total.

Q. Those silk dyeing concerns cover a large space of ground? A. Yes, they do.

Q. And are usually low structures? A. No, they are high in proportion to any other manufacturing buildings.

Q. They are one-story buildings? A. They are one story buildings, yes, sir.

Q. The map which shows the character and groups of buildings indicates in the main one-story buildings? A. Yes, sir.

Q. What rule, what life did you say you gave to the ones which you did not build? A. Well, it is a hard thing to answer. There is no two buildings hardly the same figures would apply as to the life on account of their uses and their age, but I would answer you by saying the average life of a building for dye house would be approximately fifty years.

Q. Well, of course, those buildings that were all two stories in heigth would still be very adaptable for a change of some kind because the floors will not have to be taken up? A. Yes, sir.

Q. That is so, is it not? A. Yes, sir.

Q. I notice in this paper that you presented here or rather I noted in the testimony that you speak of chimneys? A. Yes, sir.

Q. Do you mean that less chimney space would be needed or electric power would be used? A. Why, the power plant for a dye house is larger in proportion to the same number of square feet that you would find in any other class of work which you have due to the fact that they use an enormous amount of steam in boiling their water and consequently more boilers and more machinery and much larger machinery for the same area of space.

Q. Do you mean that the chimney would be useless? A. No, it would cost more money simply.

Q. The chimney would still be of use for that

if the building was converted? A. Well, that size chimney for less work is not suitable in many cases.

Q. Is there not some way of remedying the draft of the chimney, can't it be narrowed at places for the purpose of getting the draft necessary? A. I don't know of any other method except a damper which is not practical for factory work.

Q. Have you ever done that yourself, or are you just speculating upon the cost? A. A chimney is the—

Q. Have you ever converted one? A. I have done some work in that line in changing a building.

Q. Larger chimneys to smaller work? A. Not the chimney itself, no, the flue construction.

PATRICK DALTON, sworn as a witness on behalf of the National Silk Dyeing Company, testifies as follows:

Direct Examination by Mr. Lewis:

Q. Where do you live? A. At Montville.

Q. How far is that from the Rockaway River? A. Right across the road.

Q. How long have you lived at Montville? A. For nineteen years.

Q. Are you close to the river? A. Yes, sir.

Q. Does it run by your property? A. Yes, sir.

Q. Does it run through your property? A. Well, we cross the river bank.

Q. Do you remember the Rockaway River be-

fore the Boonton Dam was put up? A. Yes, sir.

Q. What supply of water did you have in the river before the dam was put up? A. Plenty of water.

Q. At all seasons of the year? A. At all seasons, yes, sir.

Q. What happened when the dam was put up? A. No water in the Summer time.

Mr. Gourley—We object to this; perhaps he had better ask the questions and we can object formally to them; we want to present the question of whether evidence of this kind is admissible or not.

The Court—Why do you think it is not admissible?

Mr. Gourley—We think the question is what the condition of the River was at the Weidmann works, and we think also that the quantity that we are seeking to condemn in this case is a definite amount.

The Court—And what effect that has is the question which counsel is meeting.

Mr. Gourley—No, that would have to be shown, and it seems to me that now is the time to raise the question of whether the abstraction from the river of this water would create the condition of which the plaintiffs, if I may so call them, complain. This question opens up the whole history of the river and goes back twenty-five, thirty or forty years. I think we are not concerned with this question in this condemnation of twenty-nine million gallons of

water from the river for the future. What occurred then, what was done at Little Falls or Boonton or Rockaway and these various streams, all leads us into a tremendous field of inquiry and makes a long and useless inquiry. I cannot quite see, now, unless the Plaintiffs agree now to predicate their case upon the fact that a certain quantity of water comes down that river, and by our extraction of twenty-nine million gallons their property is damaged.

Mr. Griggs—Why do you say twenty nine million gallons? I don't just see where that comes in.

Mr. Gourley—I am making the statement on the ground that that is the proportion of the low flow which we claim.

Mr. Lewis—The difficulty with Mr. Gourley's argument is this that the millions of gallons of water which they have there in their reservoirs is our water yet, they have not bought it yet, and it ought to be down at our works.

Mr. Gourley—Is that a stump speech or an interruption?

Mr. Lewis—No, it is an interruption.

The Court—What is the purpose of this testimony?

Mr. Lewis—We want to show that these Water Companies, Jersey City and Newark have taken our water and they hold our water back and now they want to condemn it and pay for it, and I just want to show how it affects our plants.

Mr. Griggs—In order for the jury to determine what will be the effect on the river of the diversion of Jersey City of an average of seventy million gallons a day it is pertinent to show what the effect on the river has been of the diversion of a lesser quantity in the past.

The Court—Is that the purpose of this?

Mr. Griggs—That is the purpose of this.

The Court—I will allow the question.

(The condemnors except, and it is understood that the exception is available to the three condemnors.)

Q. Did you have plenty of water before that?

Mr. Gourley—Objected to.

(Question withdrawn.)

A Juror—Is Montville above the dam or below it?

The Witness—It is below the dam.

Q. What business do you run there? A. A farm and milk route.

Q. And do you have cattle? A. Yes, sir.

Q. Did the cattle get water from the stream? A. Yes, sir.

Q. Before the dam was put up? A. Yes, sir.

Q. Did you notice what the effect upon the depth of the water was after the dam was put up? A. Why, we only have it in heavy floods, then we have plenty of it, and at other times, there is very little.

Q. About how deep was the water in the river before the dam was put up? A. It might have been three feet deep at times.

Q. At most seasons of the year or at all seasons of the year? A. Well, ordinary.

Q. How low would it get? A. No water at all, simply no water at all.

Q. I mean, before the dam was put up? A. Well, there was always a good stream there.

Q. And, since the dam has been put up, how often would it be that you would have no stream there? A. Sometimes five or six months at a time.

Q. How far do you live from the dam? A. About a mile and a half.

Q. Below it? A. Yes, sir.

Q. How often have you been up at the dam? A. Not very often.

Q. Have you seen the dam? A. Oh, yes.

Q. I show you a photograph marked for identification in another proceeding P-12 and ask you if you recognize the picture? A. Down along the river I think.

Q. Can you tell whether there is a picture of the dam there? A. Yes, that is the dam, yes.

Q. And it shows the dam, does it? A. Yes, sir.

Q. Correctly? A. Yes, sir.

Mr. Lewis—We offer the photograph in evidence.

Mr. Gourley—Objected to, it does not show when it was taken or who took it or any of the details.

Mr. Lewis—We will have the photographer here to prove it later.

Mr. Gourley—If you say you will have the photographer here who took it and will give us the date of it and the details, we will accept it. Who took it? Who was the photographer who took it?

Mr. Lewis—Alfred Roseman, and it was taken in 1915, in January.

Mr. Gourley—We have no objection.

Admitted and marked "National Exhibit No. 7" of this date.

Q. I show you another photograph marked P15 for identification in another proceeding and ask you if you recognize it as being a photograph of any property up in your neighborhood? If you do not recognize it, just say so. A. I cannot see very good without glasses. I think that is along the river.

Q. The Rockaway River? A. Yes, sir.

Q. Does it look like the Rockaway River now-a-days? A. Not now, no, sir.

Q. When you say the river is low for six months in the year, is the whole river bed exposed? A. Yes, sir.

Q. Dry? Or, is there some water trickling through? A. Just in holes, that is all, just between the rocks.

Cross Examination by Mr. Gourley.

Q. When was it dry last? Is it dry now? A. Not now, no, sir.

Q. Has it been dry in the last few months? A. No, sir.

Q. Was it dry in March? A. No, sir.

Q. Was it dry in February? A. It went down here about a month ago for a day or two but it went right back.

Q. Was it dry in February? A. No, sir.

Q. Was it dry in January? A. No, sir.

Q. Was it dry in December? A. No, it has not been dry this Winter.

Q. Was it dry in November? A. I don't think so.

Q. Was it dry in October last? A. Yes, it was down last Summer.

Q. Was it dry in September 1920? A. It was not so dry last year.

Q. Was it dry in August and July? A. It was pretty dry in July and August.

Q. Was it dry in July, yes or no? A. I could not say positively about last year, last year there was lots of rain, last year there was lots of water.

Q. Was it dry in July? A. I could not say.

Q. Was it dry in June? A. I should say it was down in June and July.

Q. Was it dry in June? A. Not last year, before, not last year.

Q. Was it dry in May? A. Not last year.

Q. Was it dry in April? A. Not last year.

Q. Was it dry in March? A. Not last year.

Q. Was it dry in February? A. It was not dry in the Winter.

Q. Was it dry in January? A. No, sir.

Q. When was it dry in what time? A. In the Summer time.

Q. Do you say that this photograph National No. 7 is taken from the Rockaway dam? A. Yes, sir.

Q. Suppose I told you now that that was taken from the spillway on the Pequannock? A. Not on the Pequannock, on the Rockaway.

Q. Do you know the locations on the Pequannock? A. No, sir.

Q. Will you say that is not on the Pequannock? A. I cannot see very good without glasses.

The Foreman of the Jury—Take these glasses.

Q. The foreman will lend you his glasses, now look at it? A. No, I cannot see with these.

A Juror—Here is another pair.

The Witness—No, I could not tell with them.

A Juror—Here is another pair.

Q. Tell me whether that is the Pequannock or the Rockaway? A. That is the Rockaway.

Q. Do you know anything about when this photograph was taken? A. Yes, sir.

Q. You were there? A. No, sir.

Q. Was Mr. Auger there? A. I don't know the gentleman, I did not meet him at the time.

Q. You were not along when this was taken? A. No. I was at the river when this was taken, along the river, along the Rockaway.

Q. How do you know this was the photograph

t aken at that time? A. I could not say, it looks like it; it may be one taken since.

Q. How old are you? A. Fifty years old.

Q. How long have you lived in that neighborhood? A. For nineteen years.

Q. When was this dam built? A. I think they were building it in 1901, 1900 to 1901.

Q. So, when you went there they were building the dam? A. About that time.

Q. You have no personal knowledge of this stream before the dam was built? A. Yes, sir, it was not built when I came there for a year or so after.

Q. They were building the dam there? A. They were building it at that time.

Q. How long were you on the stream before the water was left in the Rockaway reservoir? A. I went there in 1901 I think it was.

Q. Was that one year or two? A. A couple of years, I guess, I could not tell you just when it was completed.

Q. Was the water dry during those two years? A. No, sir.

Q. Was the channel of the stream dry? A. No, sir.

Q. Was it low? A. No, sir.

Q. It was not even low in the Summer time? A. No, sir, there was lots of water.

Q. During the two years you were there? A. The meadows were always flooded, now they are never flooded, except in high water.

Q. So that it flooded the meadows in the Summer time when you were there before this dam was built? A. Yes, sir.

Q. In July or August? A. Yes, sir.

Q. For the year or two you lived on the stream before the dam was up do you say that the meadows were flooded? A. At certain times, yes, not always.

Q. It has been so this last couple years? A. No, very little on the meadows.

Q. The stream has been quite full? A. Yes, the stream, because we had lots of rain.

AUGUST PEER, sworn as a witness on behalf of the National Silk Dyeing Company, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. In Boonton, Hanover Township, Boonton is the post office.

Q. How long have you lived there? A. All my life.

Q. How old are you? A. Seventy-two years.

Q. Do you live near the Rockaway River? A. Yes, sir.

Q. How far from it? A. Two minutes' walk about.

Q. Have you been familiar with the Rockaway river all your life? A. Yes, sir.

Q. Do you remember the Rockaway River before the dam of the Jersey City Water Supply Company was put up? A. Yes, sir.

Mr. Gourley—We make the same objection to this testimony as the former testimony.

(Question allowed; Condemnors except, and this exception goes to all.)

Q. Have you noticed any difference in the water below the dam, the quantity of water below the dam, since that time, since its erection? A. Sometimes, yes, sir, sometimes.

Q. Tell us what difference you notice? A. Well, there was always, before the dam was put up, a nice stream there before the dam was put up, and after the dam was put up in the dry times, sometimes, from three to six months, it was dry. Sometimes from three to six months, I don't know exactly, the river was dry.

Cross Examination by Mr. Gourley.

Q. Where do you live, exactly? A. My post office address is Boonton.

The Court—Where do you live? A. I live in Hanover Township, below Boonton.

Q. Hanover Township is this side, so to speak, of the dam, in other words, it is East of the dam? A. Yes, it is east of the dam.

Q. How far from the dam do you live? A. I suppose about a mile, I don't know, I never measured it, I don't know.

Q. Down stream? A. Downstream, yes, sir.

Q. How near to the stream? A. Two minutes' walk about.

Q. Is your property on the stream? A. Yes, sir.

Q. You have a claim for damages? A. Well, I don't know about that.

Q. You have not seen your lawyer yet? A. No, sir.

Q. You say before the dam was built the water was more in the stream than it is now? A. Well, there was always a nice stream.

Q. There is a nice stream there to-day? A. Yes, but it is above the dam understand.

Q. There is a spillway on the dam? A. Yes, sir.

Q. That is so? A. Yes, that is so.

Q. The water flows on and up? A. Yes, when it is high enough.

Q. When the water is high enough to flow over? A. Yes, sir.

Q. There is nothing else to stop it? A. Yes.

Q. When was it dry last? Can you give me some idea? A. Well, I have seen it dry here in August it was two days, here, within a month now, I don't know exactly, I cannot tell you the exact date, here last month or this month.

Q. Two days you mean this month? A. Within the month, I think, I don't know what caused it, but the next day the river was full again.

Q. The water came down again? A. Yes, sir.

Q. Give us any other date that you noticed this right through your property? A. Well, I cannot tell, of course, I never set it down, I don't know.

Q. You kept no records or anything of that kind? A. No, sir.

Q. Do you fish in the brook the way you used to? A. There is no fish into it.

Q. They don't let the fish come down at all? A. Well, there used to be fish there, but I suppose the water is so low when they dry it up I suppose they cannot live there now.

Q. Of course there would not be any there unless the water was there? A. No, that is true, I suppose.

Q. There is no more fish in there? A. No. Very few anyway.

Q. You have not been out with your rod and line for some time? A. No, I do not fish any.

SAMUEL PEER, sworn as a witness on behalf of the National Silk Dyeing Company, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. At Boonton.

Q. Do you know the dam across the river at the reservoir of the Jersey City Water Supply Company? A. Yes, I know it.

Q. Jersey City's reservoir? A. Yes, sir.

Q. How near to that dam do you live? A. Oh, probably a mile or three-quarters of a mile.

Q. Below it? A. Above it.

Q. Are you familiar with the water of the Rockaway below the dam? A. Why, yes, I lived below the dam for thirty years or more, there at home.

Q. What thirty years did you live there? A. Well, that was the fore part of my life.

Q. When did you move away? A. Well, some twenty years ago, eighteen years ago.

Q. Have you been back to the place that you lived in, often, since you went away? A. Sure.

Q. What takes you there? A. I go there to see my mother.

Q. Are you familiar with the Rockaway River and have you been familiar with it since the time the dam was put up? A. Yes, I have been there several times.

Q. Have you noticed any difference between the water, the quantity of water below the dam since the time it was put up and the quantity that was there before the dam was built?

Mr. Gourley—Objected for the reasons formerly stated, and also that he lives above the dam.

(Objection overruled; Condemnors except, and this exception goes to all condemnors.)

A. Well, before the dam was put up there was water plenty; of course, sometimes there,—after the dam was up there was sometimes when there was not any below at all.

Q. When there was not any? A. No, sir.

Cross Examination by Mr. Gourley.

Q. Sometimes there was no water in it before the dam was built? A. No water in the river?

Q. Yes? A. No water in the river?

Q. Yes? A. Well, I guess not, I guess you are mistaken.

Q. It would dry up like any other stream? A. No, I guess not.

Q. Do you know about the Passaic when they used to walk across on the stones here? A. No, sir.

Q. Do you know about the Passaic River? A. The Passaic River?

Q. Have you never heard about the Passaic River? A. Yes, I have heard of it.

Q. You know of the Rockaway? A. Yes, sir.

Q. But you have not been back there for some time? A. No, I have though.

Q. What about that? A. What about? The Rockaway?

Q. Yes?

The Court—Ask him some question so that he will understand what you mean.

Q. When did you move away from there? A. Some eighteen or twenty years ago.

Q. Have you been back in that time except to visit your mother? A. I go there every week, sometimes two, or three times a week, down to see my mother.

Q. Where are you living now, during this last number of years you have been away? A. Where do I live?

Q. Yes? A. I live at Boonton.

Q. That is above the dam? A. Yes, sir.

Q. And you come down to your mother's place there frequently? A. Some two or three times a week, sometimes; sometimes once a week.

Q. Does your mother own property? A. Yes, sir,

Q. Does she border on the river? A. Yes, I own property that borders on the river.

Q. You own property too? A. Yes, sir.

Q. You have a claim for damage too? A. Yes, sir.

Q. You say the water, before the dam was built, was full, the river was full? A. Well, yes, sometimes, of course sometimes it lowered some.

Q. And I understand you to say it was never dry before? A. No, it never was dry in the river, I never saw it dry before the dam was built.

Q. How wide is the stream below Boonton? A. Well, I don't know, it varies in width.

Q. Take the average? A. The average might be fifteen or twenty feet.

Q. About from here to the window, is it? A. Yes, some places and some places it is not so wide.

Q. How old are you? A. I am fifty-seven years old.

Q. Do you say then, for the, say, twenty years before the dam was built there, you never saw the stream dry? A. No, I never saw it dry, no.

Q. Did you see it often? A. Yes, sir.

Q. How low did you see it then? A. I saw it down low but I never saw it dry.

Q. It was a trickling stream, wasn't it, in the Summer time, often in the burning hot sun? A. Well, there was always some water.

Q. The sun was so hot the boys would jump in, isn't that so? Haven't you often yourself in the Summer time, known the time when there was not enough water there to swim in it? A. No, not before the dam was built there.

Q. It is quite a shelving stream is it not? A. Yes, sir.

Q. The bed was filled with large boulders and rocks all the way down? A. Well, in some places, yes.

Q. Do I understand you to say during the times twenty years preceding that you did not see the water trickling through those stones in the Summer time? A. No, sir.

Q. Were there other dams, before the Boonton dam was built, further up the stream, mill dams? A. Why, yes, there were small dams.

Q. How many dams do you recall above the Boonton dam was built across the stream above? A. Well, there was one at the Boonton Ice Company in Carville, is all I know.

Q. They had a reservoir, didn't they, for a supply? A. Just a small dam, that was all.

Q. They had a reservoir for the supply of these various places up the river? A. There was no reservoir at all, just a small dam for water, that is all.

Q. They had ponds they constructed, didn't they? A. Well, small ones.

By Judge Lewis:

Q. They would not hold seventy million gallons, would they? A. No, sir.

FRED S. WHITE, sworn as a witness on behalf of the Weidmann Silk Dyeing Company, testifies as follows:

Direct Examination by Mr. Harding.

Q. Where do you reside? A. At Butler, New Jersey.

Q. How long have you lived there? A. Since I was two years old, fifty-eight years.

Q. What business are you engaged in? A. In the manufacture of paper.

Q. For how long a time? A. I have been in it since 1877.

Q. Are you connected with a Company? A. I am President of the Pequannock Valley Paper Company.

Q. Your residence is near your works? A. My residence is near the works, yes, sir, at Bloomingdale, across the river.

Q. Just describe where your paper works are, so that the jury may understand it? A. Well, just across the bridge, the second bridge above Butler, right alongside of the stream.

Q. And your mills lie along the road as you pass up to Newfoundland? A. Along the road between Bloomingdale and Newfoundland.

Q. How far are they from the Macopin Dam? A. The Intake?

Q. Yes? A. I should say about three or four miles.

Q. This side of it? A. Below.

Q. How are they situated with reference to the Pequannock River? A. They are alongside of the Pequannock.

Q. The river runs through your works? A. Through the property.

Q. What have been your opportunities within

the last twenty or thirty years to observe the Pequannock River at your works? A. Well, I have every opportunity; I am there every day, before the Intake was built we had—

Mr. McCran—Before the witness answers the question I would ask to have the objection noted, if he is about to answer the question.

The Court—The question is what opportunities have you had.

The Witness—From living there, being there on the river every day.

Q. For how many years? A. Since 1877.

Q. Do you recall when the Water Company built their works up there at Oakridge and Clinton and Canesteo Reservoir and Echo Lake and Macopin? A. I do.

Q. Had you observed the character of the flow of the Pequannock River before they built those works?

Mr. McCran—We object to the questions for the same reasons given by Mr. Gourley in objecting to similar testimony.

Mr. Griggs—Can't we save the necessity of taking all these exceptions by having one general exception to this line of testimony?

The Court—I suppose if the ruling the Court made before is wrong all of these will be wrong. One exception undoubtedly protects them.

Mr. Griggs—Simply to save time.

Mr. McCran—One was addressed to the Rockaway River. If we sat silent in reference to the Pequannock River, I don't want any question raised hereafter.

The Court—I will allow the question and allow an exception.

Mr. Griggs—Can't you take an exception to all the testimony to prove the effect upon the flow in the river of the Pequannock and the Rockaway by the construction of these water works and the diversions of Newark and Jersey City?

Mr. Gourley—No, we cannot do that.

Mr. Griggs—You can take an exception to all of it by stipulation, I think.

Mr. Gourley—No. I don't suppose you can by stipulation.

Mr. McCran—The objection should be noted and stated on the grounds put forth by Mr. Gourley to similar testimony. I understand the Court overrules the objection and an exception is noted to the advantage of all the condemning parties.

The Court—Yes.

A. I did, yes.

Q. Did you observe the flow of the Pequannock River after they built these works, as it was below the works?

Mr. McCran—The same objection to that and the same ruling and exception without making a repetition of the objection to each question.

The Court—Yes.

A. I have.

Q. Have you observed a difference in the character of the river? A. Yes, sir.

Q. I wish you would state to the Jury and describe the change that has taken place? A. Well, before the diversion we had two good water powers and ran our mills exclusively by water; since the diversion we have put in steam and run them exclusively by stream. The water in the Summer time is almost all gone and it makes the Pequannock River below the intake for a great many months of the year, a sewer. There is no water coming over the Intake and the oily water we get for washing, we have to depend upon the small brooks, running in below the intake and in a lake that we have of our own, the Cold Spring Lake.

Q. Describe, if you can, the general appearance of the stream in periods of dry times, since the Macopin Dam has been built? A. In periods of dry times there is very little water in the stream.

Q. Describe its general appearance if you can more particularly? A. Well, I think when I said it was a sewer it was about as good as I can describe it.

Cross Examination by Mr. McCran.

Q. There was plenty of water coming down the Pequannock last year? A. Some parts of the year, yes.

Q. The greater part of the year? A. Last

year I think was a wet year, this year has been wet so far.

Q. So there has been plenty of water coming down the Pequannock River? A. There has been plenty of water coming down and there is plenty coming down to-day, lots of it.

Q. And the year before? A. I think last year was a wet year, I think we had quite a good deal last year.

Q. Prior to the building of the Newark Water Works or the Intake, during the dry season, was there much water coming down the Pequannock? A. There was always water coming down the Pequannock, sometimes not much, sometimes not enough to drive full, but we figured on perhaps six weeks in the year we would be short of water, short of a full supply.

Q. So that before the building of the Water Works by Newark you were short of water? A. Sometimes.

Q. Did you ever estimate the quantity of water that came down the Pequannock before the Water Works were built in dry seasons? A. I never estimated it, no, sir.

Q. Are you at all familiar with the measurement of water, in quantity? A. No, sir.

Q. For example, would you be in a position to say, that prior to the building of the Water Works by Newark, that during various periods not as much as might be not in excess of three million gallons for a whole week would come down the Pequannock past your place? A. I would not be able to say.

Q. You would not say that is not so? A. I

would not say it was so. I don't think there was ever as small an amount as that coming down, because we always ran our mills and I don't remember ever shutting down altogether for water, we would stop and the dam would fill up and we would go ahead again.

Q. But you did stop at various times prior to the building of the works by Newark? A. At some seasons there would be days, of course, in the year, we would figure on being a little short of water, but we always ran our mills and never shut down because of no water, three million gallons would not go very far towards running a mill.

Q. Did the Hewitts, prior to the building of the Newark works, have any arrangement for the Summer time, above your place, for the impounding of waters, in order that a supply might be maintained? A. The Hewitts? I don't think so.

Q. Do you know? A. I don't know, no.

Q. Would you say that was not done ? A. I never heard of it.

Q. Did you ever hear of the Hewitts at Cedar Pond, maintaining a dam or arrangement for impounding the waters in the Summer time because of the low flow of the water in the Pequannock? A. I never did.

Q. You never did? A. No, sir.

Q. Last year, as I understand, and the year before, plenty of water came down the Pequannock? A. I did not say the year before. I say this year and the last year.

Q. This year and last year, that is two years? A. This year and last year there was quite a good

deal of water, more than we have had since they built the reservoir.

Q. How far below the Intake is your place? A. About three or four miles.

Q. Between the Newark Intake and your place, is there any other divertor, other than Newark? A. Yes, I think so.

Q. Who? A. The Butler Water Company has a dam, I think, between the Intake and our place.

Q. Does that not affect the flow of the river down at your place? A. Well, it would not very much in the Summer time, because the stream in the Summer was from—it came out of that brook, and the stream itself was very light.

Q. Whatever does come up there? A. It would affect it, certainly.

Q. It would affect the flow in front of your property? A. Certainly. Absolutely.

Redirect Examination by Mr. Griggs.

Q. When was that Butler Water Company dam put in? A. I think about four or five years ago, perhaps, they built there.

The Court—I don't think it has been made clear to the Jury by anybody when these diversions or part of the diversions started.

Mr. Griggs—We are coming to that. We are going to supply that.

The Court—I think the jury would get a more intelligent idea of the testimony and its bearing if you gentlemen could supply that.

Mr. Lewis—Jersey City began in 1904 and Newark in 1892.

The Court—Do you claim the diversion by the City of Newark started at the time this dam was erected?

Mr. Griggs—Yes, sir.

The Court—Can we agree on the date of the erection of that dam?

Mr. Cook—I suppose Mr. Sherrerd could state that or counsel could inform the Court.

Mr. Griggs—We will prove that now.

Mr. McCran—Do I understand when they first began to construct the works or when the diversion began?

The Court—No, I understand this is a condemnation for water which they are going to take in the future, which they have already started to take; in other words, it is already on the way, because the suits for damages were parallel to this. Now, it is not as if we were starting to-day and going to take in the future.

Mr. McCran—Yes, I take it, it is just as if we had never taken a drop of water out of the river and came now and ask the privilege of taking it. That is our situation, just as though we wanted a new supply.

The Court—I don't understand that is so at all. I understand the controversy arose and you started to divert some time ago and you were sued for damages. Now, in order that you might no longer be sued for damages and your rights be settled, you are

now asking that the diversion which you commenced some time ago and which you are now continuing shall be paid for once and for all, and what we are trying to find out now is when these diversions that you are going to make perpetual started; otherwise the Jury will get no intelligent idea of this matter at all.

Mr. Gourley—Suppose they started to take before and an interlocutory bill was filed, they are entitled to interlocutory relief; suppose they started to take twenty nine million gallons and come in and ask the right to condemn the right to do that, what has the experience in the past got to do with that, except that it will indicate it was taken from the flow of the river when it was full? Is not that the clear, sharp line between us? What else can there be in the case?

The Court—If you put up a dam, for instance, next week, after this thing is disposed of, then the water would stop flowing down this river from that time on. Now, as I understand it, the dam has been built from some time around 1901. Now, the effect that the dam has there has been testified to by some of the witnesses, and, in order that the jury may understand what that means, what effect it has, what the purpose of it is, it must know when this thing started.

Mr. Gourley—That is, of course, assuming that is evidential. Your Honor has re-

ceived it in the case, you are asking our view of it, we cannot quite see how it can be at all relevant in this case. Only relatively so. The view we have of it is utterly adverse to them. This is not a question of damages in this suit at all. If they came in Court for damages they could not get one penny. That is conceded in the case. That is the law. No matter what may be said, it is a jury question as to whether that is so or not. But I think after what we know about it, what we have seen about it, the jury would be bound to take that view of the case.

The Court—Governor Griggs prefers to prove it and has his idea about it.

Mr. McCran—In other words, if the Court please, what has been referred to as being in the past and having taken place in the past is merely illustrative of the effect of the removal of a certain amount of water on the river.

The Court—That is all, and I do not understand it is offered for any other purpose.

Mr. Griggs—In view of your Honor's suggestion, I might perhaps explain now, that it is our purpose in the orderly course to show what the flow of the Passaic River has been every day of the year down to 1919 at the Great Falls, the amount of water that came down, we can also show and will show, the amount of water taken out each day, or each week by the Jersey City Water Company at Boonton and by the City of

Newark at the Pequannock, the purpose being not to prove any damages, but to show the effect of a diversion that has already been going on, from which we will argue to the Jury, and we think they will agree with us, that that is evidence as to what the effect of diverting water in the future will be, some evidence of it.

MORRIS R. SHERRERD, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. You are a hydraulic engineer? A. Yes, sir.

Q. And you are Chief Engineer of the Newark Water Works? A. Yes; my position is Chief Engineer of the Department of Streets and Public Improvements, which has charge of the water supply of the City of Newark.

Q. Have you had charge of the Newark works on the Pequannock River and adjacent thereto? A. Yes, sir.

Q. For how long? A. Since 1895, twenty six years.

Q. Will you state what the construction of the City of Newark on the Pequannock water shed is? A. It consists of four main impounding reservoirs in the Pequannock Water shed, which are located at different distances above the Macopin Intake. The Macopin Intake being about half way between Butler and Charlottesburg; and, from the Macopin Intake there are two lines of pipes

which supply the City of Newark with water as it is drawn from the reservoirs to the intake.

Q. You have controlling gates at these four large reservoirs whereby you regulate the discharge of water into the stream in accordance with the municipal needs? A. Yes, sir.

Q. The first reservoir built was the Oakridge, was it not? A. The Oakridge and Clinton were built at the same time.

Q. When? A. In 1890, 1891 and 1892.

Q. Then the next one was Canesteo? A. Yes; Canesteo and Echo Lake, which was a natural lake so arranged to allow a draft of ten feet or so to be taken.

Q. You raised the heigth of the water? A. We made a dam at the outlet and raised the lake a few feet, two feet, and arranged so that that could also be a reservoir for a small quantity of water.

Q. When did Newark first begin drawing water out of the Pequannock?

Mr. McCran—Objected to.

(Question allowed; and exception allowed to all condemnors.)

A. In May 1892.

Mr. Gourley—I understand, so far as the individual testimony is concerned, one objection will do for that particular witness along this class of testimony.

The Court—The question is allowed and an exception granted.

Mr. Gourley—I mean that will cover the whole testimony of this one witness without objecting to every question.

The Court—It does not cover everything that is asked.

Mr. Gourley—No, but it covers everything on this point of the supply of water?

The Court—Yes, on that point.

Q. Have you the records showing the average daily drafts out of the Pequannock water shed by the City of Newark down to 1919? A. I have the records by million gallons per week down to—

Q. The drafts I said now, not the flow, the drafts? A. The drafts and flow are all tabulated on one sheet.

Q. Where is that? A. Down to 1918.

Q. Where is that table? A. I have that here.

Q. Where is it please? A. Here it is (producing) for 1914, 1915, 1916, 1917, 1918, and part of 1919.

Q. Have you got the preceeding ones? A. No, I don't seem to find the preceding ones, they were in the other case. I can furnish the others.

Q. You now produce a printed table marked 1914, 1915, 1916, 1917, 1918, 1919, do you? A. Yes, I do.

Q. What do those tables show in the five different columns? A. They show, in the first column, the week, the date, and, in the second column, the natural flow of the river, which is a computation of the measurements made up from the flow over the Intake and the increase or decrease in the reservoir; then, in the third column,

the amount added to or taken from storage, where it shows a plus being the amount that was added to storage during that week in excess of the amount that was drawn out through the pipe lines, and where it shows a minus, the amount drawn from the storage during that week in order to make up the draft to the city; and, in the fourth column, the amount taken through the pipe lines for the supply.

Q. That means the amount diverted? A. That means the amount taken for the supply of the city, but it would not necessarily mean diverted from the stream of that week, some of it was taken from storage as a rule.

Q. Well, taken from the water shed? A. Taken from the water shed.

Q. In order to get the daily abstraction from the water shed you will have to divide those figures in this column by seven? A. Yes. Do you want me to describe the other two columns?

Q. Yes? A. The other two columns, the next one shows the amount water taken from storage and allowed to flow over the Intake dam, and the last column, the amount, actually flowing over the Intake Dam.

Mr. Griggs—We offer this table in evidence.

Mr. Gourley—We object to the relevancy of the proof; to the form of the proof there is no objection.

Objection overruled; Condemnors except; and this exception is for the benefit of all condemnors.

Admitted and Marked "Weidmann Exhibit No. 3" of this date.

Q. Do you recall what the daily supply, in general terms, from the stream, for Newark, was, when the works were first started? A. About twenty million gallons per day.

Q. How much was it in 1919? A. About forty-seven million gallons a day, for the period of 1900 the draft was over fifty million gallons a day.

Q. 1900? A. When the Company was selling water to Jersey City, the draft through the pipe lines in 1900 was as much as fifty-five million gallons a day.

Q. When you say "the Company" what company do you mean? A. The East Jersey Water Company which built the works for Newark, under a contract to furnish works that would supply fifty million gallons of water per day, and that contract provided, on account of the deferred payment, that the company had the right to sell the surplus water during eight years from 1892 to 1900 and during 1900 the actual draft from the water shed ran as high as fifty-five million gallons a day.

Q. Which the East Jersey Water Company was selling to Jersey City? A. Partly supplying Newark and partly to Jersey City.

Q. So that, except during that period, which was abnormal, the draft of water by Newark for its purposes, has increased from twenty million gallons a day to forty-seven or forty-eight million gallons a day? A. Yes, sir.

Q. That is the natural and normal increase?

A. Yes, and, during part of that time there was additional reservoir capacity added in the water shed.

Q. That was by raising the dam at Oakridge? A. Yes, sir.

Q. What per cent.? A. About fifty per cent., increased storage in the reservoir bringing the capacity up from 2,400,000,000 to about 3,600,000,000 gallons.

Q. Was there also a second pipe line constructed from the plant to Newark or in that direction? A. Yes, about in 1896.

Q. The first pipe proved to be inadequate? A. The first pipe was not of sufficient size to furnish the fifty million gallons required by the contract and a second one was built.

Q. The second one was put in at the works? A. Yes, sir.

Q. The wants and necessities of Newark have increased then about a million gallons a day a year? A. About, yes.

No Cross-examination.

Mr. Griggs—We want to offer the same record with regard to Jersey City which is contained in the Answers to Interrogatories served upon them. Not in this case, however. It is printed in some of the former records.

The Court—It may be admitted. You may identify it later. I understand this is an admission made by Jersey City as to

the amount of water it takes, used at a former trial?

Mr. Harding—It is in the book of stipulations.

Mr. Humphreys—It is printed at page 551 of the evidence in Weidmann v. Jersey City.

Mr. Griggs—Here is the stipulation:

By consent of all parties, the answer to the interrogatories of Jersey City in the last action at law of Weidmann Silk Dyeing Company v. Jersey City and others in the Supreme Court as appears in the printed state of the case on appeal to the Court of Errors and Appeals from pages 33 to 68 inclusive and Exhibit P8, consisting of the tables therein admitted as appearing on pages 551 to 561 inclusive on said state of the case were admitted in evidence. That is before the Commissioners and we will simply have to go to the records if they want to have it exactly and get the sworn admission.

The Court—I understand all they want is to have it identified so that they will know where to find it. Mr. Humphreys undoubtedly has it.

Mr. Humphreys—It is on page 551 of the book.

The Court then ordered a recess until two o'clock this day.

After Recess:

Mr. Griggs—We offer in evidence the answers of the City of Jersey City to Interrogatories served upon them in the case of the Weidmann Silk Dyeing Company vs. The Mayor and Aldermen of Jersey City and others, the printed record of the case showing on pages 551 to 558 inclusive, the daily amount of water delivered to Jersey City from the Boonton reservoir for the years 1911 to 1914 inclusive.

Mr. Gourley—The tables only, I imagine; you offer no interrogatories?

Mr. Griggs—No, only the table as printed here, we will get the interrogatories from the records here somewheres if you think they are material.

Mr. Gourley—No. That is satisfactory. We object to the relevancy of the proof, but not to the form.

The Court—Why do you say it is not relevant as an admission against Jersey City, the amount of water it takes?

Mr. Gourley—For the reasons stated before; this is not the particular thing we are now engaged in inquiring about, that a certain amount of water was taken one time from this place or that, is not the thing we are now engaged in inquiring about.

The Court—It is not offered for that purpose. Why don't you think it is evidential?

Mr. Gourley—I have already stated the reasons.

The Court—I think it is evidential on the issue made here, I will admit it.

(Condemnors except, and this exception is for the benefit of all condemnors.)

Mr. Griggs—Just in order that the Jury may understand this. These figures show that in 1911 Jersey City took from the Boonton reservoir a quantity of water running from 41.3 million gallons a day up to 43.6 million gallons a day, on the average; and, in the year 1912 they took on the average from 41.9 million gallons a day up to the average of 49.7 million gallons a day; and in 1913 they took on the average a day about 46 million gallons; in 1914 they took on the average a day about 47 to 48 million gallons a day.

J. RALPH VAN DUYNE, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. Where do you reside? A. In Newark.

Q. What is your occupation and profession? A. Civil Engineer.

Q. What official position do you hold? A. Chief Engineer for the Passaic Valley Sewer Commission.

Q. What is that Commission engaged in doing? A. Constructing a trunk sewer for the Passaic Valley District.

Q. Is that sewer in process of construction? A. It is.

Q. What are the terminals of that sewer, according to law, where does it begin, where does it end? A. It begins at the Great Falls in Paterson and ends in the New York Bay near Robbins Reef Light House.

Q. When you say "The Great Falls" you mean below the Falls? A. Below the Falls, yes, sir.

Q. What part of it is constructed? A. The main sewer is completed with the exception of—

The Court—What main sewer?

The Witness—The main trunk line.

The Court—From where to where?

The Witness—From the Great Falls or below the Great Falls in Paterson to the outlet end is completed with the exception of six thousand feet in the New York Bay.

Q. Are you familiar with the plans, designs and scope of that? A. Yes, sir.

Q. As Chief Engineer? A. Yes, sir.

Q. What allowance of daily discharge into the trunk sewer is made for the City of Paterson? A. Approximately fifty-four million gallons a day.

Q. What allowance is arranged or calculated or planned for discharge of factory waste? A. The sewer is designed on the basis of taking ten per cent. of factory waste.

Mr. Gourley—I understand that is fixed in the statute.

Mr. Griggs—He has told about the design of it, that is what you were speaking of?

The Witness—Yes, sir.

Q. How long will it take to complete this if you proceed with the work now?

Mr. Gourley—Is that calculable?

The Court—I assume Mr. VanDuyne will tell us whether it is or not.

Mr. Gourley—Nobody in the State up to now can answer that.

The Witness—If we had funds to prosecute the work, we could complete it in—

Mr. Gourley—We object to that, it is all contingent upon other things.

The Court—I think it is admissible.

(Objection overruled; Condemnors except, and this exception is for the benefit of all Condemnors.)

Q. Proceed with your answer? A. If we had the funds to complete the project it could be done in two years.

Q. Has the work been delayed by any litigation? A. It has been delayed by New York City litigation in which they endeavored to prevent us from discharging our sewage into the New York Bay.

Q. By an injunction suit? A. Yes, sir.

Q. Was that recently decided? A. It was.

Q. And an injunction denied? A. Yes, sir.

Mr. Gourley—We object to that and ask that it be stricken out.

The Court—Why?

Mr. Gourley—Whether an injunction has been denied or not, proved in this informal manner?

Mr. Griggs—I don't object to its being stricken out if he wants to. I am not going to bring the record of the Supreme Court.

The Court—I think it is admissible at any rate as collateral matter.

Mr. Griggs—Let it go out if they want.

The Court—That was in the United States Supreme Court?

The Witness—Yes, sir.

The Witness—There was one question I did not answer fully and that is in regard to the portion of the sewer that is completed. The main line I said was all completed but this six thousand feet, but there are branch sewers which tap the section east of the Passaic River to be constructed yet and also some six river crossings which connect with those branch sewers.

Q. Would the use of the sewer in the Paterson district have to wait on the construction of those branch laterals from the east side of the River? A. Not necessarily, but the intention is to complete the smaller work naturally before this large tunnel in the New York Bay is completed.

Cross Examination by Mr. Gourley.

Q. How are you going to connect the other side of the river, the left side of the river in Paterson? A. By River crossings.

Q. That is not constructed? A. One is partial ly constructed here in Paterson.

Q. Where? A. At Market Island.

Q. Is any constructed near the Falls? A. Well, that is the one nearest the Falls.

Q. That is at Market Island? A. It crosses at Market Island.

Q. That is down at West street here is it not? A. Yes, sir.

Q. That is the nearest to the Falls? A. Yes, sir.

Q. Where does that begin? A. Why, it begins at practically the end of Prospect street, the north end of Prospect street and runs across to the Island Market and then crosses in there, the river forks at that point around the Island Market, the Market Island, I should say, and this crossing or these two crossings extend from the end of Prospect street across to the westerly side of the river.

Q. Where is the other one designed, the other crossing? A. There are some seven other crossings, located at various points between Paterson and Newark.

Q. Where is the next crossing to the Market Island, as you call it? A. At Lawrence street.

Q. And the one next to that on the river is where? A. At Warren; first the Lawrence street crossing then the Warren street crossing.

Q. Those streets are close together, do you mean there are two there? A. Two crossings, one at Lawrence street and one at Warren street.

Q. And the next one below, is there one below? A. That is the last one in Paterson.

Q. There are none other except those three? A. Those are the only three in Paterson.

Q. You speak of the completion of the sewer, you would be able to do it in two years if you had the funds, but that would have been so two years ago, wouldn't it? You would have said the same thing two years ago? A. I think we could have, yes, sir.

Q. Not a stroke of work has been done on the construction of the sewer since July 1919, has it? A. That is right.

Q. In other words, since the Haskin Tunnel Company applied for a certiorari against the Foundation Company in regard to the award of that contract for the cost plus system isn't that so? A. Since the Haskins Company failed there has been no work done on this bay tunnel.

Q. That contract was awarded but set aside? I was in the case, so I remember. (No answer.)

Q. So that for two years there has not been a thing done under the bay? A. Not on that one contract.

Q. That is the contract under the bay? There has no part of it been touched since that time, has there? It still remains as Haskins left it? A. The rest of the sewer has been in the course of completion.

Q. You say that there is about fifty-four million gallons per day for Paterson, that is the estimate? A. Yes, approximately.

Q. That, of course, is a variable figure, is it not? A. Yes, sir.

Q. Is it not recognized, do you not recognize it, that the trunk sewer will reach its highest ca-

Q. These applications, of course, have not been taken into consideration in fixing the four years' time that will reduce the period? A. They are included.

Q. Then I gather this estimate was not made by you? A. It was made in my office, under my supervision.

Q. I thought perhaps it was made before your association as Chief Engineer? A. No, sir.

Q. Were you connected with the enterprise before you were Chief? A. I have been since the start of the construction.

Q. You were under Mr. Brown? A. Yes, sir.

Q. He was the chief engineer for a great many years, is that right? A. Yes, sir, the first seven years.

Q. Have you made a study of factory wastes? A. No, sir.

Q. When was the sewer begun? A. Do you mean the construction?

Q. Yes? A. In July 1912, if my memory serves me.

Q These funds of which you have spoken, do you mean the contributions from the various municipalities? A. Yes, sir.

Q. You have no right to borrow money yourselves of course? A. We never have up to the present time.

Q. The moneys you get for the trunk sewer are raised by the various municipalities through which the trunk sewer flows or who use it? A. Yes, sir.

Q. A great many of those municipalities are in arrears in their contributions? A. They are.

pacity within a few years after it is open? A. Not a few years.

Q. Have you made a study of this question for the future, aside from what you are actually doing? A. It was originally designed to take the sewage of this district till 1940.

Q. But those figures are now changed by you? A. Somewhat, yes, sir.

Q. May I assume that you have made a calculation of the length of time before the capacity of the trunk sewer will be reached? A. Possibly four years earlier than it was originally estimated.

Q. You think in 1936? A. Yes, sir.

Q. But, as time goes on, the increase in the manufactories and houses and other things of that kind going on, that period may still be further reduced? A. That was taken into account in estimating the life of the sewer.

Q. Inasmuch as the engineers have changed their calculation from the original estimate, was that estimate not based upon the greater growth of the community than expected? A. No, sir.

Q. What was it based on? A. The fact that originally twenty municipalities were in the project and the sewer was designed to take these twenty municipalities; later four of them withdrew, and on that account the size of the sewer was reduced, scaled down. Now, the four have come back in again and three more besides, so that the life of the sewer has been shortened on that account.

Q. All now in the district are in, are they? A. Either in or are applicant municipalities to come in.

Q. In fact, all are, are they not? A. I think practically all.

Q. Paterson is, of course? A. Yes, sir.

Q. And, I may ask, Clifton? A. I think so.

Q. What about Passaic? A. Well, I think all of the municipalities are behind.

Re-direct Examination by Mr. Griggs.

Q. That delinquency is attributable to the fact that on account of the war and the high price of money the municipalities have not been able or thought they would be able to sell their bonds to advantage, has it not? A. I presume so.

Q. That is not a material question but for the reputation of the municipalities—? A. I presume that is—

Mr. Gourley—Well, now —

Mr. Griggs—Do you want it stricken out? You can have it stricken out if you want to.

Q. When you speak of the life of the sewer as terminable in 1936, what do you mean to set the date of? A. The date at which the sewer will be flowing to its full capacity.

Q. You mean simply that it will reach its full capacity? A. That is all.

Q. The work won't be dead and gone and useless, will it? A. We hope not.

Q. At that time Paterson can still be putting fifty-four million gallons a day in the sewer? A. Yes, sir.

Q. By this multiplication of the number of municipalities that have come in, have you cut down the allowance to other municipalities at all? A. We have had to.

Q. What did you cut Paterson? A. Paterson originally was entitled to practically sixty-four million gallons per day and is now down to fifty-four.

Q. And when they went into it they supposed they were going to have sixty-four million gallons did they? A. Yes, sir.

Q. And they have been paying on that basis?

Mr. Gourley—That is a collateral issue.
Mr. Griggs—Well, strike it out.

Q. These sewers across the river from the left bank what are they designed for? A. To take the districts on that side of the river.

Q. That is the sewage districts on that side? A. Yes, sir; the municipalities on that side of the river.

ALFRED ROSEMAN, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. I live up on the Valley Road.

Q. Where did you live in January 1915? A. I lived at 194 Ridgewood avenue, Ridgewood.

Q. Were you at that time employed by Mr. Auger as chauffeur? A. Yes, sir.

Q. Did you go up along the Rockaway River

in January 1915 and take some photographs? A. Yes, sir.

Q. I hand you some photographs and ask you to pick those out which you took and explain what they represent? You can refer to them as they are marked on the back and tell us what each one of those photographs represents, describe them first and tell us what it is? A. The picture numbered P8 January thirteenth 1915 that picture shows the Rockaway River as it flows into the Boonton Reservoir, that was taken about a half mile above the Boonton Reservoir.

Mr. Lewis—We offer the photograph in evidence.

Mr. Gourley—We object to these photographs on the same grounds as mentioned before, not relevant for the reasons stated.

Objection overruled; Condemnors except, and this exception applies to all Condemnors.

Admitted and Marked "National Exhibit No. 8" of this date.

Mr. Gourley—May the exception go to all of them without raising the objection at each one?

The Court—Yes.

Q. What is the next one? A. The next is Exhibit P9 January thirteenth 1915 and shows the Rockaway River again at a different point flowing into the Boonton Reservoir, about the same distance above the reservoir, a half mile.

Mr. Lewis—We offer it in evidence.

Mr. Gourley—We enter the same objection; and exception for all.

Admitted and Marked "National Exhibit No. 9" of this date.

Q. What is the next? A. The next is Exhibit P10 January thirteenth 1915 and that is a picture which shows the Boonton reservoir and also shows the spillway in the distance.

Mr. Lewis—We offer it in evidence.

Mr. Gourley—We enter the same objection and exception to all.

Admitted and Marked "National Exhibit No. 10" of this date.

Q. What is the next? A. The next is Exhibit P7 January thirteenth 1915 and that picture shows the spillway and also shows the bed of the Rockaway River, that was taken underneath the bridge below the reservoir.

Mr. Lewis—We offer the photograph in evidence.

Mr. Gourley—The same objection and exception to all.

Admitted and Marked "National Exhibit No. 11" of this date.

Q. What is the next one? A. The next one is Exhibit P11 of January thirteenth 1915 and this picture shows also the overflow, the spillway at the Boonton reservoir, taken from a different direction the same date.

Mr. Lewis—We offer it in evidence.

Mr. Gourley—The same objection and exception for all.

Admitted and Marked "National Exhibit No. 12" of this date.

Q. What is the next? A. The next is Exhibit P12 of January thirteenth 1915 and this picture also shows the spillway or overflow below the reservoir taken from another position again.

Mr. Lewis—We offer it in evidence.

Mr. Gourley—The same objection and exception for all.

Admitted and Marked "National Exhibit No. 13" of this date.

Q. What is the next? A. The next is Exhibit P14, and that picture shows the Rockaway River about a mile and a half below the spillway and about close to Mr. Dalton's Farm.

Q. Mr. Dalton, whose name is Patrick Dalton? A. I could not tell you that, sir. Mr. Dalton's Farm.

Mr. Lewis—We offer the photograph in evidence.

Mr. Gourley—The same objection and exception for all.

Admitted and Marked "National Exhibit No. 14" of this date.

Q. What is the next? A. The next is Exhibit P15 of January thirteenth 1915 and that picture also shows the Rockaway River about a mile and

a half below the spillway taken from a different direction.

Mr. Lewis—We offer it in evidence.

Mr. Gourley—The same objection for all.

Admitted and Marked "National Exhibit No. 15" of this date.

Q. What is the next? A. The next is a picture marked Exhibit P13 of January thirteenth 1915 and this picture shows the Rockaway River two miles below the spillway.

Mr. Lewis—We offer the picture in evidence.

Mr. Gourley—Objected to on the same grounds and exception for all.

Admitted and Marked "National Exhibit No. 16" of this date.

Q. Do you recall whether or not there was a suit then being tried against the City of Newark or Jersey City by the Auger & Simon Silk Dyeing Company? A. Yes, sir.

Q. Was it during the trial of that suit that these pictures were taken? A. Yes, sir.

Q. And were they developed by you? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. Who told you to take them? A. Mr. Auger.

Q. He went with you? A. He went with me at one time.

Q. How many days did you take them on? A. I took them on two days.

Q. He was with you one of the two days? A. He was with me on Sunday.

Q. How far were the days apart? A. Sunday and Monday.

Q. How many did you take on Sunday? A. Two.

Q. How many did you take on Monday? A. Fifteen.

Q. Were the places pointed out to you to be taken? A. Yes, sir.

Q. Was the time at which you were to take them fixed by somebody else? A. No, sir.

Q. Weren't you directed to go on that particular day? A. I was directed to go up and take the pictures.

Q. And weren't you directed to go on that particular Monday to finish? A. No, I did not know it the day before.

Q. In other words, the days were not left to your selection; they picked the days because of the trial? A. I could not tell you that.

Q. You say the trial was going on at the time? A. The trial was going on at the time.

Q. Did you testify at that trial? A. I testified, yes, sir.

Q. Did you put in these pictures in that case? A. Yes, sir.

Q. They were all in after you testified? A. I testified, yes, sir.

Q. Where was the trial? A. Right here.

Q. How long was that after you had taken the pictures? A. About two weeks, it might have been a week.

Q. About a week? A. About a week or two weeks.

Q. So that the point is the day on which on which, that Sunday, that particular Sunday these pictures were taken, you were asked to go up on that day? A. Yes, sir.

Q. You did not select the Sunday, somebody else selected the day that you were to go and take the pictures? A.—

Q. Do you understand the question? A. Yes, I understand the question.

Q. What do I understand the answer to be? A. I went up there with Mr. Auger, but I did not know where we were going, we went there and we took the pictures.

Q. Did anyone else tell you to go on that Sunday? A. Nobody.

Q. Did you pick out Sunday? Why did you make it Sunday? A. Because we took a ride.

Q. Why was that day picked out and not Tuesday or Wednesday or Thursday? A. That I could not tell you.

Re-direct Examination by Mr. Lewis.

Q. You were Mr. Auger's chauffeur at that time, and you went as he directed you? A. Certainly.

Re-Cross Examination by Mr. Gourley.

Q. Where do you say you live? A. To-day?

Q. No, at that time? A. In Ridgewood.

Q. At that time you lived at Ridgewood? A. Yes, sir.

Q. Had you been up before that Sunday up to Rockaway? A. Oh, I have been to Rockaway many times, and through there.

Q. How long before that Sunday was it that you were there? A. I don't recollect that now.

Q. Were you a professional photographer at this time? A. No, I am not a professional photographer.

Q. You just developed these as amateur sport? A. I did that just as my sport.

Q. That drive that you took that day was at Mr. Auger's direction? A. Sure.

Q. And these photographs were taken by Mr. Auger's direction? A. Certainly.

Q. He could not go the next day and he sent you up alone to take them? A. I did not go alone.

Q. He sent you without him I mean to say, without him? A. Yes, sir.

Q. He had told you about what he wanted done? A. Yes, sir.

Q. And he had told you about where you were to take the photographs? A. Yes, sir.

Q. You went over with him on Sunday and selected the places? A. No, sir, I just stopped in one place and went right on again.

Q. Didn't he in going on tell you where the others were to be taken along the stream? A. I don't really know whether he told me or whether we selected them after a while.

Q. Do you remember testifying before? A. I testified before, yes, sir.

Q. Do you remember saying that he did tell you where to take them? A. No, I did not say that.

Q. Do you say it now? A. I do not say

he told me where to take them. We went up there and we selected places afterwards and Mr. Auger did not tell me where to take them.

Q. Did he say that, tell you? A. The day he was with me, he did, of course, that is the two pictures I took then.

Q. Mr. Auger was in one of the pictures, wasn't he? A. Not that I remember.

Q. On the next day you went back and took these others you have mentioned? A. Yes, sir.

By Mr. Lewis:

Q. You are not in Mr. Auger's employment now? A. No, sir.

Q. How long have you been away from there? A. One year.

JOHN H. COOK, sworn as a witness on behalf of the Property owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. What office do you bear in the Water Companies known as the East Jersey Syndicate or whatever they are known as? A. I am the Vice President of almost all of those companies, the treasurer of most of those companies and hydraulic engineer of all of them.

Q. You are a hydraulic engineer? A. Yes, sir.

Q. How long have you been in the employ, as Engineer, of this group of companies? A. About twenty four years.

Q. I understand the owner of these is the New

Jersey Securities Company is that it? A. The New Jersey General Securities Company owns all the stock of these companies.

Q. Including the Passaic Water Company? A. Yes, sir.

Mr. Gourley—I object to this line of questions. Is this important?

Mr. Griggs—I will stop it. I am only trying to show his relation to the companies.

Q. How long have you been employed in Paterson by these water companies? A. Twenty-four years.

Q. That would take you back to—? A. 1897.

Q. Have you had a record kept of the daily or weekly flow of the Passaic River above the Great Falls? A. I have.

Q. And have you tabulated that in a sheet such as I hold in my hand? A. By weeks. That was made in our office.

Q. Just state descriptively, what the document is which I now show you? A. This shows the average flow in cubic feet per second for each week in the year for the years from August 1897 through the year 1918.

Q. And it is taken from the gauges maintained by you or under your direction at the Falls? A. It is taken from measurements of the quantity of water that passes the Great Falls at Paterson, in various ways.

The Court—It is in cubic feet per second?

The Witness—Yes, sir.

Q. How do you turn that into million gallons a day? A. Roughly, by dividing that quantity by three and multiplying it by two, will give you the million gallons per day.

Q. For instance, I find here the figure three hundred? A. If it were three hundred it would give you two hundred million gallons per day.

Q. It would indicate that the flow of the river on that day was two hundred million gallons? A. Yes, sir.

The Court—Two thirds of the figure?

The Witness—Two thirds of those figures there will give you the million gallons per day.

Q. Here is one figure in 1918 93, that would give you 61? A. Yes, sir.

Mr. Humphreys—This is weekly.

Mr. Griggs—Every week, the average weekly flow.

The Witness—The average daily flow for that week.

Q. Here is one 150, that would be 100 million gallons a day for the week? A. Yes, sir.

Mr. Griggs—We offer this table in evidence.

Mr. Gourley—The same objection is entered as to the relevancy of the evidence,

there being no objection as to the form of the evidence.

(Objection overruled; Condemnors except, and the exception is for all the condemnors.)

Admitted and Marked "Weidmann Exhibit No. 5" of this date.

Q. What is the consumption of water by Jersey City, what has it been for the last two or three years, per day?

Mr. Gourley—To that we make the same objection.

Mr. Griggs—For the benefit of Counsel I would say that that was stipulated on the trial before the Commissioners.

Mr. Gourley—We object to its relevancy.

Mr. Griggs—Do you object to the fact?

Mr. Gourley—We do not object to the form of the proof.

Mr. Griggs—Mr. Cook does not know except by hearsay.

The Court—Was it stipulated before the Commissioners?

Mr. Griggs—Yes, sir.

The Court—What is the objection to using that subject to the objection that it is not relevant?

Mr. Gourley—If Mr. Cook will say it is accurate, I have no objection to its being shown.

The Court—I don't suppose it would have been stipulated if it was not the fact.

Mr. Griggs—It was further testified the draft by Jersey City was between fifty and fifty-one million—

Mr. McCran—We object to that going into the record, it is merely a discussion between counsel, we ask that it be stricken out.

The Court—The record shows exactly what took place. I presume you ask the question and counsel replies.

Mr. McCran—I ask that it be stricken out.

The Court—If you don't want to make the admission it may be stricken out.

Mr. Griggs—I withdraw all that I said about it.

Mr. McCran—We ask that it be stricken out, all that was said about it.

The Court—Why should we take up time bringing somebody here from Jersey City to testify to something which does not seem to be in dispute so far as the figures are concerned?

Mr. Gourley—If counsel will notify us what they want we will supply it.

The Court—It is already stipulated.

Mr. Gourley—That may be, but for many reasons which your Honor may not know, we may decide it otherwise; the other side knew what we were to say about the matter.

The Court—Do you dispute now so far as the figures are concerned, the stipulation?

Mr. Gourley—We won't say whether it

is true or not. Your Honor should not put that question to me. I don't know. I do not dispute. I do not know.

The Court—We don't want to sit here hearing a lot of needless testimony in order to keep the jury sitting here until we bring people from Jersey City, if the only question in dispute between the parties is the relevancy of the testimony, and, I am assuming, because you have already stipulated before the Commissioners, so far as the figures are concerned, that there won't be any dispute about the figures.

Mr. Gourley—We have allowed everything to go in here, everything they asked for, and have not raised any question. We may have reasons which your Honor would not be aware of for not wishing to make any admission regarding it.

The Court—You have not yet told me any reason why the stipulation should not be made reserving the objection as to the relevancy.

Mr. Gourley—I don't think we are bound to do that at this stage of the case. We will very gladly agree with those figures if we have an opportunity to go over them tonight, so as to save the trouble of calling anybody, but that is different than asking us to stipulate right here.

Mr. McCran—We would have to stop and examine the stipulation to do it now. If they had told us before we would have

examined it and answered them. We are not bound to make the same stipulation as made before, unless we feel we can afford to do it, we do not have to do it, and they should ask us in advance.

Mr. Gourley—I will state to your Honor privately my reasons for refusing, if your Honor desires. It is very easy for them to ask us a day in advance to admit certain things and we can then consider it and pass upon it.

No Cross Examination.

THOMAS McNAMARA, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. On East Nineteenth street.

Q. What is your business? A. Engineer for the East Fifth street works of the National Silk Dyeing Company.

Q. Have you knowledge of the other plants of the Company in the City of Paterson? A. I have, yes, sir.

Q. Which one? A. The Valley Works, the East Main street Works, the Wood street Works.

Q. When were you first employed at the East Fifth street works? A. In 1896.

Q. Who were you working for there at that

time? A. For the Auger & Simon Silk Dyeing Company.

Q. What is your position there to-day? A. Engineer in charge of the machinery and the general up-keep of the plant.

Q. How long have you been the engineer in charge? A. Since, I think, about 1904.

Q. Does your work give you familiarity with the machinery in those plants? A. Yes, sir, it does.

Q. What sort of supervision do you exercise, what do you look after? A. The pumps and engines and machinery throughout the plant, to see that they are kept running.

Q. Does that include the boilers? Yes, sir, everything pertaining to the light and the power and the mechanics in general.

Q. When you first went to August & Simon in 1896 how did they get the water for their dyeing plants? A. When I first went there they had a pump with a pipe running out into the river and pumped the water from the river.

Q. Directly? A. Directly, yes, sir.

Q. And by suction at the end of the pipe, produced by the pump? A. Yes, and pumped it to overhead tanks and distributed it throughout the works.

Q. How many pipes were there there then? A. Well, I think there were two.

Q. What was the condition of the river in 1896 when you went there in relation to the water supply?

Mr. Gourley—Objected to for the same reasons formerly stated.

(Question allowed; exception allowed to all Condemnors.)

Mr. Gourley—Does this cover the testimony from this witness on this point?

The Court—Yes.

Q. What was the condition of the river at that time in regard to the water supply? A. I would say the condition of the river in regard to the water supply at that time was what I would call good.

Q. Had you been familiar with the river before 1896? A. Yes, sir, I was working along the river all my life.

Q. Had you been employed by Weidmann before you went with Auger & Simon? A. I was with Weidmann for a year previous to my going with Auger & Simon.

Q. For how long a time? A. One year.

Q. Did your work at Weidmann's and at Auger & Simon's require any special inspection of the river and knowledge of the river? A. Well, we had to look after the water supply and we were continually along the river and had to keep the pumps going and keep the tanks full for the works.

Q. Were you the responsible man that kept the water in the works? A. For getting the water for the works.

Q. Did that require that you keep in touch with conditions existing in the river as to water supply? A. Yes, sir.

Q. What have you got to say about the condition of the river in 1896 and prior, compared to

what it was for some years before that time? A. Well, from my knowledge, I would say that the river was nearly about the same.

Q. Did a change come in the condition of water supply there? A. It did, yes, sir.

Q. About what time? A. Well, I should say about 1898 or 1900.

Q. Can you give us an idea of the depth of the water in the river? When the water was low at the East Fifth street works, as to how deep the water would be at its low stages? A. Well, at its low stages it—

Q. I mean in 1896 and prior to that time? A. Oh, I don't recollect as I seen what you would call it low water, except in extreme dry seasons.

Q. And, at extreme dry seasons would there be enough water in the river for the supply of your dye shop at East Fifth street? A. There always was to my knowledge, yes, sir.

Q. Did you ever have any difficulty in getting a supply of water there until about 1898 or on from that as you say? A. No, sir.

Mr. Gourley—This is all very leading.

Q. Please tell us when it was that you first failed to get a sufficient supply of water for the works? A. Well, I would say about 1899 it began to get a little serious, and in 1900 it was quite bad, and from that on it got continually worse until I would say 1904, 1905, 1906 and 1907 why we were in very bad stress.

Q. Was this change in the water supply a sudden thing or did it gradually work up? A. No.

There was a gradual coming on and it seemed to last for longer periods.

Q. Did you make any efforts to overcome the lack of water by changing your apparatus in any way? A. Yes, we would put out more pipe lines and build what we call receiving basins and had two or more pipes leading from the river into this basin and then connect the pump suction onto the basin and pump from there.

Q. Such water as you could get in your basin now was that supplied from the river, by pumping or gravity? A. That was gravity flow.

Q. How much water would you get in those basins? A. That would be governed by—

Q. What was the size of the basins? A. We had one there that was, I think, about twenty feet, another one seemed to me about the same, or, possibly twenty-two feet, and another one of twelve or fifteen feet in diameter.

Q. Just tell us now about the condition of the river from the time you first began to observe it as engineer down to the time when it got so bad that you could not get any water for the plant, if such time was arrived at? A. I don't quite understand that.

Q. Did you note the changes from 1896 on as to their effect upon the appearance of the river? A. Well, it was my duty to see that the works had water and I was bound to notice the difference. It was my duty to see that the works was supplied with water and I was in a position to see the different changes.

Q. Tell us about those changes? A. Well, there would be certain periods of the day when

there would not be any water, and you would have to stop the pumps, and we did for some time, and then they decided to run the pipes further in the river, get them to the other side, and see if we could get more from over there, and then added another line onto it into this basin that I spoke about.

Q. And this addition of pipes was made from time to time, wasn't it? A. Yes, sir.

Q. When you went there, I understood you to say there were two pipes? A. There were two pipes, yes, sir.

Q. How many pipes were there in use there at the time that you got the Dyers' pipe in? A. Well, six or seven lines, I am not just sure of it.

Q. Well, you just tell us the distance out into the river, as nearly as you can, for each pipe line? A. For each pipe line?

Q. Yes, and the size of each pipe line? A. Well, the first ones were eight inches, then we put in some ten, then we increased them to fifteen, one line is eighteen, one is sixteen, and then we added lengths to them fifty feet and so at a time.

Q. What was the purpose of adding those lengths to the pipes? A. To get further out in the stream where there seemed to be a little better flow of water.

Q. Was there any necessity of any such extension prior to 1896? A. No, sir, there was not.

Q. Had you plenty of water, without going across? A. We had plenty of water.

Q. Were there times when you could see the bed of the river exposed? A. Yes, sir, we very often used to walk out on the pipe in the river to

look around the end of it to see if it was obstructed in any way.

Q. When was that? A. Well, from 1900 on.

Q. Did you walk out yourself for such inspection? A. Yes, sir, many times.

Q. How often would that condition occur? A. Oh, at certain seasons of the year it might be every day for a month or so.

Q. Were there times when you could get no water into your works at all from the river? A. There were, yes, sir.

Q. Between what periods of time was that, between what years? A. Well, from 1904 on.

Q. Do you recall when the Dyers' pipe was put in? A. Yes, I remember, I think it was about 1906.

Q. Did you observe the river from the time the Dyers' pipe was put in on down to 1919? A. Yes, sir.

Q. Just tell us what was the condition as to water supply during that period of time? A. Well, I would say, from 1906 up until 1917 it was nearly about the same, no improvement.

Q. Was the bed of the river exposed? A. Yes, sir, very often.

Q. Just describe the character of the water that you would see in the river at those times, I mean, as to amount and quantity? A. Well, there would be little pools around here and there on the side of the river that the works was on and on the opposite side there might be a little running, but the bed of the river was exposed so that you could walk on it.

Q. Do you know what the company did finally to remedy the lack of water in the plant? A.

Ye, sir, they drilled a number of artesian wells.

Q. How many? A. They drilled in my time I guess about twenty wells.

Q. Could they be used for all kinds of dyeing? A. No, sir, it could not.

Mr. Gourley—This is a different examination and I want to be sure that my objection covers this class of testimony as to artesian wells.

The Court—I think it is a little different. What is your objection to this?

Mr. Gourley—On the same ground, what has taken place in the past is not now relevant, and has no direct relation to the question we are now trying.

The Court—I will allow it and allow an exception to it.

(An Exception is noted for all the Condemnors.)

Q. Was there a sufficient supply from the wells for the purposes of the dyeing plant? A. No, sir, there was not.

Q. What did you do in order to get a sufficient supply? A. We tried to put in gravity filters to try and cleanse the river water for certain purposes so that we would not have to use the spring water there, and, in some circumstances we mixed the water, to certain proportions and put in some more tanks and extra pipe lines to carry that water around through the various departments.

Q. That was before the Dyers' Pipe was put in? A. That was before the Dyers' Pipe was put in, yes, sir.

Q. Why did they get the Dyers' Pipe supply? A. Well, if there was no water in the river, they had to get a water supply some place or quit.

Q. What is the Dyers' Pipe? What do you mean when you speak of the Dyers' Pipe? A. It is a pipe line which takes water from above the Great Falls and comes down into the Riverside section and supplies the different dyers down in that section.

Q. And they got a supply of water that way? A. Yes, sir.

Q. What plants are so supplied? A. The Valley Works is supplied, the East Main street has a connection, the Wood street Works and the East Fifth street works.

Q. What have you to say about the cost of well water as compared to the cost of the river water or Dyers' Pipe water, is one more expensive than the other?

Mr. Gourley—There has been no foundation laid for that comparison of cost of each. Does he know?

Mr. Lewis—I am asking him.

The Court—The question is, do you know? That is the question.

The Witness—Well, no, not positively, no.

Q. What do you mean by not positively? A. Well, I never made any very extensive tests or

anything to find out, but I know from general knowledge.

Q. That is what we want, your general knowledge?

Mr. Gourley—No, it is not what we want. We want special knowledge.

Q. Do you know how much it costs to drive these wells and pump water from them? A. Yes, sir, it is double the cost, at least double the cost.

Q. The Dyers' Pipe water? A. The Dyers' Pipe water, yes, sir.

Mr. Gourley—I object to that and ask that it be stricken out. There has been no foundation laid for that at all, it is merely a general statement. It is not his line of business at all, he is not in charge of that business, he has made no computations of it, and yet he volunteers a statement that an expert should give after he had all the knowledge before him.

The Court—I think he has dealt with the subject. He has not given exact figures, he is saying twice as much.

The Witness—I have been doing that for twenty years, I ought to know something about it.

Mr. Gourley—Will your Honor allow us an exception.

The Court—Yes.

(An exception is noted for all the Condemnors.)

The Witness—If I don't know about it, it is time I quit and let somebody else take hold of it.

A Juror—Do I understand you can pump out of a well cheaper than you can get it from the Dyers' Pipe?

The Witness—That depends upon what system you have to adopt for pumping, we pump with compressed air, which is a very expensive way, and we have to use a surface pump after that to elevate it to our tanks, there is a double pumping.

The Juror—Do you take all of that into expense?

The Witness—Certainly, it is the installation, you have to put in the pumping system to get your water by the surface pumping, you could have to buy your compressor and you could not need the extra piping.

The Juror—Which is cheapest?

The Witness—The surface pumping is cheaper.

The Juror—I mean the compressor?

The Witness—What is that?

The Juror—With the compressor?

The Witness—Well, I say, the compressor is the most expensive kind of pumping.

Mr. Lewis—The juror wanted to know as to whether it was more expensive to pump the water than to take it out of the river?

The Juror—Or from the Dyers' Pipe?

Mr. Lewis—What do you say about that?

The Witness—I say that when we pay for the water from the Dyers' Pipe the water from the Dyers' Pipe is cheaper than pumping spring water by compressor.

Q. When the water comes into the works from the Dyers' Pipe where does it go? A. It goes through the filters and into our supply tanks.

Q. What is the heigth of those supply tanks? A. Well, the one where we use the water from the Dyers' Pipe is about forty feet to the top of the tank, something like that.

Q. And before it gets to the tank you say you filter it? A. Yes, sir.

Q. Did you do the same thing at the East Fifth street works with the water you got from the river? A. Yes, sir.

Q. When you get the water up in the tank where does it go then? A. Well, it comes down through the pipes to the various departments throughout the works.

Q. What do you mean by departments throughout the works? A. Well, the blacks and colors and stripping and the boiler room and so on.

Q. What does it go into, boilers or tubs or what? A. Tubs and for boiler feed and various uses, washing.

Q. What proportion of the water goes into the boilers, have you any idea? A. No, not offhand, I would not want to say that.

Q. Is there any hot water used in dye houses? A. Considerable, yes, sir.

Q. What is that hot water used for? A. In the baths, the liquors in the different treatments, the black and the stripping.

Q. How do you heat the water that goes into the tubs? A. Well, various pumps and engines—

Mr. Gourley—We object to this line of testimony, it is a little departure from the other.

The Court—This certainly must be admissible for what purpose the water is used in these plants. That certainly is relevant, is it not?

Mr. Gourley—It depends on what purpose it is going to be used for.

The Witness—For the dyeing of silk.

The Court—I will allow the question and allow an exception.

(An exception is noted for all the condemnors.)

Q. How do you heat the water? A. We heat the water with the exhaust steam from all the pumps and engines and steam driven units that we may have, all exhaust into what we call one common main and goes to a heater which is so constructed that the steam is on one side and the cold water which absorbs the heat is on the outside and pumped from that heater into an overhead tank and flows back to the shop as they need it.

Q. Hot water? A. Hot water, the line is formed of hot water.

Q. Do you use all of your exhaust steam in that fashion? A. We do, yes, sir, and could use more if we had it.

Q. Have you always used it? A. Always, yes, sir, to my knowledge.

Q. You have always used it in your plant? A. To my knowledge, yes, sir.

Q. And have they always used it in all their plants? A. To my knowledge, yes, sir.

Q. Do you know that it has been used in the other plants? A. Yes, sir.

Q. Other than the works of the East Fifth street and the Wood street? A. Yes, sir.

Q. When you pumped water from the river how did you operate the pump? Was it a steam pump? A. It was a steam pump, yes, sir, steam driven pumps.

Q. What became of the exhaust from that pump? A. It exhausted into this common main that runs to our heater to heat the water.

Q. And it was used for heating water? A. Yes, sir, for heating the water, for hot water purposes.

Q. If the supply of water, which you say you observed, in the river, up to 1918, from about 1900, continued to be as it has been, and you had no water from the Dyers' Pipe and it was taken away from you, where would you be able to get a supply of water for operating the East Fifth street and other plants? A. Well, I know that Mr. Auger looked around, went up around Bridge's Pond—

Mr. Gourley—I object to this.

Q. Do you know of any place?

The Court—What you did yourself?

The Witness—Well, we went even around Bridge's Pond, Alyea's pond and all around wherever we knew, all around, to see how much water there was and whether it would be feasible to transfer that water to the works so they could use it instead of the water from the river.

Q. Could you get any water from that source that would be sufficient to run the plants? A. Well, we might have done it but the cost and other things, I myself did not go into the thing extensively, but reported to Mr. Auger the result of my findings and he went further.

Q. How much pipe line would you have to build from Bridge's Pond?

Mr. Gourley—Are we going into all that and all the other ponds and various places, and find out how much the distance of the pipe line would be to each pond? I object to the question as being too remote in the case, and presupposes the expenditure of certain moneys in pipe lines to certain places and all that.

The Court—You do not even show that you would be able to get it from any such pond, that you would be able to get the pond.

Mr. Lewis—No, he does not show that, that is true.

The Court—Then how can you show the cost?

Mr. Lewis—I simply wanted to indicate

what seems to me to be the impossibility of getting any other supply.

The Court—If it is impossible then the cost of the supply does not come in.

Q. Do you know of any place where you could get an available supply of water if you lost the water from the Dyers' Pipe? A. I do not, no sir, I do not.

Q. Do you know the conditions at the Valley Works? A. Yes, sir.

Q. Do they use their exhaust steam there? A. They do, yes, sir.

Q. And at the other two plants? A. Yes, sir.

Q. Do you remember whether or not they filtered their water at the Valley Works before they used the Dyers' Pipe? A. I know that they did not filter the water at the Valley Works before they had the Dyers' Pipe.

Q. Do they filter it now? A. They do, yes, sir.

Q. And have they since they got the Dyers' Pipe in? A. Yes, sir.

Q. Do you know how many filters they have at the Valley Works? A. They have three.

Q. What is the capacity of those filters? A. Well, the total capacity is three and a half million gallons.

Q. What is the capacity of the largest? A. A million and a half.

Q. And what of the two others? A. One million each.

Q. What is the floor space that is occupied by the million and a half gallon filter? A. Four hundred square feet, ten by forty.

Q. What are the number of working days in

the year? A. We estimate our number of working days at two hundred and eighty.

Q. Have you made a calculation of the cost of the operation of those filters? A. I did, yes, sir.

Q. What was the basis for your labor charge? At what rate did you charge for labor? A. Well, we got our labor at that time for twenty-four cents an hour.

Q. How long ago was that? A. Well, that was in 1914, something around about there.

Q. It is left at that, is it, in your calculation? A. It is, yes, sir.

Q. Do you have to have any renewal of sand in those filters? A. Oh, yes, about every five years you have to clean them out.

Q. What does it cost in five years for sand? What does the sand cost in five years? You don't recollect those figures? A. No, sir.

Q. Have you got your memorandum that you made there? A. I have not, no, sir.

Mr. Lewis—I will have to withdraw the witness on that point. I will want to recall him later.

Cross Examination by Mr. Gourley.

Q. You are at what works? A. The East Fifth street works of the National Silk Dyeing Company.

Q. What is the full capacity of water used, the daily quantity? A. Well, that will vary with the amount of work in process, are you speaking of the river water or the total?

Q. Your total? All together? A. Well, three million gallons.

Q. Three million gallons a day? A. Approximately, yes, sir.

Q. That is when you are going full or not? A. Full.

Q. Have you used three million gallons a day during the past year? A. Oh, yes.

Q. More than that? A. For short periods, yes.

Q. How many gallons a day did you use ten years ago? A. Well, I would say around two million gallons a day.

Q. You have been there since, how long, did you say? A. 1896.

Q. How many gallons were you using when you went there? A. I would say the amount was small and it would be a half to three-quarter million gallons a day.

Q. And when you took your pipes out of the river, how much were you using? A. Took our pipes out of the river? Well, about the same as we are to-day nearly.

Q. You took your pipes out what year? A. Some of them are there yet, but not all of them; they are not all out yet.

Q. When you stopped pumping from the river? A. When we stopped pumping in 1906 when we went on the Dyers' Pipe.

Q. Fifteen years ago? A. Yes, sir.

Q. How much were you using then? A. About two million gallons a day.

Q. And you did not increase any for five years, from 1906 to 1911, ten years ago? A. We increased some, yes, sir.

Q. You were increasing steadily from the time you started? A. Yes, sir.

Q. And the less water came down the river the more business you did? Now, isn't that so? A. To my knowledge, yes, business increased.

Q. Business increased as water went down, isn't that so? A. We found other means—

Q. Now, you see, you are not fair with me. Now. That is the fact. There is no dispute about that, is there? A. No, sir.

Q. And in 1896 when you went there first the water was good ? A. Yes, sir, it was good, what I call good.

Q. You never saw the stones in the sun before that time? A. No, sir, well, I never was able to walk in the river in 1896 or 1897.

Q. What about 1895? A. Well, I will say the same for 1895, 1895 I was at Weidmann's.

Q. What about 1894? A. 1894, I think I went swimming opposite the Valley Works in 1894.

Q. In a swimming hole? A. No, in a Swimming School, if I recollect correctly.

Q. I am asking now whether you saw the stones in the river and the water trickling through them? A. No, I won't say that I did.

Q. You never saw that at all? A. Yes, I have seen it very often.

Q. When? Before this time, I mean? A. Yes, before this time.

Q. I suppose so, when? A. I don't just recollect the exact years.

Q. Do you remember the man who walked over the river on a tight rope over the Falls? A. I remember the time, yes, sir.

Q. Do you remember that there was not any water at all in the Valley of the Rocks, not a drop? A. Yes, sir.

Q. How long ago was that? A. I could not say, I know I used to swim in the Valley of the Rocks when I was a boy.

Q. That was a long time before any of this—? A. Not so long ago, no.

Q. That was in the Summer time? A. Yes, sure.

Q. How did you come to notice that you got an insufficient supply? A. It was my duty to see that the supply was there.

Q. Did they have a pipe there before you went? A. A pipe?

Q. Yes, to pump from the river? A. I don't know what they had before I went there.

Q. What you found at the place? A. What was there, yes, sir.

Q. What was there when you went there, one pipe, was it? A. There was two pipes.

Q. How far out were they? A. I would say possibly twenty or twenty-five feet perhaps.

Q. That is what you found? A. That is what I found, yes, sir.

Q. And did you have to lift the water up to the tank? A. To the tank overhead, yes, sir.

Q. What heigth is that, forty feet? A. About forty feet, something like that.

Q. And you have given us the capacity of the tank, haven't you? A. The tanks vary from twenty thousand gallons to twenty-five thousand gallons.

Q. That continued up to the time of the sinking of the artesian wells? A. No, we put in more pipes in 1897 and 1898.

Q. How many wells did you drill? A. I think we drilled about two or three up until 1900.

Q. Of what capacity? A. Whatever we could get out of them.

Q. What was their diameter? A. First they started with ten-inch in diameter and went down about two hundred and fifty feet.

Q. Did you pump from there? A. We pumped from them, yes, sir.

Q. Are you pumping from it to-day? A. Not just to-day, no, sir.

Q. This year? A. Not this year, no, sir.

Q. What other wells? A. From 1900 on they drilled quite frequently.

Q. About how many? A. Well, they drilled, I will say, as fast as they could drill, they drilled eighteen wells from 1900 on.

Q. On this particular plant? A. On this particular plant.

Q. And you have now eighteen wells? A. We have about twenty-two wells.

Q. How many do you use, do you pump from? A. We have three in use to-day.

Q. Why don't you pump from the others? A. Well, we changed the system of getting water, from the Dyers' Pipe.

Q. It is cheaper to buy from the Dyers' Pipe and work with it? A. I say it is cheaper to use the Dyers' Pipe water.

Q. But you have to have some artesian well water? A. We have to have some, yes, sir, to my knowledge.

Q. Only for that you would stop it all together? A. No, sir.

Q. You cannot use the well water for washing tin? A. Oh, yes.

The Court thereupon adjourned to tomorrow, Wednesday, May Eighteenth at Ten o'clock A. M.

Third Day.

Paterson, N. J. May 18th, 1921.

The trial was resumed this day, pursuant to adjournment.

THOMAS McNAMARA, resumes the stand.

Cross Examination (continued) by Mr. Gourley.

Q. Is it not the generally recognized thing in the business that cold water is most useful for use in the washing machines? A. I would not say that. We have not used any cold water any more than whatever the temperature of the water may be in the river at the East Fifth street works for quite a number of years.

Q. Are you familiar with the dyeing process? A. Not all the way through, no, sir.

Q. You would not qualify as an expert, to say, whether or not the temperature of the water should be a special temperature to get an efficient use of the machine? A. Absolutely not.

Q. The artesian well water is mainly used for washing? A. No, sir.

Q. It is not used at all by you now, is it? A. Oh, yes, for certain processes.

Q. Just one well? A. Three wells.

Q. You have three wells going now? A. Yes, sir.

Q. And before you had how many? A. Twenty-two.

Q. What is the diameter of those three that are in use? A. Two twelve and an eight.

Q. Do you know what the daily flow is? A. Yes, the daily flow according to the amount we are taking from them would run about three- quarter million to a million gallons.

Q. I mean to say flowing, it is not flowing? A. Not all the while, no; that is what we get from them in twenty-four hours.

Q. You gave me the depth of the wells, did you? A. No, I don't know as I did.

Q. What are the depths of the three wells you are using? A. One is 575 feet the other one is 450 feet and one 350 feet.

Q. Do you know how high the water stands in them? A. Yes, the water is 75 feet down in one or two of them, that is the pumping level.

Q. That is, the pipes at that depth are filled up to within seventy five feet of the surface? A. When the well is discharging, yes, sir.

Q. You mean when the well is working? A. When the well is working, yes, sir.

Q. And when they are not working? A. Well, then, it comes up to possible twenty-five feet, something like that.

Q. So that within twenty-five feet of the surface the water is then? A. Yes, sir.

Q. And you say you get about three-quarter million gallons? A. Around that.

Q. Used for what periods? A. That is the day.

Q. And is it used for what purpose? A. In the dye works the different processes.

Q. For any special purpose? A. I would not want to say just what the purposes are.

Q. You don't know exactly? A. Exactly no. I know it is not for the washing on the machines; on the washing machines they do not work.

Q. It is being used in the plant? A. In the plant, yes, sir.

Q. That plant is, what do you call it, again? A. The East Fifth Street Works.

Q. Is that the furthest down, the East Fifth street, is it nearest Weidmann's? A. Yes, sir.

Q. Then you come up to the Wood street plant? A. Yes, sir.

Q. The Wood street I understand is not in use now as a dyeing establishment? A. No, sir.

Q. Those are the two on the East side of the river? A. Yes, sir.

Q. Have you one in the Gun Mill yard? A. No, sir.

Q. The old plant that is there, that is not one of the National, you have nothing to do with that? A. No, sir.

Q. Then there are two on the other side of the river? A. Yes, the East Main street and the Valley Works.

Q. The East Main street is the next one coming up the river? A. Yes, sir.

Q. That is on the other side? A. Yes, sir.

Q. Whose plant was that formerly? A. That was the Gaede Plant.

Q. That was the Robert Gaede plant? A. Yes, sir.

Q. Have you anything to do with that? A. Not at present, no, sir.

Q. Then you come up to the one in the Valley of the Rocks? A. Yes, sir.

Q. And you come up to the Geering Plant? A. Yes, sir.

Q. That is on the cliff? A. Yes, sir.

Q. Have you anything to do with the operation of that? A. Not at present, no, sir.

Q. Did you at any time? A. I did some few years ago, yes, sir.

Q. When? A. From the time of the organization until up, until possibly three years past.

Q. When was the National organized, if you know? A. New Years, the first of the year 1909.

Q. What had you to do with the Geering plant? A. I would go around and see about the boilers and pumps.

Q. What was your title, engineer? A. Yes, sir.

Q. In charge? A. Yes, sir.

Q. How long were you there? A. I was never stationed there, I used to pay possibly daily visits.

Q. You went there from time to time? A. From time to time, yes, sir.

Q. You spoke about the pumping of this water and that you could not continue to pump because the river was low? A. Yes, sir.

Q. Will you give us the time when you say that was? A. I would say from 1900 until 1917, very often the river was so low that there was little or no water in it.

Q. Give us the figures again please? A. From the year 1900 until the year 1917.

Q. During this period of years you did not pump at all, is that right? A. Oh, yes.

Q. When did you stop pumping? A. When we connected to the Dyers' Pipe.

Q. Before you got that Dyers' Pipe connected what quantities did you pump? A. We pumped from the river.

Q. What quantities of water? A. Between our spring water and our river water I would say that we—possibly around two million gallons, something like that, in a day.

Q. You pumped two million gallons a day? A. Around that.

Mr. Griggs—He did not say that. Between the well water and the river water.

The Witness—Between the two waters, during the time when there was no water in the river it was nearly always spring water, we used part of it and then started with more spring water wells to make up for it.

Q. You mean spring water, artesian well water? A. Artesian well water, yes, sir.

Q. How many wells were in operation when you first took water from the Dyers' Pipe? A. Well, there was twenty wells in operation.

Q. All going? A. They were all piped up to be used on a minute's notice.

Q. How many were in actual use? I don't want to confine you to a date but for a period of several months, as a regular thing, what was the average number of artesian wells in use for the three or six months preceding your connection with the Dyers' Pipe? A. Well, I would say fifteen wells continually in use.

Q. What was their capacity, can you give us that? A. Well, their total capacity?

Q. Of these fifteen? In other words, how much water were you using at that time in the three to six months preceding your first taking water from the Dyers' Pipe, how much from the artesian wells? A. Well, that would depend upon how hard we were pushing them, we might get a million and a half from them or a million, if we wanted more we would start more wells.

Q. How much were you actually using? A. I would say we were using in the neighborhood of two million gallons.

Q. From the wells? A. Around that, yes.

Q. How much were you using from the river? A. Well, we would not be getting much from the river at that time.

Q. How much water did you pump from the river as an average in the three to six months preceding your taking water first from the Dyers' Pipe? A. If there was water in the river we would pump as much as we possibly could to shut down on the spring water. I would not want to say now as to just the exact amount; it is so long ago.

Q. It is important for us to know on that subject. If you cannot answer it we will just pass on, if you cannot tell us—

Mr. Lewis—Won't you give him a chance to answer?

Q. Will you tell us? A. I would say we would take on the average at the time of low periods of a half million gallons a day, possibly.

Q. And from the high period? A. Then we would take as much as we could get.

Q. How much would that be? A. If we could get our total consumption, nearly or all we needed of it, we would take it and shut the spring water down.

Q. Have you any record showing what you pumped from the river? A. No, we have not.

Q. Is there any record anywhere as to your pumping relatively from the river and from the artesian wells during the period preceding the Dyers' Pipe? A. No, sir, we have not.

Q. Had the pollution of the river anything to do with your stopping the pumping? A. No, not if there had been plenty of water there, I cannot see that it would, no, sir.

Q. Taking the water as you found it, did the pollution have anything to do with it? A. I don't think the pollution would affect it as much to-day from the heigth of the water in the river, and I take it that the river looks to me to-day to be just about what it was years ago, prior to 1900.

Q. I did not ask that question. Just think of my question? A. I think there is water enough in the river to-day to counteract any pollution that there is there.

Q. Taking the water as you find it, did the pollution have anything to do with your stopping pumping? A. At the times of very low flow it has something to do with it, yes, sir.

Q. Didn't you hear Mr. Auger testify in this case? A. I don't recollect just what he said.

Q. Didn't you hear him say that it had to do with it? A. He may have said that; I don't know.

Q. Didn't you hear him say that? A. I cannot say that I did, no, sir.

Q. You are discharging your matter into the river, polluted matter from the dye house? A. Yes, sure.

Q. You discharge all these colors, these reds, greens, blues and all colors of liquid into the river? A. Yes, sir.

Q. You do not change the color of it after it leaves the dye tubs, do you? A. No, sir.

Q. All that, all these million gallons of stuff, you discharge into the river? A. Yes, sir.

Q. That is borne down to Weidmann's? A. Yes, sir.

Q. Then your East Straight street plant discharges above you, your own plant, does it not? A. Yes, sir.

Q. And then the Geering plant discharges still above you? A. Yes, sir.

Q. So that each one of your own plants are sending down to you water that is polluted? A. Yes, sir.

Q. And all of the National sending it down to Weidmann? A. Yes, sir.

Q. Then below you in those days was the Paterson Sanitary Company? A. Well, they were above us.

Q. Well, above East Fifth street? A. Yes, sir.

Q. Between that and the Wood street? A. They are above the Wood street.

Q. After you passed the Wood street and then the Paterson Sanitary Company was on the stream? A. Yes, sir.

Q. That was the company that collected the garbage from the town dump? A. Yes, sir.

Q. And disposed of it in some way? A. They burn it up.

Q. They say they burn it up? A. Yes, sir.

Q. That went into the stream whatever came from that place? A. Yes, I presume it did.

Q. Then you come to the Public Service Gas Company they have a tremendous plant there, haven't they? A. Yes, they have a good sized plant.

Q. They manufacture gas for Paterson and the surrounding country? A. Yes, sir.

Q. For 175,000 people, is that right? A. I have no knowledge of what their—

Q. There is only one gas company in Paterson? A. There is one gas company.

Q. They manufacture the gas here? A. Yes, for the city of Paterson.

Q. And they discharge all their output, their polluting output into the river? A. Well, I don't know what their pollution is.

Q. Couldn't you tell by the colors of the rainbow on the water? A. Well, their tars and oily substances they burn in their boilers, under their boilers.

Q. There is no tarry substance in the water of the river then? A. There is very little from the gas company.

Q. Where does it come from? A. I could not say. I am sure. It is worth some money to them to burn it under their boilers, more money than it is to put it in the river.

Q. So none goes in the river? A. I would not say that, I don't know.

Q. You would not attempt to say that would you? A. No. I am not familiar with their business.

Q. You know it is a very substantial pollution of the river, don't you? A. No, I do not.

Q. Have you seen their vats down there at their works? A. I have been through their works at different times.

Q. What extent is that, how many acres have they there? A. The gas company?

Q. Yes? A. I would not want to say on that, I don't know.

Q. Then you come up and come to the old Fullerton abbatoir, where they used to kill hogs and sheep? A. Yes, sir.

Q. They discharged into the river in those old days too, didn't they? A. They did, yes, sir.

Q. Then, as you go further up the river you run into a lot of factories? A. Yes, sir.

Q. They discharge their waste water and all that into the river? A. I have no knowledge of that, I don't know.

Q. You have not seen that, you have not seen that pouring out? A. No. My understanding of it is that those factories and things empty into our city sewers.

Q. Do you know about their discharging waste into the river? A. I do not, no, sir.

Q. Whether it was stopped, whether it goes on or not? A. No, sir, I do not.

Q. What about the Manhattan Shirt Company's property, that is immediately above? A. The same thing applies, I know nothing about it.

Q. Pioneer Realty Company, formerly the mill there off Bridge street and the River, do you know about that? A. No, sir.

Q. Do you know the Henry Muhs place, do

they do any slaughtering there? A. Not to my knowledge, I have never known them to do any there.

Q. To your knowledge don't they? A. No, sir.

Q. They do not or you don't know? A. I don't know.

Q. They were there at one time and doing business just like Fullerton was, or don't you know? A. Not to my knowledge, no, sir.

Q. Didn't they render fats there and refuse and bone and boil it up and discharge the refuse into the river. A. Possibly they did, I don't know.

Q. Then you have another place, formerly a National lease, on this side of the river in the Valley of the Rocks, the old Knipscher & Maass plant? A. Yes, sir.

Q. That was a dye shop? A. Yes, sir.

Q. They were in color dying too, weren't they? A. They were, yes, sir.

Q. They did the same thing as all the dyers did, used the river as a sewer? A. The same as all dyers.

Q. And right next to the old Knipscher & Maass is the Standard Silk Dyeing Company, the Cole property, that is quite an extensive plant, is it not? A. Yes, it is.

Q. Not so extensive as yours, but a very large plant? A. It is a large plant.

Q. And they discharge their colored stuff into the river, isn't that so? A. I suppose they do. I don't know of any place it could go into.

Q. Then you have the other side of the river, do you know the Harmony Mill is, and then you have a great number of sewers their output, how

many outlets of sewers are there above the East Fifth street plant in the city of Paterson? A. I have no knowledge of the sewer outlets.

Q. There are great numbers? A. I have not the slightest idea, I could not say.

Q. You know there is one by the Geering plant? A. I know there is one at the foot of Hamburg avenue there, yes, sir.

Q. And that discharge goes right into the river? A. I guess it does.

Q. Offal, fecal matter and all sorts of household refuse? A. Whatever comes through the sewer.

Q. And, then, what other sewers are there, do you know? A. I am not familiar with the sewage system of our city, I could not say.

Q. So that then, while this stream was low and all this stuff from these sewers and other like places goes into the river, do you say that the polluted condition of that water was not a cause of coming to the Passaic Water Company to get water from the Dyers' Pipe. A. When the water was low I should say the sewage was troublesome, yes.

Q. It depends upon the quantity of sewage and the quantity of water whether it was more troublesome or less troublesome? A. If there had been as much water as there is to-day we would have very little trouble.

Q. Why don't you pump to-day? A. We have not the equipment, we have dismantled it, abandoned it, and sent it elsewhere.

Q. Why don't you put it up again? A. Well, I should think if we had known that there was

going to be the water in the river for the past three years that there has there is no question in my mind but what they would have installed some pumps.

Q. Do you know that or does that depend upon other people? A. Well, it has been talked about, and nothing definite done, because we could not be assured that the water would be there next week.

Q. But, at any rate, why don't you take it while it is there and take from the Dyers' Pipe what you need to make up the quantity? A. It would take some time to put in this installation and perhaps by the time we got it in there would not be any water.

Q. The water would come some time? A. Well.

Q. It would, wouldn't it, now, by the last three years' experience? A. Well, that I could not say.

Q. Have you anything to say on the subject further than that? A. No, sir.

Q. But, of course, that water had to filtered in any case? A. In any case, yes, sir.

Q. The Dyers' Pipe water did not have to be filtered? A. It did, yes, sir.

Q. The Dyers' Pipe is unpolluted water? A. I don't care if it is unpolluted, we filtered the Dyers' Pipe water.

Q. Does every dye house with which you are connected filter the Dyers' Pipe water? A. Yes, they do.

Q. So that you say you filter it any way? A. Yes, sir.

Q. Does the filtering of water more polluted

than others come more expensive or is it all the same? A. No, I should say the more polluted the water of course it would increase the cost of filtering.

Q. Then this Dyers' Pipe water is taken from above the Falls? A. Above the Great Falls.

Q. If you did not take it from there it would come down the river by your works? A. Yes, sir.

Q. But you prefer to take it from there because it is not mixed with the sewage when you get it? A. There may be something in that.

Q. Isn't there everything in that? A. (No, answer.)

Q. You said something about pumping, the cost of pumping, you have not always been of the same opinion about the cost of pumping as you were yesterday? A. In what respect?

Q. You said the cost was almost equal—

Mr. Lewis—He has not said a word about the pumping yet. He was not examined about that. I have not examined him about it at all.

Mr. Gourley—What did the three dollars yesterday refer to?

Mr. Lewis—He did not testify to three dollars yesterday. I have not examined him about the pumping.

Mr. Gourley—My recollection is he spoke about three dollars.

Mr. Lewis—Possibly you may have gotten the testimony concerning the filters at the Valley Works.

Q. What did you say the cost of three dollars was, the cost of doing what? A. I have no recollection of mentioning three dollars in connection with anything.

Q. It followed what you said it was cheaper to take water from the Dyers' Pipe than pump it by compressor? A. Yes, a juror was asking a question about pumping by compressor.

Q. Didn't you give us yesterday an estimate of that? A. No, sir.

Q. Didn't you mention three dollars? A. Not to my knowledge, no, sir.

Q. Do you remember saying on a former trial that $5.59 was your estimate per million gallons for cost of pumping?

Mr. Lewis—Objected to. I propose to prove this cost of pumping.

Mr. Gourley—Are you going to prove it by this witness?

The Court—The question is not cross examination.

Mr. Gourley—He did speak of the cost of pumping, but he don't seem to have been examined on the question of the cost, and he testified something yesterday as to the question of cost of pumping for I remember he spoke about the cost of compressors.

The Court—Upon the direct examination?

Mr. Gourley—Yes, certainly.

Mr. Gourley—That was an entirely different thing and had nothing at all to do with the cost of pumping; that was the pumping from the wells probably.

Q. Did you speak yesterday of the cost? A. A juror asked, if I recollect, asked me the question of the cost of pumping with a compressor as compared with pumping without the compressor, which was the most expensive.

The Court—The question was which was the most expensive.

Mr. Gourley—There was another question following the Juror's question he spoke about double cost of pumping water through the Dyers' Pipe and pumping it.

The Witness—Yes, sir.

Mr. Gourley—And your Honor will recollect that Judge Lewis asked him then about the exhaust steam lowering the price.

Mr. Lewis—I beg your pardon. I did not ask him that question. We are going to put him back on the stand.

Mr. Gourley—All right, if you will do that.

Cross Examination by Mr. McCran.

Q. In addition to the dyeing plants mentioned in answer to Mr. Gourley's question isn't there a dyeing plant at the Harmony Mills? A. I don't know where the Harmony Mills are.

Q. Do you know whether or not the Weidmann Company has a dyeing plant above the Edison's Electric Plant? A. Yes, I believe they have.

Q. Just tell the Jury where that is? A. Well, that is on Van Houten street. You say the Har-

mony Mill, I recollect now, that is there just between Prospect street and Cross.

Q. In other words the Weidmann Company has a plant in the Harmony Mill on Van Houten and where? A. Between Cross and Prospect on Van Houten.

Q. And that is above all of your plants except the one that is across the river, is it not? A. Well, I guess it is above them all.

Q. It is above them all? A. Yes, only it is on the opposite side of the river.

Q. That is about how far above the Weidmann main plant? A. Well, I would say close onto two miles.

Q. And is the same practice carried on there with reference to the discharge of waste into the river as the other plants? A. I imagine it must be.

Mr. Griggs—You don't know anything about it, do you?

The Witness—I don't know, no, sir.

Mr. Griggs—While we are waiting for somebody to come, I will state that it is now agreed by both parties that the draft of Jersey City from the Rockaway River has been between fifty and fifty-one million gallons daily for the last few years. I will also state, Mr. Cook tells me that the water flowing in the river last month was 1720 cubic feet per second, equivalent to 1,146,000,000 gallons per day. Now, if counsel concede that all right; otherwise Mr. Cook can go on the stand and testify.

Mr. Gourley—You might ask Counsel for their consent in advance.

JOHN H. COOK, recalled as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. Do you know what the flow of the Passaic River was at the Falls last month? A. I had it measured and computed and it was 1720 cubic feet per second.

Q. That is equivalent to about 1,146,000,000 gallons per day, as I figure it? A. About that, yes, sir.

No Cross Examination.

Mr. Lewis—We offer in evidence the Charter of the Morris Canal and Banking Company, found in the Pamphlet Laws of 1824.

Admitted in Evidence.

WILLIAM I. POWERS, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. At Boonton, New Jersey.

Q. What is your age? A. Within a few days of seventy-seven.

Q. What is your position? A. Superintendent of the Morris Canal.

Q. How long have you been such superintendent? A. Since 1888.

Q. How long have you been in the employ of the Morris Canal? A. Since 1863.

Q. How long before that did you know the Morris Canal? A. From my boyhood.

Q. Where does the Morris Canal run from? A. From the Delaware to the Hudson River.

Q. What are its feeders from Dover east to the Hudson River, or rather, to Newark? A. The principal feeder is at Pompton.

Q. Does it get water from the Rockaway River? A. It does.

Q. At Dover? A. At Dover.

Q. And at Powerville? A. At Powerville.

Q. Where else? A. Nowhere.

Q. Where else does it get water from? A. The Pompton River.

Q. And the Pompton River is made up of what rivers? A. The Wanaque, the Ramapo and the Pequannock.

Q. Do you know of your own knowledge that the canal has drawn upon those feeders for the period of time that you speak of, that you have known the canal?

Mr. Gourley—Objected to. What is the purpose of this?

The Court—To show that there has been the use of the water in that way during the

time that he has been acquainted with it.

Mr. Gourley—Of what significance is it in the case, of what value is it? On what theory is it offered?

Mr. Lewis—Upon previous trials the other side have been very strongly insisting that we should show a prescriptive right upon the part of the Morris Canal to take a supply out of the Passaic River, otherwise we have got to take a supply out of the Passaic River, otherwise we have got to assume them to be with the East Jersey and we want to show that there was a prescriptive right on the part of the Morris Canal to divert the water from the feeders in the Passaic River as against us.

Mr. Gourley—We agree, of course, that there is a prescriptive right in the Morris canal to take a supply.

The Court—Then it is admitted.

Mr. Lewis—Then you admit it?

Mr. Griggs—How much?

No Cross Examination.

Mr. Griggs—May I ask whether Counsel will make the same concession with reference to the right of the Passaic Water Company to take water from above the Falls, that they have a prescriptive right as against these parties?

Mr. Gourley—Yes. We are speaking for all the persons now before the Court. There are other outstanding, rights, the S. U. M.

etc., as far as those cases are concerned.

The Court—The same admission then is made as to the Passaic Water Company.

WARREN DERBY, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. In Massachusetts.

Q. At what place? A. At Southport.

Q. Where is your place of business? A. At Boston.

Q. What is your age? A. Fifty-four.

Q. What is your business? A. Appraisal Engineer.

Q. How long have you been employed in that business? A. Since 1904.

Q. By whom are you now employed? A. By the National Appraisal Company.

Q. How long have you been employed by the National Appraisal Company? A. Thirteen years; a little over.

Q. What is their business? A. Appraisals of properties.

Q. Did you make an appraisal of the property of the National Silk Dyeing Company in Paterson, or some part of it? A. I did of certain portions of it.

Q. What did you appraise? A. The mechanical equipment.

Q. When did you appraise it? A. In the Fall of 1917 and reaching up into 1918.

Q. Is the appraisal which you then made entered in the four books which I now call to your attention, which are marked "Appraisal, National Silk Dyeing Co., Paterson, New Jersey." "Summary of all properties". The second book being marked "Appraisal of East Main street Works, Wood street Works, Hill street Works, Summer street works, Paterson, Appraisal of the Valley Works, Paterson, New Jersey, Appraisal of the East Fifth street Works, Paterson New Jersey," Do you recognize those books? A. I do, yes, sir.

Q. What are they? A. They are the appraisal of the inventory and equipment of their plants as we made them.

Mr. Gourley—The personal property, the equipment is personal property and has nothing to do with the case. I call attention to that.

The Court—I think the answer is proper. The question has been answered and there was no objection to it. I think they are entirely unobjectionable, up to this point at least. This was simply preliminary, he simply states these are certain books.

Q. Did you personally make the inventory and the description that is contained in those books? A. The mechanical equipment, yes, sir.

Q. Have you made a summary from the appraisal and inventory that you made, showing the value of the mechanical equipment? A. I have.

Q. I show you a statement, did you draw that

statement and summary from the books that you have just mentioned? A. I did, yes, sir.

Q. Does that correctly show the valuations that are set forth in those books? A. It does to the best of my knowledge and ability.

Q. Are you qualified to value the equipment of that kind? A. I am, yes, sir.

Q. And you have been engaged in that work for how many years? A. For seventeen years.

Q. Please state what the books show the value of the machinery to be at the Fifth street plant? What is the value?

Mr. Gourley—The question here involves the value of the property, the real estate that we are taking. This is travelling into a new domain.

The Court—Don't you think it evidential to show what the situation is? What the character of the plant is?

Mr. Gourley—No. A man may have on a hundred dollar lot a million dollar equipment for a certain purpose.

The Court—Does not that show what the property can be used for?

Mr. Gourley—The property, yes, but not the value of the equipment. That is going beyond the point of the case. We have no expert here to show the value of the machinery; the machinery is probably unimportant in the standard of measurement we have for this case.

The Court—It is certainly competent to show whether this piece of land and buildings can be used for a million dollar plant

or whether it is only valuable for a fifty dollar plant.

Mr. Gourley—Your Honor can see the suggestion I make, a man may have an unimportant lot and set machinery on it and raise the value for making certain things, making chronometers, for example, that divide time into the smallest fraction, and manifestly the tremendous cost of that machinery has nothing whatever to do with the diminution of the value of the land.

The Court—If that fact appears the jury will disregard it.

Mr. Gourley—This apparently was done for a damage suit, judging by the statement of it and the date of it.

Mr. Lewis—Why do you say that?

Mr. Gourley—That was in their judgment, I only assume that from the date and the only question is, would throw light on. To that extent it is certainly inadmissible. How can it possibly be admissible?

The Court—I think it brings this descriptive element that is permissible to go to the Jury.

Mr. Gourley—The detail, your Honor?

The Court—Yes; what the situation is there that is being dealt with.

Mr. Gourley—How can that affect the value of the land, of the property?

The Court—The trouble is you are thinking about the damages. The other side is simply giving a description.

Mr. Gourley—No, they are talking about

damages. I am endeavoring to hold the case within the compass within which it must be tried.

The Court—I will allow the question.

(An exception is entered for all Condemnors.)

A. $253,437.25.

Q. And at the Valley Works? A. $163,884.43.

Mr. Gourley—Our objection covers without reiteration, these various plants on this subject?

The Court—Yes, the same exception will be applied to each one.

Q. And of the Wood street plant? A. $18,644.98.

Q. Making a total of what? A. Making a total of $435,966.66.

Q. That is the machinery? A. That is the machinery account.

Q. That is the total machinery of those plants? A. Yes, sir.

Q. Have you figures on tanks and tubs and filters? A. I have, yes, sir.

Q. Please give them on each plant?

A. The East Fifth Street plant $159,158.47
The Valley Works 79,663.64
Wood street 5,261.00

Total $244,083.11

Q. Then, have you the figures for the pipes and fittings and sewage? A. Yes, sir.

Q. Please give them for the different plants?

A. East Fifth Street Plant	$82,495.89
Valley Works	52,629.38
Wood Street Plant	6,136.45
Total	$141,261.72

Q. Then have you also the figures for the sprinklers?A. Yes, sir.

Q. Please give them for the different plants? A. East Fifth street plant $17,250.65. That is the only plant was sprinkled.

Q. Then have you the figures for the tools, miscellaneous fittings, benches, tables, racks, electric lighting, shafting, etc.? A. Yes, sir.

Q. Please give them for the different plants?

A. East Fifth Street plant	$28,149.59
Valley Works	18,969.03
Wood Street Plant	5,836.00
Total	$52,954.62

Q. What is the total of all those things at all the plants? A. $891,516.76.

Q. When was this appraisal made ? A. In the Fall of 1917 and right up into January 1918.

Q. And completed at that later date? A. And completed right at that time, yes, sir.

Q. Did you have any knowledge of any pending litigation when you made the—? A. I did not, no, sir.

Mr. Lewis—I would like to have the statement marked as evidence for convenience.

Mr. Gourley—We object to the statement.

The Court—The statement is not admissible, it would only be a matter of convenience for the jury for they cannot carry the figures.

Mr. Gourley—We object to it.

Mr. Griggs—Then we won't offer it in evidence. We will use it the same as we do the rest of the evidence.

The Court—The only point is that the Jury cannot possibly keep these figures in their minds unless you give them some definite method of doing it, and that is the reason it is offered.

Mr. Gourley—The view we take of this is that it is manifestly wrong.

The Court—I understand that.

Mr. Gourley—I say, we cannot consent.

Mr. Griggs—We withdraw the offer if it is objected to as evidence.

The Court—If the Jury wants it then what I will do is to read it to them and let one of them copy it from the record.

Mr. Lewis—I would ask that the jury be furnished with the necessary tools for making memoranda, for, as your Honor says, they cannot remember all these things.

The Court—Later if you want to draw this to the attention of the Jury in your summing up or any other way I will ask the stenographer to read it and let the jury copy it.

Cross Examination by Mr. Gourley.

Q. When was this made? In the Fall of 1917 and the Spring of 1918? A. Yes, sir.

Q. Who instructed you how to make it? A. The people I am employed by.

Q. You have no association with the people for whom you were making it, as to ordering how to do it? A. Who are those people you are referring to?

Q. You know the persons for whom you were working? A. I strictly work for the National Appraisal Company, I know nobody else.

Q. You did not meet any of the National Silk Dyeing people? A. I met them, but I had no business with them whatever.

Q. I ask you whether at that time there was a case pending for the collection of damages? A. I don't know. I had nothing to do with it. I know nothing about it.

Q. I am asking you? A. Repeat your question.

The Court—The answer is he knew nothing about it.

Q. Did you know there was a suit pending? A. No, sir, I did not.

Q. Had you heard there was? A. I never heard such a thing.

Q. When did you first hear about it? A. When I came down here.

Q. I am not speaking of this suit, I am speak-

ing about another suit? A. I never knew anything about any suit until yesterday.

Q. Were you told there was this suit pending? A. No, sir.

Q. You only learned it now? A. I only learned it yesterday.

Q. Although you made it in 1917? A. Yes, sir.

Q. You haxe examined the machinery, tubs, tanks, pipes, fittings, tools, racks, all of them yourself? A. Yes, sir.

Q. And you had several with you, of course, to do it? A. I did.

Q. Were they men employed with you? A. They were employed with me and worked under my instruction.

Q. You were the head of them? A. I was the head of them.

Q. These benches and tables and tools and all that were everything that is found around the place in the course of business? A. Yes, sir.

Q. Fittings and tubs and tanks and pipes and tools and tables and things of that kind, everything? A. Yes, sir.

Q. You took all those things in? A. Yes, sir.

Q. And you put such value on it as you thought it would prove worth? A. The value as a plant, a going plant, doing business at that time, to the best of my knowledge and ability.

Q. Then the value put upon it was as a going plant and not the intrinsical value? A. The article had a value as a plant doing business at that time.

Q. It was not the value as an article separ-

ately? A. Each article was appraised individually.

Q. But if separated from the plant and put up and sold to a person who might want to buy it? A. I have nothing to do with that.

Redirect Examination by Mr. Lewis.

Q. Do you make appraisals for the insurance companies, your company?. A. Yes, sir, we do.

Mr. Lewis—I offer these books in evidence.

Mr. Gourley—We make the same objection.

The Court—On what theory do you think the books are admissible in evidence as primary evidence?

Mr. Griggs—Because they contain the specific items of all this property.

Mr. Lewis—There is the whole inventory there of each article in the plant.

The Court—You mean it is a memorandum from which the summary is made.

Mr. Griggs—Yes. The details from which he makes this summary and epitomizes the result of the books, of the articles contained in this particular property.

The Court—If the summary is not admissible, why do you think the memorandum is admissible? After having done all this, he states as a matter of fact that a certain amount represents the total. That is the evidence, and that is in, the fact, the summary is not admissible and how can the items be admissible? He has testified.

Mr. Griggs—As the usual way of taking down testimony of that sort with many details. He says each one of these I inventoried and I appraised it at the figures set down opposite it.

The Court—He may use those as he has, the summary, in order to refresh his recollection and in order to produce the result he has testified to.

Mr. Griggs—Also to let the Jury see, instead of reading them all, whether they are proper and to let the Court see whether there is anything there—

The Court—I don't think the summary is admissible and if the summary is not admissible I don't think these details would be. The testimony stands, nevertheless for what he has testified to.

Mr. Griggs—All right. We make the offer.

Mr. Lewis—They are not to go to the Jury as I understand?

The Court—No.

Mr. Griggs—We now offer in evidence agreement dated September thirteenth 1905 between the Passaic Water Company and the Weidmann Silk Dyeing Company for a supply of water through the Dyers' Pipe, and it is agreed that the printed record of this exhibit which is on page 196 of the case before the Commissioners may be used.

Admitted and Marked "Weidmann Exhibit No. 5" of this date.

Mr. Griggs—We also offer in evidence agreement dated July twentieth 1918, be-

tween the Passaic Water Company and the Weidmann Silk Dyeing Company for a supply of water by the Dyers' Pipe, being the agreement which took the place of the one of 1905 and printed on page 200 of the same record.

Admitted and Marked "Weidmann Exhibit No. 6" of this date.

Mr. Gourley—Of course, we enter our exception to the relevancy of the proof. We have no objection to the form of the proof, but the relevancy of the contract that has expired, we want our objection entered to for the same reason as given in relation to the other testimony, that it is outside of the case.

The Court—In what way outside of the case?

Mr. Gourley—It is outside entirely of what is now sought to be assessed, in other words it is for a period of time that is past.

Mr. Griggs—The relevancy of it arises from this, that it has a bearing as showing what it will cost to supply water as a substitute for that which the municipalities are condemning, so long as it is taken through the Dyers' Pipe. It shows what we have paid and shows what we are paying, as some evidence tending to show what it will cost us and what it has cost us in the past and what it will cost us in the future; if we can get it at all being a question for the jury, and we furnish them all the infor-

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mation we can as to the past transactions.

The Court—I will admit it and allow an exception.

(An exception is allowed to all the Condemnors.)

Mr. Griggs—We also offer in evidence agreement dated September twenty-second 1905 between the Passaic Water Company and William H. Kern, similar to that which has just been offered, found on page 210 of the same record.

Mr. Gourley—We enter the same objection, not as to the form of the proof but as to the relevancy for the reasons stated.

(Objection overruled; Exception entered for all the Condemnors.)

Admitted and Marked "Weidmann Exhibit No. 7" of this date.

Mr. Griggs—We also offer in evidence contract between the Auger & Simon Silk Dyeing Company and the Passaic Water Company dated September thirteenth 1905 being the same in form as the Kerns contract except that the maximum supply is limited to 4,500,000 gallons a day and the minimum 462 million gallons per annum, found on page 226 of the same record.

Mr. Gourley—We enter the same objection, not as to the form of the proof, but as to the relevancy for the reasons stated.

(Objection overruled; Exception entered for all the condemnors.)

Admitted and Marked "Weidmann Exhibit No. 8" of this date.

Mr. Griggs—We also offer in evidence agreement between the E. Geering Silk Dyeing Company and the Passaic Water Company dated September thirteenth 1905 being the same in form and the same maximum and minimum as the last exhibit and found on page 226 of the same record.

Mr. Gourley—We enter the same objection, not as to the form of the proof, but as to the relevancy for the reasons stated. (Objection overruled; Exception to all the condemnors.)

Admitted and Marked "Weidmann Exhibit No. 9" of this date.

Mr. Griggs—We also offer in evidence another contract dated the blank day of July 1909 between the Passaic Water Company whereby the National Silk Dyeing Company was recognized as the successor of these various other contractees, found on page 226 of the same record.

Mr. Gourley—We enter the same objection, not as to the form of the proof, but as to the relevancy for the reasons stated.

(Objection overruled; Exception entered for all the Condemnors.)

Admitted and Marked "Weidmann Exhibit No. 10" of this date.

Mr. Griggs—We also offer in evidence agreement dated the sixth day of August 1918 between the Passaic Water Company and the National Silk Dyeing Company which is the new contract similar to the Weidmann new contract of the same period,

and which is found on page 230 of the same record.

Admitted and Marked "Weidmann Exhibit No. 11" of this date.

HERMAN A. POPE, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live and what is your business? A. Number 254 East Thirty-third street, Paterson. Accountant for the National Silk Dyeing Company.

Q. Have you the bills from the Passaic Water Company for the water that they provided through the Dyers' Pipe? A. Yes, sir.

Q. Have you the checks which paid these bills? A. Yes, sir.

Q. Have you made a table from these bills showing the number of million gallons used at each plant from 1909 down to last December? A. Yes, sir.

Q. Is this table corectly made out from the bills? A. Yes, sir.

Q. I show you a table and ask you if that is the table you refer to? A. Yes, sir.

Q. Does it show the amount of water taken in each one of the four plants in Paterson? A. It does.

Q. Does it show the amount by the month? A. Yes, sir.

Q. And the amount paid by the month? A. Yes, sir.

Q. And the total water taken for each year? A. Yes, sir.

Q. And the total money paid each year? A. Yes, sir.

Q. And the total amount of water taken from 1909 down to last year? A. Yes, sir.

Q. And the total amount of money paid in that period of time? A. Yes, sir.

Mr. Lewis—We offer the bills and checks in evidence.

Mr. Gourley—Objected to for the same reasons given heretofore, excepting that we do not object to the form of the proof, but simply on the ground that it is not relevant.

(Objection overruled; Condemnors except, and the exception is entered for all Condemnors.)

Admitted and Marked "National Exhibit No. 17" of this date.

Q. I will ask you to state the amount used at the four plants each year from the table that you have there? A. Each year or in the total?

Q. The total amount used each year at all four plants? A. Do you want the cost of that each year?

Q. Yes? A. 1909 East Fifth street Works—

Mr. Griggs—No, give the total in each works.

The Witness—Just the total for each year?

Mr. Griggs—What counsel wants is the total million gallons each year in all four plants, not each one separate.

The Witness—I have not got that tabulated complete.

Q. But you have the total for each plant, haven't you? A. Yes, for all the years.

Q. For each year? A. Yes, for each year.

Q. Just start with 1909 then and come on down with each plant with the number of gallons in each year and give each year for each plant? A. I have not got it that way.

The Court—Tell us how you have got it.

The Witness—I have got the total up to December 21st, 1920, for all plants and in detail, that is each one.

Q. I want from 1909 down? A. Grand Total Recapitulation, January first, 1909 to December thirty-first, 1920, (final page, final summary page:)

GREAT FALLS CONDUIT SUPPLY, For Minimum Total.

Water used on all Contracts to	Gallons	Cost
March 31st, 1919	13,107,478,286	$197,265.50
Additional from April first 1919 to December 31st, 1920		
At East Fifth Street Works	690,850,000	11,150.45
At Main Street Works	11,392,000	1,382.55
Valley Works	567,845,000	9,304.72
Wood Street Works	1,242,135	40.95
Total Addition to March 31st, Report	1,271,329,136	21,878.67
Grand Total Supplied and Cost to Dec. 31st, 1920	14,378,807,421	$219,154.17

A Juror—How much a million gallons?

The Witness—Well, the price changed in that contract. Originally it was—

Mr. Lewis—The Juror does not ask what the contract was, he asks what it figures out?

The Witness—We have not figured that out.

The Court—Was the price mentioned in these two contracts which ran during that period?

The Witness—Yes, sir.

The Juror—What is the average rate for the water?

The Witness—We have not averaged that.

Mr. Lewis—Just do it. You can do that in a minute, can't you?

The Witness—It averages just about fifteen dollars a million gallons all the way through. Approximately, there is a few cents difference.

Q. Have you with you some bills concerning the filter at your works? A. Yes, sir.

Q. What bills have you? A. The bills from Hungerford & Terry, the people who supplied the filters at the Valley Works.

Q. How many filters? A. Three.

Q. What are the dates of the bills? A. The bills were rendered in three payments for three payments, as the contract was completed partially, each time, the first filter was four thousand dollars—

Mr. Gourley—The price of these filters, I object to it on the same grounds.

(Objection overruled; Exception entered for all the Condemnors.)

Q. What was the capacity of that filter for four thousand dollars? A. It had a capacity of 1,500,000 gallons mechanical pressure, a capacity of 1050 gallons per minute.

Q. When was that installed? A. In 1909.

Q. What months were the three payments made on account of the installation? A. One in May, one in July and a final payment in September.

Q. Do you remember back to that period yourself as to the Valley Works and the conditions there; in other words, do you know whether or not the Dyers' Pipe had been put in at the Valley Works at that time? A. I remember when I went over there from the East Fifth street that they said there was the Dyers' Pipe there, the same as East Fifth street, but I did not see it.

Q. Have you bills for any other filters? A. Two others.

Q. What is their capacity? A. One million gallons each.

Q. What did they cost? A. Twenty-four hundred dollars each.

Q. You have the bills and checks for them there? A. I have the bills and the checks and the contracts.

Q. And the bills are receipted? A. No, the bills are not receipted, but the checks returned endorsed by Hungerford & Terry, and marked "Paid" by the Bank.

Q. Are there any other bills there, or receipts or checks, indicating expenditures concerning these filters?

Mr. Gourley—These filters were put in at a time after the Dyers' Pipe? I don't understand it.

The Witness—I have several vouchers here for payroll, labor, and several other purchases of equipment in installing new filters.

Mr. Gourley—I object to all this.

(Objection overruled; Condemnors except, and the exeption goes to all Condemnors.)

Mr. Gourley—These filters were put in after the Dyers' Pipe?

The Court—I understand that but they are some evidence as to what they had and cost and what was necessary.

Q. Just tell us what you have there rapidly? A. A bill of McNab & Harlin, 1914, $79.30 for pipes and fittings in connection with the filters. Labor from our own payroll, $261.37; Total, $340.-67.

Q. What was the labor for? A. That was for installation in connection with the filters.

Q. Go ahead? A. That is all the bills we have here.

Q. Does that make up all the bills you have there concerning that filter? A. Yes, sir.

Q. And all the checks? A. Yes, sir.

Mr. Lewis—We offer them in evidence.

(Objected to on the grounds already stated; objection overruled; Condemnors except, and this exception goes to all Condemnors.

Admitted and marked Four Packages in one, "National Exhibit No. 18" of this date.

Q. These are all concerning the Hungerford & Terry filters at the Valley Works? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. These figures that you have given us are taken from your books? A. They are taken from the bills.

Q. Made up by you directly from the bills? A. Yes, sir.

Q. So that there is no doubt, of course, of their accuracy? A. They are taken right from the Passaic Water Company bills as rendered.

Q. You have made up the statement yourself? A. Oh, yes.

Q. You have the correct figures? A. Yes, sir.

Q. The filter prices, you simply know that those filters were paid for in that way by these bills? A. Yes, sir.

Mr. Griggs—The testimony of Mr. Charles L. Auger was taken before the Commissioners and is printed in the record of the Commissioners at page 83, etc. It has been stipulated that his testimony may be read to the jury as though it were taken in this

case, Mr. Auger having had to go abroad and being now in Europe.

(The testimony is then read as follows:)

CHARLES L. AUGER, whose testimony is read, by virtue of a stipulation between Counsel, on behalf of the Property Owners, testified as follows:

Direct Examination by Mr. Lewis.

Q. You reside in Bergen County? A. Yes, sir.

Q. You are the President of the National Silk Dyeing Company? A. Yes, sir.

Q. How long has that corporation been in existence? A. Since December 1908.

Q. Carrying on business since when? A. January first, 1909.

Q. Have you a statement made from the books of the value of the company's property? A. I have.

Q. Will you produce that please? A. (Producing.)

Q. That shows the values at what plants? A. The East Fifth street, the East Main street, the Wood street and the Valley Works, all the plants of the National Silk Dyeing Company that are located on the banks of the Passaic River.

Mr. Lewis—I offer this statement in evidence.

Admitted and Marked "National Exhibit No. 19" of this date.

Q. Where is the East Fifth street plant of the National Silk Dyeing Company? A. At Riverside, corner of Fifth avenue and East Fifth street.

Q. When was it established? A. We commenced building that plant in 1887.

Q. Who established that? A. Well, it was the old Putoz concern that really built that.

Q. Was that a partnership? A. That was a partnership, yes, sir.

Q. That partnersship was succeeded by Auger & Simon? A. By Auger & Simon and then the Auger & Simon Silk Dyeing Company in 1890.

Q. The Auger & Simon Silk Dyeing Company was organized in 1890? A. July 1st, 1890, yes, sir.

Q. And they continued to do business there from the time of their organization until the turning over of the plant to the National Silk Dyeing Company? A. Yes, sir.

Q. When you went there in 1887 what buildings did you put up, as far as you now recollect? A. We put up a finishing room, thirty by fifty, a dye house, about fifty by a hundred and fifty, and a small storehouse in the rear, thirty by thirty or forty, and a boiler house, about thirty by forty.

Q. What business did you carry on there? A. Silk dyeing, skein silk dyeing.

Q. Is water necessary in that business? A. It is very necessary.

Q. Can you get along without it? A. No, sir.

Q. Where did you get your water from when you went there? A. From the Passaic River.

Q. What was the width of that river, about, in front of your plant at East Fifth street? A. I

should judge about two or three hundred feet, something like that.

Mr. Gourley—Of course, our exception goes to this testimony as well as to the others, on the point already mentioned.

The Court—Is there an objection in the record?

Mr. Gourley—The stipulation was that his testimony was to be read, owing to his absence, subject to all objections.

Mr. Lewis—Perhaps I had better show your Honor the stipulation. (Exhibiting the paper.)

The Court—There is nothing objectionable in this particular question that you are raising a point about now, is there?

Mr. Gourley—No, sir.

The Court—Then aren't you protected by your exception? If you have stipulated that this should be read. This is the stipulation. (The stipulation is read.)

Mr. Gourley—But does that waive the right to object? In other words, it is the customary stipulation when a man goes away, to use his testimony in the case, and that has been used in the case and we are perfectly willing to have it presented, but that does not follow that an exception should not be allowed to the Condemnors against a certain line of testimony. Aren't we entitled to that when it is read?

The Court—When you put in your stipulation subject to objections and exceptions,

I think the testimony may be read as it stands now, giving you an exception to the Court's failure to allow you an exception.

Mr. Lewis—We don't want to take advantage of the failure to put in the stipulation if they want to take an objection to the relevancy or anything of that kind.

The Court—It does not really mean anything; we are just discussing water that has gone over the dam. That is the reason I asked if there was some point as to the particular question which raised a point not yet noted.

Mr. Gourley—If I fail to object now wouldn't it be against me?

The Court—No. If the Court is wrong as to the revelancy any judgment recovered would not stand anyway.

Mr. Gourley—This is on the same point. We have to protect ourselves all along. We cannot permit it to go in without exception.

Mr. Griggs—I understand the question you object to is the statement of Mr. Auger as to the width of the river in front of his property.

Mr. Gourley—This is as to the relevancy of the testimony. I am objecting to every question that relates to the past consideration of the river, as I have been all through the case. I don't intend to waive that phase of it at all.

Mr. Griggs—We do not ask Counsel to waive his right. We concede that he has the right to object to that question if it

is objectionable, but we insist that the inquiry to the witness as to the width of the river in front of his place is something which has to do with the property which they are taking.

The Court—Mr. Gourley did not mean to object to that particular question.

Mr. Gourley—No.

Mr. Griggs—I thought he did.

Mr. Gourley—Oh, no.

Mr. Griggs—What do you object to?

Mr. Gourley—I have stated it.

(Objection overruled; Condemnors except; and this exception inures to all Condemnors.)

Q. What was the condition of the river in regard to its supply of water at the time you went there? A. We had plenty of water, that is the reason why we located there, or why we decided upon that location.

The Court—If there is any particular thing that you think is not relevant you may object and the Court will rule on it.

Mr. Gourley—I want to get one objection and have it passed upon. I interpose an objection to the last question for the reasons given before.

(Objection overruled Exception allowed to all the Condemnors.)

Mr. Gourley—That exception protects us as to the same class of testimony and the same statements made of the same class of testimony by the same witness?

The Court—Yes.

Q. Was the supply a constant or a varying supply? A. It was a constant supply.

Q. At what seasons of the year? At all seasons? A. At all seasons of the year, yes, sir.

Q. What did you use that water for when you went there in 1887? A. For all classes of dyeing, with the exception of whites and creams, for which we had a small surface well.

Q. Whites and creams? A. Whites and creams and delicate shades.

Q. But all other colors could be dyed with river water, I understand? A. Yes, sir.

Q. And you did dye it with river water? A. Yes, sir.

Q. What was the quality of the water as to purity at that time? A. Well, it was clean water, clean enough to dye with and to wash with, we could use it for a portion of the dyeing business.

Q. What was the average depth, if you can tell us, of the water, at low water, out in front of the plant, at the time you went there in 1887? A. Well, the water was up to my waist in 1887, in September.

Q. How do you recollect that? A. I fell in.

Q. Under what circumstances? A. In the beginning when we started in business, it was rather difficult to get plumbers to lay pipe in the river, excepting you went out of town and went to quite

a heavy expense; so we decided to lay the pipe ourselves, with some plumbers that we hired. We built a raft, screwed the pipe together on this raft, built rafts, not one raft, but several rafts, made of barrels—

Mr. Griggs—Pontoons?

The Witness—A sort of a pontoon and screwed these pipes together and pushed the pipe out until we got to the length we wanted to go, the distance we wanted to go in the river, which was about a hundred and ten to a hundred and twenty-feet, as near as I can recollect. In other words, it was past a dam, and the dam was not visible at that time, and when we went to sink the pipe, it was quite a job. In our anxiety to get the pipe down so that we would not break the joints, I with a few more fell in and I found it was up to my waist.

Q. What year was that? A. That was in 1887, in September, we started to dyeing there shortly after that pipe was laid, and that was the reason I remember it was September 1887.

Q. You speak of a dam, will you please describe that dam? A. Well, that dam was V-shaped, with the point extending up the river, and we aimed to lay our pipe on that V, so that the end would come into the V.

Q. Above or below? A. Above.

Q. That first pipe was a single pipe, was it? A. A six inch pipe, single, yes, sir.

Q. Did that supply water to your plant? A. Oh, yes.

Q. And how? A. We pumped, we had a pump on this six inch pipe.

Q. And you got your suction right in the middle of the river? A. We got a suction pump to pump it into a tank and from the tank it ran down by gravity into the dye houses.

Q. Can you recall when the next pipe was laid? A. Well, we laid, I think it was an eight inch pipe, probably a couple of years after; I cannot recall the date exactly; it was not very long after that; a short while.

Q. Was there any other pipe laid prior to 1892 than the two pipes you have just described? A. Yes, sir.

Q. How many pipes were there prior to 1892? A. We had another eight inch pipe, and we had, I think it was, two eights and a six, as near as I can remember now, directly from the river; we pumped directly from the river from those pipes, sucked directly from the river up into the tanks.

Q. And how far out did those pipes go? A. It varied from a hundred feet out to perhaps a hundred and twenty-five and to a hundred and fifty feet, as near as I can recollect at this time.

Q. You have described the depth of the water in the river in 1887, and its quality, will you tell us how long that condition continued as to depth and quality? A. We had a depth in the river up to, I should say, oh, 1892, 1893, 1894, somewhere around there. I don't recollect exactly the date, but it began to diminish until we got to 1896, 1898; then it was very low.

Q. Did it require you to make changes in the methods by which you got the water from the river? A. Yes, we started to make changes somewhere around, I think it was, previous to 1894, we built cisterns, and instead of sucking water from the river, we allowed the water to run by gravity from the centre of the river, from the deep spots in the river, where we could find them; we kept digging around there all the time; we had men constantly at work, and we allowed the water to run through these pipes; there were two eighteen inch pipes, one placed after the other, within a short time of one another, somewhere about 1894, as near as I can recollect, and this water went by gravity from these deep spots into these cisterns and from those cisterns we pumped it by suction.

Q. And when you pumped the water out of the river what was the first process through which it went? A. Well, we filtered it.

Q. And, when it was filtered where did it go? A. Into the tank.

Q. And from that tank—that tank was higher up than the filter? A. Oh, yes.

Q. So that you pumped from the river through the filters and thence to the tank? A. Into the tank, and then it ran from the tank into the dye house by gravity.

Q. What were the requisites of the plant in regard to water about that period? A. Do you mean as to quantity?

Q. Yes. A. Well, of course, first we ran light in the beginning, somewhere from less than a million, and as the plant grew it kept growing to a million and a half and two millions and three million and four million and so on up.

Q. Up to what time were you able to get all the water you needed out of the river? A. Why, 1896, 1894 and 1896.

Q. Early in 1896? A. 1894 to 1896.

Q. When you were not able to get that water out of the river in 1896, did you get it elsewhere? A. Oh, we began to resort to the use of artesian wells.

Q. How many wells did you dig, beginning in 1896 down to the time when you stopped digging artesian wells? A. Why, we had one small well which we used for light shades; that was a surface well, which we used for light shades; and we used a six inch artesian well after that, I think about 1894 or 1896, and we began to dig artesian wells then as much as we could dig them, in order to insure a supply of water. I am not sure but what I think we dug about twenty to twenty two of those wells throughout the property on both sides of the river.

Q. Was it a cheap or expensive way of getting water to get it out of the wells? A. It was an expensive way.

Q. More expensive than it would be to get it out of the river? A. Oh, yes.

Q. More expensive than it would be to get it out of the Dyers' Pipe? A. Yes, sir.

Q. What had you to do with the water in order to use it? A. Well, we would have to soften it.

Q. Is that an expensive operation? A. It is a very expensive operation. We had to soften some of it, not all of it, but we softened as little as possible, on account of the expense.

Q. In what process of dyeing is the softening of water necessary? A. We have to use it wherever we use soap or alkalis.

Q. In what colors? A. Well, it does not apply to any particular colors.

Q. And it only applies to the process? A. Wherever you use soap.

Q. The particular process is the soap? A. The harder the water the more soap you have to use; the soap curdles by hard water.

Q. Is there much of the business done without the use of soap, I mean much of the dyeing? A. Well, all the silk passes through some soap operation.

Q. When the water is taken up to the tank where is it then taken? A. You mean when the water is pumped up by the tank from the river?

Q. Yes? A. It goes down into the dye house, into the tubs, into the washing machines.

Q. How many tanks did you have in use? A. We started with about eight, as near as I can recollect, running from sixteen feet in diameter to twenty, and running in capacity from 20,000 gal- to 100,000 gallons each.

Q. What is the temperature of the water that you use in the dyeing processes? A. That varies according to the process; a great deal of it is cold, for washing, and then, in dyeing, of course, it is all the way from boiling down.

Q. How do you boil that water? A. With live steam and in some instances, with coils, through which the steam passes.

Q. Is it necessary for that purpose that you have a plant to heat the water? A. Oh, yes.

Q. What plant do you have? A. Steam boilers.

Q. What steam boilers are necessary for a

plant such as your Fifth street Works is to-day? A. Well, we have ten boilers there aggregating, I think something around 1500 horsepower, probably 2000; 1500 is near it, I guess.

Q. Capable of producing how much hot water? Do you happen to know yourself, or do you leave it to the engineer? A. Oh, I would leave that to the engineer.

Q. Do you know a process by which the cold water from the tank is heated by the steam from the boilers? A. From the injection of live steam.

Q. Into the water? A. Into the water.

Q. In some sort of a tank? A. Well, in tubs, the ordinary tubs in size.

Q. Is that the ordinary process of heating water the usual process of heating water in a dyeing plant? A. That is the way we have always done it in the dye house and still do it.

Q. And is that so in all these plants of the National which are now before the Commissioners? A. Yes, that is the same in every dye house.

Q. In every dye house it is done the same way? A. Yes, sir, in every dye house I have ever been in.

Q. Does it require a large quantity of water? A. Yes, sir.

Q. Does it run into,—how would you say in gallons, what proportion of hot water is used, to cold water about? A. Now, that depends a great deal on the process; I might make a stab at it and say from ten to twenty per cent.

Q. Can you carry on the dyeing business in any of these plants without the use of hot water? A. No, sir.

Q. Just describe the process of dyeing as carried on at the Fifth street and at the various other plants? A. Well, we receive the silk in raw state, in bundles, coming from the throwster; we boil it off, where they want organzine, that is for warping or bright tram, we boil it off, add about thirty per cent. to thirty-five per cent. of soap and that represents about probably sixty per cent., sixty to seventy per cent. of the dyeing, eighty per cent. of the dyeing is treated that way, eighty per cent. of the silk goes to the dye house, from there it is washed, goes through the boiling, the weighting, the dyeing and up to the drying rooms, and it is bundled up and delivered to the customer.

Q. When, if ever, did the water get so low in the river that you could not get it out for the purposes of dyeing? A. Well, it was in 1891, really, the beginning of 1900, that we had difficulties, and they grew until about 1903, 1904 the plans were being laid for the water pipe, the big water pipe in 1905, I guess when they first began to dig for it.

Q. You have described to us the introduction of the system of cisterns and the taking in of the water by gravity? Did the conditions keep on getting worse and finally get so bad that you could get water into the cisterns by gravity? A. Oh, yes, our cisterns were low.

Q. Did you make efforts in every way that you could think of to get it in? A. Yes, sir.

Q. What did you do? A. We kept lowering our pipes, deepening our cisterns and lowering our suction pipes.

Q. How many pipes did you have in the river in 1904 and in 1905? A. In 1905 we had three cisterns, I believe, the two larger ones were twenty to twenty-two feet in diameter, and the smaller one probably fourteen to sixteen in diameter. Outside of these cisterns we had a small chamber of receiving basin, the water entered that chamber of receiving basin, we had a screen on the inside, between the chamber and the cistern, and the water had to go through that screen into the cistern, from which we pumped it by an eighteen inch pipe to each one of those twenty to twenty-two feet cisterns, and we had, I believe, two eights and a six into the smaller cistern, the two eights and the six that we formerly used for suction pipes were used for supplying this cistern.

Q. How far out into the river did those pipes go in 1904? A. Well, we extended the pipes—we first started from a hundred feet, and felt our way, you know, and kept going across the river a little more, until in 1904 I believe our pipes were pretty nearly across the river in a sort of a deep channel, the deepest part of the river, in other words.

Q. Were you under the necessity of acquiring land on the opposite side of the river for the purpose of extending your pipes out? A. Yes, we did, we bought as much of the land on the opposite side as we could in order to give us the right to go over there.

Q. That is the land which has been described in these proceedings as the land in Manchester Township? A. I don't really know the Township; I know it is Hawthorne.

Q. What can you say about the height of the water in relation to this dam, that you have spoken of? Was the dam above the surface of the water at times? A. It was not when we first went there.

Q. Never? A. No, sir.

Q. Afterwards, when did it begin to appear? A. Oh, I should say about six years afterwards, then we began to see the top of the dam occasionally, six or seven years afterwards.

Q. And at ordinary low water was there any water going over the dam? A. Oh, no.

Q. Can you tell us whether the dam was partially or wholly exposed at times? A. Well, sometimes it was wholly exposed, with the exception of where pools of water on the sides of the stream would be, you know.

Q. Down to the bottom of the dam? A. Down to the bottom of the dam, yes, sir.

Q. Were there times when you could walk across the river? A. I did, with clogs, not across the river but across the greater part of the river.

Q. When did that first occur that you could walk across? A. As near as I can recollect, that would be somewhere about 1898.

Q. Were you able to do that afterwards, after 1898? A. Why, the bed of the river was exposed, although I never tried it, but this just happened to be one occasion that I was in a hurry to get up there to see what the trouble was and to see whether we could find a deep spot.

Q. But it was a possible thing to do, to cross the river at low water after that time, was it? A. Oh, you could do it, yes, you could walk on the bed of the river.

Q. Tell us the seasons of the year in which the bed of the river was exposed in the manner that you speak of? A. Generally in the fall, and sometimes as you went along, you know, towards the last, pretty much in the Summer too.

Q. Will you describe to the gentlemen of the Commission the condition of the bed of the river in front of your plant at the period that you call low water, when the water was at its lowest, or when there was no water at all? A. Do you mean as to the depth?

Q. I understand you to say that there were periods when the bed of the river was exposed? A. Yes, sir.

Q. Well, now, at such periods, will you describe the appearance of the river, as to the water in front of your plant? A. There were pools of water here and there, you know; of course our own discharge of well water that we used for washing generally formed a pool on our side of the river. Really, I believe if we had not discharged the water, I believe we would probably have it dry even in those spots, and the only ones where the water ran down the river, if there was any to run down, was on the opposite from us. There we had some depth, and there is where we pumped from when we could pump, but towards the last we practically had no depth over there. That is, six inches might be the best.

Q. Was such water as you were able to get usable water? A. No, sir.

Q. Why wasn't it usable? A. Why, it was too contaminated with sewage and with slime which would get into your pipes.

Mr. Gourley—What year was that?

TheWitness—Take it in 1900, and as it went along, it got worse.

Mr. Newman—Was that true both in periods of high water and low water?

The Witness—No, not in high water. In high water you had fair water, I suppose at that time, even at this time after a rainy season, you find pretty good water there, pretty fair water.

Q. Did you then make at East Fifth street any arrangement to get water in place of the river water? A. Oh, yes.

Q. Where did you get it? A. Well, we tried to get some water from Alyea's pond, that came in 1900, 1898, I think we began to look around, Bridge's pond, and we thought we might run a pipe line down from Bridge's pond if we could get the water, but we could not do that, it would cost us too much. Then we got, I think it was Mr. Weidmann that first entered into negotiations with the water company through Dr. Leal.

Q. And did you have any negotiations with Dr. Leal? A. Yes, sir.

Q. He was the representative of the water company? A. He was the representative of the water company. Mr. Weidmann was the first man to broach the subject, it was agreed between he and I that he should go and see the water company.

Q. Did you try to get the water as cheap as you could? A. Oh, yes.

Q. Did you finally enter into a contract with the water company? A. We did.

Q. The Auger & Simon Silk Dyeing Company? A. Yes, sir.

Q. I show you a contract, and ask you if that is the contract, dated September 13th, 1906? A. Yes, sir, that is the contract.

Q. Is there any provision in that that you have to take a minimum quantity of water whether you use it or not? A. There was such a provision, where we were bound to take a minimum quantity of water.

Mr. Gourley—What is the minimum in that?

The Witness—462,000,000 gallons we were bound to take, whether so many million gallons of water have been taken or not during the said twelve months.

Mr. Gourley—462,000,000 gallons for the twelve months?

The Witness—462,000,000 gallons of water, we had to pay for whether we used that quantity or not.

Mr. Gourley—That is per annum?

The Witness—Per annum. Whether so many gallons of water had been taken or not during the said twelve months.

Q. For what period of time is that contract? A. For ten years.

Q. What was the price? A. $15., per million gallons.

Q. Was this contract subsequently transferred to the National Silk Dyeing Company? A. It was assigned to the National Silk Dyeing Company in

1909 or 1908, you might say, at the time of the incorporation.

Q. Was the contract with Kearns Brothers also turned over to the National? A. Yes, sir.

Q. And that had a minimum supply? A. That had a minimum supply, yes, sir.

Q. Wasn't the contract of the E. Geering Silk Dyeing Company also assigned to the National at that time? A. It was.

Q. I show you a contract with the E. Geering Silk Dyeing Company, and ask you if that is it? A. Yes, sir, that is practically the same kind of contract.

Q. Dated when? A. Dated September thirteenth, 1905, but we did not start using the water until 1906, I remember. The contract was made before the pipe was laid.

(Those contracts have already been offered in evidence.)

Q. What was the minimum in the Geering Contract? A. The same minimum, I see; I had forgotten that. The same minimum that we had. 462,000,000 gallons at $15. per million gallons. 462,000,000 gallons a year, whether so many million gallons of water have been taken or not during the said twelve months.

Q. What was the term of that contract? A. Ten years. Identically the same contract as that of the Auger & Simon Company.

Q. After these contracts were assigned to the National did you make any effort to get rid of the charge on the minimum? A. Oh, yes, several times we did.

Q. And, did you finally enter into a contract on somewhat ameliorated conditions? A. We entered into what may be called a collective contract.

Q. I show you a contract made between the National Silk Dyeing Company and the Passaic Water Company, dated July 15th, 1909, and ask you if that is the contract which concerns this minimum at the various plants? A. Yes, this is what you might call the consolidated contract.

Q. Did that enable you to use your minimum at any particular plant if you wanted to, so as to relieve the plant where it was not used? A. Yes, it did, but we still had to pay, I think, a little in excess of what we were using.

Q. I believe the water bills now in evidence show that, do they not? A. I believe you will find there are some charges for water that have not been used.

Q. How long a term was this agreement for? For the period of the old contracts? A. Yes. To continue until the expiration of the other contracts. Until the time in the other contracts would expire.

(Mr. Lewis—That contract has already been offered in evidence in this case.)

Q. When that contract expired did you again have to seek a renewal of the contract or making a new contract with the water company for water at these various plants? A. We did.

Q. I show you a contract dated September thirteenth, 1918, and ask you if that is the contract

between the National and the Passaic Water Company for a water supply from that date? A. That is the new contract.

Q. Is there a provision for a minimum in that? A. There is. It is a slight minimum. The party of the first part shall charge and receive the sum of $25. per million gallons for two and a half million gallons per month delivered at each plant, whether so much be used or not; $20. per million gallons for the second two and a half million gallons per month delivered at each plant, and $15. per million gallons for all water above 5,000,000 gallons per month delivered at each plant. There was a provision providing further that if a four inch meter is installed at the Wood street plant at the expense of the parties of the second part, it being understood that the party of the second part shall install such meter, then the charge for water used at such Wood street plant shall be for the quantity actually used at the rate of $25. per million gallons for the first two and a half million gallons per month. $20. per million gallons for the second two and a half million gallons per month, and $15. per million gallons for all over 5,000,000 gallons per month. The four inch meter, I believe, has been installed at the Wood street plant, and we are paying for what we use.

Q. For what length of time is this contract?

Mr. Gourley—That is simply for one plant?

The Witness—No, for all the plants of the National.

Mr. Lewis—We offer the contract in evidence.

(Mr. Lewis—The contract has already been offered and it is in evidence in this case.)

Q. Did you say how long that contract was for? A. For one year, with six months' notice.

Q. Is there any provision in that contract with the National that the Passaic Water Company may under certain circumstances refuse to furnish you with any more water? A. I believe there is something of that kind. I would like to refresh my memory from the contract if I may. (Examining the contract.) Yes. May I read this?

Q. Yes? A. It is further understood and agreed that if the said parties hereto, or either of them, shall be prevented by legal proceedings from using such water for dyeing purposes or from discharging the same after such use, during the time of such prevention, the parties hereto respectively shall not be required to deliver or to pay for said water, and this contract during such time shall not be enforced against either of the parties hereto. There is also a provision in here for the case of accident, repair, etc.

Q. Is there a provision under which they cease to supply? A. There may be.

Q. Perhaps I can just as well read it, as I know where it is. It is further understood and agreed between the parties hereto that the party of the first part does not guarantee to deliver under this contract any specific quantity of this water, nor

does it guarantee the quality of the pressure of this water, but will deliver to their combined customers only such water as may be available to it under its agreement with the Society for the Establishing of Useful Manufactures, within the capacity of its pipe, already in service; a copy of the clause referred to in said agreement between the party of the first part and the said Society is thereto attached to this agreement.

Mr. Gourley—That is a contract with the Passaic Water Company, is it not?

Mr. Lewis—Yes. It is understood and agreed between the parties hereto that this agreement is for the period of one year from September thirteenth 1918, and thereafter until the same shall be terminated on six months' notice given in writing by either party to the other.

Mr. McCran—What you have read into the record is that intended to be proof against the municipality as the City of Newark also, any agreement that you make with a Water Company? Is that to affect the City of Newark?

Mr. Lewis—Oh, yes.

Mr. McCran—The agreement between your client and the Passaic Water Company?

Mr. Lewis—Yes, sir.

Mr. McCran—We wish to note an objection to that.

Mr. Gourley—What have we to do with the Passaic Water Company's contract? The Passaic Water Company is not a party here.

Mr. DeYoe—I suppose the contract itself is not the effective part, but it is, in the first place, what they have to pay for water, and the conditions under which they get the water.

Mr. Gourley—A clause has been read into the record, when the practice has been to offer the agreement. Counsel does not need to read specifically into the case some clause of the agreement.

Mr. Lewis—Counsel tried so many cases that he knows he reads his exhibits when he wants to before the Jury.

Mr. Gourley—That is a course employed by counsel which is not commendatory.

Mr. McCran—We just thought we would note the fact that we noticed what he was doing.

Q. What would be the effect upon the property of the National in these four plants if they could get no water? A. Oh, they could not carry on their business, that is certain.

Q. Would they have to abandon the plants for dyeing business? A. Yes, sir.

Q. What would be the value of the plants without the water supply? A. I would not consider them of great value by any means.

Q. What would the value consist of? A. We would have the buildings and the land left, and the foundation, which could not be used.

Q. And the machinery? A. Well, the machinery would have to be moved out, at quite a cost.

Q. And the tubs? A. The tubs, some of them in moving, would possibly be wrecked.

Q. What would be their value under those circumstances compared with the present value?

What percentage? A. It would be very hard for me to say what the value of the machinery and the buildings would be if the plant was abandoned as a dye house.

Q. Subsequent to the installation of the Dyers' Pipe did you make any investigation of the condition of the Rockaway River at some time? A. Yes, I did.

Q. Did you go up to the river at Boonton? A. Yes, sir.

Q. Did you see the water above the reservoir? A. I did.

Q. And the water below it? A. There was no water below it at this time.

Q. Can you recall when you were there? A. It was the time of the trial.

Q. That would be in January 1915? A. It was cold weather, probably it would be about that time. I should imagine so. The trial of the trial anyway.

Q. Did you have some photographs taken under your supervision of that river at that time? A. I did.

Mr. Lewis—Those same photographs were taken into this case before and they are already in evidence here.

Q. I wish you would look at these photographs and tell us if these are the photographs? A. These are the photographs. We missed some chickens that were feeding in the bed of the river at that time.

Mr. Griggs—How many of them are there?

The Witness—There are duplicates, some of them.

Mr. Gourley—Mr. Auger took these, did he?

The Witness—No. They were taken by my chauffeur.

Q. You were with him? A. No, I was not with him when he took the photographs. Not those. I was with him when he took some other photographs.

Mr. Lewis—Do you think you do not want them in?

Mr. Gourley—If he says they represent the condition of the stream at that time, I don't suppose we care.

Mr. DeYoe—If he knows the condition he may state.

Q. Did you see the stream at or about the time the photographs were taken? A. The day before. I sent him up the next day. He had a small camera and took small photographs, and I said, "Go back and take some big photographs." And he went up the next day.

Q. And are these pictures of the stream as you saw it the day before? A. Yes. I can describe it. It is very low. This is below. This is above. This is the water running into the reservoir, before going into the Boonton reservoir. So is this. This is below. This is the reservoir itself. This is the river where we saw some chickens eating off the bed of the river somewhere, I don't quite get the spot.

Mr. Griggs—Are you sure they were not ducks?

The Witnes—Oh, they were chickens. I am a farmer. I know the difference between chickens and ducks.

Mr. Gourley—The chickens did not remain, or did they remain until the chauffeur went back?

Q. Speaking of chickens, how about the fish in the river? Were there any fish in the river in 1887, opposite your place? A. In 1887?

Q. Yes? A. Oh, yes, we were troubled with eels and catfish coming up into the pump.

Mr. Lewis—We offer the photographs in evidence.

Mr. Gourley—I cannot see the relevancy of them to this case. If my friend thinks they are helpful we have no formal objection to make.

Mr. DeYoe—I presume under the testimony they show the water up there and the conditions of the river.

The Witness—Yes, sir.

Mr. Griggs—The witness says they correctly describe the condition of the river as he saw it.

The said photographs (seven in all) are admitted and marked as follows:

National Exhibit 14a representing the river above the Boonton reservoir.

National Exhibit 14b representing the river a little below Exhibit 14a.

National Exhibit 14c representing the reservoir and spillway in the distance in the back.

National Exhibit 14d, representing the spillway and the water going over it at that time.

National Exhibit No. 14e, being a second picture of the spillway taken from a different angle.

National Exhibit 14f, representing the river, the witness should say something like a mile or two below the spillway, the witness says, "I am probably wrong on that distance."

National Exhibit No. 14g, being the same as 14f.

Q. Why did you select the month of September 1887 to lay your pipe? A. Well, that is the season when the river is considered low.

Cross Examination by Mr. Gourley.

Q. The Auger & Simon plant of which you have spoken is the plant on East Fifth street? A. On East Fifth street, yes sir.

Q. What is the extent of ground covered by that plant? A. We have in all something like sixty city lots, I believe.

Q. How many feet are you on the river? A. On the Paterson side about five or six hundred; more than that, yes, we are six or seven hundred feet.

Q. Have you added to this property at that point since 1887? A. Oh, yes.

Q. What size was it in 1887? A. In 1887 we started in in a modest way and we had sixteen lots.

Q. When was your last purchase there? A. Somewhere in 1890, it seems to me, I could not tell you exactly.

Q. That gave you this frontage on the river of which you speak? A. No, the lots were a few lots on East Fifth street, running back.

Q. Your last purchase was in what year? A. I cannot quite recollect.

Q. As near as you can judge? A. I should imagine 1890. Something towards 1900.

Q. And between 1887 and 1900, thirteen years, —did you say 1890 or 1900? A. In 1890 we bought the great bulk of our property, between 1887 and 1894, before that, 1892.

Q. Where was the property which you purchased in 1894? A. I believe that property purchased in 1894, that was also across the street on the east side of East Fifth street.

Q. So in 1887 you purchased all your front on the Passaic River? A. Oh, no, not in 1887, between 1887 and 1894.

Q. In those seven years how much additional frontage did you buy? A. We had a big frontage in the beginning and an option on a portion of it; we bought sixteen lots and an option on another, practically an acre, that was above. Well, I guess we had about close to 400 feet.

Q. That is additional? A. No. We had about 400 feet when we bought, or had under option, in 1887 or 1888.

Q. How many hundred feet did you add to

your purchase on the river after 1887? A. The difference between about four hundred feet and about six or seven hundred feet, about three hundred feet.

Q. I understand you to say that at that time the water was reasonably clean? A. Yes, sir.

Q. Were not these dye houses with which you later consolidated, then at work above you? A. The largest one was, that is the Valley works was in operation.

Q. Was Wood street above you? A. Wood street was also above us, they were in operation.

Q. Was Gehring above you? A. That is the Valley. Yes, the Valley Works as we call it.

Q. Was the East Main street above you? A. The East Main street? No, I don't think it was in 1887, no.

Q. When was it? A. I am not sure of that, about four or five years after that probably.

Q. The mill races were then being discharged into the river as now? A. Yes, sir.

Q. With the same general character of waste? A. Yes, sir.

Q. The Gas Company was discharging its effluent into the river as a sewer? A. Yes, I think so.

Q. Above you? A. Yes, sir.

Q. And the floating gas appeared on the surface of the river from time to time? A. From time to time, but it was a little then, yes.

Q. The sewers of the City of Paterson, some of them had their openings into the river and discharged into the river above you? A. Yes, sir.

Q. That all went on during this time? A. Yes, sir.

Q. Now, of course, I should judge that water contaminated in that way would not be quite useful for silk dyeing? A. Oh, yes, we used it for washing.

Q. Eh? A. We used it for silk dyeing.

Q. How could you possibly get results from such a condition as that? A. We got them.

Q. How could you do it? A. There was not any trouble about it, all the dyers along the river did.

Q. You mean this water, with this effluent of that kind discharging into it, the sewage openings into the river, the dye shops discharging into the river, the gas company discharging into the river and all the wastage of the great manufacturing plants above you then discharging into the river, of which you have spoken, you say that that water was in condition to get results? A. Positively.

Q. Notwithstanding all that? A. Notwithstanding all that we used that water.

Q. You used it? A. Yes, sir.

Q. But, wasn't that one of the reasons why you wanted another supply? A. The main reason was that we did not get the water, the water did not come down the river.

Q. Was that one of the reasons? A. The main reason was we did not get the water.

Q. I did not ask you for the main or the principal or supporting reason, or anything of that kind; was that one of the reasons? A. The water was not fit to use because there was not enough of it.

Q. Was that one of the reasons? A. There was not enough.

Q. Was that one of the reasons? A. We did not have the water.

Q. Was that one of the reasons? A. One of the reasons was we did not have the water.

Q. Was it one of the reasons that the water that you had then was polluted? A. (No answer.)

Q. What do you say? A. What do I say? What is it?

Q. Was that one of the reasons—

Mr. Lewis—Let him answer you.

The Witness—If you will let me answer the question in my own way. You are trying to make me say something—

Q. No, I am not trying to make you say something. I am trying to get you to say what you have to say about it. Was that one of the reasons? A. One of the reasons was we did not have enough water, but the real reason was the water was not fit because we did not get enough.

Mr. DeYoe—He says one of the reasons was the water was not fit because they did not get enough of it.

Mr. Gourley—That is not the question.

Mr. DeYoe—Let the stenographer read the question.

Q. Was it one of the reasons why you took the water elsewhere than the Passaic River because of the facts I have mentioned, that it was polluted? A. The water was unfit to use, yes, because there

was not enough to carry away the sewage. We were pumping up water from the river—

Q. I ask for an answer. I am not speaking about the quantity of water now, whether high or low or middle or anything else; I am just asking whether it was not one of the reasons that you did not use the water because the water was polluted? A. Because it was not fit to use at that time, yes.

Q. Because it was polluted? A. Because it was not fit to use, I call it whatever you call it.

Q. Well, I call it polluted? A. I don't know that; I suppose it would be called polluted.

Q. Is there any doubt about that in anybody's mind? A. No, there is no doubt about it. no.

Q. It is so to-day, is it not? A. Yes, sir.

Q. You have not gone back to take water from the river. I understand. when the river was full, let me call it? A. I did not catch that question.

Q. Have you gone back to take any water out of the river when the river was full? A. Full?

Q. Yes? High water? Call it anything you like. A. Well, we have to take the water from the Passaic River, now, from the pipe line in the Passaic River above the Falls; we have contracted to do that; why should we go back to the river when the supply is not certain; we can only get it at times; it is only when we have high water.

Q. That is the point I want to make; you can get it to-day if you wanted it? A. The water is high to-day, yes, there is water.

Q. Have you seen the water to-day? A. No. I have not. But I should judge from the rains that we have had that it is high.

Q. There is no reason to-day why you could not get water for your dyeing establishment? A. We could use that water if we could depend upon a certain supply, we could get it to-day, but it won't last long.

Q. You could get it all of this spring, you could have got it all of this Spring? A. Yes, this has been an exceptionally wet Spring.

Q. And during the Winter, also? A. I believe, yes, we could have got some through the Winter, it was a pretty wet Winter.

Q. So your difficulty is that because you have made a contract with the Passaic Water Company in which you say there is a minimum charge for water, you have to continue it, that is your only reason? A. Yes, sir.

Q. That is the main reason. If that minimum charge was not there you could pump from the river every day while the water was there, all that you needed for your establishments? A. That is so.

Q. Now, I understand, as I heard this agreement read, your minimum charge was two and a half gallons a month, am I right? A. Yes, sir.

Q. What is the total consumption per day? A. About, around in the combined plants, about 4,000,000.

Q. Per day? A. Yes, sir.

Q. But, by the Fifth street plant, what was it? A. Two and a half million, I think.

Q. A day? A. Yes, sir.

Q. Well, as your minimum price is two and a half million a month, why don't you pump over that for twenty-seven working days a month from the river? A. Because the supply is not dependable.

Q. It is expensive? A. It is not dependable.

Q. Well, while it is there? A. I know, but we cannot tell. We might have it there after a heavy rain, and have a good supply of water, but the river is roily, all full of sand and grit.

Q. It is objectionable in that respect? A. It is objectionable because it is not dependable.

Q. And it is therefore better for you to take it from the dyers' supply pipe? A. Yes, that is dependable, we can get it right along.

Q. Did you pump the water from the river? A. No. Not towards the last. We got it in by gravity to a well, and then pumped from the well.

Q. When did you stop pumping from the river. A. Just as soon as we got the Dyers' Pipe in.

Q. How did you get the water from the river or the cisterns and all that of which you have spoken, into your place? Did you pump it? A. We pumped it from the cisterns into the tanks and from there it passed in the works.

Q. Did you use the filter? A. Oh, yes.

Q. Did you use the filter as soon as you began to use the Passaic River water? A. We used the filter practically in the beginning, yes, sir.

Q. I assume, I don't know, you can correct me in that, but I assume that the more polluted the stream was the greater the cost of filtering? A. That is true.

Q. That is true, is it not? A. Yes, sir.

Q. How many pumps had you? A. We had four river water pumps.

Q. Are they still there? A. Yes, sir, two of them are there.

Q. They are capable of use? A. They are are capable of use, yes, sir.

Q. At the present time? A. Yes; but they are not sufficient to take care of the plant. We would have to put in additional pumping.

Q. What is the capacity? A. I don't know what the capacity is exactly.

Q. What is the number of gallons used at the Wood street plant, do you remember? A. At the present time we use very little at the Wood street plant.

Q. At the former Gaede plant what is the quantity used there, do you know? A. I think they use about five or six hundred thousand gallons a day.

Q. And the Gehring plant, the Valley plant? A. About a million and a half gallons a day.

Q. Have those places any pumps? Do they do any pumping now? A. No, sir.

Q. Not in any of them? A. No, sir.

Q. You have spoken about a dam across the river, I was not quite clear whether the dam existed when you bought the place or was built afterwards? A. It is a very old dam I guess that was built probably a hundred years ago, from what I understand, it is built of cobblestones, it is a loose-stone dam.

Q. What street is that opposite? A. That is about opposite Branch, between Branch and Fifth avenue.

Q. Did you find that the pollution of which we have spoken was greater on the side of the stream than in the centre of it? A. The water was dirtier on our side of the river than on the other side. Yes, sir.

Q. Was better? A. Was dirtier.

Q. What was the character of that? A. Well, it was thick with mud and slime, slime and mud seemed to go on that side.

Mr. Lewis—What time are you talking about?

The Witness—When the water began to get very bad in the river, in 1889, 1890 and so on.

Q. Your East Fifth street plant discharges into the stream as do the other plants? A. All of our plants discharge into the street sewers.

Q. Do you mean that you do not discharge into the river at all? A. Not directly into the river, no, sir, none of us.

Q. As your East Fifth street plant is on the river, how far above the river do you discharge into that sewer? A. How far above the point where the water goes in?

Q. Yes, the discharge west of the river? A. I don't quite catch that question.

Mr. Griggs—He wants to know how far the point of your discharge is from the point where the sewer enters into the river.

The Witness—About three or four hundred feet.

Q. In other words, you discharge into the sewer and the sewer runs down the street and opens into the Passaic River? A. Yes, sir.

Q. That is so as to the East Fifth street plant plant? A. That is so as to the East Fifth street plant.

Q. What about the Gehring plant? A. They go into the sewer; I think it is the sewer that runs under the West street Bridge, and goes somewhere along there.

Q. The sewer of which you have spoken, in which the East Fifth street plant discharges, is your sewer? A. Not our sewer, but we own the property on both sides and we had to build it ourselves; we had to pay for it.

Q. So you built this and carried it down into the river? A. Yes, sir.

Q. Instead of discharging it into the river yourselves? A. Yes, sir.

Q. In other words, it is an extension of your pipe? A. It is a sewer made by you? Out in the street, in the public street.

Q. Nobody else can get into it? A. No. We own the property on both sides.

Q. It is your own private sewer? A. Practically, yes, sir.

Q. What does the Gaede plant do with its waste? A. They run into the sewer; they connect with the sewer that runs under the Straight Street Bridge.

Q. How far are they from that point? A. Oh, I should judge their sewer from the river would be probably five or six hundred feet, may be a little more.

Q. And the Gehring, how far? A. About the same distance, probably.

Q. Their sewer opens where into the river? A. Under the West street Bridge.

Q. That discharge of which you spoke at the mouth of this sewer, these sewers of yours, there

is a great quantity of colored matter in that? A. There are quantities of colored matter, yes, sir.

Q. In other words, the usual thing that comes from your product? A. (No answer.)

Q. May I ask you the quantity of silk dyed by you during the last year at the East Fifth street plant? A. It was close to two and a half million pounds.

Q. At the East Fifth street works? A. I think so, about that, two and a half to three million pounds.

Q. At these other places, can you give me the total product? A. Well, the total product of the plants on the Passaic River is something between four and five million pounds a year; we have gone over five million pounds.

Q. You have other plants, not on the river? A. Well, our plants are out of town, don't you know, and over in Bergen County.

Q. What plant have you got in Bergen County? A. That is a piece dye house.

Q. Where do you get your water from there? A. We get that from wells and from the intake there.

Q. You mean from artesian wells? A. Yes, sir.

Q. You don't purify any water there? A. We don't have to purify artesian well water.

Q. I mean any other water? A. Yes, we have a filter there for the water that we get from the Slank, that we use from the Slank water.

Q. Do you use any Slank water? A. Very little.

Q. What quantity of Slank water do you use?

A. I cannot tell you that, I know we use some occasionally.

Q. It is very slight, though? A. Very slight.

Q. It is very expensive to purify? A. I would not say that.

Q. Is it a profitable thing to do? A. No, not when you can get other water that you don't have to purify.

Q. And besides that is very polluted, too, below there? A. Not this particular water; it is not very polluted. Not this particular Slank water. It is not very polluted.

Q. It is very near the Dundee Dam and the Lake, is it not, at Dundee? A. Yes, there is springs in this Slank too.

Q. There is mud, too, and I don't want to particularize, but in a general way it is not very good water; at any rate, you cannot give us the quantity of it you use? A. No, sir.

Q. Can you give us the output of your plant there in pounds, how many skeins do you do? A. I cannot give it in pounds; that is an entirely different business.

Q. Piece dyeing? A. Yes, sir.

Q. What quantity of piece dyeing do you do there? A. About forty to fifty million pounds a year.

Q. Now, in order that we will have some understandable standard, what quantity of silk will that be equivalent to, the same capacity? A. That is a pretty hard one.

Q. Yes, that is the reason I ask it? A. I should judge that would be about close to four million pounds, four to five million pounds or six million

pounds probably; it all depends; that is a hard question to answer; it depends upon the weight of the goods.

Q. So that that plant equals all your other plants in Paterson all together? A. No, sir.

Q. Well, about, is it not, approximately? I don't want to confine you? A. I cannot answer the question.

Q. Now? About, in capacity? A. The process is so entirely different and the work so different that I cannot make the comparison for you between the two.

Q. You know the work done and you know the dye shops? A. We have less workmen, if that is what you want to know.

Q. It is approximately equal, four or five million pounds; you said that yourself? A. The four or five million pounds is an entirely different condition; it is entirely different work; you cannot make the comparison; you might as well make a comparison between an iron mill and a silk mill.

Q. Any comparison? A. No, you cannot make any comparison.

Q. Then, the same space, the same number of men, the same amount of money invested in a plant for silk skein dyeing in such a shop, would it produce about four to five million pounds? What do you say to that? A. No, it would not produce it. The same amount of money would not produce the same amount; the same amount of money invested in skein dyeing would not produce the same amount as the same money invested in piece dyeing.

Q. Can you dye four to five million skeins from

about that plant, that size? A. We would do a great deal more there on account of the area, if we had the equivalent there in space and the proper equipment, we could do a great deal more, but that equipment is entirely different.

Q. The chemicals that you use in the piece dyeing do they vary from those used in the skein dyeing? A. Yes, sir, very much.

Q. It being the skein dyeing with which we are chiefly concerned, have you anything to add in order to make it sure, to the statement made by Dr. Hunziker yesterday as to the chemicals? A. No, I have not.

Q. Did you hear that? A. I heard that, yes.

Q. Then the quantity of chemicals purchased or chemicals mentioned in relation to the Weidmann plant is the same practically as your plant, is it? A. Practically.

Q. And are all the Paterson plants, skein or piece, dyeing plants? A. They are all skein plants with the exception of the East Main street and that is ribbon dyeing, which is practically done the same way as the skein dyeing.

Q. But not any of them have any piece dyeing? None of your Paterson plants do any piece dyeing? A. Near the river? No, sir.

Q. When did you begin dyeing there, at your East Fifth street plant, what was the color of work done as to colors? What percentage, in other words, of the work in 1887 was black and what colors? A. That would be hardly fair to judge.

Q. What is that? A. You can hardly make a fair comparison taking a plant to give percentages, because we had a plant at the People's Park

which we were moving and we moved it down to Riverside and it took us the greater part of the balance of the year to move that plant.

Q. I mean, 1889, I don't mean particularly, 1888, in the early days of your East Fifth street plant? A. In the early days of the East Fifth street plant, I should say, of course, that depended upon the season, but on the average, we had about as much blacks as we had colors.

Q. And all skeins? A. All skeins, everything was skeins.

Q. About half blacks and half colors? A. Fifty-fifty, yes, sir.

Q. How long did that proportion continue? A. Well, now, that is a hard question to answer. I could not answer that.

Q. Approximately? I mean about how long? On black and on colors? A. That is all according to the demand of the trade. Sometimes we might be operating the plant with thirty per cent., blacks and seventy per cent colors, or some times seventy per cent. blacks and thirty per cent, colors, or the reverse.

Q. In those early days the quantity of water consumed was approximately what? A. Well, in the very beginning, of course, it was under a million and it gradually went up to, say, a million and a half or two million and two and a half million and so on up to the present consumption.

Q. How much of that was river water? A. In the beginning it was pretty nearly all river water, with the exception of what we used for light shades.

Q. That came from where? A. From the ar-

tesian well; first, we had a little surface well that supplied us with spring water, clear spring water enough to dye the whites and creams, until we wanted more and after that we dug the six inch well, artesian well, and we used that for a long while before we began to put in our artesian well system.

Q. As I gather, your plant at East Paterson is for light colored goods or black? A. You mean Dundee Lake by East Paterson?

Q. Yes? A. That varies. We have a class of goods there of all colors, all shades, from white to black.

Q. What proportion of blacks have you done at Dundee Lake this last year? A. I could not answer that question.

Q. I mean relatively? A. Very small.

Q. What do you mean? Ten per cent., or twenty-five per cent.? A. I would not even want to give you an estimate on the percentage.

Q. Was it as high as fifty per cent.? A. Oh, no.

Q. It was not? A. No, approximately, I should say it might have been about five to ten per cent.

Q. You dye, I suppose, the blacks with the artesian water? A. Oh, that is a different class of work, you cannot make the comparison.

Q. No, but I am asking this question; you can dye blacks with artesian water? A. In piece goods?

Q. In piece goods? A. Oh, yes, without any difficulty.

Q. I understand you to say you filtered the river water originally, did you? A. Yes, sir, we did.

Q. You filtered it in the very beginning? A. Practically, yes.

Q. Have you the date of your first artesian well? A. I believe it was before 1890. I am not sure.

Q. You are not sure of the date? A. No, sir.

Re-direct Examination by Mr. Lewis.

Q. When did you last see any pumps at East Fifth Street? A. Well, to tell you the truth, I guess about three years ago.

Q. You don't know whether they are there to-day or not, do you? A. I have not seen them there, to tell you the truth.

Q. The sewer that connects East Fifth street with the river is in a public street, is it not? A. It is in a public street, on East Fifth street.

Q. Laid under the direction of the City? A. It was laid by the City people, yes, it was laid under the direction of the City.

Re-cross Examination by Mr. Gourley.

Q. Do you use the dyers' supply pipe for fire purposes? A. Now, I am not so sure about that. If we do I am not sure. We did for a while.

Q. You have a greater head, of course, a greater pressure from the dyers' supply pipe? A. A greater pressure for what?

Q. That you had before for fire purposes, if you wanted to use it? A. The fire companies compel us to have two sources of supply.

Q. In other words, you get cheaper insurance? A. The insurance, I mean.

Q. You get cheaper insurance by using the dyers' supply pipe? A. Under the sprinkler system you cannot get insurance unless you have two sources of supply.

Q. That gives you cheaper insurance, then, by having the dyers' supply pipe as second supply? A. Oh, yes, it gives us cheaper insurance because we have got two sources of supply, whether it is the Dyers' Pipe or the main pipe, the main city water pipe; I don't really know, to tell you the truth, whether we get water to-day from the city pipe or from the Dyers' Pipe.

Q. You know your insurance is cheaper by consequense, don't you?

Mr. Lewis—There is some little item there which was allowed before in the damage suits, and we make no question about it; that $200. or something like that.

Cross Examination by Mr. McCran.

Q. What water did you use for the dyeing of light shades, such as whites and creams? A. Well water, artesian well water and surface water, in the beginning we only had a small surface well.

Q. Did you use the river water for that purpose? A. Not for whites and creams.

Q. In other words, you never used the river water for the dyeing of lights and creams? A. The whites and creams no, we never did that, no.

Q. So that the falling off of the flow in the river had nothing to do with the dyeing of the whites and creams? A. No, sir.

By Mr. DeYoe:

Q. Did I understand you correctly, in answer to one of Mr. Gourley's questions, that the water began to be contaminated in 1889 and 1890, or was it in 1898 to 1900, which? A. In 1896, 1898, more than likely when it got very low, around 1894, 1896, it got very low.

Q. Mr. Gourley asked you the question about when the water first began to be contaminated, and I understood you to answer, I may be wrong, and I want to get it correct, 1889 to 1890; is that correct?

Mr. Lewis—I understood the witness the water was beginning to get low, not contaminated.

The Witness—I don't remember the word contaminated at all in connection with that. The water was getting low after 1890, 1889 to 1890, it began to get low.

Mr. DeYoe—When did the Wood street place cease to be used as a dyeing plant?

The Witness—About eight years ago.

By Mr. Gourley:

Q. You discharge into the river just above the Weidmann's? A. Yes, sir.

Mr. Newman—Would it tend to lessen your damages any in the years to come if you should take what water you could from the river when it is available and the bal-

ance from the Dyers' Pipe or whatever it is? Or would not that be feasible?

The Witness—It is not feasible. In the first place we would have to put pumps into some of the plants, and I am not so sure that our pumps in East Fifth street are now in operation or ready to be operated, can be operated.

Q. Would it be cheaper to do that, or is it cheaper to continue to take it from the Dyers' Pipe? A. I think it is cheaper to continue taking it from the Dyers' Pipe under the circumstances.

Q. When did you build the Dundee Lake plant? A. Well, that plant, we took it over in 1909 or 1910. It was originally built by an association of silk manufacturers. We took it over and enlarged it to its present capacity.

Mr. McCran—Mr. DeYoe, do I understand that the witness answered the question you put to him as to when the river began to get low?

Mr. DeYoe—The contamination is what I asked.

Mr. McCran—When did it begin to get low?

The Witness—Somewhere around,—it began to get low in 1889, 1890, 1891, 1892, and it kept getting lower right along about that time. We had plenty of water up to about 1891, 1892.

The Court then ordered a recess until two o'clock this day.

After Recess:

ROBERT ALLECTON, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Harding.

Q. What is your profession? A. Mechanical engineer.

Q. How long have you practiced that profession? A. About nineteen or twenty years.

Q. What scientific school did you attend, if any? A. The Sheffield Scientific School of Yale.

Q. Since that time have you had experience in steam engine, pumps and boilers? A. Yes, sir.

Q. With especial reference to the use of the heat that might be utilized from exhaust steam in heating water in plants that are operated for industrial purposes? A. Yes, sir.

Q. How wide an experience have you had in that respect? A. Well, about as wide as I can, I am engaged in working all the time along that line.

Q. Have you been engaged especially during that time by any one large concern? A. Yes, by the Henry R. Worthington Machine Company.

Q. The Worthington Pump Company? A. Yes, sir.

Q. Can you state from your experience whether or not it is the practice, usually, to utilize the heat from exhaust steam in heating water in plants that are operated for industrial purposes? A. Yes, sir, it would be rather foolish not to.

Q. What institutions have you seen that done in, if you can name some? A. Any kind of mill

where they can use any heat they should do that, because they get their power practically free.

Q. Will you state, with whatever degree of certainty you can, the amount of heat that can be obtained from the exhaust steam of a pump, if you know the amount of pressure of the steam which enters the pump and also the height to which the pump raises the water? A. Yes, sir, I can give it fairly close.

Q. Suppose a pump were supplied with 3030 pounds of steam per hour, at ninety pounds pressure, and that it pumped water at the rate of 4,200,000 gallons per twenty-four hours, against a total head of fifty-five feet, what per cent of the original heat in the steam would you find in this exhaust? A. There would be about ninety-six per cent.

Q. Now, suppose the pump used more than 3030 pounds of steam per hour to do just that same work, would the amount of available heat in the exhaust be more or less than the ninety-six per cent. of the original heat, which— A. It would be greater, it would be more than ninety-six per cent.

Q. The difference then would be the heat that would be taken by the pump and should be charged to the pump? A. Yes, that, plus a few other constant losses.

Q. Is it necessary to make an actual test in order to determine the amount of heat that can be reclaimed from the exhaust of a pump, or can it be calculated with a reasonable degree of certainty? A. I should say it can be calculated as close as anybody would want it.

Cross Examination by Mr. Gourley.

Q. Have you made these tests? A. Not these particular tests referred to.

Q. You are speaking in general of the rule recognized? A. These particular figures I have already calculated out.

Q. You have not done it at the works? A. Not there, no, but these particular figures just presented to me I have checked over.

Q. In other words, you are answering the question of counsel which was submitted to you in this case for calculation, is that it? A. Well, I calculated it out, yes, sir.

Q. Does that take into consideration at all the distance the steam must travel before it does its work? A. Well, it takes in the actual figures presented.

Q. Will you just tell us through what process—the jury will want to know, some of them perhaps know it already—will you tell us the process through which it goes after leaving the boiler? A. The steam after it leaves the boiler comes through the pump, and, when it comes through the pump, a certain amount of that energy is developed into useful work; what is not developed into useful work is left in steam, less the amount radiated out to the atmosphere.

Q. I suppose all the steam does not enter the pump that leaves the boiler? A. Practically all of it should.

Q. Is there any allowance presented in a given case, or does it depend upon a variety of factors? A. No, it would depend on the operation of the plant.

Q. It would depend upon the individual operation of the man or depend upon the individual operator also on the individual plant? In other words, there are variable factors? A. Yes, but they would be very small compared with the total.

Q. Would not the design of the plant have a material significance? A. Well, it might have in some cases, not as a rule.

Q. Isn't there such a thing as proper construction and what you would regard, as a scientific man, improper construction of such a thing? A. There are such things, yes, sir.

Q. Whether or not this is designed according to the latest view of it, you cannot say? A. No, I cannot say as to that.

Q. When you have spoken of ninety-six per cent., is that a book estimate or is it a practical one? A. That is the result of my figures.

Q. The result of your figures in this case? A. Yes, sir.

Q. On this same—? A. On those figures, as I was asked: that is the result of the figures.

Q. That is theoretical, not practical? A. Well, if you have four apples and you take two away from them, you have got two left, haven't you?

Q. I think then I would understand it? A. Well, this is the same thing.

The Court—Is it based on experience or simply theoretical?

The Witness—It is based on the same kind of calculation, you start with so many heat units and so many heat units are taken away and there must be so many left.

Q. You made no practical test in this problem? A. Not in this particular case. I know all the factors and the results have to come that way. You cannot throw heat away. Energy is indestructible.

Q. Ninety-six per cent., would apply then to all plants, and all pumps? A. Not necessarily.

Q. Would it or wouldn't it? A. For instance, if you have a more economical plant than this, the figures stated would be greater in the amount of heat in the steam.

Q. It is a variable factor then? A. Yes, sir.

Q. Within what compass does it vary? A. Suppose you had a plant twice as economical as that—

Mr. Griggs—Uneconomical?

The Witness—Uneconomical, yes, then you would have about ninety-seven and a half per cent. of the heat still left in the steam.

A Juror—You are speaking of compressors, are you?

The Witness—No, but I am talking about steam.

The Juror—But you are talking about pumps.

The Witness—I am talking about pumps.

Q. Have you ever known, from your experience, any plant where such a result was obtained from exhaust steam? A. I have had quite a number of plants in experience.

Q. Do you remember what my question was? Yes, or no? A. Please repeat the question?

Q. Have you ever known, from your experience, any plant where such a result was obtained

from the exhaust steam? A. I have not made exactly the same calculation, but I have made calculations just like it.

Q. Is that the only answer you can give? A. Yes, sir.

Q. That is a method of calculation rather than a demonstrated exhibition, that is what I want to get at? A. All that I can answer on that is that energy is indestructible. You cannot get away from it.

Q. No. I want yes or no? A. You will have to give me the question over again.

Q. It is not a practical illustration demonstrated? A. Do you remember the problem of the apples? Isn't that practical? This is in the same category.

Q. What are the factors, other than those of which you have spoken, that make the result inconstant? A. Make the result vary?

Q. Yes? A. The economy of the machines, those would vary the result, but will not vary it for any very large percentage.

Q. Aren't there other losses than those you have mentioned? A. The heat taken out in actual work, you can vary that per cent. That is, when I said ninety-six per cent. was left in the steam, that left four per cent. to go into useful work and in the loss. You can vary that four per cent. perhaps in a material per cent. but if you take the other side and take the ninety-six per cent. you do not vary it very materially.

Q. In your method have you considered whether the pipe was protected from the air or from the outside or not? Your pipe running from the

boiler? A. No, sir, I have not considered it running from the boiler at all.

Q. You have not considered whether it was covered or uncovered?

The Court—Won't it make any difference?

The Witness—The problem presented to me was—

The Court—Would it make any difference whether your pipe is covered or not?

The Witness—They would lose heat out of that steam in that pipe line, yes; sir.

Q. That would be another variable factor? A. They would lose heat out of that pipe line in any case if they did that. If they had to have that pipe line, which I understand they do, to heat their water.

Q. If it is uncovered they would lose steam? A. Yes, sir.

Q. The pipe from the boiler to the pump? A. Yes, sir. They would lose more heat.

Q. That would vary the percentage again? A. It would start from the boiler.

Q. That fact was not put down in the book? A. But if you are going to heat water, no matter where the water comes from, you are still going to lose that heat, won't you? I don't see where the pump comes in.

Q. Then you are basing your figures on a hundred per cent. efficiency of plant? A. I understand you have got to heat your water anyway.

Q. Are you not?

The Court—What is the question?

Q. Then you are basing your figures on a hundred per cent. efficiency of plant? A. No, sir.

Q. What percentage? A. I am basing my figures on one hundred per cent. of energy, which you cannot destroy.

Q. You can destroy heat very easily? A. You cannot destroy energy. I do not say heat. I say energy. You cannot destroy energy.

Q. Is that the energy that you are speaking about out of the pump alone, or only? A. There is certain energy that enters the pump, and that energy, a certain part of that energy goes into useful work, part of that energy goes into heating up the room. Of course the energy that goes into heating up the room, while that is not destroyed, it is lost as far as useful work is concerned.

Q. Then I take it from you there would be no losses at all between the boiler and the pump? A. You will lose some heat out of your steam.

Q. As you would anywhere lose where the pipes are exposed to the air? A. Yes, if you have got exposed pipes you will lose heat.

Q. If the plant was not very efficient, if there are any loose drips or anything of that kind that would still lower the percentage? A. Yes, you would lose there, but, unless it is a very poor plant the percentage would be very small.

Q. Then, of course, I suppose the pump itself would give out radiation? A. That has been covered in my figures.

Q. But by theory, wasn't it, by simple theory?

A. By regular figures, used, in daily use. But the per cent. correction in that was a very small part.

Q. Your figures are estimated upon the basis that all the heat goes into use and there is no exhaust at all, just used for work only in connection with work for which the plant is designed? A. No, sir, I do not quite follow you on that. The pump does certain work pumping the water. The exhaust steam is used for heating purposes also.

Q. Do you know any plant in your own experience, where you get that efficiency as you have described? A. All mills of that type use their exhaust steam, either weaving mills, rubber mills, paper mills, they are all using their exhaust steam.

Q. There is no dispute about that, but you come here and tell us the very percentage for this given case? A. I have given you that percentage.

Q. And I am desiring to know if you have experienced that, I am testing your knowledge on your statement, and I want you to help me—

The Court—Read the last question?

Q. Do you know any plant in your experience, where you get that efficiency as you have described it? A. I do not figure in exactly the same way on a pumping engine test where you must have the same unit each time—

The Court—Counsel is trying to find out whether you are simply giving your theoretical figures, which you have learned out of books, or whether your calculations are based upon experience of results obtained

in other plants? Can't you answer that?

The Witness—It is not a case of experience.

The Court—It is not based on experience then?

The Witness—Please let me explain: You have certain fixed figures, two times two is four, constant. If we work the thing over into energy or terms of heat units, that are there, two times two is four.

The Court—Are they from practical experience as well as from theoretical?

The Witness—Yes, sir, they are.

The Court—These things that you have been telling us about are they based upon things which people have done practically in factories as well as what men have written about in books?

The Witness—Yes, sir.

Q. So that the least post graduate, the least M. A. of Yale, C. E., whatever the title is, according to your theory knows as much as the most eminent mechanical engineer on this subject? A. Any engineer could calculate these same results.

Re-direct Examination by Mr. Harding.

Q. Do you mean to say that in the case of any pump, if you know that the pump will raise 4,200,000 gallons of water in twenty-four hours to a height of fifty-five feet and requires to do that thing 3030 pounds of steam per minute at a pressure of ninety pounds, then do you mean to say that the amount of heat that would be re-

tained in the exhaust would be ninety six per cent.? A. Absolutely, sir.

Q. So it applies, when you know those factors, it applies to any pump? A. Yes, sir.

Q. And the determination of the percentage of heat that is left in the exhaust steam, necessarily, as a mathematical certainty, follows from those known factors that you have supposed? A. Yes, sir.

Q. That is what you mean when you speak about taking two apples from four leaves two? A. Yes, sir, absolutely.

Q. You don't mean, or do you, that those well recognized physical facts and mechanical conditions are not true if you went to the trouble of testing it in fact? A. If you made a test of them they would have to absolutely come out to those figures.

Q. And the experience of whatever tests you have made corroborate that judgment you have just now expressed as to this percentage? A. Yes, sir, this ninety-six per cent. is the nearest even figure to the results.

By Mr. Lewis:

Q. I understand you to say, in addition, that if the pump was less economical than the one you have in mind, the saving would be still greater? A. Yes, sir.

Re-cross Examination by Mr. Gourley.

Q. Did you ever in your life get the result of which you speak now? A. Similar results, yes, sir.

Q. Where? A. Why, in different pumping engine tests, different condenser tests.

Q. What practical pumping tests have you made that produced the results of which you now speak? A. I have made tests in Ninety-eighth street, New York, Providence, Rhode Island, Baltimore; I can give you a whole lot of them.

Q. Yes, that is what I am asking, to give them to me? A. I made condenser tests in Washington, Boston, New York.

Q. I understand you made the heat tests on those? A. It is a question of equipping your heat unit.

Q. Did you make heat tests to determine the percentage in the exhaust? That is what I am concerned about. Did you or did you not? A. Yes, sir, I have done that.

Q. You made a heat test for the purpose of determining the percentage in the exhaust? A. I have taken the results to see that the heat was there.

Q. Did you make that test yourself? A. Do you mean to make a calorimeter test of the steam?

Q. Yes? A. Now, I have not made a calorimeter of the steam. I accepted certain fundamental figures in them.

JOHN P. EVANS, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. Fall River, Massachusetts.

Q. What is your business? A. Machinery dealer.

Q. Do you belong to any Company? A. Fyans, Swayze and Blackford, of Fall River.

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

Q. What do you do in that business? A. I have oversight and have charge of the greater part of the business.

Q. You say that the business is machinery business? A. Yes, sir.

Q. What do you do with machinery? A. We buy it and sell it and appraise machinery for plants and—

Q. Do you deal in machinery, in new machinery, or in used machinery? A. In used machinery.

Q. Have you bought and sold the equipments of any manufacturing plants? A. Yes, sir, a great many of them.

Q. Please tell some of them? A. Well, we bought—the Barnaby Manufacturing Company of Fall River, which was a very large plant, and sold it. We have taken an inventory of C. H. Green & Co. of River Point, which was a Finishing Plant, one of the largest we have got, a bleaching and finishing. We bought the Fishdale Plant at Tuxbury, Massachusetts. We buy a great many plants.

Q. How many would you say, without particularly mentioning others, in the course of your experience of thirty-five years? A. Well, it is my living. I do that right along and I should think hundreds of them, small and large.

Q. Have you made an inspection of the equipment of the National Silk Dyeing Company at its

Valley Works plant and its East Fifth street plant? A. Yes, sir.

Q. And the East Main street plant? A. Yes, sir.

Q. Assuming that those plants had to shut down, what would be the value of their equipment?

Mr. Gourley—Objected to on the grounds given heretofore, and that it is incompetent, immaterial and irrelevant.

10 The Court—What is the purpose of this?

Mr. Lewis—We have already shown that if we do not get water we will have to shut down our plants. If we do shut down we have shown that we cannot use this machinery; therefore we want to show what the value of that machinery will be under those circumstances.

The Court—Do you think that is an element of damage?

20 Mr. Lewis—Yes, sir, I do. I consider it an element of damage because they are bound to pay for what they take away from us, and the damage incident to that taking.

The Court—That is part of the business, not of the property.

Mr. Lewis—That is a part of the property.

30 The Court—Why do you say that? Do you mean to say that you can recover for the loss of business?

Mr. Lewis—Not the loss of business, no,

sir; the loss of the value of the equipment, that is, the power plant, the pipes, the tanks, all the paraphernalia, or equipment of these plants used for these businesses.

The Court—It does not strike me that that is permissible.

Mr. Lewis—I would like to ask if your Honor is in doubt, to take the testimony and reserve the question upon it until a later day, because this witness came from Fall River and it would be difficult to get him back.

Mr. Gourley—Oh, no, we don't care if he comes from Fall River or from Boston.

Mr. Griggs—You mean you object, you don't mean you are ruling it out, do you?

The Court—That is exactly the course, Gentlemen, that I had in mind to take. I will take the testimony, and, Gentlemen of the Jury, you will please reserve your application of this testimony if it is to be applied at all, to the ruling of the Court to be made hereafter upon it.

Mr. Griggs—I only want to say that we think we can show your Honor that the testimony is proper, that this is a proper element of consideration in the case, on the authorities.

The Court—I would like to hear your view about it.

Mr. Griggs—We will present them at some future time.

Mr. Gourley—Will your Honor allow us an exception to the taking of the testimony

now? It is always difficult for the jury to discharge this sort of testimony from their memory after it is once presented.

The Court—Not with an intelligent jury. I will allow the exception to the admission of the testimony at this time, and will deal with the question before the Jury considers it, whether it is admissible, and will give you an opportunity to move to strike it out.

(An exception is entered to the favor of all the Condemnors.)

Q. Please state it, plant by plant? A. This is the East Fifth street plant, which takes in tanks, tubes, filters, drugs, benches, tools, miscellaneous, brass tubes, power plants and textile machinery, $110,000.

The Court—That is what it would be worth?

The Witness—That is what it would be worth.

The Court—If the plant was shut down?

The Witness—If the plant was shut down $110,000.

Q. Give us the others? A. The Valley Works, the tanks, tubs, etc., the same as the others $46,000. The East Main street plant, textile machinery, etc., $10,000.

Q. Assuming that that equipment had to be moved elsewhere and set up in another place would it be worth as much as that?

Mr. McCran—That is objected to on the same grounds.

The Court—I will think with it in the same way, although I think that may be admissible.

(An exception is entered for each Condemnor.)

Mr. McCran—We may retain the privilege to move to strike it out.

The Court—Yes.

A. I should judge that, you would lose about thirty per cent. if you were to build your foundations and pay your freight and equip your machinery in another plant.

The Court—Less thirty per cent. of the original appraisal, or the figures you have given?

The Witness—The figures I have given.

The Court—In other words, if they shut down it would be worth a certain price and if they moved it away it would be worth thirty per cent. less?

The Witness—Yes, sir.

A Juror—Could not the machinery be used over again?

The Court—Why do you say thirty per cent.?

The Witness—Because the freight and the building of foundations and erecting it again.

A Juror—Don't you sell machinery again when you buy it?

The Court—This question was, if it was worth the sum mentioned in the plant, if it was shut down, how much less would it be worth if they took it to another place and erected it? Does that answer the question?

The Juror—If it was erected it would be more valuable again?

The Court—What do you say to that?

The Juror—The price mentioned, that is what you would give for the machinery?

The Witness—Yes, sir.

The Juror—The price you mention is the price you would pay for it?

The Witness—Yes, sir.

The Juror—Right where it is?

The Witness—Yes, sir.

The Court—The question the juror asked was this, if you have this machinery and plant now, if you dismantle the plant then it is worth a certain sum, and then you say you take it and move it somewhere else and it is worth thirty per cent. less, because of the cost of putting in new foundations and moving and freight etc., but when you get through then you have a running plant again, don't you?

The Witness—You would have a second hand plant. You would not have an up to date plant, your depreciation would be something tremendous.

The Court—By reason of the moving?

The Witness—By reason of tearing it from the foundation and moving.

The Juror—But you are not buying the foundation?

The Witness—No, sir.

The Juror—You are only buying the machinery.

The Witness—That is all I buy.

The Juror—Where would you get the thirty per cent.?

The Witness—If I should sell it to you you would figure it costing you thirty per cent., you would figure on thirty per cent. more.

The Juror—That is for the moving?

The Witness—The moving and the freight and the building of the foundations.

The Juror—But you don't buy the foundations.

Mr. Griggs—Haven't you got the thing mixed? In the mill where it is, if we can no longer use it, it is worth, we will say, $10,000. What for? To sell to you, is it not?

The Witness—Yes, sir.

Mr. Griggs—It is worth to sell to you that price?

The Witness—Yes, sir.

Mr. Griggs—Suppose you leave it in the mill and do not sell it again?

The Witness—Then it is not worth anything.

The Juror—But if they sell it to you and you sell it to somebody else to be moved away, that last purchaser wants to add thirty per cent. to the cost?

The Witness—Yes, sir.

Mr. Griggs—That is to say, it would cost him thirteen thousand dollars instead of ten thousand dollars?

The Witness—Yes, sir.

The Juror—Is not the property worth so much more then where it is moved? I cannot see where it is worth thirty per cent. less?

The Court—What the jury means, and what the witness means, is when you have it installed and in motion again isn't it worth more than ten thousand dollars plus the three thousand dollars.

The Juror—It is worth that much more.

The Court—Isn't it practically the same as it was before?

The Juror—Are we to assume to the same concern?

The Court—Assuming the same concern, we will say.

The Juror—I do not see why it is not worth the same.

The Witness—Well, I should say if I was buying that machinery that if I had to move it and you came to me and asked me to give you a price on that at my mill I should have to charge you more.

The Court—What the Jurors mean, is, suppose you have a plant that has to be dismantled, as in this case, because there is no water, and they get a new location where there is water, you tear down that machinery and take it to the new location, and one

element of depreciation is undoubtedly the cost of dismantling and building the new foundations, now, is there any other depreciation?

The Witness—Well, I don't know, I only deal in machinery as it is now.

No Cross Examination.

EMIL GEERING, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. In Paterson.

Q. Are you an officer of the National Silk Dyeing Company? A. Vice President.

Q. Are you in charge of one of the plants of the Company? A. Yes, sir, the Valley Works.

Q. Did the E. G. Geering Silk Dyeing Company own that before the National? A. Yes, sir.

Q. Were you an officer of that Company? A. Yes, sir.

Q. You owned it as an individual before that? A. Yes, sir.

Q. How far back does that chain of ownership go? A. Back to 1907 or 1908.

Q. When did you buy it? A. 1893.

Q. You had been acquainted with the plant before 1893? A. Yes, sir.

Q. For how long a time? A. For quite a number of years before.

Q. Can you give us an idea? Was it back as

far as 1880 or was it later? A. Well, I should say it is 1885.

Q. Was there a dye shop there when you first became acquainted with it? A. Yes, sir.

Q. Who owned it when you got it? A. R. & A. Simon, Union Hill.

Q. Had some one occupied it as a dyeing plant before that time? A. Yes, sir.

Q. Who? A. Charley Vermorel.

Q. Was he the builder? A. Yes, sir.

Q. What buildings were there on the plant when you went there? A. There was a dye shop, a brick building and some frame buildings.

Q. Was there a boiler house? A. The boiler house was in the frame building.

Q. Tell us what additions were made by you from that time on? A. I built a new boiler house, for six boilers, and I made an addition to the tin weighting department and built an addition in the black department.

Q. You are covering the period down to date? A. Yes, sir.

Q. Ryle avenue or Ryle road runs in between you? A. Yes, sir.

Q. The Quarry Road? A. Yes, the Quarry Road.

Q. That runs in from Ryle avenue between your plant? A. Yes, sir.

Q. And you have occupied both sides of the street there? A. Yes, sir.

Q. Always? A. Yes, sir.

Q. How many hands do you employ there? A. Sometimes, four hundred and fifty, up to five hundred.

Q. When you went there how many boilers were there in the plant? A. We had two boilers there.

Q. How many are there now? A. There is all together ten boilers, not any more now, we took some out.

Q. How many boilers are there there now? A. Five.

Q. Are they different shaped boilers? A. Yes, sir.

Q. What do you use boilers for? A. For steam.

Q. Did those boilers make as much steam, these five boilers, as the ten did? A. Yes, sir.

Q. How did you get the water for the plant? A. In the beginning we got it out of the river direct.

Q. How long did you continue to take it from the river? A. About six or seven years.

Q. Up to about what time did you take it from the river? A. I took it from the river, about, well, all together about ten years, ten or eleven years.

Q. When did you stop taking it from the river? A. When there was no water there.

Q. Can you remember the year? A. Yes, it was between 1904 and 1905.

Q. What did you do then? A. Well, we had to use more straight artesian water.

Q. Did you get the Dyers' Pipe in? A. Yes, sir.

Q. At about what date? A. I think in about 1906.

Q. By a contract that you made with the Passaic Water Company? A. Yes, sir.

Q. How did you get the water from the river into your plant? A. With pumps.

Q. Originally? A. Yes, sir.

Q. Did you have a sufficient supply from the river? A. Yes, sir, in the beginning. I had.

Q. The river is divided at your plant by what is known as Temperance Island, is it not, or Market Island, they call it now? A. Yes, sir.

Q. Up to what time did you have plenty of water in the river? A. Well, I could say up to about 1900.

Q. There were no sewers above you? A. No, sir.

Q. There are none now, are there? A. No, sir.

Q. The water comes down to you from the Falls? A. Yes, sir.

Q. When did you stop taking your water from the river? A. Well, we hardly could get any more water from the river.

Q. When did you first notice a shortage of water? A. Well, I first noticed it about 1900.

Q. Were you unable to pump water out then? A. During the day time more than in the evenings.

Q. You were unable to pump the water during the day time? A. More or less.

Q. Were there days when you could not operate your plant for want of water from the river? A. Yes, sir.

Q. How frequently did that occur during the time up to the time you got your water from the Dyers' Pipe? A. Pretty near every day, every night almost, so of course we had to work night times too.

Q. What was the quality of the water you got from the river when you got it? A. Well, in the beginning it was very nice, clear, but later on, what I say, 1900 and so on, then it got very cloudy and dirty.

Q. What was the cause of that? A. Well, I could not say what the cause was.

Q. Was there any factory discharge above you? A. No, sir.

Q. And no sewer? A. No sewer.

Q. Did you filter the river water? A. Yes, sir.

Q. Did you filter the river water as you pumped it up into your dyeing plant? A. Yes, sir.

Q. Did you make any difference in filtering after you got the water from the Dyers' Pipe? A. We have to filter it too.

Q. You had to filter it too? A. Yes, sir.

Q. You filtered both waters, then, that is to say, the water from the river—? A. No, not the first eight or nine years we did not have to filter the water through filters, we had a filter in tanks something like a sponge, it went through sponges, not through a filter.

Q. Could you use those filters with the Dyers' Pipe water? A. We used them right along.

Q. Could you use those sponge filters for the Dyers' Pipe water? A. No, sir.

Q. Why not? A. Well, it is better through the filters than it is through the sponges.

Q. It is better? A. Yes, sir.

The Court—You mean, you could not filter the Dyers' Pipe water through the sponges? Was there a difference?

The Witness—I had to; when I had filters I gave up the sponges and put up three filters.

The Court—Then it was not caused by any difference in the water?

The Witness—No, the water was just as dirty before as after.

Q. After you had put in the Dyers' Pipe how low had the water gotten in the river? A. Very low .

Q. Could you pump it any more continuously? A. No, we could not.

Q. Tell us whether or not you could walk across the stream from your works to the Island at certain seasons of the year? A. You could do it every Summer.

Q. When? A. During the months of June and July.

Q. What year? A. From 1901, 1902, 1903, 1904, 1905 right along.

Q. You have been depending upon the Dyers' Pipe ever since it has been installed? A. Yes, sir.

Q. Do you have any wells there? A. Yes, sir.

Q. How many wells? A. Eight.

Q. How long have they been down there? A. Five have been down for the last fifteen years and three have been down for the last twenty years.

Q. Why did you dig them, or drive them? They are artesian wells, aren't they? A. Yes, sir.

Q. Why did you drive those artesian wells? A. Well, I could not use the water from the river or from the Dyers' Pipe for the color dye.

Q. When you pumped the water from the river did you use the exhaust from the pump for heating purposes in the plant? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. You bought the plant, you say, from Simon? A. Yes.

Q. And he bought it from Vermorel? A. Yes, sir.

Q. You went there in 1893? A. Yes, sir.

Q. Do you remember the plant from 1885? A. I do.

Q. That is the time Vermorel was there? A. Yes, sir.

Q. Were you working for Vermorel? A. No, sir.

Q. But you knew the plant at that time? A. Yes, sir.

Q. When you went there in 1893, artesian wells were there? A. Then we have one is there then, and I put in two after.

Q. One was on the premises? A. One was on the premises, yes, sir.

Q. How many did you put in up to the present time? A. I put in all together, seven.

Q. How many are you working now? A. Eight.

Q. You put in how many, all together? A. Seven.

Q. And you are working eight? A. Yes, sir.

Q. That is all that you have? A. Yes, sir.

Q. Do you use the artesian well water for the whites and creams? A. Yes, sir.

Q. And you can dye blacks with the artesian well water? A. Yes,sir.

Q. Other dyers cannot? A. Oh, yes, they can, if they prepare the water for it.

Q. If they knew their business they could dye blacks with artesian well water? A. Yes, I do.

Q. What proportion of blacks and light color dyeing have you done at your establishment in the last year or two? A. Well, I get an average of about between fifteen hundred or two thousand pounds of black a day, and colors between forty-five hundred to five thousand pounds a day.

Q. Light and color? A. Light and color.

Q. So that the blacks are about one half of your product? A. Yes, sir.

Q. How long has that been the percentage? How long has it been like that? A. Well, for the last ten years.

Q. I suppose it varies somewhat, according to the styles, is that it? A. Exactly.

Q. But not enough to change your proportions? A. Yes, sir.

Q. That is correct? A. That is right.

Q. So that with the artesian well water you can do your entire work if you have wells enough? A. Yes, sir.

Q. You have a constant supply? Your wells never run dry? A. No, sir, not so far.

Q. How deep are they? A. Some of them four hundred feet, some three hundred, some three hundred and fifty.

Q. How does the water stand in them, do you know? A. Well, it stands at least twenty five feet, twenty five to thirty feet.

Q. From the ground you mean, or the bottom of the well? A. From the bottom of the well.

Q. Have they ever gone dry on you? A. No, sir.

Q. Do you know whether they touch through any stream of water? A. I could not say.

Q. Can you hear any noise at the mouth of the well? A. No, sir.

A Juror—Is that the pumping depth?

The Witness—That is the water in the well.

The Juror—The working depth after you have been pumping a while?

The Witness—Where we pump it from.

The Juror—It stays there always?

The Witness—Yes, sir.

Q. So that, so far as the artesian wells are concerned, you can just drive another well, another well and another well, and go ahead with your work? A. Well, that is a question, if I get water in the other wells.

Q. We are judging by your experience on your eight wells, you have got water? A. I have got enough.

Q. What quantity of water do you pump daily from your artesian wells? A. Well, about a million and a half.

Q. From the artesian wells? A. Yes, sir.

Q. How much do you use all together? A. Between two and a half and three million a day.

Q. The rest you get from the Dyers' Pipe? A. I mean with the Dyers' Pipe.

Q. You mean two to three millions all together? A. Yes, sir.

Q. From the artesian wells you get a million and a half you say? A. Yes, sir, about.

Q. So that the half million to a million and a half is from the Dyers' Pipe? A. Yes, sir.

Q. Does it vary much during the year? A. Well, it all depends upon how the work lasts, how the work runs.

Q. At the lowest time of the year how many million gallons a day do you use? A. About two and a half, the lowest.

Q. Out of four million for the highest? A. Three to three and a half million.

Q. Two and a half low to three and a half high, would be a fair statement of your daily consumption of water? A. Yes, sir.

Q. These color dyes of yours are thrown into the river, into the sewer and so into the river? A. Yes, sir.

Q. That goes—? A. That goes into the sewage.

Q. You have a sewer right at your place? A. Yes, sir, on Ryle avenue.

Q. And that goes in just as it is in the dye shop, so far as the color is concerned? A. Some dye, yes sir.

Q. You cannot reclaim any part of the color dye from the tub, can you? A. Not quite, no.

Q. These brilliant scarlets and creams, I mean, the pinks and green and blues, as we see them in going through the establishment in the tubs, that is the same color that goes into the river when it is discharged? A. Yes, sir.

Q. Of course, any time you like, you can stop the flow of the water run into the river by shutting off the flow, I mean, you need not let that water out unless you like? A. Well, we have to let it out.

Q. Somewhere? A. Yes, sir.

Q. But you would not have to let it out when the Jury were there unless you want to? A. We could not keep it.

Q. You could not kep it for long? A. (No answer.)

Q. How much of that water of yours is used for washing? A. About I can say fifty per cent.

Q. That goes into the river? A. From the washing machines.

Q. About the natural color? A. Yes, sir.

Q. Is that mixed? Does it go in by a separate pipe or is it mixed with other colors? A. It goes in with the other colors.

Q. It goes in with a common pipe? A. Yes, sir.

Q. The natural water and the colored water all goes into the one pipe? A. Yes, sir.

Q. And so into the river? A. Yes, sir.

Q. Do you use the artesian well water for washing machines? A. Yes, sir.

Q. Why do you do that? A. Well, for light shades, for the white and green and light shades you have got to because the river water is not clean enough.

Q. Even from the Dyers' Pipe? A. Even from the filters, it is not clean enough.

Q. Do you need the artesian well water because it is colder? A. No. Because it is cleaner.

Q. Is it also colder than the river water in the Summer time? A. That is right.

Q. Is that an element in the use of the washing machines? A. Yes, sir.

Q. It is better to have water cold for the purpose of washing the tin from the skein silk as it comes out of the vat? A. That is right.

Q. And that is recognized through the trade, the use of hard water by dyers, of artesian well water? A. Correct.

Q. Any good dyer, no matter how much soft water he could get would have to have artesian wells if he used washing machines? A. Well, you might. That is a difference ideas of the dyer that they have, some of the dyers probably don't use it.

Q. You are a dyer of how many years' experience? A. Well, I am fifty years in the silk dyeing business, as a boy and on.

Q. I ask you, is it not recognized by many silk dyers, that artesian well water, because of its temperature, is better for use on the washing machine than water of a higher temperature? A. That is right.

Q. Does the hardness of the water enter into it, is that a protection or not? A. On some work, yes, sir.

Q. What work does hard water help? What class of work, as compared with soft water? A. Hard water certainly don't clean silk as good as soft water.

The Court—In what cases is hard water better?

The Witness—In regard to colors it is better.

Q. By using soft water you do not use as much soap, do you? A. Exactly.

Q. When do you say the river water got dirty? A. Well, it starts to get bad from 1900 on.

Q. Do you remember the years exactly? A. Well, I could not say. 1900, 1899, 1901, anything from 1900 on, I know we got less water and more dirty water than ever before.

Q. But you always filtered it? A. We did filter it, yes.

Q. The filter, as you say, was only a sponge? A. In the beginning.

Q. Later on, did you get, what I may call, a regular filter? A. Yes, sir.

Q. While you were still pumping from the river? A. Yes, sir.

Q. When was that first filter put in? A. In 1902 or 1903.

Q. That was in about two or three years before you took the Dyers' Pipe? A. Yes, sir.

Q. This year that you walked across to the Island, what year was that, to be exact? A. I could cross to the Island any time through the Summer for the last ten years.

Q. You said something about 1900? A. No, not 1900. Just during the Summer time it was very low. Yes, many times we could do it.

Q. Could you do it about 1900? A. Yes, sir, especially evenings.

Q. Could you do it in 1885 when Vermorel had the place? A. Not at all.

Q. Did you work there at that time? A. I did not work there.

Q. What was the first year that you noticed that you could walk over to the Island? A. About 1901, 1900.

Q. About that time? A. Yes, sir.

Q. Before that, however, you found some times that it was occasionally very, very low? A. Yes, especially in the evenings.

Q. That was a common thing in the Passaic River as long as you remember, is it not, during the Summer months, it is rather low? A. In the Summer months it always was more or less low.

Q. Do you use any pumps now? A. Yes, sir.

Q. What for? A. For the artesian water.

Q. Only? A. Yes, sir.

Q. You don't use any, of course for the Dyers' Pipe? A. We do.

Q. Do you mean you pump the Dyers' Pipe water? A. Yes, sir.

Q. Pump it up to where? A. Into the filters.

Q. To a higher level? A. Into the filters.

Q. How high is that? A. From the pipe between five and six feet.

Q. Do you know what the height of the pipe is? A. No, I could not tell you.

Q. But you pump it five or six feet to the tank? A. Yes, sir.

Q. What is the capacity of the tank? A. In the filters. Excuse me.

Q. Then it goes where from the filters? A. From the filters it goes in through the dye house.

Q. It draws directly from the filter, or have you a tank to store it? A. No. From the filters into the dye house.

Q. It is filtered automatically? A. We keep a certain quantity of water into it right along.

Q. It regulates itself? A. Yes, sir.

Q. How many filters have you? A. I have got three.

Q. Do you have to filter for blacks? A. Yes, sir.

Q. Do you have to filter for whites? A. Whites we are using artesian water.

Q. Cream is artesian? A. Yes, sir.

Q. What is the lightest shade you are using that filtered water on? A. We are using all artesian water for colors; it makes no difference what shade.

The Court—You don't call black a color?
The Witness—No, sir.
The Court—Or white?
The Witness—No, sir.

Q. Are you skein or piece dyeing? A. Skein dyeing.

Q. All skein? A. Yes, sir.

Q. How many pumps have you got there? A. I got three pumps.

Q. How many had you when you were pumping from the river? A. Three.

Q. The same pumps? A. Not the same, different.

Q. The same capacity of pump? A. Yes, sir.

Q. So that you could pump to-day directly from the river if the water was usable? A. No, those pumps were destroyed. Those river water pumps have been destroyed, we have not got them any more there.

Q. You mean your pumps are not in condition to pump the water now, is that it? A. No, not any more.

Q. How did the artesian well water get up into the filter? A. We do not filter the artesian well water.

Q. How did it get a head on for you? A. We have the artesian water run into a pit and from the pit it gets pumped up into the tanks.

Q. How do you get it up into the pit out of the well itself? A. From air compression.

Q. How does it get into the tank? A. From pumping.

Q. You pump it into the tank, by compression you put it into the pit and then you pump it into the tank? A. Yes, sir.

Q. You have enough water now in the river, to-day? A. Yes, sir.

Q. And if you wanted water from the river, if you could use the river water you could pump it to-day? A. Yes, sir.

Q. And if it is anything like that it is now, you can get all you want? A. Exactly; if it would stay this way, yes.

Q. How is the water to-day, so far as being dirty, is concerned? A. Well, pretty fair.

Q. How does it compare today with what it was a year ago, as to being dirty, I mean? A. Well, it is not quite so bad now. It was worse.

Re-direct Examination by Mr. Lewis.

Q. If you used the artesian well water on the washing machines from phosphate, soap or alkali, what effect would it have on the silk? A. We do not use artesian water alone for washing, the

first bath we are using some river water along.

Q. Or soap? A. Put soap in.

Q. Or alkali? A. Yes, sir.

A Juror—How did the river get contaminated at your works?

The Witness—We could not get no water.

The Juror—I know, but it don't get contaminated there, does it, with dirt of any kind?

The Witness—We have to filter it just the same.

The Court—He said nothing comes from above, as I understood him to testify, nothing comes from above him.

Mr. Lewis—I don't think he understood the Juror.

By Mr. Lewis:

Q. You say the water is dirty by your Valley Works, in the river, the water passing your works in the river is dirty? A. Yes, sir.

Q. You are asked how the dirt gets into that? A. Well, this water we have at the present time it is mostly from a shower, from much rain, and then it is all the dirt from farms and one thing and another gets into it.

Q. That is, above the Falls? A. That is above the Falls, wherever it comes.

The Juror—I mean when the water is low, when it is ordinary water, it is not dirty there is it?

A. Oh, yes, sometimes it is, yes, sir.

The Juror—In an ordinary year, ordinary weather?

The Witness—Well, in ordinary weather, in the Summer time there is hardly any water there passes my place.

The Juror—I am talking about the dirt, that is all?

The Witness—We do not call it dirt.

The Juror—There is no dirt there now, is there?

The Witness—I do not think it is dirt. It is hardly any water that is there. You can walk it over. For instance, a month before this water we have got to-day you could walk over it, there is not hardly any water gets there.

Q. The Juror asks if there is any sewer up above you? A. I hear there is one built a couple of years ago from Totowa there, it is up there, about say five or six hundred feet from our place up there.

Q. A couple years ago? A. Yes, probably six or seven years ago, before, I know there was not any, when I took possession of my place there, there was not any sewer above there.

Q. And that sewer had been completed long after you got the water from the Dyers' Pipe? A. Oh, yes, no, not long after, before; before we got the water from the Dyers' Pipe the sewer was built before.

The Court—This one from Totowa you mean ?

The Witness—Yes, sir.

The Court—When did you get the water from the Dyers' Pipe?

The Witness—In 1906 if I am not mistaken.

The Court—You said this sewer was in from five to six years ago?

The Witness—I think so.

The Court—If you got the Dyers' Pipe in in 1906, that was before?

The Witness—All right. I am mistaken then.

The Court—We want to know which you mean?

The Witness—The sewer was put in, well, I am not positive, I certainly am not positive on that.

The Court—You are not sure?

The Witness—No, I am not sure if it was put in before or after, I only noticed it, there is a sewer been put in some years ago, I could not say exactly what date it what year.

By Mr. Lewis:

Q. I omitted to ask you this; where does the dye waste from your mill go? A. In the sewer on Ryle avenue.

Q. And then the sewer on Ryle avenue where does that go? A. It goes on Hamburgh avenue, across.

Mr. Griggs—To the Hamburg avenue sewer?

The Witness—To the Hamburg avenue sewer.

Q. A City sewer? A. Yes, sir.

Re-cross Examination by Mr. Gourley.

Q. You do that for convenience, of course? You have no sewer just opening right in front of your place? A. No. It has to go in there.

Q. You had some pipes there at one time? A. Some years ago.

Q. Now, you just run it in and it runs down a hundred feet below you, something of that kind and goes into the river there, doesn't it? A. It goes in in Ryle avenue, our sewage, and the sewer pipe goes in Hamburg avenue.

The Court—Where does it empty into the river?

Q. How far from your place does it get into the river? A. I think about fifteen hundred feet.

Q. This Dyers' Pipe water has been supplied to you for all these number of years? A. Yes, sir.

Q. Would you like to go back to the river water again? A. I would if I could get enough of it.

Q. Would you really go back to the river water again? A. If I could have all the water, whatever I need for river water I would go back to the river water.

Q. With Cole on the other side of the river above you and the Old National on the other side

of the river above you, and with the Eddy System Water carrying their refuse down to your place? A. No, sir. It would go all on the other side.

Q. Wouldn't you prefer to stay now with the Dyers' Pipe? A. With the Dyers' Pipe I am satisfied.

By Mr. Lewis:

Q. You have said, as I understood you, if you had all the water you wanted in the river you would take the river water? A. That is what I said.

By Mr. Griggs:

Q. What would you do if the Water Company served notice on you that their contract would be terminated in six months? A. I would try the first part to see if I could drive some more wells and get some more artesian water.

By Mr. Gourley:

Q. Or you might go down to the Public Utility Board, do you know where that is? A. No, sir.

FRED L. PRYOR, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Harding.

Q. What is your profession? A. Mechanical engineer.

Q. Where were you educated? A. At the Stevens Institute of Technology, Hoboken.

Q. Have you been connected in any capacity

with Stevens Institute since your graduation? A. I was on the faculty for twenty two years.

Q. As an instructor? A. I started as instructor and came up through the various grades.

Q. Have you also had any experience in a practical way, which gives you special knowledge with reference to the generation of steam and boilers, pumps of different kinds and different kinds of machinery used for industrial purposes? A. During that same period I was practicing consulting engineer, having to work with industrial plants in advising, costs of operation and testing machinery.

The Court—Will you indicate to some of us who are not familiar with these processes, what the purpose of this testimony is so that we may gather the significance of it as it goes along?

Mr. Harding—Do you want me to make a preliminary statement?

The Court—Yes, what the purpose of it is so that we may follow you.

Mr. Harding—Prof. Pryor is now called to give evidence which in connection with that of Dr. Hunziker will show how much the Weidmann Company, first, would save, by reason of the fact that they are to have the water delivered to them by gravity instead of by pumping—

The Court—If you can get it by gravity from the river?

Mr. Harding—Get it from the Dyers' Pipe, get it by gravity, and we wish to give them the credit that they should have, due to the fact that we can get it by gravity and do not have to pump it; I am going to

show by Prof. Pryor, in general, what that saving would be. That is the general nature of it. It involves several other things.

Q. You started to tell us what your experience has been? A. I have been practicing consulting engineering, working for industrial plants, such as plants using steam, water boilers, pumping machinery, and have had to advise them on cost of operation together with the testing of such units to determine their performance and economy.

Q. For how many years have you had that practical experience? A. I have been in that kind of work ever since I graduated from College, first as assistant, to my then predecessor in College, and then later for myself, doing it on my own account, and for the whole time of twenty years.

Q. Now, are you familiar with the power plant of the Weidmann Silk Dyeing Company? A. In a general way I am familiar with it. I have seen it.

Q. Are you more particularly familiar with that portion of it that relates to pumping? A. That is the portion I was particularly interested in, particularly examined.

Q. When did you first make your examination of that part of the plant? A. It was about two years ago.

Q. Was it for the purpose of testifying before the Commissioners in this proceeding? A. That was the purpose of it, yes, sir.

Q. Will you state just what the problem was before you for which you made that examination, and what factors you had to work with? A. The

problem presented to me was that Dr. Hunziker had arrived at certain costs for pumping water and I was asked to look that over and to see whether or not there was any item that Dr. Hunziker had forgotten to credit himself with in making up his cost of pumping. He had prepared a little table showing the overhead and the operating costs and had reduced them down to a price per million gallons. In the dye house work, it is desirable and practical to use the exhaust steam from all the operating steam units for heating water for dye tubs etc. In that connection, looking over Dr. Hunziker's record, I saw he had made no allowance whatever for the amount of heat that he had obtained from the exhaust of those pumps which were pumping the water, had been used previously for pumping water from the river, and at the time I saw them they were pumping water from what I think was called DeGray's pond, in not crediting himself with the amount of heat that came from the pump, he also failed to take into the account the fact that he really needed less boiler capacity to supply the actual work that the pumps did in pumping the water, a large percentage of the heat coming out of the pump performing useful work in heating the water, and if it had not been used so, he would have had to run additional boiler capacity. He also failed to credit himself with an allowance for having the particular pumps ready for operation, the cost of pumping water can be better stated as the saving due to the Weidmann Company in substituting Dyers' Pipe water for river water with their own pumping. That is the cost to them was really what they saved by not pumping. There was little labor saved, a very small amount actually saved. There

was some repairs saved. Slight oil saving. But the pumps which he charged against the cost of pumping were still there and available for use. He did not save the cost of those pumps when he arrived at his figure.

Q. As I understand you then, Dr. Hunziker had really by his calculation which was submitted to you, truly found out what the cost of pumping would be if he had no plant and was to install one and included in the cost of pumping he had failed to credit himself with any value given for the exhaust steam?

Mr. Gourley—We object to the question. It contains the element of truth. Dr. Hunziker truly stated the proposition. That of course was cannot submit to.

Mr. Harding—I will strike truly out. State it without truly.

Q. Dr. Hunziker by his calculation which was submitted to you, had found out what the cost of pumping would be if he had no plant and was to install one and included in the cost of pumping he had failed to credit himself with any value given for the exhaust steam? A. Dr. Hunziker's figure was what it cost him to pump if he had put in a pump and had allowed the exhaust steam to go to waste.

Q. So that he did actually give the cost of pumping on that basis, but he did not give what the saving was to him due to the fact that he was to get the water by gravity instead of by pumping? A. He gave the cost of pumping under a condition which did not exist in his plant.

Q. You have spoken of the utilization of the

exhaust steam in dye works, what have you to say as to the necessity of the use of heating water? A. In all dye works substantially all the steam from the boilers is used for heating water. The primary use of the boilers is for supplying steam which is carried through the dye house in pipes and that is pipes properly valved with outlet into each shop whereby water can be heated. The power units that are in a dye house, which are necessary for pumping, for running electrical generators, for various power uses, have their exhaust steam lines all connected together and that steam is used for heating water which goes into the dye house to be used in the various tubs. That is, all the steam with certain small exceptions, is directly used for heating water either by the way of going through the power units and becoming exhaust steam in heating water or by heating it directly. The heat from the exhaust steam is used instead of live steam heat. That is, if we do not get the heated water from the exhaust steam we have to have the hot water anyway and it has to be gotten from live steam.

Q. Can you state whether or not in the use of this particular pump all of the steam is used for that purpose? A. Any particular pump. I understand your pumps in question, for there were two, but the exhaust steam went into what is called a jet condenser and was all condensed and heated up the condenser water and that was used for hot water service for the dye house, went up to the hot water tank.

Q. Did those figures of Dr. Hunziker give you the cost of fuel? A. Yes, sir.

Q. That would be in the operating expense? A. That would be in the operation, yes, sir.

Q. Also the cost of labor? A. It did in the operation.

Q. And the cost of any material that might be a part of the operation? A. Yes, sir.

Q. Assuming those figures as fair and proper, did you then make a test for determining what would be the saving to the Weidmann Silk Dyeing Company per million gallons due to the fact that the water was to be delivered to them by gravity instead of by pumping it from the river? A. In connection with the figures that Dr. Hunziker gave me I made a test to ascertain exactly how much hot water—

The Court—Just listen to the question. I don't think you got the question.

Q. Assuming those figures as fair and proper, did you then make a test for determining what would be the saving to the Weidmann Silk Dyeing Company per million gallons due to the fact that the water was to be delivered to them by gravity instead of by pumping it from the river? A. I did.

The Court—What was the saving?

Q. How much was that? A. The saving was ninety five per cent. of the heat that went into the pump.

Q. What did that amount to per million gallons? A. In dollars and cents?

Q. Yes? A. Do you mean the saving on Dr. Hunziker's figures or the saving to the Weidmann Company, that they made?

Q. The saving the Weidmann Company made?

A. That the Weidman Company made by substituting this supply of water?

Q. Yes? A. I for figure $1.15 per million gallons.

Q. In order to reach that result did you make certain tests? A. I did, yes, sir.

Q. What did you endeavor to determine precisely by those tests? A. I endeavored to determine the credits or allowance that Dr. Hunziker should have made in his figure for obtaining the cost of pumping.

Q. Did or did not that involve a determination by you of these factors, first, the height the water was to be lifted, the number of gallons that were to be pumped in twenty four hours? A. It did, yes, sir.

Q. Did that test of yours disclose the quantity of heat that was left in the exhaust steam after it had done the work of pumping this number of gallons, as I say, at that rate of 4,200,000 every twenty four hours at a total height of fifty five feet? A. It did, yes, sir.

Q. Now, I wish you would particularly describe to the Jury the test you made and how you made that test? A. In order to ascertain the amount of credit that should be applied, I ran the pump, or had it run, at the rate of 4,200,000 gallons in twenty four hours, pumping the water into the regular supply tank of the Weidmann Silk Dyeing Company, the one that I was told supplied the mill for their regular work, which tank was up to the top about fifty feet from the ground. The steam that came out of the pump went into this condenser, which is in effect a heater, heating the water condenser steam, and we arranged the outlet of that condenser to take the heated water into

calibrated tanks during the time that we were pumping water at this rate of 4,200,000 gallons in twenty four hours. We also measured how many gallons of hot water that we got of 160 degrees, which was the temperature the water was raised to in the condenser. The steam of the pump did two things, it allowed the pump to discharge 4,200,000 gallons of water up into this tank fifty feet above the ground, and also heated a large amount of water in these tubs. To find out how much steam was used, I measured the amount of water fed to the boiler, that was directly connected with this pump, ascertained how many pounds of water went into the boiler, which was the number of pounds of steam that came out of the boiler to supply the pump to do this particular work. That amount, if I remember correctly was 3030 pounds per hour. Subsequent to that particular run I shut down the pump and heated the same amount of water in those measured tubs and determined how much steam it took from the boiler to heat that particular amount of water.

Q. Let me ask you right there, from the same sixty degrees of temperature up to 160? A. Yes, sir. Everything was exactly the same, except the pump was shut down and the steam taken just around the pump, bye-passed the pump. In the first case it took 3030 pounds of steam per hour to run the pump and heat the water. In the second case, with the pump shut down it took 2880 pounds of steam to do the same work. The steam heating the hot water. The difference between the 3030 pounds and the 2880 pounds was the number of pounds of steam extra that it took to pump 4,200,000 gallons of water against a fifty foot head in that fifty foot tank.

Q. That would be 150 pounds? A. 150 pounds would be right. In other words, it took 150 pounds of steam to do the work of taking the water up there, pumping it up, that is, putting it that way, if we were furnishing the hot water with 2880 pounds of steam we could run the pump and furnish the same hot water with 150 pounds of steam additional, and that was the amount of steam that is to be charged against that pump for pumping that particular water or putting it the other way, that is the only amount of steam that the Weidmann Company saved in shutting down their pump, because they had to have their hot water anyway, and whenever they used the same amount of hot water with the pump shut down they only saved a hundred and fifty pounds of steam in that particular pumping operation.

Q. Right at that particular point, then, the percentage that the pump should be charged with then would be such as 150 bears to 3000? A. Yes, or about 5 per cent.

Q. That means then, as I understand it, when you use the exhaust steam you do the work with 3030 pounds per hour? A. That is right.

Q. When you use live steam without using the pump at all, you use 2880 pounds per hour? A. Yes, sir.

Q. And the difference, then, which should be charged to the pump and is really such as was used to do that work was 150 pounds or five per cent. of the total amount of steam? A. Yes, sir.

Q. When you testified before the Commission you made a diagram here which graphically described the test? A. Yes, sir.

Q. Have you got it here? A. I think I have.

Q. I have one here that is, I think, marked in evidence. In order that the Jury may understand it I will ask you to explain briefly how that diagram shows your test? A. This diagram or blueprint is made to show graphically what the operations were; the lower part of the picture represents a boiler, steam pump, supply tank and the hot water heater. The upper part of the diagram is substantially the same except the pump is eliminated, the latter representing the test without the pump and the lower one the test with the pump. I notice that in the printed statement there is a mistake in copying into the record 3050, it should be the same amount of steam comes up to the pump, of course, that goes in by mistake, I think they have it 3050 and it should be 3030. In the lower diagram it will be seen that there were 3030 pounds of steam leaving the boiler at ninety pounds pressure each hour, going to the pump. The pump is represented pumping water from a little basin below, marked the river, and discharging it into the supply tank overhead, about fifty five feet above the river. The exhaust steam leaving the pump is shown and that steam goes into the heater, also called the condenser, and heats up a certain amount of water which is drawn from the supply tank. The supply tank water from the river was sixty degrees. There were 30500 pounds of that water taken off and carried into the heater to condence the steam 3030 pounds, and make it into hot water at 160 degrees. From the hot water tank 3030 pounds of it goes back to the boiler to make up for the steam that left the boiler. The difference between the 30500 pounds and the 3030 pounds went into the mill for useful work.

The Court—It simply eliminated the heating of the water?

The Witness—It simply eliminated the heating of the water and does the same thing that is done with 2880 pounds of steam.

The Court—The upper picture shows the same thing being done without the lifting of the water?

The Witness—Yes, sir, it shows the same thing being done with 2880 pounds of steam without lifting the water.

Q. I think you have already stated that taking Dr. Hunziker's figures, you made, after making the corrections, the saving to the Weidmann Company $1.15 per million gallons due to the fact that they were to take the water by gravity instead of pumping it? A. Yes, sir.

The Court—Have all the elements that enter into the problem been considered in reaching this conclusion? All the elements that are necessary to be considered in order to show this saving?

The Witness—Yes, sir.

Q. You made the test to find out actually this result from actual operation of that pump, but is it susceptible of calculation without making a test? A. It is, yes, sir.

Q. Your test then is simply affirmative of what you can calculate if you know the factors? A. You can calculate the thing just about as close as you can test it. They are both of them accurate.

The Juror—Did you know the cost of the pump and the life of all that?

The Witness—Dr. Hunziker took that all in in his figures. I simply apply to his figures the allowances that he did not take advantage of himself.

The Court—You are going to call Dr. Hunziker, I understand.

Mr. Harding—Yes; we will have to consider the testimony of all these witnesses together.

By Mr. Lewis:

Q. Have you considered the question of what saving has resulted to the National Silk Dyeing Company by reason of the pumping of water, taking water from the Dyers' Pipe and saving in pumping from the river? A. I have, yes, sir.

The Court—What is it? Tell us what it is?

Mr. Lewis—What the saving is?

The Court—Yes?

Q. How much is the saving at the East Fifth street Works? A. $2.75 per million gallons.

Q. What is the saving at the Wood Street Works? A. $6.51 per million gallons.

Q. What is the saving at the East Main street works? A. $2.85 per million gallons.

Q. What is the saving at the Valley Works? A. $2.45 per million gallons.

Q. That is the saving for a million gallons of water actually used, is it not, at each plant? A. Yes, sir.

Q. What creates the difference in the savings

at the various plants, what elements differ? A. There are two main elements that enter into it, making the difference. In compilling this calculation I used as a basis the cost of the pumps that the East Fifth street Works had formerly had. They were a higher type of pump than was used by any of the other works, the Valley, East Main street or the Wood street Works, and, therefore, the investment was larger, and, in working out the overhead or the cost for the investment, that put a slightly higher value on their particular plant. In these days the price will be affected somewhat by the volume of water, on account of the labor item. In other words, a man can attend to a pump just as readily, whatever its size, within certain limits. That is, he cannot cut his time too short in a small pump, and in the smaller pumping plants the labor item for engineers' services goes up more per million gallons. The Wood street quantity is only one hundred thousand gallons, while the East Fifth street quantity is two and a half million gallons. The Valley quantity is one and a half million gallons. The East Main street is six hundred thousand gallons.

Q. Is there any difference in the lift of the pump at these various plants? A. They were all figured at a sixty-five foot lift.

Q. As a matter of fact the pumps have been dismantled or removed, have they not, at these various plants? A. They had all been dismantled and taken away from the position where they had formerly been for pumping water. Some of them were seeable yet, you could find them and others of course were into the discard.

Q. Then how were you able to calculate the amount of saving at the various plants? A. By

placing down the value of the pump of the character so that would pump the water for the given amount.

Q. Do you know the value of such a pump? A. Yes, sir.

Q. You are familiar with the prices of such things? A. Yes, sir.

Q. And that was set down as a factor? A. Yes, sir.

Q. What other factors were used in the calculation? A. The labor item, that is, the cost of the labor.

Q. What did you put that down at? A. The cost of labor, for engineer's services, thirty five cents per hour, fireman twenty five cents an hour.

Q. What did you set down as the time which would be necessary at the various plants, what did you set down as the time that would be necessary at the various plants? A. The time of what?

Q. The time occupied by the labor?

The Court—Why is it necessary to take these details? He has given us a statement of the methods by which he made the test and the calculations and given his reasons at length and if the other side want to inquire into the details they can do so on their cross examination.

The Court thereupon adjourned to tomorrow, Thursday, May 19th, 1921 at 10:00 o'clock A. M.

Fourth Day.

Paterson, N. J., May 19th, 1921.

The trial was resumed this day, pursuant to adjournment.

FRED L. PRYOR, resumes the stand.

Direct Examination (continued) by Mr. Lewis.

Q. In calculating the cost of pumping as you have given it, what year did you fix the price of labor as being the standard which you adopted? A. The prices prevailing about 1915.

Q. Why did you take that year? A. For two reasons, practically. In the first place, when I originally calculated the cost of pumping it was in 1915 and was the actual cost I got at that time, and, further, I thought that the price would never come back to 1915 prices and that would be the cost of pumping at that time.

Cross Examination by Mr. Gourley.

Q. When did you first make your test or begin to make your test? A. The test at Weidmann's you mean?

Q. Yes? A. About two years ago, I think, the latter part of April or the first part of May 1919.

Q. That is the Weidmann? A. Yes, sir.

Q. And the Auger and Simon or the National? A. I made no test in the Auger & Simon or the National, any of those, that is a similar test, no test.

Q. When? A. I made no test.

Q. What you say, of course, then, is confined to the Weidmann's only? A. (No answer.)

Q. Who were with you when you made the test? A. I had eight or ten men with me.

Q. Young students? A. Two or three were students amongst the number, yes.

Q. And the other men are employed by the company? A. No. Men employed by me per-

sonally. Graduate engineers and some employed by the company.

Q. How many engineers had you? A. Two, if I remember correctly.

Q. Two and yourself? A. Two and myself.

Q. Employed for this special purpose? A. Generally employed by me for that particular purpose on that particular day.

Q. What day of the week did you begin to make the test? A. Sunday.

Q. How long did the test last? A. The test lasted for about ten hours.

Q. I thought you said three hours? A. That would depend upon what you would call the test. I was testing for ten hours, and to get the test I reported on took about ten hours.

Q. It depends upon what you said when you said three hours? A. I think not. You probably asked me, if you will refer to my former testimony, how long did I run the pump and how long did I run without a pump, in taking both observations. That was three hours for each, and the preliminary before that was an hour and a half and an hour and a half in between was two periods and that would total up about ten hours in the operation of testing.

Q. Your pumping test was only three hours? A. Observation was only three hours, that is right.

Q. Is that in accordance with the standard adopted by the American Society of Mechanical Engineers? A. I think so.

Q. Are there no rules, directions or standards of which that Society approves for the making of test of this kind? A. There are many rules,

many sets of rules that they prescribe as a guide to the testing engineer what he may follow.

Q. Is it not the fact that they recommend a test of ten hours with the pump running? A. It is not.

Q. Is it not the fact that they approve of a twenty four hours total test? A. A test of twenty four hours would be approved, a test of ten hours would be approved, yes, sir.

Q. Have you any of the rules of the Society here? A. I have not, no, sir.

Q. I asked you on your former examination before the Commissioners the same question? A. You asked me if I had them with me before.

Q. I asked you on this subject about the rules of the Society? A. Yes, sir.

Q. Have you any rules here now? A. I have not.

Q. Will you explain to the Jury just how you measured? How this test was made, briefly? A. The test was made by measuring the feed water going to the boiler, the feed water gave the amount of steam that went into the pump and the quantity of water pumped was measured by the capacity of the tank into which it was pumped.

Q. As you go on, I will ask you, I think perhaps it will help things if you will permit me; is there any recognized rule of measuring the water going into the boiler? A. A recognized prescribed method, yes, I imagine so.

Q. What is your prescribed method? A. Measuring it in weighing tanks would be the better method, the better prescribed method. There are others recommended, other methods.

Q. Did you measure it as the rule suggested?

A. I know I measured it the way the rule suggested and the best way they suggested.

Q. I mean, what? I am trying to get at, is that the same method used for the boiler test? A. That is the same method used for the boiler test, yes, sir.

Q. Is that the same method recommended by the Society for making boiler tests? A. Yes, sir, it is.

Q. Was this water weighed or measured? A. Weighed.

Q. Weighed on what kind of a scale? A. On a platform scale.

Q. What did you know about the scale? A. I knew it belonged to the Weidmann Silk Dyeing Company.

Q. You had not tested that before or after, had you? A. I calibrated that approximately at the beginning of the test.

Q. How could you test the scales approximately? A. By my own weight.

Q. It would have to be accurate then? A. By my own weight and the weight of others.

Q. By your own weight? A. Yes, sir.

Q. With more or less clothing and everything of that kind you tested before? A. Yes, sir.

Q. After dinner, before dinner, all that? A. I did not have any dinner that day.

Q. That is a scientific test, is it? A. Yes, sir.

Q. We have got the water in the boiler now, being weighed? Yes, sir.

Q. The measurement was a measure of how many pounds of water went in the boiler was what weight? A. At the rate of about three thousand pounds an hour, if that answers your

question. I don't know whether it does or not.

Q. What is the test prescribed by the Society of American Engineers, if any, about the length of time required by the boiler test alone? A. For boiler testing it depends on whether you are in a capacity test or an economy test. There is a different time prescribed for each.

Q. Then after this was done, then how was the test of the steam measured? A. That was the test of the steam.

Q. That was the only test made? A. That was the test made to get the amount of steam.

Q. That was by measuring the water that went into the boiler? A. Right, yes, sir.

Q. Was there any other test made as to what the boiler produced? A. No, sir.

Q. Is there any other way of ascertaining the quantity of steam produced other than by measuring the water? A. You mean, in general theory, or theory and practice together or do you mean at that plant?

Q. Well, I will take at that plant? A. At that plant?

Q. Yes? A. No.

Q. Generally, what have you to say on it? A. In general, yes, it can be done, but it is very seldom ever done. You might condense all the steam from the boiler and weigh it that way.

Q. In measuring the water that goes into the boiler does not your Society recommend the measurement by ten hours? A. I think not.

Q. Are you sure? A. I am sure.

Q. That it does not? A. It does not.

Q. What does it say? A. In regard to ten hours?

Q. What does it recommend? A. It recom-

mends that you run it long enough to insure steady results, constant.

Q. Does it recommend any period, ten hours, as being a fair test? A. It only does that when you are weighing the coal.

Q. Then we cannot see how you make a boiler testif you do not inform us how you made it? A. I did not make a boiler test. I got the amount of water going into the boiler, the amount of steam coming out of the boiler, that is not a boiler test.

Q. Is it not essential to make a boiler test? A. It is essential to find the amount of steam, not essential to make a boiler test.

Q. You did not make a boiler test? A. I did not make a boiler test, but I got the amount of steam from the boiler.

Q. The steam then, the waste steam, the exhaust steam, that heats this water to a temperature of what? A. To about 160 degrees.

Q. Is that the temperature at the tank? A. That is the temperature at the point of mixing the water with the steam.

Q. How long does it retain that temperature, say five or ten minutes afterwards, what? A. Oh, it retains the temperature. There would be a great deal of work in finding just exactly how long it retains the 160 degrees temperature, that is problematical. It depends on the radiation of the pipe line between the condenser and the tank up above and then the length of time before that piped water would be in the dye house.

Q. It depends upon many factors? A. Yes, sir.

Q. So that every plant will vary according to those factors? A. The temperature of the water would vary from the time that the hot water is

made until it was used in the various plants and in some plant depending on the particular day.

Q. Is not your test or statement based on the condition that the water is drawn from the tank just the same degree at which it enters? A. No, my figuring is based on the fact that we have to heat the water to that temperature and by the use of steam whether it was done with other steam or by pump steam.

Q. Is not your testimony based on the statement of ninety five per cent. efficiency that the water is drawn from the tank just as fast as it flows into it? A. It is based on the statement that one fifth of the—

Q. Yes or no to that question? A. Please read the question.

Q. Is your ninety five per cent. efficiency test based upon the fact that the water is used just as fast as it enters into the tank? A. No, sir.

Q. It took you some time to answer that? Why did you hesitate? A. Because the question is rather double edged.

Q. All my questions are? A. I think so.

Q. You are looking for an efficient answer? A. Yes, sir.

Q. You were looking for an efficient test? A. Yes, sir.

Q. And you took all the available factors to make that test or percentage as high as you could? A. No, sir.

Q. Wasn't that what you were employed for? A. No, sir.

Q. It was not? A. No, sir.

Q. Then, why didn't you, as a mechanical man, take into consideration that these various dyers at the tubs through this great plant, might all at

one time draw this water off and leave nothing there and then not use it again for four or five hours? A. I don't see that that has anything to do with the problem.

Q. You don't? A. No, I don't.

Q. If you don't then I will pass on? A. I don't.

Q. I want the jury to understand and you want the Jury to understand that is what you mean? A. That was what I mean.

Q. It would be drawn off at the same degree at which it entered? It would be drawn out at the same temperature at which it entered? A. No, I don't want the Jury to understand anything of the kind.

Q. When you say ninety-five efficiency test what do you understand? Don't you mean that the water is to be the same degree of temperature after it enters the tank? A. I don't mean anything of the kind.

Q. What do you mean? A. I mean that ninety five per cent. of the heat that went into the boiler went into the hot water system for furnishing hot water to the plant; when it was used I don't know.

Q. If four or five dyers draw off a tub or vat full of hot water and then four or five hours nobody else draws any at all, that would not affect your percentage? A. That would not affect the percentage. It might affect the temperature of the water a little.

Q. It would depend upon the water that was used? A. No, it would depend upon the length of time it was not used, if there was not steam going into it to keep it hot.

Q. If they used water all morning and did not

use any in the afternoon your test would not be ninety five per cent. efficient, would it? A. It would.

Q. It would at the tubs? A. I did not talk about the tubs, I am talking about the tank.

Q. You stop at the tank? A. I stop at the tank.

Q. We can't get you any further than that? A. You cannot get me any further than that, with that test, no.

Q. Then I won't take you to the tub, although I would like to? A. I imagine so.

A Juror—What does it cost to pump water from the river?

The Witness—To where?

The Juror—Into this tank?

The Witness—The cost—?

The Juror—The cost of pumping?

The Witness—The cost of pumping at the Weidmann plant? You are talking about when they had their pumps there as they have now but when I last saw them would be $1.15 per million gallons with the pumps already there.

The Juror—Do I understand that they pay fifteen dollars a million gallons?

The Court—Yes, fifteen dollars is the contract.

The Juror—And the pumping is $1.15?

The Witness—That is what it cost them when they have their pumps there, yes, sir.

Q. The Doctor, whose figures you revised, his

figures were five dollars and something? A. Yes, sir.

Q. He thought it would cost $5.34? A. $5.75.

Q. He figured it $5.75 and then he employed you and you got it down to $1.15? A. I got it down to the right basis, $1.15, yes.

By a Juror—Is that running capacity? That is having full demand for the water?

The Witness—Full demand for the water, four million gallons they use a day, that was their capacity.

A Juror—The cost would rise very rapidly as the amount was reduced, would it? If you calculated on that same basis for a million gallons instead of four million gallons what would it cost?

The Witness—The cost would not rise as rapidly as you would think, because the pumps are there. That is the main cost. The only thing that you would have more in would be your engineer's services would have to be devoted to the smaller quantity where in the first place you might devote it to four million gallons you would have to devote his services to one million gallons. The labor and overhead would be one-fourth the amount if you had a four million gallon pump and only pumped one million.

The Juror—Can these dyeing companies tell exactly what their pumpings cost up to the present from the River?

The Witness—Yes, sir. The Weidmann Company they could tell from the test they made, the one that Dr. Hunziker made, exactly what it cost them. If I answer your

question. Or, did you say for the National?

The Juror—I say, can they tell?

The Witness—Who is "they"?

The Juror—Weidmann or the National?

The Witness—Yes, sir, they can tell.

The Juror—Can they tell by their books?

The Witness—I doubt it very much if they can tell it from the books.

The Court—It is a matter of calculation.

The Witness—Yes, sir, it is involved in the rest of the power plant work.

The Juror—Are you allowing any credits for the exhaust steam to the live steam?

The Witness—Yes, sir, that is the way I got down to the $1.15 allowing the credit for the exhaust steam which heats the water. Dr. Hunziker had not allowed that.

The Juror—Is there anybody who knows exactly what it is?

The Court—What is what?

The Juror—The witness says they can tell.

The Court—As I understand this witness, he says that Dr. Hunziker made certain calculations or charges which were very large, were something like five dollars, and this witness went there and he found that the doctor had included certain charges which were not properly made, so he arrives at the figure, taking all of the elements which he says are proper to take into consideration and makes the cost $1.15. It is not a question of footing up the various items to arrive at it, but taking into con-

sideration the elements that go into making up the cost of pumping.

The Juror—That pump is not pumping all the time; you cannot go by that?

The Court—What do you say to that?

The Witness—When the pump can get the water to pump the additional cost for pumping water at the Weidmann plant would be $1.15 per million gallons.

The Juror—Don't he want to know what it costs with low water?

The Witness—He did not estimate it then.

Mr. Griggs—There is no cost for what you don't pump?

The Juror—It must cost more to pump a little water when you only get a little in order to get a lot?

The Witness—There is very little difference between the cost of pumping when the river was 1.8 feet deep and there was not any water there at all, and had to make a fifty five foot lift.

Mr. Gourley—It is eight plus fifty five.

The Witness—No, fifty five minus eight, would be a little less cost of pumping when the river was high.

The Juror—Where there was not much water and they did not get near as much water, I know you cannot pump out of a well when the water is low and get as much water?

The Witness—That was with air lift, I imagine?

The Juror—No, a regular pump.

By Mr. Gourley:

Q. Did you include the fixed charges in the $1.15? A. The fixed charges were included by Dr. Hunziker, and as long as the pumps were there were taken in by me in the calculation, except the amount for depreciation.

Q. Did you include them in my question? A. I included them and deducted them.

Q. You did or did not? A. I included them and then made a credit on them.

Q. You took it out then? A. I considered them, if that is what you mean. I did not take them out. I had to put them in to take them out.

Q. Is the overhead charge included in the $1.15? A. The depreciation part of it is.

Q. What about the cost? A. Well, the depreciation is ascribed to the cost.

Q. Is the cost of the pump and the cost of the labor included in it? A. Yes, sir, to a certain extent.

Q. And the interest on the investment? A. The interest is not included.

Q. Are the taxes included? A. No, sir.

Q. And the variable factors were not included? A. It was not included, no, sir.

Q. Can you give us theoretically the amount of steam required to lift the water fifty five feet? A. How much water?

Q. I think 4,500,000 gallons? A. Can I? Just a moment.

Q. Yes? A. About three thousand pounds an hour.

Q. About thirty one hundred pounds? A. I think the exact figure was 3030 if I remember correctly.

Q. What is your percentage of the heat of the steam? A. That question is not clear. Tell me what you mean.

Q. The heat of the steam used by the pump, what is the percentage? A. About 1900 per cent.

Q. Do you know what my question is? A. Yes, you ask me what the heat of the steam was for the pump.

Q. Consumed by the pump I will say? A. Five per cent., that would be.

Q. That is, as I understand, the theoretical test standard? A. That was an actual test.

Q. In what way did you measure the water? In what way did you weigh it? What did you put it in? A. The water I have already testified to.

Q. Yes? A. I measured it in a tub placed on a pair of platform scales.

Q. Was it one of the dye house tubs? A. Yes, sir.

Q. And you ran the water into the tub? A. Yes, sir.

Q. Then you weighed it before it went in and after, is that right? A. I weighed it when it was full and when it was empty and the difference is what we took.

Q. That was your method of doing it? A. Yes, sir.

Q. And the steam measurement, of course, is based upon that measurement? A. Yes, sir.

Q. That I understand is five per cent.?

Mr. Griggs—The steam consumed?

Mr. Gourley—Yes. Five per cent.

Q. Did you make any memorandum of those

measurements at the time? A. They were all put down, they were all recorded.

Q. Have you that with you? A. I have one book with me. I don't know if I have the one you want or not.

Q. Was there any record made during the progress of the test? A. Record of observations?

Q. Yes? A. Yes.

Q. How was that taken? A. By observation, recorded with a pencil.

Q. What was your average working pressure? A. About ninety pounds.

Q. How was that determined? A. By looking at a steam gauge and putting it down.

Q. How was the coal measurement? A. We did not measure it.

Q. How was it weighed? A. We did not weigh it.

Q. Then what quantity did you use or see? A. We did not use any or see any.

Q. How can you then testify about the quantity of steam if you don't know the quantity of coal? A. I testified on the quantity of steam as affecting the coal.

Q. On the basis that you don't know? A. On the basis that if only five per cent. of the steam was used in the pump that only five per cent. of the amount of coal formerly charged by Dr. Hunziker to the pump would be chargeable to the pump.

Q. You did not make any measurement of the coal? A. Not of the coal, no, sir.

Q. You don't know what kind of coal it was? A. No, I do not.

Q. You don't know whether it was full of ash or not? A. It might have been full of ash. I

don't know. I know all the coal at the time I saw it at the time of the test, but I don't know at the the time Dr. Hunziker made his test and his figures.

Q. So, of course, the heat producing units of the coal, they vary, of course? A. Yes, sir.

Q. There is bad coal and good coal? A. Yes, sir.

Q. Some dealers sell good coal and some do not? A. That is right.

Q. Do you know what price Dr. Hunziker used per ton in his calculation? A. I think I did know, but I have rather forgotten it now, it is two years since I saw it or used it.

Q. You cannot give us that? A. No, I cannot, not per ton, that is, the price per ton.

Q. Of course, in your theoretical estimate of $1.15 whatever it is, you assumed naturally that they had use for all the hot water? A. Another double edged question.

Q. Well, I will give you additional time on that if the Court will concur? A. Will you read the question?

Q. Of course, in your theoretical estimate of $1.15, whatever it is, you assumed, naturally, that they had use for all the hot water? A. No, sir.

Q. What deduction did you allow for the water not used? A. I did not allow anything for the water not used.

A Juror—Are there not new kinds of pumps of recent make where a silk dyer could pump water cheaper than these would?

The Witness—Not where you have use for your exhaust steam, no, sir.

The Juror—Which is the most economical, the steam pump or the bell pump?

The Witness—When you have use for the exhaust steam they would be just alike, because the only thing is the motive power and you could use all your exhaust steam, any system of pumping whatever could be used, a direct pump pumping directly into the tank or any way.

The Juror—When you figured that out did you figure also on the saving of the exhaust steam?

The Witness—Yes, sir, the saving by the exhaust steam from the engine when it left went back to the steam pump. If your question was a general one, where you don't have to use the exhaust steam, then the ability to pump by the main engine would be more economical than a steam driven pump.

Q. You said something about five per cent. of the total amount of steam consumed? A. Yes, sir.

Q. That was, I assume, the actual test that you made? A. Yes, sir.

Q. What is the theoretical test, how did that compare? A. Will you be more explicit? What the theoretical test is.

Q. The theoretical quantity for the five per cent. that you have mentioned? A. By calculation you mean I can do it, and what I got?

Q. Yes? A. Three per cent.

Q. This was two per cent. in excess of that? A. Yes, sir.

Q. Can you give us the factors that make up

that sum? A. Make up the sum of five or the sum of three per cent. do you mean?

Q. The difference between the three and the five? A. That is due no doubt to the radiation of the pump and the mechanical efficiency losses in the water valves, and some radiation loss in your steam line of your pump and exhaust line of your heater.

Q. That was your guess, of course? A. Oh, no, you can calculate it very closely.

Q. You did not make any such calculation? A. Yes, I did.

Q. You made a calculation of that radiation? A. Yes, sir.

Q. What was that based on? A. That was based on the number of square feet that would be exposed to the temperature.

Q. What was the temperature when you made it? A. About eighty degrees, ninety degrees, in the engine room.

Q. Did you make a calculation of the temperature? A. I estimated the temperature by looking at the thermometer.

Q. So you allowed two for that? A. Two per cent. for the amount carried off that way.

Q. For the difference between the theoretical and the mechanical? A. Yes, sir.

Q. What about the oil, did you calculate the feed oil to the cylinder and pipe lines and all those other things? A. No, sir.

Q. You did not do that? A. No, sir.

FELIX G. PETTIT, recalled as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. You are familiar, are you, with the equipment of the Valley Works, the East Fifth street Works, the East Main street Works and the Wood street Works, or, rather, the East Fifth street Works, the Valley Works, and the Wood street Works? A. Yes, sir.

Q. When you made your valuation of the buildings did you include anything for the value of the equipment? A. No, sir, I did not.

Q. Are you familiar with that equipment? A. In a general way, yes, sir.

Q. Are you familiar with the machinery in those plants that I have just mentioned? A. Yes, sir.

Q. Can you tell us whether or not that machinery is fastened to the ground or to the buildings? A. Mostly to the foundations.

Q. But it is fast, is it? A. Yes, sir.

Mr. Gourley—I don't think the witness said that.

Mr. Lewis—He said, mostly, to the foundations, the machinery.

Q. The tanks, are they fastened to the ground? A. They are supported by foundations and trestles of their own.

Q. The tubs? A. No, sir.

Q. They are not? A. No, sir.

Q. The filters? A. Yes, sir.

Q. The pipes and fittings and sewer? A. Yes, sir.

Q. How about the sprinklers? A. Yes, sir.
Q. That is fastened? A. Yes, sir.
Q. The tools—

A Juror—Do I understand you are asking if they are fastened to the foundations of the buildings?

The Witness—Am I supposed to answer that?

The Juror—I don't understand the questions and answers.

Q. How about the tools? A. No, sir.
Q. How about the benches? A. No, sir.
Q. How about the tables and racks? A. No, sir.
Q. How about the electric lighting work? A. Yes, sir.
Q. That is fastened? A. Yes, sir.
Q. How about the shafting? A. Yes, sir.
Q. That is fastened? A. Yes, sir.

No Cross Examination.

DR. AUGUST J. HUNZIKER, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Harding.

Q. What is your profession? A. I am a chemist by profession.
Q. What is your business? A. I am in the silk dyeing business for the last twenty seven years.

Q. Are you connected with theWeidmann Silk Dyeing Company? A. Yes, sir.

Q. In what capacity? A. Originally as chemist and later on as one of the managers and vice president for several years.

Q. When did you begin your association with the Company? A. In 1894.

Q. Have you been with them continuously down to date? A. Yes, I have.

Q. During that time, in the course of your business, how much of the time have you been at the works along the river? A. I have been there practically every day.

Q. Since 1894? A. Since 1894.

Q. And you then, of course, have had opportunity to observe the river? A. Yes, sir.

Q. And its flow? A. Yes, sir.

Q. Daily, from that time down to date? A. Yes sir.

Q. When you went there in 1894, what was the condition of the river, and I refer particularly to the volume of water that flowed there at all times and seasons of the year? A. We had all the water we wanted at that time.

Q. At that time, how much did you want? A. We used about from two to three million gallons in twenty four hours.

Q. You say you had all you wanted, I will ask you to state as near as you can how much you had there at the lowest season of the year?

Mr. Gourley—We object to the question for the reasons given in the objection to the other testimony of this class.

Objection overruled; Exception granted to all Condemnors.

Q. With reference to what you wanted, whether you had more than you wanted or how much more?

Mr. Gourley—Will that exception cover all the testimony of this witness of that character?

The Court—No, I don't think I ought to enter a general exception to any testimony.

Mr. Gourley—This is a specific exception to the question. I don't want to take up the time objected to all the questions of the same class.

The Court—I will allow an exception to the admission of this question.

Mr. Gourley—Suppose they ask three or four questions later about the same.

The Court—If they are really the same then you are protected by this, if it is the same class. I don't think I should give a general exception to all the testimony. Some may be good and some may not. I will allow this question and allow an exception.

(An exception is entered to all the Condemnors.)

A. Yes, we had many times more than we wanted.

The Court—At low seasons?

The Witness—At low seasons.

Q. How did you take the water for the use of your plant and business, when you first went there? A. The water was taken from the river through a twenty four inch pipe and two eight

inch pipes which were extended to about the centre, the middle of the river and ran back into the pump house to the pump.

Q. Were those pipes simply laid on the bed of the river? A. Yes, they were just placed on the bed of the river.

Q. How was the water drawn from the river to your works? A. Just by suction.

Q. By pumping? A. By pumping, yes, sir.

Q. I will ask you first what you used the river water for? A. We used the river water in the black dyeing principally and in part of the weighting.

Q. Why did you use it? A. Because it is soft water.

Q. I will ask you whether or not that river water at that time was peculiarly suitable for the use of black dyeing and weighting? A. Yes, it is. Wherever you use soap or alkalis it is to advantage to use soft water, because, if you use a hard water you precipitate your ammonia salts and could not use your soap or anything like that.

Q. When you use artesian well water what do you use that for? A. We use the artesian well water for washing the silk which comes from the bichloride of tin; we use it in the color shop and use it in the white shop, wherever we use acids; with the exception of the black I would say.

Q. You have artesian wells? A. We have artesian wells, yes.

Q. How many have you there? A. We have now about sixty.

Q. Where are they located? A. They are located on both sides of the river.

Q. Where are the most of them located? A.

Right along the river banks, most of them are now on the Hawthorne property.

Q. On the Hawthorne side? A. On the Hawthorne side, yes, sir.

Q. That is, the northerly, I may say, on the northerly side of the river? A. Yes, sir.

Q. Your plant proper is located on the southerly side, on this side of the river? A. Yes, sir.

Q. Generally speaking, how much does that comprise in acreage? A. About fifteen acres.

Q. And, on the Hawthorne side? A. I don't know the exact figure, but around ninety acres, I believe.

Q. How far does the property on this side of the river extend along the river? A. It starts below East Fifth street, goes along the River bank, passes the Erie Railroad, to East Twelfth street.

The Court—How much in feet?

The Witness—It is approximately eleven hundred feet, I should think, twelve or fifteen hundred feet.

Q. Does the Hawthorne tract on the other side of the river extend as far as the property on this side of the river? A. It extends further up the river as well as down the river.

Q. But for this distance of twelve or fifteen hundred feet the plant proper on this side of the river extends continuously along the river, and the Hawthorne property extends on a line coincident with that and projects still further both ways and to the north and the south? A. Yes, it does.

Q. About how much water did you use from the river when you were working at full time

when you went there? A. From two to three million gallons a day.

Q. Has that increased as your business has increased down to the present time? A. Yes, it has.

Q. When you work at full time, what quantity of water, such as you used from the river when you first went there, soft water, do you require? A. Up to five millions a day.

Q. Normally about how much? A. Normally around four.

Q. How much do you use in your business from artesian wells when you are running normal? A. Around four millions, three to four millions I would say.

Q. So that at present when you run your plant normally, both for dark dyeing and for colors, as you call it you would use normally about eight million gallons a day? A. Yes, that is correct.

Q. Have you observed any changes in the river with respect to the flow of the river, that have occured since 1894? A. Yes, I have. Shortly after I came there the water seemed to be getting lower, and we had serious trouble getting water in the Summer . In 1898 the condition got so bad and the water so low that we lost the suction on the pumps, we could not pump the water through the twenty four inch pipe and it became so serious that we were looking for another supply, and Mr. Weidmann was able at that time to come to an understanding with Mr. De Grey so that we could take water from the pond opposite a part of our works from the Goffle Brook. We had to take this water, extended the line to that, I mean the suction pipe, from the middle of the river up stream and across into the DeGray pond. We put in a thirty inch

suction, connecting in the middle of the river to the old twenty four inch. We started to use that water in the Summer of 1899, and found out very soon that the Goffle Brook did not give us enough water, so we dug a ditch from this pond into the river, between the pond and the river we built a dam, and left an opening with a gate on hinges, and when, during the night, the Goffle brook water filled the pond, we were able to get a good start in the morning, until the level got lower, and then the river water began to flow in by pushing open the gate, which was on hinges on top. That went for some time, but it was not a satisfactory condition. Very often, early in the morning we had to go out and dig a channel from that opening in the dam out into the river to let whatever water we could get into this pond. There were times when we wanted to start in the morning that there was no water available, the tank was empty, and we had at that time from six to seven hundred men working. They just had to wait until we could get water. Water used to come down a little later in the morning and enabled us to keep going. At the same time, 1898 and 1899, and later on, we began to drill artesian wells to help out, and, of course, to cover the increased business. I remember times when we could not get the water, when we used to take several hose from the hydrants and lead the hydrant water into the cistern so we could take the water from there up into the spring water tank to keep going. This condition was very bad in 1904, 1905. There was one help sometimes, due to the fact that during the Summer months there was not much business and we could keep going that way. But, if business increased and we had to work in the Sum-

mer time we could not get the water, and, to help out, Mr. Weidmann made an arrangement with the Water Company to get water through a special pipe line from above the Falls, which is called now the Dyers' Pipe.

The Court—When was that?

The Witness—That was in 1905 and 1906. In October. We began to take water from that pipe in the middle of October.

Q. The contract you mean? A. No, the contract was made—

The Court—It began back in 1906?

The Witness—It began then, we began to take in October 1906.

Q. And that continued down till when? That contract continued in force down until when? A. The contract originally was for ten years and then that was extended from year to year up to 1918 and in 1918—

Q. You took under that contract until its expiration? A. Yes, we did.

Q. Then you made a new contract in 1918? A. In 1918 we made a new contract which is somewhat different from the other one.

Q. Which is in force now? A. Which is in existence to-day.

Q. If you can, I would like to have you describe to the Jury so that they can form a picture of the appearance of that river in low times? A. As I stated before, in low times, we had to go across to the other side with a gang of men, as early as five o'clock in the morning and dig a

ditch or channel out to the place where the water was somewhat deep towards the middle of the river.

Q. I want you to describe the appearance of the bed of the stream in those low times? A. Well, men walked right out there, and, naturally, the bed of the river was exposed, we had just to shovel the stones away. And another way of getting an idea of how low the water was, there is a rock above the Railroad Bridge in the middle of the river.

Q. That is the rock that has been described as the Turtle Rock? A. Which we call the Turtle Rock, that used to stick way out in the Summer time, and the rock used to be covered practically the most part of the year.

Q. When you say used to be, be a little more specific as to the time? A. That was in the early parts of the Summer, and then during the later years, after we had laid the pipe over to the De-Gray pond the rock was exposed and the pipe was exposed in dry seasons afterwards.

Q. Right at that point, when you laid this pipe to connect with the deGray pond, you made a connection between the old twenty four inch pipe and the new thirty inch pipe that you sent to the deGray pond? A. Yes, sir.

Q. And that connection was out in the river? A. In the middle of the river to the pond.

Q. Was there a depression just at the point where the connection was made? A. Yes. That was the lowest point, because that was the intake of the old suction pipe.

Q. That formed a sort of a dam there, did it? A. Yes, it formed a dam.

Q. Was that in itself a monument by which

you could determine the height of the water, when it would go by that depression at the connection of these two pipes? A. Yes, sir.

Q. Describe the changes that you saw in the river, using that as a standard to go by? A. The water got lower and lower, and, as I said, the original way was that the pipe was exposed only in the Summer months, but, afterwards we could very often see the pipe exposed practically all year 'round, barring times of freshets or heavy rains. In the dry spells the pipe held the water back and it was only flowing over this low point extending both sides probably fifteen or twenty feet.

Q. When you say that in those low times it got so low you could not get suction, I suppose you mean there was not water enough to cover the pipe and the air went into the pipe? A. The air was drawn in.

Q. State to us generally, if you can, how the change was, whether it was increasing or otherwise, as the years went by, in the contamination of the stream? A. There seemed to be a gradual increase in the spells of low water, in times of low water.

Q. How about the volume of the stream, how did that gradually change? A. The river was lower.

Q. It got lower as the time went on and for longer periods? A. It got lower and for longer periods.

Q. It is necessary for the successful operation of your business that you should have a dependable supply of water at all times of this class of soft water? A. Yes, it is absolutely necessary because we are getting orders in from day to day which have to be filled promptly.

Q. If you did not have it could you continue the operation of your plant successfully? A. If we did not have the water we could not continue, because we could not fill the orders.

The Court—Counsel also means, whether, if the supply were intermittent, whether you could run your business?

The Witness—No, sir.

The Court—If the supply were intermittent you could not?

The Witness—No. We must have a continuous supply.

Q. You could not run your business by having it one month in the year, for a certain time and another month stop another time? A. No, we could not.

Mr. Gourley— That is, you could not run it at all if you had that for the whole year, I understand.

Q. There is no certain season of the year that you can tell when this water would be low? A. No, we cannot tell. As a rule it used to be the Fall months.

Q. Sometimes in the Spring? A. We had it sometimes in the Spring and sometimes during the Winter.

Q. In using this river water while you used it, you had to filter it, didn't you? A. Yes, we filtered it always.

Q. And you would filter the water that you took from the Dyers' Pipe as well? A. Yes, we do.

Q. Why did you filter it? A. Because it is

not pure enough, and in case of rain is turbid, is full of sand or mechanical impurities, clay.

Q. If the river had the flow in it at low times such as existed when you first went there was it usable for your use? A. It was.

Q. At all times? A. At all times.

Q. Taking into consideration the present condition of the river, the river as it is, it was usable if you had that much flow there?

Mr. Gourley—Do you mean then or now?

Mr. Griggs—Now, last month. Don't you? You mean last month?

Mr. Harding—Yes, the present time.

The Witness—The present time, like the river is to-day we would not have any trouble at all in getting all the water we want.

A Juror—You could use that water now without getting from the Dyers' Pipe?

The Witness—As it is to-day, absolutely.

Q. Or, even if it was lower? A. It might go down somewhat lower, yes.

Q. Since you abandoned the use of the water, which I think you said was after you made this contract to get it from the Dyers' Pipe did you continue to use the water such as you could secure from the deGray pond? A. Yes, we did, after 1907 we did not take any more water in the way I described through this opening in the dam. That was closed up.

Q. You did not take the mingled water from the river and the pond? A. We only used the deGray water and the Dyers' Pipe water.

Q. First you took that deGray water under lease, didn't you? A. Yes, we did.

Q. And Mr. deGray died and you purchased the property? A. Yes, when Mr. deGray died we had to purchase the property, because there were other people after it.

Q. So, then, during the continuance of the lease of September fifth, 1905, you used the Dyers' Pipe water under that contract, for part of your dyeing, and also what you could get from the deGray pond? A. Yes, we did, according to the contract we had to take—

Mr. Gourley—Do you mean 1905?

Mr. Harding—Yes.

The Witness—Yes. According to this contract we had to take 156,000,000 every three months.

Q. Whether you used it or not? A. We had to pay for it, and it was naturally our object to keep within that limit.

Q. Do as to keep within the minimum you took from the brook? A. We took from the deGray water during the first part of the quarter, and then we began to calculate and see how we come out, and to keep within the limit, we had to take the water from the Dyers' Pipe to keep within the 156,000,000 per quarter. There were times when we stopped the pumps entirely, though the water was there, and took it all through the Dyers' Pipe, to make up the 156,000,000.

Q. In order to utilize this water from the Dyers' Pipe which was in substitution of that which you previously had used from the river, did you have to go to some expense? A. You mean to get the deGray water?

Q. To get the water from the Dyers' Pipe? A.

To get the water from the Dyers' Pipe, yes, we had to connect our supply tank with the Dyers' Pipe, which came down Fifth avenue, and we also put in five additional filters to take care of this water.

Q. In the trial of these proceedings before the Commissioners did you make an estimate of the annual cost which you were put to due to the fact that you had to take this water from the Dyers' Pipe and discontinued the use of the water in the river? A. Yes, I did.

Q. In that statement did you state the quantity of water that you had taken in the four years, practically four years, lacking one month, prior to these proceedings? A. Yes, I did.

Q. Which would be the years 1915, 1916, 1917, 1918 leaving out January of the year 1915? A. Yes, I did.

Q. And did you in that calculate the amount that you paid for that water? A. Yes, sir.

Q. And is that statement as follows:

Payments made per year to the Passaic Water Company, from February first, 1915, to December 31st, 1916, three years and eleven months, making all together, forty-seven months.

Years	Gallons	Paid
1915	731,200,000	$10,966.95
1916	780,580,000	$11,785.50
1917	712,720,000	$10,731.15
1918	700,470,000	$10,691.85
	2,924,790,000	$44,175.45

A. Yes, sir.

Q. And then underneath this statement, under the second head: Water taken from the DeGray

Pond from February first 1915 to December 31st, 1918, forty seven months? A. Yes, sir.

Q. Under the head of year from 1915 how many gallons?

Mr. Gourley—We admit the Water Company figures, not the deGray figures, and before they are put in I would like to find out something about them.

Q. Have you the records here of the quantity of water that was taken by you and used from the deGray pond in the year 1915? A. Yes, I have.

The Court—You can tell from that statement whether you used that or not?

The Witness—I have the actual figures here.

Mr. Gourley—The point about this is the measurement of water.

The Court—He has that.

Mr. Gourley—He has the statement, I want to prove how it was made up.

The Witness—I have got the statement here of the whole year. I did not take that last month, 1915, 1916, 1917, 1918.

Q. Give us the year 1915, how many gallons?

Mr. Gourley—Objected to. There must be some way before that goes in, as a lump sum, of showing how it was arrived at, how it was measured, by what process. He cannot say how many million gallons unless he measured it himself and knows about it.

The Court—Tell us how you got your figures?

The Witness—We keep a record in our engineering department and mark down every day how much is pumped and then it is tabulated by the month.

The Court—Is this from the records kept in your business?

The Witness—Yes, sir, this is a copy of it.

Mr. Griggs—We can call the engineer who kept these records, but we have not done it heretofore, and have not thought it was necessary, and in many of the calculations that have been put in evidence here we have not called the original makers or takers of the records, and, if counsel's objection stands we understand we have got to call those witnesses, but that may subject them to some reprisals which they would not like. We have tried to agree to these things.

The Court—I don't understand Mr. Gourley insists on your calling the engineers. These are the records from your plants.

Mr. Gourley—We do, sir. We have given them every information we had, our experts, Mr. Sherrerd, and every public record, and we have permitted them to go into all the records they wanted to, but now they come and claim for a supply of water and we want some engineer who made the records in order that we may learn what he did about it.

Mr. Griggs—Then we will have to pass that. We cannot prove it except by the

original record. We will go on with something else.

Q. In this estimate have you put in an amount as cost saved from pumping due to the fact that you took water from the Dyers' Pipe instead of from the river? A. Yes, sir.

Q. And in that estimate did you take Prof. Pryor's figures? A. I did.

Q. And, just in that connection, did you submit to Prof. Pryor your cost of pumping? A. Yes, I did.

Q. And, state to the Jury, how you estimated that? A. I arrived at that estimate by first measuring the capacity of the pumps, by pumping water with each pump in the river water tank. The man in charge of the pump house went up to the river water tank with a stick and I was down in the pump house counting, watching the counters on the beam giving the revolutions. From the diameter of the tank and the quantity we pumped in there, say one or two feet, which we measured after one foot, another one after the second foot, we got the quantity of water pumped in that tank by our pump for a given number of revolutions. That gave us the capacity of the pump. Then we did on the following day connect one boiler with these pumps, made a ten hour run, measured the coal, after weighing, and counting the revolutions, and of each pump, either by half hour or by every hour, until the ten hours' run was finished, and, in this way we arrived at the amount of four million gallons were pumped with these in ten hours, and I also had the actual weight of the coal which was consumed by that boiler to do that work. I then made an estimate of the investment, we had

at that time eleven pumps in that boiler house, I made an allowance, or a charge, whatever you want to call it, for this one boiler, taking into consideration the economizer, the pumps, put in the labor charges and the price of coal and arrived at the figure $5.75 per million gallons.

Q. That was based upon the reasonable prices? A. The test was made in 1912, and of course that was based on the prices at that time of coal and labor.

Q. That was for the purpose of the first ejectment suit for the taking of water against these companies? A. Yes, it was.

Q. When you made that was it based upon the value at that time of the material, fuel and labor and the other material that entered into the question? A. It was, yes, sir.

Q. And you made, first, an overhead or investment charge, in which you included the cost of the pumps? A. Yes, sir.

Q. Or the installations? A. Yes, sir.

Q. Then you made a direct operating charge? A. Yes, sir.

Q. And the two together made this $5.75? A. They did, yes, sir.

Q. You made that charge for the investment of the pumps, although in fact you had the pumps there on hand, didn't you, to pump the river water with? A. Yes, sir.

Q. And you made no allowance for any value to you for exhaust steam? A. No, I did not.

Q. And you submitted that estimate of yours to Dr. Pryor, did you? A. Yes, sir, I did.

Q. And that is the estimate that Dr. Pryor refered to in his testimony? A. Exactly.

Q. Have you that estimate here? A. Yes, I

have. These are the four sheets, one giving the capacity of the pump—

Q. I only want the estimate to show the conclusions. A. Well, I can give you the whole thing.

Q. I just want the one, that is the only one I want. (The witness produces paper.)

Mr. Harding—We offer it in evidence.

Admitted and Marked "Weidmann Exhibit No. 12" of this date.

Q. The question of the quantity of steam that could be consumed by the pump was a question for a mechanical engineer? A. It was. I just made the actual test, weighing the coal, filling so much water in the tank and getting at the exact figures as near as I could.

Q. You were not able to tell how much exhaust steam would be consumed by the pump? A. No, sir.

Q. Do you know of any other supply of water that would be available or procurable for the use of dyeing blacks and the weighting process in your business other than the river water and the deGray water and from the Dyers' Pipe? A. I don't know of any other supply where we can get the same quality of water in sufficient quantity.

Q. Will you state a little more particularly why it is necessary that you should have water of the character that was in the river for the purpose of doing your black dyeing and weighting or doing either of those things? A. We have to use,—or wherever you use soap and alkali it is of advantage to use soft water and that is really the reason why Paterson has been the centre of the silk dyeing industry for the very quality of the water in

the river, when the people originally located here.

Q. Can you use your artesian well water for that purpose? A. You can use artesian well water for certain processes.

Q. When it comes to using it in general—? A. Not in general, in black and colors for weighting where you use acids.

Mr. Gourley—What is that answer?

The Witness—You can use artesian well water for certain processes in black and weighting where you use acids, but to use hard water in connection with soap is not an advantage on account of the curdling of the bath and the precipitation.

Q. Would you be able to use it in your business without its requiring great expense? A. Our well water is about from three to four times as hard as the river water and to bring that water down to the same degree of softness would cost a considerable amount of money.

Q. How much would you say? A. We are softening to-day the river water down to zero. If you softened the well water down to the softness of the river water it will cost you about a hundred dollars a million gallons by the same process.

Q. And, even then, if you did it, would you be assured that it would be as good for the purpose for which you needed your river water now? A. Well, that is a matter we do not know because we have not done it.

A Juror— You said it cost fifteen dollars a million gallons from the Water Company?

The Witness—It does. I beg your pardon, according to the new contract we pay

twenty five dollars for the first two and a half million gallons and we pay twenty dollars for the second two and a half million gallons of water and whatever we use in excess of the five million gallons per month we pay fifteen dollars per million gallons for, or, roughly speaking, it is fifteen dollars per million gallons.

Q. Did you estimate the cost of pumping water from the river? A. Based on our figure we figured it would cost $1.15 according to the estimate made in 1912. Of course, to-day, you know the coal is higher and labor is higher. That would change that estimate somewhat, based on today's cost.

The Juror—According to that then the Water Company makes thirteen dollars a million gallons?

The Witness—Why, that is up to them. I don't know what it costs them. There is the investment of the pipe and taking care of the intake and all that, and I suppose they have some expenses connected with it, undoubtedly.

The Juror—Would the pipe cost any more than the other in your expense of pumping?

The Witness—I beg your pardon?

The Juror—Do you think the pipe would cost any more than the expense of your pumping?

The Witness—The pipe line?

The Court—I don't think you made clear to the Jury that there was no $13.50 profit.

Suppose you explain that again. I think the juror did not get it. He says there are other elements to be taken into consideration. For instance, their overhead. How much they pay their officers, how much it costs for the pipe and how much it costs to operate.

The Juror—But they don't have to pump the water?

The Witness—No, but they had to lay the pipe from the Falls down Fifth avenue, a forty-one inch pipe, at a considerable expens undoubtedly, and somebody has to take care of the water as it goes into the pipe, and they have got an amount to write off, against the venture, the money which is represented, for it deteriorates and they have got a meter which is read I believe every month, in our case every month and they put a tape on the meter and that registers, and all those things go into the cost.

A Juror—To make it plain it costs you about $13.50 more for water through the Dyers' Pipe than it did when you pumped it from the river?

The Witness—Yes, that is correct, based on our figures, not the present cost, it would be higher on the present figures.

Cross Examination by Mr. Gourley.

Q. When did you say you went to the river? A. I went to the Weidmann Silk Dyeing Company in 1894.

Q. Were they on the river at that time? A.

They were in the same place where they are now.

Q. Where was Weidmann before he moved to the river? A. Up in the City, on Paterson street.

Q. Right in the heart of the City here? A. Yes, sir.

Q. Two blocks from the Hamilton Club? A. Yes, sir.

Q. And he had an extensive dyeing establishment for Paterson there? A. I don't know how big the place was, but just from pictures I judge it was a fair good sized plant.

Q. The largest in Paterson at that time in one place? A. That I don't know.

Q. Then he moved to the river from there? A. In 1887.

Q. Your first acquaintance with the situation came in 1894? A. Yes, sir.

Q. Was that the first time you came to Paterson? A. Yes, sir.

Q. At that time what was the capacity of the plant in silk? A. In dyeing?

Q. Yes, how many pounds a year? A. About a million pounds.

Q. Did you dye a million pounds a year? A. I believe so.

Q. How many pounds did you dye last year? A. Last year we dyed about 2,400,000 pounds.

Q. So you increased from one million to two million in that time? A. Yes, sir.

Q. Is that a fair indication of your gradual growth or is it due to any other cause? A. No, we have been more, last year, as you undoubtedly know, was a bad year for the silk business, so this figure which I gave you was considerably below the average.

Q. What was the average for the last five years

in that? A. The last five years, preceding last year, we have not done, what I could call a normal business since 1916, on account of the war conditions, things were a great deal upset.

Q. What was it for 1915, or 1916, how many million pounds for 1915, do you recall? A. I believe around four million pounds.

Q. 1914 about the same? A. Close to it.

Q. And it has gone on from one to four or five as you say? A. Yes, sir.

Q. And the number of men, of course, has increased in the same ratio? A. Not absolutely, no, sir.

Q. Owing to appliances you have limited the labor? A. We decreased the amount, yes, from the introduction of machines.

Q. Is it all skein dyeing? A. It is all skein dyeing, yes, sir.

Q. You do not do any piece dyeing at all? A. No, sir, none at all.

Q. For skein dyeing you need cold water more than you do for piece dyeing? A. I presume so.

Q. Relatively? A. I presume so.

Q. Is it a presumption only? A. I never had anything to do with piece dyeing.

Q. You don't know about that? A. No, sir.

Q. When you went there, I understand you to say that the year you went there the river was low? A. The year I went there the river was low in the Summer, but we had plenty of water to keep going.

Q. For the last Summer the water had been increasing in the Summer, you have much more water now in the Summer time than you had before? A. We had an exceptionally wet season

last year and there was more water in the river in the last two years.

Q. There was more water there in the last two or three years than you had in 1904 and 1905 in the Summer time? A. I should say so.

Q. And in 1906? A. Yes, there was not any at all.

Q. You use about four million gallons of river water a day? A. On the average, yes, sir.

Q. The flow of this river Monday when you were there was how many million gallons? A. I understood something like eleven hundred million gallons.

Mr. Griggs—Eleven hundred and forty six million gallons, if you want it exactly.

The Witness—A very good condition.

Q. There would be no trouble for you to get your four million gallons out of that eleven hundred and forty six milion gallons? A. Not at all.

Q. Do you know how many million gallons was going down the river in 1904 and 1905? A. How many?

Q. Yes? A. Very few. Of course, I have no readings.

Q. Did you ever see the river fall below ninety million gallons? A. I have no records about the exact quantity that comes down.

Q. I want you to tell the Jury why it is that you cannot get four million gallons of water if that is all you use from the Passaic River? A. We can get it now.

Q. Was there a time, so far as you know, during your entire association with the Weidmann

Company that there was not at least seventy five million gallons of water going by your door? A. That might be, but as I said, I don't know.

Q. Why couldn't you get it out of the seventy five million gallons? A. I don't know the quantities that go by, except by what I hear stated, in previous years. I have no records.

Q. You own right across the river? A. Yes, we do.

Q. All the way across? A. All the way across.

Q. So that you can do anything you like with the bed of the stream there? A. Yes, sir.

Q. You can make any excavation you like, form any plan you like, any pond or pool you like, anything of that kind? A. Yes, sir.

Q. If that is so, why don't you get four million gallons a day out of the river during this period? A. When the river was so low as it was in 1905 and 1914 and previous years, the water was in a very bad condition so that we could not filter it. When we went across to deGray's pond and pumped the water in from the river, or at the time we pumped it direct, we had no end of trouble in filtering the water; the filter got clogged in no time. And, for that reason we could not use the water, because we could not get it through the filters.

Q. Then is was due to the pollution and not to the quantity? A. It was due to both of those combined.

Q. If the pollution had not been there, and the quantity of water, could you not have gotten the water? A. We could not get it with the installation we had when we started because we lost the suction, we had a twenty four inch pipe and that pipe was not covered,

Q. If the water had not been polluted couldn't you have pumped it? A. If the water had been absolutely pure.

Q. If it had not been polluted couldn't you have pumped it? A. We could pump, pump the water, yes, surely.

Q. And it is because of the pollution that you went to the Dyers' Pipe? A. It was because of two causes, the one because the water was not there, and, what little bit was there, was bad.

Q. After you got it out of the Dyers' Pipe? A. How is that?

Q. After you got it out of the Dyers' Pipe it was your water, wasn't it? Would not that water come down stream by your door if you had not taken it up above? A. I presume so, if you did not send it somewhere else.

Q. Why did you go up and take it there instead of taking it in front of your door? A. Because it was not there.

Q. If it was up above it would be at your place too, wouldn't it? A. I don't know what they would do with it if they would not send it down.

Q. It was coming down through the pipe? A. Yes. When we took it it came down through the pipe.

Q. You took it from the pipe at the dam, why didn't you take it from the pipe in front of your door with your own pipe? A. Because that was so low, as I said, in the summer months, it was bad and we could not filter it.

Q. So that it was the pollution and not the quantity you complain about? A. That had something to do with it, surely.

Q. Isn't that the complain? A. (No answer.)

Q. That is the fact? A. As I stated before,

when the water was so low in the river it was bad, you say from pollution, but it was so bad that we could not handle it, we could not filter it, that is why we could not take it and did not take it.

Q. Why did you go up above and take that water at the time when the water came down to you, if you could take it from there? It would come down if you had not taken it from up above? A. Because that water was in better condition, better quality.

Q. It was the pollution that you suffered from, you took it from up there because it was unpolluted, isn't that the fact? A. We took it from the Dyers' Pipe because we could get it there. We got it from there and in the river we could not get it.

Q. If you had not taken it up above through the Dyers' Pipe you would have had that water come down the river? A. I presume so, yes, it would.

Q. There was no other place for it to go, was there? A. I don't know where you would send it to.

Q. We would send it wherever the water would flow, it would flow to you, wouldn't it? A. Yes, if it goes as far as the Falls I suppose so.

Q. So that the same quantity of water that you took from the Dyers' Pipe you could have gotten from in front of your own door if you chose to pump it? A. Yes, we could have if we could have pumped it.

Q. What caused this pollution along the stream? A. All the City sewers emptying into the river and the industrial establishments discharging either into the sewers or directly into the river, as far as I know.

Q. You discharge into the river yourself? A. We do.

Q. You make the river a sewer? You use the river as a sewer? A. We use it as such.

Q. The National uses the river as a sewer? A. I presume so.

Q. Don't you know so? A. I was never in there.

Q. The gas company uses it as a sewer? A. Yes, you can see that.

Q. That is very plain? A. That is very plain, every morning now.

Q. You can see floating spaces on the river with variegated colors? A. Yes, sir.

Q. Floating down by your place? A. Yes, sir.

Q. Then you add to the demonstration and add colors on your own account, and so send it on to the lower proprietor? A. Yes, we do.

Q. Everybody polluting it as it passes their door? A. Yes, sir.

Q. The stuff that comes from your place is not potable, is it? A. No, it is not.

Q. A cow would not drink it? A. A cow would not drink it when we get it.

Q. It would not? A. No, it would not.

Q. Do you mean that? A. I mean it.

Q. Do you mean that the water above the dam a cow would not drink? A. I do not mean that, I mean the water that is in the river.

Q. The Dyers' Pipe water a cow would drink? A. I presume it would.

Q. In other words, it is the ordinary raw water that we see in the river, is the water you get? A. Yes, we do.

Q. Of course, you could swim in the thing as

it passes your door, I suppose, or could you? A. You could swim or you could not swim.

Q. It would not be safe even to swim, would it? A. I would not.

Q. You would need a couple of artesian well baths after it? A. Yes, some good scraping, undoubtedly.

Q. In other words, it is generally admitted it is in a bad condition, is it not? A. In the Summer, yes.

Q. In this great establishment of yours what quantities of dye stuff do you use? A. We use acids, alkalis, logwood extract, tannin, bichloride of tin, phosphate of soda, silicate of soda, aniline dyes.

Q. What quantity of logwood do you use a year? A. In a normal year about eight hundred thousand to a million pounds.

Q. Gambia, how much gambia do you use? A. About seven hundred thousand pounds.

Q. How much bichloride of tin do you use? A. Around four million pounds.

Q. That is an acid? A. That contains an acid, yes.

Q. Is that deleterious to the fish life? A. When you treat it, we wash the silk and the water is slightly acid.

Q. Answer my question first and explain afterward. A. The water is slightly acid.

Q. Is the bichloride of tin as you use it deleterious for fish life? A. It may be.

The Court—Do you mean as they use it, or discharge it?

Mr. Gourley—I first want to get it as it is used.

Q. Before it is reclaimed or anything done to it by you it would kill the fishes? A. Surely, in a concentrated form.

Q. I mean, in pails? A. In pails, yes, surely.

Q. Tell us how you reduce that or how you lessen the acidity of the water before it is discharged into the river? A. The natural hardness of the water neutralizes a great deal of the acidity contained in the bichloride which is washed off the silk.

Q. That is washed off with artesian well water? A. Yes, sir.

Q. And that runs off with the water? A. That runs off with the water to the basins.

Q. In other words, the silk comes from this bichloride of tin bath and is put in a washing machine? A. Yes, sir, it is.

Q. And then these minute little holes fill with water and pour it in a rather forceful stream against the silk which revolves and the bichloride of tin upon the silk is washed off and runs off with the water? A. Part of it is fastened to the silk and the other part runs off and is caught in this reservoir or precipitation basin and if there is too much acidity we add some lime, milk of lime or lime water.

Q. But in any case, the water, as it leaves your establishment, is pronouncedly aciduous? A. The water which leaves the basin is slightly acid, but otherwise absolutely clear.

Q. The gum that is washed off is that a nitrogen? A. It is a nitrogen compound.

Q. Combined with something that will decom-

pose, won't it? A. It will smell, certainly, if it is kept in the form of gum, soap, in a concentrated form.

Q. Won't it smell when it is taken off the silk when the silk is stripped of the natural gum that comes with it? A. But we keep it in solution.

Q. And then the solution, the gum solution, passes out and isn't there a smell to it? A. There is a smell to it, a soapy smell.

Q. Won't it and doesn't it decompose? A. It does decompose if you keep it in concentrated form, it begins to smell, but if it is diluted—

Q. Then as fast as it does become—

The Court—You said, if it is diluted?

The Witness—If it is diluted it wont smell.

Q. If you passed by the river below your works when you are discharging this stuff from it, do you say you cannot smell the nitrogen? A. I don't think you smell the gum solution, no.

Q. What is the smell then, that peculiar gummy odor from silk? A. The smell of the various chemicals and sewage, all mixed, everything together.

Q. The general combination? A. Yes, it is undoubtedly that.

Q. What about the silicate, what quantity do you use? A. About five million pounds, that is all solution.

Q. A year? A. Yes, sir.

Q. And these dye stuffs, these various bright colors, how much of those do you use? A. That varies according to the fashions of the season

probably from thirty to fifty thousand pounds a year.

Q. Depending upon the colors? A. Depending upon the colors. Naturally, if the fashion is dark shades we use more, if it is light shades, we use less.

Q. Chemically what do you call those dye stuffs? A. They are all coal tar bases, aniline colors.

Q. All aniline colors? A. All aniline colors.

Q. None of them are vegetable, are they? A. We use some argil.

Q. They are all products of coal tar, practically? A. Yes, the principal ones.

Q. So all of those stuffs, the reds, the blues, the greens, and all those bright dye effects that we saw there, are discharged into the river in that form? A. They are, yes, sir.

Q. So if you had chosen, when we were down there the other day, you could have given us quite a little picture on the water, if you had chosen to do it, if you had just been in the act of discharging those greens, blues, reds, and they had gone out in the stream while we were there it would have been quite a color picture? A. Well, you saw what we did.

Q. I saw that, but I did not see what you did not do? A. Well, that is the actual condition.

Q. If we had chanced to have been there at the time the other tubs were let loose it could have been quite a picture? A. Which other tubs?

Q. The blues and reds? A. They were all mixed in with the others; you saw a kind of a dirty brownish color, that is the mixture of the various colors.

Q. You do not discharge all of your tubs at

one time? A. We did not discharge anything especially for your effect, we let it go as our regular running conditions demanded.

Q. Do you mean to say that you let the lights go and let the others go at the same time? A. We might let the green go for your benefit.

Q. I suggested that myself? A. Yes, that was very good.

Q. But you did not take advantage of it? A. No, we could not.

Q. What about the whites and creams? A. The whites and creams they are run off through another sewer, that is the waste water or soap from the whites and creams that is just simply a purplish color.

Q. You use the river water for the whites and creams? A. We use a part of the river water which is used with the soap bath and use the well water for the soda bath.

Q. You use a part with soap? A. Yes, we use a part of the river water which we soften for the soap bath.

Q. What proportion do you soften for the whites? A. I should say half and half.

Q. A fair proportion? A. I think so.

Q. Half artesian well water and half—? A. Well, it might be a little more soft water.

Q. And those light shades? A. And colors?

Q. Yes? A. That is all well water, artesian well water.

Q. The lighter shades? A. All of them.

Q. Why for the whites do you take half? A. Because we dye the whites in what we call a fresh soap bath, that is an alkaline bath, we use soft water, but the colors we do in a broken soap both which is the gum stuff with the addition of either

sulphuric or acetic acid which means a slightly acid bath, and for that we use well water.

Q. You use sulphuric acid too, do you? A. Yes, sir.

Q. What quantities of that do you say you use? A. About six hundred thousand pounds.

Q. Then when you come to the darker shades, do you use any well water? A. Yes, sir.

Q. Artesian well water? A. Yes, we use practically all artesian well water in color dyeing, for all shades, and we use a very small percentage of soft water for special work which needs a softening in the dyeing to clean the color.

Q. Why don't you use the river water with the color shades? A. We find that through experience we get a better hand, a better scrupe, and that is an established method we have in our plant ever since I am here.

Q. So, therefore, so far as we have got, is, you need to have artesian well water for the lighter shades, is that right? A. Artesian well water, yes, sir.

Q. And you need it for the washing machines? A. Yes, sir.

Q. Let us get to the dark shades, please, what artesian well water do you use for them? A. We do not use any artesian well water for the blacks.

Q. Is that a color? Is that the only color, if you call it a color, used in your shop, where the artesian well water is not used? A. Yes, sir.

Q. So for every other you use artesian well water? A. From the light to the dark, yes, sir, for all colors.

Q. And yet, artesian well water only forms a half of your total consumption? A. Yes, sir.

Q. What then is the other half used for, if you

do not use it at all for the lighter shades, nor for the whites, how do you use the other half? A. The artesian well water?

Q. No, the other water? A. The soft water?

Q. Yes? A. That is used for blacks, for boiler feed, condensers, manufacturing soap and other chemicals.

Q. But for dyeing purposes it is only used for the blacks? A. And for the phosphates and silicates in the weighting department.

Q. But, so far as the actual dyeing is concerned, the river water is only used for blacks, and one half of the waste, is that a fair statement? A. Yes, for dyeing.

Q. What you want it for is for other uses associated with your dyeing business? A. Exactly.

Q. Do you make all the dye stuffs used, in a general way? A. In a general way, yes, I think so.

Q. About the pumping of the water, I understand you pumped the water when you went there first? A. We did.

Q. And you, of course, do not use the pumps now at all? A. Oh, yes, we do.

Q. From the other side of the river? A. We pump from the deGray pond.

Q. But you do not pump any from the river? A. Not directly, no.

Q. This junction that has been spoken about between the thirty inch pipe from the deGray property and the twenty four inch pipe from your property, in the middle of the river, at that point could any water be taken from the river? A. Today, yes.

Q. Did you give us the gambia? A. Yes. I

said about seven hundred thousand pounds.

Q. How much gall extract? A. Gall and tannin, gall and sumac extracts.

Q. Gall and sumac? A. Yes, and tannin.

Q. Did you give them separate? A. No, it is all the same line practically, that may be two hundred thousand pounds.

Q. What about salt, soda? A. About three hundred thousand pounds.

Q. Is that Prussiate of soda? A. No. That is something else. That is used in black. That is about fifty thousand pounds.

Q. All of these dyes that are not taken up by the silk and all of this material goes into the river? A. They do. With the exception of the tin, the phosphate and the soda which are recovered, and the stuff from the black department.

Q. The tin you recover as much as you can? A. We do, yes, sir.

Q. And recover about, you say, fifty or sixty per cent.? A. No, about, between thirty-five and forty per cent.

Q. The other sixty or sixty five per cent. goes into the river? A. Oh, no, that stays on the silk.

Q. How much is on the silk, all the rest? A. All the rest, surely.

Q. Then you recover all? A. We recover forty per cent. from the wash waters, the balance is on the silk, we do not lose any.

Q. You recover all except what is on the silk? A. Yes, sir.

Q. None goes in the river? A. Well, there may be a small percentage which we cannot get.

Q. All the tin? A. Yes, all the tin, hydrate of tin.

Q. You have given us the quantity of aniline dyes, have you? A. I did.

Q. About the pumping, you pumped when you went there first? A. Yes, sir.

Q. And you pump still? A. We do.

Q. You pump from the deGray pond? A. Yes, sir.

Q. And you pump in the same way from the deGray pond that you did from the river? A. Yes, it is the same principle, just simply the suction ends in the pond instead of in the river. It is an open end.

Q. I was asking you a minute ago when we were interrupted, whether or not at the junction of these two pipes in the river you draw any water between the twenty four and thirty inch pipes? A. Not now, because the pipes are connected, one to the other, there is a joint.

Q. There is no place to take water at the junction? A. No, sir.

Q. The pumping now is entirely from the deGray pond? A. Entirely except in the winter we do not, or in the last few days where the water from the river flows into the pond so we might assume that some of that river water goes also into the pond and through the pipe into the works.

Q. In the summer time is the deGray brook always dependable? A. We had quite a stream last year, but in dry seasons there is not much water there.

Q. How much water do you use in the deGray pond as far as you know? A. Approximately about a million and a half a day.

Q. You have made no calculation of that yourself? A. We keep records from the pumps.

Q. Have you made the calculation? A. No, sir.

Mr. Griggs—I thought you would not let him swear to it on direct examination.

Mr. Gourley—He does not swear to it yet. He says approximately, and does not give us an exact answer.

The Witness—I might say this, six years ago I instructed the engineer to take the readings of the pump every day and put down the time that the pumps ran.

Mr. Gourley—But you cannot talk about what anybody else did.

Q. Did you filter the river water? A. Yes, we do.

Q. Did you filter it when you went there? A. Yes, sir, always.

Q. Do you filter it now? A. We do.

Q. Is not the expense less for filtering now than before? A. The expense is less, taking it from the deGray pond.

Q. No, not that? A. Well, there is not any special expense. We have the same filters now. It simply means more washing if you have water that it not as clean.

Q. Is it not more expensive to filter water that is dirty than it is to filter water that is clean? A. It is.

Q. So that if you filter the river water in front of your place in the Summer time it would be more expensive to filter than either the deGray water or the Dyers' Pipe water? A. It won't be much more expensive, if it is like it is to-day. Three or four years back, of course, it would, because there we

could not filter it, because it was closing up the filters.

Q. Think of the question. If you filtered the water there from the river in front of your place during these dry periods of which you have spoken, in the Summer time, where the water in the river was low, would it not be more expensive to filter the same quantity of water than it would be to filter the same quantity of water taken from the Dyers' Pipe? A. We could not filter it because the filters got clogged up and we had to wash all the time, and it was more expensive using more wash water.

Q. In other words, the dirtier the water the more expensive the operation of filtering? A. Yes, take it that way.

Q. Did you make any test of this pumping yourself? A. I did.

Q. Your estimate, I think, was $5.75 per million gallons? A. Yes, sir, it was.

Q. Now you have got it down to $1.15? A. That is the revised figure which Prof. Pryor reached by taking into consideration the value of the exhaust steam.

Q. In your estimate did you take account of the weight of the coal? A. I did.

Q. Do you remember what it was? A. 2078 or something, I have got the figure here.

Q. You may turn to any memorandum you made yourself? A. Yes, sir.

Q. What was the weight of the coal in your test that you used? A. 2087 pounds of coal.

Q. What was the price per ton? A. The price per ton at that time was Buck No. 1., $1.85.

Q. That was in the good old days? A. Yes, it was.

Q. Do you know what the pressure was at the pump? What the suction pressure at the pump was? A. The suction pressure?

Q. Yes? A. No.

Q. Do you know what the discharge pressure was? A. We pumped against the river water tank which is fifty feet high. Of course the tank was not full, the men had to go up there and lean over the edge. If you took the full height of fifty feet from the ground the tank would overflow, so we kept it below, about four feet, so he could measure the water as it came up, two feet and read it nicely.

Q. What was the height of the lift? A. It was just what I said, fifty feet above the ground, less probably four feet of the height and the suction which might have been eight and ten feet.

Q. Between fifty-five and fifty-eight feet? A. Yes, sir.

Q. How many pumps did you make the test with? A. We ran four pumps.

Q. Do you know the kind of coal? A. It was Buck No. 1.

Q. Do you know anything about the pressure at the pump? A. Ninety pounds.

Q. You have a memorandum of that, have you? A. Yes, sir.

Q. You have a minimum price in this contract, the 1918 contract under which you are working? A. The new contract?

Q. Yes? A. The minimum price is twenty-five dollars for the first two and a half million gallons, twenty dollars for the next two and a half million gallons and fifteen dollars for whatever we consume over the first five million gallons.

Q. Twenty five dollars for two and a half mil-

lion gallons per month, how much is that per annum? A. Twenty-five dollars.

Q. Sixty two dollars per month? A. Well, it all depends upon how much you use.

Q. You know the contract? A. Oh, I see; we have to take five million gallons.

The Court—Isn't that a mere matter of arithmetic?

The Witness—That would be sixty million gallons a year that we have to use at twenty five dollars, makes fifteen hundred dollars.

Q. It is a simple sum, fifteen hundred dollars do you make it? A. Yes, sir.

Q. Twenty five dollars a million gallons at two and a half million gallons a month?

The Court—What is fifteen hundred dollars? I do not understand.

Q. Sixty two dollars and a half a month for the minimum charge for using the Dyers' Pipe water, they do not have to use any more than that unless they want to.

The Court—That they have to pay for whether they use it or not?

Mr. Gourley—Yes.

The Court—It costs them fifteen hundred dollars a year whether they use it or not?

The Witness—Yes, according to that twenty five dollar clause.

Mr. Gourley—I make it seven hundred and fifty dollars.

The Witness—Twenty five dollars a million?

Mr. Gourley—Twenty five dollars a million gallons for two and a half million gallons a month.

The Witness—The first two and a half million gallons a month, if we use it or not, we have to pay that much for the first two and a half million gallons and then it would make five hundred dollars more for the second two and a half million gallons, at twenty dollars a million gallons.

A Juror—What do you use a month?

The Witness—That depends. Under the old contract we had to use 156 million gallons, which was about fifteen a month. Lately we have been using, since we can take water on account of the rainy season, we use about twelve to sixteen or seventeen, million, last month about thirty million, on account of the fact that we had quite a busy rush.

The Juror—And you paid for the first five million gallons $22.50 a million?

The Witness—Yes, sir.

The Juror—And that balance fifteen dollars a million gallons?

The Witness—Yes, sir.

The Juror—That charge was a minimum rate to be charged?

Mr. Gourley—That is the rate to be charged, so much, whether they used it or not. Then the rate beyond that was the regular rate.

The Juror—Does not that provide that a certain amount must be used?

Mr. Gourley—No. I am speaking of the minimum.

Q. You say the minimum was fifteen hundred dollars a year? A. Well, if you take the five it would be $1250.

Q. So that if you pumped the water from the river and had all that you wanted you would only have to pay actually $1250., a year if you did not take any water at all from the Dyers' Pipe? A. We would not have to pay that if we took it? Oh, you mean in addition? We would have to pay that in addition, yes.

Q. If you did not touch the Dyers' Pipe water, if you signed this contract for a period of a year and did not take a gallon of water through the Dyers' Pipe you would only have to pay the Company $1250., a year if you did not take a gallon of water, isn't that so? A. Yes, that is so.

Q. So that, to-day, you could put your pumps at work on the river, while it is high, for this last period of years that you have spoken about, and get all the water you want, and the only penalty would be $1250. a year for that? A. The last period, going back, is only, going back about a year or so, or a year and a half, since we had rain, and then we did not have water before.

Q. While you have water in the river? A. Yes, but we may not have it next week.

Q. While you have water in the river and you chose to pump it out, and you are still bound by this contract, you do not want to give it up, you only have to pay the Passaic Water Company $1250. a year, is that right? A. Yes, sir, that is right.

Q. And you have the privilege to cancel the contract yourself, if you want to? A. Six months' notice.

Q. So that to-day, while the water lasts, you

can pump it and use it, according to your story? A. Yes, we can, but how can we get it next week or next month? We would have to make changes in our plant and then when we have got the change made there is no water there, what then?

Q. What changes do you mean? You would have to put in new pumps? A. We would have to either open up the dam in the deGray pond or break the suction in the middle of the river.

Q. That is not an important thing to do? A. It is not? Well, it is important enough, because you cannot close it up again. Suppose it is done and the next month you have no water.

Q. You mean you cannot pump from the water then without expense, is that the idea? A. No. But what we are talking about is the chance of getting a dependable supply. We have it to-day, we may have it next week, but we may not have it next month.

Q. While the water was over your pipe you would not want to close it up, you would still pump? A. Surely, that is what we did in the low time, and when the condition changed we would have to give it up.

Q. If you had the water in the river you could pump it and use it and the only penalty you would have to pay every six months would be $625., and by giving six months notice to these people you could stop that? A. Yes, sir.

Q. And your point is you cannot get any water in the river? A. No, that is not the point. The point is because we don't know if it is there next month; you cannot change your plan and change your system without knowing that you are going to get water six weeks from now or two months from now.

Q. Would you take the water from the Passaic River yourself if you could get it, when you can get at the present rate from the Dyers' Pipe? A. We would take it tomorrow if we could get it, yes.

Q. Didn't you request the company to put the Dyers' Pipe in? A. I don't know about the request, but that was the only way out of this terrible nightmare we had, we could not keep going.

Q. Didn't you ask them to do it? A. I did ask, I don't know who asked, I did not.

Q. Didn't your company ask to have it done? A. Mr. Weidmann might have asked, I did not.

Q. Didn't you ask them to stop the water in front of your place and give it to you, the same water, from up above, instead of allowing it to come down through this polluted district, don't you know that Weidmann asked that from them? A. We did not have water in 1904 and 1905 and the plant was practically closed up.

Q. Why didn't you have water? A. Because they held it back.

Q. How could they hold it back? A. They did hold it back.

Q. It would have to go around the race? How could they hold it back? A. They know how to hold it back.

Q. You did not? A. We did not see it come down till the morning about half past seven, they held it back all night and on Sunday.

Q. They held it back on Sundays? A. Surely.

Q. You were not working on Sundays ? A. No, but we could use what is there and have it come down Monday morning. It could come down and wash out there.

Q. Who is holding it? Is Jersey City holding

it? A. I don't know who holds it, I know we don't get it.

Q. You don't know that Jersey City is holding it. Is Newark holding it back? A. I don't know.

Q. Is the Acquackanonk Water Company holding it back? A. I don't know. Somebody holds it back, because after half past seven it comes down.

Q. It comes down where? A. Past our works. That is what I said, when we had trouble, we could not start at seven o'clock in the morning, we had to wait till half past seven or eight when the water came down then we could start to pump again.

Q. There was not enough water for your purposes? A. No, there was not.

Q. How much was there in the river at that time? A. There was not enough to keep clean.

Q. Have you a record to show what the flow was at that time? A. No, I have not.

Q. You have spoken to us about the Turtle Rock, why don't you give us some figures so that we can measure? A. I can show you the Turtle Rock stood up twenty four to thirty inches.

Q. A chemist like you and did not take note of it? A. I took notes every day, I kept my readings, way back in 1896 how the water was, I have been twenty-seven years on that river, and I know what it looks like.

Q. Where are those records? A. They are kept down in the office.

Q. Can you bring them here this afternoon? A. I will.

Q. I will be glad to have them. A. They are personal notes. I had them here once before. I have got some here, for the last four years, if you

want to see those, when I saw the stone covered up and exposed, I kept that every day.

Mr. Griggs—You have some of them now?

The Witness—Yes, if you will allow me I will just show you what it looks like. (Producing.)

Q. Can you give us, from any memorandum you have, the quantity of water in the river, as to the number of gallons flowing? A. I cannot do that.

Mr. Griggs—The witness says he produces records showing the height of the water on the Turtle Rock. That is what he was asked for.

Mr. Gourley—Oh, no. We want some measurement of the river level, unless somebody verified that with the height of the water in the river in the case of high or low flow.

The Court—What is the nature of your records?

The Witness—I kept the records like this, for instance, on August first 1916 the stone was covered, then on August—

The Court—That means the Turtle Rock?

The Witness—That means the Turtle Rock. Then on the fifth of August I put that down, that the stone was flush; on the seventh the stone was out several inches; on the tenth it was still out; on the eleventh it was still out, again on the twelfth, and the pipe began to show, the suction pipe is

about fifteen inches below the top of the Turtle Rock and that gave me an object, how far the pipe is out.

Q. How far was the Turtle Rock covered on Monday? A. Last Monday?

Q. Yes? A. Several inches. You could not see the rock.

Q. So that that represented when covered eleven hundred million gallons? A. Yes, sir, that is what I understand.

The Court—So that your record is just—

The Witness—Just in a general way gives the flow over the Rock and the Pipe.

Q. Give us some more? A. In 1914, stone out twelve inches July 3rd, 1914, stone out twelve inches on May 29th, 1914.

Q. That is the last one? A. That is 1915. Do you want 1920? (Producing.)

Q. What are you turning over so fast for?

The Court—What do you want to know, Mr. Gourley?

The Witness—Well, do you want any special date?

Q. Is there any statement you have to make now from your records as to measurements? A. That is the only records I have got.

Q. Let me see the Summer months of last year, 1920, July, August and September? A. Here is the seventeenth of July, (producing).

Q. Let us see what you have there? A. Cloudy, rainy, fair, rain, stone covered seventeenth, stone

out eight inches on June fourteenth, fifteenth ten inches; sixteenth twelve inches; for the next week there is no memorandum at all what it is.

Q. That signifies it must have been all right if you did not say anything about it? A. Except that it was not changed probably, it was the same way, and nothing special to be marked about it.

Q. It would not be exactly the same to the inch? A. Yes, about the same condition.

Q. That must have been a pretty good month, then July you have not anything—

The Witness—I went away July, somebody else kept the book.

Q. There is no data on that? A. No, sir.

Q. Give me 1919 then? A. Here it is, (producing).

Q. May, June, June first, Sunday, June second, river lower, stone twelve inches, third, pipe, Bells, what is that? A. The bells come up first and then the pipe.

Q. Then for the remainder of the month from the seventh down to the fifteenth, pipe out, top pipe out, that means you could see the top of the pipe? A. You could see the top of the pipe, yes, sir.

Q. How far is the top of the pipe below the top of the Turtle Rock? A. Fifteen inches about.

Q. Then we have the pipe out on the sixteenth? A. Yes, sir.

Q. Then we have the pipe out on the twenty-third, and nothing beyond that. July, no indication so far up to the tenth, nothing about water, water very low on the tenth.

The Court—Did I understand you to say that there was a continuation of the previous condition where there was nothing marked?

The Witness—Yes, sir.

Q. How could that be here from the twenty-third of June up to the sixth of July? A. Let me see what it is, (examining), twenty second of June top of the pipe out, that is marked, and then one-third pipe out twenty sixth and twenty seventh and twenty eighth, 29th Sunday, 30th, Bells out.

Q. What do you mean Bells out? A. It is a cast iron pipe, and the ridges over the cast iron pipe.

The Court—You mean the rim on the pipe?

The Witness—Yes, Second of July top of the pipe out, then, river goes down very low, very low, very low.

Q. Give me from any record you have there the lowest period of flow on the river on this daily memoranda now? A. I would have to go through it to find out.

Q. It is important enough to take a little time.

The Court—Suppose you reserve that until his examination is completed and he can then go through the record while some one else is on the stand.

Q. One or two of the books will do. A. I will do it.

Q. I show you a memorandum of some figures which we asked you to supply us and which were supplied, that is correct? A. Yes, sir.

Mr. Gourley—Dr. Hunziker is going to give us several days to look over this memoranda.

Mr. Griggs—He is going to get the records that he has not got here at present and give you those also; you have called for all of them.

Mr. Gourley—I am entitled to have my question answered. How many books have you there?

The Witness—From 1914 up to date.

Q. On those books that you have here in Court will you go over them after you leave the stand and give us the various periods of lowest flow during that period of time? A. Yes, those that I can find.

Q. I have asked you the number of pounds per annum at your place? A. Yes, sir.

Q. The maximum production, I am asking you the maximum production of the highest month if you can give it to me, as near as you can? A. Not off hand.

Q. How near can you come to that? A. I did not quite catch your question.

Mr. Griggs—How near can you give it?

Q. You gave us your best recollection of the total production per year, the highest maximum amount of dyeing silk in your establishment, the highest number of pounds of silk died for the

largest month? A. I think the largest month was around 430,000 pounds.

Q. I am further requested to ask you one or two more questions. I think you gave the value of the coal? A. I did, yes.

Q. When the test was made? A. $1.85.

Q. Do you know what the steam pressure at the pump was? A. At the boiler, ninety pounds.

Q. What was it at the pump? A. About the same, because there is very little difference, there is a short direct connection, a short line from the boiler to the pump.

Q. Do you know Mr. Boller? A. I do.

Q. Did you say to Mr. Boller in 1912 the total head was seventy five? A. I don't think so, because the tank is fifty feet above the ground.

Q. Did you say to him it was seventy five? A. I don't think so.

Q. You don't know, I presume what the percentage of ash and coal was in making the test? A. No, we did not measure the ash.

Q. Taken all together as to the number of pounds of soap, bichloride of tin, carbonate of soda, gambia, logwood, aniline dyes, sumac, gall extract and those things collectively, what are the number of pounds used per year? A. The total?

Q. Yes? A. I could not tell you that except to add them up.

The Court—You gave them separately, didn't you?

The Witness—Yes, approximately.

Q. About twenty-two million pounds? A. Yes, it might run up to that.

Q. You are not a mechanical engineer? A. No. I am a chemist.

Re-direct Examination by Mr. Harding.

Q. If the river now had the quantity of water that was there when you first went with the Weidmann Company at its lowest flow, notwithstanding all the pollution that exists, would you still be able to use it? A. Yes, sir.

Q. And, with such quantity of flow as existed when you first went there, would it so dilute, did it so dilute the pollution that it would be entirely usable for your use? A. We did use it.

Q. Were there times there when you went there when the river got so low that there was not sufficient water for you to get suction so as to pump any amount of water? A. Yes, sir.

Q. No matter whether it was clear or polluted it was too low at times for you to get suction to physically pump it? A. We lost our suction on the twenty four inch pipe.

Q. Were there other times when you could physically pump the kind of water that was there but when it was so full of pollution due to the low quantity of water that you could not filter it and use it? A. Yes, sir.

Mr. Gourley—That is a statement. You are testifying. He is not.

Mr. Harding—I am asking him. He can testify to it. Do you object to it?

Mr. Gourley—It is in now. The harm is is done.

Q. You have spoken of using the river water for the dyeing of blacks? A. Yes, sir.

Q. And in the weighting process? A. Yes, sir.

Q. Now I want to ask you whether or not you use the river water for any purpose in the dyeing of colors, for any purpose? A. We only use it for white after it is softened.

Q. For white after it is softened? A. Yes, we let it go through a special process to get zero water which is absolutely soft.

Q. How do you use it for whites after it is softened? A. We just use it in tubs the same way as we use the other water.

Q. I want you to understand me. Do you use the river water for any purpose in the process of dyeing your colored goods? A. No. As I said, only for soaping a very small percentage in dyeing.

Q. Do you use it for boiling off your skein? A. The river water?

Q. Yes? A. Oh, yes.

Q. Your skein silk? A. Yes, sir.

Q. You do not use artesian well water for that? A. Not for boiling off, no, you want soft water, because it is boiled off with soap.

Q. You don't consider that part of your dyeing process then? A. That is a preliminary process.

Q. Just tell the process that it goes through, the skein of raw silk? A. We receive the raw silk in the brown state and the silk is boiled off or stripped in a boiling soap bath.

Mr. Griggs—Boiling off and stripping mean the same thing?

The Witness—That is the same, yes. After the boiling off the silk is washed, and then it is either directly dyed or it goes through the weighting process to be

weighted with tin or it goes to the black department to be treated for certain blacks with red iron and so.

Q. I want to find out what kind of water you use in the process you have just mentioned? A. In the stripping process we use soft water to prepare the soap baths and to wash the silk after it comes out of the soap baths, then we give it a slight acid in artesian well water, and from there we go to the weighting department and use bichloride of tin and wash the silk afterwards with artesian well water on the machine which you saw, that is where the largest quantity of artesian well water is used.

Q. How do you use the river water in the raw silk, that is what I want to know? A. To prepare the soap baths for boiling off.

Q. Just tell us how you do it? Is that with reference to all of your raw silk? A. All the raw silk, all the brown silk which is boiled off receives the treatment with soap, and this bath is prepared with soft water, that is, river water.

Q. That applies to all the silk that you get? A. Yes, sir. Now, you asked me about the weighting. After it comes from the tin weighting and is washed with the artesian well water, it goes through the phosphate bath or the silicate bath or after the silicate it is treated with soap and all those waters are soft waters.

Mr. Griggs—You have spoken of the dyeing process, and have said that for dyeing creams and whites and colors, you use artesian well water, and I want to know what you want us to understand as the dyeing

process, is there a point in the process of the treatment of the silk, where, before you get the dyeing process, is there a point of distinction? Does the dyeing process comprise the boiling off, or what does it comprise ?

The Witness—No. I would not call it that way. The boiling off and the weighting are all preliminary operations.

The Court—The dyeing starts when you put the color on?

The Witness—The dyeing starts when you have got the silk all ready that you can do it, when it is weighted and all, then you can dye it white, cream, blue, pink, red, green, brown, anything you want, or black.

The Court—That is what you term the dyeing process?

The Witness—That is the dyeing process.

Mr. Griggs—Would it be possible for you to carry on your business as silk dyers, without having soft water for the purpose of boiling off or stripping, and washing your silk, in these preliminary processes?

The Witness—No, you want soft water wherever you use soap.

Mr. Griggs—You must have it?

The Witness—Yes, sir.

Mr. Griggs—It is necessary?

The Witness—It is necessary; that is an essential part.

Re-cross Examination by Mr. Gourley.

Q. In other words it is a question of the value of soap? A. We have to use soap, you want soft

water whenever you use soap. If you have hard water you form a precipitate.

Q. Soft soap? A. Soft soap, surely, but it has a whole lot to do with the lustre of the silk afterwards. If you use hard water, put the silk through it in the soap bath with hard water you will get silk blunt and all those things.

Q. Does not soft water, soften soap? A. It surely does.

By Mr. Griggs.

Q. Is it practical to go through this washing off process and stripping process with hard water, if you use artesian well water can you do it, provided you use a large quantity of soap? A. If your silk comes out blunt, it is not the right——

Q. Do it is not merely the soft soap? A. No, sir.

By Mr. Gourley.

Q. Plenty of dyers in town do not use the river water? A. Well, there are all kinds of well waters, when you come to this. There may be harder well water or softer well water. That is a general expression.

Q. There are quite a number of dyers in town who do not touch river water? A. Well, they must use some water of some kind.

By Mr. Griggs.

Q. Would you say that anybody could boil off silk with hard water? A. I would not say they could not, but it is not the proper way to do it. Not to get the best results.

By Mr. Gourley.

Q. Not the Weidmann way? A. It is not our way. We have our established method and every other dyer has his rule.

JOSEPH W. GRAHAM, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Harding.

Q. What is your profession? A. Industrial engineer, specializing in plant appraisal.

Q. What experience have you had? A. I have had about fifteen years' experience, partly as chief engineer and plant purchasing agent and design and operation of various kinds of plants besides appraisal work.

Q. Covering how large an experience? A. About fifteen years' experience.

Q. What territory, generally speaking, have you been engaged in? A. Most of my experience has been in the vicinity of New York City.

Q. Some in Jersey? A. Well, what I mean is, from Pennsylvania, Philadelphia, New Jersey, New York City, Connecticut, and in through that country.

Q. In your experience have you had much to do with buying and selling machinery of different kinds? A. Yes, I have during the war, second hand machinery especially, for a variety of plants.

Q. Have you been especially engaged to appraise the value of the equipment, machinery etc., of the Weidmann property? A. No, I was not especially engaged for that purpose.

Q. Have you been engaged for that purpose in a general way? A. Well, since last week I have gotten up the figures on the machinery and the equipment.

Q. And, I am speaking in general, have you been appraising the property down there for some time? A. Yes, in general, I have been there for about seven months.

Q. For the purpose of making a general ap-

praisal? A. For the purpose of making a general appraisal of their property.

Q. Now, with reference to the making of a special valuation of the property, have you been specially engaged in that for several days? A. I have been engaged for several days in making out these figures.

Q. For the purpose of obtaining the figures that you now purpose to give us, is that right? A. Yes, sir.

Q. Have you yourself made an examination, I will ask you first, of the general machinery and equipment of the Weidmann plant?

Mr. Gourley—We object to the question for the reasons already stated. And we object for the further reason that this witness seems only to have examined the machinery during the wet period, the extent of his knowledge stated on the stand.

The Court—I understand he has been appraising machinery for fifteen years.

Mr. Gourley—So might I swear to the examination and appraisal of machinery but that is not a sufficient qualification.

The Court—He seems to have familiarized himself with values, and he might even have had much experience during the war and the adjustment and change of conditions and still be qualified. I will allow the question.

Mr. Harding—I will qualify him a little more specially if Counsel insists upon it.

Q. What has been your experience in reference to the value of this kind of machinery?

Mr. Gourley—May I have an exception to that?

The Court—The question was withdrawn.

Mr. Gourley—At this stage I desire your Honor to make a ruling and request an exception.

Mr. Griggs—There is nothing here to except to, the question is withdrawn.

The Court—There is nothing before the Court. The original question is withdrawn in order that Mr. Harding may comply with your objection and qualify the witness before he asks it.

Mr. Gourley—It is not withdrawn after he has already asked a question concerning the value of the machinery of this witness.

The Court—You certainly cannot have an exception to the questions already asked and answered.

Mr. Gourley—Whether the witness is competent or incompetent, my exception goes to the fact.

Q. What had been your experience in reference to the value of this kind of machinery since you have been in business in general? A. Well, I have handled boiler, hoist equipment, pumps, engines and lathes, machine shop tools, machinery and just the general line of machinery, you meet in most businesses.

The Court—What do you mean by "handled"?

The Witness—What I mean is that I have purchased machinery and designed plants. I am familiar with prices, I had to

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be familiar with prices in order to do that.

Q. Is it a part of your business to be familiar with prices and values and the cost of this kind of machinery? A. Yes, sir, it is.

Q. Does that experience of yours extend before the war time? A. Yes, sir, it does.

Q. And during the war? A. During the war and before the war.

Q. And since the war? A. And since the war.

Q. Have you made an examination of the machinery at the Weidmann plant, first, which we would describe as general machinery and equipment? A. I have.

Q. Have you gone over with care all of this property that is comprised under that head? A. I have.

Q. And have you estimated the value of it? A. I have.

Q. I will ask you now what you make the value of that property as of, say, December thirty-first, 1919?

Mr. Gourley—My first objection is as to the original incompetency of the testimony. It is not relevant to the purpose of the inquiry, and also on the further ground that the witness has not been qualified as yet. He has not indicated what his experience has been. He said he sold some machinery but does not indicate any particular facts, and his testimony thus far does not constitute him an expert; he must show where and how and under what circumstances, so that we can see whether or not he is competent.

The Court—I will allow the question and an exception.

(An exception is entered for all Condemnors.)

Q. What valuation did you put upon that property so classified as general machinery and equipment of the Weidmann Silk Dyeing Company's plant? A. ~~$913,750.58.~~ $1913.750.58

Q. Did you also estimate the value of the property under the head of pipes? A. I did.

Q. What did you make that valuation?

Mr. Gourley—We enter the same objection.

(Objection overruled; condemnors except and the exception is entered for all Condomners.)

A. $428,036.32.

Q. Have you also valued the property classified as platform, foundations and wiring?

Mr. Gourley—We make the same objection.

(Objection overruled; Exception entered for all Condemnors.)

Mr. McCran—May the exception taken by Mr. Gourley apply to all this line of examination as to values?

The Court—Yes, sir.

Mr. Humphreys—We also wish to object to it on the ground that this machinery is other than personal property.

The Court—There is some evidence from which the Jury may infer that it was not,

but even if there was not, we can take the evidence of what there is there and the jury may know what is personal.

Mr. Humphreys—We ask an exception on that ground.

Mr. Gourley—That is personal property, the machinery and the equipment.

The Court—The other side have introduced evidence to show that it is a fixture.

(Objection overruled; Exception entered for all Condemnors.)

A. $128,268.77.

Q. What did you make the total of those items? A. $2,470,055.67.

Q. Is that the present value? A. That is the present value of the property that was in the Weidmann plant on December thirty-first 1919, yes, sir.

Q. It is the present value of the property that was then in the plant on December thirty-first 1919? A. Yes, sir.

Q. What did you make the total of that? A. $2,470,268.67.

Q. Have you also appraised , or fixed the present value of these three classes of property which represent property that has been acquired since December thirty-first 1919 down to March thirty-first 1921?

Mr. Gourley—Which property do you mean?

The Court—Of the same classes.

Mr. Gourley—That is a very general indication of it.

The Court—General machinery and

equipment. He is speaking about the same thing about which he has already given the value?

Mr. Gourley—What are those things?

The Court—General machinery, pipes, etc.

Mr. Harding—What I propose to prove by the witness is exactly the same classification already testified to only with reference to property since acquired.

Q. Have you? A. Yes, sir.

Q. Under that head of general machinery and equipment and property acquired since December thirty-first 1919 to March thirty-first 1921 what valuation have you?

Mr. Gourley—We object to the question; there should be some limitation of what general machinery is. I never saw or heard of that being done. What is the limitation of general machinery?

The Court—It is all subject to examination as to what it is, if you want to know.

Mr. Gourley—The property should be specified.

Mr. Griggs—We will specify every item if you want. We have got the data here.

Mr. Gourley—I have not seen any data yet.

Mr. Harding—Give us time and we will give it to you.

Mr. Gourley—Why don't you give it to us in advance of the hearing and we will know what you are talking about?

The Court—What is the value?

The Witness—$82,284.51.

Q. And under the heading of pipes? A. $51,-561.16.

Q. And under the heading of platforms, foundations and wirings? A. $30,529.55.

Q. What is the total? A. $164,375.22.

Q. What is the grand total of the machinery that existed December 31, 1921, of these additions referred to? A. The total to March thirty-first 1921 is $2,654,430.89.

Q. Have you here with you available the items that go to compose these classified properties? A. Yes, sir, I have them.

Q. Have you them in your hand now? A. No, they are contained in those books here, in this tin box.

Q. Produce the tin box, and describe what they are about, how many are there all together? A. There is 1800 pages of inventory and 45 items to each line.

Q. They are here in Court, are they, available? A. Yes, sir.

Mr. Griggs—We produce them.

Mr. Harding—I don't propose to go over each one of these items.

The Court—I don't think Mr. Gourley does either.

Mr. Harding—If he does, he can have the fun of it.

Q. Have you also made an estimate out of this general merchandise and equipment class, which existed December thirty-first 1919 as immovable and unrecoverable? A. Yes, sir.

Q. What do you mean by unrecoverable? A.

The value of which at a sale would be very slight.

Q. Very slight, what do you mean by that? A. Well, you cannot very well take out the installation of the machinery itself, in the way of unloading and setting it up.

Q. Speaking generally, what is this, what you call immoveable and unrecoverable property, what does it consist of? A. It consists of economizers, and coal bunkers, filter tanks and filtering material, the smelters and furnaces, nitric acid cells, general foundations, dry boxes, air ducts, coal elevating equipment, wells and the Hawthorne water supply system and pond and intake from the river.

Q. Under the classification ofplatforms, condensers and foundations and wiring, I will ask you whether or not you have referred all of those things as immoveable and unrecoverable? A. Yes, sir, I have.

Q. In this class of property under the name of general machinery and equipment which is immoveable and unrecoverable, I understand you practically valueless, how much have you estimated the value? A. Under general machinery and equipment the value of $851,364.08.

Q. You mean to say that $851,364.08 you have regarded as valueless out of the classification that you referred to? A. Yes, sir.

Mr. Harding—A Juror asks whether or not $851,364. should be deducted from the $1,913,750.58, as absolutely lost, is that right?

The Witness—Yes, it should be deducted.

Q. Under the heading of pipes, where you gave the present value of $428,036.32, what amount

would be immoveable and unrecoverable according to your estimate? A. The immoveable and unrecoverable portion would be $406,634.51.

The Court—The foundations etc.?
The Witness—That is for the pipes.

Q. With reference to the foundations and wiring of $128,268.77, you consider those all immoveable? A. All are unrecoverable.

The Court—What is the total?
The Witness—$1,386,267.36.

Q. That is all to be written off from the $2,470,055.67? A. Yes, sir.

Q. Now, coming down to the general machinery and equipment that has been acquired since December thirty-first, 1919, which you valued at $82,284.51, how much did you write off as immoveable and unrecoverable? A. $23,394.51.

Q. And of the pipes? A. $46,405.16.

Q. From the original value of $51,561.15? A. Yes.

Q. As to the platforms, foundations and wiring of this later acquired property of $30,529.55, how much did you write off there? A. The same amount, $30,529.55.

Q. You have written off in the same way with reference to this subsequently acquired property as to platforms and foundations as you did to the previous? A. Yes, sir.

Q. How much then do you make the total written off of this immoveable and unrecoverable property, the grand total of it all? A. $1,486,596.58.

Q. And from the grand total of original value of how much? A. $2,634,430.86.

The Court—Let me understand what that means? Does that mean, if you had to abandon this plant and set it up somewhere else, that would be lost?

The Witness—You could not recover on that, that would have to remain where it is.

The Court—Those are the items that would be lost?

The Witness—That would be lost.

Mr. Harding—I have that made in the form of a statement here, if counsel are willing to have it go in.

Mr. Gourley—You have not given us a copy of it. We know nothing about it, and decline to give our consent to it. We have not even seen it.

The Court then ordered a recess until two o'clock this day.

After recess.

Mr. Griggs—If the Court please, the last witness testified to the value of additional equipment put on the plant since the date of the taking. Similar testimony was given with reference to the buildings on the plant since the taking. After consultation and consideration, we have decided to withdraw that evidence from the consideration of the Jury in so far as we claim any benefit from those additions, our view being that the property must be taken as of its condition at the time the condemnation began about two years ago.

The Court—Do these figures cover a part of that valuation?

Mr. Griggs—Yes. The last witness gave figures showing additions of $164,000. since December thirty-first, 1919.

The Court—That is after the filing of the bill ?

Mr. Griggs—Yes, now we waive all claim arising out of such evidence.

The Court—You ask that that evidence be disregarded?

Mr. Griggs—We ask that that be disregarded by the jury. I say that now, to save counsel taking that into consideration and taking the trouble of controverting it. Or of cross examination on it. And the same is true with reference to the buildings which Mr. Torrey testified to as having been put up on the Weidmann property since that time.

The Court—Gentlemen of the Jury, you will regard the testimony of the valuations of the buildings or of the personal property or whatever other property was testified to by the last witness and by Mr. Torrey which were added subsequent to February 1919. You will remember that this morning the witness testified to general machinery, pipes, foundations etc., and then gave some items, which were added subsequent to December thirty-first 1919. That will be disregarded by you, and the same course taken with reference to the testimony mentioned by Governor Griggs given by Mr. Torrey. You will disregard that, gentlemen, please.

JOSEPH W. GRAHAM, resumes the stand.

Cross Examination by Mr. Gourley.

Q. Were you working for yourself or as the representative of some firm? A. I was employed by W. F. Weiss & Co.

Q. Where are their headquarters? A. Number 170 Broadway, New York City.

Q. What was the last time you valued a dyeing plant? A. I have not valued a dyeing plant before.

Q. This is the first time? A. This is the first time, yes, sir.

Q. When did you value or appraise any plant of a somewhat similar character? A. In 1918.

Q. How similar was that plant? A. It consisted of a large amount of pipe and pumping system and filtration plant.

Q. Was it used in any way in connection with textile work? A. No, it was used in a general way for city water supply.

Q. Is that as near then as you can come in experience to the appraisal of a dyeing plant? A. No. The regular line of machinery experience would apply to a dye shop, just as well as to anything else.

Q. It depends upon whether or not you had ever bought or sold such like machinery before? A.. Well, the bases in these plants are similar.

Q. No, answer my question? A. What is that?

Q. Just try to keep your mind on what I ask, then give me your answer ifyou kindly will; it depends upon whether you had ever bought or sold such like machinery before? A. Well, I have not bought or sold dye tubs or dyeing machines. I have boilers, boiler plants, pumps and all that sort of thing.

Q. If you have not bought or sold these dyeing establishments, made up of the equipment you have mentioned, how can you tell what the life of it is? A. From the records of the Company.

Q. How can you tell how long efficient any part of this equipment may be, how long it will last? A. By observation.

Q. But you never saw or dealt with one before? A. Machines are made up of cog wheels, structural steel and tool steel and that sort of thing and an engineer who has had experience on similar machines can determine what that should—

Q. There are no similar machines that you have had anything to do with?

Mr. Griggs—He does not say that. I don't think counsel ought to misstate it.

The Witness—I said I had never had experience with dyeing machines before.

Q. Have you had any experience with any part of this equipment except as you have mentioned, pipes and filters? A. Boilers, pumps, tanks, foundations, general timber work and in the plant installation.

Q. The life of all those things depends upon many factors, doesn't it? A. Yes, it does.

Q. You are without the experience of that kind; you are depending on those for what they told you? A. As applies to what?

Q. You are apprised by other people, you have not had any experience in running these things, but what you were told, to what particular uses they were put and how frequently during the twenty-four hours, a month or a year they were in

use? A. You mean the dyeing tubs and the dyeing machines?

Q. Yes, take the whole unit of the plant? A. Why, I don't gather just what the question is.

Q. You were not appraising the building? A. No, I am appraising the machinery.

Q. Appraising everything that is there that is fixed, you say? A. Yes, sir, appraising everything.

Q. How do you mean, the things were fixed to the building, you appraised them? A. I appraised them.

Q. Now, I say, what calculation can you give to those fixed things if you have had no previous experience about it? A. Well, knowing the cost of the particular machines, and knowing the general upkeep of the plant and about how their repairs run every year, I could determine approximately what the condition of a particular machine was.

Q. Well, take those vats in which they have the chloride of tin, how long will one of those last? You have not the slightest knowledge? A. Those, where, in the plant do you mean?

Q. The plant where they take thegum off the silk. A. There is no chloride of tin in there.

Q. In the plant where they put the chloride of tin or in the place of the gum taken off? A. Well, those tanks have less life than they would otherwise.

Q. I know, but have you any experience in the past as measuring the life of them? A. I have.

Q. Did you ever pass upon the life of a tank containing chloride of tin? A. I have done that for the last three months in this particular plant.

Q. You are a perfect baby at it then? A. Not in this particular business.

Q. And you have learned all about them in that time? A. I have put a life on every piece of apparatus in the plant.

Q. That tank is lined with what? A. With hard rubber.

Q. Had that been removed during your time? A. What do you mean? The hard rubber removed?

Q. Yes? A. If you remove the hard rubber you have to remove the tank.

Q. The bichloride of tin, the walls of the tank in which the bath is, is what material? A. It is made of hard rubber.

Q. How long does that rubber last? A. That would last from ten to fifteen years.

Q. Have you the slightest information or have you any definite information how long rubber would resist bichloride of tin? A. I just answered that question.

Q. Have you any experience anywhere before your three months' at Weidmann? A. The only way to gain that experience is by written records.

Q. Have you any experience that will tell us how long, before you went to Weidmann those three months, so that you could before you went there fix the life of the rubber in the tub in which the chloride of tin bath was? A. No, I have not.

Q. Did you ever sell a washing machine? A. No, I did not.

Q. Did you ever see a washing machine? A. I did.

Q. Until you saw this? A. Not this particular kind of washing machine.

Q. Whose washing machine is this? A. Some manufactured by the Tollhurst Machine Company.

Q. Did you ever see one like it until you saw

this? A. Which one are you referring to?

Q. The one that is there? A. There are a great many washing machines.

Q. Any one of them? A. Do you mean particularly employed in dyeing? I have not.

Q. How do you know the life of them then? A. By consulting the records.

Mr. Griggs—If the Court please, I am about to enter upon a branch of the case now, which has not been opened, and which I think, for a better understanding of the testimony, it would be well to explain to the Court and jury.

The Court—Yes, I would like to have it, it gives us a better understanding how to apply the testimony you are introducing.

Mr. Griggs—The evidence that will now be presented has relation to the disposal of the discharge or effluent or waste from this factory or plant after it has been used in dyeing. It is recognized by the owners that there is a trunk sewer to be built and our claim is that they have aright to put ten per cent. of their total waste into the trunk sewer. The rest of it they will expect to put into the river. They recognize the fact that when the trunk sewer is completed it will be necessary to so arrange their plant as not to get into the river effluent that will make the quality of the water worse than it is when it comes to them, or, in other words, in the language of the Courts, create an indictable nuisance. Now, we propose to show by this and other witnesses how that can be done. We will show

you the process by which it can be done, show you how it is necessary to do it, and show you the maximum of cost. Merely showing you the cost in order to show you that it won't be necessary to abandon the plant, because, if your Honor please, as long as it is prudent, and economical, there would be every reasonable ground to continue this plant, making such arrangements and appliances as are necessary to conform to the law of the river. It is utterly immaterial to the condemnors in this case how much it costs us, because they cannot take advantage of what the owner has to spend in order to utilize his property; after he has done it, the water is just as desirable and just as valuable as before.

Now, with that explanation, I will proceed.

The Court—What do you say about the ten per cent. I did not catch that?

Mr. Griggs—We will show that design of this trunk sewer was made after an investigation by Prof. Hazen employed for that purpose by the City of Paterson, particularly, with a view to seeing how the manufacturers of Paterson in the Passaic River could be allowed to continue their operations and business, that he recommended the building of the trunk sewer and reported that five per cent. of the waste would be all that was necessary to put into the trunk sewer, all the rest might be put into the river without contamination, but as a factor of safety, that ten per cent. should be provided for, and, therefore, the trunk sewer act provided that it should be planned so as to allow

ten per cent. of the factory waste to be put into the sewer.

The Court—The act provides for that?

Mr. Griggs—Yes, and Mr. Van Duyne has testified that that was provided for, that the act does provide for that. We will be using the trunk sewer act, laws of 1907 I think.

Mr. Gourley—Of course, we don't agree with some of those statements?

The Court—He was just simply stating what they claim.

Mr. Griggs—We did not expect you to agree and did not ask you to.

Mr. Gourley—The only point I disagree with you on is that you state the trunk sewer act is making a separate provision for ten per cent., and the act speaks for itself rather differently.

Mr. Griggs—I was making the opening as I understood it, just as you made your opening and did not expect your consent to what might hurt you.

HARRY W. CLARK, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. Where do you live? A. At North Andover, Mass.

Q. What is your profession? A. Chemist.

Q. Where were you educated? A. At the Cornell University and the Massachusetts Institute of Technology.

Q. What official position do you hold at present? A. Chief Chemist of the State Department of Health of Massachusetts.

Q. How long have you been Chief Chemist of the State Board of Health of Massachusetts? A. I have been in the employ of the Board for thirty years and chief chemist since 1897, twenty-four years.

Q. During that time or at any other time, were you engaged in any other place of a public character? A. I have served as consulting expert to many cities, towns, corporations etc., in different parts of the country; I might say, in explanation, that I had charge of the State Experiment Station of the State Board of Health at Lawrence.

Q. What is the Experiment Station at Lawrence? A. It is a station designed for carrying on investigations in regard to the treatment and purification of water, treatment and disposal and purification of sewage and mill wastes, etc., it is equipped with chemical and bacteriological laboratories and with filters, tanks and other apparatus.

Q. Have you personally given attention, in your position as chemist of the State Board of Health of Massachusetts, to matters of disposal of sewage, factory wastes etc.? A. I have.

Q. How much of that kind of business comes before your Board? A. Why, there is considerable in regard to the treatment of sewage and more or less, quite a little each year, in regard to factory wastes.

Q. Are there many factories in Massachusetts located on the streams? A. Very many.

Q. State if they are extensive manufactories? A. Yes, sir.

Q. What branches of manufacture? A. Wool-

en and cotton industries, paper making, tanneries.

Q. And all those you have had experience with? A. I have.

Q. Are there any silk, any dye works, in that state on streams that you have had to do with? A. Yes, sir.

Q. Do you know the Weidmann works in this town? A. I do.

Q. How long have you known them? A. In 1906 I was employed by the firm of Harrison & Whipple to do certain work and make certain reports in regard to the methods of purification of sewage of the Passaic Valley and made some studies of waste here at that time. But I really did not get intimately acquainted with any of the dye works at that time, but my chief acquaintance with it has been in the past two or three weeks, at Weidmanns.

Q. State what you have done there during the past two or three weeks? A. I spent two days there in getting acquainted more or less with the processes and collecting samples for analysis.

Q. Samples of what? A. Samples of the waste liquors from their various processes as carried on.

Q. Was there anybody else pursuing a similar investigation contemporaneously with you? A. Just before my work.

Q. Who was that? A. Mr. Fales and Mr. Wentworth of the firm of Metcalf & Eddy.

Q. They were doing that on behalf of the municipalities in this case, as you understood? A. I understood so.

Q. How many samples did you take for analysis? A. Well, when I went there I found some

fifty samples, duplicates of samples taken by Messrs. Fales and Wentworth, and I had those shipped to my laboratory and I took, I believe forty-one other samples.

Q. What do those samples represent? A. They represent——

Q. Can you give a list of them, the principal ones? A. Why, yes. There were four samples in the stripping department, so-called; called, first washwater after soap, and stating the number of reel machines and the pounds of silk; the second sample was the second washwater after soap; the third was the third washwater after soap with sulphuric acid.

The fourth sample was a special ammonia wash after soap then from the Souple Department:

First washwater after souple bath; second washwater after souple bath with H2S04.

Third sample, Bleach bath and last wash water.

Samples in bottles, marked 9 and 10, second, third and fourth washwater after bleachbath.

Sample 11, Soap bath from one 29 foot box, 429 pounds of silk.

Sample 12 Sulphur bleach bath.

Bottles or samples 14 and 15, first and second washwater after soap bath and first wash water 452 pounds of silk, and second 258 pounds of silk and the ratio of combinations.

Bottle 13, I had a sample collected from the drain from the color shop every fifteen minutes, that is where the colored dyeing with the aniline dye is carried on.

Bottle 16, Silicate baths.

Bottle 17, third washwater after phosphate with hydrochloric acid. That it Bottle 17a.

And Bottle 17B is washwater with H2S04 after alum bath.

Bottle 18, or sample 18K, first wash after phosphate.

Sample nineteen, second wash after phosphate.

Bottles 20 and 21, first soap after silicate.

In the White Shop:

Bottle 25, Soap Dye Baths.

Bottle 26, First washwater after soap dye bath.

Bottle 27, Second and third wash water after soap dye bath.

Bottle 22, Fourth washwater after soap dye bath with H2S04.

Bottle 23 Washwater after acid H2S04.

Bottle 24 Oil washwater after wash water.

Black Shop:

Bottle 28; Red Iron Spray wash.

Bottle 29 Wash after one minute, that is after the red iron spray.

Bottles 33 and 34; 33 is first light alkali bath after logwood soap bath and 34 is second light alkali bath after logwood soap bath.

Bottles 35 and 36; First and second washwaters after light alkali bath.

Bottle 37; Washwater after red iron soap bath.

Bottle 30; Gambia tin crystals bath.

Bottle 31; spray wash after gambia tin crystals bath;

Bottle 32 same as 31.

Then in the Black Shop:

Bottle 38; Spray wash after black iron.

Bottle 39; Wash after one minute.

Bottle 40; Light alkali bath after logwood bath.

Bottle 41; Spray wash light alkali bath.

Bottle 41; One minute wash, first three samples.

Bottle 42; Washwater after 1 minute.

Bottle 43; Tannic acid bath.

Bottle 44; First wash water after tannic acid bath.

Bottle 45; Second wash after tannic acid bath.

Bottle 46; Oil avivage with acetic acid and lactic acid.

Bottle 47; Spray wash after pure gambia bath from black iron silk.

Bottle 47; One minute wash first three samples.

Bottle 48; Wash after one minute.

Bottle 49; Ammonia before dye bath, red iron silk.

Bottle 50; Oil wash from red iron silk.

Bottle 51; Prussiate bath.

Bottle 52; Wash water after Prussiate bath.

Bottle 53; Pure Gambia bath after Prussiate wash, from sixteen foot box.

Q. Are those that you have stated the samples that were taken similar to samples taken by Mr. Fales and Mr. Wentworth? A. They are.

Q. The additional samples that you took and analyzed were the samples that you took subsequent? A. Yes, sir.

Q. What are they? Are they duplicates in any way of the fifty-three you have just read? A. A large part of them are duplicates, but I collected some samples of waste which were not collected by Messrs. Fales and Wentworth.

Q. Just give us then the samples that you took that are not comprised in the list already put on the record? A. There were more Fales and Wentworth samples.

Q. I thought you finished them? A. No, sir.

Q. All right, finish them?

Bottle 54; Spray wash after light alkali, from logwood tin silk.

Bottle 55; Wash after one minute.

Bottle 56; Acid wash, acetic acid after spray wash.

That finishes the Fales and Wentworth samples.

Q. Now, if you will mention the samples that you took subsequently that are not duplicates of the ones already enumerated? A. These samples were taken May fourth and fifth, from the stripping department:

Sample one, first wash after soap——

The Court—That is a duplicate?

The Witness—That is a duplicate of the process, but taken from the samples that were not of the Fales and Wentworth samples.

The Court—But it is practically the same sort of sample?

The Witness—Yes, sir.

The Court—The Governor is asking you to point out the samples which you took which are not practically duplicates of the others.

The Witness—I understood it the other way.

Q. Those that are not duplicates:

Sample 60; Dynamite water, so-called, as it enters the river.

Sample 61; Clear water basin just before entering the river, dynamite.

Sample 62; Passaic River above Weidmanns.

Sample 63; Dyers' Pipe water unsoftened.

Sample 64; Artesian well water.

Sample 65; Wash after silicate.

Sample 66; Another sample fro mthe dynamite.

Sample 67; Sample from the dynamite.

Sample 68; Water from soap recovering plant. That is all.

Did you analyze those samples to obtain their chemical contents? A. I did.

Q. Are you familiar with the plant and method of operation of the Weidmann plant and the process of dyeing? A. I could not say that I am familiar with it. I spent two days looking the plant over.

Q. You understand it, don't you? A. More or less.

Q. You saw it in operation? A. I saw it in operation.

Q. You saw how the various implements and wastes were discharged? A. I did.

Q. In various places? A. I did.

Q. Did you see the way the water from the artesian wells went into the river? A. Well, after use?

Q. After use, yet? A. Yes, sir.

Q. Did you have samples of that? A. Why, that is largely used in dynamite, that is, in the tin washing, so-called and I took samples of that.

Q. Have you got the result of your analysis with you there? A. I have.

Q. Subject to be examined when called for? A. Yes, sir.

Q. Now, taking into consideration the result of those analyses, taking into account the method of operation, as you saw it there carried on, what would you say as to the practicability of concentrating out the ten per cent. of the waste, of the worst waste and pouring that into a separate sewer and then either treating or pouring with-

out treatment into the Passaic River the remaining waste so as not to contaminate the river? A. I should say that it was absolutely practicable as far as my observations go, to separate ten per cent. of the waste of the liquors so that they could be put into the sewer, the remaining waste could also be either separated and treated or put into the river.

The Court—With what effect?

The Witness—The taking out of the strongest ten per cent. would, of course, not take out all the polluting matter. These samples which I have put to one side as suitable for going into the river combined with polluting matter, but I think not in such amounts as to make the river a nuisance.

Q. You have got an analysis of those waters as they would be if they went into the river? A. I have.

Q. Could that ninety per cent., effluent be further treated for purification? A. I think there is a considerable portion of it that would need no treatment under any consideration.

Q. What portion is that? A. Well, about, I don't know whether it is seventy-five per cent., or more, but over three million gallons of the total waste from the plant is the dynamite water so-called, which I consider would not need any treatment.

Q. That could be separated, or is separated, is it not? A. Yes, it goes separately into the river now.

Q. That is water that comes from the artesian wells? A. Yes, sir.

Q. What is the chemical purity of the water that comes from the artesian wells, do you know? A. Why, I have the analysis.

Q. Well, just state it? A. It is very good water.

Q. If it were found necessary in order to conform to the law, to further treat the remaineder of this discharge, could that be done? A. It could.

Q. Is there any difficulty about that or would there be any difficulty about it? A. I think not.

Q. How could it be done? A. I think all the treatment necessary could be done in this case, where the different classes of wastes could be mixed in such ways as to cause a separation of a large part of the soapy matters and considerable of the colors and the acids could be neutralized and the effluent be entirely unobjectionable.

Q. Can you say anything about what the maximum of cost would be for such treatment of that part of the waste if it had to be done? A. It would be a case of estimating the cost of tanks and making separations in the dye house, I really don't know, I could give a guess at it, that is all.

Q. Give us your guess? A. I guess it could be done——

Mr. Gourley—Is that proper?
Mr. Griggs—Not if you object to it.
The Witness—I can make the estimation.

Q. Have you had any experience in Massachusetts with the methods of disposal of factory wastes? A. Some, yes, sir, and in other States.

Q. Just explain to the jury what this method of disposal is and why it answers the purpose? A. In this particular instance I think that all the

soapy, soaps and soapy dye liquors could be carried to a tank where they could be treated with the acid wastes and the soaps and a considerable part of the coloring matter separated out and the fatty matters so separated could be treated in filtering presses, the acid water remaining could be mixed with the alkali wastes and the dye wastes, and I think you would get a considerable purification of the liquor and probably, I think, in this instance, to allow the effluent to pass into the river.

Q. Tell us what the chemical action of the combination of waters colored with different colors is, whether they neutralize one another? A. They do to some extent.

Q. Just explain that to the Jury? A. Well, for instance, if one of the wastes here, is a so-called red iron liquor, which is a ferrous sulphate, a very good precipitation or clarifying agent, and that, mixed with some of the coloring liquors, clears them up. It is a case of coagulation and clearing.

Q. What is gambia? A. I believe it is a natural dye, I am not particularly familiar with the dyes.

Q. Did you see the method by which the masses of colored waste can be separated from the rest and turned off into the different conduits? A. I did.

Q. How is that done? A. Why, in the washing of the silk, they use spray washers, not in all cases, in many of the processes and those spray washers use a large volume of water, in almost all those spray washers a large volume of water is used, the most of the color comes out in the first minute or so, of the washing, and by arrange-

ment of the tubs, the highly colored first wash water can be made to go into one drain and the clearer water into another direction another drain.

Q. Is that now done in the Weidmann works? A. I really do not know whether it is done or not.

Q. I did not know but what you had seen it done? A. No, I don't think it is.

Q. Would there be any difficulty in arranging the plant so as to do that? A. Speaking generally, I think not, but I am not familiar enough with that to say.

Q. You are a chemist, not a hydraulic engineer? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. It is not your business to design these plants? A. No. I have designed them, but that is not really my business.

Q. You are simply a chemist? A. I have designed such plants and also water purification plants.

Q. But it does not come properly within your professional scope? A. To a certain extent, yes, my experience has been of the kind that it has been both sanitary chemistry and in that sense sanitary engineer and I am not practicing sanitary engineering.

Q. Have you designed a plant for the treatment of wastes in dye houses? A. No, sir.

Q. Your estimate, then, would only be quite general, I suppose, as to the cost of such a plant? A. It would simply be estimating the cost of the construction of concrete tanks with certain areas and certain thicknesses of wall and it would not be a very difficult task. However, that is not my line, as I say.

Q. You have been at the plant for two days? A. Yes, sir.

Q. Did you walk along the river and see the effect upon the river water of the output of this great plant? A. Yes, sir.

Q. You saw the water more highly discolored and all that near the river line? A. Right close by the plant, the color quickly disappears.

Q. Did you see their own waters flowing out from the Weidmann plant? Did you see the discharge from them? A. Yes, sir.

Q. Great bodies of different colored water, brown, etc., what was the color the day you were there? A. Why, the principal waste that was colored was from the Dyers' Pipe, they had various colors, but almost as soon as it got into the river it had a brown tinge.

Q. The Dyers' Pipe does not go into the river? A. The drain, I did not mean the Dyers' Pipe, I mean the drain from the color shop.

Q. The drain pipe from the works? A. From the color shop.

Q. And of course that discharged in large quantities into the river, eight million gallons a day? A. From this drain do you mean?

Q. From the whole plant, such as you saw it there, in various forms, light and dark color, it has the tendency to make the river a nuisance? A. Well, only a comparatively small portion of it was highly colored. There is dynamite water which is very clear water, which is perhaps three and a half million gallons a day going in.

Q. You see, you have not answered my question?

Mr. Griggs—I object to that statement,

The Witness—I intended to answer. I will try again.

Q. Yes, you are trying. Isn't it something that has a very great tendency to make a nuisance of that part of the river?

The Court—Isn't what?

Mr. Gourley—The discharges of these millions of gallons a day of water from the dye house in various shades of color and various conditions? A. That depends altogether on what you call a nuisance.

Q. I will ask you, do you call it a nuisance?

Mr. Griggs—I object. The witness should answer the question.

A. Near the plant there is a slight discoloration but on the days I was there the discoloration very quickly disappears, as I say, it became brown. I am not saying that is the case all the time.

Q. Have you heard in Court here Dr. Hunziker describe the millions of pounds of these various dyes, aniline, vegetable, mineral, etc.? A. I have.

Q. And these other chemicals? A. Yes, sir.

Q. Roughly speaking twenty-two million pounds a year? A. Yes, sir.

The Court—That was not all dyes, was it?

Mr. Gourley—Twenty-two million pounds, yes, of various ingredients; I have not said a word about dyes at all.

The Court—I understood you to say so in your question.

Mr. Gourley—No, various compounds which he spoke about.

The Court—Let us read the last question.

Mr. Gourley—Let us reframe it.

Q. Have you heard Dr. Hunziker describe the millions of pounds of these various ingredients? A. Yes, I heard him give the list.

Q. You, as a chemist know in the main just what those ingredients are, I need not enumerate them to you? A. I do.

Q. Hasn't that a grave tendency in your judgment to raise a condition of nuisance? A. It has a tendency. It puts polluting matter into the river, without doubt. The question what is a nuisance is quite different.

Q. I only use the word nuisance myself because you used it first in your direct examination by Mr. Griggs, otherwise I would not have used the word? A. Yes, sir.

Q. I was curious to know what you had in mind when you used the word? Had you any definite condition of the river in mind? A. I think the river is perhaps a nuisance when it is of such a character, or the water in it of such a character that it is very disagreeable to live near and causes odors.

Q. Those are the two conditions that you have in mind? A. Yes, sir.

Q. Not attempting to define it for anyone else? A. Yes, sir.

Q. Now, let me ask you, what I am concerned about, that would create undoubtedly a grave condition so far as polluting matter is concerned? A. Certainly. It puts polluting mater in.

Q. And the ten per cent., of which you have

spoken to Governor Griggs, what particular part of this output can you segregate out into the trunk sewer? A. I have a list.

The Court—Take your list and tell us?

The Witness—Well, the first soap from the stripping house, the first souple after stripping and the first wash ammonia bath, souple soap, a certain percentage of the waste coming out of the drain from the color shop, the first wash water of the souple, the soaps after silicate treatment, soaps from white dye, red iron spray wash, a certain percentage of the gambia, tin crystal bath, gambia spray wash, first alkali after logwood, and second alkali after logwood, water, after red iron treatment, black iron spray wash, and a certain percentage that is the percentage of slightly colored light alkali, after dye bath, spray wash after dye bath, that is ten or fifteen per cent. of it, tannin bath, water after tannin, ammonia bath, final wash, Prussiate bath, gambia bath and acid water bath.

Q. The rest goes into the river, under your treatment? A. The rest goes into the river under my treatment unless, as Governor Griggs suggested, some of it is treated in this case.

Q. But, so far as the waste is concerned, ninety per cent. goes into the river, so far, and ten per cent. into the trunk sewer?

Mr. Griggs—Excuse me, that would not be ten per cent.

The Witness—As that was at the end of

last year this would take about 375,000 gallons out of perhaps six million gallons.

Q. What percentage is that? A. About six per cent.

Q. So that six per cent. goes into the trunk sewer and the rest into the river? A. According to this, yes.

Q. And there would remain ninety-four per cent.? A. That is true.

Q. That water, however, was originally river water, the greater part of the column of it? A. I could not say what percentage is river water and what percentage is artesian well water.

Q. All is river water that is not artesian well water. Can you just tell us what proportion of that six per cent. is river water? A. No, sir, I cannot.

Q. Can you tell us what is the artesian well water in that? A. No, sir, I cannot.

Q. All the artesian well water you saw treated in the tin baths, dynamite, that, under your process, goes into the river? A. Yes, sir.

Q. Therefore, the probability is that the main part of the six per cent. is river water? A. I don't know, but it may be.

Q. Is it not likely that it is? A. It is only $375,000 gallons and I don't know where the well water goes to, so that this may all be river water for all I know, or it may be all artesian well water.

Q. Is the polluting matter all out of the ninety four per cent.? A. No, sir.

Q. What proportion of the ninety-four per cent. is still polluted? A. I presume a considerable proportion still has polluting matter in it, but I don't know just what proportion. I did not work that out,

Q. Can you approximately give us your opinion? A. Well, about three and a half million is dynamite water which is clearer than the river water.

Q. Even that water however is water associated with the tin baths? A. Yes, sir.

Q. What effect has the introduction, if there is anything, of the acidity still left there, if it is not dissolved in the water and gathered in the pit? A. Why, it would be slightly acid, without doubt.

Q. It would not leave the water in a condition that would be fit for you or me to drink? A. No, sir.

Q. Nor for fish to swim in? A. I don't know whether the small amount of acid would affect the fish, it might; it probably might.

Q. You would not want your cattle to drink it? A. I don't have any cattle, so I don't know.

Q. Could a cow from your experience, drink it? A. Why, it is not only very slightly acid, and it would not be very good for a cow, but then I am not expert with cows.

Q. If that acid was increased to the strength being used in the dye house it would kill a cow? A. If it was as strong as some of the acid liquors, certainly, I can answer that.

Q. You had a plan of neutralizing some of these waters, colored waters, by uniting them together in a tank? A. Yes, sir.

Q. Well, assuming you could do that, that, of course means additional expense and additional labor and all that sort of thing, doesn't it? A. It is some expense.

Q. It is costly, what would it add to the cost of the work? A. It costs something. I have not made any estimate.

Q. Have you made any estimate of what it would cost to make those treatments? A. Not in this particular case.

Q. You just indicated what you thought was the method of doing it? A. Yes, sir.

Q. If you found the quantity of polluted matter in this effluent not diluted enough would you recommend more water, the use of more water for the purpose of diluting it further? A. No, I don't think I should.

Q. In other words, would it entail an increased consumption of water for the purpose of further diluting the polluted matter? A. Before it goes into the river?

Q. Yes? A. No. I should not recommend anything of that sort.

Q. You would not recommend diluting it in that way? A. No, sir.

Q. So that the number of million gallons that you mentioned as going in from the tin is not a material element in determining the pollution or not? A. Well, that is a waste product. But I understood from you that you would buy water to do it?

Q. Yes? A. No. I should not do it. But, having all that waste clear waste, water, the great advantage is it does dilute it.

Q. You would not use more water for the purpose of further diluting it? A. I should not buy any more.

Redirect Examination by Mr. Griggs.

Q. Have you had experience with silk dyeing plants and the disposal of their wastes, outside of the State of Massachusetts? A. I have.

Q. How extensive? A. Quite extensive experience with a large plant in Connecticut.

Q. And your testimony was based on the ex-

perience that you had had in the silk dyeing business? A. Partly that and partly from my knowledge of here.

Recross Examination by Mr. Gourley.

Q. You say this water of which you have spoken, coming out from the dynamite process, three and a half million gallons I think you said, was in a state of freedom from pollution, is that correct? A. I do not understand your question.

Q. I say, did you say that the three and a half million gallons of water from the tin that was discharged into the river, was in a fairly free state from pollution? A. I said it was very clear water and with a little pollution.

Q. Why couldn't you use that water over again? A. I presume there is some element in it that would make it unfavorable for the dyeing purposes, for the use of a dyer.

Q. Could it be used over again? A. I don't know, I am not a dyer.

ALLEN HAZEN, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. What is your business? A. Civil Engineer.

Q. How long have you practiced that profession? A. For twenty-five years.

Q. Have you ever made a special examination of the Passaic River with a view to the treatment and disposal of the sewage in the city of Paterson and the waste of the factories? A. I have.

Q. When did you do that? A. In 1906.

Q. On whose employment? A. The city of Paterson.

Q. Did you make a written report and recommendation? A. I did.

Q. Is it printed? A. Yes, it is printed.

Q. You have a copy of it here? A. I think I can find one.

Q. There is a copy of it, is there? A. Yes, do you wish to see it?

Q. What was your opinion and what is your opinion as to the best plan of disposition of the sewage of the cities in the Passaic Valley below the Falls, after that study and investigation? A. The plan is being carried out, the construction of the trunk sewer to take the wastes so far as necessary out of the river so as to clean the river out and take them to a point of discharge in the New York Bay.

Q. That was your conclusion from the investigation you made in 1906? A. Yes, sir, there is a slight qualification to that, I would have to refer to the report for that, there were some alternate considerations, but substantially that is correct.

Q. You understand that the trunk sewer law, as they call it, was passed in pursuance of or to follow up your recommendation? A. Well, I would not put it that way, the trunk sewer was talked about before that and Paterson joined it after this report, Paterson's connection I think was based on the report.

Q. The trunk sewer agitation was started before that but the law was not passed until afterwards? A. Well, I am not familiar with the dates of the law.

Mr. Griggs—It is a matter of record that the statute was passed in 1903 which was declared unconstitutional by the Court of

Errors and Appeals on the appeal of the City of Paterson, in consequence of which the matter still being an agitated one, Paterson employed Mr. Hazen to investigate the question and see what really Paterson could agree to, and what could be done consistently with its interests, whereupon, after his report, Dr. Gourley and myself, and Mr. Dunn got together and drew this act in cooperation with the counsel for the City of Newark.

Q. Tell us what you found with reference to the sewage and factory wastes at Paterson in 1906 and the reasons for the recommendation and conclusion to which you arrived? A. I found that great quantities of waste were produced in the industries of Paterson, particularly in the silk dyeing industry; the total amount of waste was much greater than the volume of the city sewage and to carry all of that waste into the trunk sewer, as had been talked about, involved a very great additional expense——

Q. Expense in what? A. Expense in sewer construction and maintenance.

Q. Expense on the public? A. Expense on the public and expense to the taxpayers of Paterson. I made a study of the industrial wastes of Paterson of all kinds, the breweries, the slaughter house, the dyeing establishments and everything that made waste in any volume. The silk dyeing was very much the most important and I went through some of the silk mills and talked with the silk people and afterwards got chemists here who were associated with me to go through it in more detail and to take samples for analysis of the different wastes, and we got estimates of the quanti-

ties and we found that the great bulk of the polluting material from the silk mills was contained in a comparatively small quantity of water, that is to say, there was a small amount of very concentrated waste that carried the great bulk of all the material that was making the trouble in the river, so far as the silk mills contributed to that, and the rest of the waste, which is the great volume, was clean water. Some of it was cleaner than the river water, some of it was not so clean as that, but it was all after this first bath relatively clean, and, as a result of that situation and the analysis and discussions that we had and calculations that we made based on them, I arrived at the conclusion that if ten per cent. of the concentrated wastes from the silk mills were separated, as I believed they could be practically and reasonably separated, and put in the trunk sewer, that the other ninety per cent. of those wastes could be allowed to go to the Passaic River without substantial injury to anyone, and it seemed to me that it was better that that should be done and I so recommended. The detail of that is all in the printed report.

Mr. Griggs—I offer in evidence a copy of Prof. Hazen's report.

The Witness—You must not call me Professor.

A Juror—The term silk mill, does that mean dye shops only or all silk mills and everything?

The Witness—We intended it to apply to all the shops, throwing mills and ribbon mills and all that, but the amounts that they produced were very small comparatively.

The Juror—Your evidence relates to the dyeing industry?

The Witness—The whole dyeing industry.

Q. Are you of the same opinion still, that the separation of ten per cent. into the sewage and the discharge of the rest into the river would injure nobody? A. Yes, sir, that is my opinion.

Q. You have recently re-investigated the discharge of the dyeing establishments here, haven't you? A. Yes, sir, I have been in some of the silk mills, some of their processes have changed obviously; the samples of to-day would be somewhat different from the samples of any other time and the exact waste that would be classed as concentrated now would differ a little from those that we classed in that way in 1906, but, broadly speaking the same condition exists.

Q. Is that true of all the silk dyeing establishments? I refer now to the National as well as to the Weidmann, what you said? A. I think it is. I have not examined all of them in detail. I have been to some mills of the National and to the best of my knowledge and belief it applies to them.

The Court—Is it a complicated process to segregate this ten per cent. of waste?

The Witness—No. I think it is rather simple. We have not made any estimate of that, it has not been our business to do it. The most bothersome thing is it means working in the rooms where they are carrying on their processes. If it could be done

when the mill was shut down for a month it would be very easy, but I should think it would interfere with their daily operation somewhat to put these drains under the floors.

Q. That is, the loss of time would be more than the expense of the work? A. That is my idea, yes, sir.

The Court—But, practically, it is not a complicated process?

The Witness—No, sir, I don't think it is complicated.

Q. Or chemically it is not a complicated process? A. No, sir. Chemically it would always have to be under the supervision of a chemist. There would have to be some common sense to pick out from time to time the wastes that were concentrated and diluted and see that they went to the sewer.

Q. Have you examined the analyses made by Mr. Clark of the samples recently taken? A. Yes, sir, I did examine them with him rather rapidly, but to get an idea of what they indicated.

Q. What have you to say with reference to the result of those analyses as to the difference in conditions if any between what you found in 1906 and what exists now? A. The differences are not very radical. I don't think it would be profitable for me to try to explain that. I am not enough of a chemist to say that, but there are some changes in the process, that is plain.

Q. Is there anything to modify your opinion

as to the possibility of the separation in the treatment? A. Not at all.

Q. If it should be found on the instruction of the Board of Health or anybody else, that after putting the ten per cent. of the waste into the trunk sewer, there still remains some of the effluent which was not chemically pure or sufficiently pure to justify its being discharged into the river would that be treated so as to be unobjectionable? A. Certainly it could, if it was necessary.

Q. How? A. Well, there would be various ways of doing that, one way that has been suggested to me, and it seems very promising, is to mix these various wastes in a tank to which they would flow from the mill and in which they would neutralize each other and deposit some of their impurities so that the mixed liquor would flow to the river in more uniform and broken up state. Some of these wastes are acid and some of them are alkaline, and if they were all mixed it would all be alkaline, there would not be any acidity.

Q. They kill each other, do they? A. They kill each other, yes, sir.

Q. What other method? A. Well, that is as far as I have thought very much about it.

Q. Are you able to say how expensive a system of treatment of the wastes in that way would be, or in any practical way? A. No, sir. I cannot say as to that. It would depend upon the amount and I have not studied that up in the different mills.

Q. You are familiar with the costs of disposal plant? A. Well, some, but I would not want to make any offhand estimate. It would depend upon the site.

Q. Having in mind the fact that this is an

established business, with an investment of three or four million dollars, is there any obstacle in the way of a judicious owner in treating his effluent so as not to create a nuisance in the river? A. No, sir, there certainly is not any difficulty.

Q. Would you recommend anybody to abandon such a plant on account of the cost or difficulty of treatment? A. No, sir, I would not.

A Juror—After you have deducted this ten per cent. and returned ninety per cent. to the river, would the river then low tide sustain animal and plant life?

The Witness—I think it would so far as this discharge was concerned, if it was protected from other discharges, of course, I could not say anything about that.

Q. This discharge would permit animal life if it was otherwise possible to live? A. Well, I think so.

Q. With reference to this ten per cent., how much did you figure as really necessary in your opinion to discharge into the sewar? A. In 1906 I figured five per cent.

Q. Why was it made ten per cent.? Why did you recommend ten per cent.? A. Because I thought it might be difficult to make the separation, probably changes in the processes etc., and I just gave myself two to one ratio for safety.

Q. As a factor of safety? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. That opinion, the chemical analysis opinion, was used in the Doremus case of Mr. Whipple? A. I am not aware of that.

Q. The chemical analysis on which you based your statement of that percentage?

Mr. Griggs—He says he does not know.

Q. Don't you know that Dr. Hunziker here upset it? A. No, sir, I was not aware of it.

Q. You don't know that there were several elements involved in the matter not taken into consideratior in that analysis? A. No, sir.

Mr. Griggs—What analysis do you refer to?

Mr. Gourley—The analysis you say he made of five per cent.

Mr. Griggs—That was in his report a recommendation, not an analysis.

Mr. Gourley—He made an analysis as a basis of that.

Mr. Griggs—An analysis of the water?

Q. This ninety per cent. spoken about, of waste did it have any polluting matter in it? A. Yes, sir, there were some polluting matters in it.

Q. What is the worst pollution you have to deal with in that ninety per cent.? A. Well, sir, I don't know that I can say what the worst would be, it represents mainly similar liquors to those in the ten per cent., only more diluted, much more diluted.

Q. You are not a chemist, I think you said? A. Well, I have had some chemical training. I am not a chemist, no, sir.

Q. You are not a practical chemist? A. No, sir, I am not a practicing chemist.

Q. And when you say it is of the same char-

acter as the ten per cent. but more diluted, that is as near as you want to go? A. It is very much more diluted.

Q. What per centage of the ninety per cent. would have to be taken out to make the water reasonably good? A. Well, for discharge into the Passaic River, I suppose it is my judgment that nothing beyond the ten per cent. need to be taken out.

Q. It is as bad as that, the river, is it? A. (No answer.)

Q. You have a very low opinion of the condition of the water from a sanitary standpoint? A. No, but I have the idea very firmly fixed in my mind that if ten per cent. concentrated wastes are taken out the remaining wastes are rather diluted.

Q. It is diluted but no more diluted than the river where it is going ? A. Some of it would be more diluted, some of it would be less diluted, take it right through it is not a material pollution of the river.

Q. Then, what condition, may I ask, was the river in, before that water got into it? A. Well, I am thinking of the river, if you please, as it will be, when the trunk sewer is in service and the sewage is diverted from it and then it should go back to a pretty fairly clear condition but it won't be possible to make a drinking water system out of it, and I don't think that standards which would be applicable to the upper Passaic should be applied to it here.

Q. It would not be as good as the upper reaches of the Passaic? A. No, sir, I don't think it would be.

Q. Always by a City as populous as Paterson,

this being somewhat near the centre of population on the river it will be polluted? A. No, sir, there will be some pollution left, but I do expect it to be cleaned up so that it will be attractive.

Q. You have found, have you not, that the factory wastes and the sewage are increasing faster than — are increasing quite fast in Paterson? A. I have not seen any evidence of their increasing very rapidly. No doubt they are increasing.

Q. Your report was made fifteen years ago? A. Yes, sir.

Q. Have you seen any increase in the manufacturing wastes in that time in Paterson? A. In the last years it has been a dull time for the silk industry. The statistics for the last year are hardly up to those which I used in 1906.

Q. Do you know that in the last year or two Paterson has had the most extended period of successful operation the trade has ever known?

Mr. Griggs—Not on the average.

A. With the last year?

Q. The last two years, up to within a year ago? A. Before last year there were some years of great prosperity I think.

Q. Do you remember in your report this language? "While the natural flow of the river has been considerably decreased, the quantity of polluting matter in it has increased much more rapidly, and if the full natural flow of the river were now restored it would not suffice to relieve the present objectionable conditions? A. I think that is correct.

Q. That sounds like Hazen, doesn't it? A. It does.

Q. Are you still of that opinion? A. Yes, sir, I think the growth perhaps has been less rapid from 1906 to 1921, than for fifteen years before 1906.

Q. Our population in ratio of increase has been less than the preceding years to 1906, do you know that? A. It has been less?

Q. Yes? A. That is my impression.

Q. Do you remember this "——?

Mr. Griggs—What page are you reading from?

Mr. Gourley—Page 77.

Q. Do you remember this: "It has been suggested that the minimum flow of the river might be greatly increased by the construction of storage reservoirs upon the upper river or its tributaries. If it is feasible to increase the flow of the river in that way many advantages would come from it. It would be possible to increase the minimum flow of the river to fifty per cent. more than its natural minimum flow or perhaps to a greater extent. Such an increase in the flow of the river would not suffice even at the present time to purify the river and make it unobjectionable." Does that sound like Hazen? A. That sounds all right, sir.

Q. You are the father of that, as Henry Ward Beecher said, are you? A. I think I am.

Q. I am not sure whether I asked you or not if you designed any plans for purifying dyers' wastes? A. No, sir, I have not.

Re-direct Examination by Mr. Griggs:

Q. When you spoke in your report in the passage Mr. Gourley read about reservoirs up in the

head of the water shed, you mean a reservoir that would let water down here, not reservoirs that would keep it from coming down here, didn't you? A. I did.

Q. Do you know anything about the Passaic River between the pumping station of the East Jersey Water Company at Little Falls and the head of the Great Falls? A. I know something about it, I am not familiar with it in detail.

Q. Tell us what you know about its condition? A. It is quite a populous district. I should say something like three miles quite a populous district. I am not familiar with what wastes may go into it.

Q. You know the filter station of the East Jersey? A. Yes, sir.

Q. Do you know of its operation? A. Yes, sir, I know something of that.

Q. Do they discharge anything into the river? A. I think they put their filter washings into the river.

Q. The washings from their filters? A. Yes, sir.

Q. What do they use for killing the bacteria in the water? A. Chlorine.

Q. And alum? A. Sulphate of alumina, is used in treating the water.

Q. Does that produce a sediment in the filters? A. The sulphate of alumina produces a sediment in the basins before it goes to the filters.

Q. You don't expect the trunk sewer to purify every part of the river, do you, that part of the river above the Falls? A. As I understand it, there is no provision in the existing act or procedure to do that; I remember reporting in that volume, if I am not mistaken, that I thought provi-

sion should be made for doing that either at once or holding capacity for its being done in the future.

Q. You have made a study of the potable waters, have you not? A. I have.

Q. From your knowledge of the river from Little Falls down to the Great Falls, would you think that that was a safe and good source of drinking water? A. No, sir, I should not, not unless the water was very carefully treated.

Q. What would you say about cattle drinking that? A. Cattle?

Q. Yes? A. Do you know whether they could drink that?

Mr. Gourley—He may be expert on cows?
The Witness—Yes, I keep cows.

Q. How many cows do you keep? A. I have twenty-five at present. I don't know whether they would drink that water or not.

Q. I read to you from the contract that has been offered in evidence between the Passaic Water Company and the Weidmann Company and the National Silk Dyeing Company: "And it is further understood and agreed between the parties hereto that this water is not fit for culinary or drinking purposes." That relates to the water taken at the Great Falls. Would you think that was a wise provision?

Mr. Gourley—I object to the question. It is not necessary to put that to Mr. Hazen whether it is wise or not.

(Question overruled.)

Cross Examination by Mr. McCran:

When you speak of the construction of reservoirs in the Passaic water shed which by the storage of water would permit of the increase of the minimum flow, did you have in mind a reservoir which under the protection of a state body would require the increasing of the minimum flow of the tributaries of the river? A. I had no idea of a State body. I had only the engineering conception of the possibilities of building one or more reservoirs, which had been proposed and of which I had seen plans which would hold the flood flows of the river and permit the water to be given out to maintain the flow when it otherwise was low.

Q. Are you familiar with the Wanaque development by the City of Newark? A. I cannot say that I am familiar with it. I am aware of its extent.

Q. For example, had you in mind, this kind of a reservoir, a reservoir which would impound the flood waters, the storm waters and which would permit of a flow at all times of not less than twice the normal natural minimum flow? A. Well, I am not familiar enough with the Wanaque project to know what the proposal is in regard to that.

Q. Let me put it to you, the proposal is that, and which now is being carried out, the construction of an impounding reservoir, which will receive and impound the storm waters——

Mr. Griggs—Where?

Q. —— at Wanaque. I will describe it, by means of a large dam constructed above Midvale, you are familiar with where Midvale is? A. Well, in a general way, yes, sir.

Q. And which will permit, and which under State direction must permit of the flowing down the Wanaque river of a quantity of water that will be at least twice the normal low flow of that river. Is it a reservoir of that kind that you had in mind? A. No, sir, I would not say that it was exactly that kind of a reservoir that I had in mind, because the Wanaque Reservoir, if I understand, is a reservoir designed to furnish water to municipalities for domestic purposes and I had in mind a reservoir constructed for the purpose of increasing the flow of the river.

Q. But if this reservoir that I am speaking of now will increase the normal flow at all times in the driest seasons to twice what it normally would be isn't that accomplishing what you had in mind? A. It would apparently, on your statement, accomplish it to some extent.

Q. It would accomplish it to twice the normal flow, wouldn't it? A. To whatever extent it was devoted to that.

Q. For example, if the normal flow of the Wanaque River is between five and six million gallons and this reservoir will increase it at Midvale to a quantity not less than twelve millions at all times, in the driest of seasons, isn't that towards the accomplishment of what you had in mind with reference to increasing the normal low flow of the river at the City of Paterson? A. It would work to that end to that extent.

The Court—Let me ask you, how much do you ask under your petition to take out of this river?

Mr. McCran—We ask in our petition for permission to take out so much as would be necessary——

The Court—Seventy million gallons?

Mr. McCran—No, sir.

The Court—No; there is no limitations?

Mr. McCran—There is the natural limitation.

The Court—In your petition I understand you are asking permission to take such water as comes out of this river, there is no minimum to it.

Mr. McCran—In our petition we ask the right to take continuously so much of the waters of the Pequannock as may be necessary for the needs of the City of Newark. In other words, in the driest of seasons we might take all the water.

The Court—It gives you the right to take it all, doesn't it?

Mr. McCran—Yes, sir.

The Court—Is there anything in your petition which the Jury may consider by way of limitation in your plans such as you are discussing with Mr. Hazen?

Mr. McCran—I am going to develop that.

The Court—If it is not in the petition how can the Jury consider it?

Mr. McCran—I am going to prove it.

The Court—How can you prove it if you do not ask for that but ask to take what there is and make no limitation in your petition? Why must not this jury consider that you have the right to take it all and consider it on the basis of your taking it all?

Mr. McCran—I am speaking of the Wanaque. One of the complaints made by the manufacturers in this case is that by rea-

son of the fact that we are going to take out of the Pequannock a certain amount of water, therefore that water will not pass their place, at Paterson, to the extent we are taking it out, and to that extent they are going to be injured because of it and they get that much less water, and the Governor has raised the question to the Jury that in the future their water supply may cease. I am going to show the jury that in the development of the Wanaque project by the City of Newark, where the normal low flow now in the Summer time, which is the flow Dr. Hunziker to-day said injured them, when the water gets low like that under the plan of the Wanaque project there will come down the Passaic River by reason of the development of the project by the City of Newark twice the normal flow at all times, in the Summer time.

The Court—But, don't you see, you are asking for all of it?

Mr. McCran—They are asking for that injury in their damages.

The Court—They are taking it on its most injurious interpretation. Now, they say if you have the right to take it all, what is to prevent you in a year after you have made this arrangement, instead of letting some down the river letting it all come down to Newark?

Mr. McCran—Because I am going to show that the State of New Jersey has in the development of that river so stipulated and that they must under that stipulation permit to flow from the Wanaque a quanti-

ty of water not less than one and a half million gallons of water at low flow.

The Court—Then should not that be in your petition?

Mr. McCran—That is a matter in reduction of damages.

The Court—Either you don't mean what I mean or you don't get what I mean. As I understand the petition in this case is the guide. You say in your petition and that is the guide, that is what will be counted on hereafter if any dispute arises, you say you want to take the full flow of this river; when you need it you may take it, or you may not, you may make temporary plans, you may make plans for the present whereby you only take as much as goes down, or you may send twice as much down by some means; but, doesn't there always remain upon the record the right, after this condemnation has taken place, for you to take that which you had sent down by reason of this impounding or any method, always the right to cease sending down, and say, "Under the petition we have filed we are entitled to all of this water?"

Mr. McCran—Yes, that is true.

The Court—If that is true, what difference does it make what temporary arrangement you make or are proposing to make?

Mr. McCran—Governor Griggs has attempted to prove not later than to-day the abandonment cost of their plant.

The Court—Yes, they have a right to assume that you are going to take it all, whether you do or not.

Mr. McCran—But they are arguing that not upon the amount that we are taking under the petition, because that we have been taking and the plant is still there. It is upon the theory——

The Court—Yes. But they are getting water from somebody else.

Mr. McCran—Pardon me, sir. He was permitted to put that in the case upon the theory that there will not be any Dyers' Pipe in the future because all the waters of the Passaic will have been abstracted for potable purposes by the petitioners.

The Court—No. They don't say that. They say the Passaic Water Company might assert its right to cancel this contract when they could not get the water from the Dyers' Pipe.

Mr. McCran—Then the answer to that is that the Public Utilities Commission stands between this Company and the private citizen and the corporation.

Mr. Griggs—Do you want to know what the answer to that is?

The Court—Thay may be so or it may not.

Mr. McCran—The engineers don't know in advance. And what they have attempted to prove is that there will not be sufficient water in the river for the supply of that water in the future. In answer to that claim we are going to prove that there will be more water in the Passaic River at low flow in the future than has ever been or would be naturally.

The Court—That depends upon how you

operate the rights which you are acquiring. You may abandon that and decline to give them water at any time? Isn't that so? In other words, if what you say is proper, then should not your petition state "We desire to condemn the water rights which you have mentioned, all of the waters in the river, but we agree are subject to the condition that we will send down twice as much as there is there now at low flow." If you put that in your petition then we can consider it, but that is not there, in the absence of that, then we are bound to assume that you are going to take it all.

Mr. McCran—It is a practical matter to the jury that we are going to take under our petition all of the waters of the Pequannock, yes, granted, but, haven't we the right in this case, even under that, to show some other consideration in the future that the development of the Passaic River, that the probable development of the Passaic River, what is probable to happen in the future, is that there will be, notwithstanding our abstraction, more water in the Passaic River than there is to-day or has been in the past by virtue of that fact?

The Court—But when that is done it is due to your operation of the rights which you acquire under this petition, and which you may abandon at any time.

Mr. Kearns—The Wanaque is a separate proposition.

Mr. McCran—May I just say what I have in mind and what we purpose to offer in evidence. We purpose to offer in evidence

the development of the Passaic water shed under State direction and State policy, and show to the Jury that it will never come to the time in the future when these dyers cannot get sufficient water, as an element of damages that there will be in the Passaic River at normal flow more water than would ever be there under natural conditions, and that is to be the development of the future for them to conclude as an element in reaching that conclusion whether that is so or not.

The Court—If that is so what is the use of your admitting that you want to take it all? If what you say is so, that there is going to be more water than there is there now, more water than they need, what is the use of your taking it all or acquiring the right to take it all?

Mr. McCran—We are admitting because we want to stop them from coming into this Court and mulcting us for six cents damages, in order to stop the City of Newark from engaging counsel and expending large sums of money.

Mr. Griggs—That is not quite right. The reason you are here is because the Court of Chancery has put an order on you and compelled you to come here or to stop.

Mr. McCran—They can bring us into this Court every month and get a verdict of six cents under the decision of the Court of Errors and Appeals.

The Court—They certainly could not if the situation had developed to the point where you say it has.

The Court—In the meantime, it is not coming to-day, this work is going on, probably will not be completed for a year or two, but it is something which the Jury have a right to consider as an element. They have gone into the Court of Chancery regardless——

The Court—I understand this is brought about not by your manipulating and handling of the water along the river of which you seek the right to take all by some such action——

Mr. McCran—Done with our money, under the law of the State and the protection of the State Commission, yes, sir. That will unfold itself when I come to that part of my case, and if I may say this, it will be unfolded in such shape as to come to the Jury as an element. For example, they have attempted to show that the water will be taken away, can't we ask in this case as we asked before the Commissioners, what assurance have we that the Weidmann Dye Works are going to continue in the future? For what purpose did they put in the cost of dismantling their plant? Only in the event that they have got to give it up by our action? What other purpose could they have for that? Some day they may have to move their plant? Why? Because they are caused trouble by other than my client. My client is not the only party that causes them trouble. I want to show that in the future they are not going to be damaged by this water proposition, and as an element for consideration of this jury I want to

show that there is going to be more water than there was before.

The Court—Then I do not understand the purpose of the condemnation.

Mr. McCran—The purpose of the condemnation is to give us the right and no longer be subject to damage suits and let them recover from us six cents.

The Court—Why should not this limit be show in the petition?

Mr. McCran—The jury may determine that.

The Court—Until that is done must not the petition be taken in its most injurious use?

Mr. McCran—I will say this, that they have gone into Court themselves, for an injunction.

The Court—The Court of Chancery took into consideration in issuing this injunction that this matter would be settled in a year or two.

Mr. McCran—I was not in the case then.

The Court—It cannot be possible that the Court of Chancery expected this to hold longer than its case.

Mr. McCran—I do not say so, but that is for the Jury to reach its conclusion, I am going to argue it so that the jury can have in mind that injunction, they are entitled to an injunction against anyone who abstracts any water from the river and diverts it and regardless of what their damages are, so that the only course we have in the meantime is to come into Court and condemn it, and come before a Jury so that

the injunction won't issue to the people of Newark saying "You cannot get potable water out of the Passaic River because Weidmann has stopped you." And that is regardless of the damages.

Mr. Gourley—If they get the money and the water comes down in the future how are we going to get the money back?

The Court—That is the point I am asking about, whether your petition could not be framed now asking for it in other terms than perpetual?

Mr. Kearns—The petition relates only to the Pequannock, we are taking the Pequannock, not the Wanaque.

The Court—That does not make any difference, you are taking what you are taking, wherever it is.

Mr. Humphreys—If your Honor please, it seems to me there is a confusion between what we acquire by condemnation and how much damage we have to pay. Of course, if Newark by this proceeding acquires the right to condemn the whole flow of the Pequannock River, that is what it gets. Now, the question is, what is the measure of damages that it has to pay to Weidmann and National for that privilege? What is the compensation? Now, that compensation depends upon a number of collateral facts, it depends upon the real measure of damages as what would a purchaser, how much less would a purchaser pay for that property than it would if there was no diversion?

The Court—Assuming you had the right to take it all.

Mr. Humphreys—If there is water coming from the Wanaque River down there, it throws light upon the measure of damages, it shows the purchaser would pay more for it than if he had not got that. He would not care whether it was a legal diversion or an illegal diversion. I think there is a confusion between the measure of damages and the compensation. I don't see how it can be relevant to show that there would be water coming down the Wanaque River as affecting the question of damages. It shows, as I said before, that a person wanting to buy the Weidmann property would take that into consideration and would not deduct from the purchasing money what they would otherwise by reason of the whole Pequannock river being lost to him because of this abstraction, for there would yet be water coming from this Wanaque river.

The Court—Is it your idea that because someone else is going to provide a method to restore the water of the Pequannock river you have the right to take away from the riparian owners the water, all the water of the Wanaque?

Mr. Humphreys—I think we have a right to take away all the water from the Pequannock provided we pay for it. What have we got to pay for it? We have got to pay the damage done to the Weidmann's. The depreciation of their property is consequent upon the diversion.

The Court—Are you entitled to have the

State, for instance, when the State does this work, to have the State supply a substitute for what you abstract from the river and save yourselves from paying the money?

Mr. Humphreys—I think we are entitled to have the Jury pass upon the question as to what the damage will be to Weidmann, and in determining that they have got to take into consideration a number of things, for instance the diversion by the Morris Canal——

The Court—In other words, it comes to this; you say, "We will take all the water from the Pequannock river, but we ought not to pay the riparian owners anything for it because the State of New Jersey or somebody else is going to supply that which we remove, by means of a reservoir or some method which they are building.'"

Mr. Humphreys—I mean to say this, if by taking the whole of the Pequannock River and this supply comes down no damage would be done at all to the riparian owner except a nominal damage.

The Court—There is damage done to the owner but somebody provides a substitute in some other way; now, can you relieve yourself because somebody else substitutes it for you?

Mr. Humphreys—I don't think that is a proper way to put it. It is a question of what damage we have got to pay. The Weidmann's have got to show what their damages are. If they get water in spite of our diversion, from some other source, they

cannot expect us to pay damages which they have not suffered.

Mr. McCran—Supposing we were the only diverter on the Passaic river. Supposing that the seven million gallons that is the normal flow of the Pequannock river in dry season was the only water that in the Sumer time when Weidmann might possibly be injured, was taken by the City of Newark, supposing the other eighty-five million gallons that are being taken each year, or the other seventy-eight million gallons that are being diverted by other people from the river were not being diverted, but are in the river, and, therefore, there is passing the plant of the Weidmanns sufficient water for them to carry on their business without shortage from the river, in other words, more than enough water, then we come in and condemn, does the Court then say that we shall pay the figures we are attempting to show now, or what we offer to pay, what that water was actually worth by way of damages and what damages if damages are shown, because there is more than enough water for their business?

Now, they reverse that, they say, notwithstanding that there are seventy-eight million gallons being diverted by other people and we divert all of the Pequannock, which in low time is less than a million gallons a day, we shall pay them all of their damages, because of the fact that there is not enough water passing in front of their place and that in the future that is going to con-

tinue and going to get worse, so that some time they may have to dismantle their plant and when they do that all they can get for it is what the witnesses show.

That is the position.

We are going to show on the contrary, that instead of the water getting less, in the future it will get more. We are going present that to the jury as an element of what the damages are to be in the case. Surely that is not going to be denied us, as an element? No more than your Honor has ruled out attempts to show that some day they might have to dismantle their plant, although they admit that to-day the plant is running, and, as Mr. Hunziker admitted, this last year, within the last few years their business had risen to greater heights than it had ever reached before. There is a claim for damages only because the Court says we may take the water and some day in the future there will not be enough water in the river for them.

The Court—I say the point is that you take the water for all time, and the bad conditions won't exist for all time.

Mr. McCran—Absolutely; and is not that a factor we are entitled to have considered?

Mr. Griggs—If the Court please, we do not wish to limit the area that our friends on the other side have to exhibit their lack of desire to step up and pay like men. Therefore it is on that idea that we shall have the same liberality of surmise and conjecture that they are asking for, that we are rather disposed to let them talk all they

want to about Wanaque. The appropriatness of it being very remote, but something like this, it is for the jury to say whether we will ever be able to get a sufficient supply of water to run our plants and in determining that they must take all the facts that are known and proven into consideration. They can take the fact that we now are keeping up our work which has not been closed, they can consider that the water is now being supplied to us by a contract, which has not been terminated, they can consider that the contract is terminable at the option of the water company, if it is terminated, they can consider whether we have any means of obtaining a supply of water: They can determine how much the water company can charge us for it, whether they can charge us at a rate which will make it prohibitive for us, and they can consider whether there is any source or possible way in which we can get water, and in that connection they may consider the Wanaque scheme and this pipe dream of Morris Sherrerd, that has so often amused us. We had the same thing about reservoirs up on the Pequannock, that we could turn the low flow down and all that sort of thing. But they never did. We have got this same low flow idea in the river. All right. Let them have the benefit of it. But on the other hand, we want this, is there going to come a time, through the endless years, during which we have lost our right to this water from the Pequannock and the Rockaway, is there going to come a time when the necessities of the population of this City, the City of Paterson, will not be urged upon the legislature as a

reason for depriving the manufacturers of the use of the water? There has been talk of that kind and we are going——

Mr. Gourley—I think the statement now is not fair.

The Court—I think it is an answer to what Senator McCran is arguing.

Mr. McCran—We attempted to answer your Honor's questions.

The Court—Let us hear what the Governor has to say.

Mr. Griggs—I say, we have a right to present to the Jury for their consideration, that a reasonable man can take into account, a reasonably prudent man, anything that is proper for consideration when he offers this property for sale or is wanting to buy it, as affected by this diversion, and that would be one of the considerations and the Wanaque pipe dream would be another consideration, and all of them to be taken together for what they are worth. The jury would have to look at it as a reasonably prudent man would, and now, I say, I am offered this property or I go to buy it, what is it worth by reason of all this water uncertainty, how much less than it would be if I was sure I was going to have this water? That is the question. And that is one of the considerations we have got to take into account.

The Court—I think we have cleared the atmosphere somewhat. Senator McCran may proceed with the cross examination.

Mr. Gourley—Will your Honor hear me?

The Court—I am satisfied with the dis-

cussion. Senator McCran may proceed with the cross examination. I simply wanted to clarify the atmosphere, simply for my information. You gentlemen insist upon making jury speeches, and I simply wanted to get information for the Court.

Mr. Gourley—Your Honor being impressed with Governor Griggs's remarks I can understand it. Your Honor's being impressed with anybody else I cannot.

Mr. McCran—Governor Griggs may take up the examination after his very long speech.

By Mr. Griggs.

Q. That is to say, if the water came down here it would be in line with your plan? A. Yes, sir.

Q. In letting it get down here without interception? A. Yes, sir.

PAUL MASSINI, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. Williamsport, Pa.

Q. What is your profession? A. Chemist.

Q. Where are you employed? A. By the National Silk Dyeing Company.

Q. At what works? A. At the Williamsport Works.

Q. How long have you been a chemist there at that place? A. Pretty near ten years.

Q. Where were you born? A. In Switzerland.

Q. What education have you received as a

chemist? A. I have received a diploma of the Politechnical school in Zurich and Dr. of Chemistry of the University of Zurich.

Q. Have you been employed professionally in the chemistry work of dye houses? A. I was.

Q. Were you so employed in Switzerland? A. I was so employed in Switzerland.

Q. And subsequently here? A. In Williamsport, yes, sir.

Q. What is the size of the Williamsport plant of the National? A. Compared with the Paterson plants, it is about the size of the Valley Works.

Q. How much water does it use? A. It uses about two million gallons a day.

Q. Are the processes of dyeing carried on at Williamsport in a manner that is similar to the manner in which they are carried on at the works, the Valley Works, in Paterson? A. It is.

Q. And at the Weidmann works? A. Yes, sir.

Q. Where do you discharge the waste from the dye works, or where do you discharge the waste from the dye works at Williamsport? A. Before?

Q. Yes? A. We discharged them in a few beds and——

Q. No, I mean before any change? A. We discharged them in the river.

Q. What river? A. The Susquehanna.

Q. Was any complaint made by the State authorities about that discharge? A. We had some complaints, yes.

Q. Did you proceed to remedy the evils that were found in that discharge? A. We did.

Q. Who prepared the process by which that remedy was affected? A. I don't get you right?

The Court—You mean who corrected it?

Mr. Lewis—Yes.

Q. Do you now discharge the water into the river in a manner that is satisfactory to the State authorities of Pennsylvania? A. Yes, sir.

Q. What change did you make in the method of discharge after the complaint was made? A. We separated out the dirty and colored waters of the dye house and ran them into large receiving and settling beds, after which we also add any other waste which is acid; this acid liquor, in contact with the soapy liquors precipitates most of the impurities. We pour then this liquor through filter presses and keep this precipitated impurities back, the rest of this liquor, which is yellowish, slightly acid, but clear, we throw into the main sewer where the running wastes are coming down from the dye houses. The remaining wastes are both alkaline and acid, but predominating in alkalies; then these liquors, together with the liquor from the filter presses are making a neutral liquor which runs into the river. That is the system that we are now using over there.

Q. Is it necessary to treat all the wastes from the silk dyeing in order to prevent the pollution of the river? A. I don't understand you?

Q. Is it necessary to treat all the wastes from silk dyeing in order to prevent the pollution of the river? A. No, sir.

Q. What percentage of those wastes must be treated? A. I can say about five to ten per cent. of the wastes.

Q. After they have been treated what is the result as to the rest of the water, is it clear? A. After it is treated?

Q. Yes? A. Then it is clear.

Q. This system which you describe as having installed at Williamsport, did you install it yourself? A. I did install this one in Williamsport, but there are other places where it is made already, mainly in Europe, and they are using the same kind of system over there.

Q. Have you seen it in operation? A. I have seen it, yes, sir.

Q. And it works? A. It works, yes, sir.

Q. Does it produce a water that does not injure the river? A. It does not injure the river.

Mr. Gourley—We surely object to that.

Mr. Lewis—Then we withdraw it.

Q. Have you a sample of the effluent from the Williamsport works with you? A. Yes, sir.

Q. Please produce it? A. (The witness produces.)

Q. You hand me a bottle containing water, where was that water taken from? A. That was taken before it went into the river.

Q. From what? A. From the sewer.

Q. From the dye works? A. From the dye works.

Mr. Lewis—We offer that sample in evidence.

Mr. Gourley—Objected to, it is a sample taken from another place where we do not know the conditions and has nothing to do with the case in hand.

Objection overruled; Exception entered for all Condemnors.)

Admitted and Marked "National Exhibit No. 19" of this date.

Q. Have you made an analysis of that water from the sewer? A. I did.

Q. For the purpose of determining the amount of organic and inorganic matter in it? A. Yes, sir.

Q. Tell us what your analysis was. A. I don't recollect it exactly, may I take my paper?

Q. Yes? A. I have an involatile matter 0.7816 gram per litre; inorganic matter 0.5300 gram per litre; organic matter 0.2516 gram per litre. That would represent approximately 0.078 of one per cent. of involatile matter in this water, or 0.053 of one per cent. of inorganic matter; or 0.025 of one per cent. of organic matter.

Q. Will you tell us what the organic matter consists of? A. The organic matter consists mainly of logwoods and a little tannin.

Q. Is it in quantities traceable or distinguishable by analysis? A. Yes, it is logwood mainly.

Q. Does it affect the color of the water? A. Very slightly.

Q. Does it affect the odor of the water? A. No, sir.

Q. It is odorless? A. Yes, it is odorless.

Q. What does the inorganic matter contain? A. The inorganic matter is the main part sodium chloride, sodium phosphate, sodium sulphate, silican, dioxide and traces of iron.

Q. Are you familiar with the Valley Works plant of the National? A. I am not very familiar with it but I went there already and I know the way they are doing business.

Q. And the East Main street works? A. I was there too already.

Q. And the Wood street works? A. I was there.

Q. And the East Fifth street plant? A. I was there too, yes, sir.

Q. What was the cost of the installation of the plant you put up at Williamsport? A. The cost of the Williamsport plant is $49,058.06.

The Court—You mean for purifying the water?

The Witness—Yes, sir.

Q. Can you tell us whether it is practicable to install similar plants at the dye houses here in Paterson? A. I think it is.

Q. What would it cost to install such plants at each of the dye houses in Paterson?

Mr. Gourley—Objected to. This is a chemist. There is no indication that he had knowledge which enables him to give the cost of the construction of such a plant.

Mr. Lewis—If you insist upon it I will take the time to show it.

The Court—You may qualify him.

Q. What experience have you had in the construction of such a plant as the one at Williamsport? A. I do not understand.

Q. Have you ever constructed any other plant than the one at Williamsport? A. In another place in Williamsport?

Q. No. Have you ever installed any such plant as this at any other place than at Williamsport? A. No, sir.

Q. Would such a plant as you have at Williamsport do the same work here at the Paterson plant as it does at Williamsport? A. It would.

Q. Tell us in detail what that plant consists of? A. That plant consists of beds, of pumps, of

filter presses, a pressure tank, a dryer, to dry the paste afterwards. We have a motor and we have sewers.

Q. In the process of eliminating the waste do you get a paste finally? A. We get a paste finally in those filter presses.

Q. Have you a sample of the paste that you reclaim? A. Yes, sir, here it is (producing.)

Mr. Lewis—We offer it in evidence.

Mr. Gourley—Objected to on the same grounds, this is not at all proof of what may be done here.

(Objection overruled; Exception entered for all Condemnors.)

Admitted and Marked "National Exhibit No. 20" of this date.)

Q. Is there any reason why the installation of a plant for the reclaiming of the wastes in the way that you do it at Williamsport, if that were installed at Paterson, should cost any more than the Williamsport plant did?

Mr. Gourley—Objected to; that is the same question in another form; he is asked about Paterson prices and he is not shown to have any knowledge of labor conditions here or of the costs here, and this man is a chemist, he must have limitations.

(Question withdrawn.)

Q. Would you have to make any difference in the size in the plant that was put up in Paterson from the one that was put up in Williamsport? A. Yes, I would, I would have to make it bigger in

the East Fifth street Works and would have to make it smaller in the Main street and the Wood street works?

Q. How much bigger?

Mr. Gourley—What plant are you talking about anyway? What plant are you questioning him about?

Mr. Lewis—Don't ask me. If you want to object just object.

Mr. Gourley—I object to the question, his making a larger or a smaller plant in Paterson. What plant? The East Fifth street plant? Or the other plant across the river? What is the standard plant?

The Court—He has mentioned two plants.

Q. How about the Valley? A. The Valley Works would be approximately the same as we have.

Q. How much bigger would the East Fifth street works be? A. I guess about one-third.

The Court thereupon adjourned to tomorrow, Friday, May twentieth, 1921, at 10:00 o'clock A. M.

Fifth Day:

Paterson, N. J., May 20th, 1921.

The trial was continued this day pursuant to adjournment.

MAX AMMAN, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. You are employed by the Weidmann Silk Dyeing Company? A. Yes, I am.

Q. Did you take some samples of water from the effluent? A. Yes, I did.

Q. When? A. I took some three weeks ago, two weeks ago, one week ago and this week.

Q. How many samples did you take? A. I took something around fifty.

Q. Did you put them in bottles? A. I put them in bottles.

Q. Have you the bottles here? A. They are all here.

Q. Tell us what you took samples of, what water, from what process of the plant? A. All the same samples that Mr. Fales took and some for Mr. Clarke too.

Q. Where are the bottles? A. They are all over there.

Q. Are they all labelled showing the point from which they were taken correctly? A. Yes, sir.

Q. I show you bottle number sixty-one, what is the label on that? A. This is our wash water from the bichloride of tin from the basin.

Q. That was taken by you? A. Yes, sir.

Q. And the other bottles are labeled with a description similar to this? A. Yes, sir.

Q. How many of them are there, how many bottles are there here that you took? A. Something around fifty.

Q. The labels show where each one was taken from? A. Yes, the labels show from what water it comes and from what kind of a process it comes.

Q. How many bottles are the here, do you know? A. Something around fifty.

Mr. Griggs—We offer those fifty bottles in evidence.

Mr. Gourley—What is the purpose of the offer.

Mr. Griggs—Simply to show the jury the appearance of the water as it comes out of the various parts of the operation.

Mr. Gourley—All right.

The Court—They will be admitted.

The said bottles are marked as one exhibit, "Weidmann No. 13" of this date.

Cross Examination by Mr. Gourley.

Q. When were these samples taken? A. They were taken on different dates.

Q. These colors vary from white to black? A. Yes, sir.

Q. This number fifty, says black shop, oil wash? A. That is an oil wash, yes, sir.

Q. It does not say where in the black shop it was taken? A. (No answer.)

Q. Number forty, black shop, first wash with light alkali after logwood dye bath, now that is a sample taken where? A. In the black shop.

Q. Where in the black shop, what part of the black shop, what tub, do you know? A. I can only say it comes from the box, not anything else.

Q. What color is that, number fifty-two? A. That comes from the black shop too.

Q. Has it any definite color? A. Before it was yellow, it turns blue a little bit now.

Q. It was yellow when you took it out? A. Yes, sir.

Q. Have those things changed since you took them out? A. Some.

Q. Or are they the same color? A. That is the only one change, from a Prussiate bath.

Q. Those were selected in what length of time? A. I took this one, number fifty-two, that is a wash after Prussiate bath.

The Court—Were they all taken one day?

The Witness—No. On different days.

Q. How far apart were the days, from what time to what time? A. (No answer.)

Q. What color is fifty-two did you say? A. (No answer.)

Q. Number forty-nine, ammonia wash before dye bath is that right? A. Yes, sir.

Q. Have you given me the dates yet, the first time you took them and the last time?

The Court—How many days before you took all of them together?

The Witness—I took them on four days, I took samples on the sixteenth of May, the seventeenth, the eighteenth the nineteenth and the twentieth.

Q. You took some to-day? A. I took some to-day too; yes, sir.

Q. These were the selected days, this last day or two? A. Yes, sir.

Q. Did anybody go with you when you took them? A. I took them myself alone, almost all.

Q. Were you looking for the divers shades from the tubs, the darkest shades, or the lightest shades, when you took them? A. I took all, light and dark.

Q. Where are those carmines, those brilliants crimsons, colors that we saw in the dye shop where we were, where are they? Those great vats of scarlet color? A. They came from the color shop. That is dye from the shop, pink and blue mixed.

Q. Where are those scarlet colors that you had in tubs there and those brillians reds, I don't see any of them here? A. I have not any brilliant red here.

Q. Why didn't you bring some brilliant reds? A. I cannot take all colors.

By a Juror—Where were those taken from?

The Witness—From the color shop.

The Juror—Inside of the building?

The Witness—Inside, yes, sir.

The Court—Right from the tanks?

The Witness—From the tubs, yes, sir, before they pulled the plug.

Q. Why didn't you bring those others, the reds and blues and green and striking colors? Why didn't you bring some samples of those? A. I can bring it too, but it takes a hundred bottles or more.

Q. Why didn't you in the sixty bring some of the brilliant colors that we saw? A. I just took a few of them.

Q. Where are they? I don't see any of them here? Is that the brilliant green we saw in the tub? A. No. I did not take any brilliant green.

Q. That is just a pale green? A. That is pretty pale, that is our wash after fifty-two.

Q. You have not any brilliant dyes here at all? A. No, I have not any others.

Q. These are only washes? A. I have some dyes, but that is sky blue, pink, blue and pink.

Q. You don't call that sky blue do you? A. There is sky blue in there, there was one-fiftieth sky blue and one-fiftieth pink.

Q. That is fifty-fifty? That is a mixture too?

A. Not all. You can read it. That is mixed, and this one is not mixed.

Q. You took them any way that just struck your fancy, is that it? A. Yes, sir.

Q. Put two shades together and took some and took some, the shades being separated? A. From a few processes I took them separate.

Q. When we went there to the dye shop on Monday we saw there a great many tubs filled with brilliant colors? A. Yes, sir.

Q. Have you a single one of those samples here? A. I have some very brilliant colors. I have some from the brown and navy blue and mixed.

Q. Have you anything not mixed, in its original condition of those beautiful shades that we saw? A. No, not from the color shop.

Q. I ask you, why didn't you bring some of those? A. I can bring them, but as I say, it takes a whole lot of bottles.

Q. But you have a lot here of about the same shade, there you have four or five down here almost white, why didn't you bring some of the brilliant colors? A. But they are all the same condition, only the color is different. The soap is the same and the wash off is the same too.

Q. In other words, you went along and took what you were supposed to take? A. I did not have orders to take all of them.

Q. May I ask what your orders were? A. My

orders was to take samples from the color shop, to take dark color, mix different colors, together, and from the light color mix two colors together.

Q. That is the only orders you got? A. And I have mixed them together and I have there samples from the main sewer, from the color shop, that is in bottle number thirty.

Q. Have you a memorandum of those bottles? A. Yes, they all have numbers.

Q. You have not written anything out, have you, except on your own book? A. That is the same as on the labels.

Q. Of these fifty bottles how many of them are mixed? A. Only a few of them.

Q. How many would you say about? I am not particular about the exact number, about? A. May be ten.

Q. Ten out of sixty? A. Yes, sir.

Q. The other fifty are the original colors? A. Only a few are colors, the most comes from——

Q. Of the fifty remaining how many are colors? A. From the color may is ten, from the black shop thirty, most are from the black shop.

Q. They are mostly from the black shop? A. Yes, sir.

Q. In various degress of darkness of shades? A. Yes, all the darkest comes from the black shop.

Q. You took them from the black to the white, almost, in various degrees of shade, in that black shop I mean, light and dark? A. Yes, and from the black shop, but only a few of them.

Q. Where did you get the rest of them? A. The rest of what?

Q. These light shades, these whites? A. They come from the weighing department, come from the weighting shop, come from the stripping department, come from the soupling department.

Q. Those are different whites? A. Yes, the first wash after soap, the second wash after soap, the third wash after soap is acid.

Q. How many washes are there all together after soap? A. There are three, but not all the time, sometime only two.

Q. That is after the soap? A. Yes, sir.

Q. Then, after that, what is your process? A. After that it goes to the weighting department.

Q. That is where the tin is put on? A. Yes, sir.

Q. Have you got any of that agency here? Which one represents tin, number one? A. No, sir.

Q. That is it, bichloride of tin? A. Yes, that come from the weighting department.

Q. Is that artesian well water? A. That is from our spring water, yes.

Q. That is artesian well water in sixty-one? A. In sixty too, sixty and sixty-one.

Q. That is artesian well water? A. Yes, sir.

Q. Have you any other samples than that of tin? A. Not from the tin, there are some came from the phosphate and came from the weighting department too.

Q. With the weighting department is there more than one washing? A. Yes, sir, there is more.

Q. What number is that, sixty-one, what bath is that? A. Sixty-one, after the silk comes from the stripping, no, tin, from the spray wash, from the spray wash we recover the tin and that is our wash water from the spray wash.

Q. Is that the water as it comes from the washing machines? A. Yes, sir.

Q. Have you more than one sample of that? A. I have four of them.

Q. That water of the washing machine that you have here comes directly from the tanks, not from your own washing? A. It comes from the bichloride of tin, but comes from the tank and the leader from the river.

Q. The artesian well tank is separate from the river tank? A. They are separate.

Q. You draw the artesian well water separately if you desire it, in your shop? You can draw the artesian well water separately if you desire it? It is not mixed with the river water? A. No, sir.

Re-direct Examination by Mr. Griggs.

Q. Was anybody else getting samples at the same time you got these? A. Mr. Huber helped me take some samples from the spray washes.

Q. Was there anybody else getting samples? A. No, the other samples I took myself.

Q. Did you see a gentleman there by the name of Mr. Fales? A. The samples Mr. Fales took I took too, I was there too, and Mr. Clark, when he took samples, I was there too.

Q. Are these samples you took the same, from the same water and the same kind of samples that Mr. Fales took? A. That is the same kind of samples Mr. Fales took.

Q. And Mr. Clarke? A. All the same, yes, sir.

Recross Examination by Mr. Gourley.

Q. You know Mr. Fales? A. I know him, yes.

Q. Did you go along with him when he took each sample? A. I was with him, yes, sir.

Q. Did you take the samples which you have the same time? A. The same fifty, fifty I took at the same place he took.

Q. I thought these samples were taken this week? A. Yes, sir.

Q. Mr. Fales did not take any this week? A. No, sir.

Q. What did you mean then by saying that you took your samples when he took his? A. Those are the samples Mr. Clarke analyzed.

Q. Mr. Clarke took them? A. Yes, sir.

HARRY W. CLARK, recalled as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Griggs.

Q. What did you have to do with the taking of these samples or any of them? A. I had nothing to do with the taking of this set except to ask that samples be taken exactly or as nearly as possible exactly as the samples taken by me and their man on May fourth and fifth.

Q. Were there two sets of samples taken at that time? A. No, not on May fourth and fifth, there was one set taken, but there were two sets taken when Mr. Fales took samples.

Q. And you have a similar set? A. Yes, sir.

Q. Precisely? A. As nearly as possible, from the same baths and the same waters.

Q. Are you familiar with these sixty odd bottles that are brought here and testified to by the last witness? Can you show us which of those bottle contain liquid which in your judgment could be passed into the trunk sewer when it is constructed? A. I can, yes, sir.

Q. Can you tell without producing the bottles? Without bringing them up to the stand? A. Those are all numbered just as my samples were numbered, but, in order to show which wastes I thought ought to go into the sewer I think that the bottle would have to be exhibited, and to show which bottles should go into the river they would have to be exhibited.

Q. Here is the bottle number fifty? A. I will have to refer to my records. (Referring.)

Q. Take these that are here, the first bottle, number fifty, black shop, oil wash? A. That goes to the sewer.

Q. Number sixty-one, the weighting department, wash water from bichloride of tin from basin? A. That goes to the river.

Q. Number forty-nine, black shop, ammonia wash, before dye bath? A. That goes to the sewer.

Q. Number forty, black shop, first wash, with light alkali after logwood dye bath? A. That goes to the sewer.

Q. Number seventy, color shop, dye bath, from sky blue and pink? A. That would go to the sewer.

Q. Number fifty-two, black shop, wash after Prussiate? A. That goes to the river.

Q. That has some color in it? A. It has, yes.

Q. What would become of that color when it goes into the river? A. It would disappear quite rapidly.

Q. Before it got beyond the premises? A. Well, I would not say that, but quite rapidly.

Q. Well, just tell why you would put that into the river? A. It did not seem to me that it was polluted enough or high enough colored to need to go into the sewer.

Q. What about the chemical action on it? A. Why, some of the other wastes would react on it, the red iron precipitates it.

Q. Number seventy-five color shop, second water after dye bath for brown and navy blue? A. I understood these samples all to be numbered just as duplicates of my numbers, but evidently some of them are not. I have no number seventy-five.

Q. What do you say about it as you see it now? A. I should say that went to the sewer.

Q. Here is number fifty-one, black shop, Prussiate bath? A. That goes to the sewer.

Q. Number seventy-one, color shop, dye bath, from brown and navy blue, have you got that number? A. I have not that number, but I should like to make a statement in regard to this if I may.

Q. Yes? A. All the wastes from the color shop, so-called, go into the drain from the color shop, they all mix together and we took an all day sample from that drain, collecting samples every fifteen minutes, we judged, or I judged from looking at the processes carried on in the dye shop, or the color shop, that about thirty-three per cent. of that waste, the strongest, would go to the sewer, and the remaining sixty-six or sixty-seven per cent. could go to the river. Now, their man, evidently, instead of taking an all day sample, has taken separate samples from the color shop, some of the baths and some of the waters, but putting them together, as we judge, or I judge, that sixty-six per cent. of waste from that shop would go to the river and thirty-three per cent. to the sewer.

Q. Here is number seventy-four, color shop, second water after dye bath, with sky blue and

pink? A. Well, part of that, as I said, would go to the river.

The Juror—That blue and that pink, would you say one of those went into the river and one went into the sewer?

The Witness—Why, I said this, number fifty-two would go to the river, and with this number seventy from the dye shop is one of the wastes I have just been speaking of that their man took separately, in the way, however, in which I took all together, that would go to the sewer.

The Juror—Why?

The Witness—Largely on account of the color and the suspended matter in it.

The Juror—On account of the color?

The Witness—Yes.

The Juror—What is the difference between the sewer and the river?

The Witness—I do not understand?

The Juror—What is the difference between the sewer and the river?

The Witness—We are referring to the trunk sewer that we assume is to be built.

The Juror—When it it built?

The Witness—Yes, sir.

The Juror—But so far everything goes into the river?

The Witness—Yes, sir.

Q. Have you a schedule there showing all the numbers of samples that are here except the last few that you said you did not have the numbers of, with a statement to which of them would go into the trunk sewer if and when built and which of

them would go into the river? A. I have a schedule showing all the samples of waste that I stated yesterday should go into the trunk sewer, and of course, by elimination all the others I allowed to go into the river; it is very easy to separate it.

Q. Just give us the numbers of the samples which you say should go into the trunk sewer? A. I gave those all yesterday, but I will give them again.

Q. Did you give those yesterday? A. Yes, sir.

Q. With reference to these samples? A. Yes, sir.

The Court—He gave the numbers of the samples, but the bottles were not here, isn't that right?

The Witness—Yes, sir.

The Court—He went into detail and stated as to each sample what it was.

Mr. Gourley—By their numbers, but we better have them now.

Q. Just give the numbers of the samples that you say should go into the sewer? A. One, two, four,——

The Court—Do they correspond with the numbers before us now?

Mr. Griggs—The numbers on the bottles?

The Witness—I think there is a bottle here for every number that I have, but I am not sure of it, because there are some extra numbers here.

Mr. Gourley—I understand some of these were taken to-day.

The Court—Just cover the numbers you

have not on your list. What is the highest number you have?

The Witness—The highest number I have is number sixty-eight.

Mr. Gourley—Up to number sixty-eight do your numbers correspond with these identically?

The Witness—I am assuming that they are because I asked to have samples taken corresponding with these numbers.

Mr. Griggs—If you question it we will bring every bottle forward.

Mr. Gourley—We are anxious to speed this case, but it is important to know whether the numbers you give are these numbers.

The Witness—I think it would be safer to the record if I was allowed to separate these myself, look over them and see if the numbers correspond and separate them in the different batches.

The Court—Suppose that is done while we proceed with some other witness.

Mr. Griggs—Yes. Step aside and go through that examination.

DR. PAUL MASSINI, resumes the stand on behalf of the Property Owners.

Direct Examination (continued) by Mr. Lewis.

Q. I call your attention to National Exhibit Number twenty and ask you what that bottle contains? A. That bottle contains a paste coming out of the filter presses, that is a precipitate which we hold back.

Q. What do you do with it? A. We dry that and use it for under the boilers or we try to make, to reclaim the oil out of it, we try to do that.

Q. What do you actually do with it? You say that you try to get the oil out it, or burn it up? A. We did burn it up already.

Q. Do you burn it up in the furnaces? A. We do.

Q. Is it useful as a fuel? A. It is useful as a fuel, yes, sir.

Q. Since you have adopted that process has there been any expression of satisfaction as to the discharge from the Pennsylvania authorities?

Mr. Gourley—We object to the question.
(Question overruled.)

Q. Do you know whether or not cattle drink the water below your plant? A. Yes, sir, they do.

Q. And are they able to catch fish in it? A. They catch fish right by the mouth of our sewer, where it runs into the river.

Q. Have you seen them do it? A. I have seen fish in it.

Q. Have you seen them catch fish there? Have you seen them catch fish, take the fish from the water? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. That was before they got your water, was it? A. It is that side on the mouth where it goes into the river.

Q. Tell us again, if you will, just describe in some detail, your process? A. Well, as I said yesterday, we are running the colors, that means those

five to ten per cent. what we were talking about yesterday, we were running in big pits.

Q. What kind of a pit is it, what sized pit? A. That is concrete and lined with bricks.

Q. Brick and concrete? A. Yes, sir.

Q. What size is it? A. Well, we have twenty-seven by twenty-seven by nine, two of them so that we can change and pump off.

Q. You mean nine feet deep? A. Nine feet deep.

Q. Have you anything in those, do you put anything in before this then goes into it, any treatment? A. No, no treatment, we are using the acid from the color shop to break the paste and to precipitate that sediment, what you see over here in the bottle.

Q. I understand all the effluent from the color shop goes into those two pits, is that right? A. Yes, sir.

Q. Of both the black and the dye shop? A. Yes, sir.

Q. And the water goes into this pit? A. Yes, sir.

Q. That is the process? A. That is the process.

Q. And I understand you to say you do that with all your colors, is that right? A. Where colors is in it.

Q. Do you do that with all your colors? A. With the color shop, yes, sir.

Q. All the colors in the color shop go into these two pits? A. Yes, sir.

Q. And the two pits used for the same purpose? A. They are for the same purpose, that is only to change off if the one is full.

Q. It is the same process? A. It is the same process.

Q. Is that color effluent treated in any way in the pit? A. It is not treated except through its own acid.

Q. How long does it lie in the pit? A. It lays in the pit say for one and a half hours.

Q. Then what is done with it? A. Then it is pumped to a tank, a pressure tank and that works automatic.

Q. How high is the tank? A. Forty-five feet.

Q. Why is it so high? A. It gives pressure on the presses, on the filter presses.

Q. That is pumped up? A. That is pumped up, yes, sir.

Q. What size pipe? A. Two and a half inch.

Q. How large is the tank? A. The tank is very small, it is eight feet in diameter and five feet high.

Q. How long does it lie there? A. It does not lie there, that is only to give pressure, that is all.

Q. It goes up there and comes down into the filters. A. Yes, sir, into the filter presses.

Q. Where are those filter presses? A. The filter presses are on the same pipe as the tank is, after flowing what is clear water, you know, what settles, that goes direct through the press and when the press clogs up then it goes up in the tank.

Q. What size pipe leads from the tank into the filter presses? A. The same pipe, the same thing.

Q. How many inches? A. Two and a half inch.

Q. What does the filter press do with it, how long does it remain there? A. It don't remain at all.

Q. It just runs through? A. It runs through.

Q. What do you filter with? A. With filter cloth.

Q. Lime? A. No, through filter cloth.

The Court—It is pressed through cloth?
The Witness—Yes, sir.

Q. What kind of cloth? A. Well, filter cloth you call it that way.
Q. Filter cloth? A. Yes, sir.

The Court—A sort of a canvas is it not?
The Witness—It is a sort of a canvas, yes, sir.

Q. How thick is it. A. Fifty-three plates and forty-two squares, each frame.
Q. Is there more than one filter cloth? A. Oh, my, yes, fifty-three in one press.
Q. Do you mean fifty-three yards of canvas cloth? A. Well, fifty-three frames and each frame has two sides.
Q. Do they lie one against the other or any they separates or what? A. What?
Q. The filter cloth?

The Court—Just ask Mr. Lyle to give it to us?
Mr. Lyle—(One of the Jurors.) It is what they call filter presses consisting of a number, thirty, fifty or more plates that are machined on both sides and set so that there is a hollow between each plate and on each side of those plates are cloths made of cotton. We have made them and are still making them.
Mr. Gourley—How far apart are those various plates?
Mr. Lyle—They are machined so as to form a joint and then the stuff is fitted in in the

middle, one to the other and that makes what they call a filter press consisting of so many plates.

Mr. Gourley—Is it a patented process?

Mr. Lyle—Yes, it is a patented process, but there are different makes, the Vale, Johnson and others.

Q. What press do you use, who is the maker of your press? A. Nelson.

Q. How long have you had it? A. About a year ago.

Q. Was that the first time you put this in about a year ago? A. Yes, sir.

Q. When it comes from the filter press where does it then go, the effluent? A. That goes into the main sewer.

Q. And so into the river? A. It mixes then, part goes into the river and the remaining wastes with the clear wastes, that means the wastes from the wash machines, and that waste and the overflow of our pits where we reclaim our tin out of.

Q. In other words, it runs directly into the sewer with the other water? A. With the other wastes, yes.

Q. Do you empty right into the river? A. After it is mixed we empty into the river, yes, sir.

Q. Is that a public or a private sewer? A. Which one?

Q. The one that you empty it in? A. No, that is ours.

Q. That is your sewer? A. Yes, sir.

Q. Are you along the bank of the river? A. We are alongside of the bank of the river.

Q. Does this sewer open right into the river? A. No. That is in the mouth of a little creek.

Q. How far from the river? A. About fifteen feet.

Q. Then it goes into the river? A. Then it goes into the river.

Q. How wide is the river at Williamsport at that point? A. Well, I don't know exactly, but I think it is about half a mile.

Q. A half mile wide? A. Yes, but there is an island in between that is counted in with it.

Q. Do you know anything about the flow of the river? A. That is very different.

Q. What is the name of this branch? A. The Susquehanna, West Branch.

Q. The west branch of the Susquehanna? A. Yes, sir.

Q. It is a very shallow stream? A. It is shallow in some places and pretty deep in others.

Q. Right by your place it is quite shalllow? A. Not so very.

Q. How many feet deep is it? A. There is a channel through there.

Q. What depth is that channel, do you know? A. Six, seven, to eight feet.

Q. Outside of that channel the water is very shallow is it not? A. Quite shallow in some places, there are sand banks in it.

Q. What is the current in the river? A. What?

Q. How fast does the water flow in the river? A. That is very different; if we have high water it flows pretty fast, if we have low water it flows very slow.

Q. Are you the only dye shop up there? A. Yes, sir.

Q. How long have you been there? A. About nine years, a little over.

Q. It was only a year ago you began to treat your wastes? A. No, we did not, we had a settling basin before that.

Q. What is the number of pounds of silk manufactured in your shop? A. We figure about ninety thousand, sometimes it is less, sometimes it is more.

Q. What is it now, this last month? A. I cannot tell you.

Q. What was it the month before that? A. I don't know, that is our average about.

Q. Haven't you any idea of it at all? A. I have nothing to do with the handling of the account

Q. Do you mean you cannot tell about the capacity of your works?

The Court—He says that is about the average.

Q. What is the average? A. Ninety thousand.

Q. A month? A. Yes, sir.

Q. Are you skein or piece dyeing? A. Skein.

Q. All colors and all shades? A. All colors and all shades, and black too.

Q. Do you weight your silk before washing as they do at the Weidmanns and Auger & Simons, or the National plant? A. I don't understand what you mean by that?

Q. Do you tin it? A. Oh, weight it, yes, sir.

Q. The same as the Paterson plant? A. Yes, sir, the same thing.

Q. You spoke, I think yesterday, about mixing some of these tubs together, the water from the tubs, the alkalis and the acids in order to neutralize them? A. Yes, sir.

Q. Can you give us the names of the alkaline tubs, the alkaline water and the acid water? A. I can give you the salts which are in when it comes down the river.

Q. What are those that are alkaline?

Mr. Lewis—He does not understand your question. He is talking about what was done to the effluent.

The Witness—I did not give you yesterday the ingredients before they are mixed, I gave you the ingredients after they were mixed; if you are mixing an alkaline with an acid naturally you get neutral.

Q. I thought you said yesterday that you put some of the alkaline waters with the acid waters together and neutralized them? A. I did, but I did not tell you what kind.

Q. Just what I am trying to find out, what kind was it? A. Well, alkaline is, for instance, phosphate liquors.

Q. Can you give me the alkaline liquors that you mix with the acid liquors, what alkaline liquors and of what different alkaline waters do you put in with the acids, the dye waters? A. Our soap liquors are alkaline, and the phosphate liquors are alkaline and the silicate liquors are slightly alkaline.

Q. Can you name any particular colors that you plan as you have indicated? A. I do not get your question right.

Q. Can you tell us the colors that you put into the vat so as to neutralize the acid? A. The colors are acid and that is just the acid what I am using to neutralize our color shop uses acid, sulphuric acid in their dye liquor and that acid from the color shop I am using to precipitate my soap and those different things in the pits, that takes care of the soda, the waste of the color shops.

Q. In other words, this matter goes all in the pits? A. From the color shop, yes.

Q. Just one pit, that is all it is put in? A. Yes, sir.

Q. That is what you claim is the neutralizer? A. No, that is not neutral yet, it finally neutralizes in the main sewer.

Q. It is only when it gets into the main sewer? A. Yes, sir, after it leaves our filter presses it is slightly acid yet.

Q. Do you use sulphuric acid? A. Yes, we do.

Q. Where? A. In the dye shop.

Q. In the color shop? A. Yes, sir.

Q. Do they use it here in Paterson? A. Yes, sir.

Q. They do use it? A. Sure.

Q. Have you any record of the capacity of the effluent? A. When it goes over into the river?

Q. Yes? A. Yes, sir, it is neutral when it goes into the river.

Q. There is no alkalinity there or no acidity? A. No, sir, this one I can prove you on analysis, which I don't have here, but I can prove it for one year that I made that every day.

Q. Here is a bottle marked National Exhibit Number nineteen, that is taken as it goes into the river? A. Yes, sir.

Q. Where was it actually lifted from? A. Before it goes into the river.

Q. Was it in the brook or in the river you took this? A. No, that is in the sewer.

Q. The sewer empties into this creek? A. In the creek, yes, but that is taken before it goes into the creek.

Q. How far before it goes into the creek? A. At the sewer.

Q. At the mouth of the sewer? A. Just at the mouth of the sewer before it runs down into the creek.

Q. Does the water of the creek come up to the sewer? A. No, sir.

Q. How far from the brook does the mouth of the sewer end? A. If we have a normal time, I think——

Q. How far from the creek does the mouth of the sewer end? A. Well, it runs right in it.

Q. What does the brook do, come up to it? Do the waters of the brook come up to it? A. No, sir.

Q. If it runs into it, it must come up to it? A. No, sir, it has to run into it; it runs right down the river bank.

Q. If it runs right in it the water of the creek comes up to the mouth of the sewer? A. No, sir.

Q. I don't understand that? A. What would you call it over here? If you have the sewer over here?

The Court—How far from the mouth of the sewer to the brook water?

The Witness—About two or three feet at the present time.

Q. Then the water comes up to within two or three feet, according as the creek rises and falls? A. If the creek rises then, of course, it might come to the sewer if it is very high.

Q. It is very high now everywhere? A. No, it is not.

The Court—He says this was taken at the mouth of the sewer and it does not touch the water.

Mr. Gourley—Does that bind me because he says so? I am endeavoring to show if the Court please, that the water of the creek is

mingled with this bottle. Have I a right to show that or have I not?

The Witness—Well, you cannot show it.

Mr. Gourley—It is one of the most important elements in this case.

The Court—Of course it is.

Redirect Examination by Mr. Lewis.

Q. Is there any river water in that sample? A. No, there is not in here, there is nothing in here but that that we are using our own self, that is pumped by our own pumps, that is before it goes into the creek.

Q. Exhibit National Number nineteen has it any mixture in it of the water from the pipe of the river, is there any river water mixed with it?

Mr. Gourley—Is this proper?

The Court—He has already stated where it came from and it is entirely clear; he said he took it out of the pipe that is two feet above the river level and took it as it came out of there, that is what he said and he said it a half dozen times.

Recross Examination by Mr. Gourley.

Q. Is this the same color that it was yesterday? A. It looks here slightly darker, that is explained——

Q. In other words, it has changed right in this bottle over night? A. That was taken out last Friday.

Q. But it is a darker color than it was yesterday here, isn't it? A. Well, you have seen it.

Q. You have seen it? A. Yes, sir.

Q. Was this all taken at one time? A. Which?

Q. This? Was this all you took or did you take more? A. I took more.

Q. How much did you take? A. I took about a quart at a time.

Q. Did you do it more than once? A. Sure I did.

Q. Why was it necessary to take several quarts in order to get this? A. Because, if you want to have a fair sample I think it is no more than right to test it more than once, then we can talk something about it, otherwise you could not; if I was to take a sample out of here and give it to you you might say did you test it twice or three times, something like that, I made a lot of analysis. I think it nothing more than right for me if I said something I know what I am talking about.

Q. You took several samples until you found one that suited you and then you mixed it together? A. No, sir, I can show you every one of them.

Q. How many quarts did you take out? A. I took out at least ten of them.

Q. They were like this? A. Yes, sir.

Q. Of this color? A. Yes, sir, that is the darkest I had.

Q. Can you tell the amount of solid produced by this process? A. How do you mean? What comes out of the filter presses?

Q. Yes, simply solids? A. What comes out of the filter press do you mean?

Q. Yes? A. We count between two and four tons a day.

Q. Do you get your water from the river? A. Partly, yes, sir.

Q. Partly artesian wells? A. We get most of our water at the present time out of the creek

which passes, which I was talking about where we put our water in out of this creek we are using the water.

Q. You pump the water from the creek? A. Yes, sir.

Q. How much do you take from the creek, do you know? A. Well, I can not tell you that, I have nothing to do with that.

Q. Do you buy any water? A. No, we do not buy anything, we pump it only.

Q. Have you any measurement of the water used? A. Measurement?

Q. Yes? A. In what respect? The amount do you mean?

Q. Yes? A. Well, I figure out about two million but I would not bet on it, that is simply an estimate which I give you. I have nothing to prove it.

Q. Can't you tell from the quantity of work produced in a dye shop about the number of million gallons used? A. I am no dyer, I am a chemist.

The Court—Do you want to find out how many million gallons of water is used in a process that produces two tons of precipitate?

A Juror—That depends on what he is dyeing.

The Witness—Why, sure, and if we have a whole lot of black, naturally we have considerably more solid than if we dye a whole lot of colors.

Q. I am speaking about the average, what is your average, do you know? A. You mean the amount of water we put in the tanks?

The Court—How can he get the average in that way, one time they are dyeing one quantity of blacks and another time a much less quantity.

Q. You can give us the average for the year?

Mr. Griggs—I understand Mr. Gourley wants to know about the quantity of water used now, not about the quantity of solids produced?

The Witness—The quantity of water is very different.

Mr. Lewis—He estimated at about two million gallons a day.

Q. As to the sludge what is the moisture in that sludge? A. About forty percent.

Q. What is the cost of the operation of your plant, of your disposal plant? A. I figure it cost me per year about fourteen thousand dollars, that is depreciation and interest on the money calculated in.

Q. What items does that include? A. That includes interest on the money, depreciation, it includes labor, it includes what I am saying.

Q. Does it include overhead expenses? A. No, sir.

Q. Does it include investment? A. Yes, sir.

Q. Does it include taxes on investment? A. It don't include no taxes.

Q. Was that calculation made by you? A. That calculation is made by me, yes, sir.

WOLCOTT C. FOSTER, sworn as a witness on behalf of the Property Owners, testifies as follows.

Direct Examination by Mr. Griggs.

Q. Where do you live? A. Rutherford, New Jersey.

Q. What is your profession? A. I am consulting engineer for a number of manufacturing concerns.

Q. Are you a chemist? A. I have had a great deal of chemical training.

Q. What particular plants are you consulting engineer for? A. For the United Piece Dye Works, the Belding Coohulle, Shelton Mills, The South River Spinning Company, The American Piece Dyeing Company, and I have been doing some work for the Gary Mills recently and for the Weidmann Silk Dyeing Company.

Q. Where are the works of the American Piece Dye Works? A. At Lodi, New Jersey.

Q. On what stream? A. On the Saddle River.

Q. How long have you been in charge of that as hydraulic engineer or whatever it is? A. I have been with them since before the consolidation, with the old Alexander Dye Works, since 1892 or 1893.

Q. And you still are with them, with that plant at that place? A. Yes, sir.

Q. What business is carried on in the Lodi plant? A. The dyeing of silk, the dyeing and finishing of silk.

Q. Skeins or pieces? A. Piece dyeing, they have another plant at Hawthorne which is across the river here, of which I also——

Q. That is on the Goffle Brook? A. That is on the Goffle Brook, yes, sir.

Q. It used to be the American? A. It used to belong to the Arnolds.

Q. The American Piece Dyeing Company are the same, are they? A. Yes, sir.

Q. What kind of dyeing do they carry on there, piece or skein? A. Piece dyeing and printing.

Q. Are the Lodi works very large? A. Yes, sir. sir.

Q. What amount of water a day is used in the Lodi works? A. From six million to fifteen million gallons a day.

Q. What causes the variation between the six and the fifteen? A. It is depending on how busy they are, it averages about ten to twelve millions gallons a day.

Q. Where is the effluent discharged? A. Into the Saddle River.

Q. Have you had any experience with reference to disposing of waste from silk dyeing plants? A. Yes, sir.

Q. What experience have you had? A. We had a disposal plant at the old Alexander Dye Works which we operated for about seven or eight years, disposing of all their wastes, at the same time what is now known as Mill B belonging to Botga Piece Dyeing Company and they had a disposal plant at their works.

Q. Describe those disposal plants? A. Then I may say that for certain portions of the waste we have put recovery plants in at Lodi and also at Altonbach and Seldon in Newark.

Q. Describe those disposal plants? A. The disposal plants? All of them?

Q. Well, at the Lodi works? A. The disposal plant at the Lodi Works, at the old Alexander Dye Works, took care of all of their wastes, it was a series of mixing and settling basins and

then the effluent was run into a cinder filter, or cinder pit.

Q. A cinder filter? A. Yes, sir, made up of fine screened cinders; the sludge from those settling and mixing basins was run into another cinder filter for drying purposes. At the Botga Piece Dye works the disposal plant was a large wooden tank and the wastes were treated with chemicals and allowed to settle in this tank and then flowed into the river.

Q. How expensive were those disposal plants? A. The one at the Alexander Dye Works cost at that between two and three thousand dollars to build.

Q. What did the one at the United cost? A. At the Botga I don't know what that cost, they were separate concerns at that time.

Q. Was there anything to indicate whether one cost more or less than the other? A. The one at the Botga Piece Dye Works was much more expensive than the one at the Alexander Dye Works.

Q. How much more? A. That I could not tell because I had no access to their books.

Q. A thousand dollars, a hundred dollars, two or three dollars? A. I had no access to their cost records; I should judge his cost probably four or five times as much as the others.

Q. That would be your judgment, not your guess? A. That would be my judgment.

Q. Are you acquainted with the Weidmann works here in Paterson? A. Yes, sir.

Q. And the works of the National Silk Dyeing Company? A. No, sir.

Q. How long have you been acquainted with-

the Weidmann works? A. I should say for six or seven years.

Q. Do you know their processes? A. In a general way, yes, sir.

Q. And the kind of business they carry on? A Yes, sir.

Q. The kind of dyeing they do? A. Yes, sir.

Q. The amount of water they use? A. Only from what they tell me.

Q. You have heard it here in Court, haven't you? A. Oh, yes.

Q. What would you say as to the possibility of their disposing of the effluent at the Weidmann works, as to the discharge of the harmless effluent into the river? A. I should say it was perfectly possible.

Q. How would you do it? A. If they have to dispose of all of their wastes and cannot empty any into the trunk sewer I should build a similar plant to the one that we had at the Alexander Dye Works, simply a series of mixing and settling basins and possibly a cinder strainer or filter, afterwards for the effluent.

Q. Have you made an estimate as to what such a plant would cost? A. No, sir, I have not.

Q. Have you any judgment or opinion? A. It would be a pure guess——

The Court—Can you approximate it? Would it cost a million dollars?

The Witness—Oh, no. I should say a hundred and fifty thousand dollars would be very high indeed.

Q. That is, if you had to treat the whole of it?

A. That is if we had to treat the whole of it, yes, sir.

Q. If you were to segregate ten per cent. of the worst of the wastes and dispose of that in some other way what about the treatment of the other ninety per cent.? A. I have never made any measurements so I cannot say whether that other ninety per cent. any of it would need treatment or not, but if it did need treatment I should treat it in very much the same way as I would the entire wastes, simply mix all the different solutions together in mixing and settling basins and then run it through either a sand filter or a cinder filter.

Q. What is the cost, if you know, of the operation of the Alexander dye disposal plant? A. It was very small indeed, it took about two men one day a week on the average and a team of horses and a wagon with about two men for one day.

Q. What did the team have to do? A. The team was used to take the sludge from the sludge drying bed generally over into the lot to pile it up.

Q. You did not allow the sludge to go into the stream? A. No, sir.

Q. When that was dried you carried it away? A. When it dried we carried it over into the lot and set fire to the piles of sludge and burn it up.

Q. Is it inflammable? A. Very.

Q. It contains oil? A. Yes, sir, a great deal.

Q. Which causes it to burn readily? A. Yes, sir, if I remember rightly it contained about eighteen to twenty-four per cent. of fatty material.

Q. Would the same thing be required if you put in such a plant as that at the Weidmanns or the National? A. Yes, sir.

Q. Would that kind of a disposal apply to any

and every silk dyeing plant on the Passaic River as far as you know? A. Why, to the smaller ones I don't think it would, they would not have variety enough of waste.

Q. Explain that statement? A. Where you have a great variety of wastes and a great variety of dyes and you mix them together they react on each other, and they are thrown out of solution; if you only have one or two colors or a few colors and they are the same class of color and you mix them together you get a different color but you do not throw them out of solution as a rule.

Q. Is that what you call a process of neutralizing? A. Yes, sir, it is a process of neutralizing and precipitation; one sticks to the other, as it may be called, as it is commonly called, and it settles out the solid matter.

Q. Like two snakes devouring each other? A. Yes, sir.

Q. There is no snake left? A. There is no snake left, no, sir.

Q. What can you say to give us an opinion, would be the cost of operating a plant of that kind at the Weidmann plant, considering that they do a business using from six to eight million gallons of water a day, part of it well water and part of it soft water? A. I really could not say. I would have to sit down and do a lot of figuring on it.

Q. Is there anything in the way of impracticability or excessive expenditure, which would necessitate the suspension of the plant? A. No, sir; I will say this, that in the latter part of 1916 I had some preliminary samples taken from the Weidmann Silk Dyeing Company's plant to see whether those reactions that we got at the Alex-

ander Dye Works would take place or not, and——

Q. You mean this killing off of each other? A. Yes, sir.

Q. By reaction? A. Yes, sir, and I had some investigations made and I found that they would take place, the same thing would take place there as took place at the plant that we had at the Alexander Dye Works.

Q. Have you anything further to say on that line? A. The result at the Alexander Dye Works the effluent that went into the river was clearer than the original Saddle River above the dam.

Q. Above the Lodi dam? A. From the Lodi dam. It was non-putrefactive, that is, we never had any odor from it and where it went into the river the fish in preference would come up and swim around our outlets, would come there; the composite sample that I got from the Weidmann Silk Dyeing Company investigation was similar so far as I could tell from appearances and smell and general looks.

Q. Equally good to the effluent that you have described at the Alexander? A. Yes, sir.

Q. How did they treat the effluent at the Hawthorne works? A. They do not treat it at the present time, they empty it into a sewer and it is carried down along the Goffle Brook and emptied into the Passaic River if I remember rightly.

Q. It does not go into the Goffle Brook? A. No, sir. You see, the Weidmann Silk Dyeing Company take water out of the Goffle Brook below the Hawthorne works.

Q. How does the process of piece dyeing differ from skein dyeing? I mean, what additional processes does skein dyeing go through if any? A.

Why, the machinery is different, the handling, the chemicals and dye stuffs are about the same.

Q. What about the stripping or boiling off? A. We have that in piece dyeing, just the same as in skein dyeing.

Q. Then as to the elements that enter into and form the wastes, is there any difference between the waste in piece dyeing and in skein dyeing? A. The wastes in piece dyeing from a works like the Alexander Dye Works from the Hawthorne works are likely to be worse so far as decay goes than the skein dyeing works, on account of the large amount of finish that we use and the large amount of gum that is used for printing the goods, for making up the dyes for printing.

Q. Then, as between the two, you would say that the piece dyeing produces more waste, or pollution, if you please to call it that, than skein dyeing? A. It produces a pollution that is more likely to decay than skein dyeing.

Q. Is there anything else that you can say with reference to this matter which I have not interrogated you about?

A Juror—Do you do any weighting over there?

The Witness—Yes, sir, a very large quantity of weighting.

Q. Do you use tin? A. Yes, sir.

Q. Do you recover the tin? A. We recover the tin yes, sir.

Q. In the same way the Weidmanns and the other concerns do? A. Very similar.

Q. There is just one way of doing that, isn't there? A. Yes, sir.

Q. And that is applicable to all? A. Yes, sir, they also do that at Kaltenbach & Stevens where I built the plant for reclaiming the tin wastes.

Cross Examination by Mr. Gourley.

Q. Are you a chemist? A. I have had a great deal of chemical training, I am not a chemist, that is, I do not practice chemistry as a profession.

Q. What is your title, civil engineer or hydraulic engineer? What is your profession? A. My profession is and has been mainly devoted to water supply, waste purification and recovery of waste matters and some chemical engineering.

Q. Would you call yourself a sanitary engineer? What is the title? A. You might call it that.

Q. You might not, of course. I thought you would know best. A. It is industrial work, it is a combination, a lot of different things.

Q. Kind of an all 'round man? A. Yes, sir.

A Juror—Why would not Industrial Engineer apply?

The Witness—Very well, it would.

Q. Is there such a title?

The Juror—I don't know, that is a new one.

Mr. Gourley—We will make it up now. We will start him off.

Q. This Alexander plant is where, that you speak of? A. The Alexander plant was at Lodi, New Jersey.

Q. What did they do there, what kind of work? A. Silk dyeing and printing.

Q. Silk and printing? A. Silk dyeing and silk printing.

Q. Was it extensive as a dye shop? A. Why, sure, that is part of what is known as the United Piece Dye Works and that has the reputation of being the largest silk dyeing plant in the works.

Q. Taking in all of its processes I suppose? A. Yes, sir.

Q. Successor of the United Piece? A. Yes, sir.

Q. That empties into the Saddle River? A. That empties into the Saddle River.

Q. That is one of the dirtiest rivers in New Jersey, is it not, even including the Passaic? A. That plant was abandoned years ago, along in 1907 or 1908.

Q. You spoke about the effluent being cleaner or better than the water in the river? A. Yes, sir.

Q. The water of the river is just horrible, is it not? A. Not above the dam, no, sir.

Q. Don't you regard the Saddle River as one of the most polluted rivers in New Jersey? A. That depends on where you are, what part of the Saddle River you refer to. Above the dam, it is polluted so it is not good for drinking purposes in the raw state, without treatment, below the dam it gets the color from the dye manufacturing plant, gets the color from the dye works, lower down it gets the waste from the New Jersey Worsted Spinning Company.

Q. What plants are you associated with there now on the Saddle River? A. The United Piece Dye Works and the Color Works, and the Color Manufacturing plant which is one of the branches of the Duponts.

Q. That is where? A. That is right on the left

on part of the property of the United Piece Dye Works.

Q. Below the dam? A. Part of it below and part of it above.

Q. Where do you enter your wastes, where do your wastes go? A. The wastes all go into the river below the dam.

Q. In other words they go into the water that is better than the water above, is that is? A. No, they are some of the things that color the water below the dam.

Q. Is this effluent of yours in its fine state such as to discolor the water? A. That is not in operation now and has not been, that was dismantled in 1907 or 1908.

Q. Before it was dismantled did it discolor the water? A. It did not.

Q. The effluent did not discolor the water? A. No, sir.

Q. Is it in operation now? A. No, sir; we built buildings on the land that was on.

Q. What works, if any, are in operation at that point now? A. Disposal works.

Q. Yes? A. There is a general reclaiming plant.

Q. There are no disposal works there now? A. No, sir.

Q. Is there any manufacturing concern there without disposal? A. Why sure, pretty nearly all manufacturing is without disposal.

Q. Are you associated with them? A. With any of the manufacturing?

Q. Yes? A. Yes, sir.

Q. Along that point I am speaking of now? A. Yes, sir.

Q. They discharge into the river? A. Yes, sir.

Q. Do they treat their effluent? A. None of them that I know of.

Q. Then it comes back to that particular one that you have mentioned? A. Yes, sir.

Q. How much land is needed for that disposal plant? A. I have been looking for my old plans and information on the subject and I have been unable to find them. The plant was situated over in the yard of what is now called Mill A, where we store the coal at the present time for the boilers, and where we have one of the buildings.

Q. My question was, what number of lots of land, what extent of territory was required, in extent, for the use of this disposal plant? A. That I could not tell you unless I had the map here.

Q. What would be necessary for the Weidmann plant in extent? A. I have made no calculations.

Q. According to the series of pits or vats or whatever you called them, as you describe it, and as I heard it, it would take considerable ground? A. Well, it is a case of how many you want to put in. I should say it would not take over three acres, two to three acres for the entire outfit, for the whole of the Weidmann works.

Q. Do you know the Gehring plant of the National Silk Company? A. No, sir, I am not familiar with the National.

Q. Do you know how much land they would have there? A. I am not familiar with the National Silk at all.

Q. Do you know the East Fifth street plant of the National? A. No, sir.

Q. Do you know the old Gaede plant on North

Straight street of the National? A. No, sir.

Q. And you cannot say anything about them? A. No.

Q. You said that the branch of the United Piece at Hawthorne, formerly the Arnold Works, sewered into the river? A. Yes, sir.

Q. Discharged their effluent untreated right into the river? A. They do at the present time.

Q. They discharge it on the Weidmann property? A. It is so long since I followed up that sewer that I could not tell you just where it is emptied.

Q. They discharge it right opposite the Weidmann Dye Works? A. I should say so, but I could not say positively.

Q. Did you construct a plant such as you approved of yourself for disposal? A. I did not do the contracting, no, sir.

Q. When did you construct or direct the construction of the last one? A. Why, I think the last one that I designed and saw partly constructed was either last year or the year before.

Q. Where? A. That was at St. Johns, Quebec.

Q. What was the class of work? A. Skein silk dyeing.

Q. What was the quantity of work to be manufactured? A. The silk?

Q. How many pounds a month did they dye? A. I think about twenty thousand pounds.

Q. That was a small plant? A. That was a small plant, yes, sir.

Q. What other plant have you constructed? A. The one before that was the tin reclaiming plant at Kaltenbach & Stevens.

Q. Where is that? A. That is in Newark.

Q. When was that done? A. I could not remember the dates, five or six years ago.

Q. What was their business? A. Their business is ribbon dyers, they are manufacturers of silk ribbons.

Q. What number of pounds per month do they dye? A. I have not the slightest idea.

Q. It is a small plant? A. It is a pretty fair sized plant.

Q. Have you had any other experience in construction? A. Yes, I built the tin reclaiming plant at the United Piece Dye Works.

Q. That is where you are employed now? A. Yes; I built the neutralizing plant for the dye making establishment which now belongs to the Duponts and the soda reclaiming plant, caustic soda reclaiming plant in use at Mill B.

Q. You do not call this a reclaiming plant, do you, it is a disposal plant? A. A reclaiming plant is a plant where they take out portions of these waste or pollutions of the material that would go down as wastes and do go down as wastes, to use them over again.

Q. At a profit? A. Yes, at a profit.

Q. Would you call this kind of a disposal plant we are now speaking of? Reclaiming plant or disposal plant? A. This is hardly a reclaiming plant.

Q. Disposal plant is the better word? A. Yes, sir.

Q. Is there a definite relation in your mind for the erection of a disposal plant as to the capacity and the quantity of silk dyed? In other words, would you put in a small plant? If so, where is the limit? A. I don't exactly understand.

Q. Is there any defined relation of dyeing silk as to quantity that you would recommend the construcion of a disposal plant? A. Why no, the quantity of waste liquor from any plant depends on how that plant is operated. You take the United Piece Dye Works, for instance, and they use pretty nearly as much water for one-third or half of their works as they do for the colors which are very acid and they get out a very large proportion of skeins, as they do when their production is small the wastes are very much stronger than when their production is large.

Q. Take a case where the silk dyers had followed the practice, the usual practice of the trade varying from whites to blacks, blacks about fifty per cent. dye work and colors perhaps about half, or a quarter, something of that kind, changing according to the season, is there any definite output that one of those dye shops must have before you would suggest the installation of a disposal plant? A. That depends upon where their wastes go. Into the river, or how they get rid of their wastes.

Q. If they dumped it into some river it is objectionable, of course? A. It depends upon the relative quantity of the waste and the size of the river.

Q. It is illegal and we want to stop it, let us say, it is an unlawful thing and we want to stop it, I want to know, is there any particular output of a dyeing plant that you would recommend the installation of this disposal plant or not? A. I should say that question is more for the public authorities than it was for an engineer. It all depends upon legal conditions.

Q. Then you would not put it in any plant or

would not recommend it to be put in a plant unless there was propulsion behind it? A. Not necessarily, no.

Q. In other words, you would not spend the money unless you were compelled to do it? A. Unless I was compelled to do it by some surrounding circumstance.

Q. So in such a case you would have to put it in small or large then? A. Yes, sir.

Q. This estimate of yours of the Weidmann plant, is that based on the present day labor cost, cost of material now? A. That is what I had in mind, yes.

Q. Have you made any drawings or plans for the construction of a disposal plant for the purpose of giving us this estimate? A. I said that was not an estimate, that was simply my judgment and guess.

Q. In other words, you have made no measurements and made no calculations, but gave us the result of your judgment on the matter? A. No, sir.

Q. Is that so as to the operation of this plant? A. I don't think I made any estimate as to the operation.

Q. Have you any estimate that you can give us for the operation of this $150,000 disposal plant you suggest for the Weidmanns? A. I could not, without sitting down and doing a lot of figuring.

Q. I understand you to say it would take three acres for such a plant? A. I should judge somewhere around two or three acres.

Q. Would that be crowding the thing to put it into three acres? A. No, I don't think it would.

Q. You think that would be about right? A. I should think so.

Q. Does that depend upon the quantity of output of the Weidmanns? A. That is based on what I am told is the quantity of the mills.

A Juror—Are the Arnold works going?

The Witness—No, sir.

The Juror—They empty into the river?

The Witness—I think they empty into the Passaic River. I have forgotten whether they empty into the Goffle Brook or whether they empty into the sewer. It is a good many years since I traced out that sewer. It gets into the Passaic River.

Q. You spoke about the abandonment of a plant, I think one of the plants on the Saddle River? A. Yes, sir.

Q. Why was it abandoned? - A. That plant was built——

Q. I am speaking of the plant that you had the disposal plant on at one time, that was abandoned, I ask why that disposal plant was abandoned? A. I say, that plant was built in pursuance of a suit which was brought by a lower riparian owner against the Alexander Dye Works and they settled with those owners and they needed the land or wanted to use the land for building purposes and,——

Q. So they did not dispose of it any more? A. So thy abandoned the plant.

Q. So that is no longer there? A. So that is no longer there, no, I can dig down over there and find the old sludge, find some of the old sludge and parts of the old basins.

A Juror—Must we understand that you took that away because it is easier to throw it into the river?

The Witness—Why, no, the cause of building it, that is the moving spirit for building it, was a damage suit in which an injunction was issued, and that was settled and the riparian owners' rights below were paid for, and just where that plant happened to be located they wanted to put up a building so they stopped using it.

HARRY W. CLARK, recalled as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Harding.

Q. Have you made a selection and separation of the bottles, samples, that are to go into the sewer as you say from those that are to go into the river? A. I have.

The Witness—I separated them and going in this direction——? A. All of those samples represent wastes which I have said should go into the sewer.

The Court—Can you give us the numbers of those?

Mr. Griggs—Did you separate those?

The Witness—I separated them and checked those numbers.

Mr. Harding—I will read them; they are numbers: 40; 68; 28; 30; 33; 41; 46; 50; 51; 49; 44; 24; 1; 2; 14; 15; 53; 11; 47; 56, 38, 35; 34; 37; 20; 25; 26; 43; 31.

The Court—The others that have been

mentioned and are among your samples, are the ones that go into the river?

The Witness—Yes, sir.

Mr. Harding—Shall I read those?

The Court—It is hardly necessary, it simply eliminates the other numbers.

The Witness—I should like to make one statement about the samples, from the ones that do go into the sewer; I have no sample there of the waste from the color shop, so-called, I took an all day sample; we have here three samples from the color shop which if mixed would represent about what I have. But they have not my number.

Mr. Harding—The colors which are in here if mixed together would represent your sample?

The Witness—I don't know just to what extent, but there are colored waters and absolutely clear wash waters there, and that is what made up my sample.

Q. Now I ask you, what those samples, taken all together, that you say should go into the sewer, would represent in gallons of water? A. The samples I compared would represent about 300,000 gallons a day.

Q. And those samples which you say are to go into the river? A. Would represent approximately four and a half million gallons a day.

Q. What percentage would those samples in quantity that are to go into the sewer, bear to those in quantity that are to go into the river? A. Six per cent.

Cross Examination by Mr. Gourley.

Q. Where are the brilliant colors that we saw in the tubs? A. Those brilliant colors that you saw were probably good for short periods and then combined with other colors and they became mixed and made a color such as some that you see here. For instance, the last bottle on the row, I think, if you will dilute that you would find a very brilliant purple. It looks almost black there, but really if diluted it would be a brilliant purple.

Q. I understood from the other witness that he took samples right out of the dye tubs; now, what I want to know is, and I presume the jury have the same thought in mind, why haven't we samples here of all the brilliant colors? A. I think you misunderstood the samples that I took from the bright colors that you speak of, they are the colors used in what they call the color shop, and that is an all day sample that I collected at the end of the drain, which we have not represented here, we have not a sample of that sort here.

Q. Then you have no sample directly from those bright colors in the dye shop? Or in the dye tubs? A. Except what are on the bench behind there.

Q. Do you say, that is a bright color? A. No, I do not say that is a bright color.

Q. This is the brightest one that is here, this pale pink, is that a bright color, number 70? A. That is quite characteristic of a lot of the waste that goes from that color shop drain.

Q. That is the only illustration you have of the bright colors here? A. Yes, sir.

Q. Have you made any arrangement of the colors of those you propose sending into the sewer? A. Did I make any arrangement?

Q. Did you make any calculation as to the volume that goes into the sewer? A. Yes, sir.

Q. How was that calculation made? A. It was made from the actual volume of water used each year, or used last year in each class of waste for a certain number of pounds of silk during the year, treated last year, those figures were given to me by Dr. Hunziker.

Q. You did not make them yourself? A. No, sir.

Q. You are relying for your figures on what Dr. Hunziker gave you? A. Yes, sir.

Q. I understood you to say a while ago that thirty-three per cent. of the waste from the color shop went into the sewer? A. Yes, sir.

Q. Now, I understand you to say it is not so? A. No, sir.

Q. Make that correct? A. I stated, I think yesterday that the waste from the color shop amounted to about 270,000 gallons a day and thirty-three per cent. of that would probably be highly colored enough and contain other matters so that it would have to go to the sewer and the remainder could go to the river.

Q. You have no sample of that? A. Simply those separate samples, I just stated I have no sample of that.

Mr. Lewis—If your Honor please, we are about now to change and go to another line of proof, as far as we are concerned. We want to show the proportions of hard and soft water necessary in the operations of the plant and then I am going to show, assuming the necessity to resort to wells exclusively, the expense of such wells.

EDWARD F. L. LOTTE, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. I live in Paterson.

Q. What is your business? A. I am General Manager of the National Silk Dyeing Company.

Q. And you have been such for how long? A. Since the beginning of the company, January first 1909.

Q. Are you familiar with the processes of silk dyeing? A. Yes, sir.

Q. What has been your experience as a silk dyer? A. Do you mean, how long?

Q. How long and what you have done, what you know about it? A. Well, I have been in the silk dyeing business ever since I was a boy, I have been in it for the last, over thirty years. I have worked in every department of the silk dyeing business in a practical way.

Q. Are you familiar with the plants of the National Silk Dyeing Company here in Paterson? A. I am, I visit them most every day.

Q. That includes the Valley, the East Main street, the Wood street and the East Fifth street works? A. Yes, the East Fifth street works and the East Main street Works, and the Wood street works; the Wood street works I do not visit quite so often, but I do visit the East Fifth street and the East Main street most every day.

Q. And are you familiar with the Valley Works? A. I am familiar with Valley Works.

Q. Is water essential to the dyeing of silk? The use of water, is that essential to the dyeing of silk? A. Well, we could not dye it without water.

Q. Do you technically make any distinction when you speak of dyeing silk from any other pro-

cess which the laity regard as the process of silk dyeing? A. Well, dyers, usually in speaking of dyeing, generally call the whole process dyeing because the results are the dyed silk, but the actual coloring of the silk is really made up of a small part of the work and uses the smallest part of the water, that is, when I say the actual coloring, I mean the actual putting on of the color. The large amount of water taken for the use in skein silk dyeing is for the preliminary processes, such as boiling off, and what we call the weighting process and the washing and so on, but the actual dyeing of the silk is a small proportion of the water, probably about five to ten per cent. Not any more. The dyer when usually asked on the stand he has in his mind more the actual coloring.

Q. What kind of water is necessary in the preliminary treatment of the silk which you speak of? A. In the preliminary treatment, the first treatment is the boiling off process, there we must have soft water, we cannot use hard water and get results; for one thing I may say, it is not merely the color, when we deliver silk, our customers demand that it must be workable, it is not merely the color, but the condition of the silk must be such that our customers or the manufacturers to whom we deliver must be able to use it and work it.

Q. Is soft water essential for that? A. Soft water is essential for the first process that we use. as a matter of obligation, all skein silk goes through the soap first whether we boil it off or not.

Q. What sort of water is the river water and the Dyers' Pipe water, soft water or hard water? A. They were soft water.

Q. What proportion of all the water you use

in your dyeing operations at these plants which we have mentioned, is soft water? A. The amount of soft water we use is about seventy-five per cent. The hard water about twenty to twenty-five per cent. That may vary just one way or the other according to the amount of work we are doing.

Q. Where do you get that hard water from? A. We get our hard water from wells.

Q. Artesian wells? A. Artesian wells.

Q. At the various plants? A. Yes, sir.

Q. Can you use that well water in place of the soft water, without treatment? A. No, we could not; not and get results in boiling off and in other processes.

Q. What would be the result of the treatment of which you speak to which you would submit such well water? A. You mean the result with the silk?

Q. Yes? A. If we took and boiled off silk with hard water the lime in the water will precipitate the soap.

Q. I don't think you got my question?

Mr. Griggs—Yes, I think he is answering it.

Q. Yes? A. Would precipitate the soap, that would get into the fibres and that would give us trouble all through the processes of dyeing, weighting or dyeing, and it is impossible to use hard water and have soap and not have precipitation, even if we tried, we cannot wash that out with water, in fact, it is very hard, because the precipitate is almost insoluble; then, even if we do succeed in dyeing it so that it would look like

something, when it went to the mill it could not be used, our greatest trouble in the dye house, the silk dyer, his trouble is largely through those things. He has very little complaint between himself and his customers concerning the matching of shades, that does not give him trouble. The real trouble is the condition of the silk, the condition in which he delivers it when it is dyed, and unless the silk when boiled off, is properly boiled off, we cannot weight it properly nor can we dye it properly so that that preliminary process, which all silk in every dye house goes through, is essential.

Cross Examination by Mr. Gourley.

Q. What is the quantity of water used, if you know, at the Gehring plant, both hard and soft? A. The Gehring plant uses about a million and a half to two millions of soft and about a half million of hard water.

Q. Did you hear the testimony of Mr. Gehring himself? A. I did not hear all of it.

Q. The old Gaede plant, what is that property? A. The old Gaede plant, I have not got those figures in mind.

Q. The East Fifth street plant? A. The East Fifth street plant about three-quarter million hard water and about two and a half million soft water.

Q. Is there any trouble using the water for dyeing which comes through the pipes in the city here, filtered water that we get from Little Falls? A. You mean the Dyers' Pipe water?

Q. I do not mean the Dyers' Pipe water, I mean the ordinary city water that we drink? A. I have had no experience with it.

Q. Were you ever supplied with that water? A. Not in either of those plants and I never knew of it since I have been here.

Q. You have had no experience with it? A. No, sir.

Q. You know, of course, that other dyers in town have that for their sole supply? A. I don't know .

Q. Do you know anything about the subject? A. No, sir, I do not.

Q. There are a number of dyers in town who are not on the river? A. That may be. I don't know. I could not answer you what they are using.

Redirect Examination by Mr. Gourley.

Q. I think you said something about the use of hard water after it has been reduced to the same kind of water as is in the river, or water having the same degree of hardness, and what would be the effect of such water upon the silk, will you kindly state what the effect would be? A. I don't just get that.

Q. Can you soften hard water or well water so as to make it as usable as the river water? A. Well, it would be quite expensive, but I could not say that I have had experience in doing it.

Recross Examination by Mr. Gourley.

Q. The main question is the soap, the expense is mostly in the soap? A. If it would be reduced. Of course, there is one thing I want to say, you could not use hard water even if you did put ten times as much soap in it and get good results with hard water in boiling off silk, you could not

do it and you could not get results, with our well water that we have you could not boil off silk successfully with it.

Q. Do you know whether there is any distinction in the well water you get at the different plants? A. I presume there it, but I don't know anything about any plants but our own.

DR. THOMAS R. DUGGAN, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. Where do you live? A. In New York.

Q. What is your business? A. I am a Chemical Engineer and Technical Manager of the Permutit Company.

Q. What is the business of that company? A. Supplying plants to soften water and generally treating water by softening it or taking care of waste waters in every direction.

Q. Are you familiar with the well waters of the National Silk Dyeing Company at the Valley Works, the East Fifth Street Works, the East Main street Works and the Wood street Works? A. Yes, sir.

Q. Have you analyzed those waters? A. Yes, sir.

Q. What was the purpose of the analysis? A. The purpose of the analysis of those waters was to see if they could be treated, and, if they could be treated by what process, and of course, what the cost would be for treatment.

Q. Did you arrive at the cost of treatment? A. Yes, sir.

Q. To bring the water down to the same softness as the river water? A. Yes, or to zero hardness, which, of course, we prefer to do.

Q. You estimated the cost to bring it down to zero hardness, as well as to the hardness or softness of the river water? A. Yes, sir.

Q. What is the degree of hardness in the river water? A. About three degrees.

Q. Now, please tell us what it would cost to reduce the well water, the artesian well water at the East Fifth street works to the degree of hardness of the river water? A. In the East Fifth street works, I understand there are fifteen wells, and samples of those were submitted to us, and upon the average analysis of the fifteen wells I found that they contained 14.4 degrees of hardness, iron 2.7 parts per million, and manganese 4.3 parts per million. The average hardness of the fifteen wells contained 14.4 grains per gallon iron compounds, the average was 2.7 parts per million; manganese average was 4.37 parts per million. The cost of softening down to zero, removing all those by sundry processes would come on the average to $100.93 per million gallons, but if we had to reduce it down to only the three degrees hardness, similar to the river water, then it would cost $80.00 per million gallons.

Q. Will you please tell us what it would cost to do the same thing, that is reduce the hardness of the well water at the Valley Works to the degrees of hardness of the river water? A. Which one is that? Is that the East Main street works?

Q. The Valley Works? A. Under similar conditions the hardness there was 11.4; it would cost to treat it down to three degrees, $56.53 per million gallons.

A Juror—Do you do that in tanks or in the process of dyeing?

The Witness—No, it is treated first of all with this defect of iron and manganese in it, in settling tanks, large tanks, that, according to the quantity of water, might be as large as this room, and the water allowed to remain in there a certain number of hours, five or six, and treated by chemicals and then, after settlement, pumped out, passed through a filter press and delivered to the various places after finally taking out all hardness by another process which is a little bit complicated, to look at, but really is not in practice.

The Court—What is the price for the other plant?

The Witness—The East Main street plant, to reduce that down to three degrees of hardness would be $85.78, to reduce it down to zero would be $111.40. The Wood street works to reduce the water on the average wells there down to three degrees of hardness would be $89.16, and to reduce it to zero degree of hardness $116.17.

The Court—The prices differ because there is a difference in the hardness of the water?

The Witness—Yes, sir, it contains iron and manganese in different quantities making a little difference in the expense.

Q. What makes the difference in the cost of reduction? A. The difference in the hardness of the waters and the difference in the contents of the iron and the manganese.

Q. Which plant has the hardest water in its artesian wells? A. The East Main street, showing sixteen grains per gallon, that is the hardest water, that, of course, is the average.

Q. What is the next in hardness?

The Court—He has given us the figures and that tells the story, doesn't it?

A. The Wood street is the next hardest.

Q. Which is the softest artesian well? A. The Valley Works 11.4.

Cross Examination by Mr. Gourley.

Q. This examination was made when? A. This examination was made in August 1919.

Q. You got the water yourself, of course? A. No, sir, they were all delivered to me by one of the truckmen, who assured me that they had been just——

Q. No, don't tell that? A. They were delivered to me by one of the truckmen of the National Silk Dyeing Company.

Q. Where? At your place in New York? A. Yes, in New York.

Q. How did they come, and in what were they? A. In one gallon bottles sealed up.

Q. No representative of yours took the samples? A. No, sir. We delivered the bottles there and they filled them and sent them to us, but I may tell you at this point, perhaps it might be interesting, that the figures were given and as they were given, to show you there is no question about that, we stand by the analysis, we are prepared to put in a plant to do it if necessary, so we are quite satisfied.

Q. I don't get that? A. We stand by the fig-

ures we have given and assume that the samples are perfectly satisfactory, because we are quite prepared to put in a plant to treat the waters on those samples received.

Q. Of course, no matter what the samples would reasonably be, you are quite prepared to put in your plant? A. But on those analysis.

Q. Yours is a patented process for making hard water soft? A. We use a patented process.

Q. It is patented? A. Yes, sir.

Q. There are several in the market for softening water? A. Yes, sir.

Q. You prepared your own? A. Yes, sir.

Q. There are about how many? A dozen or so? A. It depends upon what process you refer to.

Q. The process of softening hard water? A. There are dozens of them, there are various processes, yes, sir.

Mr. Lewis—I will have to put on,—I did not suppose there would be any question about the authenticity of the samples. I have just sent for the man who took the samples and the man who made the delivery and I will have them here.

The Court—Do you make any point about that?

Mr. Gourley—We don't know anything about it. We will let it go with the rest of it.

The Court—Then you do make a point about it?

Mr. Gourley—We do not know much about it, I just asked the questions a lawyer would ask because I don't know.

The Court—Do you make that point about it? Do you make enough of a point about it to bring the men here or don't you care about that?

Mr. Gourley—I don't care about it at all.

The Court—There is no use taking time with it if Mr. Gourley does not think it is important.

Mr. Lewis—It will take two witnesses to prove it.

WILLIAM H. KEARNS, sworn as a witness on behalf of the Property Owners, testifies as follows:

Direct Examination by Mr. Lewis.

Q. You conducted the plant at Wood street before it became a part of the National? A. Yes, sir.

Q. And it was operated by you under the firm name of Kearns Brothers, was it not? A. Yes, sir.

Q. When did you go there to Wood street? A. About 1892, I think it was.

Q. Where did you get your water for dyeing? A. From the river.

Q. How long did you take water from the river? A. Till about 1898.

Q. Did you make any change then? A. Well, we had to abandon the pipe in the river.

Q. Why? A. Owing to it being so dirty and low.

Q. Where did you get your water from then? A. Two wells and the City Water Pipe.

Q. The water in the river became unusable? A. Yes, sir.

Cross Examination by Mr. Gourley.

Q. You say the water was dirty, when was that, do you remember? A. About 1898.

Q. You took water from the city, do you mean from the City Pipes of the Passaic Water Company? A. Yes.

Q. That was before the Dyers' Pipe was installed? A. Yes, sir.

Q. Did you request them to put in the Dyers' Pipe? A. Well, they came along by our works, yes.

Q. You connected with them when it came? A. Yes.

Q. One of the reasons you did not use the river water was because it was too dirty? A. It was too dirty.

Mr. Griggs—If the Court please. Nothing has been said in this case about the poor little Acquackanonk Water Company. There was an award made by the Commissioners on behalf of the Acquackanonk Water Company which is the Water Company that supplies the City of Passaic by a pipe running from the East Jersey Pumping Plant at Little Falls down to Clifton and Passaic. They ask for the right to divert nine million gallons up to 1925, differing totally from the nature and extent of the condemnations of Jersey City and Newark. We propose to show that the Acquackanonk Water Company, being one of the defendants in the injunction suit, served upon the owners a requisition for the

right, to take nine million gallons a day down to 1925, with an offer of payment of a certain amount, which will be stated, that that was contemporaneous with the service of similar requests and offers of payment by the various municipalities who were buying their water from the East Jersey Water Company at Little Falls, it being necessary in order that the East Jersey might escape the condemnation that these municipalities which alone had the right to condemn, take the proceedings, that those proceedings were all prepared as part of the same operation and that the owners accepted the offers of various of the municipalities but did not accept the offer of the Acquackanonk Water Company. That the basis of the offer of the various municipalities, all of which were for limited periods running from two to ten years, was at the rate of a hundred dollars per million gallons per year; that is to say, if a municipality wanted to take a million gallons a day, it was to pay a hundred dollars a million gallon a year and all these offers were made on that basis. Now, the various smaller municipalities agreed with the owners, as an arrangement of license and payment. I don't know whether it is proper for me to state what the Commissioners found, unless Counsel does not object, it seems convenient to say it—

Mr. Gourley—I have not the slightest objection.

Mr. McCran—None whatever.

Mr. Griggs—I don't see why you should object.

Mr. Gourley—We do not object.

Mr. Griggs—The Commissioners awarded against the Acquackanonk Water Company the exact sum which they had offered to pay——

A Juror—What Commissioners?

Mr. Griggs—The Commissioners, Mr. DeYoe, Mr. Newman and Mr. Brown, the three commissioners from whose award these appeals are taken. I don't know that the Jury understand.

The Juror—We do not.

Mr. Griggs—That this case was tried before three Commissioners appointed by Justice Minturn, under the procedure for condemnation. Now they made findings and awards, they awarded a certain sum in favor of the Weidmann Company——

Mr. Gourley—You can mention it with my consent, if you desire.

Mr. Griggs—It seems to me at this time if the Jury do not understand the procedure——

Mr. Gourley—I say, you may mention the whole matter with our consent if you care to mention the Acquackanonk; you have our consent to mention the rest if you desire.

A Juror—If you don't want the jury to understand all right, but we do not understand.

Mr. Griggs—I was starting to explain and I will proceed with the explanation. The Commissioners were appointed to ascertain the amount that ought to be paid for these takings by the Acquackanonk Water Company, who were to take until

1925, nine million gallons of water a day, for the City of Jersey City which was to 1925, nine million gallons of water a day, forever and for Newark which was to take all of the water of the Pequannock above the Intake Dam at Butler forever. The Commissioners awarded against Jersey City, $97,000, and a little more, to be paid by Jersey City; $48,000 to be paid by Newark; that amount to be paid to Weidmanns and a similar amount to be paid to the National, amounting all together to about $300,000 about $150,000. each; and they awarded as against the Acquackanonk Water Company the sum which they had offered——

The Juror—Where are the Acquackanonk Water works?

Mr. Griggs—They take water from the East Jersey plant at Little Falls, filtered water, which they run out through their pipe, through Passaic, past Clifton and Paterson to Little Falls and get water in there.

The Juror—Then where is their plant?

Mr. Griggs—They have no plant, really.

The Juror—Is this different whether the Acquackanonk or the East Jersey Water Company is really taking the water?

Mr. Griggs—The arrangement, I think, we will show, is this; the East Jersey Water Company contracted with Bayonne, Paterson, East Newark, Orange, South Orange, Nutley and various municipalities to sell them or further them water from the Little Falls plant at so much per million gallons. That was paid to the East Jersey for pump-

ing that water out and sending it to these various municipalities. Then the Chancellor put an injunction against the East Jersey Water Company, doing that unless it would take proceedings to condemn, that is, to acquire by condemnation the right to divert the water. Whereupon the East Jersey went through the process of having each of these municipalities start proceedings to condemn, because the East Jersey Water Company is not a company which has any right by the law to condemn, but they could have condenmnation in the name of these municipalities. The Acquackanonk Water Company has the right itself to condemn and it is condemning the right until 1925——

The Juror—It is a private corporation.

Mr. Griggs—No, that seems to be their right, and the East Jersey has not——

The Juror—How can you do that if it is against the law?

Mr. Griggs—No, it is not against the law. I say they have the right. We cannot question it. We thought we could, but they have the right to condemn.

The Juror—These damages of several hundred thousand dollars awarded by the Commissioners, do I understand they are final?

Mr. Griggs—No.

The Court—Gentlemen, this is the procedure; if you want to condemn land, you must first make an offer to the proprietor or property owner; the idea is that the parties shall get together if they can. If

that offer is rejected then the Supreme Court appoints three Commissioners; they hear the case and they return their findings to the Supreme Court. If either side is dissatisfied with the findings, then they may appeal to the Circuit Court and have a jury determine. That is the whole procedure, gentlemen. They have made the offer, the offer has been rejected, except in the particulars Governor Griggs has mentioned, three offers were rejected and Commissioners were appointed who heard the cases and made their findings, and the parties being dissatisfied, they have appealed and it is now entirely up to you, as a new proposition to determine on the evidence here and by your own judgment what sums ought to be awarded.

The Juror—The question in my mind is what were those awards?

The Court—What was the question?

The Juror—Are those final awards in perpetuity?

The Court—The right acquired by the City of Jersey City in the Rockaway River is perpetual, it is forever and forever. The right acquired by Newark is forever and forever. That is as to those. The right acquired by the Acquackanonk Water Company ends in 1925. Let me say this, when you go to your Jury room, you will have in your hands the petitions which will show exactly what is being condemned. Of course, all of these questions, it is very wise of you to ask them now, yet they will come to you under the instructions of the Court later anyway.

The Juror—If you know what you have to do you can do it better.

The Court—Yes.

Another Juror—There is one question I would like to ask. Are we to presume that these damages have been fixed or that we are to reopen the entire case?

The Court—You take this case as if nobody had ever heard it before.

The Juror—As if there had been no award?

The Court—As if this was the first time it had been heard.

The Juror—As new?

The Court—As a new case entirely and you determine it upon your own judgment on the evidence you have heard here and not on what somebody else did at all.

The Juror—These other figures, we are not to consider them?

The Court—You are not concerned about those at all. You are trying this case as if it had never been tried anywhere, and your purpose is to award damages, to award compensation, just compensation.

Mr. Griggs—I will explain a little further; The Commissioners found and stated what they thought the Cities ought to pay and what the owners ought to receive for what practically amounts to a sale of all this water right. Now, the Cities were dissatisfied with that award, and they said, "We appeal to the Court." The Dyers were dissatisfied with that and they appealed also. In other words, neither party was satisfied.

Now, with reference to the Acquackanonk Water Company, we say we are satisfied. The Acquackanonk Water Company says, "We are not satisfied; although we offered you fifty-four hundred dollars at the time you did not take it, then, although the Commissioners awarded fifty-four hundred dollars, we are not satisfied."

Mr. Gourley—Don't make it that way——

Mr. Griggs—I am simply in good faith trying to help the Jury in this matter.

The Court—What is the objection?

Mr. Gourley—The explanation of the point of dissatisfaction and the discussion of the question.

Mr. Griggs—Haven't I the right to say that we did not appeal and you did?

Mr. Gourley—Just state the proposition.

Mr. Griggs—Well, that is the fact, that the land owners did not appeal from the Commissioners' award as against the Acquackanonk Water Company and the Acquackanonk Water Company did appeal. Now, I don't know how much counsel on the other side will admit of the facts I have stated with reference to this offer of the Acquackanonk Water Company and of the prices per million gallons at which the licenses were granted to the other municipalities.

The Court—Let us find out.

Mr. Humphreys—I think the contracts ought to be offered in evidence.

Mr. Griggs—We offer them.

Mr. Humphreys—We would like also to

have it noted on the record, that at the time these offers were before the dyers and the time they accepted some and refused others, that all the offers were before them including those of Jersey City and Newark.

Mr. Griggs—That is right. We agree to that.

The Court—The contracts may be offered.

The Juror—If I bought out somebody that had a plant across the river or along the river and started a dye house, could I bring a suit again in the future?

The Court—We are dealing with only those things which are before us here.

The Juror—It all pertains to the same thing.

The Court—That might be, but what we are dealing with here is these three condemnors, Jersey City, Newark and the Acquackanonk Water Company taking rights from the two owners, and the question is what shall be the just compensation to be made to the owners for what is being taken. That is the only question. There may be questions arise that are collateral to that in the minds of the jurors, and on that you must deal with the evidence before you and apply it with your common sense to the facts.

Mr. Gourley—If it could be shown to them that the test is what is the value of the land before and after, that would simplify it in the juror's mind. What is the difference in value in the land before and after.

The Court—That is not what the Juror asked.

Mr. Gourley—Does not that simplify it for the Jury, to know what the value is?

The Court—Of course we could easily simplify the whole matter if I charged them now and charged them afterwards, but it would be a very unwise and disorderly thing to do.

The Juror—I think it is very much better if they get control of the land on both sides.

The Court—Of course, we must only deal with the facts we have here.

Mr. Griggs—We offer in evidence Deed of License from the Weidmann Company to the City of Bayonne, to take not exceeding an average quantity of sixteen million gallons a day from the Passaic River at Little Falls from January 29th, 1919, to October 6th, 1929, for a consideration of $17,600.

Admitted and Marked "Weidmann Exhibit No. 14" of this date.

Mr. Griggs—We offer in evidence a similar deed of License made by the Weidmann Company to Bloomfield for the right to take at Little Falls three million gallons a day from February 14th, 1919 to May first 1925, for a consideration of $1,800.

A Juror—Who gives that right?

Mr. Griggs—The Weidmann Company conveys to the City of Bloomfield or the Town of Bloomfield the right to take three million gallons of water a day out of the Passaic River.

The Juror—Why? Do they own the Passaic River?

Mr. Griggs—Well, they have the right to have it flow past their place and nobody can take the water out.

The Juror—What right has the Weidmann Company to say that Bloomfield should have some?

The Court—Because Bloomfield is taking away the water which ordinarily would flow past the Weidmann place.

The Juror—Other people have the right besides the Weidmanns.

The Court—Every man who has land on the river has the right to use the water. We are here now trying to determine what compensation if any the Weidmann concern is entitled to for the water that is supposed to go past their place, and it is not the man below on the stream who has the same right and the next man below who has the same right, unless he has parted with it or some other way parted with it, but we are only dealing now with the rights before us here and not the rights of somebody else.

The said deed of license is admitted and marked "Weidmann Exhibit No. 15" of this date.

Mr. Griggs—We offer in evidence a similar deed of License from the Weidmann Company to the Montclair Water Company to take 2.2 million gallons a day from the river at Little Falls from February fourth 1919 to January first 1925, for $1320.

Admitted and Marked "Weidmann Exhibit No. 16" of this date.

The Court—Is that entirely clear to you?

Every man who owns property along the stream is entitled to the reasonable use of the water. If anybody takes it away from him and asks to have it perpetually, then they condemn against that particular place. He may say to other people, "I will pay you so much if you don't bother me when I take it." Other people may sue for damages: Now, every man along that stream is entitled to the use of the water. Every man can come into this Court if the water is taken and he has not parted with his rights, and ask for compensation. Some may have done it. Some may have waived their rights. Some may have sold their rights. Some may not insist upon their rights. But each man, as you go along the stream, whether it be a private owner or a mill, has the right to the use of the water. But, what we are doing here now is simply to determine the rights of one man to this water, he is asking that his rights be determined because somebody insists on taking it away forever.

The Juror—Isn't there a difference between use and diversion? As I understand it, as I get it, every riparian owner has the use of it as it goes by his place but he has no right to lessen the quantity or the quality of the water. It must be put back into the stream the same quantity of water and the same quality.

The Court—Exactly.

The Juror—Therefore he has no right to arbitrarily take a certain portion of the water out of the stream and sell it to somebody else.

The Court—That is not what this is. He says here, "If you take it away from me you must pay me for the use I would have made of it." Those who take may still deal with all those who have rights. In other words, the Weidmann Company cannot dispose of the water against anybody else's right; all they can dispose of is their own right. In other words, what they lease is the use of this water. They may not sell it, they cannot deal with it as their property, because it is a moving thing which passes along for all the owners, and all that they can get compensation for is the right they have in it. They do not sell it to somebody else, they do not deal with it as their property, they do not sell it and get compensation as you would sell a horse or a piece of cloth; they simply say, "Since you are taking away that which I may use, I want to be paid the amount that it is worth to me?" A. Does that make it clear?

The Juror—They are selling the use of it?

The Court—They are being compensated for that of which they are deprived, namely, the use of it.

Mr. Griggs—Of course, the Jury understand that these Water Companies take the water out of the river and send it off below and do not put it back. I suppose they understand that. It is the right to take it away from the river, not the right to take it away from the river, use it and then pour it back.

The Court—The Juror got the impression that the Weidmann people were selling it.

They are not selling it, but are simply being compensated for the deprivation of the use of it.

Mr. Gourley—They are selling all they can get.

The Court—No, you should not state it that way, because you confuse the mind of the jury again, they are not selling any water.

Mr. Gourley—They are not selling it as they sell some silk.

The Juror—Whatever award we think they should get would we have to take that amount off of it?

Mr. Griggs—We will deal with that later.

We now offer in evidence a similar deed of license from the Weidmann Company to Glen Ridge, granting the right to take 350,000 gallons a day from February 4, 1919 to January 1, 1925, for a consideration of $210.

Admitted and Marked "Weidmann Exhibit No. 17" of this date.

The Court—You see, Gentlemen, I can see readily how you became involved on this, because of those words, "granting the right to take" and that seems to indicate that they are selling it or giving it away. That is simply technical language and what it means, so far as we are concerned, is, "You may have this much water, we are willing to be deprived of this much water for that length of time."

The Juror—But they are short of water. In other words, there is two hundred gallons flowing by my place to-day and I am

using twenty-five, and I have a right to say to the other jurors that they can use fifty now pay me so much money.

The Court—Yes, and the man next door in the same situation as you are must also be taken care of by the man who is going to take.

Mr. Lewis—It may be useful at this point to call attention to the language of these licenses which is the right to take as against the lands of the licensors.

Mr. Gourley—The Court will take care of that.

Mr. Griggs—We next offer in evidence a similar deed of license made by the Weidmann Company to the Commonwealth Water Company of West Orange granting the right to take a million gallons a day from February fourth 1919 to January first 1925 for six thousand dollars.

Admitted and Marked "Weidmann Exhibit No. 18" of this date.

Mr. Griggs—We next offer in evidence deed of license from the Weidmann Company to Nutley granting the right to take 750,000 gallons a day from February fourth 1919 to January first 1925 for $450.

Admitted and Marked "Weidmann Exhibit No. 19" of this date.

Mr. Griggs—We next offer in evidence deed of license from the Weidmann Company to the Town of Kearney granting the right to take six million gallons a day from February seventh 1919 to January first 1921,—less than two years and that has expired and they are subject to injunction if

we want to put it on,—for a consideration of $1500. The agreement with the Town of Kearney also contains an option for an extension of the contract until the first of January 1925, an additional period of four years, for not exceeding six million gallons a day for an additional consideration of three thousand dollars and then a further option of the right to contract to take ten million gallons a day from 1925 to 1935 for $10,000.

Admitted and Marked "Weidmann Exhibit No. 20" of this date.

Mr. Griggs—The total amount paid under this list of contracts is $23,480. The total million gallons contracted for is 29,114 million gallons, the average price per million gallons is $100. a year for a million gallons at the rate of a hundred dollars a year.

A Juror—Were those agreements made pending this settlement?

The Court—Governor Griggs mentioned that.

Mr. Griggs—These agreements were made as settlements with these municipalities. They offered to pay us that much money for the right to take that amount and we took that.

We did not take the Acquackanonk offer, but the Commissioners found that their offer was the amount which they should pay. Now, from that the Acquackanonk appealed, and we are going to let it stand on that as far as we are concerned. That would leave the Acquackanonk paying at the same

rate that the other municipalities paid. If they claim that is too much it is for them to show it.

Mr. Humphreys—I would like to have it placed upon the record that similar contracts at similar prices for similar terms were entered into by the National Silk Dyeing Company with the same parties.

The Court—That is proper and it may be noted.

Mr. Lewis—We agree to that.

Mr. Gourley—Is the admission that the same terms were offered for Jersey City and Newark?

Mr. Griggs—No, we could not do that because Jersey City and Newark did not have any number of years we could multiply by.

Mr. Harding—It has been consented by counsel that we may use the statement made in the book entitled Geological Survey of New Jersey, John D. Smoot, State Geologist, with reference to the statement of Mr. Vermeule, consulting engineer, in which he says that the lowest flow in the driest season before the diversions were made by these companies was 150 cubic feet per second at the Great Falls at Paterson, which would be equivalent to 100 million gallons.

The Court—That is before any diversion?

Mr. Harding—Before any diversions took place.

The Court—No diversions whatever?

Mr. Griggs—Any diversions by the Water Companies, the other diversions of the Passaic Water Company and the Morris Canal were going.

The Court—They were already taking, but that is outside of these new diversions?

Mr. Griggs—Yes, sir.

Mr. Harding—Also the statement of Mr. Vermeule in this book, showing the probable increase in the consumption of the water during several years.

Mr. Humphreys—I do not see what the prophecy of Mr. Vermeule could have to do with it, we have the experience now.

Mr. Harding—It is the same portion that appeared in the case before the Commissioners: The portion I refer to is obtained from pages four where it starts beginning with the words "in 1882" and continued on down to page 6, just before the words, "our highland" on page 6 in this report. I just have not the page of that where he speaks of the lowest flow, whatever that is, appears in the book.

The Court—The same as appeared in the Commissioners' Report?

Mr. Harding—Yes, sir, the same.

The Court—It appears in the testimony?

Mr. Harding—I think it does, yes.

The Court—It appears in one of the briefs doesn't it?

Mr. Harding—It appears in the brief; yes, the whole thing is in our brief.

The Court—That is the part you offer I understand?

Mr. Harding—Yes, sir.

Mr. Griggs—The owners then rest.

Mr. Lewis—The owners rest.

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Statement Relative to Population

The statement admitted in evidence, as above indicated, is as follows:

"In 1882 the population in the State dependent upon systems of public water supply amounted to 587,660 using 48,923,406 gallons daily. In 1894, 1,114,403 persons were supplied with 107,840,361 gallons daily. In twelve years the population supplied nearly doubled and the consumption of water had increased 120 per cent. The per capita consumption now averages 97 gallons daily, and ranges from 60 gallons in towns of less than 15,000 population to 149 gallons in the city of Camden. Of the total supply in 1894, about 8,000,000 gallons daily was drawn from wells and 100,000,000 from streams.

"The southern New Jersey cities are rapidly increasing in size and importance, and this subject is demanding more and more attention from them, but it is in the northern counties that it assumes the greatest importance. This is not alone due to the large urban population within our own borders, but to the great growing metropolitan district of which it forms a part. This district may be taken to include the counties of Hudson, Essex and Union, with Passaic northward to Paterson, and Bergen to Hackensack and Englewood, in our own State; New York, Kings and Richmond, with Long Island City and Newton in Queens County, in the State of New York. Practically all of the population thus included will soon be dependent upon public water-supply. Its magnitude and growth are shown in the following table compiled from the United States Census.

Statement Relative to Population

Year	Metropolitan District		New Jersey Portion of same		New York City	
	Population	Per cent Increase	Population	Per cent Increase	Population	Increase Per cent
1840	453,374	.....	72,404	.....	316,392	.....
1850	798,066	76.0	116,932	61.8	519,983	64.4
1860	1,375,400	72.3	224,617	92.0	830,369	60.0
1870	1,815,454	32.0	370,957	65.0	971,273	17.0
1880	2,387,910	31.5	516,192	39.1	1,206,299	24.2
1890	3,180,038	33.2	726,442	40.8	1,515,301	25.6

"For the last three decades the whole district has increased in population quite uniformly at the rate of 32.2 per cent. per decade. The New Jersey portion has preserved an increase of 40 per cent. for the last two decades. We may estimate the future increase at 30 and 40 per cent. respectively. This gives the following future population:

	Metropolitan District	New Jersey Portion Of Same
1900	4,134,000	1,017,000
1910	5,374,000	1,424,000
1920	6,986,500	1,993,000
1930	9,082,000	2,791,000
1940	11,807,000	3,907,000
1950	15,349,000	5,470,000

"The present consumption in this district averages closely 100 gallons daily per capita. At this rate, the whole supply needed will amount to 1,500,000,000 gal. daily in 1950. Our investigations show that the supplying capacity of the neighboring watersheds for the driest year does not exceed 14 inches of rainfall. This amounts to practically two-thirds of a million gallons daily for each square mile of watershed, and the above demand will require the total yield of 2,250 square

miles of watershed, the equivalent of three streams as large as the Passaic above Paterson.

"While the demand thus increases, the supply of pure and wholesome water near at hand decreases because of the encroachments of population and its attendant defilement of streams. This whole area must shortly be supplied from sources without, and it is the consideration of these facts which has led to investigation of available sources of supply.

"This great prospective demand for potable water and wholesome gathering grounds in the vicinity of our northeastern cities is of interest to our citizens, but they are even more directly concerned with the demand which will arise within our own borders. By 1950 our estimate shows that the New Jersey portion of this population will itself require a supply of 547,000,000 gallons daily, or the total yield of 820 square miles of drainage area. It will not be an easy matter to find so much water as this without going to the Delaware River or its tributaries. Since fifty years cannot be considered a long time in the future for which to make provision, it is evident that the time has come for us to know what our resources are and to provide for their preservation and wise development."

ALFRED P. BOLLER, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys:

Q. Where do you live? A. In East Orange.

Q. What is your business? A. Mechanical Engineer.

Q. Where did you graduate? A. At Stevens Institute about thirty years ago.

Q. Are you a mechanical engineer? A. I received that degree at Stevens Institute.

Q. What line of business have you been interested in particularly since you graduated? A. For about twelve years I devoted my time almost exclusively to the design, installation and operation and testing of pumps and pumping machinery, pumping engines, since then, why I have practiced my profession in connection with general power plants and particularly with all engineering matters pertaining to mills and factories.

The Court—This testimony is directed to what particular point?

Mr. Humphreys—This is directed to the cost of pumping .

Q. Have you made a special study of the cost of pumping and determining the cost of it? A. I have.

Q. Have you made any examination at the Weidmann Silk Company's dye house as to the cost of pumping there? A. I have.

The Court—Gentlemen, I understand that you are acting jointly in presenting your

defence, as you did in the cross examination, so that this witness is called for all the Condemnors, in all of the cases.

Mr. Humphreys—Yes, sir.

Q. Have you a statement showing the pumps and their cost of operation? A. I have..

Q. What kind of pumps are doing duty at the Weidmann Silk Dyeing Company? A. Two compound condensing Davidson single acting pumps.

Q. What do you figure the total cost per million gallons? A. $6.11 when using some semi bituminous coal; $5.68 for Buckwheat coal, per million gallons for twenty-four hours.

Q. Are you familiar with Prof. Pryor's testimony in this case? A. I am.

Q. Do you agree with his conclusions? A. I do not.

Q. Wherein do you disagree? A. In several particulars, the time of the test which he ran to determine the theoretic steam consumption and head return of the pump was too short. Also he neglected to take into consideration interest and depreciation in making up the fixed charges, and he did not seem to consider that the cost was an annual cost for continuous daily operation and the amount of credit which he established for the steam which might be returned was entirely too high.

Q. Is the price that you fixed based upon an actual experiment on the pump that was there? A. Prof. Pryor's determination in his test——

The Court—No. Just answer the question.

Q. Is the price that you fixed based upon an

actual experiment on the pump that was there? A. Yes, sir.

Q. Does you figure represent a price which would be practical in the application to such a plant? A. Yes, sir.

Q. In every day practice? A. In every day practice.

Q. Looking at your statement, what steam pressure did you calculate the pumping at? A. The steam pressure at ninety pounds.

Cross Examination by Mr. Harding.

Q. Are you giving the same figures now for the cost of pumping that you gave when you testified before the Commissioners? A. Yes, sir.

Q. And you say this was based upon an actual experiment at the Weidmann pumps that were there? A. Yes, sir.

Q. You mean by an actual experiment, an actual test? A. Yes, sir.

Q. Do you mean to say that you have made anything like such a test as Dr. Pryor has made? A. I used the figure that Dr. Pryor established for the steam consumption of the pump.

Q. Why do you call that an actual test by experiment when you take somebody else's figures? A. Well, it was through an actual test.

Q. Then you did not make the actual test or experiment? A. I did not make that test.

Q. Then you were not accurate in your statement to counsel when you made it twice, that you had made an actual test? A. As I understood the question it was whether the figures were based on an actual test.

Q. He asked you whether you made an actual test? A. I did not so understand it.

Q. The fact is that you never made any test of the pump at all, you never made any test? A. I did not make the test.

Q. In other words you assume certain figures from the actual test made by Prof. Pryor and you make your calculation on that test, don't you? A. Yes, sir.

Q. Now, when you did it, I want to ask you, what were the factors you took into consideration? A. Do you wish me to read the detail of this report? Because there are a number of figures.

Q. I will ask you to state to me, first, whether or not you considered the quantity of water that was to be pumped a day, or at what rate? A. Yes, sir.

Q. What was it? A. This is based on——

The Court—No. What quantity of water was to be pumped.

Q. In making your calculation, what quantity of water was to be pumped or at what rate it was to be pumped? A. The rate is on the basis of four million gallons per day.

Q. The height? A. The rate of steam consumption was based on 4.2 million gallons a day which is the rate Dr. Pryor ran the pump.

Q. Now, I ask you, at what height did you consider that quantity of water was to be pumped? A. Seventy-five feet total height, total head.

Q. Then you assumed that you had to pump it seventy-five feet in height? A. No. That was the basis on which Dr. Hunziker's test was made, run in 1912.

The Court—What height did you estimate it to be in your estimate?

The Witness—Seventy-five feet.

Q. Don't you know, Dr. Hunziker, on the last trial of this case, and that all along, has insisted that the height was only fifty-five feet, or less? A. No. I don't know that.

Q. Don't you remember that the question came up in your testimony before the Commissioners and that you were asked about it, and that you afterwards were going down to measure it yourself and that you were going to determine whether or not you had made your calculation upon erroneous figures? A. No, I don't understand that.

Q. Let us read your estimation on that subject.

The Court then ordered a recess until two o'clock this day.

After Recess:

ALFRED P. BOLLER, resumes the stand:

Cross Examination (continued) by Mr. Harding.

Q. When you were examined before the Commissioners was your testimony as follows:

"Q. What head did you say you took as a basis for your calculation? A. For what?

Q. Cost of pumping? A. Seventy-five feet.

Q. Why did you take that? A. That is the actual head at which the pumps operate for service there.

Q. How do you know that? A. I was told that by Dr. Hunziker when I visited the plant, and I confirmed it in my observations there at the time, and Mr. Cook's office also has that.

Q. Are you positive Dr. Hunziker didn't tell you it was fifty-five feet? A. I am positive.

Q. And have you any measurements that you can actually show now that it is seventy-five feet? A. I made no actual measurements, only by close estimates and observations."

Q. Is that your testimony before the Commissioners? A. Yes, sir.

Q. Then, do you pretend to say now or not that you have ever made since that time any actual measurements as to the height at which the water was to be pumped? A. The height at which the water was pumped was established in 1912 when this test was run, which refers to the figures.

Q. The question I am asking you now is this, have you since you gave this testimony made any attempt to measure the height to which the water was pumped by actual measurement? A. I could not measure it.

Q. What? A. I say, I could not measure it, it was in 1912 that the height was established.

Q. I don't understand just what you mean by that that you could not measure it? A. The test was run in 1912, which is the basis of this computation of Professor Pryor and also of my report.

Q. The tank has not been taken away that was there, has it? A. I don't know that it has.

Q. Have you examined the present tank that is there? A. I have not.

Q. Do you know that the present tank is open at the top and that you cannot lift the water any higher than fifty-five feet otherwise it would overflow? A. I don't know that that is the fact, but if you refer to the tank in which this particu-

lar test was run that tank you could pump water to the height of seventy-five feet.

Q. What tank is there there that has a height of seventy-five feet? A. The tank Dr. Hunziker used at the time and the tank he pointed out to me the day I was there in October 1912.

Q. Was the standpipe there at that time? A. I don't know.

Q. Don't you know on the trial before the Commissioners that Mr. Cook had reference to the standpipe when he spoke of the height to which this water could pumped? A. I do know this, that when I visited the plant, shortly after the test, in company with Dr. Hunziker, and we were down there for the purpose of seing the conditions of operation and one of the important things was the matter of height and I examined that with a good deal of care and made notes which I have at this time, and at that time the operating conditions under which he ran the pump was fifteen feet suction head and sixty feet delivery head making a total of seventy-five feet.

Q. You spoke on your original examination of having the information from the records of Mr. Cook which enabled you to say that it was seventy-five feet. A. He confirmed that from the records they had in their office, he confirmed that at that time, that that was correct.

Q. Mr. Cook on that examination, you heard his testimony with reefrence to the records he had? A. No, sir, I did not hear his testimony.

Q. Didn't you hear his testimony? A. No, sir.

Q. Suppose it were only fifty-five feet in fact that the water was to be raised by this pump, how would that affect your calculation? A. The seventy five feet would make about thirty-five per cent.

more work on the pump than at fifty-five feet.

Q. Does that bear the same proportion with reference to your estimate of cost? A. Approximately actual consumption, yes, sir.

Q. How much would that reduce it? How much did you say your estimate was, $6.11? A. Yes, sir.

Q. Your estimate of $6.11, how much would that reduce it, if you were to take that thirty-five per cent. off? A. That $6.11 is made up of several——

The Court—The question is how much it would reduce it if you took the head at fifty-five feet? What would it cost? Thirty-five per cent. less?

The Witness—Fifty-five feet would be $5.47 on the bituminous and $5.14 on the Buck.

Q. I am not asking for those details, I am asking you whether if you——

The Court—He is telling us about it now.

Mr. Harding—I am asking for the result at that price.

The Court—That is what he says, one for Buckwheat and one for Bituminous.

Q. I am asking the total price.

The Court—He says $5.47 against the $6.11.

Q. $5.47? A. Yes, sir.

Q. You also took into consideration in getting your $6.11 it was based upon an overhead charge of the cost of the installation of the pumps, was it not? A. Yes, sir.

Q. Did you consider the fact that the pumps necessary to do the pumping are already in existence? A. Certainly.

Q. That we have them? A. Certainly.

Q. While those pumps are in existence and we already have them there, do you mean to say that there would be any saving to us? I mean considering the cost of the pump as a saving, to us, from the pumping of water by gravity instead of pumping it from the river? That that should be considered as an item of cost while those things are in existence? A. It always is so considered and I would consider it so in this case.

Q. Why do you consider it so in this case, if a man had them already to do the pumping with, why did you go and put them into the cost? Why did you put into your figure the cost of installation for them, to make an overhead charge, to make an estimate showing the cost of pumping? A. The cost of raising the water from the river into the tank will require certain apparatus and the cost is made up in addition to the actual labor of maintenance, repairs, etc., of the additional charge of interest and depreciation on the investment of the equipment necessary to transfer the water from one level to the other.

Q. This is for the purpose of showing what the Weidmann's saved, why should you put this as an overhead charge when they have the thing there? A. I cannot see that that has any special bearing, when you are determining what the cost of pumping would be.

Q. Then your estimate is based upon the idea that it is just the same as if the Weidmann's did not have any pumps there and they had to start out and put in new pumps, isn't that so? A. New pumps and new equipment would cost much more in the overhead than what we have allowed here.

Q. I am not asking in reference to that. If the Weidmann's had absolutely no pumps there now, such as you would install, notwithstanding the fact that they are there, you would not regard that fact at all, but you are merely following out the cost of the pumps as if they had to go out and install them, aren't you? A. I cannot quite understand that question.

Q. In estimating your cost of pumping under this calculation of yours, you would reach the same results that you reached if Weidmann's had to go out and buy pumps; did not have any pumps there at all for that purpose? A. They could not pump water without pumps.

Q. I did not ask you that. Listen to the question and answer it. In estimating your cost of pumping under this calculation of yours, you would reach the same results that you reached if Weidmann's had to go out and buy pumps and did not have any pumps there at all for that purpose? A. Yes, sir.

Q. You have said that in your opinion the pumps in doing this particular work, when the pumps did this particular work there would only be seventy five per cent. of the heat in the exhaust steam that went into the original steam? A. That went into useful work in heating water that could be used in the mill.

Q. You never have, as you say, made any exact

test to determine just what these pumps would do under any conditions, have you? A. No, sir.

Q. And this opinion of yours then is based upon what you think this pump would do, not according to your experience? A. It is based upon the amount of steam used by the pump as determined by Prof. Pryor and my experience and opinion as to what utilization of exhaust steam could be made for practical mill purposes.

Q. The factors that you had in mind to come to your conclusion were these, were they not? The work was to pump 4,200,000 gallons of water in twenty four hours at a height as you say of seventy five feet and this pump to do that work took in 3030 pounds of steam per hour at a pressure of ninety pounds, that is right? A. Well, it is not precisely—

Q. Now, do you mean to say that there can be no pump or there is no pump of any kind in existence which will pump that quantity of water at that height taking that quantity of steam at that pressure which will return in exhaust steam more than seventy five per cent. of the heat that was in the original steam, do you mean that? A. Not to be used throughout the year in useful work.

Q. Well, then, you do not deny or contradict, do you, the statement of Dr. Pryor that in this particular test that he made he actually found that there was only five per cent. of the heat of this steam consumed by the pump? A. That would be correct, it is theoretically correct.

Q. Why do you say theoretically correct, if you admit that the man actually made this test and found those results? A. The test checks up the theory.

Q. Then if the test accords with the theory

he was actually right in the test and actually right in the theory, wasn't he? A. He completed that few hours' test under ideal operating conditions.

Q. You do not pretend he was incompetent to make the test? A. I do not.

Q. On the other hand, he is thoroughly competent, isn't he? A. He is thoroughly competent to make a test.

Q. To make that test? A. He certainly is.

Q. And you do not doubt that he made it accurately so far as that test was concerned? A. It appears to be.

Q. Do you mean to say then that in your experience generally, with any pump operating throughout the year will not give you back more than seventy five per cent. of the heat that is in the steam that is used? A. I would think that would be a liberal proportion of the useful heat that could be obtained from exhaust throughout the year.

Q. In your profession how is Kent' Mechanical Engineer's Textbook regarded? A. It is regarded as standard.

Q. It is regarded as first class is it not? A. Yes, sir.

Q. It is about the Bible, is it not, in your profession? Isn't that so? Hasn't it been so characterized generally? A. It used to be. There are many other text books just as good standard.

Q. When all of the heat in exhaust steam from engines and pumps including water and condensation is used for heating purposes the fuel cost of the steam engine pump may be practically nothing. Do you agree with that? A. I have read such a statement in Kent.

The Court—He asks you whether you agree with that?

The Witness—No. I do not agree with it.

Q. Since the exhaust contains all of the heat in the steam delivered to the engine except from five to ten per cent., which is converted into work, and a trifling amount lost by radiation. You do not agree with that? A. No, sir.

Q. What is the matter with it? Is it the author? Is he obsolete? Mossback? Or what is it? A. No. My cantention is that there are general losses that comes in which will reduce that again. You cannot absorb and take all of that exhaust heat. There are many losses, and at the end of the year my judgment is that you would not average more than about seventy five per cent. of the useful work.

Re-direct Examination by Mr. Humphreys.

Q. Can you state briefly to the Jury exactly how you reached this price? By what computations you reached it? A. The total price was made up of the fixed charge and the operating charge. The fixed charge is based on a valuation of the plant of twenty thousand dollars.

Q. That would not be the price of a new pumping plant, would it? A. No, sir.

Q. Why did you adopt twenty thousand dollars? A. Twenty thousand dollars was the sum testified to by Dr. Hunziker as having been taken from his books, representing the cost of such a plant. Such a plant would doubtless cost more money to-day. Then there was:

Depreciation 4%
Interest 6%
Taxes $2.84
Labor per day at $4.50
Repairs, valves, packing, oil, waste etc., at $1.50 a day.
Coal, cost delivered, net ton, cars, in Paterson, a good grade, semi bituminous steam coal about 13500 B. T. U. $6.00 per ton.
No. 2 Buckwheat about 12000 B. T. U.'s $4.24 per ton.
Carried inside chutes 50 cents a ton.

Q. Have you got that in the form of a table? A. Yes, sir, I have it in the form of a table.

Q. And have you made a resume of the prices of both with the height seventy five feet and the height fifty five feet? A. I have.

Q. Just read out what the price is of bituminous coal for seventy five feet and fifty five feet?

The Court—He has already done that and compared them.

Mr. Humphreys—We offer these statements in evidence.

Admitted and marked "Condemnors' Exhibits Nos. 1 and 2 of this date."

Q. Although Weidmann had paid for the pumps, they still, as pumps could use them for the same purpose, could they not? A. Certainly.

Q. And, therefore, it is a saving to it not to have to use pumps for this particular purpose? A. Yes, sir.

Q. You have been engaged in the water cases for a number of years? A. I have.

Q. Since what year? A. Since 1912.

Q. And in every case you have heretofore appeared in as a witness have you or have you not used the height to which the water was to be pumped at seventy five feet? A. It has always been used at seventy five feet.

Q. Was there any objection made from anybody on that subject? A. No, sir.

Q. At the Weidmann plant? A. At the Weidmann plant, no, sir.

Q. When were you first of all informed that there was any question about the height being fifty five feet only? A. When Prof. Pryor ran his test at fifty five feet.

Q. Where is this pump located with reference to the level of the river? A. Approximately fifteen feet above the water of the river.

Q. So that the river then is fifteen feet below where the pump is located? A. Yes, sir.

Q. And you have never made any measurement as to the height from the level of the land up to the top of the tank, have you? A. I have not.

Q. Nor from the level of the river up to the top level of the tank? A. I have not. Other than just an approximate level. My purpose in visiting the plant was to see if that height of seventy five feet at which this original test was run, was possible, and it certainly appeared to be.

ERNEST H. FOSTER, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. Where do you live? A. On Staten Island.

Q. What is your business? A. Mechanical Engineer.

Q. On what subjects have you specialized? A. Pumping machinery, filters and boilers, and boiler room accessories.

Q. Just state your qualifications to enable you to testify as to the cost of pumping engine work? A. I graduated from Stevens Institute in 1884 and for the next sixteen years was employed by the Worthington Pump Company, starting in the shop and working up to be Chief Engineer; in 1900 I left them and organized a company to manufacture super heaters and boiler room accessories. I have always carried on a consulting practice on steam pump plants.

Q. Are you the inventor of the Foster Superheater of Steam? A. I am; super-heater.

Q. Have you any special knowledge with reference to the use of steam? A. It has been my business for over twenty years to investigate the uses of steam and engines and pumps.

Q. What position, if any, do you hold in the Pump Specialty Company? A. Until the first of the year I was Vice President. I am now advisory engineer.

Q. What does that Company do? A. That Company installs power plants and improves power plants and places power plant accessories.

Q. Did you have anything to do with the estimate which has been offered in evidence made by Mr. Boller as to the cost of pumping at the Weidmann plant? A . I did.

Q. Just state what you had to do with it? A. Mr. Boller brought the data to me and we went over it. I went over it with him, studied the costs and agreed with him on the conclusions.

Q. Did you coincide with him in the views expressed by him and the figures given? A. I did.

Q. In every particular? A. I did.

Q. As to the percentage of loss in the steam? A. Yes, sir.

Q. You heard Prof. Pryor testify? A. I did.

Q. What have you to say as to the difference between his testimony and Mr. Boller's and yours on the subject? A. I think the failure to consider the capital charges and the length of the tests made a difference which should have been considered.

Cross Examination by Mr. Harding.

Q. You never saw these pumps? A. I never saw these pumps, no, sir, not these particular pumps.

Q. You never made a test of them? A. No, sir.

Q. No actual test? A. No, sir.

Q. Your opinion is based upon your general experience with reference to other pumps? A. Other pumps of the same class.

By Mr. Griggs:

Q. Do you make the locomotive super heaters? A. I have made them.

Q. Are you connected with the locomotive super heater company? A. No, sir.

PETER J. NESTLER, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. You are a mechanical engineer I believe? A. Yes, sir.

Q. And you reside in Passaic? A. Yes, sir.

Q. Were you employed by the Acquackanonk Water Company and its kindred companies up to February 1916? A. From January 1910 to February 1916.

Q. Then you left them for a little time? A. Yes, sir.

Q. Now you are again employed by them? A. Yes, sir.

Q. How long have you been with them this last time? A. Since March fourteenth 1921.

Q. Previous to your leaving them in 1916 how long did you work for them? A. From June 1910.

Q. During that period did you familiarize yourself with the water in the river with reference to the quantity of water in the river and the quantities of pollution in it? A. Yes, sir.

Q. Did you make gauges to measure the water? A. Yes, sir.

Q. Did you keep a diary? A. Yes, sir.

Q. What did you enter in the diary? A. I entered in the diary observations that I made at points from the Erie Railroad Bridge and from the intersection of Fifth street and Fifth avenue and from the Goffle Brook.

Q. Did you make your observations always from the shore or did you ever go out in a boat? A. I also was out in a boat.

Q. Tell the Jury what you observed as to the nature of the waste water coming from the Weidmann plant? A. Well, from the bank of the river there are a number of pipes projecting out into

the stream and I noticed on various occasions great masses of liquid coming therefrom of all colors of liquid and its colors would change from time to time in the different pipes.

Q. What was the color? A. They were red, green, black, blue, all colors.

Q. What about the odor, if any? A. When I was out in the boat making the gaugings of the stream, it was necessary for me to go completely across the river and as I approached the Weidmann shore I noticed the difference in odor, as I approached the Weidmann plant, which is a familiar dyeing plant odor, which is very strong as you approach their shore.

Q. When did you last make an observation there? A. On account of being familiar with the conditions of the river and having had connections with the various companies, I noticed it the last time I rode past in the railroad train which was this Spring.

Q. Where did you graduate? A. Stevens Institute of Technology.

Q. Were you a pupil of Prof. Pryor? A. Yes, sir.

Q. Did you go over with Mr. Boller his calculations as to the cost of pumping? A. I did, sir.

Q. What have you to say as to the difference between you and Mr. Pryor? Which is right in your judgment? A. I confirmed Mr. Boller's testimony and believe that what he says to be true to the best of my knowledge and belief.

Q. In every respect? A. In every respect.

Cross Examination by Mr. Harding.

Q. You do not pretend to say that those offensive smells come from the dyeing material, do

you? A. The greater part of them do, yes, sir.

Q. I will just ask you if you were examined before the Commissioners and this question was put to you:

"Q. Could you tell what the odor or smell that you say came from the water, whether it was from house sewage or whether it came from chemical dyes? A. It would be hard to tell."

Did you answer that question that way? A. I presume I did, if it so states.

Re-direct Examination by Mr. Humphreys.

Q. Did you make any examination of the discharges from the National Mill or any of its mills? A. I noticed them as I went past, particularly, during this time from 1910 to 1916.

Q. How did they compare with the discharges from the Weidmann's? A. All the various colors, in the same manner.

Q. Similar? A. A similar type.

Re-cross Examination by Mr. Griggs.

Q. Did your examinations of the condition of the water extend up as far as the pumping station at Little Falls? A. Well, I have been up and down the river all the way.

Q. Was that a part of the area that you were to investigate? A. And made notes in detail.

Q. And examine? A. And made notes in detail.

Q. I did not say anything about making notes in detail, I said investigate, was it or not? A. Well, I have noticed the stream up to Little Falls. I have made observations on the river up as far as Little Falls as I went past, yes, sir.

Q. Is there pollution up there? A. Not visible to the sight.

Q. Is there pollution up there? A. I don't know.

Q. Are you acquainted with the works at the filtering station at Little Falls? A. Yes, sir.

Q. Do you work around there? A. At times.

Q. What do they put into the river? A. When you say "them"?

Q. I mean those who operate the filter station? A. Mr. Green?

Q. Well ,what company, the East Jersey Water Company? A. Yes, sir.

Q. Well, now, what does that station, manager or operators of that station put into the river? Don't they put the cleanings from the filters? A. I am not sure of that.

Q. Do you say that you don't know? A. I don't know.

By Mr. Humphreys:

Q. Are you sure that the East Jersey operates those filters? A. No. When I answered that I thought he meant the Associated Companies besides, if the East Jersey is taken alone it is only one of the companies that operates that plant.

Q. Which corporation actually operates it? A. The Montclair Water Company.

JAMES GIBSON, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. You are an inspector of the East Jersey Water Company, are you not? A. Yes, sir.

Q. For the purpose of examining the character

of the water in the Passaic River? A. Not the character of the water so much as the detrimental matter that would show.

Q. Have you made a frequent observation of the wastes discharged from the different houses from the Dundee Dam up? A. Yes, I have.

Q. Tell the Jury what you have observed? A. I have made a semi-monthly inspection of the Passaic River from the Island down on the left bank to the Crew Mills and returning to that point, an inspection of the left bank from the same point down to the Market street bridge and taking in the dye houses and slaughter houses and sewers; observing conditions of them and reported them to the office.

Q. Did you see any of the waste water coming out of Weidmann's? A. Yes, sir.

Q. What character of waste was that? A. Well, dye house waste.

Q. What colors was it? A. The colors of the rainbow, every color, practically.

Q. Did you observe any odor in that? A. Yes, sir.

Q. Was it an offensive odor? A. Well, that seemed to be where it came from the sewers, it was a mingled odor then very hard to distinguish.

Q. Did you see any waste coming from the East Fifth street mill? A. Yes, sir.

Q. And from the other mills of the National Company? A. Yes, sir.

Q. And were they all about the same? A. They were all about the same, with little or no change in it in all the four years.

Q. For how many years have you made your examination? A. For four years, 1916, 1917, 1918, 1919.

Q. And your observations extended over those four years? A. Yes, sir, twice a month.

Q. And up to the present time? A. Not up to the present time, up to November 30th, 1920.

Cross Examination by Mr. Griggs.

Q. Did your duties require you to take notes of incidental pollutions of the river by families or cattle? A. There were no specific duties or instructions. It was generally understood. I have been on the watershed for twenty years past.

Q. Did your observations extend from the pumping station at Little Falls to the Great Falls? A. Well, no, not from Little Falls, from the Island, the West street Bridge, I commenced. There was nothing from Little Falls to that point.

Q. So that you have nothing to say about the condition of the water—? A. Yes, I have to say from general knowledge that seems to be perfectly free and correct, O.K. in every sense.

Q. What is? The water? A. From the Little Falls to the Great Falls.

Q. That is all right, is it? A. Yes. Then I took it up from the Island which is a mile below the Great Falls.

Q. I want to know whether you mean to say that the water from Little Falls to the Great Falls is pure and unpolluted, is that what you mean to say? A. To the best of my knowledge and judgment, yes.

Q. As far as you know? A. As far as I know, yes.

By Mr. Lewis:

Q. Down to Temperance Island? A. From Temperance Island down to Market street Bridge,

the both sides of the river; the entire river for that distance.

ANDREW J. BRADY, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. You are an inspector of the Board of Health of Newark, are you not? A. Yes, sir.

Q. Have you made observations of the conditions of the Passaic River from the Dundee Dam up to the Great Falls? A. I have.

Q. How did you come to do that? A. By the request of Mr. Rosentrader, the Water Department of the City of Newark.

Q. When did you make those observations? A. My last observation was a year ago last August.

Q. Previous to that over how long a period did your observations extend? A. From July 1916 to November 1916.

Q. Tell the Jury what character of waste waters, the colors and smell, that you saw, if any, coming from Weidmann's dye house and from the National dye houses? A. Well, the waste from the dyes, that is, the colors, substance that came from those particular factories, I might say they were all colors; they ran red and blue and black and white.

Q. Did you notice the pollutions on both sides of the river? A. On both sides of the river, yes, sir.

By Mr. McCran:

Q. When was the last time you made that examination? A. The last inspection?

Q. Yes? A. That was August 1919.

Q. When was the first inspection you made? A. It was from July to November 1916.

Q. Was there any change in August 1919 from the condition which you found in 1916? A. Well, I could not see any, it appeared to be about the same to me.

Q. At whose request did you note these conditions in the river? A. Well, from the instruction, from Mr. Rosentrader who informed me as to what my duties were when I came here, I took my notes from that.

No Cross Examination.

JOHN P. WENTWORTH, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. Where do you live? A. At Marvin, Massachusetts.

Q. What is your profession? A. Civil Engineer.

Q. Are you connected with any firm there? A. I am employed by Metcalf & Eddy.

Q. Where were you educated? A. In the Massachusetts Institute of Technology.

Q. Are you a graduate of that place? A. I am, yes.

Q. What have you done since you left College in the practice of your profession? A. For a year

following my graduation I was Assistant Instructor in the Massachusetts Institute of Technology. From that time to date I have been employed by Metcalf & Eddy, with the exception of eighteen months when I was in the Army. My work with Metcalf & Eddy has been chiefly in connection with water, sewage, manufacturing wastes. Previous to entering the Army I was in the Sanitary Corps and worked there chiefly with water and sewage problems.

Q. And you are now in the employ of Metcalf & Eddy? A. Yes, sir.

Q. Have you made certain measurements and done other work under the direction of Mr. Fales at the plant of the Weidmann Company? A. Yes, sir.

Q. When did you do that? A. Last month.

Q. Just describe in a general way what you did? A. I assisted Mr. Fales in taking the samples, we measured the various baths and tanks from which those samples were taken, computed about the capacities of the tanks and also measured the flow in one of the sewers and took samples from that sewer.

Q. How often did you take those measurements? A. You mean in the sewer?

Q. Yes? A. I took them every fifteen minutes during the day.

Q. How often did you take your samples? A. I took the samples the same time I made the measurements.

Q. In what form are the results of your measurements? Did you put them down on paper? A. I put them down in a book.

Q. What did you do with those books? A. I turned them over to Mr. Fales.

Q. Have you got them here? A. I have them right here, yes, sir.

Mr. Humphreys—I would like to have these books marked for identification.

The said books are marked "Condemnors Exhibits Nos. 3 and 4" of this date, for identification.

Q. Didn't you turn over some papers to Mr. Fales? A. Yes, sir.

Q. What did those papers contain? A. My computations on the capacity of the tanks and the measurement of them.

Q. You made those papers as well as these books? A. Yes, sir. Four sheets.

Q. These are what you turned over to Mr. Fales? A. Yes, sir.

Mr. Humphreys—We will have these sheets marked for identification.

The said sheets are marked, "Condemnors Exhibit No. 5" of this date, for identification.

Q. When did you do this work? A. This year, we started on the last Tuesday in the month and our measurements took four days.

The Court—What month?

The Witness—April.

Q. How many days did you work all together? A. Four days.

Q. Describe how you took these samples? A. The samples that we took from the vats and tanks

we took them with dippers and then turned them into bottles, the samples that I took at the sewer from the color shop and took those samples every fifteen minutes, and varying the amount of the sample according to the flow at the time. At the end of the day I took the entire amount that I collected during the day and turned it over to Mr. Fales.

Q. Did you make a composite of that? A. That was the composite sample, yes, sir.

Q. And you delivered that to Mr. Fales? A. Yes, sir.

Cross Examination by Mr. Griggs.

Q. Were you the gentleman who took the fifty-fifty samples, testified about, that is, the samples divided in equal amount between the representative of the Weidmann Company and you? A. Yes, sir.

Q. That was done, was it? A. Yes, sir, those were the samples.

Q. So that you both had samples exactly alike? A. Yes, sir.

Q. How old are you? A. Thirty four years old.

By Mr. Humphreys:

Q. Did anyone from the Weidmann Company work with you in taking the samples? A. Yes, sir.

Q. And in the measurements. A. In the measurements and the samples, yes, sir.

A Juror—If you took some muck at the Dundee Dam or the Dundee Lake, could you

tell what that was or what made it?

The Witness—I did not quite catch the question.

The Juror—If you took some bottom dirt from the bottom of the Dundee Dam or the Dundee Lake and analyzed it, could you tell what that came from?

The Witness—I could not, no, sir, I don't think I could.

The Court—This man is a civil engineer, not a chemical engineer.

STEWARD E. COOGAN, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. What is your profession? A. Chemist.

Q. Where do you live? A. At Quincy, Massachusetts.

Q. Where were you educated? A. At the Worcester Polytechnic Institute.

Q. When did you graduate? A. In 1913.

Q. What have you done since you left College in the practice of your profession? A. The first two years after graduation I acted as assistant chemist at the Worcester Sewage Purification Works, and after that I went into the employ of Metcalf & Eddy at Boston and for two years I worked at the Windsor Brothers & Smith tannery at Norwich as Chemist and in supervision of the operation of the waste disposal plant at that place and after that I went into the office of the same firm and since that time I have acted as chemist in practically all the problems that have come in

to the firm, also I have served in supervision of the operation of various waste disposal plants, among those being the American Woolen Company at Mendham, the Beaver Brook Mills, the American Woolen Company at Lowell, Windsor Brothers and Smith at Norwich, tannery, White and Sons tannery at Walpole, Medbury Sewage Purification Works, Medfield Hospital for Insane.

Q. Have you made certain analysis of the waste waters of the Weidmann plant under the direction of Mr. Fales? A. I have.

Q. From whom did you receive the samples? A. From Mr. Fales.

Q. Did you receive any from Mr. Wentworth? A. I received some from Mr. Wentworth on the last day when we made the test.

Q. That would be what date? A. That would be on the last day of April, the thirtieth of April.

Q. When did you receive the samples from Mr. Fales? A. Directly after, the morning after they were collected.

Q. Did you go down there and get them yourself? A. I did.

Mr. Griggs—Down where?

Q. Down to the Weidmann plant? A. I did.

Q. Did you go down each day, each morning? A. I went down each morning.

Q. To the Weidmann plant? A. To the Weidmann plant.

Q. And get those samples? A. Yes, sir.

Q. When did you make the analysis? A. Directly after I received the samples.

Q. Where did you make the analysis? A. At

the laboratory of the Little Falls Filtration Company, I believe that is the name.

Q. Did you make observations as to the character of the samples? A. I did.

Q. Tell us what you did. A. I took observations on the color and the odor, suspended matter, and made chemical analysis of the various samples.

Q. Did you turn over to Mr. Fales the results of your observations? A. I did.

Q. Have you got them here in papers? A. Yes, sir.

Q. Produce them please? A. (The witness produces.)

Mr. Griggs—Are those the results of the analysis of the various samples?

Mr. Humphreys—These are the results of the analysis, yes, sir. I will have them marked for identification.

The said papers are marked "Condemnors Exhibit No. 6 of this date, for identification."

No Cross Examination.

BENARDUS COLEMAN, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. Where do you live? A. At Little Falls, New Jersey.

Q. What is your profession or business? A. Chemist and Bacteriologist of the Montclair Water Company.

Q. Where were you educated? A. At the Massachusetts Institute of Technology.

Q. Did you graduate from there? A. Yes, sir.

Q. When? A. In 1918.

Q. How old are you now? A. Twenty three years old.

Q. What have you done since you graduated? A. Since I graduated I was bacteriologist with the Brooks Hospital in Brookline, Massachusetts, for a while I went into the Army and from that time on I have been with the Montclair Water Company as Chemist and Bacteriologist.

Q. By whom are you now employed? A. By the Montclair Water Company.

Q. What are your present duties? A. The Chemical and Bacteriological examination of the water to determine the sanitary quality of the water.

Q. Do you make regular analysis of the water at Little Falls, for the raw water? A. Yes, sir.

Q. How often? A. Daily and monthly.

Q. Do you make comparative analysis of the river water at Little Falls and Great Falls? A. Yes, sir.

Q. When? A. About three weeks ago, the exact dates May sixth, May ninth, May twelfth.

Q. What did you do with the results of your analysis? A . I sent the results of the analysis to Mr. Fales.

Q. Have you got them here? A. I have (producing).

Mr. Humphreys—I should like to have these marked for identification.

The said papers are marked "Con-

demnors' Exhibit No. 7'' for identification of this date.

Q. These are the results of your own work? A. Yes, sir.

Cross Examination by Mr. Griggs.

Q. What was the condition of the river when you took the samples which you analyzed? A. At the time the samples were taken the river was in excellent condition from a sanitary standpoint.

Q. That is to say, you mean it was high and well diluted? A. Well diluted?

Q. Was the water high in the river? A. Was the water high in the river?

Q. Yes? You understand that, don't you? A. Well, the water was just about the same height that it is, there is an average, it was not very high.

Q. Was it as high as it is now? A. Just about, yes, sir.

Q. Where did you take the samples? A. The samples were taken at Little Falls and at Great Falls.

Q. Whereabouts in Little Falls, above or below the filter plant? A. Just at the filter plant.

Q. Were they taken at the place where the refuse from the filter plant goes into it? A. No, sir.

Q. Where were they taken at the Great Falls? A. At the S. U. M. plant, the power plant.

Q. Have you made any comparative analysis of the water at Little Falls and at the head of the Great Falls in low times? A. No, sir.

Q. Are you conversant with the operation of

the Little Falls filter plant? A. Yes, sir.

Q. What do they turn into the river? A. They turn into the river a portion of the filtered waste from the filters.

Q. They do not wash the plates full of refuse in there? A. What plates?

Q. I thought you said they turned their plates in? A. A portion of the filter waste.

Q. That is the waste that comes out? A. Yes, sir.

Q. What do they do with the rest of it? You said a portion? A. The filter waste goes to a basin and there it stays for a while and the effluent is allowed to flow into the river.

Q. Does that tend to purify the river any? A. Yes, sir.

Q. The waste from the filters tends to purify the river? A. Well, there is a certain amount of alumina sulphate used to purify the water in the first place, some of that alumina sulphate comes out from the filtered waste and would certainly tend to purify the river.

Q. Alumina sulphate is lime? A. It is one of the products of the reaction of lime with the alkali constituents in the water.

Q. And you think throwing the refuse into the river tends to purify it? A. It is not exactly a refuse, of the filters, it is a part of the substance in the refuse does that.

Q. The water that is sent out from there to the various towns and cities that are supplied from that place is filtered before it is sent out, is it not? A. Yes, sir.

Q. Why is it filtered? A. To purify it.

A Juror—Is this water that we use in

Paterson fit for boilers and such things?

The Witness—To my knowledge it is.

The Court—What do you mean, to your knowledge? Is it, or is it not?

The Witness—It is.

The Juror—Is the water that goes into the pipe lines better?

The Witness—Better than what?

The Juror—Better for boilers than the City water?

The Court—You mean the Dyers' Pipe?

The Witness—Yes, sir.

The Juror—How can the other be good then?

The Witness—I did not catch your question.

The Juror—I ask you if the City water that we use in Paterson is good for boilers?

The Witness—Both waters are good for boilers.

The Juror—Which is the best?

The Witness—I think the river water is a little better for boilers.

By Mr. Griggs.

Q. Why? A. Because, by putting sulphate of alumina in the water, adding it to the water, the hardness of the water is increased.

JOHN H. COOK, recalled as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. I think you have already stated your con-

nection with the Water Companies? A. I have.

Q. What have you to say to-day, from your observation of the Passaic River, as to the sufficiency of water in it at all times at the lowest flow for the needs of the Weidmann Silk Dyeing Company and the constituent companies of the National Silk Dyeing Company? A. There always is water enough for their requirements in times of low flow. I have measured it for twenty five years, I suppose, twenty four years.

Q. If the water which now goes through the Dyers' Pipe were to cease to be diverted by the Dyers' Pipe where would it go to? A. It would go down the channel of the River past the properties of these dyers.

Q. Where is the water that passes through the Dyers' Pipe taken from? A. It is taken from the S. U. M. Dam, just above the Great Falls in Paterson.

Q. How does the quantity of water which flows in the River past the National and Weidmann mills compare with the quantity flowing in the River above the Great Falls? A. The quantity of water that flows past the Weidmanns and the National is somewhat more than the quantity of water that passes the Great Falls. It is about fifteen million gallons a day more, something like that.

Q. How far is the Great Falls above the Weidmann and the East Fifth street plant? A. About two miles.

Q. Can you tell us what the lowest weekly average of water flowing at the Great Falls was at the time of the lowest flow in the last twenty one years? A. Well, I can if you will put in that blue print which I would be glad if you put in.

Q. All right, I will put it in, can you tell us? A. Did you ask to have it in million gallons or cubic feet per second?

Q. Give it in million gallons daily? A. It was twenty four million gallons at the Great Falls in Paterson.

Q. What date was that? A. That was the latter part of September, 1917, that was the last week in September, next to the last week in September 1917.

Q. Twenty four million gallons a day? A. Yes, sir.

Q. Taking that as a basis of your calculation, what would the flow past Weidmanns and East Fifth street plants be at that time? A. About forty million gallons a day.

Q. How do you arrive at that? A. I know that there is about fifteen million gallons more flows down the river past Weidmanns than is passing the Great Falls, I have measured it and had it measured, oh, perhaps, fifty times in the last fiften years or even more than that.

The Court—Where does that come from?

The Witness—It comes from the Dyers' and the Passaic Water Company uses about ten million gallons a day and that water must get into the river, it must empty, or a great part of it gets into the river above that point.

The Court—Through the sewers?

The Witness—Through the sewers, yes, sir; then in addition to that there is the water that the dyers themselves take out of the ground and put into the river in their various operations. There is some small

amount, perhaps one or two millions gallons a day that comes through the dyke which is Spruce street, which is between the main feeding canal of the S. U. M. and the pool below the dam.

Q. That would make altogether at the period you refer to forty one million gallons? A. About forty one million gallons.

Q. What do those two million gallons represent? A. As I said, it represents the leakage through this conduit which is at Spruce street, which is between the main feeding canal of the S. U. M. and the pool below the Falls.

Q. What use does the Society for the Establishment of Useful Manufactures make of the water at Great Falls? A. We have a large hydro-power station there, that is, a power station that is operated by water, which flows down the stream. We have a head there of about seventy feet and we generally turn out, when there is an ample supply of water in the river, about, oh, say, six thousand or sixty-five hundred horse power. We are doing about that to-day. That is produced from the water that is in the river.

Q. Does the power developed depend upon the flow of the river? A. Absolutely. Some years we cannot run the hydro station all year, some years we can run it practically all year. We have run it practically all year for the last two or three years.

Q. The water that you use for power at the Great Falls, what becomes of that water after it is used by you? A. It flows down the channel of the river past the various dye houses which are in this litigation here.

Q. Where did you say the dyers took their

water from the Passaic Water Company? A. They take it from water through the pipe called the Dyers' Pipe, which water is taken out at the S. U. M. dam, which is right over the Great Falls in Paterson.

Q. Will you look at your tables please and tell us what the lowest flow was at Great Falls in the year 1919 up to September fifteenth in any twenty four hours? A. Up to September fifteenth in 1919, 112 million gallons.

Q. What week was that?

Mr. Griggs—I guess you are wrong. Look at the week ending July nineteenth.

The Witness—In 1919, excuse me, I was in error. That is right, seventy million gallons.

Mr. Griggs—That is the daily average for the week?

The Witness—That is the daily average for the week, yes, sir.

Q. Is any of the river water used for manufacturing purposes below Weidmann's, for instance, in Passaic? A. Yes, sir, a large quantity of water is used there for both manufacturing, and power purposes, at the Dundee Water Power and Land Company's plant in Passaic.

Q. What is draft for Passaic about? A. The draft for manufacturing purposes was, I had it measured I think last year some time and I know from my acqauintance with the matter that it is about, oh, somewhere around eighteen or twenty million gallons a day, somewhere in that vicinity. If you read what I said in the testimony before that will show what the result was of my measurement at the time.

Q. I understand Dr. Hunziker testified yesterday that with the water in its present condition of flow that he could operate his mill notwithstanding the pollution that is in the river; what basis of flow of the river was equal to the flow of yesterday? A. I have made some notes here so that I would not take up quite so much time. The flow on the day Dr. Hunziker testified to, or Mr. Auger, I forget which in the previous hearing, the flow on that day was 940 million gallons, and in an average year, throughout the period where I have measured the water, there were twenty one weeks in which the flow was equal to or greater than the flow on that day.

Mr. Griggs—What year was that?
The Witness—Those were working days.
Mr. Griggs—What year?
The Witness—The year that Dr. Hunziker spoke about was April fourteenth 1919, and the quantity I speak of refers to the average year for those twenty five years that I measured the water, or twenty four years, to be more exact.

Q. How did the flow of the river on April fourteenth 1919 compare with the flow of the river today or yesterday? A. It was somewhat greater on April fourteenth 1919 than it was on Monday when Governor Griggs asked me what that was.
Q. How many days during the year 1919 were there when the flow was equal to or greater than the flow of yesterday? A. That was 1720 million gallons, wasn't it?

Mr. Griggs—1446 million gallons?
The Witness—1720 was the cubic feet;

(figuring) seventeen weeks.

Mr. Griggs—Seventeen weeks?

The Witness—Seventeen weeks in 1919 when the flow of the river was greater than 1720 cubic feet per second or whatever the million gallons are.

Q. How many days is that? A. Well, that would be six times whatever the number of weeks was.

Q. How many days? A. Twenty one weeks, that would be 126 working days.

Q. What does that indicate with reference to the percentage? A. The percentage of what?

Q. With reference to what percentage of the year on the average water could be got from the river? A. It was something like forty two or forty three per cent. of the year when there was a greater quantity of water flowing than there was on the day Dr. Hunziker testified that he could use the water without trouble.

Q. Have you any statistics as to the condition existing before any diversions for water supplies were taken from the River, showing the number of weeks during which in those times the flow of the Passaic River by Paterson would be greater than 940 million gallons per day? You testified to Vermeule's work on that subject at the last hearing? A. I don't quite get that now, but, do you want me to say what Vermeule said in respect to the flow in excess of 940 million gallons?

Q. Yes? A. Well, in the average year he said there would be twenty six weeks.

Q. What does Vermeule give as the flow in Paterson at the driest month before there was any diversion by these water supplies? A. I heard Mr. Harding read it this morning.

Mr. Griggs—You testified to it before?

The Witness—I cannot just remember what it was before.

Mr. Harding—He says on page 156 of the Report, under the head of Dry Season Flow; In September 1883 Mr. Lebos B. Ward found the flow at Paterson to be at the rate of one hundred and fifty cubic feet per second, which is at the rate of twenty one inches per month; the last appears to be the very lowest point reached by the stream under natural conditions for so long as three consecutive weeks. He states that on page 156, and on page 103—

Mr. Griggs—You don't know anything about it except what Vermeule said?

The Witness—I am citing just what Vermeule says in his book, and it is a well accepted authority as to the flow of streams in Northern New Jersey and simply confirms what I was expecting the flow of the river would show, that is all, and I say that I figured that there were thirty eight weeks in 1917 and thirty two weeks in 1918 when the flow was greater than the minimum flow that Vermeule said obtained in the river.

Q. What have you to say, what in your opinion would be the condition of the river after the trunk sewer is completed? A. The character of the water flowing in the river should be very much improved after the trunk sewer is built. After the trunk sewer is built the sewage from the city sewers, the sewage proper, house sewers, I am speaking of primarily now, will be diverted to the

trunk sewer and a great part of the worst waste certainly from the dye shops and manufacturers of that character, which are the greatest source of pollution that appears to the eye in the river, that will be diverted to the trunk sewer, and, while I doubt if every bit of polluting matter will be taken from the river, yet the character of the water should be very much improved.

Q. Will that be so notwithstanding the fact that some of the fifteen million gallons which flow into the river below the Great Falls and by the Weidmanns, which comes from the sewers will then be diverted into the trunk sewer? A. It will be, notwithstanding that. By the time that fifteen million gallons gets down by Weidmanns it is pretty badly defiled anyway.

Q. If these dyers had plenty of water before 1898 for their purposes, how will that condition compare with the condition that will prevail when the trunk sewer is completed? A. The water will be in very much better condition after the trunk sewer is completed than it is to-day or than it was in 1898.

Q. How high must the flow of the river be to enable these dyers to get a water supply? A. Theoretically, as long as there was as much water in the river as they wanted for their needs they would have all they would need. I don't see quite what you are driving at?

Q. The years of lowest flow during the last twenty one years you say have been how many million gallons per day? A. You mean the week of lowest flow?

Q. Yes? A. I told you what it was. Shall I go through that again?

Q. In 1917 and 1918,—? A. Repeat the question.

Q. The week of lowest flow during the last twenty one years you say have been how many gallons per day? A. I don't know what you mean by that.

Q. I want to know the lowest flow for the years 1917 and 1918 in the river?

Mr. Griggs—I think we can give them you from the tables.

The Witness—The lowest flow in 1917 was, you mean at the Great Falls now?

Q. Yes? A. At the Great Falls was twenty four or twenty five million gallons a day.

Mr. Griggs—How long did that continue?

The Witness—That continued for a week, and the quantity the following week was only slightly more.

Mr. Griggs—If you want 1918 look at the last week in July and the first week in November?

The Witness—No. It is not so.

The Court—Give us 1918?

The Witness—In 1918 the lowest flow, average flow for any week in 1918 was about twenty eight million gallons on the fourth week in October of 1918.

Q. Would there be any practical difficulty in in these dye houses so operating their water supply as to make use of the Dyers' Pipe during the periods when the water in the river was too low to pump and taking the water from the river during the period when there was sufficient water in the river for that purpose? A. Absolutely none.

Q. How would they do it? A. It would only be necessary to have a duplicate suction, and for a great part of the way that would not even be necessary, all that would be necessary would be to put a joint in the suction line and have one pipe go to the river, and that could be used for river; when they could not water from the river or did not want to take it, they could shut that gate and take through the Dyers' Pipe or, when there was ample supply of water in the river they could shut that gate and take water from the river. It is the simplest thing imaginable.

Q. There have been offered in evidence certain contracts between the Weidmann Silk Dyeing Company and the National Silk Dyeing Company, and seven different grantees of the right to divert water from the Passaic River in front of their properties, the municipalities so taking being the City of Bayonne, the Town of Bloomfield, Montclair Water Company, Borough of Glen Ridge, Commonwealth Water Company, the Town of Nutley, the Town of Kearney. I believe that you and Mr. Sherrerd fixed the sums which these municipalities and water companies were to offer for obtaining these grants. Please tell us how you made the calculation in fixing those sums and whether or not your calculation had any relation in fact to what you considered the owners' damages to amount to?

Mr. Griggs—Objected to.

The Court—I think it is an element which may be considered by the Jury. Question allowed.

A. When we considered what should be of-

fered to these dyers as compensation for the difference in the value of their property by the taking away of these waters that it was proposed to take away, my theory of the thing was this, that we should offer a nominal sum, because I said and I so believed that it was more advantageous to these dyers to get the water from the Dyers' Pipe than it was to take it from the river, or ever was, and I believe so still, that it is more advantageous to these dyers to take the water from the Dyers' Pipe than it would be to pump it from the river. I firmly believe it. Therefore, my idea was, not to offer anything but a nominal amount to these dyers. But our Counsel told us that the practice did not permit us in a matter of that kind to offer a nominal sum. That we must offer, oh, I forget what the particular expression was he used, but it means a substantial sum, or a sum which will be substantial; so Mr. Sherrerd and I got together and I said, "Now, what is a substantial sum?" And, finally, talking together, we concluded that if we figured the thing on the basis of a hundred dollars per million gallons that was used per day for a yearly use, that would be the proper amount to offer, or an amount that would satisfy our counsel to offer, and that was the amount that was fixed in these agreements and that was the amount accepted in a good many of them.

Mr. Griggs—I ask to have that testimony stricken out as irrelevant, improper and largely hearsay.

The Court—Certainly a lot of it is. I was wondering why you did not object to it before.

Mr. Griggs—I did not want to break in on

the answer. I thought my objection covered it all.

The Court—I thought the question was proper but the answer is not.

Mr. Griggs—I knew what the answer was going to be because I had it before me in the former proceedings.

The Court—I will decline to strike it out now.

(Property Owners except.)

A Juror—What is the capacity of that sixty two inch pipe?

The Witness—Which?

The Juror—The Dyers' Pipe?

The Witness—Well, as it happens, the Dyers' Pipe is forty eight inches generally, and it is good for about, well, I suppose we could supply, without much or material reduction of head, I suppose we could supply twenty five or thirty million gallons a day from it. I have never tried to make any computation as to the quantity of water that might be delivered from it, but it would be in that vicinity somewhere I think.

The Juror—Is that as much as the dyers need?

The Witness—That is much more than they use now-a-days, they use probably somewhere around a daily average of perhaps in the best times six or seven million gallons from it.

The Juror—That is all their plants?

The Witness—That is at all their plants.

The Juror—You mean Ashley & Bailey and all?

The Witness—I mean all the parties on

the Dyers' Pipe. I think they do not exceed an average of seven million gallons a day.

The Juror—And you could give twenty five?

The Witness—We could, I suppose, that is the capacity of the pipe, the pipe is sufficient in capacity to supply probably twenty five million gallons a day.

The Juror—Does it always run full?

The Witness—It must run full. It is under a head, it takes water from an elevation of 114 and the elevation of the ground where it is delivered I suppose is about seventy five feet less than that. There is always a head on the pipe.

Mr. Gourley—On that point, if the dyers were not using the water, would it run out at the other end anyway?

The Witness—If no water was taken through this pipe by either the dyers or anybody else, that water would flow down into the Falls and flow down the bed of the river as it usually did.

The Court—Or anybody else? What do you mean by that? That you might take it somewhere else?

The Witness—No. I mean if none took water from the pipe, through the Dyers' Pipe.

Mr. Gourley—But if the dyers are not taking water from the pipe the water still remains there?

The Witness—That water would come down the river as though the pipe were not there.

Mr. Gourley—Does it continue to come

down the pipe if the dyers shut it off all together?

The Witness—No, what is in the pipe just lays there.

Mr. Gourley—In other words, there is no outlet to it?

The Witness—There is not outlet at the lower end unless somebody opens something to let it out, that is, unless there is a draft of water from the pipe.

By Mr. Humphreys:

Q. In that case the water would then back up from the pipe and go over the Falls? A. It would simply go over the Falls, that is all.

Mr. Lewis—Is there always water going over the Falls?

The Witness—No, sir.

The Court—We had better continue the direct examination.

By Mr. Humphreys:

Q. I understand you to say that as long as there is practically any water at all going past Weidmanns they could get it by pumping? A. As long as there is some water going by Weidmanns, more water than is required by their business, they could if they made proper effort get that water into their factory. There is no question about it.

Q. How did you calculate or fix the number of million gallons of water which each municipality was to ask the privilege to divert? A. I took that quantity from the quantities that had previously been supplied from year to year, and con-

structed a curve and concluded that those were the quantities that would be required for the periods during which the condemnation took place.

Q. In order to have it upon the record in a clear manner, please state the number of million gallons of water the right to divert which has been obtained by the various municipalities and water companies, the periods of time during which those who have acquired the right to divert acquired those rights.

The Court—Isn't there a statement of that?

The Witness—There is a statement in the book, and you might read is just as well.

Mr. Griggs—We have it right on the book here.

The Witness—Read it into the record. I will have to refer to my notes if you do not read it.

(The statement as read by Mr. Humphreys is as follows:)

The Montclair Water Company, 2,200,000 gallons daily to January 1st, 1925.

Commonwealth Water Company, 1,000,000 gallons daily to January 1st, 1925.

Glen Ridge, 350,000 gallons daily to January 1st, 1925.

Bayonne, 16,000,000 gallons daily to October 26th, 1929.

Kearney, 6,000,000 gallons daily to December 29th, 1920.

Harrison, 3,000,000 gallons daily to March 9th, 1929.

East Newark, 800,000 gallons daily—

Mr. Humphreys—East Newark has no contract with anybody to supply water I believe?

The Witness—No, neither has Kearney now. Bloomfield, 3,000,000 gallons daily to May 1st, 1925. Nutley 750,000 gallons daily, to January 1st, 1925.

The Court—That is correct, is it?

The Witness—Yes, sir.

Q. Tell us the amount of water, if you know it, which is diverted from the River by the Passaic Water Company and by the Morris Canal respectively? A. The amount of water taken by the Passaic Water Company from the plant at Little Falls for the last, or, three or four years, has not varied materially from ten million gallons a day; the quantity of water that is taken by the Morris Canal Company in times of low flow into the river is approximately ten million gallons a day, pretty close to that. I have not measured it within the last year or two.

Q. In making up the offer which Jersey City made and which was to be for a permanent diversion, how did you make the calculation?

Mr. Griggs—Objected to as immaterial.

The Court—How is that relevant?

Mr. Humphreys—Your Honor permitted to show the others.

The Court—That was on an entirely different basis.

Mr. Humphreys—In the case of Weidmann v. City of Newark, the Court of Errors and Appeals has held that the measure of damages is the diminution in times of

low flow and I have got the right to show by this witness that that is how he calculated his offer.

The Court—What difference does it make what offer he made?

Mr. Humphreys—I think there are reasons why it might matter. The other offers having been accepted, which were made on the same basis as this offer, all being made in times of low flow although they were taken straight out of the water, I think there is a legal argument we intend to present to your Honor to show that they are bound by those, and that they cannot recover from Jersey City or Newark upon any higher basis or higher rate than what they have received from Bayonne and the other municipalities.

The Court—Even assuming that to be so, what right have you got to introduce evidence that they made an offer and what the offer was?

Mr .Gourley—We can calculate the amount now.

Mr. Griggs—I object to it.

The Court—That question I will overrule and that disposes of that.

(Exceptions entered for all Condemnors.)

Q. Can you now, in the witness box, make a calculation as to the amount that Jersey City was willing to pay for the privilege of diverting at the time it made the offer?

Mr. Griggs—Objected to as immaterial.

(Objection sustained; Exception to all the Condemnors.)

By Mr. Gourley:

Q. Are you able, in your judgment to calculate, what you consider, and give us the reasons for it, the damage done to the Weidmann plant by the abstraction of the water by these municipaliies? A. I believe I am able to do it, yes, sir. I think I can.

Q. Will you please do it?

Mr. Griggs—That is a question for the Jury. I don't know that I object to it in the present form of the question, I only want to call the attention of the Counsel and the Court and the Jury to the fact that it is a mixed question of law and fact and I don't know that Mr. Cook is competent to pass on the legal questions involved in the problem. But I am not going to object so as to have an exception taken against it. If they want to put it in all right.

Adjournment to Monday, May 23rd, 1921, at 10 o'clock A. M.

Sixth Day:

Paterson, N. J., May 23rd, 1921.

The trial was resumed this day pursuant to adjournment.

JOHN H. COOK, resumes the stand.

Direct Examination (continued) by Mr. Humphreys.

Q. In preparing the offers which you submitted to Weidmann and the National for Jersey City, did you base your calculation in the same way as you did with regard to the other corporations desiring to condemn? A. I did.

Q. Did you do the same in regard to Newark? A. We did, yes, sir.

Q. What did you adopt as the low flow of the Rockaway River upon which you based your offer? A. 13.6 million gallons a day.

Q. That is for the Rockaway River? A. That is for the Rockaway River.

Q. How did you arrive at that? A. The drainage area of the Rockaway River above the Boonton Dam—

Mr. Griggs—Is this relevant or material? Offers made which were not accepted. We have nothing to do with that.

Mr. Gourley—It is going to the damage as well.

Mr. Griggs—That is another thing. He is asked how he made a certain offer which he did make. Now, all offers are off and it does not seem to me that it is material how he made up his offer.

The Court—Is this the offer?

Mr. Humphreys—This offer was not accepted.

The Court—The other side put in some offers which were on the same basis, weren't they?

Mr. Humphreys—On the basis of the same price as this one.

The Court—And you want to show, as I understand it, that the offers that were made were not based upon the true theory but upon some other basis?

Mr. Humphreys—One hundred dollars a million gallons a day per annum. And we want to show simply what the low flow of

the Rockaway River was upon which the offers are based and the same with Newark. Of course, there is a conflict between what we claim, that we can only be made to pay our proportion of the total damages which the amount of water which we divert in times of low flow bears to the total amount of water diverted in times of low flow.

The Court—That is on this offer.

Mr. Humphreys—I don't care about that. I asked the question that way but what I want to find out is what the low flow was, and what we want to know is how he arrived at that low flow.

The Court—How you apportioned that?

Mr. Humphreys—Yes.

Q. Now, will you tell us how you arrived at that low flow? A. The drainage area of the Rockaway River above the Boonton Dam is 121½ square miles. We frequently say 122 squar miles, but 121½ square miles is the drainage area. The run off in times of low flow per square mile is about 113,000 gallons daily for each square mile of drainage area. 113,000 gallons multiplied by 121½ square miles, gives 13.6 million gallons as the daily run off of the Rockaway River in times of low flow at the Boonton Dam.

A Juror—I did not get the figures.

The Witness—113,000 gallons for each square mile multiplied by 121½ square miles gives 13.6 million gallons for the total drainage area and that— I am going to say something about the money part of it now, may I?

Mr. Griggs—That is not asked of you.

The Witness—I don't want to embarrass anybody, but I would like to continue.

Q. What did you find the low flow of the Pequannock River? A. We found the low flow to be 7.1 million gallons.

The Court—Above the Macopin Intake?

The Witness—Yes, sir, above the Macopin Intake, and in this way, the drainage area is 62½ square miles, and 62½ times 113,000 gallons gives a total of 7.1 million gallons a day from that drainage area of 62½ square miles.

The Juror—Does the Pequannock give as much as the Rockaway?

The Witness—The run off from the drainage area of the two streams would be about the same for the reason that the character of the drainage area generally is about the same, the Macopin drainage area is——

Mr. Gourley—That is per square mile?

The Witness—Per square mile, of course, I mean.

Mr. McCran—I understand the question of the Juror was whether or not the run off in the river was more or the same for the Pequannock as the Rockaway? In other words, what is the proportion?

The Witness—I don't understand how to put it that way; but, in any event the run off would be proportional to the drainage area.

The Juror—It is the same amount comes down both?

The Witness—The same amount of water per square mile would come down each stream.

The Juror—I mean the same amount in the river?

The Witness—The total amount?

The Juror—The total amount?

The Witness—Oh, no, it would be about approximately twice as much for the Rockaway as for the Pequannock.

The Court—You are speaking above the Macopin Intake?

The Witness—Yes, sir, above the Macopin Dam and above the Boonton Dam.

Q. In other words, above the Boonton Dam what is the low flow of the Rockaway River? A. Above the Boonton Dam it would be 13.6 million gallons a day.

Q. And what would Newark's low flow be on the Pequannock? A. Above the Macopin Dam it would be 7.1 million gallons. In each case that is the point from which the water is taken to these towns. The Macopin Intake for the Pequannock and the Boonton Dam for the Rockaway.

The Juror—I mean down to the East Jersey plant at Litle Falls?

The Court—He means the river irrespective of the dams.

The Juror—I mean the river itself.

The Witness—You mean if there had been no dams there?

The Juror—Yes?

The Witness—If there had been no dams there and, speaking generally, the quantity of water that would come down the Rock-

away River would have been 13.6 million gallons a day and the quantity of water which would come down the Pequannock would be 7.1 million gallons a day.

Q. That is in times of low flow? A. That is in times of low flow.

Q. Have you got a chart of the flow of the river at Great Falls? Mr. Griggs offered in evidence one went down to 1919.

The Court—Let me interrupt you: isn't there any drainage area between the dam and and the place where the Pequannock river goes into the Pompton River?

The Witness—There is, yes, sir, very decidedly.

The Court—Isn't there then an addition to be made to that, you are giving us figures at the dam, and the juror is asking for the total river below the same as well as above the dam, the river itself, that is what he is asking.

The Juror—I said, down to the East Jersey Water Company plant, that is at Little Falls, is it not?

The Witness—Yes. You mean the so-called East Jersey plant at Little Falls, down to that point there, what would the low flow be, at times of low water?

The Juror—That is what I mean.

The Witness—Well, the lowest—

The Juror—Say we have the Pequannock to whatever that runs into.

The Court—You want to know what the flow is when the Pequannock strikes the Pompton River?

The Witness—When the Pequannock strikes the Pompton what would the low flow be if there were no dams on it?

The Juror—Yes?

The Witness—I can look that up. I do not just recall at the moment what the total drainage area of the Pequannock is.

The Court—What the Juror wants to know what is the total flow of the Pequannock River, not only down to where the dam is, but the whole of it to where it empties into the Pompton River.

Mr. McCran—If there were no dam there.

The Court—In other words, what the total drainage area of the Pequannock river itself is.

The Witness—The total drainage area of the Pequannock river is 84.8, that is, practically 85 square miles.

The Juror—Isn't there some way I can test this; you say the Rockaway River has twice as much area as the other?

The Witness—About. That is the intercepted portion of the Rockaway River.

The Juror—Will it care for the same amount of water produced in the Rockaway river from such a flow?

The Witness—To all intents and purposes.

The Juror—Well, that is the answer.

Q. The other side have offered in evidence a chart of the flow of the river at Great Falls at the S. U. M., running down, I think to 1918 or 1919, have you continued that chart down to the present time? A. I have carried it down through 1920.

Q. Now down to the present time? A. Not up to the present minute, no, I have got it through 1920.

Q. What was the low flow of the river in 1920? A. The lowest week, do you mean?

Q. Yes? A. The lowest week in September was 156 million gallons, that was the lowest week.

Q. The low flows that you have given of these rivers, the very low flows, you found, are they apt to occur, do you think, from your experience? A. A. On the extremely low flows such as occurred in 1917 and 1918 I would say, of course, no man's experience runs over a hundred years, or anything like that, but, I would say, offhand, low runs like that may occur once in perhaps twenty five years, something of that kind.

Q. Taking the various diversions in times of low flow to be as follows: Passaic Water Company, ten million gallons, Morris Canal, ten million gallons; Newark, 7.1 million gallons; Jersey City, 13.6 million gallons; Acquackanonk Water Company, nine million gallons; Montclair, 2.2 million gallons; Commonwealth Water Company for West Orange, one million gallons; Glen Ridge, 350,000 gallons; Bayonne, 16 million gallons; Kearny, 6 million gallons; Harrison, three million gallons; East Newark, 800,000 gallons; Bloomfield, three million gallons; Nutley, 750,000 gallons; Commonwealth Water Company and East Orange from Canoe Brook, three million gallons; making a total diversion of 85,800,000 gallons, and assuming that the damages when ascertained are to be divided between all these parties in the proportion of the current flow diverted by each in times of low flow, have you made any calculation as to what percentage each amount of each divertor is

to the total diversions, namely 85,800,000 gallons? A. I have made such a calculation and it was offered before, and if somebody will give me the testimony it is easier for me to read it from that.

Mr. Griggs—It is on page 337. I object to it because it is irrelevant and immaterial. I apprehend that the Court is not going to charge the Jury that compensation is to be divided on any such percentages. I apprehend that the Court will charge the Jury that the prescriptive rights of diversion of the Passaic Water Company and the Morris Canal are not to be taken into account and that these condemnors are not entitled to have a percentage charged against them. Therefore the testimony is irrelevant, and, if given would be based on figures which have no relation to the case. And we might just as well, perhaps understand now, once for all, whether these ancient diversions are to be counted as takings of water against these parties which are to be founded in determining the proportions. We insist that they are not. We insist that the situation is that during all these years that these dyers have been going on the Passaic Water Company—

The Court—Didn't I eliminate these in the damage suit at the time of Auger & Simon and Weidmann? Didn't I eliminate these same two companies?

Mr. Humphreys—I think your Honor did eliminate them, at the same time we would want to go to the higher Court on that

point and I think it would be convenient to have it on the record anyway.

The Court—I will overrule the question and allow an exception.

(The exception is entered for all the Condemnors.)

Q. Have you made a similar calculation as to what the percentage would be in case the diversion of the Morris Canal and the Passaic Water Company were omitted? A. I have.

Q. The total diversions in that case being 65,800,000 gallons? A. I have.

Q. Can you tell me what the percentages would be in that case of all the diverters?

Mr. Griggs—Let us understand what you mean by diversions? Excluding the Passaic Water Company and the Morris Canal?

Mr. Humphreys—I mean so far as the Acquackanonk Water Company, Jersey City, Newark, Montclair, Commonwealth, Glen Ride, Bayonne, Kearney, Harrison, East Newark, Bloomfield, Nutley, Commonwealth and East Orange?

Mr. Griggs—Based on what, may I ask you? Based on your theory of low flow?

Mr. Humphreys—Yes, based on our theory of low flow. Upon the testimony of the witness as to what the low flow was.

The Court—As I understand he wants to divide the compensation among all the diverters, whether they are present diverters or past diverters, he wants to include the past diverters. In other words, the present diverters will only pay the proportion to

what the whole diversion is, that is right, is it not?

Mr. McCran—That is eliminating the Morris Canal and the East Jersey.

Mr. Griggs—Well, subject to this, that we do not admit, in the first place, that the element of low flow, as they have stated it, has anything to do in the case; nor do we admit that the quantities to be taken by the Acquackanonk Water Company, which is one of the parties here in condemnation on a basis of five or six years, can be proportionately arranged with the perpetual diversions of Newark and Jersey City. Subject also to the fact that we do not concede, but rather deny that the grants of the right to take water given to these various municipalities whose contracts we have offered in evidence are to be taken into account. But I won't object to having the figures given as now asked for, after having stated what I have said as to their relevancy. I do not want to exclude them.

The Court—Let me ask you, Mr. Cook, is it possible to make such a report, considering that the one Company has only a few years to operate?

Mr. Humphreys—I was just going to speak on that subject and was going to say that we are going to make the calculation, in the first place, as if the Acquackanonk diversion were going to be perpetual, put it on a par with the others, then reduce the proportion by calculating the interest on that sum and finding the present worth of six years.

A Juror—I understand that somebody is

trying to sell Paterson water. Who is it? What water?

Mr. McCran—May I answer that?

The Court—I think we had better let this examination go on.

The Juror—I think that is very relevant to the business, because if the East Jersey sold all it has and then sells to Paterson again, it is going to be responsible along the River with the others, or Paterson is.

Mr. Humphreys—Paterson gets its water from the Passaic Water Company which has a prescriptive right to divert water.

Mr. Griggs—That is the course of Paterson to date. At the same time there is a contract in existence which Mr. Sherrerd says will enable Paterson to get its water out of the Wanaque River watershed. What will happen in the future, we don't know.

Mr. McCran—We will explain that.

Mr. Gourley—That comes after this.

The Juror—What does the East Jersey own?

The Witness—The East Jersey Water Company owns an interest in the plant at Little Falls, which is frequently called the East Jersey plant. There are several parties in interest there; the Passaic Water Company owns three-eighths of the property up there; the Acquackanonk Water Company owns two-eighths; the East Jersey Water Company owns two-eighths; The Montclair Water Company owns one-eighth and the property is operated by the Montclair Water Company, and each of the parties in interest there is charged so much of

the operating costs in proportion to the quantities of water they take from the plant.

Mr. Griggs—Does the Acquackanonk Company own some of that plant?

The Witness—I said so.

Q. Can you tell what the proportion would be of all the diverters excluding the Passaic Water Company and the Morris Canal? A. This is, excluding the Morris Canal and Banking Company and the Passaic Water Company:

Newark, 7.1 million gallons; 10.8 per cent. of 65.8 million gal.

Jersey City, 20.7 per cent.,

Acquackanonk Water Company, 13.7 per cent.

The Court—That is based on a perpetual right?

The Witness—Yes, sir.

The Court—This has not been reduced yet?

The Witness—No, sir.

Montclair, 3.3 per cent.

Commonwealth, 1.5 per cent.

Glen Ridge, 0.5 per cent.

Bayonne, 24.3 per cent.

Kearney, 9.1 per cent.

Harison, 4.6 per cent.

East Newark, 1.2 per cent.

Bloomfield, 4.6 per cent.

Nutley, 1.1. per cent.

Commonwealth and East Orange, 4.6 per cent.

Q. Had you and Mr. Sherrerd anything to do with the proposal that was made by Kearney for the right to divert water? A. We had, yes.

Q. What had you to do with it? A. We computed the amount of money—

Mr. Griggs—How is that material? What they had to do with it?

The Court—I do not see how it is material.

Mr. Griggs—I am not going to object to it if they insist on it.

Mr. Gourley—I understood the Governor said they made two proposals for these various municipalities, the Governor said that on his direct statement of the case, one of those little speeches he makes from time to time, whether that is in evidence or not, I don't know, whatever offers were made by these people. Now, there are figures in here which they say were not made by them.

The Court—But this question does not ask that. It asks what Mr. Sherrerd and this witness had to do with Kearney.

Mr. Humphreys—I want to know what amount they proposed that Kearney should offer.

Mr. Griggs—I have no objection.

A. $720.

Q. What amount did Kearney offer?

Mr. Griggs—What did they pay?

Q. What did they pay? A. I heard Governor Griggs read it here the other day, and it seemed to me it was about twice that.

Q. Do you know how that happened? A. I think I do.

Mr. Griggs—Of your own knowledge, Mr. Cook; not hearsay.

Q. Do you know it of your own knowledge? A. Well, I know certain circumstances that affected it to my knowledge. Of my own knowledge I know certain circumstances which had a very decided effect upon the amount of money which they paid.

Q. Tell us what those were? A. The important factor was that Kearney did not have to pay that money itself at all, and, therefore, it did not have the personal interest in the payment that it should have had. Tha is a very important factor from my point of view. If Kearney did not have to pay the money out of its own pocket, why, it was a matter of indifference to a great degree with Kearney how much it was, and somebody must have hypnotized Kearney into paying about twice what they should have paid.

Mr. Griggs—You look at me as though you thought I did it?

The Witness—I think very likely you did it.

Q. Have you kept any record of the amount of water delivered to the National Silk Dyeing Company from the Great Falls conduit from 1912 down to 1920? A. I have it here, I did not keep that record and I can produce the man who did keep the record; but I will testify to it if you people are willing that I shall.

Mr. Griggs—We do not object to it. You can put the table in and let it go to the Jury,

because it wont vary from the figures we have already in.

The Witnes—Yes, it will. I am going to testify to the quantity of water which was actually delivered to them.

Mr. Griggs—And paid for?

The Witness—In the early days of this arrangement with the National Silk Dyeing Company there was a contract which was made with different companies which were afterwards united with the National Silk Dyeing Company, and after this union had taken place the National Silk Dyeing people came to the PasaicWater Company and says, "Now, as we are all united we ought to get the benefit, if there is any benefit of the difference of draft of each of these mills from the required minimum, and as they did not want to use the water at some of their plants they wanted to use that minimum quantity at the other plants, and we permitted them to do that.

Mr. Griggs—No, I have no objection to your stating the number of million gallons.

The Witness—The number of million gallons we delivered to the National Silk Dyeing Company for all their plants was, in,

1912 973,800,000 gallons,
1913 709,700,000 gallons,
1914 1,142,300,000 gallons,
1915 1,199,000,000 gallons,
1916 1,309,000,000 gallons.

The Court—That is the total water used during the year?

The Witness—Yes, sir.

The Court—During each of those years?

The Witness—The quantities which I have stated.

1917 1,137,700,000 gallons,
1918 869,700,000 gallons,
1919 802,000,000 gallons,
1920 871,600,000 gallons.

The Court—That was used by them in what way?

The Witnes—In all their plants, for their various manufactures.

The Court—You mean furnished by?

The Witness—Furnished through the Dyers' Pipe.

Q. Have you made a similar record of the water delivered to the Weidmann Silk Dyeing Company during the same years? A. I have.

Q. Will you state those figures? A. Well, I happen to have it here for the years from 1914 up and including the year 1920, and I will read those off; if anybody wants any more I will get them. The water delivered from the Dyers' Pipe to Weidmann's was, in

1914, 749,000,000 gallons,
1915, 795,000,000 gallons,
1916, 780,000,000 gallons,
1917, 712,000,000 gallons,
1918, 700,000,000 gallons,
1919, 302,000,000 gallons,
1920, 376,000,000 gallons.

The Court—Is not this the water for which the receipts are already in evidence here?

Mr. Griggs—Yes.

The Court—The receipts show the actual money paid?

Mr .Griggs—Yes, and the table is in evidence.

Mr. Gourley—Is there any table prepared of the Weidmann?

The Witness—I have not put in any this time.

Mr. Gourley—You can do that?

The Witness—I can give you a blueprint of it and I can produce the other tables if you want to put it in.

Mr. Griggs—It is already in.

Mr. Humphreys—We offer in evidence chart of the flow of the Passaic River at Paterson at the Great Falls, or such parts of it relative to the years 1919 and 1920.

Admited and marked "Condemnors' Exhibit No. 8" of this date.

The Witness—That is the water was taken by the National or by the Weidmanns from the Dyers' Pipe during those years.

A Juror—The first year was 1912?

The Witness—The first year that either of those parties began taking water from that pipe was 1906 as I recall it now.

Mr. Lewis—The contract was made October 1905?

The Witness—The contract was made October 1905 and they began to take water in 1906.

The Court—Those contracts I understand are in evidence.

Mr. Humphreys—We offer in evidence the statement which Mr. Cook just testified to concerning the water furnished to the National through the Dyers' Pipe.

Admitted and marked "Condemnors Exhibit No. 9" of this date.

A Juror—Can you give me the date when the East Jersey started furnishing water?

The Court—You mean through the Dyers' Pipe?

The Juror—I mean to Newark.

The Witness—The first water was delivered to Newark in April 1892.

Q. What experience, if any, have you in regard to the rental value of mill property in Paterson? A. Why, I have rented mill property of various kinds in Paterson for the last twenty odd years, sometimes in a year probably as much as two hundred thousand square feet.

Q. Have you had any experience in regard to the conversion of mills used for dyeing purposes to other uses? A. I have.

Q. What was that experience? A. The New Jersey General Securities Campany came into possession of a mill in Passaic that had been used, called the Waterhouse Mill, for mill purposes, that mill had been used for woolen manufacturing and a part of that mill property was used for dyeing. I converted the dye house property into property which was afterwards used for handkerchief manufacturing and for some other manufacturing purposes, one purpose was, as I recall, the making of corks that were put in beer bottles and soft drink bottles, etc. Then we had another property that belonged to the Dundee Water Power and Land Company that was called the Algonquin Mill, and I converted the dye house there into a property that was afterwards used for handkerchief manufacturing and is now used as the finishing room

of a concern that makes those so-called Jersey cloth that women's clothes are made of. It made a fine room and was beautifully adapted for the purpose or any other manufacturing purpose.

Q. If it became necessary for the Weidmanns and the National to discontinue their business as dyers, to what purposes do you think their mills would be adapted? A. They could use those mills for almost any manufacturing purpose, particularly the weaving of silk, or the manufacture of areoplanes, if you will. There is a large factory here in town that is devoted to that purpose. Or they could use it for, we will say, the manufacture of water wheels and machinery of that kind in a large way.

Q. How would the rental value of that property in your opinion, if used for some of the purposes you have referred to, compare with the rental value of property in use as dye houses? A. It might be very largely increased. It was with us in those two alterations of the plants in Passaic.

A Juror—Were those plants in Passaic buildings of a similar nature as to height and length as the one here of the National?

The Witness—One of those buildings that was built in the Algonquin Mill, would compare favorably with the buildings that are in the Weidmann plant and also the buildings in the Fifth street plant. This building I have particular reference to was about fifty five feet wide and a hundred and five or a hundred and ten feet long, and I converted it from a dye house into a mill that was used for light manufacturing and it was a beautiful light mill and it

rented for considerable more than it did before we converted it.

The Juror—That is a one story structure?

The Witness—Yes, sir.

The Juror—I don't refer to three or four story structure.

The Witness—No, neither do I.

The Juror—The Water house mill was four stories?

The Witness—I did not have reference to the conversion of any particular part of that. The building that I had converted was the party which had formerly been a dye house in each case.

The Court—In the figures which Mr. Cook gave you based the calculation of the Acquackanonk Company on the taking forever which you make thirteen per cent.

Mr. Humphreys—That was for nine million gallons.

The Court—Yes. You have not given us the figures when the Acquackanonk takes only for a short period, which will increase the percentage of the others and decrease that of the Acquackanonk, and those figures may be misleading.

Q. Can you tell us what per cent. that percentage of the Acquackanonk Water Company would have to be changed in order to bring it down to instead of being a diversion perpetual to a diversion to January first 1925? A. No, I cannot. I don't know what it would be. You may have computed it but I never have.

Mr. Humphreys—I think that is a mathe-

matical calculation and I think it can be be calculated.

The Court—I thought you did it.

Q. There has been some evidence offered of salvage of this property if the Weidmann property was being discontinued for dyeing purposes, that the salvage would be only worth forty per cent. of the value of the real estate and buildings which I suppose is tantamont to saying it would cost sixty per cent. of the value of the real estate and buildings to convert the buildings to other uses, what have you to say as to that?

Mr. Griggs—I think the latter part of the question is objectionable.

Mr. Humphreys—I am willing to strike it out.

Q. There has been something said on the other side as to the salvage of these Weidmann buildings amounting to forty per cent. of the value of the real estate and the buildings if the buildings were discontinued to be used as dye houses. I want to know whether you agree with that statement and if not—

Mr. Griggs—Is he qualified as being able to judge of the salvage value of plants? I don't think he ever dismanteled any plants.

The Witness—I have some.

Mr. Griggs—Unless he is qualified as an expert on the equipment of dyeing plants I don't think it is relevant.

The Court—I think you ought to inquire further as to his qualifications.

Mr. Humphreys—He says he handles the rentals of this property and has had experience converting buildings from dyeing plants to other purposes.

The Court—One as I understand it.

The Witness—Two mills.

Q. What experience, if any, have you had as to dismanteling buildings? A. When I came to Paterson, or shortly afterwards, we bought a number of mills along the raceways. I say we, I mean the Securities Company did, and those mills at that time, were some of them quite full of machinery, for example, the Essex Mill, so-called, that the Governor is familiar with, at the time we bought it, was quite full of machinery—

Mr. Griggs—What kind?

The Witness—It was cotton spinning machinery, some I don't know whether it was dyeing or finishing there or not, but in any event that machinery was pulled out, moved, I did not have charge of the pulling of it but I did have charge of putting the property into shape after it was pulled out and that is what I understand is what is asked me here, what it would cost to put the property into shape to let after the stuff was moved out of it.

Mr. Griggs—No, that is not the question.

The Court—No, the question is what the salvage would be.

Q. What the salvage would be, whether you think forty per cent. would be a fair salvage? A. The salvage would be very much greater than for-

ty per cent. in my opinion, very decidedly greater.

Q. Have you any idea whether the cost of converting the buildings to other uses would be anything like sixty per cent. of the cost of the real estate and buildings? A. Nothing like that.

The Court—When you speak of the real estate and buildings you mean the land and the buildings and fixtures?

Mr. Humphreys—I suppose so. We have not included them, but they are real estate, they are real fixtures.

A Juror—The boilers, etc.?

Mr. Griggs—Including the boilers and pumps and pipes?

The Court—Everything fixed in the buildings, attached to the land, included.

The Witness—I mean, what it would cost to put the buildings into shape to be used for some other purposes, after the machinery and stuff of that kind has been moved out, the boilers, and the engines, etc.

The Court—Are you estimating how much a man who owns property of this nature if it is changed is going to lose?

The Witness—Well, I put it both ways, one question was one way, one question was the other way.

The Court—I did not so understand it. I understood they were both the same way.

The Witness—No, I said the salvage would be greater and the cost would be less.

Q. Are the Weidmann buildings well lighted? A. They are excellently well lighted, most of them.

New Jersey State Library

Q. If the Weidmann Company are able, as they think they will be able, to put ten per cent., or their waste or the worst part of their polluting matter into the trunk sewer and if, as they claim, they will be able to put the remainder of the water, the waste water into the river, does it not necessarily follow that they could use that water, if it is unimpaired in quality, over again, in their own business? A. It would follow; if they did not pollute the water it would follow that they would not need to buy any water, they could use it over again.

Q. And if they think the water is unfitted for their own use, by putting it into the river, they are "passing the buck" to the man below, are they not? A. Exactly.

Mr. Griggs—The question is objected to as leading, argumentative, misstating the proposition of law by not reciting the whole of it.

The Court—Yes. It is very leading. I will overrule it.

Q. If they continue to put the ninety per cent. of their waste into the river which they are unable to use themselves, what would the effect be upon the lower riparian owner?

Mr. Griggs—Objected to as a question of law and argumentative.

The Court—Yes, that is a matter of argument. The question is overruled.

(Exception is entered for all Condemnors.)

A Juror—Does the East Jersey draw water at the Dundee Dam?

The Witness—No, sir.

The Juror—Who does?

The Witness—The Dundee Water Power and Land Company.

The Juror—Who owns that?

The Witness—You mean who owns the stock of the Company?

The Court—The East Jersey interest?

The Witness—The stock of the Dundee Water Power and Land Company is owned by the New Jersey General Securities Company.

The Court—Who owns the East Jersey?

The Witness—It also owns the stock of the East Jersey Water Company.

The Court—It is owned by the same parties?

The Witness—Yes, owned by the same interests practically.

The Juror—Why don't they sue the General Securities Company?

The Witness—A witness cannot answer that.

Mr. Gourley—They always get it wrong anyway.

The Juror—It looks mighty funny.

Q. If ninety per cent. of the waste waters of Weidmann is permitted to go into the river, as described, after treatment, would it be available for use by the dyers below? A. It would not, without further purification.

Q. What observation, if any, have you made, as to the quantity of and the character of the waste effluent as discharged from the dyeing houses now owned by the National Silk Dyeing

Company and the dye houses of the Weidmann Silk Dyeing Company?

Mr. Griggs—I submit to Counsel, not to the Court, we have had that specifically proved by chemists, with samples brought here, and I understand that they have chemists on their side. Why should we take a hydraulic engineer for the purpose of proving what the Jury saw, what has been proved in other cases? I assume counsel is asking the question because he asked the same question in some other case.

Mr. Humphreys—Mr. Cook is a practical man and perfectly able to talk about this pollution and I want to have it on the record. It is one of the most important features of our case.

The Court—Of course, what he saw. But does he pretend to be a chemical engineer?

Mr. Humphreys—I am going to ask him what he saw, what the colors were that he saw.

The Court—That is perfectly proper.

Mr. Griggs—I don't object to the question if counsel wants to ask it.

A. I have observed the character of the wastes from the factories along the river, from dye houses and discharges from dyers, more or less, for the last twenty years or more, and I have paid particular attention to it in view of proceedings similar to present proceedings. I have sometimes visited the Weidmann Works and the works of the so-called Fifth street plant of the National, for every day for a period during low flows of the water in

the river, just to see what they were doing to the river at the time that the flow was low. The flow from the Weidmann works is very great, highly colored, diversified coloring, sometimes there is a half acre of soapy foam on the water outside of the Weidmann works. I have observed it repeatedly in different seasons of the year, sometimes in Winter, sometimes in Summer, and I have observed the flow from the sewers into which the wastes of the Fifth street works are put, and that waste from that sewer is as any one may see any day and I have seen for twenty years, highly colored and different colors and constantly changing, and there is a large volume of deposit outside of the Fifth street sewer. It may be seen at any time by anybody. I have seen the waste from the Gehring plant as it comes out of the sewer under the West street bridge. I have seen wastes from the so-called Formans, Stumpp & Sharp plant of the Weidmann Silk Dyeing Company which is on the old Harmony and Industry property, above the Gehring property. I have seen the wastes from the Standard Silk Dyeing Company and from other factories up and down the river, every factory up and down the river and have observed it carefully with just this matter in my mind. The volume is large and the liquids are some of them very objectionable in appearance.

Q. Had you anything to do with the installation of the Dyers' Pipe yourself? A. I had not, no, but I know what it cost.

Q. Do you know what it cost? A. Yes, sir.

Q. Can you tell us? A. It cost about $140,000.

Q. What does it cost to take care of it? A. In the year 1920 it cost about a little more than seven thousand dollars for operating charges,

without including the interest or depreciation or taxes.

Q. Are any moneys paid to the Society for the Establishment of Useful Manufactures for the privilege of diverting water into the Dyers' Pipe? A. Yes, sir.

Q. How much money? A. Seven and a half dollars a million gallons.

Q. Do you know of any lands belonging to the National Silk Dyeing Company adjacent to the East Fifth street mill, which would be available for the building thereon of a plant for the treatment or purification of their waste water? A. I do not.

Q. If Weidmann were to take directly from the river ten per cent. of the quantity of water per day that they take through the Dyers' Pipe and through the deGray property and were to divert the water as well as ten per cent. of the water from the artesian wells into the trunk sewer, would that create, in your opinion, a perceptible diminution of the flow of the river below the point of diversion and would it in your opinion work appreciable injury to the lower riparian owners?

Mr. Griggs—The question is objected to because the rights of the lower riparian owners do not enter into the controversy at all.

The Court—Let me have the question again.

(The question is read.)

The Court—Does not that deal with the question of reasonable use?

Mr. Griggs—All of it, except whether it

would work injury to the lower riparian owners. I don't know how he is able to say that. If that is an element in this case. It is not a public thing. That is of a private nature.

Mr. Humphreys—If Weidmann is damaged by our diversion there are lower riparian owners who would be damaged by the Weidmann diversion.

The Court—They may or may not; it may be nominal. That depends upon the legal status of the parties, and that lower riparian owner may already have parted with his rights.

Mr. Griggs—I withdraw the objection.

The Court—Very well, I will allow the question.

A. Read it again please.

Q. If Weidmann were to take directly from the river ten per cent. of the quantity of water per day that they take through the Dyers' Pipe and through the deGray property, and were to divert that water, as well as ten per cent. of the water from the artesian wells into the trunk sewer, would that create, in your opinion, a perceptible diminution of the flow of the river below the point of diversion and would it in your opinion work appreciable injury to the lower riparian owners? A. It would.

Q. State your reasons for saying that? What are your reasons for saying that? A. Why, I have heard it testified to here by Dr. Hunziker and others that the total use of the Weidmann mill was something like eight millions gallons of water a day of different kinds, and ten per cent. of that

eight million gallons is 0.8 million gallons, and in times of low flow the 0.8 million gallons might be, oh, three or four per cent. of the water that is flowing down the street past the Weidmanns, which is water that comes down to the property of the Dundee Water Power and Land Company below.

Q. If the water which Weidmann took from the Passaic Water Company and from the deGray property and from the wells and proposed to put into the trunk sewer, if that were permitted to go into the river would not the lower riparian owner be able to utilize that quantity of water to the same extent and for similar purposes as the Weidmanns could if they wanted to? A. Yes, sir.

Q. Can you give us any idea of the size, as to the quantity of water, represented by four million gallons of water? A. I don't know if I can give a very accurate, but it might be, oh, perhaps two-thirds as big as the Court House, something like that.

Mr. Griggs—If put in a tank?

The Witness—If put in a tank, yes, sir.

Q. The water that Weidmann takes from the artesian wells, if those wells were ceased to be operated, where would that water go?

Mr. Griggs—Objected to.

The Court—How can that possibly throw any light on this diversion, where the subterranean waters go?

Mr. Humphreys—We claim the water they take from the artesian wells they draw from the river.

Mr. Griggs—This witness has not shown that he knows anything about wells, how deep they are, what their flow is or anything about it.

The Court—You claim that the water taken from the artesian wells is being diverted from the river. You will have to show that first.

Q. Are you familiar with the wells at the Weidmanns? A. I am.

Q. Do you know about their depth? A. I have heard it testified to here. I never measured it.

Q. How deep are they? A. Well, I have heard it testified here that some of them were as much as two hundred feet deep, some of them fifty feet deep, various depths. I don't think that any well or all wells were ever testified to in respect to depth, or any particular number of wells.

Q. Do you know anything of the geological formation of those wells? A. I know something about the behavior of those particular wells, which is, well, I will continue about it, if you please, some few years ago there was a complaint that the operation of those wells—

Mr. Griggs—We object to this.

The Witness—But I went there to look at it in the course of my business.

The Court—This is too much detail and recitation.

Mr. Griggs—Do we have to let the witness go on and tell everything that he ever heard?

The Witness—No, what I saw.

Mr. Griggs—Did you hear the complaint?

The Witness—No, but I went with an expert to look at the ground.

The Court—Tell us what you found, not what was said.

The Witness—We found, according to our judgment, that the water from these wells would have flowed into the Passaic River if it had not been taken from the wells.

The Court—The water from the wells would have flowed into the Passaic River?

The Witness—Yes, sir, the water that was being taken from those wells would have flowed into the Passaic River and at no very remote place from the place where the water was taken.

The Juror—In 1908 when the river bed was dry, did the wells take water from the river?

The Witness—In 1908?

The Court—Whenever the river was dry, was there any indication that it was supplying the artesian wells?

The Witness—The river never is dry, it never has been dry.

The Court—When the river is low why do not the owners of wells supply the deficiency from them?

The Witness—They do. You probably all know that there is water in the land in the vicinity of the river, in fact, almost everywhere, stands up within some reasonable distance of the surface of the ground, after a rain; now, as the rain stops, the water that is on the surafce of the

ground ceases to flow into the river, the flow of the river is maintained by the water that is in the soil, and as a dry period continues the water level in the soil is reduced. Now, as the people pump from that water level they take the water out of the upper part of that gravelly soil that would continue to contribute to the flow of the river if they did not take it out.

The Juror—How is it you find springs on the top of a mountain?

The Witness—You do not usually find springs on top of a mountain.

The Juror—I know of several.

The Witness—It is very common to find springs at the base of a mountain, and if those wells were artesian wells, properly so called, which they are not, they would be an indication of a different kind of water. Artesian wells are properly flowing wells, which generally indicate that the water which comes to those wells comes from some point very much higher than the surface of the ground where they flow, but that is not the case with these wells.

The Juror—Down in Rutherford, do they?

The Witness—There are certain springs in Rutherford that do flow, and they might come from some high land within the Passaic water shed. It does not necessarily follow that because a well is an artesian well that the water comes from some point outside of the water shed, although it may be, but it does not necessarily follow; it reduces through the soil and that is a very

common knowledge that anyone notices, in the country, that as the dry season proceeds the water level in the ground slowly, slowly recedes and that water that is receding is tributary to some stream and is holding up the low flow of the stream to a greater or less degree, and that is a very common thing that is observed everywhere in the country.

The Juror—The same with oil?

The Witness—The same thing holds good.

Q. If in times of high water the whole flow of the Rockaway river were impounded by Jersey City would the rest of the drainage area furnish or would it not furnish sufficient water for Weidmann's purposes? A. It would furnish sufficient water.

Q. If the whole Pequannock river were to be impounded would the result be the same? A. The same in that case.

Q. Have you given us the drainage area of the Pequannock? A. I have, repeatedly.

Q. What is the drainage area of the Passaic River at the Great Falls? A. 797 square miles.

Q. Would it be possible, in your opinion for Weidmanns to contruct a low dam in the Passaic river at the lower part of their property which would hold the water flowing in the river slightly higher, say one foot, above the present low height? Would they be able to get the water needed by pumping from the river with such a construction? A. They would.

Q. Would there be any difficulty in building such a dam? A. There would not. There is a sort of a dam there now. There is a pool back of their mill

now where there is ample depth of water at the present time or in dry seasons.

Q. Have you any idea as to the cost of such a dam? A. No, sir.

Q. Would there be water overflowing such a dam at all times even if they took four million gallons of water out of the river? A. There would.

Q. There was some evidence or some question as to the height of the tank to which the water had to be pumped at the Weidmanns from the Passaic River, can you give us your views as to what the height of that tank was? A. There was some discussion about it, and in the stipulation before the Commissioners it was made reasonably clear the height of the tank that I talked about any the height of the tank into which they pumped the water in 1912 so far as we understood the top of that tank was seventy-five feet above the surface of the ground.

Q. And then the ground? A. And the surface of the ground was about, oh, approximately about ten feet above the level of the water in the river. Afterwards Dr. Hunziker testified the tank was fifty-five feet above the surface of the ground and that the surface of the ground was about ten feet above the river, so that would make the height of the tank that he talked about, about sixty-five feet above the level of the river. Now, then the tanks, as I understood from Dr. Hunziker's testimony and as it is contained in the stipulation, are interconnected and the water is taken from the Dyers' Pipe, which has a head of about seventy-five feet there at that point; the water was taken from the Dyers' Pipe into their filters, therefore they get the benefit of the high head which is seventy-five feet above the surface of the ground at that point.

A Juror—Is the flow of those wells at Weidmanns and deGrays as much as ever they were?

The Witness—Well, I don't know. I suppose so, but I don't know.

The Court—Did you notice any difference between the first time you saw them and the last time?

The Witness—You men in respect to the flow from them?

The Court—Yes.

The Witness—I never saw the flow from them, except in the factory, the flow is taken across the river into the factory.

Q. Have you any knowledge as to whether the fact that Weidmann takes its water by gravity through the Dyers' Pipe has any effect upon the amount of insurance it has to pay? A. I have heard it testified to here.

Mr. Griggs—Then don't state it.

Q. What have you to say, if anything as to the probability of the State of New Jersey or the federal government at some time in the future building a large reservoir for the purpose of rendering the Passaic River navigable?

Mr. Griggs—Objected to.

The Court—How can he know what they will probably do? Can anybody divine what the government will do? What knowledge has he?

Q. What knowledge have you on the subject?

Mr. Griggs—Objected to.

Mr. Humphreys—He may have some peculiar knowledge on the subject. I want to find out if he does know.

The Court—How can he tell what the governor is going to do, any more than the rest of us?

By Mr. McCran.

Q. In the matter of the development of the Passaic River for the purpose of navigation——

Mr. Griggs—I only want to know whether one counsel is through and the other beginning.

Mr. McCran—I will withdraw it and ask it later so that there will be no question about it. I withdraw the question and I will begin later.

By Mr. Humphreys.

Q. Can you give us the flow of the Dundee Canal, the low flow? A. The water that is taken into the Dundee Canal in normal conditions, I mean, runs up as high as three or four hundred million gallons daily, and in times of low flow the requirements are approximately twenty million gallons a day for manufacturing purposes.

The Court—Do they get it?

The Witness—Yes, sir, they do, and more.

Q. Do you know whether the Botany Worsted Mill utilizes water that comes down to them below Weidmanns? A. They do, they filter it and use it.

Q. Do they use large quantities of it? A. They use about as much as Weidmann does of the river water itself.

Q. What is their business? A. They are manufacturers of a very high grade of woolen goods.

Q. Have you seen samples of the water that they have filtered? A. I have.

Mr. Griggs—Objected to as immaterial and irrelevant for that is five miles away.

(Question withdrawn.)

By Mr. McCran.

Q. Has the matter of making the Passaic River navigable to the City of Paterson been under consideration by the State authorities? A. It has been, yes, sir, the Board of——

Mr. Griggs—You have answered the question.

Q. What Board has this improvement in charge for the State of New Jersey? A. The Board of Commerce and Navigation.

Q. Have they examined into this subject?

Mr. Griggs—I object to all this evidence as immaterial and irrelevant. There is no such official body as the Board of Commerce and Navigation.

The Witness—I think here is.

Mr. Griggs—Even if here was, what they might be examined is one thing and what they have done is another; what they have done I do not object to if it is something visible and material.

Mr. Gourley—Mr. Cook and I were before them.

The Court—I think it is admissible.

Q. Has the State Board of Conservation and Development been working with the Dundee Water Power and Land Company in behalf of the State of New Jersey, looking to the making of the Passaic River navigable? A. Yes, sir, you mean he Board of Commerce and Navigation.

Q. The Board of Commerce and Navigation? A. Yes, sir, it has.

Q. And has the United States government likewise had anything to do with that subject recently? A. Well, within a few years, within the last three or four years, as I remember it.

Q. Has there been any recommendation made by either of those bodies to the State or federal authorities with reference to the construction of a reservoir in the Passaic watershed for the purpose of impounding the waters of that watershed in order to permit of the normal flo wof the Passaic River above the natural low flow being so increased as to enable the river to be made navigable?

Mr. Griggs—I object to the question; if such recommendations have been made they must be produced and not stated by the witness who can only say he had read them or heard of them.

The Court—I think that is so. We ought to have the thing itself.

Mr. McCran—Does the Governor understand the question? If they made it?

Mr. Griggs—I understand the question, yes, and that is the reason I objected to it.

Whatever the recommendation is if it is material it may go in.

Q. Had the State Board through negotiations with you proposed on their part a tentative agreement and accepted from you a proposed tentative agreement on behalf of the Dundee Water Power and Land Company, on which reports have been sent to the Legislature at the last session for consideration leading to a contract to be entered into between the State of New Jersey and the Dundee Water Power and Land Company with reference to enabling or helping the river to be made navigable at the Dnudee Dam?

Mr. Griggs—Objected to for the same reasons.

The Court—Yes. I think we ought to have the documents.

Mr. McCran—If the Governor insists upon my producing the State laws, I will do that.

The Court—Anybody can read it and the witness's recollection may be deficient.

Q. Are you an officer of the Dundee Water Power and Land Company? A. I am.

Q. Has such an agreement been offered to your Company by a State body?

Mr. Griggs—Objected to. We must have the best evidence of it, which is the document.

Q. Has it ever been made?

Mr. Griggs—Objected to.

Q. Has a proposed agreement been offered?

Mr. Griggs—Objected to.

The Court—Let us have what they did.

Mr. McCran—If the Governor insists upon my producing the original documents we will do so, but it is the first time in this case that that which is known to the knowledge of the witness has been insisted on.

The Court—Mr. Cook may recollect it or he may not recollect it correctly so that what it amounts to depends upon what the document itself says.

Mr. Gourley—The recommendations are in the session laws on the subject.

Mr. McCran—I will produce the session laws.

Mr. Griggs—You don't need to prove them.

Mr. Gourley—It is all within a very narrow compass.

Q. Have you been in negotiation on the behalf of your Company with a State Board in reference to the subject of the Dundee Dam as relates to the making of the Passaic River navigable? A. I have.

Q. With whom of that Board? A. With the director of the Board and members of the Board and with Mr. Cresson particularly, who is chief engineer of the Board.

The Court—Was it your idea to make it navigable or was it simply broached by the other side?

The Witness—We were approached by the State authorities.

The Court—It is not your purpose to make it navigable?

The Witness—We were negotiating for an agreement whereby——

The Court—What I am trying to find out is, are you acquiescing in the proposition or——

The Witness—If you will put it another way I can say——

Mr. McCran—May I explain? According to the charter of the Dundee Water Power and Land Company——

The Court—We had better have the documents.

Mr. McCran—This is in the laws.

The Witness—We never believed in it if that is what you mean.

The Court—You don't believe it is to your interest or for the interest of the company?

The Witness--I do not believe it is for the interest of anybody unless they create a a storage reservoir up above to take care of the low flow and I do not believe it practicable unless they do.

Mr. McCran—Unless they construct a reservoir to impound the stream waters?

The Witness—That is the idea.

Mr. McCran—I will produce the papers.

Cross Examination by Mr. Griggs.

Q. I understand you to say that you do not think the scheme of making the river navigable is possible without the construction of a very large reservoir somewhere up in the upper regions above Paterson? A. That is right.

Q. So you think that the scheme of making the river navigable at so great an expense as that is one

in the public interest? A. I do not, unless they build the reservoir.

Q. Well, if they do and go to that cost, I don't believe in it anyway, do you? A. No.

A Juror—Without the reservoir how are you going to get water for the other cities or for navigation?

The Witness—You could not make it large enough with reasonable cost to make it navigable.

Q. Just at that point, are you familiar with the charter of the Dundee Water Power and Land Company? A. Reasonably so.

Q. That charter granted to the corporation the right to build a canal that would make the Passaic River navigable, a dam and a canal, did it not? A. To a certain degree, yes, sir.

Q. And as a mere incident of that, the sale of water flowing through the canal now don't insure the navigation, isn't that right? A. Well, I don't think you put it just as it is.

Q. You give it to me just as you understand it. I understand that in the original charter there was a provision which permitted the company to make navigation from a point in the Passaic River above the dam to a certain Weasel Brook, something of that kind, up there, and into the pool above the Dundee dam, that is what I want to get at, the primary authority was to make navigation? A. At that time it was a navigation scheme, yes, sir.

Q. And the secondary and subsidiary use was the land and lower? A. That is the way it would appear.

Q. And the Company never made it navigable,

but built the canal so as to furnish power and have gone on doing that business? A. Well, not exactly like that.

Q. Well, let us have your way? A. When the Company started they built the canal and built the locks at the upper end of the canal, which are still in existence and they built locks at the lower end of the canal where they could readily enter this Weasel Brook, and the canal was continued from the point where these lower locks were put to the Weasel Brook, but the lower end locks, the locks at that lower end were made of timber, six inch timber, they got those locks completed, the old company failed, and by the time they got the new company on its feet and going, the navigation which was proposed and required by the charter had become so much a back number, like the Morris canal, that they never renewed the old timber locks at the lower end, they just were abandoned and the whole navigation scheme through that canal was abandoned at that time. Since that time the water through that canal has been used for water power and for manufacturing purposes.

Q. Exclusively? A. Yes, I believe exclusively. Not for navigation anyway. I will put it that way.

Q. You are an officer in the New Jersey General Securities Company? A. I am.

Q. What officer? A. Treasurer.

Q. Who is President?

Mr. Gourley—Objected to as immaterial.

Mr. Griggs—I will withdraw it, if they don't want the Jury and the public to know.

The Court—I think the witness has already stated?

Mr. Gourley—Who was President of the Company?

The Court—Yes?

The Witness—No, I don't think I did state who was President of the Company.

Mr. Griggs—I will get it in another way.

Q. Are you a stockholder of the New Jersey General Securities Company? A. I am. Not a very extensive stockholder.

Q. Who built the plant on the Rockaway River at Boonton for Jersey City ? A. The Jersey City Water Supply Company.

Q. Who owned the Jersey City Water Supply Company? A. There were a number of stockholders, I don't recall who they were. In the original there was the principal interest in a man whose name was Flynn.

Q. But finally——

Mr. Gourley—Is this important in the case?

Q. Somebody sold those works to Jersey City, who was it? A. The Jersey City Water Supply Company sold the works to Jersey City.

Q. Was the Jersey City Water Company at that time owned by the General Securities Company? A. Partly, but not wholly.

Q. How much? A. That I really could not say, but I know there were other substantial stockholders than the New Jersey General Securities Company.

Q. Is it not the fact that whatever is to be paid for the acquisition of the water rights of the parties here has to be paid by the Jersey City Water Supply Company?

Mr.Gourley—Objected to.

The Court—It shows an interest. The question my be permitted.

(An exception is entered for all the Condemnors.)

Q. Is not that the fact? A. I think there is a limit to the amount, although I am not sure what that is, but to a considerable degree that is true.

Q. The Jersey City Water Supply Company sold the plant to Jersey City on the assumption or on the warranty that they had full title to divert the water, did it not? A. I believe it did.

Q. Who is defending this suit for Jersey City? I don't mean the individuals. Who is paying the expenses of it? A. Who is paying the bills?

Q. Yes? A. The Jersey City Water Supply Company.

A Juror—I thought the suit was for Jersey City?

The Witness—It is in a way, but the Governor will explain that to you better than I can.

Q. Jersey City is the party who is acquiring this interest, but the Company mentioned which partly belongs to the Securities Company, in which you are a stockholder, has got to pay the verdict if there is one recovered? A. As I say, there may be a limitation to it, but to all intents and purposes that is the fact.

Q. They have to pay the verdict? A. Yes, sir.

Q. Because they warranted, when they sold to Jersey City that they had full title and the right to divert?

Mr. Gourley—We are forced to go to Trenton to bring contracts here and yet counsel is asking here about some agreement that he can produce if he wants to.

Mr. Griggs—This is cross examination.

Mr. Gourley—Whether it is crsos examination or not it should conform to the usual rules. How can he testify to the contents of the paper when he is not an officer of the company?

The Court—Is he not an officer of the Jersey City Water Supply Company?

The Witness—I never was an officer of the Jersey City Water Supply Company.

The Juror—Do you think in the end Jersey City will pay for this the same as Kearney?

The Witness—I do not.

The Juror—The Supply Company?

The Witness—Well, in a way they will pay the same as Kearney, but you had better take some other, we only know that here——

The Court—All right, Governor Griggs.

Q. The owners of the Little Falls pumping and filtration plant and pumping station, the various parties you have mentioned on your direct examination are furnishing and have been furnishing water to these municipalities that were mentioned as having paid something for temporary rights, are they not? A. Yes, sir.

Q. It has been the business of the East Jersey Water Company to supply water from the Little Falls plant to the various municipalities South and East? A. To a considerable number of municipalities, yes, sir.

Q. They supplied the Montclair Water Company? A. Supplied the Monclair, Oh, no. How long do you want to begin back?

Q. Now? A. Beginning now at the present time?

Q. At the present time? And for the immediate past? A. Yes.

Q. They supply Montclair water, it sells water to the inhabitants of Montclair? A. No, sir, it does not.

Q. Don't they sell water? A. To the Montclair Water Company.

Q. But the station supplies it? A. Oh, well, that is by the station.

Q. The Montclair Water Company is supplied from that station? A. Yes, sir.

Q. And they sell water to Montclair? A. Yes, sir.

Q. The Commonwealth Water Company is supplied from that station and they sell water to one of the Oranges? A. Yes, sir, but it is not solely supplied from that station.

Q. The City of Bayonne gets its water from that station under a contract with one or more of the owners? A. Yes, sir.

Q. And so as to Kearney? A. Yes, sir.

Q. And East Newark? A. Although Kearney has no contract at the present time.

Q. Not at the present time, but it did have? A. Yes, sir.

Q. And East Newark? A. Has no contract with anybody.

Q. And Nutley? A. Nutley has an arrangement with the East Jersey Water Company, I don't know exactly what it is.

Q. And Glen Ridge? A. The Glen Ridge arrangement is with the Montclair Water Company.

Q. You said that the Passaic Water Company paid the Society for Establishing Useful Manufacturers for the right to divert the water which it sells to Paterson? A. Yes, sir.

Q. Who owns the Society for Establishing Useful Manufactures?

Mr. Gourley—Do you mean at the present time?

Mr. Griggs—At present, who owns the Passaic Water Company and the S. U. M.

The Witness—I don't think the Passaic Water Company pays anything to the S. U. M. for the ordinary supply of Paterson.

Q. It pays for what you take out by the Dyers' Pipe? A. Yes, sir.

Q. Who owns the S. U. M.?

Mr. Gourley—Objected to on the same grounds.

(Question allowed; and Exception noted for all Condemnors.)

A. It is practically owned by the New Jersey General Securities Company.

Q. And the New Jersey General Securities Company owns the Passaic Water Company?

Mr. Gourley—Objected to on the same grounds.

(Question allowed; exception noted for all the Condemnors.)

A. Yes, sir.

Q. So that this charge of $7.50 a million gallons

is a mere charge between subsidiary companies, and the whole benefit of it goes into the Securities Company, isn't that right? A. That might be.

Q. With reference to the quantity of water that would go from these dyers' plants into the trunk sewer did you hear the testimony that it would be about ten per cent. of their total use? A. I heard somebody testify that but I did not believe it.

Mr. Gourley—You did not what?

The Witness—I did not believe it.

Mr. Griggs—You need not volunteer that because that is injecting your opinion about somebody else's testimony. I did not ask you anything about that. I only want to know if you heard that.

The Witness—I heard it.

Q. Would ten per cent. of the amount of water extracted from the effluent and put into the trunk sewer equal the amount of new water that is put into the river from the artesian wells? A. I should think it would not.

Q. In other words, from the artesian wells they are putting more water into the river than they would put into the trunk sewer? A. As you have stated it, yes.

Q. Referring to this flow of water that if not taken into the wells would get into the river, do you know of any particular place above the Weidmann works or opposite the Weidmann works where any such water visibly comes into the river? A. Sometimes it does and sometimes it don't.

Q. In what shape does it come in? A. It comes in frequently right along the bank.

Q. Above? A. About the Weidmanns and opposite the Weidmanns you can see the water oozing

from the bank frequently into the river.

Q. Can you tell whether the level at which you saw that water come in is above or below the level of the water in those wells? A. No, sir.

Q. Referring now to the matter of salvage and the corelative matter of loss from abandoning this property for the purpose of dyeing, if the value of the buildings and the equipment of the Weidmann Company is four million dollars then what would you say in case they had to abandon that the percentage of loss and damage would be by reason of the consequence of that abandonment? A. I think that is a little too involved for me, Governor. If you would ask me the thing in perhaps a little different way I could understand it better, if you will ask me directly; if you are asking me what it would cost to make these buildings usable for some similar or better purpose then I may have some idea about it.

Q. You were asked on your direct examination about the salvage and the forty per cent. as being the remnant of the salvage,was referred to and you testified about that,now, I am asking for the value, suppose the value of the buildings and machinery which are a part of the buildings to be four million dollars and I am asking you whether you can give any estimate as to what the percentage of that would be in the loss and damage from the consequences of the removal or abandonment?

The Juror—Does that take in the profits?
Mr. Griggs—Oh, no, not at all.

A. I should judge from the experience that I have had that the loss to the property due to the removing of the present business from there and taking it away somewhere else and leaving the property

just as it is, is that what you mean, just as it would be with the stuff removed?

Q. Well, with the consequent damage? A. Vacant buildings?

Q. The damage, the abandonment of the boilers, or the removal of the boilers, everything, take them all, considering also that a large amount of piping and a large part of the establishment there which is valuable and expensive for dyeing purposes is invaluable for any other purpose? A. Well, I could not estimate that. I don't think that would be so.

Q. You would not want to give any estimate? A. No. But I would be willing to say this, I think that the removal value would be at least seventy-five per cent. or more; I would be willing to say that.

Q. We have here these buildings which have been proven, we have fourteen acres of land, if the value of that real estate, land, buildings and equipment, is four million dollars, what percentage do you think that you could rent it for as it is now? A. Can you tell me what the square feet of floor space is?

Q. No, I suppose when you spoke of it you knew? A. Well, I don't know as much about it as you do. That is clear.

Q. Well, referring now to the National, assuming that the value of their property is a million and a half, in order to get ten per cent. on that you would have to rent it for $150,000 that is, by your figures, is it not? A. Yes, sir, that goes easy.

Q. Would a gross rental of ten per cent. be sufficient to make it pay? A. Why, in a large property like that it would probably be sufficient.

Q. Counting the cost? A. Yes, I think it might, or it might better be a little more. But you cannot always get it you know.

Q. Is it your idea that you could rent it for $150,000? A. If there is sufficient floor space there you might even rent it for more.

Q. You think that you could find customers that would take it, do you? A. Well, I have no floor space in Paterson that is rentable, that can be rented, now, and only a little bit in Passaic.

Q. This would be a pretty large addition to the rentable floor space? A. It would, yes, sir, and it might be all the better for that.

Q. What did you mean when you said it did not make any difference to Kearney what it paid for the water? A. Because they have not got to pay the money.

Q. Who has? A. Directly, I suppose, the New Jersey Suburban Water Company and then eventually the East Jersey Water Company.

Q. The drainage area covered by the Jersey City plant is very nearly double the drainage area covered by the Newark plant? A. Yes, approximately, pretty close to it.

Q. And I notice here in this table of percentages that you gave that the percentage of Newark is 10.8 and the percentage of Jersey City is 20.7? A. Well, that is about right.

Q. That is about right? A. Yes, sir.

Q. Is it your idea that that is about the relative percentage that is to be considered by those who contribute? A. I think if it was between those two persons that that would be about the percentage, that they ought to contribute.

Mr. Gourley—Exclusive of the Canal?

Mr. Griggs—Between those two persons.

Mr. Gourley—Exclusive of the Canal?

Mr. Griggs—Yes, exclusive of the canal or anybody else.

The Witness—In any proposition, any proposition of the division proportioned on those drainage areas.

Q. 1920 furnished high flow along the river for more days, a longer length of time, than any other year on the record, did it not? A. That I don't know. I can look at it and tell you, but I have not thought of it in that way.

Q. As a matter of fact was not 1920 a year of very high rainfall? A. It was.

Q. And most extraordinary and unusually high? A. It was.

Q. The flow at the Falls as you have measured it, is that at a point above or below the opening of the S. U. M. raceway? A. It is practically at that point. It is the quantity of water that goes opening plus the quantity that may go over the dam, plus the quantity that went through the power plant, plus the quantity that went through the Dyers' Pipe.

Q. It does not mean the water you measured goes over the Falls, it may go through the raceway? A. Oh, yes, yes, that is right.

Q. So that it includes in this measurement what you send down the raceway? A. The measurement includes the water that goes, so to speak, past the Great Falls at Paterson and would go down the river past Weidmanns.

Q. Going through the raceway is there any loss in the quantity of water? A. Not to speak of.

Q. There is some, isn't there? A. All that I can conceive of is evaporation.

Q. How about the sewage? A. How do you mean?

Q. Isn't water taken and used for closets and washing and other things in the factories? A. Yes, but it goes back either into the raceway or the sewer, the outlet of the sewer is at the West street Bridge or above the West street Bridge.

Q. Last Monday the flow of the River at the Falls was 1,146 million gallons? A. Well, I think it was 1,722 cubic fet per second.

Q. 1,146 million gallons a day? A. I don't know whether that is right.

Q. That is the figure you gave us. Now, I would like you to look at your table for the year 1918 and take the 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, weeks and give us the flow at the Falls in million gallons during each of those weeks? A. The 40th week, 52,000,000 gallons, 41st week, 38,000,000 gallons, 42nd week, 32,000,000 gallons, 43rd week, 30,-000,000 gallons, 44th week, 38,000,00, 45th week, 38,000,000 gallons, 46th week, 62,000,000 gallons.

Q. That is a period of seven consecutive weeks and the highest weekly flow is the last week, the forty-sixth? A. Yes, sir.

Q. So that during those seven weeks the highest flow was the last week when it was 62,000,000 a day? A. Yes, sir.

Q. Now, refer to 1917, the 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, weeks, and if you can, give me the average daily flow for those weeks? A. Fifty million gallons.

Q. Fifty million gallons a day for eleven consecutive weeks? A. Yes, sir, that was the daily average for the twelve weeks.

Q. Take the 38th and 39th weeks of that year, what was the average daily flow for those two weeks? A. About twenty-four million gallons.

Q. For two weeks? A. Yes, sir.

Q. Referring to the quantity of water taken through the Dyers' Pipe in 1919 was there not a strike in the silk business which caused the suspension of these works for a long period in that year? A. There was some sort of a strike, but I don't remember particularly what effect it had upon the quantity of water that was taken. I know that the quantity of water taken in the last two or three years has been less than it was previously.

Q. I think you testified before the commissioners that there had been a strike which accounted for the diminution in the quantity consumed? You don't remember? A. Well, I said that there was a strike and doubtless it may have contributed to the diminution of consumption. There was not any strike in the following year, however, as far as I know.

Q. 1920? A. Yes.

Q. I don't think there was, but there was poor business. I want to know how you compare the compensation that should be paid for the use of this water by these parties who took it for periods ranging from two years to ten years, how that can be utilized in estimating the value of it when it is to be taken as by Newark and Jersey City for all time, presumably? A. That is very simple. By figuring out in each case what the probable amount was yearly and capitalizing that.

Q. Now, you understand, don't you, that when the period of these municipalities that have paid up for these short periods, when their rights have expired, then there is no longer any right on their part to divert and the right is gone as far as they are concerned? A. That is as I understand it.

Q. And if Jersey City and Newark, having a perpetual right, then take what those municipali-

ties would have taken, or what they are taking, they ought to pay for all of it in that period, ought they not? A. They ought to pay for just what they ought to pay, as far as that goes. It has nothing to do with these other municipalities that I can see.

The Court—What the Governor means is, when those rights cease, will Jersey City and Newark get it?

The Witness—No, not at all.

The Court—It is possible for them to get it if they condemn?

The Witness—No, sir, it would not be because the water which these people get is——

Q. Is way below? A. What is that?

Q. Comes out of the river, is taken out of the river below the points where these total diversions were? I mean, below the point where Newark and Jersey City divert? A. Yes, sir.

Q. When was the Little Falls plant built? A. You mean, when was water taken first from that plant?

Q. Well, have it any way you please? A. They started to build it along about 1897 and took water from there first the latter part of the Fall, something like that, of 1899.

Q. What did they do with the water? A. They supplied water to Paterson and Passaic, and the East Jersey Water Company for the uses that have been mentioned here, and the Montclair Water Company for the use of Montclair, and at that time they took out water, or shortly after began to take out water to supply a part of the water that was used in the City of Jersey City.

Q. Didn't they send it to Newark? A. No, they

did not, as I recall, some of that water went through the Newark Pipe line down to Belleville, but none of it went to Newark. There was plenty of water for Newark in the works which Newark then owned.

Q. At what point on the river did the Passaic Water Company take water prior to going to the Little Falls plant? A. Well, just prior, and for some years prior to that time the Company took the water at the Great Falls in Paterson.

Q. Why did they move their works to Little Falls? A. Because, some two or three years previously we had had an epidemic of typhoid fever in Paterson, I don't think a very serious epidemic, but a considerable number of cases of typhoid fever, and through, largely, the influence of Dr. Leal, who was then our sanitary man, we moved the works to Little Falls.

Q. In other words, you thought the water at the Falls was no longer sanitary for drinking purposes? A. Well, it was not unsafe, in spite of possible disease germs in it, but, so far as the matter of the character of the water went in other respects, it was not particularly objectionable,because it had been drank by the people of Paterson and was drank up to the time the Little Falls plant was opened.

Q. But it had been getting worse all the time, wasn't it, by natural, inevitable consequence? A. Only slightly, probably, and that was perhaps matter of, oh, not dangerous, at least, but a matter of the appearance of the water or something of that kind. People began to be a great deal more particular about water, and they have so continued to be. People would not drink many of the water supplies that were supplied we will say, twenty-five years ago, they would not have it now.

Q. What does the plant at Little Falls consist

of, I mean, generally? A. Well, primarily, it consists of a dam and a canal with a gate house that brings the water down to the pumping station for power purposes at the pumping station and brings the water down to the sedimentation basin from which it goes to the filter plant and is there filtered and returns to he pumping station and is there pumped into pipes which carry it down through the right of way of the Company and finally to these various municipalities through various branch pipes.

Q. The first process is the pumping? A. Well, no, that is really the last.

Q. It is run by gravity into the basins? A. It comes by gravity into the first sedimentation basin, then flows by gravity over into the filter plant, then drops through the filter beds by gravity and returns to the pump and is just about—

Q. Isn't there some treatment given to it after it goes through the filter plant? A. Yes, after it goes through the filter plant it gets a very slight amount of chlorine applied, about one quarter part per million parts, that is, in a million gallons of water there would be about a quarter gallon chlorine.

Q. Chlorine is a poison, is it not? A. Yes, sir, in any reasonable quantities, not in such quantities as applied to the water supply, however.

Q. They used chlorine gas against the allied troops, the Germans did, didn't they? A. Well, not so far as I know. That is purely hearsay as far as that goes.

Q. I think you said on your direct examination that there would be some pollution of the river between the bottom of the Falls and these dye works even if the sewers were taken out? A. Why, there might be, I don't know what form it would take.

Q. There might be leaves off the trees, might there not? A. Well, I would hardly call that pollution.

Q. Well, including that, using the term pollution for all substances that may get into the river, it would include leaves off of the trees? A. Well, I would think that was a very broad generalization, to include leaves.

Q. Leaves off the trees would get in, wouldn't they? A. They would, yes, sir.

Q. And in times of rain the water would wash in there? A. It would.

Q. You said, I think, that you were an officer of all these subsidiary companies? A. I think so, yes, sir.

Q. And you are treasurer of the New Jersey General Securities Company? A. Yes, sir.

Q. Did you have anything to do with the letter transmitted by the General Securities Company to the Mayors of Paterson, Passaic and Clifton dated May fifth, 1921? A. I saw it, yes.

Mr. Gourley—What is the purpose of this? I object to it.

The Court—I think I had better allow the question.

(An exception is entered for all the Condemnors.)

Q. Did you have anything to do with furnishing the data contained in that letter? A. I made some computations in respect to it, yes, sir.

Q. And it was prepared and signed with your assistance and approval?

Mr. Gourley—To that we make the same objection.

(Objection overruled; Exception entered for all Condemnors.)

A. It was not signed by me, it was signed by Mr. Gardner, who prepared the letter. I furnished him with certain information which no doubt guided him in writing that letter.

Q. I show you a paper and ask you whether that is a correct copy of the letter I refer to? A. This one here?

Q. Yes. A. You mean the statement true, that is in there?

Q. No, I do not, I did not ask that? A. That is a copy of the letter which I saw.

Q. I ask you whether that is a copy of the letter I refer to, and which was shown you, submitted to you for approval or criticism or correction? A. I saw this same letter which is here produced dated May fifth, 1921.

Q. Did you furnish any of the figures contained in it? A. I did not.

Q. You did not, as treasurer? A. What is that?

Q. You don't know then whether the figures in that letter are correct or not? A. No, but I believe they are, although I did not make them up. The cashier made them up, and I did not make them up, and presumably Mr. Gardner drew his own deductions from the figures which were furnished to him.

Q. I ask you as treasurer of the company whether the statement in that letter as to profits is true?

Mr. Gourley—That is objected to.

The Court—I will allow the question.

(An exception is entered for all the condemnors.)

Mr. Gourley—This is injecting into this

case the contents of a letter. To me it is pernicious and introducing into the question involved in this case a controversy that should not be embraced in any way in the injury we are now considering. It is pernicious.

(Objection overruled; exception entered for all the Condemnors.)

Mr. Griggs—If Counsel objects to it I won't press it.

Redirect Examination by Mr. Humphreys.

Q. The fifty million gallons which was stated as the average low flow of the river in certain weeks that Governor Griggs mentioned in 1917 at the Great Falls, that was after all the diversions at Little Falls and by Jersey City and Newark had been taken out of the river? A. That is right, yes, sir.

Q. And to that amount of low flow there would have to be added what went into the river below the Great Falls above Weidmanns? A. Yes, sir.

Q. Some fifteen million gallons? A. Yes, sir.

By Mr. McCran.

Q. You spoke of a guarantee to Jersey City by the Jersey City Water Supply Company as to the right of Jersey City to divert waters of the Rockaway, I want to ask you if any such guarantee that you know of, exists in favor of the City of Newark? A. No, sir.

Q. Has the City of Newark any connection directly or indirectly with the General Securities Company, or the East Jersey Water Company, any connection with or concerning the diversion of waters by Newark in the Pequannock River? A. At the present time, no.

Q. You say at the present time; when did any connection between those companies and the City of Newark cease? A. In September 1900, in connection with the diversion of waters in the river.

Q. You also spoke of the proportionate diversion by Newark and Jersey City, as between the City of Newark and the City of Jersey City, what is the proportion between the two cities for all diversions at low flow? A. Why, one is approximately twice what the other is.

Q. Which is twice that of the other? A. Jersey City is the big one and Newark is the little one.

By Mr. Gourley.

Q. You spoke of chlorine gas, is chlorine employed to purify the water, used by the City of New York in the Croton acqueduct? A. It is.

Mr. Griggs—Do you know?
The Witness—I do know.

Q. Is that not a modern method of purifying water? A. It is a comparatively modern method that has been in use I suppose ten or a dozen years, may be longer.

Q. Is it in use in the purification of waters supplied to large cities? A. Quite universally in America.

Q. Was it originally a method devised by your company? A. Well, it was put into operation on a large scale for drinking water purposes by our Company, they were the first people that did it.

Q. And that has been followed by the great companies in the country? A. Yes, it has been followed by large companies and it is quite common.

Q. And it is used by the cities of the country owning their own supply? A. Yes, I suppose there are probably three hundred at least communities in the country that are using that method to a greater or less degree.

Q. You were asked to give the average for ten weeks' supply in the Summer of 1918, will you give me from your tables for the same period the supply in the Summer of 1916 and 1915? A. I will have to ask you to tell me what the weeks were.

Mr. Griggs—In 1917 we began with the 31st and went to and including the 42nd.

The Witness—Which year do you want?

Mr. Gourley—1916 and 1915, the two years. The two years immediately preceding Gov. Griggs' selections.

A. 1915: 950,000,000 gallons 31st week, 2,600,000,000 32nd week, 1,188,000,000 gallons 33rd week, 520,000,000 gallons 34th week, 266,000,000 gallons 35th week, 160,000,000 gallons 36th week, 112,000,000 gallons 37th week, 426,000,000 gallons 38th week, 426,000,000 gallons 39th week, about 300,000,000 gallons 40th week, about 380,000,000 gallons 41st week, 340,000,000 gallons 42nd week, an average of about 640,000,000 gallons for that period in the year 1915.

The Court—That is a sort of a flood period?

The Witness—No, sir, that is I think the average and better than that in plenty other years in that same period.

Q. Take the very next year now? A. 1916 31st week, 1,180,000,000 gallons, 32nd week——

The Court—What is the idea of reading these figures into the record? I understand it is admitted by everybody that the flow is variable, and the only important fact is from your standpoint, the low flow.

Mr. Gourley—Your Honor will allow me, I hope to put this in. It is calculated on this table as cubic feet, and Mr. Cook has been asked in a particular year to convert it into gallons and I am taking the two years immediately preceding that period. Can I be fairer than that?

The Court—The point I am making is, do we accomplish anything by reading in figures for different periods, we know one year differs from another year, and the only figures which can be important are those of low flow, as I understand it.

Mr. Gourley—If your Honor was to learn that that low flow had not been reached for fifteen years before, would it be important?

The Court—Of course, if it did not happen that would appear from the tables, but sometimes it happened in the Winter and sometimes in the Summer.

Mr. Gourley—This is an average month, if your Honor will indulge me.

A Juror—What other record have we got besides what the Water Company took?

The Court—You will have them all before you in the evidence.

The Juror—Have we any more in there?

The Court—No, I think not.

The Juror—Why not take it?

The Court—That is what I had in mind.

Mr. Gourley—That is by the cubic feet

per second, and it will only take a few minutes to turn it into gallons.

The Witness—I am going to put it into million gallons. I will convert it as I go along.

Mr. Gourley—Or, will you make it in a table and bring it when you come back?

The Witness—If you say so I will give it to you for those weeks.

Mr. Griggs—Yes, at the same time just make a memorandum to bring the figures for the period in 1913, running from the 27th week to the 39th week inclusive and for the year 1914 for the 32nd week to the 45th week inclusive.

A Juror—I would like to ask in regard to the supply of the weeks taking river water, we are naturally reminded of the rule about water seeking its level, the engineers and others have stated that these wells on the properties when not being operated, so as to get the natural level of the water, was about twenty-five feet below the surface of the ground, that would be below the river itself, would that make any difference in the statement that they would contribute to the river supply?

The Witness—No. For this reason, that the reservoir of water that is tributary to each of those wells in the ground is depleted locally, and they might deplete the water from the ground that is adjacent to the river to such a point that the water instead of going from the ground into the river might go either away from the river into the ground, and be there pumped by their pumping operations if they depleted the water level in the soil be-

low what would otherwise be the ordinary and normal and usual contribution to the flow of the river, then they certainly take out water at a greater rate than would have been contributed to the river in the ordinary and point that is below the surface of the water in the wells locally and in a small area to a point that is below the surface of the water in the river and below the bottom of the river if you will, but it is only because prior to that they took out the reservoir of water that was above that point.

Q. I understand then that the watersheds of the same area they would give theoretically the same amount of water? A. They would if they were of a similar character as Rockaway and the Pequannock; they are two water sheds of similar character and if they were of equal area they would provide the same quantities of water.

Mr. Griggs—In the one case the one might be largely flat land and marsh land, or else covered with vegetation, and the other might be rocks and hills, and even where there is the same amount of rainfall on the one as on the other they might differ very much, because one might run off very rapidly and produce a freshet stream, and the other might run off slowly and produce a stream of ordinarily uniform flow.

The Witness—But these two water sheds we are discussing are quite similar. They differ from the main watershed of the Passaid River in which there is an area of marsh land, the Big Piece, for example.

A Juror—Didn't some people start a suit against the Dundee Water Power and Land Company?

The Witness—They never did. They talked it a lot but it never came to anything.

The Juror—They collected money off the people who subscribed?

The Witness—I don't know. The Judge may know something about that. I did not subscribe any money. I know nothing about what became of it.

The Juror—He did not collect any money?

The Witness—Who did not? The Judge.

The Court—That is all, Mr. Cook.

ELMER L. FALES, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. You are a member of the firm of Metcalf & Eddy, consulting Engineers? A. Yes, sir.

Q. Where is their place of business? A. 14 Beacon street, Boston, Massachusetts.

Q. In what line does that firm specialize? A. In investigations and reports upon the treatment of sewage and industrial wastes, purification of water, water supplies, pollution of water supplies, and other public utilities, the design and supervision of construction of such plants and the supervision and operation of such plants.

Q. What are your qualifications, your personal qualifications on those subjects? A. I was graduated from the Worcester Polytechnic Institute in 1898, specializing in sanitary chemistry. Upon gradua-

tion I entered the employ of the City of Worcester, Massachusetts, first as assistant chemist in testing laboratories at the city hall and after a few months was made assistant chemist at the Orange purification works, and I remained in the employ of the City of Worcester until 1913, and during the last five years of that employment I was supervising chemist in charge of the testing laboratories at the city hall and in charge of the operation of the Sewage Purification Works. My duties at the Sewage Purification Works involved the direction and the operation of a plant consisting of tanks holding about five and a half million gallons, used daily for chemical precipitation of the sewage and partly for sedimentation preliminary to sand filtration. There was seventy-five acres total of sand filtering surface for treatment of sewage. In addition to the supervision and operation I conducted investigations on a large scale relative to nearly all of the principal methods of sewage purification, including septic tanks, Imhoff tanks, contact beds, sprinkling or trickling filters, and other processes. These investigations were important because of the peculiar character of the waste sewage in that it contained an unusual proportion of industrial wastes. Upon joining the firm of Metcalf & Eddy in 1913 my problems became much more varied, involving investigations of the treatment of sewage and industrial wastes at various places, including the treatment of paper mill wastes, woolen mill wastes, including wash waters, from soap and waste waters from dyeing, packing house wastes, tannery wastes and various others. My work included the investigations relative to the proper methods to adopt and the basic data of design for additions or improvements where those were needed and the supervi-

sion of operation of such plants as existed. The work involved questions of the segregation of the wastes and interaction of certain portions of the wastes upon other portions of the wastes. I think in a general way that covers the work I have done along those lines.

Q. When did you join the firm of Metcalf & Eddy? A. In 1913.

Q. Do you know the Weidmann Silk Dyeing Company's plant? A. Yes, sir, very well.

Q. Have you made any investigations there of the discharge of waste waters from the Weidmann Silk Dyeing plant into the Passaic River? A. I have.

Q. When? A. February twenty-sixth 1919, October twenty-eighth, twenty-ninth, 1919, April twenty-sixth to thirtieth, inclusive, 1921.

Q. Describe your investigation on February twenty-sixth 1919? A. The investigation of February twenty-sixth 1919 included the examination of all of the outlets from the Weidmann Silk Dyeing Company plant that were above water or partially above water, including the collection of samples from such drains as had all their flow into the river, and certain samples of the river itself above such outlets which were submerged, where that was practical. These samples were carefully observed and determination made of the acidity and alkalinity of them, and the acid samples were mixed with the alkaline samples, in combinations of two or more to determine what effect the mixing would have. In all of those tests the resulting water after sedimentation was unsatisfactory, in my judgment, for direct discharge into the river because of the polluting matter contained therein. I think that covers the results of that investigation.

Q. What were the tests and examinations made on October twenty-eighth and twenty-ninth 1919? A. On October twenty-eighth and twenty-ninth 1919, the investigation covered a period of twenty-four hours, and involved some fifteen trips, I think from the upper end of the Weidmann plant to the last drain below the Erie Railroad. These trips were made in making measurements and taking samples from each of the outlets from the Weidmann plant. The river had gone down to a point where we could collect samples and make measurements from all of the drains, and the results of those analyses and tests of those samples collected indicated that the waste waters removed from the tin recovering process did not contain a sufficient proportion of polluting matters to prevent their direct discharge in the river, and in addition to this there were other bore the contributing clean waters, comparatively clean, and it was also concluded that they might be discharged directly into the river. From all of the other drains, the waters, in my judgment, contained too large a proportion of polluting matters to permit of their discharge into the river without treatment. A composite sample was made up of the tin washer wastes and analyzed, upon which these conclusions with respect to those wastes were based, and a composite sample was made up of those samples in proportion to the flow of each which did require treatment; the composite sample of the wastes requiring treatment was found to be much stronger than the ordinary city sewage.

The Court—Was that made up of equal proportions of everything except those which were eliminated?

The Witness—Not equal proportions, but a proportion of the flow of each.

So that the results of this investigation showed that there were very large amounts of polluting matters being discharged into the river by the Weidmann Silk Dyeing Co. and the observation of the river showed that the river was being noticeably polluted by those wastes, that is as respects color and turbidity and the foaming character due to soaps and soapy odors and dye waste odors noticed in the vicinity of the river.

The Court then ordered a recess until two o'clock this day.

After Recess:

ELMER L. FALES, resumes the stand.

Direct Examination (continued) by Mr. Humphreys.

Q. Have you given us all the results of the tests you made October twenty-eighth and twenty-ninth 1919? A. No, I have not described the sedimentation tests and the chemical precipitation tests yet. The sedimentation test was made on a large portion of the composite of the wastes requiring treatment, by allowing it to stand quiescent so that all of the solids which would settle in two hours would go to the bottom. The result of that test showed that a much smaller proportion of those solids of all kinds would go to the bottom in the case of this composite sample than in the case of sewage, so that the supply of wastes obtained in this way were from two to five times as strong as the supply of wastes, supply of sewage, from ordinary domestic sewage, showing that the interaction of the wastes did not cause a large reduction in solids upon the sedimenta-

tion. The conclusion from this test was that sedimentation alone would in no wise be sufficient treatment for these composite wastes.

The next test was the chemical test, or chemical treatment of these wastes that held alumina, commonly called alum, which is considered one of best means of coagulation and clarification of soda wastes. These results showed a large removal of solids and the effluent from this treatment was only slightly turbid, or only slightly cloudy, and contained only a slight amount of suspended matter, which was noticeably reddish brown in color.

The treatment produced a very large volume of sludge and it became evident from these observations and tests and analysis of the effluent that the treatment, even though it would produce a possible water, was prohibitively expensive as compared with other processes adopted for such treatment.

Q. What are the quantities of waste waters which can be discharged directly into the river, and what quantity should be treated before discharge into the river, based upon your analysis and tests? A. The quantities of waste waters which can be discharged directly into the river as represented by the composite of the samples of the tin recovery process, averaged for the fifteen trips, 2,680,000 gallons, the maximum being 3,281,000 gallons per twenty-four hours. That was the maximum for one trip. There were, in addition to these tin wastes, as I stated before, a relatively small quantity of wastes which were considered clean enough to go to the river, which would add not more than a half million gallons to this quantity, making the total somewhere between three and three and a half million gallons per day of water suitable to go to the river. The wastes requiring treatment averaged for the

fifteen trips 2,802,000 gallons, the maximum for all drains for any one trip was 425,000 gallons; this average quantity of 2,802,000 gallons per twenty-four hours, contained a quantity of sewage, the sewage from the soil pipes, which was discharged into the river, so that sample contained the ordinary sewage and we know what the character of ordinary sewage is, but, making allowance for that, I concluded that the quantity which should have been treated on that day was three million gallons.

Q. Your examinations of October twenty-eighth and twenty-ninth 1919 did not necessitate your going into the mill of the Weidmann Silk Dyeing Company? A. They did not, they were confined to the outside.

Q. Have you described your investigation made April 25th to 30th, 1921? A. These investigations were made primarily on the inside of the factory with a view to determining the character of the wastes from the individual processes so as to determine what wastes, if any, could be turned directly into the river. And the strongest waste which could be separated for the trunk sewer, it might be, and what waste if any of the remainder which should be treated before going into the river.

Q. Have you selected certain wastes which should be excluded from the river? A. Yes, sir.

Q. Describe in detail your selection and upon what you base your decision and the quantity which you allow to be discharged into the river? A. I considered the sample from each process obtained to represent the character of the waste, the average character from that process, and decided whether that sample contained polluting matters of the various kinds which are determined by the sanitary analysis of water, in quantities which would con-

tain a material quantity of polluting matter. I made that decision primarily upon the character of the analysis of the water at Little Falls and at Great Falls, as determined by analysis made by Mr. Coleman, and the Little Falls filtration plant analyses were furnished me by him and have been identified by him. These samples which contain a quantity of polluting matter materially greater than that contained in the raw water at Little Falls or at Great Falls, were considered to contain a material quantity of polluting matter for the river and——

Q. How many samples did you examine? A. Fifty-six samples altogether were collected and examined for this purpose.

Q. Now proceed? A. In this way I determined that certain waters were suitable for discharge into the river.

Q. As to the quantity? A. Shall I give the numbers or the processes?

Q. Just give the quantities of water that you decided could go into the river? A. The waters which I decided suitable for discharge into the river were numbers 9, 10, 10a combined, which were wash waters in the souple department, but I considered also the question of the practicability of the separation of such waters for discharge into the river, and in the case of those samples, 9, 10, 10a, I found the quantity of water that would be produced on the basis of the work done in 1920 to 1921 as from data furnished by Dr. Hunziker, that the quantity here was so small that it would be not worth while to separate it, that being the only water in this department which I considered as suitable to discharge directly into the river.

The next sample which was considered satisfactory to turn into the river was number twen-

ty-three from the white department. This represented the water wash after the sulphuric acid wash. This takes place in tanks or boxes in which other processes are carried out, which produced a waste which would not be satisfactory to discharge into the river, and I considered that it was impracticable to allow such a separation to be made, it would have to be done by men pulling plugs, men who would be quite likely to pull the plugs from the wrong processes and therefore dump wastes into the river which were entirely unsuitable to discharge into the river.

The next sample which I considered suitable to discharge into the river was number twenty-nine which represented the wash water from the spray wash in the red iron silicate bath after one minute. During the process of that spray washing the waters from the process cleared up gradually until they became fairly clear and substantially free from suspended matter. So that after one minute I separated the wastes and after examination of that sample I concluded that that was suitable to discharge into the river.

The next sample which was number thirty-two, which was also a spray wash in one of the baths——

Q. Omitting some of these details, can you give me the total amounts that you determined could be properly put into the river without pollution? A. Yes, both suitable and practicable. I believe that with certain changes in the construction of the machines and the separation of the wastes from the particular wash of one minute for treatment and the wastes after one minute for discharge into the river, and the total quantity that would be suitable and practicable to discharge into the river, I have computed with the aid of my assistants. The allowance to the river from the process, sample

of the processes which are carried on and where we took samples, based on the data furnished me by Dr. Hunziker, came to 575,000 gallons of rinse water or waste water which could be discharged into the river in addition to the quantity of wash water from the tin recovery process.

Q. That is per day? A. That is per day, based on the 1920.

Q. Can you give us the whole total? A. The whole total would be 3,075,000 gallons, based on the year of normal business of 3,800,000 pounds of silk per year. The allowance to the river, corresponding allowance would be 5,406,000 gallons.

Mr. Griggs—Let us understand? What is 5,406,000? What is that?

The Witness—The 5,406,000 gallons, is waste water per day which could be discharged into the river during a year of normal business.

The Court—How much could not be? You have stated how much could be put into the river, how much could not be?

The Witness—2,505,000 gallons. In a year of what might be considered perhaps a maximum business of 4,505,000 pounds of silk per year. The quantity which could go into the river would amount to 6,399,000 gallons for twenty-four hours.

Q. What is that figure? A. 6,399,000 gallons is all of the waste water which would be suitable to discharge directly into the stream in a year of business of 4,500,000 pounds of silk dyeing.

Q. Would the separation of the portion of the waste waters that could go into the river from the

part that you think could go safely into the trunk sewer, would that involve skill and labor to oversee it? A. Yes, that would involve someone who has to be on hand and who understood it to see that the mechanism was kept in proper working order so that there would be a minimum of discharge of wastes during the first minute of spray washing, which would be unsuitable for discharge into the river.

Q. Would there be constant danger of some of the more polluted part going into the river? A. Yes, there would be danger.

Q. Have you calculated certain wastes to discharge into the Passaic Valley Trunk sewer? A. I have.

Q. Describe in detail your selection and what you base your decision on?

Mr. Griggs—You don't mean decision, you mean opinion, don't you?

Mr. Gourley—The same thing.

Mr. Griggs—No, indeed, there may be a dissenting opinion.

A. The samples which I decided that it would be practicable to separate or discharge into the trunk sewer upon the estimation that ten per cent. of the total quantity of waste waters might be so discharged, picking out the strongest wastes and wastes most difficult to treat for discharge into the trunk sewer I selected sample number thirteen which was representative of the entire waste waters discharged from the color department, because it was my opinion that it would be utterly impracticable to separate any clean waters from dirty waters in that department because of the innumerable number of baths and the impossibility of getting men to properly effect such separation.

In addition to that sample I selected all of the waste waters from the black dye department, with the exception of the first minute from the spray washes. The first minute, that brought me up to a total quantity which was as I could pour into the trunk sewer on the basis of the ten per cent.

Q. What was that quantity? What quantity was that? A. For 1920 to 1921 that quantity to the trunk sewer was 450,000 gallons per twenty-four hours, leaving a balance of 975,000 gallons, that is deducting also the water which it was considered total quantity which was as I could pour into the river, gave me 975,000 gallons, or, in round numbers, one million gallons per day requiring treatment upon the basis of normal business of 3,800,000 of silk per year. The quantity which could be discharged into the trunk sewer on the basis of ten per cent. of the amount of the waste would amount to 791,000 gallons in twenty-four hours nd the balance which would require treatment amounted about 1,714,000 gallons or in round numbers 1.7 million gallons per twenty-four hours.

In a year of maximum business of say 4,500,000 pounds of silk per year the total quantity which could be diverted to the trunk sewer would be 936,000 per day and the quantity requiring treatment would be 2,029,000 gallons per day, or, in round numbers two million gallons per day.

Mr. Lewis—Is that a year of normal business, or was that over? A. The last is the maximum.

Mr. Gourley—On a four and a half million year?

The Witness—Yes, sir, that is the basis.

Q. Have you finished? A. Yes, I think in a general way that covers it.

Q. What is the character of the waste water to be treated? A. An analysis was made of each of these wastes in sufficient detail to determine what the character of it would be, and a composite analysis made up in proportion to the quantity of each to determine what the general character of the waste to be treated would be. These wastes, this composite sample of waste was considerably stronger than ordinary domestic sewage, and contained considerably more suspended solids. I think perhaps that tells in a general way what those wastes were, or what that composite waste was like.

Q. Have you heard the testimony of Dr. Bassini? A. I have.

Q. What do you say as to the practicability of the treatment which Dr. Bassini proposes for the Weidmann Silk Dyeing Company's wastes, which require treatment, excluding the ten per cent. which you have considered should be put into the trunk sewer? A. I do not think it would be adequate or applicable.

Q. Did you hear the testimony of Mr. Foster? A. I did.

Q. What have you to say as to the applicability of the construction which he recommended? A. I think the method which he proposes is entirely satisfactory as my method.

Q. What about the adequacy of the plant which he proposes? A. I think the plant which he proposes, the size of it, is entirely inadequate.

Q. Did you hear the testimony of Mr. Hazen? A. I did.

Q. Do you agree with him, that, excluding ten per cent. of the worst wastes the remainder will

not contain a material amount of polluting matter so that the remainder can be turned directly into the river? A. No, I do not agree with him.

Q. Have you heard the testimony of Mr. Clarke? A. I have.

Q. Do you agree with him that after five to ten per cent. of the worst wastes have been diverted to the trunk sewer the remainder will contain no polluting matter? A. No, I do not agree to that. I did not get that question altogether.

Q. Do you agree with what Mr. Clarke said that after five to ten per cent. of the worst wastes have been diverted into the trunk sewer that the remainder will contain no polluting matter? A. I agree with that that it will contain polluting matter.

Q. Do you agree with Mr. Clarke's decision that the wastes of the Weidmann Company excluding ten per cent. of the wastes can be directly discharged into the river?

A Juror—Can the last question and answer before this one, be read?

(Question read, as follows: Q. Do you agree with what Mr. Clarke said that after five to ten per cent. of the worst wastes have been diverted into the trunk sewer that the remainder will contain no polluting matter? A. I agree with that that it will contain polluting matter.)

The Witness—I do not agree with Mr. Clarke's statement that it will contain no polluting matter, that is Mr. Clarke's statement.

Mr. Griggs—This is an attempt to state what Mr. Clark testified to, and I don't think it ought to be done.

The Court—I did not hear any objection and it went in.

Q. If five per cent. of the wastes have been diverted into the trunk sewer, would the remainder contain any polluting matter? A. It would contain a material amount of polluting matter.

The Court—What?

The Witness—It would contain polluting matter.

The Court—Would it contain polluting matter that would be detrimental to the use of the river?

The Witness—Yes, it would.

Q. Do you agree with what Mr. Clarke said that after putting in ten per cent. of the worst wastes into the trunk sewer that the remainder could go into the river without harm? A. I do not agree with that statement.

Q. Do you agree with Mr. Clarke's proposition to afford some treatment for these wastes before discharge directly into the river? A. I agree with that proposition.

Q. Do you agree with his proposition to afford merely tank treatment for these wastes? A. No, sir, my tests show that tank treatment would not be adequate.

Cross Examination by Mr. Griggs.

Q. In April of this year you were given permission to examine the operations of the Weidmann plant as fully as you desired, were you not? A. Yes, sir.

Q. And you spent a considerable period of time there with such assistants as you wanted to bring? A. Yes, sir.

Q. And whatever information you asked for was

furnished back as far as May 1920? A. I think that is true, sir.

Q. At the same time you were investigating, was Mr. Clarke there? A. No, sir.

Q. Was there anybody taking samples contemporaneously with you? A. Mr. Ammond was taking samples with me, he assisted me, he took a part of each one of the samples.

Q. He represented the Weidmann Company? A. Yes, sir.

Q. And these bottled samples in here have been testified to as being samples which were taken contemporaneously with your sample? A. I do not so understand it, no, sir.

Q. Dont you understand that Mr. Clarke analyzed samples similar to the samples which you got? A. I understand that it has been testified that these are similar to the ones Mr. Clarke analyzed, which were the same samples that I analyzed.

The Court—I understood him to say that he took them with you and divided them, you took a part and he took the other part, and you analyzed one part and he analyzed the other part of the same samples.

The Witness—That is true.

Q. You were a witness for Newark and Jersey City in the trial of this matter before the Commissioners something like a year ago? A. Yes, sir.

Q. At that time you testified that there was a feasible method of disposition of all this effluent by a disposal plant, the details of which you stated, did you not, you so testified? A. I presume I did, although I think I did not give the details myself.

Q. Well, Mr. Eddy gave them? A. Yes, I think he did.

Q. That you corroborated, with Mr. Eddy? A. I did.

Q. At that time you were of the opinion that it would be judicious for the owner to go to the expense of providing such a disposal plant rather than to give up the works, were you not? A. Yes, sir.

Q. That opinion was based upon a condition wherein no part of the waste was diverted to the trunk sewer? A. That is true.

Q. Now, you have testified that a certain part, much less than the total effluent would need to be treated if some of it were put into the trunk sewer? A. That is true.

Q. I suppose the cost of treating this smaller amount of effluent would be much less than the cost of treating the whole, would it not? A. That is true.

Q. So you now would think that a judicious owner would be justified in going to the expense of treating whatever part of the effluent needed to be treated after putting into the trunk sewer what he could, judiciously and legally, get in, would you? A. That is true, yes, sir.

Q. You would not advise the owner of the plant to give up the business because of the cost of treatment? A. No, indeed.

Q. With reference to the handling of the—what do you call that, where they started? A. The plugs.

Q. Would that take any more skill than it takes to handle the plugs of an automobile? It would not take a scientific engineer to do it? A. It would not take a scientific engineer to pull a plug.

Q. Could not a man of ordinary intelligence be trained to do that with very little risk of mistake in the pulling of a plug at random? A. I think there would be considerable risk.

Q. You think there would be considerable risk? A. Yes, sir.

Q. Do you think you could learn to do it? A. Yes, but I could not guarantee to do it every time if I was busy.

Q. You could not guarantee to handle the right lever of a car every time either, could you? A. No. Perhaps not.

By Mr. Gourley.

Q. That question concerning the abandonment of the plant, had that anything to do with the present plant or was it a hyphothetical question? A. I beg you pardon.

Q. Had that anything to do with the question of the Weidmann plant, the question of the abandonment of which you have spoken?

Mr. Griggs—I made my question refer to the Weidmann plant and that is the one he examined.

Q. Was that question a hypothetical one or was it based at all upon the need of abandonment of the Weidmann plant? A. I think what his question means and I took it to be a hypothetical one.

By Mr. Humphreys.

Q. Would the water turned into the river containing the water which Mr. Clarke and Mr. Hazen say could go into the river be impure as to quality? A. It would be impure as to quality.

Q. Could it be used for industrial processes by riparian owners below without being treated? A. Not by all kinds of riparian owners, no, sir.

By Mr. Griggs.

Q. When I asked you those questions about disposal plants for the Weidmann works I referred to the fact that you had brought here a year ago a system of disposal works adapted to the Weidmann plant, and you understood me then? A. Yes, sir.

Q. That is when I asked you about those plans which you and Mr. Eddy testified about? A. Yes, sir.

Q. Then when I asked you whether it would have been judicious to abandon the plant or to build the disposal works, I understood you to say that it would have been judicious not to abandon the Weidmann plant? A. That is what I intended to convey.

Q. Then when I asked you whether with a much reduced amount of effluent to be treated it would still be wise not to abandon the plant, I referred to the Weidmann plant, did you? A. I did.

Q. You did not examine the National Silk Dyeing Company plant? A. I did not.

HARRISON P. EDDY, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Mr. Griggs—Unless you want to show the Court and Jury about Mr. Eddy's qualifications, we will concede that he is qualified.

Mr. Humphreys—We would like to show it.

Q. You are a member of the firm of Metcalf & Eddy referred to by Mr. Fales? A. Yes, sir.

Q. And you specialize as testified to by that witness? A. I do.

Q. Kindly tell us what your qualifications are, especially describing with some detail the work you have done in the treatment of industrial wastes at various places? A. I, immediately after leaving College, entered the employ of the City of Worcester, and for about one year had charge of the sewage treatment plant; for the next fifteen years I had charge of the entire sewer department, which included the enlargements and additions to the sewage treatment plant, various studies on methods of sewage treatment, studies of the industrial wastes which were produced in the City of Worcester which is a large manufacturing city, these wastes consisted of the sewage wastes from the White Mills, dyeing and all liquors from the carpet mills, dye liquors and soap liquors from the woolen mills and the wastes from a very large tannery. During that period of fifteen years I had charge of the construction as well as of the operation of the entire department, building and enlarging and constructing by direct labor rather than by contract. During a portion of that time I did work as consulting engineer for various municipalities and individuals. In 1907 I formed a partnership with Leonard Metcalf, under the firm name of Metcalf & Eddy and at fourteen Beacon street Boston where we have been ever since. Since 1907 we have acted as consulting engineers in matters of the waste disposal and the treatment of sewage for the American Woolen Company, at two plants, one at Beaver Brook Mills and one at the mill in Maine. Those wastes are cloth washing and dye wastes, soaps and dyes being present in the wastes We have done similar work since 1913 for the Winslow Brothers and Smith, both tanners and wool and scourers at Norwich, Massachusetts. This plant like those of the American Woolen Company we have supervised

the operation from day to day and from month to month for the last five, six or seven years. We have done similar work for Bird & Son of Walpool, Massachusetts, boxes, and the wastes are from the manufacture of Manilla paper, and that plant was designed by us and built under our direction and we have had the general supervisory charge of that plant ever since. About 1901 we made investigations of the problems of the City of Gloversville, where the domestic sewage from a small city of 120,000 persons receives also a lot of tannery waste from some twenty to twenty-five fine leather tanneries. We designed and constructed a plant for the Harriman Tannery in Massachusetts. We have also served as consulting engineers and are now for City of Milwaukee upon a sewage treatment problem, and at the present time also upon a water supply problem, also for the cities of Akron, Gloversville, Buffalo, Cleveland, Cincinnati, Pittsburg, and a good many cities about the country. Within the last two years we have made very exhaustive investigations Armour & Co., and Swift & Co., upon the subject of the disposal of the wastes from the packing houses, so that in general I might say that we have devoted our time almost continuously for the last thirty years, that is, I have individually, and our firm has since 1907, to the problems of the treatment and disposal of the sewage of cities and of industrial wastes for industrial plants.

Q. Have you made investigations as to the discharges of waste water into the Passaic River from the plant of Weidmann? A. I have.

Q. Describe your investigations? A. I made my first visit to the Weidmann plant in 1919 in company with Mr. Fales, one of the partners of our firm. That was on February twenty-sixth 1919. And we

viewd the conditions as I found them at the river. The water at that time was high so that we could not see all of the pipes from which the wastes were being discharged, but we could see the effect of those discharges and we could see the actual discharge through a number of the waste pipes.

I then had a very long conference with Mr. Fales and assisted him in laying out the scheme for investigating the problem suggested, how the wastes be measured, how the samples be taken, what analysis should be made and in general what investigations should be made at that time.

More recently, in the Spring of 1921, this year, with Mr. Fales, Mr. Cook, Mr. Humphreys and Dr. Hunziker, I went through the necessities of the Weidmann plant and in a similar manner to that which I adopted in 1919, I laid out a plan of investigation with Mr. Fales as to how the wastes should be measured, how the samples should be taken and what analysis should be made to determine the character of those wastes.

Q. Did you design a plant for the treatment of the quantity of wastes which Mr. Fales has testified, based on the analysis made of the samples taken on October twenty-eighth and twenty-ninth 1919? A. I did.

Q. Have you consulted with Mr. Fales and examined the results of his analysis and measurements and do you concur in his conclusions and plans? A. I have.

Mr. Griggs—Let me understand? Consulted about the samples in October?

Mr. Humphreys—I said, examined the results of his analysis and measurements, and do you concur in his conclusions. The last question was October.

Mr. Griggs—I understand he was not there on October twenty-eighth and twenty-ninth. I thought the Spring of 1919 was all.

Mr. Humphreys—Mr. Fales testified to February and then October twenty-eighth and twenty-ninth.

Mr. Griggs—What I want to understand is just what testimony of Mr. Fales you are now asking him to concur in, what testimony is it.

Mr. Humphreys—It is the testimony that Mr. Fales has just given as to the measurements that he took etc., on October twenty-eighth and twenty-ninth 1919.

Q. Did you concur in that? A. I do.

Mr. Lewis—Was that after the hearing before the Commissioners?

Mr. Humphreys—No, before.

Q. Describe the character of those wastes with reference to their practicability of treatment? A. The wastes represented by the samples which were taken in October 1919 were all of the wastes as they were discharged at the river outlet, that is, they were not individual bath wastes separated and tested individually. Now, those wastes were divided into two classes, one class which we considered could be discharged into the river without treatment, the other class which required treatment. The first class which did not need treatment was composed primarily of the waste waters from the tin recovery process. The other portion contained the highly colored and the soapy waters from the regular processes other than the tin recovery, in the plant. The wastes that required treatment were much

stronger, contained much more fat and organic matter, that would putrify, than the sewage of the ordinary city. They were very highly colored, contained some matter which would settle, but relatively little matter which would settle in a short period of time. They were, however, very high in the very finely divided matters and in the gum and fatty substances.

Q. Describe the plant which you designed and which you consider will so treat those wastes that they may be discharged into the river?

Mr. Griggs—I dont want to object, but how is it material?

The Court—How it was treated at some other plant?

Mr. Griggs—No, the fact is that Mr. Eddy designed as Mr. Fales says, a disposal plant that would take care of this effluent, and he testified to that before the Commissioners, taking no account of any trunk sewer. Now, Mr. Fales says that a plant to be built to take care of all the effluent needed to be treated after discharge into the trunk sewer, would be and could be built for so much less, and that a judicious owner would be justified in going to that expense. Now, what difference does it make what the plan is, and why should we go into a long discussion of these details as long as this witness says it can be done? I don't object but want of course to limit the thing.

Mr. Gourley—He simply says that it is much cheaper for you to take water from the Dyers' Pipe than to go to that tremendous expense.

Mr. Griggs—If that is all, we can easily

dispose of that; taking water from the Dyers' Pipe when you can stop us in six months.

The Court—Why is it necessary to go into the details of it? Why not state the amount and then if the Governor wants to go into the details he may do so on his cross examination.

Mr. Griggs—I withdraw the objection to save time.

Mr. Gourley—They have gone into it, they have shown their plan. Surely we ought to be able to show by our witnesses just what they think of that.

The Court—That is what I am suggesting. If you have the amount stated you will have the point covered, you don't have to show the details, more than the concrete amount.

Q. Can you briefly describe the plant which you have designed?

The Court—How much would it cost, one of the kind you have designed?

The Witness—The plant which I designed to treat the wastes without separation, other than the tin wastes and a small quantity of clean waters, was $1,200,000 in round numbers.

Q. Do you concur in what Mr. Fales said as to the quantity of waste waters that could go into the trunk sewer and as to the quantity that would remain? A. I do.

Q. And have you designed any plant for treating the water which would require treatment after ten per cent. had gone into the trunk sewer? A. I have.

The Court—I understood Mr. Fales to say that a judicious owner would not abandon the plant but would build a disposal arrangement of this kind. Would you consider it judicious to spend a million dollars on a four million dollar plant for a disposal plant?

The Witness—I should.

The Court—That is what you think Mr. Fales means?

The Witness—I think so.

Q. Tell us briefly the details of the plant that you have designed? A. The cost of that plant I have estimated at $1,700,000 in round numbers, and this estimate like the one of $1,200,000 is based upon the prices as of the Fall of 1919. The plant for the treatment of the wastes after separation, that is, the $700,000 plant would consist of sewers for collecting the wastes, a pumping station for pumping that and sand or cinder filters for filtering them. The wastes would be introduced into tanks for equalization and clarity and for the sedimentation, of such matter as would settle out, before going to the sand or cinder filters.

Q. What do you estimate the cost of operating that plant would be, the cost and interest and depreciation on the plant? A. $87,000 per year the entire operating and fixed charges.

Q. And, with reference to the first plant that you estimated on to take care of all the discharged waters, what do you estimate the cost of operating that? A. $158,000. And that plant was to treat three million gallons per day.

Q. And the second plant was to treat how much? A. And the second plant was to treat two million gallons a day.

Q. Have you given consideration to the acid

treatment of the Weidmann waters chemically after diversion of the ten per cent. of the worst wastes to the sewer and certain comparatively clean wastes to the river? A. I have.

Q. What do you say about the practicability and suitability of that method of treatment? A. I do not think it is as suitable or as practicable as the plan which I have suggested. The waste after diversion of a portion to the sewer, and another portion to the river, are highly alkaline, and it would take a very large quantity of acid to neutralize this alkalinity. It is not possible to operate such a plant and turn out an effluent or a treated waste which is not quite acid, the acid treatment will not remove as much of the organic polluting matter as the other method, and my judgment is that the acid method would be more expensive than the method which I have suggested.

Q. What have you to say about the adequacy of the treatment plan proposed by Mr. Foster for purifying the Weidmann wastes? A. I do not think that it is anywhere large enough size to do the work. The principle involved is exactly the principle which I have utilized in the plan which I have suggested, but it is not large enough to do the work required of it.

Q. Would the water which Mr. Clarke and Mr. Hazen said could go legally into the river after the ten per cent. went into the trunk sewer, would that water be, in your opinion impure in quality? A. It certainly would.

Q. And, in your opinion could it be used by the lower riparian owners for dyeing purposes? A. I think it could not.

Q. If it could be used for dyeing purposes could it not be used a second time by the Weidmanns at

their plant? A. I should expect that it could.

Q. How would that be done? A. Simply pumping it over and using it over and over.

Cross Examination by Mr. Griggs.

Q. You testified before the Commissioners in these cases? A. I did, sir.

Q. You were asked this question, and making this answer:

Q. "If you owned that plant of the Weidmann Company there, and you were told it were necessary to go to this expense, in oredr to continue to operate it, what do you think about the answer you have given as to economical expense? A. I think I would continue to operate it. Some of my clients would." Do you recall answering that way? A. I do, yes, sir.

Q. And this question;

Q. "All those buildings and machinery and all would maintain its value? A. Why certainly; it would only be an item of cost."

Q. Do you recognize that? A. I do.

Q. Do you confirm it? A. I do.

Q. You were asked this further question:

Q. "And the water they had to get from above would still be as important to them as ever? A. Yes, sir."

Q. Do you confirm that? A. I should think so, yes, sir.

Q. And then this question:

Q. "And worth as much to them as ever? A. So far as I know."

Q. Do you confirm that also? A. Yes, sir.

Q. You agree to all of that? A. I do.

FRANK W. FURREY, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. Where do you reside? A. In Paterson, New Jersey.

Q. What is your business? A. Real estate and insurance.

Q. How long have you been in that business? A. Twenty-seven years.

Q. Have you been actively engaged in business all that time? A. Yes, sir.

Q. Have you a knowledge of the rental value of factories and mill sites in the City of Paterson? A. Yes, sir.

Q. And of their selling value? A. Yes, sir.

Q. Are you familiar with the property occupied by Weidmann on the Passaic River? A. I am.

Q. If that building were converted into a mill for some other manufacturing purpose, such as a silk mill, would those buildings, in your opinion, command as high rental for that purpose as for any other? A. Practically the same, yes, sir.

Q. And so to their value, as it is now, if they were not owned by Weidmann but by some other party and the buildings were made suitable for the manufacture of silk, what would you say would be the value of them compared with their value for dyeing purposes? A. Practically the same.

Q. Up until how long ago was it that there was such a great demand for floor space in the City of Paterson? A. Why it has fallen off the last year.

Q. Before that there was a very great demand, wasn't there? A. Yes, sir.

Q. How much did floor rental increase during

that period of great demand? A. From three hundred to four hundred per cent.

Q. Has it gone down since then at all? A. Yes, it has.

Q. To what extent? A. Well, just about where you can get about a hundred per cent. perhaps about a hundred and fifty per cent. now over normal times.

Q. Are you familiar with the land lying directly opposite the Weidmann dye house on the south side of the river? A. I am.

Q. What does it consist of? A. Why, there is one plot there of about twenty-seven or twenty-eight acres known as the deGray Farm which is now used, as I notice as a baseball ground and an oiling station, and also the place where the Weidmann's dump their ashes from their factory, across the stream. There is another, that is about twenty-six to thirty acres of ground, then, east of that there is another tract lying in between the two railroads, it is a gore, about four and a half or five acres of ground, and still further east of that is another tract of ground comprising about sixteen or seventeen acres that lies very low from the grade of the street.

Q. Can you give us your estimate as to the value of this land? A. I would calculate the deGray plot to be worth about eighteen hundred dollars an acre the gore plot between four hundred and five hundred dollars an acre, and the plot further east of the railroad at about twelve hundred dollars an acre.

Q. Are there not a lot of cinders on one of these tracts of land? A. On the deGray tract there is.

Q. How large a pile of cinders is there about? A. Oh, it covers, well, I would calculate it to be about two acres of land and about thirty feet in height.

Cross Examination by Mr. Griggs.

Q. Have you sold any manufacturing plants in Paterson? A. Yes, sir.

Q. What ones? A. Over on Albion Avenue.

Q. Give us the name of that? A. My brother owns it, I sold it to my brother.

Q. What is it known as? A. Furrey.

Q. Whose plant was it? A. I don't know who the owner was, I dealt through an agent, it was known as the Albion avenue mill.

Q. How big was that in value? A. It would take up about three acres.

Q. How much in value? A. About twenty-two thousand dollars.

Q. Have you sold any other mill property? A. Yes, sir.

Q. What? A. On Putnam street.

Q. What plant was that? That was part of the Ashley and Bailey mill or plant.

Q. When did you sell that? A. About four, five or six years ago.

Q. Who for? A. I sold it for Kip.

Q. How much was the value of that? A. Twenty thousand dollars.

Q. Any others? A. That is about all that I can recall now.

Q. Have you ever been in the Weidmann plant? A. Yes, sir.

Q. When? A. About five or six years ago.

Q. You were sworn before the commissioners? A. Yes, sir.

Q. Do you recall having this question put to you:

Q. "Have you ever been in the Weidmann plant? A. No, sir."

A. That was true at that time, I had been in the

office, only I had been in the plant but not in the works.

Q. You had never been then, I understand you never have been in the plant outside of the office? A. That is correct, that is what I meant at that time.

Q. And you don't know anything about how suitable it is for manufacturing purposes or what it would cost to adapt it to other manufacturing purposes, do you? A. Only calculating on the basis as a dye house, as all dye houses are laid out.

Q. You don't know anything about the cost of adapting it or anything of that sort, do you? A. No, sir.

Q. The high value of rentals for manufacturing purposes was almost exclusively for silk manufacturing purposes, was it not? A. Practically so.

Q. And that bubble exploded very noisily, didn't it, about a year ago? A. It did.

Q. As a matter of fact, have there not been numerous sales in bankruptcy of silk manufacturing plants since that time? A. There have been.

Q. There are such advertisements in the papers almost every night? A. Correct.

Redirect Examination by Mr. Humphreys.

Q. During the past twenty-five years there have been ups and downs in the silk business, have there not? A. There have.

Q. There have been periods of boom such as we saw a year ago? A. Yes, sir.

Q. And periods of depression? A. Yes, sir.

JAMES FITZPATRICK, sworn as a witness on behalf of the Condemnors, testifies as follows:

New Jersey State Library

Direct Examination by Mr. Gourley.

Q. What is your business? A. Chief Inspector of the Health Department.

Q. And you have been for how long? For how many years have you been associated with the Paterson Health department? A. For thirty-one and a half years.

Q. As part of your duties have you made an examination of the Passaic River as to the pollution etc.? A. Yes, sir, several times.

Q. Have you also made an examination of the discharge of waste waters into the Passaic of manufactures and sewers? A. Yes, sir.

The Court thereupon adjourned to Tuesday, May twenty-fourth, 1921, at 10:00 o'clock A. M.

Paterson, N. J., May 24th, 1921.

Seventh day:

The trial was continued this day, pursuant to adjournment.

JAMES FITZPATRICK, resumes the stand.

Direct Examination (continued) by Mr. Gourley.

Q. Just tell us the result of your examination as to the pollution of the sewers between the Valley of the Rocks——

Mr. Griggs—I would like to ask a question as to when he made this examination last.

Q. When did you make your last examination? A. May fifteenth and sixteenth 1911, that is the detailed inspections.

Q. Since that time have you been up and down the river from time to time? A. Only casually.

Q. Do you know whether there is any increase since 1911 up to the present time in the outlets?

Mr. Griggs—That is, above the dyers?

A. You mean sewer outlets?

Q. Yes? Between Weidmanns and the Valley of the Rocks? A. I think there are a couple of new ones down there, Wood street and Lowe street since that time.

Q. Just tell us what they were at that time, in 1911? A. What the outlets were?

Q. Yes? A. I think the Totowa discharged into the river in the Valley. That is the first one. Then there is one at the foot of Prospect street, and Mulberry street, and West street, both sides of the river at West street, Main street, Arch street, Jefferson street, Stout street, Lawrence street, I think there is a relief sewer there, and the large sewer then is at Montgomery street, Straight street, both sides of the bridge, Franklin, Warren, Short street, Bergen street, Lowe and Wood street, and I think that is all this side of Weidmanns excepting the pipe discharging from Auger & Simon's works.

Q. What about the Fifth street? A. The East Fifth street?

Q. Yes? A. That is the one I think discharges alongside of Auger & Simon's works. There is one at Sixth avenue, I can say also a new one that has been constructed down below the Sixth avenue bridge.

Q. Have you looked at this map? A. I had a list of them made by the City Engineer.

Q. Are those outlets you have mentioned shown in red here on this map? A. Yes, sir.

Q. Then there are other sewers below the Weidmanns? A. I think there are eight below the Weidmanns, between them and Market street.

Q. Shown on this map in red? A. Yes, sir.

Mr. Gourley—We offer this map in evidence.

Admitted and marked "Condemnor's Exhibit No. 10" of this date.

Q. What have you to say about the discharges of waste water into the river between the points I mentioned? A. Our instructions were at that time to visit the factories bordering on the raceway and on the river banks and to ascertain as near as possible the number of hands employed and also to learn whether they discharged directly into the river or indirectly, I mean by that, that the factories on the raceway would be discharging indirectly and the factories on the river bank would be discharging directly, also the number of dwellings on the river bank and the number of people occupying those dwellings by actual count

Q. You testified for the City in the suit by the City of Paterson against the East Jersey? A. I don't remember who it was against.

Q. You appeared so often you may not, I think you may remember at least the counsel in the case? A. Mr. Dunn was counsel at different times, the only man I remember is Mr. Griggs, the governor.

Mr. Griggs—I am the only one that is left in the matter?

The Witness—Yes, sir.

Q. Can you tell us the inspections you made at the time, what you remember about it? A. Yes, sir. Will I tell you what I told before?

Q. Do you remember testifying in the suit of Auger & Simon v. The East Jersey? A. I think so.

Q. I find this question was asked you,

"Q. Some of these mills are not on the river, are they? A. Some of them are not on the river, some of them are I think.

Q. Can you give us the number? A. Of factories?

Q. The number of factories directly discharging into the river between the Valley of the Rocks and the Weidmann plant? A. Eighteen.

Q. Do you notice on this map Exhibit Condemnors 10, marked in black along the river little spots in black lead pencil marks, have you noticed them on the map? A. I cannot see them from here.

Q. Will you just come down and look at them and tell us if you can recall what factory was represented by those black marks? A. This would be the Knipscher & Maass.

Q. That is the first one in black on the map? A. Yes, the next I think would be the Cole, this would be Foremans, Stump & Sharp, I think, this would be Gehring and this would be the Gaede, and the next one on the same side, that is the Gaede.

Q. That is East Straight street? A. East Main street.

Q. Which is one of the National Silk Dyeing Company's plants? A. This would be the Kearn.

Q. That is one of their plants? A. Yes, sir.

Q. The next one? A. Along here.

Q. Is the Wood street plant shown there? A. Yes, sir.

Q. Where is the next one? A. This would be Lamond Robertson, Cadgene Dye Works.

Q. Revere Harrison now is the name? A. Yes, sir, and this one would be Auger & Simon, that is as far as I went.

Q. What is that National Silk Co.? A. That is a National plant, yes, sir.

Q. Where is the Weidmann plant? A. This is the Weidmann plant here.

Q. And the others are on the other side? A. Yes, sir.

Q. What is the next one below the Weidmann? A. I would think that would be the Gautchy plant, right near the bridge there, and there is one occupied by William Saunders, below that, and that I think is between the Gautchy and the Wagaraw bridge and I think that is all.

Q. Where is the next over here? A. East 33rd street, that might be the Kramer & King Co., on 33rd street.

Q. What is this one down here at Tenth Ave.? A. That would be the Kramer King, I don't know what plant this would be, that is a new plant there. Then there is the Lyons Piece Dye Works.

Q. Does the plant of the National Silk on the other side of the river show on this map? A. No, sir.

Q. Does the plant of Kearn show on this map? A. No, sir.

Cross Examination by Mr. Griggs.

Q. Can you give us the names of the establish-

ments which you ascertained when you made your examination were located either on the raceway or on the river from the point of the Rogers Locomotive Works down to the Weidmann plant? A. Yes, sir.

Q. Have you got it there? A. Yes, sir.

Q. Just read them off? A. Rogers Locomotive Works, do you want the number of hand employed at that time?

Q. Yes? A. They employed at that time four hundred hands.

Q. Go right on, read it off;

Frank & Dugan, 240 hands.

Hamil mill, 100 hands.

Hamilton Mill, 39 hands.

Hope Mill, 154 hands.

Atherton Mill, 60 hands.

Essex Mill, 57 hands.

Todd Mill, 139 hands.

Congdon Mill, 310 hands.

Adams Mill, 755 hands.

Edison Electric Works, 60 hands.

That was all the firms on the Raceway.

Then going down the river:

The Broomhead Mill, River street, 42 hands.

The Atkinson Mill, River street, 64 hands.

The T. J. Mitchell Co., River street, 60 hands.

The Addy Mill, Ryle avenue, 54 hands.

The Geering Dye Works, Ryle avenue, 150 hands.

The Pope Mill, Jay street, 111 hands.

The Eureka Silk Company, Water street, 40 hands.

The Gaede Dyeing Company, East Main street, 175 hands.

The Levy Mill, Bridge and River streets, 160 hands.

The Manhattan Shirt Factory, River street, 600 hands.

The H. Muhs Packing Factory, River street, 36 hands.

The Fullerton Slaughter House, East Fifth street, 14 hands.

The Public Service Gas Works, East Fifth street, 60 hands.

The Paterson Sanitary Works, East Fifth street 4 hands.

The Kearns Dye Works, Wood street, 60 hands.

The Auger & Simon Dye Works, East Fifth street, 550 hands.

The Lamond Robertson Company, Branch street, 100 hands.

The Lemond Robertson Company, Branch street, 135 hands.

Q. How many establishments does that make in number? A. Twenty eight.

Q. What is the total number of hands you found employed during that period? A. 4729 hands.

Q. Twenty eight establishments employing forty-seven hundred hands? A. Yes, sir.

Q. That includes practically the old seat of industrial Paterson, does it? A. Yes, sir.

Q. The sewers that you have mentioned as emptying in from the Valley of the Rocks down to the Weidmann Works are most very old sewers, aren't they? A. Most of them are, yes.

Q. They have been there from the earliest times that you can remember? A. Well, within twenty five years.

Q. How long? A. Within twenty five years a great many of them have been constructed.

Q. Aren't some of them among the early days in the city? A. I think so, yes, sir.

Mr. Gourley—We will offer this old photo graph that has been talked about so often. This has been used often.

Mr. Griggs—Do you think it is an ancient document?

Mr. Gourley—Yes, we do.

Mr. Griggs—You cannot offer it now.

PETER J. NESTLE, recalled as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Humphreys.

Q. You have in your hand a map showing a cross section of the Passaic River, tell us what that map shows? A. This is a cross section of the Passaic River made October 1912 showing the depths of the water on this particular date and that the flow of the river at this time was measured by myself to be 107 million gallons a day.

Q. What depth does that show? A. Well, it starts off on the opposite bank from the Weidman buildings at zero and 1.1 feet twenty feet out, 1.4 feet thirty feet from the bank and when you get out about 100 feet from the bank it is 3.1 feet deep and 150 feet out 3.6 feet deep, 190 feet out 2 feet deep, 210 feet 2.4 feet deep, and then you get back to the Weidmann plant to zero.

Mr. Humphreys—We offer the map in evidence.

Admitted and marked "Condemnors Exhibit No. 11" of this date.

Cross Examination by Mr. Griggs.

Q. How was the flow of the river at the Falls the day that map was made? A. I did not say that. The flow of the river at that particular point where that section was made was 107 million gallons.

The Court—How did you measure it at that time at that point?

The Witness—With a current meter.

Q. What is the date of that? A. October eighteenth, I think it is, 1912, that is right on the section, October eighteenth 1912, I think is the date.

Mr. Griggs—Now, Mr. Gourley, what do you wish to show with reference to that photograph?

Mr. Gourley—I wish to show that this was taken forty years ago by Mr. Wright who is dead, John Wright, and it has been used in all these water cases.

The Court—What does it show?

Mr. Griggs—It shows the appearance of the river on the day that a man crossed it on a tight rope.

Mr. Gourley—Yes. I was there. I think I am in this photograph.

Mr. Griggs—Are you willing to swear to that?

Mr. Gourley—Well, I saw the thing done.

The Court—It is a long time ago.

Mr. Griggs—We have no objection.

Admitted an dmarked "Condemnors' Exhibit No. 12" of this date.

MORRIS R. SHERRERD, sworn as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. McCran.

Q. What is your profession? A. Civil Engineer, my principal work has been in the hydraulic branch of the profession.

Q. What experience have you had in reference to the conservation and the development of potable waters? A. I have been in charge of the Water Supply matters for the City of Newark since 1895, twenty six years, and I was Engineer for the State Water Supply Commission from the time of its creation under the act of 1907, until 1916, when a part of its duties were merged with the Board of Conservation and Development of the Northern part of the State, when the northern part of the State was created into a water supply district under the provisions of the North Jersey District Water Supply Commission. And I was first, acting secretary for that Commission and Chief Engineer in the design of the Wanaque plant. My position with the Commission is now Consulting Engineer for the North Jersey District Water Supply Commission, but having direct charge of the construction work of the Commission, in addition to my position as Chief Engineer for the City of Newark.

Q. What have the State Water Supply Commission to do with the potable water supplies of the State? A. The duty of the Stater Water Supply Commission was the apportionment of the waters of the State to the municipalities, and the conservation of the water supply. No person or corporation or municipality can appropriate or take water of the State, even for municipal pur-

poses, without the permit of that commission. And that condition still exists under the Board of Conservation and Development, and with the further proviso, that the development of water supplies in the northern portion of the State must also be approved by the North Jersey District Water Supply Commission.

Q. Prior to Newark getting its water supply from the Pequannock where did it get its potable waters and waters used in the City? A. The City obtained its water supply prior to 1892 by pumping from the Passaic River at Belleville.

Q. You say that until 1892—? A. Yes, sir.

Q. They pumped from the waters from the Passaic River at Belleville? A. Yes, sir.

Q. Did they give up that supply? A. It was found necessary to abandon that source of supply on account of the pollution of the river and the discoloration, which in a large measure was caused by the industries in Paterson.

Q. Will you kindly explain to the Jury, using the map on the easel for that purpose, what is known as the Passaic watershed tributary to the Passaic River from the City of Paterson northerly into the watershed and showing the course of those various tributaries, where they take their rise, and may I ask also if you will kindly mark the watershed as you proceed northerly on the Passaic River and its tributaries, with a pencil so that the Jury may see when they examine the map. Beginning with the City of Paterson?

The Court—Where is the City of Paterson? Indicate it on the map?

The Witness—The City of Paterson is at this end of the map to which I am pointing.

Q. May I ask that you begin at the City of Paterson and show where it flows? -A. The Passaic River discharges into the Newark Bay between Kearney and Bayonne.

Q. Where does the Newark Bay discharge? A. Or rather, between Newark and Kearney. The Newark Bay connects with the New York Bay through the Kill van Kull, and with the Raritan Bay through the Kills shown on this portion of the map.

A Juror—Is this section that you have just pencilled in what is called the Passaic Watershed?

The Witness—These portions that are marked on the upper portion, Ramapo, Wanaque, with Greenwood lake, shows as a separate division. The Pequannock and the Rockaway are what are known as the Highland branches of the Passaic River.

Q. May I ask that you begin at the City of Paterson and proceed northerly, then we will get a full understanding about it and it will unfold itself?

The Juror—I have my own ideas how I would like to get my picture.

Q. May I ask that you get the picture? A. From Paterson?

Q. Beginning at the City of Paterson, kindly trace the Passaic River northerly for me, please? A. The City of Paterson is located at this bend in the Passaic River to which I am now pointing on this map, which is one prepared by the North Dis-

trict Water Supply Commision, showing the northern part of the State and is compiled from the State Geological maps, and here at the Great Falls in Paterson where I am now pointing is where the Passaic Water Company and the East Jersey allied corporations formerly took their water supply, as has been testified by Mr. Cook, and about the year 1900, I think it was, the point of taking was changed to Little Falls. The pumping plant and the filter works being located at Little Falls and the water being taken in from above the so-called Beatty Dam at this point. Now, this change of intake was also made because of the condition of the river water. And then the river flows down, —I am going backwards now, of course, with my pointer, from a point known as Two Bridges, being a distance of about four miles or so from the Little Falls. At Two Bridges the River is made up of two branches, one the Pompton River, and one, what is known as the West Branch of the Passaic, the drainage areas of those two branches being almost similar, in the neighborhood of four hundred square miles each, the total drainage area is more exactly, at Little Falls, about 797 square miles, and the Pompton Branch being about 380 to 390 square miles, so that these two branches of the Passaic River are practically for the purpose of the discussion of equal area.

Q. Will you kindly follow the West Branch of the Passaic? A. The West Branch of the Passaic comes down from a point up near Millington, one of the branches, or one of the streams that make up the West Branches, it includes the Whippany which runs through Morristown, and it includes some tributaries down on a portion of the drainage area down towards Bernardsville, and

it runs through Millington, and Chatham, and along through the Township of Livingston. On one of the Highland branches of this portion of the river is located the reservoir supply of Jersey City at Boonton, shown in this large blue coloration, just north of Whippany. This watershed embraces about 121 square miles tributary to the Boonton reservoir. There is a small portion of the river between the Reservoir and the West Branch, which is shown here on the map.

Q. What is the drainage area of the Rockaway River from which the water enters the reservoir of Jersey City? A. 121 square miles, and this is shown, the outline of this drainage area is shown in this yellow portion which I am now bounding with the pointer.

The Court—Marked "Rockaway Watershed"?

The Witness—Yes, sir.

Q. Will you just draw your pointer around what is shown on that map to be the Rockaway watershed? A. From the Boonton reservoir to the line on the south portion of the watershed, the one which I am now tracing, is colored in yellow, and it extends up just west of Wharton, and almost up to Lake Hopatcong, along the easterly side of Lake Hopatcong, about one half mile from the lake, and then goes almost northerly to a point which is known as Edison, where the Edison Company have some ore separators located, and then nearly easterly, being within about a quarter mile of the Oakridge Reservoir on the Pequannock stream, and then runs nearly south-easterly, taking in Green Pond as a part of the drainage of

the Pequannock watershed, and then comes down towards the east again. It adjoins the Pequannock for a distance of about ten miles.

Q. If you will, turn to the other Branch of the Passaic River, at Two Bridges, where the Pompton River comes in and kindly follow the course of those tributaries and explain to the jury as you did in the case of the West Branch? A. I am now pointing to Two Bridges, this is about four miles from Little Falls, three or four miles from Little Falls, and the other branch of the Passaic, made up of the Pequannock, the Wanaque and the Ramapo, these three tributaries coming together near Pompton, and from there along the Two Bridges, the river is known as the Pompton River. At Pompton Plains, in the Pompton River is contructed a dam, controlled by the Morris Canal and Banking Company and this is the head of the so-called Pompton Feder, and the waters of the Pompton River are turned in to the Pompton Feeder, runs for a distance of about four or five miles down to Mountainview, and there the Feeder furnishes water for the canal clear down to tide water in the Newark Bay or the Passaic River Lock. And, at a point just above that Feeder Dam, the Ramapo River comes into the stream, and at a point about a mile further up the Wanaque and the Pequannock come together, and, as I said before, constitute the main supply of the Pompton River.

Q. What development, if any, water development, is there on the Ramapo, within the State of New Jersey? A. On the Ramapo, near the Pompton Turnpike, there is a dam which forms a lake called Pompton Lake, and from that Lake the Borough of Pompton Lake obtains some water

with which it runs an electric light plant. And further up the river, near Oakland there is shown on this map the outline of a proposed reservoir which is the subject of application for supplying water to the City of Bayonne.

Q. In other words, for the future development of the Ramapo? A. Yes, sir.

Q. On the Wanaque is there any development? A. On the Wanaque, at a point—

Q. Other than what is proposed by Newark? Any development other than what is proposed by the North Jersey District Water Supply Commission? Other than that, which I will come back to later? A. Well, there is no recent development. But Greenwook Lake has been constructed into a large storage reservoir, with a dam at the outlet, from which some ten feet can be drawn for the supply of the Morris Canal.

Q. I will come back to that later. Now, if you will, kindly pass into the Pequannock and trace its course? A. On the Pequannock at a point about eight miles or so from the junction of the Pequannock and the Wanaque, the Macopin Intake of the Newark Water is located.

Q. You mean about eight miles further north? A. About eight miles further north.

Q. From the mouth of the Wanaque and the Ramapo? A. Yes, sir.

Q. How far is the Macopin Intake from the City of Paterson? A. About twenty miles.

Q. Go ahead and trace the river, we will come to the development later? A. From the Macopin Intake two pipe lines extend to the City of Newark, which is shown with a broken dash line on this map.

Q. Kindly trace the Pequannock water shed,

or mark it on this map, trace that and tell the Jury what color it is in? A. The Pequannock water shed of sixty two and a half square miles, is almost circular in its outline, and it is shown by this light brown coloring on this map, adjoining on the south the water shed of the Rockaway and on the north the water shed of a river which runs into New York State, running towards the north and into New York State, the Walkill River, and, along the easterly side of the watershed to the watershed which is tributary to Greenwood Lake, and on the lower portion, on the easterly side on the watershed which is tributary to the Wanaque.

The Court—Is there a ridge there which divides the waters?

The Witness—These boundaries of the water shed are drawn as nearly as may be from the contours that are shown on this State map and are drawn on the summit of the ridges dividing the water sheds. The outline on the Pequannock and the outline on the Wanaque have been pretty definitely fixed on the ground.

Q. Will you kindly tell the Jury what you mean when you refer to the drainage area of a river, and illustrate if you will on that map what you mean by drainage area? A. When we use the expression that the Pequannock water shed embraces sixty two and a half square miles, we mean that the slope of the land above the Macopin Intake from which the rainflow will flow down to the brooks in this territory and collect in the main stream and run to the Intake, as shown on the ground, is actually found to exist on the

ground, so that this division line is in almost every case the summit of a hill. Of course, where it drops across the valley it would come about in the middle of the valley, which is called in technical terms a saddle, and there it goes across the entire valley and the saddle is laid between the ridges on each side.

The Court—In other words, it is the actual condition, not merely sketched on the map, it is the natural condition, not artificial?

The Witness—It is the natural division and portion of the area of this part of the State from which the rainfall runs down towards the Macopin Intake.

The Court—The same as a saucer, on that particular watershed?

The Witness—It is.

Q. What is the percentage of the drainage area of the Pequannock Watershed above the Macopin Intake with reference to the total watershed of the Passaic River?

The Court—Suppose you make clear to the Jury, first, from what point you take.

Q. Will you kindly explain to the Jury what you mean when you say the Macopin Intake and that the sixty two and a half square miles of drainage area is part of that and refers to that; First, the Macopin Intake at the southerly end of the Pequannock, where it empties? A. The Macopin Intake is a dam, about sixteen or eighteen feet high, which impounds about thirty million

gallons of water only. It is the point at which the water is taken in the pipe line. It is located about half way between Butler and Charlottesburg.

The Court—Will you point to it on the map?

The Witness—I am now pointing to it.

The Court—Now, what the City of Newark is taking, as I understand, is the water that comes to the Macopin Intake above that point? You take nothing below the Macopin Intake?

The Witness—Nothing at all further on. It is the right to take all the water that may be necessary for the City of Newark from the drainage area of the Pequannock River above the Macopin Intake.

Q. Does the Pequannock River continue below the Macopin Intake? A. It does, for a distance of eight or ten miles, before its junction with the Wanaque.

Q. And does the water that comes down the Pequannock to what is known as the Macopin Intake constitute all that is taken in this case? A. Yes, sir.

Q. And none of the waters that are below the Macopin Intake? A. No, sir, none that are below the Macopin Intake.

A Juror—If you take all the water above the Intake will there be any below?

The Witness—To answer your question I will have to explain. The situation is somewhat different on the Pequan-

nock from the situation on the Rockaway in that respect, because what is actually taken for the supply of the City of Newark are stored waters from flood times in the four reservoirs that are located in the Pequannock Valley. Now, it happens that on the Pequannock River the reservoirs are located some miles above the Intake. I am now pointing to the Oakridge Reservoir, which is one of the main reservoirs, and that is a distance of about seven miles above the Macopin Intake. Another reservoir is at Clinton, which is just north of Newfoundland, and is a distance of about six miles from the Macopin Intake on another branch of the Pequannock, and a third reservoir is located at Canesteo which is about one and a half miles above the point of the Intake.

The Court—What the Juror wants to know is that under this condemnation you have the right to take all above the Macopin Intake, whether they store it or do not store it, you have the right to take it all if you wish.

The Juror—If they took all above the Intake would there be any left below?

The Witness—I would like to explain if the Court will permit that there is a situation here—

The Court—You are not answering the Juror's question; he was asking whether there is any water from the drainage area which would go into the river below there?

The Witness—I am trying to get to that point. This is the point I am trying to reach in answering your question; there is a portion of the Pequannock Watershed

which amounts to about twenty two square miles, situated below these reservoirs and while these condemnation proceedings would allow the taking of those waters it is imposible to take them with the present construction on the Pequannock. We cannot take any more than is sufficient in times of rain up to the capacity of the pipes. In other words, in times of storm, even though it is Summer time, where the rainfall is more than the need of the pipe, there will always be an overflow at the Macopin Intake.

The Court—Just one moment. You are arguing the case, not presenting the facts. We are not dealing with the present. We are dealing with what you are going to take.

The Witness—I am describing the present situation.

The Court—Anything in the future, such as a dam, you may want to put up there, anything you may want to build in order to take the water of that watershed, will be within your right if you get this condemnation. Don't argue the case, as experts always will, unconsciously. Just answer the question.

The Witness—May I answer; I say that there is a prospect of building a reservoir in the lower portion of the watershed.

Q. Below the Macopin Intake, on the Pequannock River, is there a watershed whereby waters will run into the Pequannock below the Intake? A. Yes, sir, there is about twenty-five or thirty square miles.

Q. About twenty five or thirty square miles of water shed where the waters will run into the Pequannock regardless of what Newark takes above it in these proceedings? A. Yes, if Newark take every drop.

Q. If Newark takes every drop there is still a drainage area below the Intake of twenty five or thirty miles that flows into the Pequannock River? A. Yes, sir.

Q. Will your small map illustrate that better? A. No. I don't think it will on that point. I can outline it pretty closely to the Court. The green color, called Post Brook watershed, and the northern portion of the Rockaway Watershed and extending for about ten miles from the Macopin Intake down to the Junction of the Pequannock, and then this part of the territory that I am now tracing with the pointer, which is a portion of the Pequannock River and its tributaries that is below the Macopin Intake.

A Juror—Does that watershed below produce about the same amount of water per acre as above?

The Witness—Yes, the run-off is practically the same per square mile.

The Juror—Does that twenty five miles include this Wanaque part?

The Witness—No, it does not.

The Juror—It is independent of that.

The Witness—No, it is exclusive of the Wanaque. The Wanaque Valley is from the point near Midvale.

The Court—It is exclusive of it, is it not?

The Witness—I am now pointing to it.

The Court—The Jury want to know whether the part you have indicated is exclusive of the Wanaque or inclusive of it?

The Witness—It is exclusive.

Q. And the watershed of the Wanaque has nothing to do with the watershed of the Pequannock? A. The watershed of the Wanaque from Midvale southerly is very narrow and only a distance of about a half mile to a mile fron the brook.

Q. How far below the Pequannock is it that the Wanaque River empties or joins? A. About eight to ten miles.

Q. What percentage does the drainage area of the Pequannock Watershed bear to the drainage area of the Passaic Watershed? A. Counting the Passaic Watershed down to Paterson or Great Falls, approximately four hundred miles, square miles, eight per cent. of four hundred square miles would be sixty four square miles, and the Pequannock is sixty two and a half square miles, so that it is a little less than eight per cent. of the total drainage area.

Q. I am asking you what percentage does the drainage area of the Pequannock bear to the entire watershed? A. I just answered that.

Q. You referred to four hundred square miles? A. Four hundred square miles of the drainage area of the water shed to Paterson.

Q. I thought it was 797 square miles? A. Well, approximately, I mean to say, eight hundred, eight per cent. of eight hundred would be sixty four square miles and the Pequannock is sixty two and a half square miles, so that its percentage is about 7¾.

Q. Is that percentage affected by reason of the fact that the Pequannock is a quick spilling stream as compared with a slow spilling stream? A. The run-off in times of low flow on this watershed is materially affected by the nature of the territory. The four so-called highland branches, the Rockaway, the Pequannock, the Wanaque and the Ramapo, being in mountainous portions of the drainage area of the Passaic River and having very little portion of those drainge areas covered by swamps, whenever there is a rainfall the water runs off quickly in the stream, so that the actual low flow on those highland streams is much longer than is the case of the West Branch of the Passaic River, including the Whippany and a portion of the Great Piece and swamp area along that Branch of the stream, and the river at Great Falls is kept up in times of low flow to a greater degree by waters that come down the West Branch than those that come down the Pompton, and is much more than half of the low flow.

A Juror—Where does the Pequannock river start?

The Witness—The Pequannock River has two main branches at Newfoundland, one of them rises at the Cedar Pond, somewheres near Moe's Tavern, which some of you may know, and the other branch comes down from Stockholm, through the Canesteo reservoir, through Stockholm and through the Oakridge reservoir and joins with the Clinton branch at Newfoundland.

Q. Which do you term the Clinton reservoir? A. The Clinton reservoir is the one that is about

a mile and a half above Newfoundland, the large one to the right.

A Juror—Which is the Oakridge?

The Witness—The Oakridge is the one up along the Susquehanna Railroad.

Q. They are both connected together? A. The operation of the reservoirs is to allow water to come out of the reservoirs, to store water when it is needed to make up the deficiencies, of the stream, to allow it to run down the stream below the reservoir and at the point of the Intake where it is put into the pipes, to make up for the deficiencies in the flow in times of low water.

Mr. Griggs—You run water down to the Macopin Intake through the bed of the stream?

The Witness—Yes, sir.

Mr. Griggs—And there you put pipes in to take it away to Newark, is that right?

Mr. McCran—I will bring that out.

Q. I understand then that the approximate percentage of drainage area of the Pequannock above the Macopin Intake to the Great Falls is seven and three-quarters per cent? A. Yes, sir.

Q. What is the drainage area of the Rockaway Water shed, used by Jersey City for its water supply, all of the river above the Great Falls? A. That would be about fifteen per cent.

Q. Considering these drainage areas and the fact that both Newark and Jersey City supplies are obtained by storing the flood waters, what effect would the diversion of those two municipal-

ities have on the flow of the river at the Weidmann works in your opinion?

Mr. Griggs—The question is objected to. If it is intended to evoke a mere professional opinion, I object to it because it is calling for a legal deduction. If it is intended to express the exact facts, then the witness ought to show that he knows by observation or otherwise, what the results of this diversion have been during the period of years that they have been going on. All of which is addressed to the fact that tables have been put in on almost every detail that counsel can want to employ in the summing up of the case.

The Court—I will allow the question.

A. Records have been kept, both on the Pequannock at Macopin and on the Rockaway at the Boonton reservoir, and those records, some of which have already been put in evidence, show on the Pequannock, for instance, for periods of seven weeks at a time, the low flow of the stream, at low flow periods, the stream, the run of the stream is four and a half million gallons per day for seven weeks, and for a continuous period of twelve weeks, that the low flow of the Pequannock is six million gallons a day—

The Court—At what point is this?

The Witness—At Macopin Intake, a continuous series of measurements are made and calculations carried on from the increased quantities in storage or decreased quantities in storage from which the deduc-

tion can be made of the flow of the river during the period of dry weather. There were also kept during the period of the construction of the works on the Pequannock actual gaugings of the flow of the river, and prior to the construction of the reservoir those records show that the flow was—

Mr. Griggs—We object. Where are the records? Who kept them? We do not know anything about them.

The Court—I think that is so.

Q. Are you familiar with those records? A. I am.

Q. Did you have to do with the keping of those records? A. Not at that time.

Q. Where are those records now? A. Those records are a part of the files of the company that constructed the works. The City was furnished with certified copies of them.

Q. Are you familiar with those records? A. Yes, sir.

Q. That is part of your work as engineer for the City of Newark? A. Yes, sir.

Q. With reference to the water supply obtained from the Pequannock River—

Mr. Griggs—No.

Q. With reference to your work concerning the water supply from the Pequannock River, had you occasion to familiarize yourself with those records? A. I have.

Q. And have you, from observation, since having become connected with the water supply of the City of Newark and the Pequannock, had occasion to verify the accuracy of those records?

Mr. Griggs—I object to that. That cannot be so.

The Court—Yes. How could he?

Mr. Griggs—Those records were taken by the East Jersey Water Company who built the plant, when it was built, and Mr. Sherrerd was not there. How could he verify? What could he do to verify whatever was done before then?

Mr. McCran—Then we will take up the actual records.

Q. Have you caused actual records to be made of the flow of the Pequannock at any time, at the Intake? A. I have, yes, sir.

Q. What is the low flow of the Pequannock during the dry seasons of the year? A. At some of the very low periods in recent years it has been as low as three million gallons per day. An average, I mean, of three million gallons per day, for periods of five or six weeks, and it has been as low as one million gallons a day.

Q. And the records that you have now and which you produce by request of Governor Griggs, do they show those flows? A. They show some as low as two million gallons a day, two and a quarter milion gallons a day.

Q. Have you finished you answer to that question with reference to the effect of the taking of the waters of the Pequannock down past the Weidmanns? A. The answer is not finished. To continue, the effect of the taking of the waters at the Macopin Intake, I should say, at first, that in a scheme of supply such as the Pequannock and the Rockaway, in which the flood waters are impounded in reservoirs, even though the entire

capacity of the pipe lines, or, in the case of the Pequannock as now constructed, even after the entire available field of the Pequannock were taken, the effect in times of low flow in the River at Paterson can only be the portion of the flow of the stream which is intercepted at the Macopin Intake and brought down, because, whenever the stream falls below the quantity of water that is needed for the city it must be made up by drafts on the reservoirs, and these records show that for periods of twelve weeks consecutively the low flow being as low as six million gallons per day, and that those periods, as in accordance with documents that have been submitted in this case as to the flow at the Great Falls, show that there is no cause for complaint, I take, on the part of the dyers for any portion of the year to exceed the twelve weeks of low flow, therefore the only effect of the taking of the Pequannock, whether it is all taken or not, would be limited to the six million gallons.

Mr. Griggs—Now, we are getting the summing up, if the Court please.

Q. Will you kindly turn to the blueprint put in by Mr. Griggs, Condemnors Exhibit 8, taking, for example, the third week of October 1918? A. I remember the figures pretty well.

Q. I want to show it by absolute records, Condemnors Exhibit eight, third week in October 1918, showing the flow at great Falls thirty millions? A. Yes, the lowest flow I think it is.

Q. And then turn to the record put in reference to the flows of the Pequannock River at the Macopin Intake and explain to the Jury what ef-

fect the flow at Great Falls and the flow of the Pequannock at the Intake have upon each other, in reference to—? A. The record on the Pequannock for the run on the third week of October 1918 shows a total for the week of seventeen and a half million gallons running in the stream—

The Court—What date in October?

The Witness—Is shows on the diagram October 19th, 1918; and dividing that by seven makes approximately three million gallons as the flow per day. On the diagram showing the flow at Great Falls the figures are forty-four cubic feet per second, which, translated into million gallons, would be about thirty million gallons.

The Court—Senator McCran, I understand what you are showing now is what the effect was at certain times in the past?

Mr. McCran—Yes, sir, at the Great Falls and what the condition was at the Intake. I am showing the condition, as for example, the third week in October, and the records show what the flow of the Passaic River at Great Falls was at the same time, according to the records taken of the flow at Great Falls and the records taken of the flow of the Pequannock, showing just what that flow was.

The Court—What is troubling me is this; under this condemnation you have the right to have all the water that comes from the Pequannock above the Macopin Intake; you may take all the water that comes there every day, high flow and low flow, or you may take all the water that comes when the

dry times and low flow comes, and take all the water away, so that in other words, you may dry up that watershed so far as the City of Paterson is concerned.

Mr. McCran—We say this, that it is impossible to dry up the watershed of the City of Paterson, but we say—

The Court—You may dry up this part of the watershed and not let out a drop.

Mr. McCran—Yes, that is true, but on the third week of October 1918, the low flow of the Pequannock River was three million gallons. Now, if we take every drop on that day, which under this condemnation we have the right to, all that we can take is three million gallons and I want to show that on that date the flow at Great Falls was twenty four million gallons so that the effect we have on the property of the Property Owners is three million gallons on that day.

The Court—You mean if you took it all?

Mr. McCran—If we took all the water of the Pequannock on the third week in October 1918 we would take on the average three million of gallons of water a day and that is all that came down that river. I want to show in the Passaic River at Great Falls in the City of Paterson there flowed thirty million gallons on that day. Now, if we took it all, we could only affect that flow at Great Falls in Paterson to the extent of three million gallons.

The Court—Why did only three million gallons come down the Pequannock on that day?

Mr. McCran—The witness will explain this. I think it is the lowest flow of the Summer time.

The Court—Irrespective of what you get?

Mr. McCran—Yes, sir.

The Court—In other words, the normal flow?

Mr. McCran—No. If the reservoir was not there no more than three million gallons would come down that river on the average.

The Court—If you will simplify it in that way instead of complicating it.

Mr. McCran—I won't complicate it.

The Court—If you won't and the witness won't, we will get some clear understanding of it.

Q. Now, continue in reference to that?

The Court—You had better ask some definite question.

Q. From what you stated in the third week in October 1918 the flow of the Passaic River at Great Falls was thirty million gallons a day? A. The flow at Great Falls was thirty million but there was increment from sewers to increase that to the amount of fifteen million gallons.

Mr. Griggs—I object to that and ask that the latter part of the answer be stricken out as not responsive to the question and a mere interpolation of the witness.

Motion granted.

Q. What in your opinion is the increment due

from your experience and knowledge of the Passaic River from the Great Falls to Weidmanns?

Mr. Griggs—You have proved that.

Mr. McCran—Then why do you object to it?

A. According to the testimony I say fifteen million gallons.

Mr. Griggs—I object to it and my objection is only that this is repetition of undisputed testimony, and is thrown in to enable this gentleman to express his views on this case.

The Court—Yes, I think that is so. It is very important that that is merely giving Mr. Sherrerd a chance to argue the matter.

Mr. McCran—I beg your pardon. It is not done with any such purpose. Your Honor has no right to say that to me.

The Court—I say that is the effect of it.

Mr. McCran—But that is not my purpose.

The Court—He says according to the testimony it is fifteen million gallons, the simple effect of that is that that is not testifying to what he knows himself but he is talking about some testimony that he has heard, and makes certain comments upon it.

Mr. McCran—He is stating what Governor Griggs concedes is stated to be the fact.

The Court—He is, but he must confine himself to stating the facts and not argue the case.

Q. What, at the Great Falls, in the third week of October 1918 was the average flow of the Passaic River? A. Thirty million gallons per day.

Q. And if, from ceded testimony in this case, fifteen million gallons of water is added to the normal flow of the Passaic River at the Great Falls what quantity of water was passing the Weidmans on that day? A. Forty-five million gallons a day.

Q. On that day, or that week, the third week in October, what was the normal natural flow of the Pequannock River at the Macopin Intake? A. Three million gallons per day.

Q. And had that flow of the Pequannock River at the Macopin Intake any reference to any waters taken by the City of Newark or was it the natural flow of the river? A. It was that much taken by the City. That is all that could be taken from the flow, the low flow.

Q. Was that all the water that came down the Pequannock River during that period? A. It was all the natural flow of the river, and there was a draft on the reservoirs.

Q. Leaving out the drafts on the reservoir that you store up, leaving them out entirely; I am speaking now of the Pequannock River. If there were no reservoirs there whatever? A. That would be the amount coming down the stream. It would be seven per cent. of forty five million gallons—

Mr. Griggs—Now, you see, that is not asked you.

Mr. McCran—That seems to bother Governor Griggs very much.

Mr. Griggs—No, it does not bother.

The Court—The Governor certainly has the right to call the Court's attention to the fact that the witness is answering as to things not asked in the question.

Mr. Gourley—We have had that all through the case.

Q. The reservoirs built by the City of Newark impound the waters that come down the Pequannock, principally what class of waters? A. Waters in times of heavy rainfall or flood flows.

Q. In other words, do I understand that when the floods are on in the watershed above the Intake and when the waters are high that the reservoirs are filled? A. They tend to fill up—

The Court—They collect the water?

Q. They collect the water, you collect those waters? A. Yes, sir.

Q. What is the aggregate capacity of the four reservoirs of the City of Newark? A. It is about 11,000,000,000 gallons.

Q. What is the daily consumption, the average consumption of Newark out of that watershed? A. About forty-seven million gallons per day.

Q. When you have stored in these reservoirs these waters that you collect, over what period of time have you obtained a supply for the city of Newark? A. About 230 days' supply, without counting any of the flow of the brooks running into the reservoirs in that period, which is some additional quantity.

The Court—How often do they fill?

The Witness—They fill every Spring. There has been no season since the plants were constructed that they have not filled and overflown.

The Court—In the Spring time?

The Witness—Generally, yes, in the Spring time.

Q. What is the low flow of the Pequannock River? A. Generally for periods of five or six weeks it runs about five millions gallons per day.

Q. Does it run below that? A. It has on many occasions.

Q. I notice that you have referred to the low flow of the Pequannock River at 7.1 a day, what do you mean by that? A. The figure 7.1 million gallons that was used in figuring or attempting to arrive at a basis for the offers to the dyeing companies for the diversions of these waters. This figure of 7.1 million gallons was used as being representative of a fair amount which is more than the low flow of the Pequannock in times of low flow for a period of twelve weeks in some years, and it represents a period much longer than twelve weeks and is more than the average flow of the river during low flow periods.

Q. What is the low flow of the Rockaway River? A. The low flow of the Rockaway River is about twice that of the Pequannock.

Q. Do your records show whether or not the Pequannock River in low flow has gotten down as low as a million per day? A. Yes, the records show certain times.

Q. That it has gotten down as low as a million per day? A. Yes, sir.

Q. What is the low flow of the Ramapo River?

A. The low flow of the Ramapo is about fifteen million gallons a day.

Q. When you speak of the flow as 7.1 fixed at the time of the offer, I want to ask you if there is any State policy with reference to the ascertainment of the low flow of the river?

Mr. Griggs—Objected to, is there any State policy with reference to the flow of the River? State policy cannot be proved or derived from the opinion of a gentleman who comes here as an engineer. It must be determined in some other way. The policy of the State cannot be expressed by the opinion of this witness.

(Question overruled; Exception entered for all condemnors.)

Q. Is there a State policy—

Mr. Griggs—That is what we objected to.

Q. Is there a State law fixing that standard?

Mr. Griggs—Objected to. If there is a law the law must prove itself.

Mr. McCran—He is the Engineer of the State Supply Commission and can testify to it.

Mr. Griggs—We object to it.

(Question overruled; Exception entered for all condemnors.)

Q. I asked you in reference to the fixing of the 7.1 as low flow, how you arrived at it, what elements entered into the fixing of that figure? A.

The State act, Chapter 252 of the Laws of 1907 had a reference to what—

Mr. Griggs—If the Court please, we object to the statement of the witness, and would like to have the question read.

Mr. McCran—May I modify the question?

Q. When you refer to Chapter 252 of the Laws of 1907, I will show you the act of that year and show you Chapter 252 on page 633, and ask you if that is the law to which you refer?

Mr. Griggs—I don't understand that he has referred properly to any law.

The Court—No.

Q. I ask you if that is the law you refer to? A. Yes, sir.

The Court—Why don't you offer the law?

Mr. McCran—He says he took that as his guide in fixing the 7.1.

Q. You did? A. Yes, sir.

Mr. McCran—We have the statute here and we can read this whole chapter.

Mr. Griggs—Proceed with the examination of the witness—This is not the time to read the law.

The Court—Do you offer this law in evidence, of 1907?

Mr. McCran—Yes, the State Water Supply Act of 1907 as it is reprinted in the re-

vision of 1917, p. 5799, vol. 4, both statutes:

"If at all times an amount equal to the average daily flow for the driest month, as shown by the existing records, or in lieu thereof one hundred and twenty-five thousand gallons daily for each square mile of unappropriated watershed above the point of the diversion, shall be allowed to flow down the stream, the commission shall fix the minimum rate and may increase the rate proportionately as a less amount is allowed to flow down the stream."

Q. Was that one of the elements you referred to as entering into the determination of 7.1 as the low flow of the Pequannock? A. It was.

Q. How many reservoirs has Newark in the Pequannock above the Macopin Intake? A. It has three main reservoirs, and Echo Lake, which has been changed into a reservoir from which about ten feet may be drawn.

Q. Will you kindly give the names of the reservoirs to the Jury? A. The one nearest the Intake is the Echo Lake, the next one along the stream north of Newfoundland is Clinton, the one northwest of Newfoundland is Oak Ridge and one about four miles further north is Canesteo reservoir.

Q. Which are the Newark reservoirs? A. Those are the Newark reservoirs in the Pequannock. There is also a reservoir at Cedar Grove which holds about 750,000,000 gallons in which the storage of some flood waters may also be made.

Q. Did you hear Mr. Cook testify to the present diverters from the Passaic River and the amounts which they diverted from low flow? A. Yes, sir.

Q. Is that substantially correct? A. That is

practically the basis on which the offers were made. I think in several instances that is higher than the low flow for periods of six weeks.

Q. If anything, the amounts given the present diverters, sometimes are higher than what the actual diversions are? A. Yes, particularly in the case of Newark and Jersey City.

Q. The Wanaque River to which you refer is a tributary, of course, of the Passaic River? A. Yes, sir.

Q. It lies below the Pequannock, does it not? A. The watershed lies to the east of the Pequannock and the junction of the two is about a quarter mile below.

Q. Do you mean above or below? A. Below the Intake.

Q. Below the Intake? A. Yes, sir.

Q. And is the Wanaque River at this time being diverted? A. It is.

Q. I show you a printed copy of a contract made between the City of Newark of the first part and the North Jersey District Water Supply Commission of the second part and bearing date the thirty-first day of October 1918, and ask you if that is a copy of the contract entered into between the said parties concerning the development of the water supply in the Wanaque River? A. It is.

Mr. McCran—I offer this printed copy of the contract referred to just now by the witness as a contract between Newark and the North Jersey District Water Supply Commission, in evidence; there being no objection for want of the production of the original contract.

Admitted and marked "Condemnor's Exhibit No. 13" of this date.

Mr. McCran—We offer in evidence Grant from the Department of Conservation and Development of the State of New Jersey to the North Jersey District Water Supply Commission, bearing date December nineteenth 1916 for the development by the said commission of a water supply in the Wanaque River, which grant contains the condition that the dry season flow of the Wanaque River below the dam must at all times be maintained at a minimum of twelve million gallons a day, and which offer is assented to in lieu of the production of the original record.

Admitted and marked "Condemnors' Exhibit No. 14" of this date.

Q. What is the normal low flow of the Wanaque River? A. At the location of the proposed dam in Midvale the low flow is six million gallons per day.

Q. You know that to be so? A. I have had measurements made of it and have had charge of the gaugings when I was engineer for the State Water Supply Commission. That is exclusive of the drafts that may have been taken by the Morris Canal at Greenwood Lake.

Q. Exclusive of that? A. Yes, sir.

Q. So that the stipulation in the grant from the State Board of Conservation and Development to the North Jersey District Water Supply Commission that the minimum normal low flow shall be twelve million, is approximately twice that which would be the natural low flow of the Wanaque at the point mentioned? A. It is.

Q. The contract refers to a water supply to New-

ark, that is so, is it not? A. Yes, and for other municipalities that may afterwards join. It is now for Newark alone.

Q. In other words, any other municipality has the right to join this project upon the payment of a proportionate share of the costs? A. Yes, sir.

Q. But Newark at this time is the municipality that is causing this work to be done, is it not? A. Yes, sir.

Q. Can you tell the Jury what is to be the cost of that development? A. Well, it will exceed twelve million dollars.

Q. Has Newark advanced any money to the North Jersey District Water Supply Commission for the carrying on of this work under the contract in question? A. It has.

Q. How much money? A. A million and a half to date.

Q. Has the Water Commission expended any money in the project up to the present time? A. It has.

Q. Can you tell us what it has expended? A. It has expended——

Mr. Griggs—It seems to me irrelevant. I hate to object to it, but why go into all these figures?

Mr. McCran—We want to take the pipe dream out of it.

Q. Go ahead? A. It has expended to date $1,188,621. And it has awarded a contract for W. H. Gelhegen incorporated, in November 1920, the estimated amount for the cost of the foundations of the dam being $1,429,116 and it has paid on account of said contract for work done the sum of $229.852. In

addition to a retained fund of $25,000. And there has been paid for property taken, including the Wanaque River Paper Company and its plant, the sum of $643,031.

Q. That plant to which you have just referred had to be razed did it not, torn down, removed? A. Yes, it has been torn down and removed.

A Juror—How much did they get?

The Witness—They got $520,000 for their plant and good will in the business.

The Juror—May I ask what is the reason of Newark expending this money, $12,000,000, for what purpose?

The Witness—For an additional water supply for the city.

The Juror—For the City of Newark?

The Witness—Yes, sir.

The Juror—I understood this was to show the flow from this dam which comes down the Wanaque River and to make up for what is being taken in the Pequannock.

Mr. McCran—Yes.

The Juror—Well, if they are taking it for additional water supply, how does it come down the river?

Q. Just explain that to the Juror? A. Because the reservoir must be built of a capacity in accordance with this contract that will allow twelve million gallons that the State Board require to pass the reservoir at all times to be taken out of the reservoir, whether Newark gets its quantity of water or not, the reservoir must be built of a capacity which will take care of both, but surely of the twelve million gallons for the low flow of the river.

The Juror—You say the low flow must be kept up to twelve million, then what is there left for Newark to take?

The Witness—That is the storage.

The Juror—The low flow of twelve million must be kept up and what is left Newark can take?

The Witness—Yes, sir.

Mr. McCran—And any other municipality that may go into this project.

Q. In other words there must always, every day, be permitted to flow over the spillway or over the dam——

The Witness—Or through the gates.

Q. And into the Wanaque River the amount of water not less than twelve million gallons? A. That is right.

Q. And that the normal flow of that river at this time, before the construction is not in excess of six million? A. Yes.

The Juror—And after that twelve million the company is to be supplied?

The Witness—This is exclusive of the draft on Greenwood Lake by the Canal Company.

The Juror—Can you tell me to-day what the Canal uses?

The Witness—It has at times taken twenty million gallons a day in at Greenwood Lake.

The Juror—How long ago is it in use?

The Witness—Well, the matter is a subject of a suit now between the City of Newark——

The Court—No, when was it begun?

The Witness—That is a matter in controversy in that suit. It is claimed it is needed to be taken to maintain the canal as a highway whether boats are passing through it or not, so that they had to take it at low periods.

Q. When was it taken? A. It is taken from Greenwood Lake.

Q. When? A. In the Summer time.

The Court—Now, you mean?

The Witness—Yes, now. Or, perhaps they have no need of it this spring, there has been so much water flowing in the river, but they took the water out at the Pompton Feeder dam for the supply of the Pompton Feeder, that is carried down to Mountain View and turned into the canal at that point when the Pompton Feeder is running sufficient water to supply the canal, they do not always draw from the storage at Greenwood Lake when the low flow period takes place in the river. They claim to have the right, and at times do take all the flow of the Pompton River at this diverting dam, except possibly a little bit which leaks through the dam, and they add to that, water drawn from storage in Greenwood Lake which is allowed to come down the Wanaque River and flow on down to the Pompton Feeder.

The Juror—Will the Morris Canal use as much water while they are not using it as when they use it?

The Witness—Well, the passage of a number of boats through the canal generally does

take an additional amount of water to make up for the lockage, but there is always a flow of water through the canal to make up for the leakage, and to maintain a current in the canal so that they use, I should say, at times, when they are not running their boats, something like sixty per cent. of the water, sixty to seventy per cent. of the water that they would use when they are actually running boats.

By Mr. McCran.

Q. If the canal were abandoned as a waterway where would the water now flowing into the canal go? A. It would go down the river.

Q. Which river? A. The Passaic River at this portion of the canal, or a portion of the water now used would, it would depend upon how they operated the Greenwood Lake outlet gates as to whether all of it would, but the natural flow of the river would be increased if the Morris Canal were abandoned as a water way.

Q. After the water came down the river to the Weidmann place, could a dam or an intake or other arrangement be constructed in the river that would permit of Weidmann impounding every drop of water while upon their lands and taking it into their place? A. Yes, there could be a dam constructed and a low dam would be feasible.

Q. And practicable? A. Yes, sir.

Q. What, in your opinion as an engineer, would it cost for them to construct such a dam or other arrangement for impounding the waters and damming it to enable them to pump it into their place? A. I made a rough estimate of it which amounts to about fifteen thousand dollars.

Q. I show you this estimate on the back of this book and ask you if that is the rough estimate that you have made? A. Yes. This would be a low dam which would raise the water slightly above the present low water level, low average and the waters could flow over it.

Q. Tell the Jury how you would construct that dam for the purpose of enabling the Weidmanns to pump all of the water that comes to their place? A. I understand the Weidmanns own on both sides of the river, and at a point at the lower portion of their property there would be a concrete dam constructed which would be approximately four ft. or so high over entirely across the river, and then on the upper portion of that dam a gravel fill be made so that there might be a slope from the botttom of the river up over this dam, and where these records show that practically the lowest quantity passing Weidmann's even in the very driest days is forty-five million gallons, there would always be a pool above the dam from which the dyers could pump water into their plant.

The Juror—What would they do with the sewage?

The Witness—The sewage seems to be there without right, the City of Newark does not put it in.

Q. After the trunk sewer is finished the——

The Juror—Yes, but now, speaking of the present time, what would you do with the sewage?

The Witness—I would insist that the different mills cease polluting the river, then

the water in the river would be fitted for manufacturing purposes.

The Juror—How about the City sewage?

The Witness—That ought to stop too.

The Juror—How would you stop it?

The Witness—By turning it into the trunk sewer.

The Juror—The trunk sewer will not be finished for ten years to come?

The Witness—It will be finished so that it can be used to the Newark Bay in two years.

Q. Are you speaking of an anticipated dam down there on a dam at the present time? A. It could be put in now, it could have been put in before this time.

The Court—You mean they could get water to use now?

The Witness—They can get all the water they need for manufacturing purposes if such a dam is constructed in the river.

The Court—Notwithstanding the sewer?

The Witness—They can get the water. If they can get the water now and if they could get the water before it would be usable,—I am not a chemist, I don't know whether they can use it or not in its present state. I remember some testimony of some one in regard to the fact that if it were properly treated they could use it.

The Juror—Would they have the right to build that in there?

The Witness—If they own the property on both sides of the river, which I understand they do. They only need to raise the water about six inches to effect that, get it 2 feet

above the bottom of the river, and they would only have to raise the water slightly and take it up a little ways above the plant, back it up.

The Juror—Is the water three feet deep now?

The Witness—No. In some places there are pools, like that, but it is in pools and they find difficulty to get it for the supply of the mill.

Q. I want to ask you about the paper mill that was torn down? A. Yes, it has been torn down.

Q. Let me ask you this, has Newark any connection directly or indirectly with the East Jersey Water Company with reference to the waters which were taken from the Pequannock? A. None at all.

Q. Or with the General Securities Company? A. Nothing.

Q. Has it any guarantee to be made whole in the event of any damages given in this case, from anybody? A. Nothing. That thing was settled in 1900.

Q. Twenty one years ago? A. In 1900 and the Spring of 1901.

Q. Newark took, when it began, what quantity of water from the Pequannock? A. About twenty two million gallons a day.

Q. To-day it is taking forty-seven million gallons a day? A. Yes, sir.

Q. And it is taking the forty-seven from the reservoirs? A. From storage, in both cases.

Q. What effect, in your opinion, if any, had the taking of the twenty two million gallons with reference to their now taking of forty-seven mil-

lion gallons upon the low flow of the Pequannock River? A. Just the same.

Q. It did not make any difference upon the low flow? A. No, sir.

Q. Just explain to the Jury why that is so. A. Where a plant of this kind is constructed for the use of stored waters, when the City of Newark was only using twenty two million gallons a day, of course those reservoirs filled up quicker, because it was not necessary to draw so hard on them, they filled up during times of flood flows, and ran over the spillways and down the stream, but in the Summer time when the flow of the stream was down to five or six million gallons a day then it was necessary to make up the difference from the reservoirs, so that if we took twenty million gallons a day in that period the effect on low flow would be just the same as it is now when we have a greater quantity stored in the water shed, having raised the Oakridge reservoir within the last three years to make up the extra amount for the forty-seven million gallons from storage waters. The effect on the low flow of the stream at Weidmann's is the same in either case. The interception of the low flow that would affect the period of dry weather here in Paterson.

Q. What in your opinion would it cost to construct a dam in the river for the use of Weidmanns? A. Fifteen thousand dollars.

The Juror—If a dam like that would double the water running down the stream why not do that in the Pequannock River?

The Witness—A dam in the river at Paterson would not double the amount of water.

The Juror—If this dam in the Pequannock takes twice as much water coming down?

The Witness—There is no condition on that, there was no State control or State Commission in existence at the time the Pequannock was constructed, but this law to which reference has been made established, as claimed, a State policy regarding the future water supplies of North Jersey, and that in the grant from the Board of Conservation and Development the condition is absolutely there that the low flow must be twelve million gallons in order to maintain the stream during the Summer time, because in this big scheme of water supply and development and conservation it seems to me that it must be carried out along broad lines in order to furnish water for potable purposes and also for manufacturing industries. Otherwise the rivers would go dry, unless there is conservation just now.

The Juror—Can the same thing be done on the Pequannock?

The Witness—The same thing has been done to a limited extent on the Pequannock, because during the early operation of the Pequannock plant I have always allowed five million gallons of water to pass the Intake in the Summer time, but when Newark was reaching the limit of the capacity in the Pequannock we could no longer do that. We have since then, however, raised the Oakridge reservoir, which will enable Newark to keep its supply of water

up to fifty million gallons a day from Pequannock and Newark is now spending and under contract to spend twelve million dollars to develop the Wanaque, which will be ready in four years, to supplement Newark's supply, so that in my judgment it will not be taken—

Mr. Griggs—Oh, Mr. Sherrerd.

The Witness—It will not be taking half of the flow of the Pequannock.

Mr. Griggs—The juror asked a simple question and he is going on with a long lecture and address and he has since got in what the State policy is and all that sort of thing which we tried to exclude. He tells what the State policy was in this lecture we have been listening to.

Mr. Gourley—What is the capacity of the Jersey City reservoir?

The Witness—I think it is about 8,000,000,000, eight or nine billion.

Cross Examination by Mr. Griggs.

Q. Give us a list of the various positions as Water Engineer and Consulting Engineer that you have held from the time you came to Newark up to now? A. I was first, Engineer and Superintendent of the Department of Water of the City of Newark, and that was in, from 1895 until 1905.

Q. Was 1895 your first personal connection with this? A. Yes, sir.

Q. Proceed? A. In 1905 I was appointed as Chief Engineer for the Department or for the Board of Street and Water Commissioners, which was a Board in the City of Newark that had charge of the water supply, it is now, under the

Commission Government, the Department of Streets and Public Improvements, and I am chief engineer for that department. In 1907 when the State Water Supply Commission was created I was Engineer for that Commission and that—

Q. How long did you continue Engineer for t! at Commission? A. Until its work was merged with the department of conservation and development in 1916 I think it was.

Q. Then did you transfer your connection with the latter Board? A. No. Not to that Board. There was created at that time the North Jersey District Water Supply Commission having charge of the water supplies in North Jersey.

Q. Then did you become engineer of that? A. I was, first, chief engineer for that and am now consulting engineer for that Board.

Q. So that continuously, from 1895, you have been an engineer for the City of Newark in city water development, you have been engineer for th General State Board and you are now engineer for that division of the State Board that represents North Jersey? A. Yes, sir.

Q. In addition to that have you ben consulting engineer for the East Jersey Water Company? A. I have not been directly consulting engineer for the East Jersey Water Company. I have passed on one or two phases of their construction work, one was the foundation, they were only retainers of two or three days' duration. Those were the only t! ings I have ever received from that Company.

Q. You have been retained and given them professional services? A. I gave them advice on the foundations for the Boonton dam, I was asked to pass on the foundations of the Boonton Dam and I think there was a controversy with the Watchung Tunnel.

Q. Are you retained now by the East Jersey or any of its associated companies? A. I am not.

Q. You are the engineer of the North Jersey Water Supply Commision? A. I am consulting engineer for the North Jersey District Water Supply Commission.

Q. Also consulting Engineer for the City of Newark? A. No, I am chief engineer.

Q. Well, chief engineer? A. Well, there is a slight difference in the two.

Q. You have brought here a contract between the Mayor and Common Council of Newark, or whatever it is, and the North Jersey District Water Supply Commission? A. That contract.

Q. We have got such a contract in evidence, that is the one I refer to, the one that was put in evidence? A. Yes, sir.

Q. Did you draw that contract? A. I had a part in its preparation.

Q. Who helped you? A. Mr. Spalding Frazier and myself.

Mr. Gourley—Is this important? Who drew the contract?

Mr. Griggs—We have got it in; I will have it stricken out if you desire. I asked if he participated in it.

Mr. Gourley—I don't care.

Q. As a matter of fact, then, when this contract was entered into you represented both parties as engineer, didn't you, Newark and the North Jersey Water Supply Commission? A. Perhaps so.

Q. Is there any doubt about it? A. Well, I was acting simply for the Commission at that time before the contract was executed.

Q. And did you not make a written statement of suggestions regarding the additional water supply for the City of Newark from the Wanaque River in October 1917? A. Such a statement was prepared by the Board of Street and Water Commissioners.

Q. You prepared it, didn't you? A. Most of it.

Q. I show you this pamphlet and ask you if that contains the suggestions of yours? A. It contains suggestions of mine, yes, sir.

Q. I will ask you whether you recognize this language as yours:

"Newark is rapidly reaching the limit of the capacity of its present water supply from the Pequannock River. Practically all of the larger cities have found it necessary to provide for doubling their water supply approximately each twenty five years and Newark is no exception to this rule. The Pequannock supply was installed in 1892 and it is imperative that an additional supply should be developed at once."

Q. Is that yours? A. It sounds like mine.

Q. Have you any doubt that it is yours? A. Hardly.

Q. "The increased use of water in Newark during recent years is due to the better quality of the water furnished and because all modern dwellings are provided with increased water facilities and also from the added fact that many industries of a kind using large quantities of water have been attracted to Newark by the exceptionally good quality and softness of the water."

Q. Did you approve of that? A. A little advertisement for the City.

Q. So that the absorption by Newark of a part

of the Passaic water shed has enabled Newark to broaden its boundaries in the manufacturing way because of the good quality of that water, is that right? A. Also by the fact that Paterson is very crowded place.

Q. Never mind, just answer the question and stop. Is that right or not? I ask you whether these words, "The revenues of the Water Bureau are sufficient to carry the several bond issues contemplated under the proposed contract, the net earnings of the Water Bureau for the year 1916 were $330,000." Is that right? A. Taken from the records.

Q. So that Newark, by the sale of its water from the Pequannock Water Shed to the various manufacturers and inhabitants of Newark earned $330,000. in that year, is that right?

Mr. McCran—One minute. What that has got to do with this case I do not understand. What the report has got to do with it I do not understand. I object to the question,

The Court—It is already in.

Mr. Griggs—It has been answered.

The Witness—It was not answered.

Mr. Griggs— Why did you hesitate?

The Witness—Because Mr. McCran stood up to object.

Q. Which only goes to—

Mr. McCran—Is that question withdrawn?

The Court—He is aking another question; he cannot be insisting upon it if he is asking another one.

Q. During the years from 1907 on down you have taken a great deal of interest at Trenton during the sessions of the legislature in getting up water legislation, have you not? A. I have.

Q. Who was the author of the act of 1907 creating the State Water Supply Commission? A. Well, I don't know that I can say exactly, but it was Dr. Kummel—

Mr. McCran—Objected to, that is certainly irrelevant.

The Court—I think it is proper cross examination. I think the purpose is to show his interest. I will admit it.

(Exception is entered for all the condemnors.)

Q. Just tell us? A. Gov. Stokes, Dr. Kummel, Mr. Vermeule and I was consulted about it.

Q. You participated in the consultations, did you not? A. No. It was after the act was drawn that I was brought into the mater.

Q. Did you also have to do with the legislative promotion or advocacy of the act dividing the State into two Commissions? A. Yes, sir.

Q. And continually, on behalf of the interests of Newark, you have attended the legislature at every session from 1907 to the present time to watch legislation on the subject of water supply? A. Not exactly for that.

Q. Not exactly for that but for that purpose? A. Only in recent years.

Q. And, has it not been impossible to get anything through the legislature relative to water supply that you did not approve of?

Mr. McCran—Objected to.

(Question overruled.)

Q. You flung in a statement here that was not responsive to the question that was asked you to the effect that Newark gave up the supply of water at Belleville on account of the sewage from Paterson? A. I said the sewage.

Q. Now, did you happen to know that the City of Newark brought an action, the Aqueduct Board brought an action to restrain the City of Passaic from putting in a sewage system to empty into the river and that the Chancellor refused the injunction. Did you happen to know that?

Mr. McCran—We object to that question.

(Objection overruled; Exception entered for all Condemnors.)

A. I knew there were some proceedings, I don't know that you are correctly describing them, but there were some proceedings about the pollution of the river.

Q. And did you know that the City of Newark when it was pumping water from the river at Belleville was discharging its sewers into the river below and that the sewage was being carried up by the tide to Belleville where the pumping station was pumping it? A. I don't know that of my own knowledge. I know the sewers did discharge into the river.

Q. And didn't you know that they carried pollution? A. I did not know that they did then.

Q. You did not know that? A. No, sir.

Q. You know the tide flows back up as far as Passaic? A. The tide flows, yes, sir.

Q. Do you mean to have the jury understand that you are swearing that the amount of water you take out of the river at the Macopin Intake

does not affect the flow of the river at the Great Falls at Paterson? A. I did not say that.

Q. I understood you to say so? A. I said that the effect on the low flow at Weidmann's at times of low flow by the taking of the water at the Macopin Intake could not be more than the low flow of the river which was intercepted at that point, or from about five million gallons per day, and certainly it would affect it to that extent.

Q. I wish you would refer to the table showing the natural flow of the Pequannock River at the Macopin Intake for the year 1917? Page 322 of Vol. 2? A. I have got it.

Q. That statement shows in one column the natural flow of the river? A. Yes, sir.

Q. That, I understand, was ascertained by measurements? A. Ascertained by—

Q. By measurements, now, wasn't it? Just answer the questions briefly? A. Well, it has to be more than measurements, it has to be calculations, to show the increase in the reservoirs and decrease in measurements and ascrtain these quantities, yes, sir.

Q. Then the next column shows the amount added to or taken from storage? A. Yes, sir.

Q. With a plus mark where it is added to and a minus mark where it is taken away? A. Yes, sir.

Q. Then the next column shows the amount taken through the pipe lines? A. Yes, sir.

Q. And then the next column shows the amount taken from storage and allowed to flow over the Intake Dam? A. Yes, there is a column there for that.

Q. Was there anything taken from storage in

the year 1917 and allowed to flow over the Intake Dam? A. Not that year, no, sir.

Q. Was there anything in the year 1918? A. No, I don't think so.

Q. Was there anything in the year 1919? A. As far as the records show, no, sir.

Q. Was there anything in the year 1916? A. No, there was not.

Q. Was there anything in the year 1915? A. Not according to this tabulation. There was in 1914.

Q. There was in 1914. How many gallons? A. Sixty three million gallons total in that year, sixty three million gallons.

Q. I make it thirty five million? A. Oh, yes, is right.

Q. Thirty five million gallons in the year 1914? A. Thirty six million gallons.

Q. Thirty six million was all that was allowed to flow out of storage that year and that was there was for the years 1914, 1915, 1916, 1917, 1918, 1919, as far as the records go? A. It was not the amount allowed to flow over the Intake Dam.

Q. The amount taken from storage and allowed to flow over the dam? A. Yes, sir.

Q. Refer to the 1907 table and start on the twenty seventh of October? A. I have not those figures.

Q. 1917? A. 1907 you said. I have 1917.

Q. Starting with the week of October seventeenth what was the natural flow of the river for that week beginning October twenty-seventh? A. The flow of the river is 463 millions for the week.

Q. How much was the total amount that flowed in the river over the dam? A. That is the total

amount that would flow in the river.

Q. What was the amount allowed to flow over the dam? A. Twenty-one million.

Q. Twenty-one million, and the natural flow was 463 million? A. Yes, sir.

Q. What became of the difference? A. It went into storage and made up the draft in the pipe lines.

Q. How much went into storage? A. 135.

Q. Take the next week, November third, what is the natural flow of the river? A. 846 million gallons.

Q. How much of that did you put in storage? A. 506 million gallons.

Q. How much did you allow to go over the dam? A. 43 million.

Q. Take the next week, November tenth, what was the natural flow of the river? A. 346 million.

Q. 346 million gallons? A. Yes, sir.

Q. How much went over the dam? A. Nothing.

Q. Take the next week, November seventeenth, what was the natural flow? A. 198 million.

Q. How much went over the dam? A. Nothing.

Q. Take the next week, December first, how much was the flow? A. You skipped one, I think.

Q. Did I skip November twenty-fourth? A. I think so, 240 million gallons.

Q. November twenty-fourth that was 240 million gallons? A. Yes, sir.

Q. How much went over the dam? A. Nothing.

Q. Then take the week of December fifteenth how much was the flow? A. 131 million gallons.

Q. How much went over the dam? A. About a million gallons.

Q. Take the week of December twenty-second what was the natural flow? A. 277 million gallons.

Q. How much went over the dam? A. Nothing.

Q. Take the week of December twenty-ninth what was the natural flow? A. 341 million gallons.

Mr. Gourley—Are not these tables all in evidence? We were promptly stopped from doing anything like this and everything was put in evidence and the jury will have them before them. Is it necessary to take the time of the Jury and Court in asking as to each item?

Mr. Griggs—I am afraid you will have to suffer.

Mr. Gourley—I am only a common sufferer.

Q. December twenty-ninth the total flow was 341 million gallons and nothing went over the dam you say? A. Yes, sir.

Q. January nineteenth 1918 what was the total flow? A. 709 million gallons.

Q. How much went over the dam? A. Five million gallons.

Q. Take the week beginning August twenty-fourth 1918, begin with the week of August twenty-fourth and go down to the week of December fourteenth inclusive, now,the question will follow: how many days during that period of seventeen weeks was any water allowed to go over the dam. A. About three days.

Q. What were the amounts on these days? A. Two and a half, one and a half, and three million gallons.

Q. Making all together about six million gallons in this number of weeks? A. Yes, sir.

Q. Where was the low flow going then? A. It was being taken.

Q. You were taking the low flow? A. Yes, sir.

Q. The whole of it, practically? A. Yes, except five or six million gallons. That was a period when there was a pretty strenuous time.

Mr. Griggs—Never mind about that.

The Court—That will be stricken out; everything that appears as a voluntary statement will be stricken out.

Q. Now, refer to the year 1914, beginning with the week October third and going down through, from October third to December twenty-sixth, that is the day after Christmas, October, November, December, how many days during that period did you allow any water to flow over the dam? A. Two of them, if I have gotten your question correctly.

Q. A half million one day and sixty-one million gallons on another day? A. Yes, sir.

Q. Out of that period of weeks there were two days? A. Yes, sir.

Q. The scheme that you mentioned here of building a dam on the Weidmann works is that the same scheme that you testified to in the damage suit that was tried here some time ago? A. No, sir.

Q. This is a new one? A. This is a different plan to get the water.

Q. You had a plan for taking care of this water when the Auger & Simon-Weidmann cases were tried for damages for past diversions, didn't you? A. Yes, sir.

Q. You have got a different one now? A. Yes; do you want to know the reason?

Q. You did not give us the benefit of that invention in that case, did you? Give us the benefit of this recent plan? A. I can tell you why.

Q. Now, I have not asked you why, have I? I

asked you whether you did? A. Well, it is an unfair question on me.

Q. You can answer it if you give us the benefit of this later plan in that case? A. The amount of water——

The Court—Did you or did you not?

The Witness—No, I did not, if that is a fair way to confine a witness on a question of that kind.

The Court—Just answer the questions without any argument.

The Witness—I have a right to protect my reputation.

The Court—Nobody has ever attacked it here so far as I can see.

Q. Your reputation has not been attacked? A. You are implying that I did not give you the benefit of my judgment at that time. There were reasons why.

Q. I beg your pardon, I did not imply anything of the kind. The matter was so indefinite that I wanted to get it plain and not to leave it stand that for certain reasons in this case it was made? A. There were certain reasons and I was obliged to show that plan.

Q. I wanted to find if you had abandoned the plan you formerly recommended for the reason of what we said about it?

Mr. Gourley—Is that fair to the witness whether he abandoned the plan at one time or other and then not give him an opportunity to explain his answers?

Q. What year was it that you refer to the third week of October 1919? A. Was that October during 1919?

Q. October nineteenth 1919? A. Well, we have not get those tables.

Q. It is in here, it is in evidence, you have the wrong tabulation. A. The tabulation has been carried down a little further.

Q. This is 1918, where is 1919? A. Oh, I made a mistake then it is 1918, I misread it, I beg your pardon.

Q. It is the week of October nineteenth 1918? A. Yes, sir.

Q. According to the records how much at low flow passed your dam at that time? A. The natural flow of the river that week?

Q. How much if anything passed? A. Oh, nothing over the dam. The low flow was three million gallons.

Q. You kept all there was? A. Yes, sir.

The Court—Was this the period Senator McCran asked about?

The Witness—Yes, sir.

Mr. Griggs—That is the very specific time he asked you about?

The Witness—Three million gallons was taken from the flow of the stream, three million gallons a day.

Q. You took all there was? A. Yes, sir.

Q. And you had been taking all there was for a period of seven or eight weeks prior to that? A. Yes, sir, it was a very strenuous time, those were very strenuous times.

Q. And you did for a period of eight or ten weeks

afterwards? A. Yes, sir, that was taken for war purposes. Did you hear that?

Q. What? A. It was taken for war purposes at that particular time.

Q. Yes, I heard that. You mean it was for war purposes in Newark? A. No, sir, war purposes for the railroads.

Q. For what? A. For the railroads.

Q. What railroads? A. Railroads terminating in Jersey City, it was to help out a situation that was very serious and all of the water plant that could do so were conserving every drop of water to the pipe for that period.

Q. That period does not differ from a half dozen other periods when there was not any war does it? A. Yes, sir, it does.

Q. In the long times when you did not let water go over the dam? A. Yes, in some respects it does.

Q. Didn't I call your attention to several long periods? A. Yes, but this was a long time.

Q. The Wanaque contract the limitation of low flow is contained in the letter from the North Jersey District Commission to you as originally from Mr. Kummel acting director of the Department of Conservation and Development? A. He annexed a copy of it to the contract.

Q. That is contained in that letter? A. There is a copy to the contract——

Q. If you will just answer the question briefly; is this provision that the dry season flow of the Wanaque River below the dam must at all times be maintained at a minimum of twelve million gallons per diem? A. Yes, sir.

Q. That is the provision? A. That is one of the conditions.

Q. That is the provision about the discharge which you have spoken of? A. Yes, it is.

Q. And the only one, is it not? A. I am not sure, I think it is.

Q. Well, that is the one you had in mind? A. Yes, sir.

Q. If you let out twelve million gallons in times of low flow where does it go? A. It goes down the Wanaque River below the dam.

Q. And then, does it go into the Pompton Feeder? A. It may or it may not, depending on how the canal is operated.

Q. It may go into the canal, may it not, if they want it? A. I don't know. It may go there. It is physically possible to go there.

Q. And don't they take it, whenever that comes down the Wanaque into the Pompton Feeder? A. Unless the Society gets after them and prevents it, and they have a save——

Q. Can't you tell what their custom and practice is? A. I know what it is, yes, and at times the Society——

Q. I know, but tell me, I am not asking you to go into old legal disputes between the Society and the Morris Canal, they are older than either you or I? A. That is dependent on circumstances.

Q. It is not dependent on it at all, if you will answer my questions you can have your counsel ask the balance of it, I want to know whether this water does not go naturally to the Pompton Feeder and wouldn't it be water that the Canal Company had a right to take? A. Do you want me to express a legal opinion.

Q. I want you to say yes or no? A. That is what you ask me.

Q. Isn't it water which they are accustomed to take? A. I presume so. Sometimes they let it go over the dam, and sometimes they take it down

at the Feeder. And when they are taking enough water from Greenwood Lake this water can go over the feeder dam.

The Court ordered a recess until two o'clock this day.

After Recess:

MORRIS R. SHERRERD, resumes the stand.

Cross Examination (continued) by Mr. Griggs.

Q. Are you, in addition to your other employments, employed by the City of Paterson as advisory engineer on water questions? A. I have been asked to advise them in connection with the purchase of the water plant.

Q. You gave some figures of the amounts paid so far for the Wanaque River project? A. Yes, sir.

Q. Have you got the detail of that here? A. I have got some of the details.

Q. Let me see what you have got? A. (The witness produces.)

Q. No, this is not it? A. Those are the figures I testified to, are they not?

Q. No, I don't think so? A. The amount paid, and the amount paid by the City of Newark.

Q. You mentioned what was paid to the Wanaque River Paper Company, have you got a list of those specific payments? A. No.

Q. You have not got it? A. I have got the total amount paid for properties here.

Q. How much has been paid for properties so far including the Wanaque Paper Company?

Mr. McCran—Objected to as immaterial.
Mr. Griggs—This is cross examination.

Mr. Gourley—He volunteered that and it was one of the statements objected to by counsel and now counsel wants to cross examine about it. We did not want it and it was brought in voluntarily and counsel objected.

The Court—You could move to strike it out.

Mr. Gourley—We had to take it with the rest of the statement out.

The Court—They could all have been stricken out if you had moved for it. If this is in I will permit him to cross examine on it.

Mr. Gourley—It simply means a protracted examination.

The Court—I will have to permit it.

(An exception is entered to all the Condemnors.)

Q. What is the answer? A. $643.031. For properties including the paper mill.

Redirect Examination by Mr. Gourley.

Q. This bill about which you were examined in 1916, something was asked about your legislative experience, who introduced that bill in the legislature? A. I think it was Senator McCran.

Mr. Gourley—Now, I asked Mr. Cook for some tables, and I think I requested them also of Governor Griggs.

Mr. Griggs—Yes.

Mr. Gourley—He has given us 1916.

Mr. Griggs—1913 and 1914.

Mr. Griggs—As you have two and I have only one, I will permit them all to go in. I offer them in evidence.

Admitted and marked "Condemnors' Exhibit No. 15" of this date.

Condemnors Rest.

GEORGE G. PATTERTON, sworn as a witness on behalf of the Property Owners in Rebuttal, testifies as follows:

Direct Examination by Mr. Griggs.

Q. Where do you live? A. In Hawthorne.

Q. Are you a civil engineer? A. No, sir, I am a mechanical engineer.

Q. And a graduate of Stevens Institute? A. Yes, sir.

Q. Do you know how to measure heights, depths and distances? A. Yes, sir.

Q. Did you measure the height of the storage tank of the Weidmanns? A. Yes, sir.

Q. You did? A. I did.

Q. When? A. On the eighteenth of May 1921 I measured the height from the river water to the storage tank of the Weidmann plant, May eighteenth 1921.

Q. Is that a blueprint showing the elevations? A. Yes, sir.

Mr. Gourley—This I suppose is a part of the affirmative case, to show the capacity of the tank?

The Court—No. I understand the Condemnors to say it is seventy-five feet and the Property Owners say it is fifty-five feet.

Mr. Griggs—And this is to show the actual measurement.

Mr. Gourley—As a necessary question of their expert in pumping, it was necessary to show the height to which the water was lifted. Now, they insisted it was fifty-five feet and they should have put in all their proof on that then. We come and say it is seventy-five feet and the reason for it is given, and then does the Court permit them to come back again and say it was fifty-five feet.

The Court—I think if we have the accurate measurement I will take it.

Mr. Gourley—I don't want to try the case in two parts and don't suppose that the Governor does.

Mr. Griggs—No, I think it would have been more in order if the measurement had been put in at first; it was not done and two sets of people have testified to different measurements and I want to give the exact measurement as made by this witness.

Q. Just tell us what the heights are? A. This print shows the elevations of the tanks, on the top is a datum line, a point which is about the average grade of the mill yard. The height of the bottom of the tank above this datum line is 31.3 feet, the tank itself is 20.4 feet deep, which makes the elevation to the top of the tank above the datum 51.7 feet. The level of the water in the river was 8.06 feet below the datum, and that makes the total height from the suction level in the river to the extreme top of the table, or the point at which it would run over, 59.78 feet; and in pumping this water we maintain a level of about four feet from the top of the tank to insure us not having the

tank running over on the buildings, which makes the total lift, suction and discharge together come to fifty-five feet.

Q. That diagram shows that? A. This diagram shows the actual elevations of the tank and the datum and the top and the water.

Cross Examination by Mr. Humphreys.

Q. Which tank was that you measured? A. The River water storage tank.

Q. Isn't there another tank there near the standpipe? A. There is a standpipe in the yard but that is not for storage.

Q. Isn't it connected with the Dyers' Pipe? A. It is, yes.

Q. Does not the water through the Dyers' Pipe go into both those tanks? A. It could go into both but you cannot fill the standpipe without running this tank over.

Q. Do you know the tank it was? Do you know which tank it was that Dr. Hunziker had reference to when he testified about the pumping? A. Yes, sir, it was this tank here.

Q. The one that you measured? A. Yes, sir.

Q. How do you know that when it was in 1912 that the pumping was done? A. Well, I relied on the records of the test as being true.

Q. Are you talking about Dr. Hunziker's test? A. Yes, sir.

Q. That was made in 1912? A. Yes, sir.

Q. Do you know that they use the head of water in the Dyers' Pipe in the filters, to operate the filters? A. Only a very small portion of the filters.

Q. They did use some? A. Some, yes.

Q. And under the head that is naturally in the Dyers' Pipe? A. Yes, sir.

Mr. Griggs—The diagram is offered in evidence.

Admitted and marked "Weidmann Exhibit No. 21" of this date.

Mr. Griggs—I don't think I offered this book of suggestions of Mr. Sherrerd's.

Mr. Gourley—We object to it.

Mr. Griggs—Then we withdraw it.

Testimony Closed.

The Court—Are there any arrangements to be made about the summing up?

Mr. McCran—I understand the dyers in this case are going to open?

Mr. Griggs—Do you want an opening?

Mr. McCran—Yes, we will have to have a full opening.

Mr. McCran—We offer the map produced by Newark, in evidence.

Admitted and marked "Condemnors' Exhibit No. 16" of this date.

The Court—The petitions in these various cases I want to go to the Jury. They have not been offered but I would like to have them go to the Jury so that they may understand what is claimed in this case. If there is no objection they can go to the Jury.

Mr. Griggs—We have no objection.

Mr. McCran—We have no objection.

Mr. Humphreys—Nor have we any.

(Mr. Lewis then opens for the Dyers.)

(Mr. McCran then sums up for the Condemnors, as relating to Newark.)

The Court then adjourned to tomorrow, Wednes-

day, May twenty-fifth, 1921, at 10:00 o'clock A. M.

Eighth Day:

Wednesday, May 25th, 1921.

The trial was continued this day pursuant to adjournment.

(Mr. Gourley then sums up for the Condemnors, as relates to Jersey City.)

(Mr. Griggs then sums up for the Property Owners.)

The Court then ordered a recess until two o'clock this day.

CHARGE OF THE COURT.

The Court charged the Jury as follows:

The Court—Gentlemen of the Jury; it is your function to decide the evidence, and it is the province of the Court to tell you what the law is, as applicable to a case of this kind, so that you may apply the law to the facts as you find them.

You are trying six cases, Gentlemen, not one. They appear to take the form of one case, because they have all been tried together, but there are six cases, as evidenced by the six petitions which will be placed in your hands by the consent of counsel, and, when you return your verdicts you will return a verdict in each one of those cases. For instance, here is the case of the City of Newark v. the National Silk Dyeing Company, the City of Newark v. The Weidmann Silk Dyeing Company, Jersey City v. The Weidmann Silk Dyeing Company, Jersey City v. The National Silk Dyeing Company, The Acquakanonck v. The Weidmann Silk Dyeing Company and the Acquakanonck v. The National Silk Dyeing Company. So you see, you will have to fix a sum in each one of these cases.

These are not damage suits, Gentlemen, they are compensation suits. Suits to make compensation, not to fix damages. And the difference between a damage suit and a compensation suit is, that a damage suit compensates a man up to a certain time; when that time has passed, if there is a new injury, the man starts another suit and then may ask another jury to assess his damages for a further period. But this is an action in which the parties seek to take forever certain rights, and you

are to make compensation for those right thus taken.

A Juror—Forever?

The Court—Forever. All except one, all except the Acquakanonck Water Company which seeks to take for a limited period.

The Juror—Is that for six years, that limited period?

The Court—I think it is.

Mr. Gourley—From January, 1919.

The Court—From January, 1919, until January first, 1925, and takes, but perhaps I had better state this to you as we go along, as I had it in mind to do. You see, in case of compensation, especially where the taking is perpetual, there is no difference between that and a case where a man says, "I will give you so much for your property." And the other man says, "I will take it." One man then has the money and the other man has the property. And so with compensation in a case of condemnation, because, when you are through with your verdict, the matter is settled and disposed of, for then those who condemn will have the right as if it belonged to them, just as if they had bought it, and the other parties will have the money.

This proceeding has its basis in our constitution, which provides that private property shall not be taken for public use without just compensation. I cannot take your property. If you had a house and I wanted it, there would be absolutely no way in which I could acquire it, unless you wanted to sell it to me. But, where it is for public use, in the interests of the public at large, the individual must make his sacrifice, if it is a sacri-

fice, and give up his property; but, he is entitled to just compensation for it, to be fixed by a jury which hears all the facts.

I want to make clear to you, Gentlemen, at the outset, just what these condemnors are taking. They are not taking the business. The business stays there. The business still belongs to the Weidmann Silk Dyeing Company and the National Silk Dyeing Company, as long as there is any business, and they are not condemning the business. Our Courts have stated it in this way, and, perhaps you will find this clearer than if I expressed it in my own words:

> "An established business has never been held to be, by itself, property in the constitutional sense. A business is less tangible in nature and more uncertain in its vicissitudes than the rights which the Constitution undertakes absolutely to protect, and although in some cases the destruction of an established business works a much greater hardship than many injuries for which the Constitution makes compensation necessary, the diminution of its value is considered a vaguer injury than the taking or appropriation with which the Constitution deals. A business might be destroyed by the construction of a more popular street into which travel was diverted, or by the change in the location of a railroad station, a subway entrance, or even a transfer point for street cars, as well as by competition, but there would be as little claim in

the one case as in the other. The case stands no differently when the business is destroyed by taking the land in which it was carried on, and it well stated that when land occupied for business purposes is taken by eminent domain, the owner or occupant is not entitled to compensation for the destruction of his business or the injury thereto by its necessary removal from its established location."

So you see, Gentlemen, the condemnation is not of the business. The condemnation is of the land.

A Juror—In this particular case is there any condemnation of land?

The Court—No. I am going to explain that to you. It is, of the land, or, as we call it, real estate. Now, real estate, in cases of this kind,—and, all the way through, Gentlemen, where I speak of property I shall mean real estate,—real estate consists in a case of this kind of land, buildings and fixtures. No personal property. They are not condemning personal property or anything which is not fixed. There are certain personal chattels which may become real estate, become a part of the land, a part of the whole real estate. They become such in a situation like this, where the personal property is actually annexed to the realty or something appurtenant to it; where the application is to the use or purpose to which a part of the realty is appropriated, and, where it is the intention of the party in making the annexation to make a permanent accession to the real estate.

So, in this case, the owners contend that real

estate consists not only of the land and the buildings, but those things which are actually attached to the buildings like the pipes, the boilers, the sewer pipes and things of that kind, actually attached to the land, becoming part of the property for all time and useful for the purpose of the operation of that plant and intended to be and remain a part of that land.

A Juror—How shall we know when a thing is not to be considered a part of the building?

The Court—By applying the three considerations I have stated to you, these three conditions that I have outlined to you, that it is attached to the realty, that it has an application to the use for which the realty is being appropriated, and the intention is that it shall remain there. That is, a part of the real estate and if it were sold it would go with it.

The Juror—The tanks and pipes?

The Court—Anything which comes under those three conditions. A man might afterwards, for instance, the owner of the building might detach it from the real estate and then make it personal property.

The Juror—But in taxation it is divided?

The Court—That is a different proposition. That is a purely arbitrary matter. The tax assessor might assess it that way, but that does not make it realty or personal property. If an owner of land makes an agreement to sell his land, those things which are affixed to the realty under the conditions that I have stated, that they are affixed, that they are adapted to the use and intended to be permanently affixed, they become a

part of the permanent property and are real estate; that is what the constitution means, the real estate, it does not mean that they are taking the business.

Now, these petitions, Gentlemen, set out what is to be taken. You will have the petitions before you, so that you will be able to get the exact language, but, briefly, so that you may have it in mind temporarily for the purpose of consideration during the charge. Newark takes the waters of the Pequannock above the Macopin intake. The quantity which they desire to take is not limited, as I recall it. Jersey City takes the waters of the Rockaway at Boonton, not exceeding the average of seventy million gallons a day, not seventy million gallons a day, but an average of seventy million gallons a day; in other words, that may be more at some time and less at another, but an average of seventy million gallons a day——

A Juror—How long a period of time does that average cover?

The Court—This taking is for all time.

The Juror—I mean, the average for a week or a month or what time?

The Court—I presume it is for a year. The petition will probably set out. If it does not, that is the usual method of calculation with the "water men" and which they have evidently adopted here. The Acquackanonk Water Company takes from the Passaic River at Little Falls, until 1925, an average of nine million gallons a day.

So that when you consider those figures, Gentlemen, you may say to yourselves, "Well, will they take that much, say, seventy million gallons a

day? May be they will take but twenty-five or thirty million gallons a day." But this gives them the right which they may exercise at any time to take the amount that they have appropriated by these proceedings. The law on that point, provides:

> "The award must be made on the basis of the most injurious use that can be lawfully made within the right taken as disclosed in the petition or the plan disclosed."

So that they have the right to take that amount and you have the right to assume that that is the amount they are going to take, because, they may take it at any time that they choose to do so.

Now, what is it they are asking? Which brings us to the question asked a few moments ago:

When this proceeding is over, Gentlemen, the owners will still own the land, not only on the banks of the river, but the land under the water, whatever water flows there, that will still belong to them. They still own that. The condemnors are not seeking to take that away. They are simply taking the water which flows over that land, and the owners say, "We have a property right in that water and we want to be paid for it."

Now, you will want to know, of course, what the rights of the property owner are in water that flows past his place. That same right, I might say here, is inherent in every property along the stream and every man who owns property along

the stream, not only Weidmann and the National, but to Jones and Brown and everybody else who owns land on the stream. This is the right, as our Courts have very clearly stated it:

> "The right of a riparian proprietor to the use and enjoyment of the stream of water in its natural state, is as sacred as the soil itself. It is a part of the freehold, of which no man can be disseized but by the lawful judgment of his peers or by due process of law.
>
> "Every owner of land through which a stream of water flows, is entitled to the use and enjoyment of the water, and to have the same flow in its natural and accustomed course, without restriction, diversion or corruption."

The Court of Appeals has stated it this way:

> "Such water in its natural state, so far as respects the private ownership thereof, is not personal, but real property, being as much a part of the land itself as the soil and the rocks; in this respect it is viewed by the common law, which holds that he who owns the soil owns all above and beneath it. But, in view of the transient and flowing nature of water, the landowner's property therein is not absolute, but qualified in a sense, he owns it while it is upon his land, but his ownership is limited to the unsufructory interest, without rights to di-

vert any from its natural course saving for the limited uses that naturally and of necessity pertain to a riparian owner, such as the supplying of his domestic needs, the watering of his cattle, the irrigation of his fields, the supplying of power to his mill and the like. This right of user is limited to so much as shall be reasonably necessary, and is qualified by the obligation to leave the stream otherwise undiminished in quantity and unimpaired in quality. The common law recognizes no right in a riparian owner as such to divert water from a stream in order to make merchandise of it, nor any right to transport any portion of the water from the stream to a distance for the use of others."

Now, that is the right he has. He has a right to this property and if he remained there it would be a part of the soil and it is his property during the time that it is on his soil, he may then use it, in a reasonable manner, as indicated, and then must return it to the stream undiminished in quantity and unimpaired in quality. That is his right.

Now, you will notice, Gentlemen, that it is said he has a reasonable use. Our Courts have also dealt with that in this language:

"We are of opinion that when the riparian owner abstracts water from a running stream for the purpose of so using it that it will be returned to the stream in such a

polluted condition as to appreciably deprive it of its natural qualities and render it unfit for the use of the public, thereby committing a nuisance, he is not making the reasonable use thereof to which he is entitled as such owner, and that any damage he may suffer because he is not able to do this because of the act of the defendant is not more than nominal, if any."

So that if a person uses water in an unreasonable way, and somebody takes it away from him, then the damage he suffers and the compensation he is entitled to is only nominal, because, if he is not using it properly, he is not hurt; but, when he is using it reasonably, then he is entitled to compensation for its use in such substantial sum as you find the facts to warrant.

Now, this compensation, Gentlemen, you will want to know what time it starts from. The compensation that is awarded in this case begins at the time the petitions are filed. The dates are on the petitions, but, speaking generally, from about February first, 1919. They vary in date somewhat, but that, generally speaking, is the time; you will find the filing marks on the papers themselves, so that the condemnation starts from that time. Now, that means this, Gentlemen, that your compensation must be made from that time. Of course, part of that period has gone by. These land owners could not sue the Water Companies for anything that has happened, by way of damages between the time of the filing of the petitions and to-day, because that is supposed to be con-

templated in this taking as of that date; in other words, it not being taken as of to-day, but being taken as of the date of the filing of the petition.

Now then, as to the rule for compensation. I think I have already stated to you that this compensation that is made in these cases, is to cover all compensation for this taking. That there can be no future action or suit brought to cover that. It must cover all that can be obtained at any time. There can be no future actions brought.

Now, as to the rule for compensation. The problem becomes a little more difficult than the ordinary case. In the ordinary case, where land is taken, for instance, if a Railroad Company came along through your end of the town and took your land, then the Jury would have to determine what the value of the land was that they have taken. If they took a part of the land, then the Jury would determine how much the land was worth that they took, and what damage was done to the balance of the land that they did not take. Here, however, the situation is a little different, because what they are taking is not land in its strictest sense, but it is the use of that which is a part of the land, as I have described to you. So that you will have to determine, Gentlemen, by this rule, what you are going to award:

> "The compensation for taking is the difference between the value of the real estate," in the way I have indicated to you "considered as a unit, before the taking, and its value of it after taking."

You cannot consider business or anything else, or any loss or injury therefrom.

Now, in order to determine how much less the property is worth after this water is taken than it was before, both parties have laid before you a great mass of testimony in order that you may have all of these facts before you; may have shown you the value of the plant, the use of the water, what part it plays in the operation of the plant and all the other circumstances that you have heard detailed here and argued by counsel. From all of which, the land-owners say, applying the rule which the Court has just laid down to you, this property, in view of the changed conditions that will exist when the water is taken, is worth so much less than it was before this right was taken away from them. And that is the reason all this testimony has been produced. The other side, of course, claims that there is no diminution. And you will have to weigh all that in order to determine. But that is the rule. How much less is this property, as a unit, worth, than it would have been worth if the diversion had not taken place?

A Juror—From what date?

The Court—As of the date of the filing of the petition.

The Juror—1919?

The Court—Yes. But you see, Gentlemen, you must of course take all of the facts into consideration, especially in those cases where the taking is for a long period; because there is no way in which you can sit down and mathematically make an accurate statement of what the compensation

is. You must exercise your good judgment and your good sense on all of the testimony that has been produced here, because a large part of the problem revolves itself around the question as to what are the reasonable probabilities, as applied to a situation such as that which exists here, one side saying that it forever depreciates their property, the other side saying that it is not going to be depreciated forever, but will be made up, and that a man who comes to buy as of the first of February, 1919, fixes his price just upon what the reasonable probabilities are, or what is going to happen. One side says that where there is a reasonable probability that this water is going to be taken away the plant is going to be very extensively injured, therefore, as of that date, it is worth so much less money; the other side argues, when the buyer comes on that date, he says, "Oh, well, this will soon pass away. There will be water enough there. I am willing to give so much for it."

So you see, the question of the reasonable probabilities of what is going to happen in the future becomes an element for consideration.

A Juror—What I mean is, must we take the flow of the river in 1919 or the flow of the river originally, ten years or twenty years before?

The Court—You must take all of the evidence, Gentlemen, into consideration; the rights that the parties had were those rights which existed before these three diverters took, and the other five water companies which were forced to take under the Chancellor's orders. That is the condition that must be considered.

A Juror—May I ask, in connection with your last remark, these other diverters who took under the Chancellor's orders, we are to figure that they are diverters also?

The Court—Yes, I am going to charge you this, Gentlemen, on that proposition, that you do not take into consideration in figuring the proportions, the diversions which were made by the Morris Canal nor the Passaic Water Company—

A Juror—That is the S. U. M.?

The Court—No. The Passaic Water Company. Ten million gallons a day, as I understand it. Those were the two who have prescriptive rights in that stream. But these various companies who have been mentioned to you here, and I wont take the trouble to repeat the names, who were restrained by the Chancellor and told that they had to make arrangements or condemn, as these three companies here condemning are, that all of those people together and including these three, that was the amount of water which was in the stream and the parties who are taking now must pay for their proportion in the way I will indicate to you later, in the proportion that their proportion bears to the whole amount that is taken by these three and those who were before the Chancellor in that proceeding.

I also want to read to you the rule as stated by our Court, as it may help you on the question of just compensation:

> "The rule is fundamental and familiar that it is a question for the jury to determine, under proper instructions by the

Court, upon the evidence, what elements of expenditure are necessary to render the land owner an equivalent for what was taken.

"But the owner in getting such equivalent, is not entitled to have a more costly plant or a better plant than that before the taking."

That, of course, would be the case where a plain substitution could be made, like a power plant, where a man had, for instance, a certain horse power from the river, and it is taken away, then it might be quite an easy problem to say, "It will take so much money to fit him with the same amount of horse power." But, in this case you take a part of the land and then find the diminution.

This may also assist you, Gentlemen, in solving this somewhat complicated question:

"Generally speaking the true rule seems to be to permit the proof of all the varied elements of value; that is, all the facts which the owner would properly and naturally press upon the attention of a buyer to whom he was negotiating a sale, and all other facts which would naturally influence a person of ordinary prudence desiring to purchase. In this estimation the owner is entitled to have the jury informed of all the capabilities of the property as to the business or use, if any, to which it has been devoted, and of any and every use to which it

may reasonably be adapted or applied. And this rule includes the adaptation and value of the property for any legitimate purpose or business, even though it has never been so used, and the owner has no present intention to devote it to said use. * * * The proper inquiry is not; 'What is the value of the property for the particular use?' But, 'What is its worth in the market in view of its adaptation for that and other uses?' "

"It is incompetent to go into the profits of the business carried on upon the property. No damages can be allowed for injury to business."

I think I have stated that to you in another form, but I would re-state it, Gentlemen, because it is very clearly stated in Mr. Gourley's brief.

So you see, you take all of these elements, and that is the reason they have been presented to you.

Now, as to the proportions, Gentlemen. Our Courts have laid down the rule in this way:

"The impounding of water in reservoirs in time of flood or high water, was no injury to the property owners.

"At such times the supply in the river was adequate for them, and it might even be to their advantage to have the water impounded in time of flood.

"The injury to them came only in time of low water when it was impossible to pump the necessary supply from the river."

You see, Gentlemen, when there is lots of water, then apparently, nobody is hurt; but, when the water gets so low that there is not any, or not sufficient, that is the time the shoe pinches. The Court then goes on to say:

> "The true basis for apportioning the loss among the diverters was the proportion of the current flow diverted by each in times of low water, when the plaintiff could not obtain its supply by pumping.
>
> "This, of course, affects only the question of apportionment, and not the total of the plaintiffs' loss; since they had to make a contract for a continuous supply even though they needed it only during low water."

In this case, the Water Companies claim that there is abundant water there at all times, high or low flow, and, therefore, there is no injury at all, except, nominally, six cents, damages, or compensation, for taking the owner's rights. But, on the other hand, the property owners are contending that in times of low flow it is impossible for them to get the water which is required on their properties and that they could not close their plants during that period, and, that, therefore, it would be necessary for them to make other arrangements, and not depend upon the river, and that, as a result, that depreciates the value of their property, and that proportion which I have spoken of, Gentlemen, would be then, as I have said before, the proportion, taking into consideration the

diversions which exist at times of low flow between these three diverters and the others who were included in the Chancellor's order, and who have now as I recall it, obtained rights for taking for a number of years. You have heard that testimony.

Now, there has been something said about pumping, Gentlemen, that, perhaps I should refer to, so that there will be no mistake about it, although I think you have it quite clearly in mind.

The cost of pumping has been a matter of controversy here, not, as an element of damage or compensation to be included in your award; but, as a matter of credit. It becomes pertinent in this way. The owners had the right to take the water from the river. In doing so they had to pump it, and it cost them money to pump it. If, then, the water is secured by gravity, from the Dyers' Pipe, or in some other manner, then, of course, the cost of pumping would be saved. Therefore, the evidence has been produced here on both sides, to show you how much it cost to pump, in order that you may know how much money would be saved if one of these other methods were adopted in substitution.

Now, the pollution, Gentlemen. I have already spoken to you about the reasonable use of the water by the riparian owner. He must use it in a reasonable manner, in the way I have indicated to you.

If the owner has water taken away from him which he would not use in a reasonable way, then his damages would only be nominal. If, on the other hand, the owner makes a reasonable use of

the water, then he is entitled to such compensation as he satisfies you he is entitled to.

And it has been in this connection that all this testimony has been produced relative to pollution and purification. The owners are contending that the reasonable probabilities are that by reason of the trunk sewer, that is being put through, and the other facts that have been laid before you with reference to the river, that the water will be fit for use, that the sewage will be taken out of it, that they could then pump it from the river into their plants and use it and that by the methods which they have in mind and which they have described to you here, they could return the water in such a state that it could be used by others, and they have told you what efforts would be made to do that, and they have had their witnesses here to tell you that a judicious owner would adopt the methods which have been outlined. So they say that the reasonable probabilities in the future are, judging from all the facts and conditions, that they will be able to make a reasonable use of the water and therefore they are entitled to substantial compensation.

The other side, on their part, contend, that it would be impossible for the owners in this case to use this water in their business in a reasonable manner, and that, if they use it in their business in the way which they have to do that they could not turn it back into the stream, no matter what they do, within the limits of a reasonable expenditure, in such a way that it would be what is termed a reasonable use.

So those are elements also for your consideration.

The burden of proof, upon all of the issues that have been made here, is on the owners.

Now, with reference to the DeGray pond. The pond was bought by the Weidmann Company to get some of its water from there to be brought into the plant, and is now a part of the operation just as much as the filters and the machinery and the rest of the plant that you saw there. It is one of the elements, Gentlemen, that you may take into consideration, one of the things which they have there, just as they have other things which you may take into consideration in determining what diminution the entire plant has sustained, and for no other purpose.

Now, Gentlemen, that is all that I have to say on the part of the Court, so far as the Court's charge is concerned. You must take all of this testimony, take these computations and all of the evidence, and award a sum in each of these cases which represents the diminution in value of the property due to the diversion in the proportions and in the manner in which the Court has indicated, as you apply the facts to the law.

I have had handed to me a number of Requests. I am sorry I have to burden you with them, Gentlemen, but Counsel seem to think it is important, and a hundred and twenty of them have been handed to me—

A Juror—May I ask, in apportioning the damage, you mentioned the apportionment of the low flow, now, in making the award are we to consider the full flow or the low flow?

The Court—The low flow.

The Juror—Any part of the low flow that would be?

The Court—No. You estimate the proportions in times of low flow, because, you see, in high flow there is water enough, nobody is hurt in times of high flow. It is in low flow, when they cannot get the water. That is the only time when the property owner is injured in any way. So you take the proportions based upon the entire amount that is taken by all the diverters I have mentioned before.

A Juror—The price that was fixed at the time of the settlement with these other municipalities, was that a right or just a privilege? Is that the price to be used to guide us in our decision?

The Court—It is not a fixed or a positive guide. But, it is an element which you may take into consideration. For instance, I think Mr. Cook, if I recall right, explained how he happened to fix a certain price. He gave his reasons for that. The other side, if I recall right, contend that they wanted to dispose of the matter and get it out of the way. You may determine, Gentlemen, if you deem it proper, that that is a reasonable and right price to proceed upon. On the other hand; you may decide that there are other elements involved in fixing that price and that that does not fix a price which satisfies you.

A Juror—It has no relation to there being a permanent taking?

The Court—It may or it may not. That is for you to say. I cannot say positively. That is for you, Gentlemen, to determine taking into consider-

ation what the witnesses told you about it, what you have heard here of the case, whether you believe that is a fair and proper figure or whether other elements should be taken into consideration on either one side or the other, or both. You need not adopt that price but you may take it into consideration and apply it as you think best.

A Juror—The diversions have been mentioned as 85,000,000 gallons. Is there anything giving the total amount in the future of these diversions.

The Court—There may be figures here.

Mr. Griggs—Those are the diversions to be made under this right.

The Court—The diversions to be made under this right and those who were before the Chancellor?

Mr. McCran—I have it here and I will present it to the Court.

The Court—Is there any paper which shows these figures which the Jury may have?

Mr. Griggs—I have a summary of them here.

Mr. Gourley—Eighty five million gallons is with the Morris Canal and the Passaic Water Company.

Mr. Griggs—What is the question now?

The Court—I want to know how much water is being taken by these three diverters and also how much is being taken by the others, Montclair, East Orange, Glen Ridge and the rest who were before the Chancellor.

Mr. Griggs—Do I understand the question to be that you want to know how much is being taken out of the river, or how much they are

claiming the right to take. I understand the juror refers to actual taking?

The Court—Yes.

Mr. Griggs—Not the right to take.

The Juror—The right to take.

Mr. Griggs—The right to take is fixed by the petitions.

Mr. Gourley—But it is from the low flow that the Juror wants to know—

Mr. Griggs—I don't think counsel has the right to interpolate. I have said, it is fixed by the petition.

The Court—Yes, I have told them that.

Mr. Gourley—Your Honor charged that low flow, the proportions of that for the sixty five million gallons taken, and that is not the quantity, how much may be taken at high times is what is applied to the sixty five million gallons, it is low flow and that sixty five million is to be taken in the way stated—

The Court—What I have asked for is, is there any paper which shows the amount that is being taken by Montclair and the others, in evidence?

Mr. Griggs—Yes, here is one made out in pencil, you can use it. We can furnish that and leave it here.

The Court—You will find that on page 338 of the book vol. 3, that may include, however the figures for the Morris Canal and the Passaic Water, but you will have to discard them.

Mr. Griggs—Will your Honor allow me to interject here a request which I do not think is included, in the matter of proportion according to law, if you will allow me to interject it.

The Court—Yes.

Mr. Griggs—I would like your honor to explain to the Jury that the statement read from the decision of the Supreme Court to the Jury is for the purpose of guiding the jury in apportioning damages they found among the various diverters and not for minimizing the damages according to low flow or anything of that kind.

The Court—Yes, that is true, Gentlemen, and I so charge you.

The Court—Now, Gentlemen, I take up these Requests. And these are the Requests of Acquackanonck and Jersey City:

1. In determining what compensation these dyers should receive for the proposed diversions of water by the Acquackanonk Water Company, Jersey City and Newark, you must bear in mind that the measure of the compensation is not the value of the water taken from the stream (since the water is not the property of any one proprietor) but is the decrease in market value of the riparian real estate belonging to these dyers, by reason of the proposed diversions of the water by the condemning parties.

The Court—I charge you that, Gentlemen, and I charge you the same thing in the Request Number one of Newark, in which, however, the word, instead of riparian real estate, they use the word "real estate."

(The Request No. 1 of Newark here referred to is as follows, viz:)

1. In determining what compensation the dyers should receive for the proposed diversions of water by The Acquackanonk Water Co., Jersey

City and Newark, you must bear in mind that the measure of the compensation is not the value of the water taken from the stream (since the water is not the property of any one proprietor) but is the decrease in the market value of the real estate belonging to the dyers, by reason of the proposed diversions of the water by the condemning parties.

The Court—I will continue with the Requests of Jersey City and the Acquackanonk.

No. 2. While the proposed diversions by the condemning parties (as I may term them) continue, the bed of the river will remain the property of the riparian owners, and the usufruct of whatever water is permitted to run down the river will belong to them also,—so that if you allow them the difference between the fair market value of their real estate as such value would exist if they were not going to divert any water from the river, and the fair market value of their real estate as affected by the proposed diversions, that is to say, if you allow them decrease in the market value of their real estate by reason of the proposed diversions of the water, you will be making them whole and giving them the just compensation which the Constitution requires.

The Court—I so charge you, Gentlemen, and also charge you the same in connection with Request number two for Newark, which is identical.

(The Request No. 2 for Newark referred to by the Court is as follows.)

2. While the proposed diversions by the condemning parties (as I may term them) continue, the bed of the river will remain the property of

the riparian owners, and the usufruct of whatever water is permitted to run down the river will belong to them also—so, if you allow them the difference between the fair market value of their real estate as such value would exist if they were not going to divert any water from the river, and the fair market value of their real estate as affected by the proposed diversions, that is to say, if you allow them the decrease in the market value of their real estate by reason of the proposed diversions of the water, you will be making them whole and giving them the just compensation which the Constitution requires.

The Court—Number three I decline to charge except as I have already charged, and I make the same ruling in regard to the same request by the same number on the part of Newark. As I have already told you, there is no compensation to be made for business and what I have already charged is explicit in that regard.

(The Requests No. 3 for Jersey City, Acquackanonk and Newark, referred to by the Court are as follows:)

3. (For Jersey City and Acquackanonk) In awarding these dyers the just compensation called for by the Constitution you are not permitted to take into account any damages which will be done to the businesses of these dyers by the proposed diversions of water by the condemning parties.

3. (For Newark) In awarding these dyers the just compensation called for by the Constitution, you are not permitted to take into account any damages which will be done to the businesses of

the dyers by the proposed diversions of water by the condemners.

The Court—No. 4 I decline to charge except as I have already charged, and I make the same ruling with reference to Newark, in a like request of the same number.

(The Requests No. 4 for Jersey City, Acquackanonk and Newark, referred to by the Court are as follows:)

4. (For Jersey City and Acquackanonk) When land occupied for business purposes is taken by eminent domain, the owner or occupant is not entitled to compensation for the destruction of his business or the injury thereto by its necessary removal from its established location,—and the same principle applies where the damage done to the business is due to the unlawful diversion of water used by a riparian owner for business purposes. The riparian owner can recover nothing for such injury to his business.

4. (For Newark) When land occupied for business purposes is taken by eminent domain, the owner or occupant is not entitled to compensation for the destruction of his business or the injury thereto by its necessary removal from its established location,—and the same principle applies where the damage done to the business is due to the unlawful diversion of water used by a riparian owner for business purposes. The riparian owner can recover nothing for such injury to his business.

5. (For Jersey City and Acquackanonk)

The decrease in value (if any) of the real estate of the dyers, due to the proposed diversions, is

not the decrease in such value necessarily as dye houses, or necessarily as belonging to the Weidmann Silk Dyeing Company or to the National Silk Dyeing Company, but is the decrease in such value as real estate (independently of who may be the owner thereof) available to be used for any purpose for which it may be properly and legitimately used.

The Court—I so charge you, Gentlemen, and I will ask Counsel for Newark, does that cover your number five?

Mr. McCran—Yes, sir.

The Court—That will apply then to Newark.

(The Request No. 5 for Newark, referred to by the Court, is as follows:)

5. (On behalf of Newark) The decrease in value (if any) of the real estate due to the proposed diversions is not the decrease in such value, as such value enures to the Weidmann Silk Dyeing Co., and the National Silk Dyeing Company, but the decrease in such value as real estate (independently of who may be the owner thereof) available to be used for any purpose for which they may be properly and legitimately used.

6. (For Jersey City and Acquackanonk)

The only legitimate purpose for which evidence as to damage done to the business is permitted to be introduced is to illustrate one of the uses to which the real estate is adapted.

The Court—I so charge you. There is no similar request on the part of Newark.

7. (For Jersey City and Acquackanonk.)

In taking into consideration the evidence as to the extra expenses these dyers will be put to in

purchasing a water supply through the dyers' pipe from the Passaic Water Company and applying that evidence to the only real inquiry before you, viz: as to the decrease in value of the real estate consequent upon the diversions, you must exercise great care to guard against reaching a result absolutely irreconcilable with the real criterion, which is, the difference between the market value of the property before the diversions take place, and the market value of the property after the diversions take place, having in view the periods of time during which such diversions are to continue.

The Court—I so charge you, and also the same thing as requested in the Request submitted by Newark Number six.

(The Request No. 6 on behalf of Newark, referred to by the Court above, is as follows:)

6. (For Newark.) In taking into consideration the evidence as to the extra expense these dyers will be put to in purchasing a water supply through the dyers' pipe from the Passaic Water Company and applying that evidence to the inquiry before you, viz, as to the decrease in value of the real estate consequent upon the diversions you must exercise great care to guard against reaching a result absolutely irreconcilable with the real criterion, which is, the difference between the market value of the real estate before the diversions take place, and the market value of the real estate after the diversions take place, having in view the periods of time during which such diversions are to continue.

8. (For Acquackanonk and Jersey City.)

You must bear in mind that after the trunk sewer is completed Paterson's sewage will be discharged into that sewer, and after that time no polluting matter can legally be discharged into the river, so that bearing these facts in mind, if you conclude from the evidence that after the trunk sewer is completed there will be sufficient water in the river flowing by these dyers' properties (which will then be unpolluted and capable of being utilized) available for these dyers' uses, it will then be unnecessary for these dyers to purchase any more water through the dyers' pipe from the Passaic Water Company, and all relevancy of the capitalized cost of the purchase of such water to the depreciation in the market value of the lands due to the proposed diversions will automatically end.

The Court—I so charge you, Gentlemen, both in this Request of Jersey City and the Acquackanonk and also the same request as stated in Newark's Request Number seven. Now, Gentlemen, there is a slight variation. It amounts to the same thing, but it seems to be digested.

Mr. Gourley—I think the variation is immaterial.

The Court—It is more clearly stated in the Newark Request perhaps.

Mr. Gourley—Yes, sir.

(The Request on behalf of Newark, referred to, is as follows:)

7. (On behalf of Newark):

If you conclude from the evidence that after the trunk sewer is complete there will be sufficient

water in the river flowing by these dyers' properties, available for their uses, and if you further conclude that it will then be unnecessary for the dyers to purchase any more water through the dyers' pipe from the Passaic Water Company, all relevancy of the capitalized cost of the purchase of such water to the depreciation in the market value of the real estate due to the proposed diversions must be eliminated from consideration.

9. (For Acquackanonk and Jersey City.)

The Court—This request I decline to charge, and the same Request made on behalf of Newark but numbered 8, I also decline to charge.

(The Requests to charge thus declined are as follows:)

9. (On behalf of Acquackanonk and Jersey City.) When you have determined what sum represents the total depreciation in the value of the real estate of these dyers which will be due to the proposed diversions of water by the Acquackanonk Water Company, Jersey City and Newark, and to the diversions of the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, and to the diversions of the Passaic Water Company and the Morris Canal Company, the true basis for apportioning such sum representing such depreciation as found by you among these various diverters will be the proportions of the current flow of the river diverted by each in times of low water.

8. (On behalf of Newark.)

When you have determined what sum represents the total depreciation in the value of the

real estate of the dyers which will be due to the proposed diversions of water by the Acquackanonk Water Company, Jersey City and Newark, and to the diversions of the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, and to the diversions of the Passaic Water Company and the Morris Canal Company, the true basis for apportioning such sum representing such depreciation as found by you among these various diverters will be the proportions of the current flow of the river diverted by each in times of low water.

The Court—No. 10 on behalf of the Acquackanonk and Jersey City, I charge as follows:

10. When you have determined what sum represents the total depreciation in the value of the real estate of these dyers which will be due to the proposed diversions of water by the Acquackanonk Water Company, Jersey City and Newark, and to the diversions of the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, when you find what sum represents the total depreciation due to all their diversions, the true basis for apportioning such sum representing such depreciation as found by you among these various diverters will be the proportions of the current flow of the river diverted by each in times of low flow.

The Court—That states in another way what you, Gentlemen, have asked me before. I so charge you that on behalf of both.

(The Requests to charge as submitted by the

various parties, referred to by the Court in the last above stated request, are as follows:)

10. (For Acquackanonck and Jersey City.)

When you have determined what sum represents the total depreciation in the value of the real estate of these dyers which will be due to the proposed diversions of water by the Acquackanonck Water Company, Jersey City and Newark, and to the diversions of the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, the true basis for apportioning such sum representing such depreciation as found by you among these various diverters will be the proportions of the current flow of the river diverted by each in times of low water.

9. (For Newark.)

When you have determined what sum represents the total depreciation in the value of the real estate of the dyers which will be due to the proposed diversions of water by the Acquackanonck Water Company, Jersey City and Newark, and to the diversions of the Montclair Water Co., Commonwealth Water Co., Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, the true basis for apportioning such sum representing such depreciation as found by you among these various diverters will be the proportions of the current flow of the river diverted by each in times of low water.

A Juror—The time of low water varies and that would spread the average over a certain reasonable number of years?

The Court—No. That simply means this, that

at the time of low flow the contention of the property owners is that they have not any water at all, or have not any use of the water; therefore, to all intents and purposes, they are out of business during that period. It is for the purpose of fixing the proportions between them during the times when the property owners are injured.

11. (For Acquackanonck and Jersey City.)

While the Acquackanonck Water Company proposes to divert nine million gallons of water per day to January 1, 1925, and while the Montclair Water Company, the Commonwealth Water Co., Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley have obtained by contracts from these dyers the right to divert for terms of years, and while Jersey City and Newark intend to divert perpetually, nevertheless you must presume either, first, that when these various terms have expired they will be renewed from time to time, in which case these dyers will again be paid the value of their renewals, or, secondly, that when the terms expire the diversions will cease, in which latter case the water will be available to these dyers, and the depreciation in the value of their properties so far as these diversions are concerned, will cease. In the first instance there would be no sense in holding that Jersey City and Newark should to-day pay for diversions in the future which these other contracting municipalities and water companies will have to pay for when they come to renew their contracts or leases, and in the second instance there would be no sense in holding Jersey City and Newark liable to pay to-day for diversions after the expiration of said

terms, which diversions will then automatically cease.

The Court—You see, it means this, Gentlemen, that you cannot simply treat these other diverters I have mentioned, the Montclair Water Company and the others, that they know will cease in a term of years, because the owners now are being paid for the diversions at the time that they take it. If those contracts are renewed then they will be paid again for the renewed period. If those contracts are not renewed and these people go elsewhere to get their water, then the water comes back and goes past the places of these owners again, and that is the reason I am saying to you that the proportions must include the amount that is taken out by these other companies as well as that taken out by Jersey City, Newark and the Acquackanonck.

That covers both Requests for both parties, doesn't it?

Mr. McCran—Yes, sir.

The Court—I charge that as to both, covering the same Request on the part of Newark.

(The Request referred to by the Court on the part of Newark, is as follows:)

11. (For Newark).

While the Acquackanonck Water Co. proposes to divert nine million gallons of water per day to January 1st, 1925, and while the Monclair Water Co., the Commonwealth Water Co., Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, have obtained by contracts from the dyers the right to divert for terms of years, and while Jersey City and Newark intend to divert perpetually, never-

theless, you must presume either, first, that when these various terms have expired they will be renewed from time to time, in which case the dyers will be again paid the value of their renewals, or, secondly, that when the terms expire, the diversions will cease, in which latter case the water will be available to the dyers, and the depreciation in the value of their real estate as far as those diversions are concerned will cease.

12. (For Acquackanonck and Jersey City.)

I charge you that when these dyers entered into these contracts with the Montclair Water Co., Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley they necessarily fixed, as against themselves, but not as against the plaintiffs, the basis upon which the damages to be recovered from the Acquackanonck Water Co., Jersey City and Newark must be calculated.

The Court—I decline to charge that, Gentlemen; however, you may consider that as an element and you may so find if you choose to do so. I have already explained that to you.

And I take the same action with reference to the similar Request submitted on the part of Newark, where the word compensation is used instead of damage.

(The Request submitted by Newark, to which the Court refers, is as follows:)

12. (For Newark.)

I charge you that when these dyers entered into those contracts with the Montclair Water Co., Commonwealth Water Co., Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, they necessarily

fixed as against themselves, but not as against the condemning parties, the basis upon which the compensation to be recovered from the Acquackanonck Water Co., Jersey City and Newark must be calculated.

13. (For Acquackanonck and Jersey City.)

If you conclude under the evidence that after the trunk sewer is completed the flow of sufficiently pure water past these dyers' properties will be amply sufficient for their purposes, then they will not be entitled to recover anything but nominal damages for any result of the diversions which will occur after the trunk sewer is completed.

The Court—I so charge you, Gentlemen, in both Requests.

(The Request submitted on behalf of Newark to which the Court refers last above, is as follows:

13. (For Newark.)

If you conclude from the evidence that after the trunk sewer is completed the flow of water past the dyers' properties will be amply sufficient for their purposes, then they will not be entitled to recover anything but nominal compensation for any result of the diversions which will occur after the trunk sewer is completed.

14. (For Acquackanonck and Jersey City.)

If you conclude under the evidence that these dyers are to-day using the river as a sewer for their waste waters, and if you conclude under the evidence that they will continue to do so until the trunk sewer is completed, then for the period intervening between the present time and the time when the trunk sewer will be completed, these

dyers will only be entitled to recover nominal damages.

A Juror—How do we know when the trunk sewer will be completed?

The Court—That, Gentlemen, is one of the things I have mentioned before. You will have to use your good judgment and determine what are the reasonable probabilities; you cannot do it with mathematical certainty, any more than you do many other of these things you must use your own good common sense and determine what the reasonable probabilities are. That is the best you can do with it. There is no way to get it definite.

The Court—I charge you number fourteen, and, on behalf of Newark, I charge it as well, the difference in phraseology does not mean anything, does it?

Mr. McCran—No, sir.

(The Request submitted on behalf of Newark to which the Court refers in the last above, is as follows:

14. (For Newark.)

If you conclude from the evidence, that the dyers are to-day using the river as a sewer for their waste waters, and if you conclude from the evidence, that they will continue to do so until the trunk sewer is completed, then for the period intervening between the date of the filing of the petition and order in this cause, and the time when the trunk sewer will be completed, the dyers will only be entitled to recover nominal compensation.

15. (For Jersey City and Acquackanonck.)

Charge of the Court

In arriving at your verdict you must bear in mind that even if the Passaic Valley Sewer Act has legalized as against the State of New Jersey the diversions of water by these dyers from the Passaic River into the trunk sewer when completed, such diversions would still remain illegal as against lower riparian owners, and as neither Weidmann Silk Dyeing Co., nor the National Silk Dyeing Co., has any power to condemn, they will be compelled, if they take the water from the river, to put it back into the river, first purifying it. They may not put back into the river any polluting matter whatsoever, and you have heard what it would cost to purify their waste waters. On the other hand, if they purchased their water from the Passaic Water Co., taking it through the dyers' pipe, they could lawfully discharge their waste waters into the trunk sewer because the Passaic Water Co. has the prescriptive right to divert the water for their use.

The Court—I so charge you, Gentlemen; but, of course, you also have the right to take into consideration in this problem, that the owners if they are using artesian well water and putting that back into the river and if they put in an amount that is equal or greater than the amount which they abstract then the lower riparian owners could not make any complaint.

A Juror—That would cover the ten per cent. they put into the sewer.

The Court—I so charge that on behalf of both Newark and Jersey City, of course, I am including the Acquackanonck with Jersey City.

(The Request submitted on behalf of Newark,

referred to by the Court last above, is as follows:)

15. (For Newark.)

In arriving at your verdict you must bear in mind that even if the Passaic Valley Sewer Act has legalized as against the State of New Jersey, the diversion of water by the dyers from the Passaic River into the trunk sewer when completed, such diversion would still remain illegal as against lower riparian owners, and as neither Weidmann Silk Dyeing Co., nor the National Silk Dyeing Company has any power to condemn they will be compelled, if they take the water from the river, to put it back into the river first purifying it. They may not put back into the river any polluting matter whatsoever, and you have heard what it would cost to purify their waste waters. On the other hand if they purchased their water from the Passaic Water Co., taking it through the dyers' pipe, they could lawfully discharge so much of their waste waters into the trunk sewer, not exceeding ten per cent., of their total waste, because the Passaic Water Co. has the prescriptive right to divert the water for its use.

16. (For Acquackanonck and Jersey City.)

You have the right to consider from the evidence what the total diversions of water above these dyers' properties are, and what proportion of the total diversions in times of low flow were diverted by the condemning parties respectively, and thus arrive at as near an estimate of the damages as the nature of the case will permit.

The Court—Of course, Gentlemen, you have a right to consider all the evidence, and I so charge

you in behalf of both parties; that is what you are here for, to consider the evidence.

(The Request to which the Court refers last above submitted on behalf of Newark, is as follows:)

16. (For Newark.)

You have the right to consider from the evidence what the total diversions of water above these dyers' properties are, and what proportion of the total diversion in times of low flow is diverted by Newark.

17. (For Acquackanonck and Jersey City.)

This is the situation with which you have to deal. There were several trespassers who were unlawfully diverting water. Under the duress of an injunction they were required to commence condemnation proceedings, and as a preliminary they were required to make offers to purchase the rights to divert from these dyers. These offers were all based upon exactly the same calculation as to the value of the right to divert, namely, an arbitrary sum of $100. per million gallons per day diverted in times of low flow per annum. The dyers accepted the offers of all but three, and declined the offers of those three. The dyers now claim that the diversions by the parties whose offers they accepted were thus legalized, but that the diversions by the parties whose offers they refused continue to be illegal, and that therefore those parties should be held liable to pay the entire damages. I charge you this is not the law.

The Court—I charge you, Gentlemen, that that is not the law. I have already charged you that,

but I must include them all. I eliminate from the Request the statement:

"These offers were all based upon exactly the same calculation as to the value of the right to divert, namely, an arbitrary sum of $100. per million gallons per day diverted in times of low flow per annum."

I do not recall whether that was the fact or not, and the Jury will have to remember that.

I charge that also in behalf of Newark.

(The Request submitted on behalf of Newark to which the Court refers last above, is as follows:)

18. (On behalf of Acquackanonck and Jersey City.)

When the amount of damages these dyers are entitled to receive is fixed by you, then under the uncontroverted evidence Jersey City is only liable to pay 15.8 per cent., of those damages.

The Court—Gentlemen, I don't know what the proportions are. You will have to recall the evidence and determine it, and I charge you that in similar manner as to Newark.

(The Request referred to by the Court on behalf of Newark, is as follows:)

17. (For Newark.)

When the amount of compensation the dyers are entitled to receive is fixed by you, then under the uncontroverted evidence, Newark is only liable to pay 8.5 per cent., thereof.

19. (For Acquackanonck and Jersey City.)

If the Court declined to charge request No. 18 then we ask the Court to charge when the amount of damages these dyers are entitled to recover is

fixed by you, then under the uncontroverted evidence Jersey City is only liable to pay 20.7 per cent. of those damages.

The Court—I charge you in the same way as with reference to number eighteen, and the same request presented by Newark. The figures you will have to work out.

(The Request submitted by Newark, referred to by the Court last above, is as follows:)

18. (For Newark.)

If the Court declines to charge Request No. 17, then we ask the Court to charge that:—

When the amount of compensation these dyers are entitled to recover is fixed by you, then under the uncontroverted evidence, Newark is only liable to pay 10.8 per cent., thereof.

20. (For Acquackanonck and Jersey City.)

The Weidmann Silk Dyeing Co., being simply entitled to the diminution in the value of its property consequent upon the proposed taking away of the water, you should take into consideration the fact that Weidmann, being owner of the DeGray property, had by reason of such ownership a source of supply to at least in some degree take the place of the water proposed to be diverted as showing that its property would necessarily not be diminished in value to the same extent as if it did not possess such substitute supply.

The Court—I so charge you, Gentlemen, and the same thing as to Newark also where the words real estate are used instead of property.

(The Request submitted on behalf of Newark, to which the Court refers last above, is as follows:)

19. (For Newark.)

The Weidmann Silk Dyeing Company being simply entitled to the diminution in the value of its real estate consequent upon the proposed taking away of the water, you should take into consideration the fact that the Weidmann Company, being owner of the DeGray property, had by reason of such ownership a source of supply to at least in some degree take the place of the water proposed to be diverted as showing that its real estate would necessarily not be diminished in value to the same extent as if it did not possess such substitute supply.

21. (For Acquackanonck and Jersey City.)

In passing on the question, what have these dyers saved as a result of not having to pump water from the river, you must take in consideration, among other things, the cost of the pumps.

The Court—I so charge you, and a similar Request on behalf of Newark.

(The Request submitted on behalf of Newark to which the Court refers last above, as follows:)

20. (For Newark.)

In passing on the question, what have these dyers saved as a result of not having to pump water from the river, you must take into consideration, among other things, the cost of the pumps.

22. (For Acquackanonck and Jersey City.)

You must bear in mind that it is impossible to deduce from the quantities of water diverted by the various diverters the amount of damages which these dyers sustained. No means exist for making any such computation. You cannot turn gallons of water into dollars and cents. All these

dyers can recover is Newark's and Jersey City's share of the diminution in value of their real estate consequent upon all the diversions.

The Court—And I add to that, "Except the Morris Canal and the Passaic Water Company." I charge you that and I charge you in the same way as to Newark's same request.

(The Request submitted by Newark to which the Court refers last above, is as follows:)

21. (For Newark.)

You must bear in mind that it is impossible to deduce from the quantities of water diverted by the various diverters the amount of damages which these dyers sustained. All these dyers can recover is the diminution in value of their real estate consequent upon all the diversions.

23. (For Acquackanonck and Jersey City.)

The amount of just compensation which the dyers will be entitled to receive will not depend upon the quantities of water diverted either by Jersey City, Newark or the Acquackanonck Water Co., but upon the decrease in the value of these dyers' real estate consequent upon all diversions. Afterwards, when the damages thus computed are ascertained, then it will become necessary to divide these damages among all the diverters by the method laid down by the Supreme Court in the case of Weidmann Silk Dyeing Co. v. Newark, 83 N. J. L. p. 50.

The Court—That is declined, and there is no similar request as to Newark, but, if there is, I decline it as well.

The Court—Gentlemen, is there any point made on the question in view in this next request? Do

you desire that I should read to the Jury from the cases what the purpose of the view is, or is it the purpose to speak of the depreciation?

Mr. Humphreys—No. That is submitted because we have let in the Commissioners' awards.

The Court—What you are trying to point out to the jury is the effect of the Commissioners' awards. You are not making any point as to the law on the view? Because, if you are——

Mr. McCran—No, we think not.

Mr. Humphreys—No.

24. (For Acquackanonck and Jersey City.)

The jury must be satisfied as to the depreciation in the value of the real estate of the National and Weidmann respectively consequent upon the diversions of Newark, Jersey City and the Acquackanonck Water Company without reference to any information they may have as to the amounts awarded by the Commissioners. The only testimony to be considered by the Jury is that which has been received at the trial, supplemented by the knowledge obtained by the Jury from a personal view of the premises.

The Court—In other words, Gentlemen, you are trying the case here as if it had never been tried before. It is before you irrespective of what the commissioners or anybody else did. Both sides appear to be dissatisfied with the award of the commissioners and you are here to try it on what you have heard, not what somebody else may have found.

A Juror—Isn't that in evidence?

The Court—Yes, it is in evidence and you may

have it. I charge you that request and I charge you the similar request as to Newark.

(The Request submitted on behalf of Newark to which the Court refers last above, is as follows:)

23. (For Newark.)

The jury must be satisfied as to the depreciation in the value of the real estate of the National and Weidmann companies, respectively, consequent upon the diversions of Newark, Jersey City and the Acquackanonck Water Co., without reference to any information they may have as to the amounts awarded by the Commissioners. The only testimony to be considered by the jury is that which has been received at the trial, supplemented by the knowledge obtained by the jury from a personal view of the premises.

25. (For the Acquackanonck and Jersey City.)

The fair market value of real estate is determined by what a purchaser, willing to buy, but not compelled to buy, would give, and a seller willing sell, but not compelled to sell, would accept for the property. In determining the present question the jury must determine how much less in their opinion a purchaser, willing to purchase, but not compelled to purchase the dyeing companies' properties, would be willing to give for them than he otherwise would be willing to pay because of the proposed diversions of the water from the river by the present condemning parties, the Cities of Newark and Jersey City and the Acquackanonck Water Company.

The Court—I so charge you and also the similar request on behalf of Newark.

(The Request submitted by Newark last referred to by the Court, is as follows:)

42. (For Newark.)

The fair market value of real estate is determined by what a purchaser, willing to buy, but not compelled to buy, would give, and a seller, willing to sell, but not compelled to sell, would accept for the property. In determining the present question the jury must determine how much less in their opinion a purchaser willing to purchase, but not compelled to purchase the Dyeing Companies' properties, would be willing to give for them than he otherwise would be wlling to pay because of the proposed diversions of the water from the river by the present condemning parties, the Cities of Newark and Jersey City and the Acquackanonck Water Company.

The Court—Number 26 for Acquackanonck and Jersey City, I decline to charge except as I have already charged and make the same ruling in regard to the similar request submitted on behalf of Newark.

(The Requests last referred to by the Court are as follows:)

26. (For Acquackanonck and Jersey City.)

In making their calculation the jury should first consider what will be the fair market value of the Dyeing Companies' properties if the river were in its natural state; that is to say, if no water were diverted from the river by the Morris Canal, Passaic Water Company, or by any of the cities or corporations which the evidence shows are now diverting water from the river; and having determined what would be the fair market

value of said properties if the river were in its natural state, the jury should then determine what would be, in their opinion, the fair market value of the properties after taking into consideration all the water being diverted from the river by all parties now doing so; that is to say, the Morris Canal, the Passaic Water Company, and all the cities and corporations which the evidence shows are now diverting water from the river, and adding to that total amount the amount which the cities of Newark and Jersey City and the Acquackanonck Water Company propose to divert, thus arriving at the total amount of water which will be diverted from the river after the rights to divert have been acquired in these proceedings by the present condemning parties. Having determined the diminution in the fair market value of the Dyeing Companies' properties by the method indicated, it must be presumed that the total diminution in value is caused proportionately by the amount being diverted by each city and corporation which the evidence shows is now diverting water from the river; that is to say, the jury having determined the amount of the diminution in the value caused by all the diversions, including those proposed by the three present condemning parties, and having found from the evidence the total amount of water measured by millions of gallons being diverted from the river by all the cities and corporations now diverting water therefrom, including the three present condemning parties, the amount of such total diminution in value, for which any one of the said three condemning parties can be required to pay by these

proceedings, is that proportion of the total diminution in value which the amount of water such party acquires the right to divert by these proceedings bears to the total amount diverted by all the cities and corporations diverting the water from the river, including among the others, the Morris Canal and the Passaic Water Co.

43. (For Newark.)

In making their calculation the jury should first consider what will be the fair market value of the Dyeing Companies' properties if the river were in its natural state; that is to say, if no water were diverted from the river by the Morris Canal, Passaic Water Company, or by any of the cities or corporations which the evidence shows are now diverting water from the river; and having determined what would be the fair market value of said properties if the river were in its natural state, the jury should then determine what would be, in their opinion, the fair market value of the properties after taking into consideration all the water being diverted from the river by all parties now doing so; that is to say, the Morris Canal, the Passaic Water Company, and all the cities and corporations which the evidence shows are now diverting water from the river, and adding to that total amount the amount which the cities of Newark and Jersey City and the Acquackanonck Water Company propose to divert from the river after the rights to divert have been acquired in these proceedings by the present condemning parties. Having determined the diminution in the fair market value of the Dyeing Companies' properties by the method indicated, it must be

presumed that the total diminution in value is caused proportionately by the amount being diverted by each city and corporation which the evidence shows is now diverting water from the river; that is to say, the jury, having determined the amount of the diminution in the value caused by all the diversions, including those proposed by the three present condemning parties, and having found from the evidence the total amount of water measured by millions of gallons being diverted from the river by all the cities and corporations now diverting water therefrom, including the three present condemning parties, the amount of such total diminution in value, for which any one of the said three condemning parties can be required to pay by these proceedings is that proportion of the total diminution in value which the amount of water such party acquires the right to divert by these proceedings bears to the total amount diverted by all the cities and corporations diverting water from the river, including among the others, the Morris Canal and the Passaic Water Co.

27. (For Acquackanonck and Jersey City,—Revised.)

If the Jury take the amounts of water used by the dyers in the past year, and the prices they had to pay for that water to the Passaic Water Co., in past years as the criterion of the quantities of water they will probably have to use, and the prices they will have to pay for it in the future, then the jury must take the past conditions exactly as they have hitherto existed, and not interject into those conditions possibilities that the

DeGray pond may not in the future be available or that the Dyers' Pipe may not in the future be available.

The Court—I so charge you, and also the similar request submitted on behalf of Newark.

(The request submitted by Newark last above referred to by the Court is as follows:)

44. (For Newark.) (Revised.)

If the jury take the amount of water used by the dyers in past years, and the prices they had to pay for that water to the Passaic Water Co., in past years as the criterion of the quantities of water they will probably have to use, and the prices they will probably have to pay for it in the future, then the jury must take the past conditions exactly as they have hitherto existed, and not interject into those conditions possibilities that the DeGray pond may not in the future be available or that the dyers' pipe may not in the future be available.

28. (Acquackanonck and Jersey City.)

If the jury deduce what the damages should be in the future from past conditions, then they must take the past conditions exactly as they are without any change, and if they do that they must take into consideration the fact that Weidmann has the DeGray pond available as a water supply, and the fact that the Passaic Water Company will undoubtedly be willing to continue to furnish water through the dyers' pipe, and could be compelled to do so by the State Board of Public Commissioners.

The Court—I cannot charge you, Gentlemen, as a matter of fact, that the Passaic Water Company

will undoubtedly be willing or that the Public Commissioners would be willing or could compel them, so I will have to state it that that would be uncertain, otherwise I charge it; or, I will charge you this:

In finding what the injuries will be in the future, you must take into consideration all the pertinent and relative evidence in the case, and decide therefrom what the reasonable probabilities are for the future, based on all the factors entering into the problem. You may consider that the DeGray pond is available, that the Passaic Water Company might be able and willing to furnish water, and that the Utility Commission might be able and willing to compel the Passaic Water Company to furnish water. But I cannot say that they positively will be able to do so. I charge you that in behalf of both.

(The Request to charge submitted by Newark, to which the Court last refers, and which is disposed of in the same manner as the Request of Jersey City No. 28, is as follows:)

45. (For Newark.)

If the jury deduce what the damages should be in the future from past conditions, then they must take the past conditions exactly as they are without any change, and if they do that they must take into consideration the fact that Weidmann had the DeGray pond available as a water supply, and the fact that the Passaic Water Company will undoubtedly be willing to continue to furnish water through the dyers' pipe, and could be compelled to do so by the State Board of Public Commissioners.

29. (For Acquackanonck and Jersey City.)

In calculating the amount to be awarded the Weidmann Silk Dyeing Co. it is not proper to consider the amount of water which the evidence shows the Weidmann Silk Dyeing Co., has been able to obtain from the DeGray property in substitution for water taken from the river, and then to charge for that water what it might cost to obtain it from the Passaic Water Company or from any other source, or to capitalize the amount which it might cost to obtain such water from the Passaic Water Co., or from any other source in place of the water actually obtained from the DeGray property.

The Court—I so charge you, Gentlemen, in connection with what I have already said.

A Juror—Has this Commission power to make the rates through the pipe line the same as the Public Utilities have over the trolleys?

The Court—That is also one of those things in which you will have to apply your good sense as to what the reasonable probabilities are. For instance, it may be that to-day the Public Utilities Commission might have or some other authority have the power to regulate the price of the water going through the dyers' pipe, or that they have not, and you will have to determine whether that same condition will exist in the future. I don't know. You will have to determine what your judgment would be about it. Suppose the Passaic Water Company decided to go out of business? Suppose they decided to take the water somewhere else. It might be that the Utility Commission might say "You must bring it down here."

They might say, "We will let you take it somewhere else." They might say, "We will regulate prices." They might say, "We won't regulate prices." I cannot say as a matter of law what the reasonable probabilities are for the future. It is one of those elements that you must take in connection with the problems you have before you and do the best you can in the reasonable probabilities. The condemnors showing that this is a public body, and saying that it will be regulated, the other side arguing as it was this morning, that they have no right to put the water through the dyers' pipe at all, and if they have no such right the State Board would not have the right to regulate that which is unlawful.

The Court—As I have already said, I charge you that, Gentlemen, in connection with what I have already said, and I also charge the Newark Request to the same effect.

(The Request submitted by Newark, last referred to by the Court, is as follows:)

46. (For Newark.)

In calculating the amount to be awarded the Weidmann Silk Dyeing Co., it is not proper to consider the amount of water which the evidence shows the Weidmann Silk Dyeing Co. has been able to obtain from the DeGray property in substitution for water taken from the river, and then to charge for that water what it might cost to obtain it from the Passaic Water Company, or from any other source, or to capitalize the amount which it might cost to obtain such water from the Passaic Water Co., or from any other source in place of

the water actually obtained from the DeGray property.

30. (For Acquackanonck and Jersey City.)

The evidence being that in order to obtain another source of supply for some of the water diverted from the river, the Weidmann Silk Dyeing Co., purchased the property across the river known as the DeGray property and paid the sum of $20,000. for the same, or charged that amount to the property as the proportion of the purchase money applicable to it, it must be presumed in the the absence of any evidence to the contrary, that the price paid for this property represents its fair value, and the water taken from that property can only be charged for at a rate equivalent to the interest on the purchase money of $20,000. plus the cost of operation.

The Court—That and a similar request submitted by Newark, I decline to charge except to say that it is one of the elements which you may take into consideration with all of the facts and except as I have already charged.

(The Request submitted by Newark last referred to by the Court is as follows:)

47. (For Newark.)

The evidence being that in order to obtain another source of supply for some of the water diverted from the river, the Weidmann Silk Dyeing Co. purchased the property across the river known as the DeGray property and paid the sum of $20,000 for the same, or charged that amount to the property as the proportion of the purchase money applicable to it, it must be presumed in the absence of any evidence to the contrary that the

price paid for this property represents its fair value, and the water taken from that property can only be charged for at a rate equivalent to the interest on the purchase money of $20,000. plus the cost of operation.

31. (For Acquackanonck and Jersey City.)

The jury must bear in mind that all the diversions of water from the river which the evidence shows are being made by Morris Canal, the Passaic Water Company and other corporations and municipalities will be simultaneous in point of time with those proposed to be made by the three present condemning parties; and that the diminution in the flow of the river will consequently be due to the combined diversions of all the cities and corporations causing the same, and that consequently the present diminished flow of the stream and the diminution in the value of the Dyeing Companies' properties caused by such diminution in the flow of the river, cannot be attributed solely to the diversions by the three condemning parties, which three parties only contribute to the diminution in the value of the Dyeing Companies' properties in the proportion which their diversions bear to the total amount of diversions of all the cities and corporations, including themselves.

The Court—That I decline to charge except as I have already charged, and I make the same ruling as to a similar request submitted by Newark.

(The Request to Charge submitted by Newark last referred to by the Court, is as follows:)

48. (For Newark.)

The jury must bear in mind that all the diversions of water from the river which the evidence

shows are being made by Morris Canal, the Passaic Water Company and other corporations and municipalities will be simultaneous in point of time with those proposed to be made by the three present condemning parties; and that the diminution in the flow of the river will consequently be due to the combined diversions of all the cities and corporations causing the same, and that consequently the present diminished flow of the stream and the diminution in the value of the Dyeing Companies' properties caused by such diminution in the flow of the river, cannot be attributed solely to the diversions by the three condemning parties, which three parties only contribute to the diminution in the value of the Dyeing Companies' properties in the proportion in which their diversions bear to the total amount of diversions of all the cities and corporations, including themselves.

32. (For Acquackanonck and Jersey City.)

It is immaterial that the Morris Canal and the Passaic Water Company and the other municipalities and corporations (not including the present three condemning parties) which the evidence shows are now diverting water from the river, acquired legal rights to do so previous to the rights which the three condemning parties are now acquiring by the present proceedings.

The Court—I charge you that, Gentlemen, with the exception of this, that the question of its application to the Morris Canal and the Passaic Water Company is as I have already charged you. With that remark I charge you that and also the similar request submitted on behalf of Newark.

(The Request to charge submitted by Newark, last referred to by the Court, is as follows:)

49. (For Newark.)

It is immaterial that the Morris Canal and the Passaic Water Company and the other municipalities and corporations (not including the present three condemning parties) which the evidence shows are now diverting water from the river, acquired legal rights to do so previous to the rights which the three condemning parties are now acquiring by the present proceedings.

33. (For Acquackanonck and Jersey City.)

The Jury cannot take into consideration the possibility that hereafter additional quantities of water may be diverted from the river, thereby further diminishing its flow, by other municipalities or corporations which have not now acquired a right to do so, for in case any such additional diversions are made, the party causing the same connot legally acquire the right to do so without compensating the Dyeing Companies for any further diminution in the value of their properties caused by such additional diversions, and the present three condemning parties cannot be required in these proceedings to pay for such additional diminution in the value of said properties not caused by themselves.

The Court—That is true, Gentlemen, they only have to pay for what they do themselves, and I charge you that as requested, and also as requested in a similar request by Newark.

(The Request to charge submitted by Newark, last referred to by the Court is as follows:)

50. (For Newark.)

The jury cannot take into consideration the possibility that hereafter additional quantities of water may be diverted from the river, thereby further diminishing its flow, by other municipalities or corporations which have not now acquired a right to do so, for in case any such additional diversions are made, the party causing the same cannot legally acquire the right to do so without compensating the Dyeing Companies for any further diminution in the value of their properties caused by such additional diversions, and the present three condemning parties cannot be required in these proceedings to pay for such additional diminution in the value of said properties not caused by themselves.

34. (For Acquackanonk and Jersey City.)

The evidence being that the Dyeing Companies have in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies will not be able to continue to obtain such substituted supply in the future, the jury cannot take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies may be cut off from these substituted sources of supply.

The Court—I decline to charge you that, Gentlemen. The reasonable probabilities in the future are for you to determine from all the evidence. I make the same ruling as to a similar request to charge submitted by Newark.

(The Request to Charge submitted by Newark

to which the Court last referred is as follows):

51. (For Newark.)

The evidence being that the Dyeing Companies have in fact, at the present time, secured for themselves other sources of water supply to take the place of the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies will not be able to continue to obtain such substituted supply in the future, the Jury cannot take into consideration the conjecture or possibility that at some time in the future the Dyeing Companies may be cut off from these substituted sources of supply.

35. (For Acquackanonk and Jersey City.)

The evidence being that the principal source of the substituted water supply to the Dyeing Companies to take the place of the water diverted from the river is the water obtained from the Passaic Water Company through what is called the dyers' pipe, by means of which water is obtained from the Passaic River at a point above the Great Falls and above the Dyeing Companies' property, and the evidence being that there is plenty of water in the river in times of lowest flow to supply the water through that pipe—if at any time in the future (due to other diversions from the river) there should not be sufficient water in the river to supply this pipe, the parties responsible for such additional diversions would be liable for any consequential damages resulting from the fact that there would not then be sufficient water in the river to supply the dyers' pipe, and the jury in making their present awards cannot take into consideration the possibility that at some future

time there may not be sufficient water in the river to supply the dyers' pipe.

The Court—I so charge you, with this addition: But you may consider, if you decide it to be reasonably probable, that the supply from the dyers' pipe may not be available to the owners, for other reasons, than the taking by the new diverters.

I so charge you, and also charge you a similar request to charge submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows):

52. (For Newark.)

The evidence being that the principal source of the substituted water supply to the dyeing companies to take the place of the water diverted from the river is the water obtained from the Passaic Water Company through what is called the dyers' pipe, by means of which water is obtained from the Passaic River at a point above the Great Falls and above the dyeing companies' property, and the evidence being that there is plenty of water in the river in times of lowest flow to supply the water through that pipe—if at any time in the future (due to other diversions from the river) there should not be sufficient water in the river to supply this pipe, the parties responsible for such additional diversions would be liable for any consequential damages resulting from the fact that there would not then be sufficient water in the river to supply the dyers' pipe and the jury in making their present awards cannot take into consideration the possibility that at some future time

there may not be sufficient water in the river to supply the dyers' pipe.

36. (For the Acquackanonk and Jersey City.)

The Passaic Water Company, from which the evidence shows the Dyeing Companies obtain water through the dyers' pipe in substitution for some of the water diverted from the river, is a public utility corporation, and as such is under the supervision of the State Board of Public Utility Commissioners, and consequently it will be unable lawfully to arbitrarily refuse to supply water from the dyers' pipe to the Dyeing Companies as it is at present doing, but on the contrary, it can be required by law to continue to furnish such water at reasonable rates, and upon reasonable terms and conditions.

The Court—I charge you that, with this addition:

But whether, when such occasion arises, it is reasonably probable, under all the circumstances then existing, that the Utility Commissioners will require it to continue so to do is for you to determine from all the evidence that you have before you.

With that addition I charge you that request and make the same disposition of a similar request submitted by Newark.

(The Request to Charge submitted by Newark to which the Court last referred, is as follows:)

53. (For Newark.)

The Passaic Water Company, from which the evidence shows the dyeing companies obtain water through the dyers' pipe in substitution for some of the water diverted from the river, is a public

utility corporation, and as such is under the supervision of the State Board of Public Utility Commissioners, and consequently it will be unable lawfully to arbitrarily refuse to supply water from the dyers' pipe to the dyeing companies, as it is at present doing, but on the contrary, it can be required by law to continue to furnish such water at reasonable rates, and upon reasonable terms and conditions.

37. (For Acquackanonk and Jersey City.)

The evidence being that the Dyeing Companies have in fact succeeded in obtaining sufficient sources of water supply in substitution for the water diverted from the river, and there being no evidence of a reasonable probability that the Dyeing Companies will not always be able to obtain sufficient water from such substituted sources of supply, the jury cannot take into consideration what would be the depreciated values of the Dyeing Companies' plants upon the theoretical possibility that at some time in the future the Dyeing Companies may not be able to obtain sufficient water from these substituted sources of supply.

The Court—That I decline to charge, and I make the same ruling in regard to a similar request submitted by Newark.

(The Request to charge submitted by Newark and last referred to by the Court is as follows:)

54. (For Newark.)

The evidence being that the dyeing companies have in fact succeeded in obtaining sufficient sources of water supply in substitution of the water diverted from the river, and there being no evidence of a reasonable probability that the dye-

ing companies will not always be able to obtain sufficient water from such substituted sources of supply, the jury cannot take into consideration what would be the depreciated values of the dyeing companies' plants upon the theoretical possibility that at some time in the future the dyeing companies may not be able to obtain sufficient water from these substituted sources of supply.

38. (For Acquackanonk and Jersey City.)

In awarding damages in these proceedings, nothing can be allowed on account of depreciation in the value of the personal property of the Dyeing Companies consequent upon the diversions.

The Court—I so charge you, and also charge a similar request submitted on behalf of Newark.

(The Request to Charge submitted on behalf of Newark, last referred to by the Court, is as follows:)

55. (For Newark.)

In awarding compensation in these proceedings, nothing can be allowed on account of depreciation in the value of the personal property of the dyeing companies consequent upon the diversions.

39. (For Acquackanonk and Jersey City.)

There having been no evidence submitted of any reasonable probability that the Dyeing Companies in the future will not always be able to obtain sufficient water for the purposes of their dyeing business, the jury cannot consider the theoretical possibility that at some time in the future the Dyeing Companies will not be able to obtain such necessary supply, and because of such failure may be required to move their dyeing business elsewhere. And even if such removal should become

necessary, nothing can be awarded in these proceedings on account of the cost of such removal.

The Court—As a whole I cannot charge that as an entire proposition, as given to me, and I decline to charge it, accordingly. I also make the same ruling in regard to a similar request submitted by Newark.

(The Request to charge submitted by Newark, last referred to by the Court, is as follows:)

56. (For Newark.)

There having been no evidence submitted of any reasonable probability that the dyeing companies in the future will not always be able to obtain sufficient water for the purposes of their dyeing business, the jury cannot consider the theoretical possibility that at some time in the future the dyeing companies will not be able to obtain such necessary supply, and because of such failure may be required to move their dyeing business elsewhere. And even if such removal should become necessary, nothing can be awarded in these proceedings on account of the cost of such removal.

40. (For Acquackanonk and Jersey City.)

In making the awards in these proceedings nothing can be allowed on account of the cost of removing the dyeing companies' business elsewhere even although such removal might be rendered necessary by the proposed diversions.

The Court—I so charge you, and also charge a similar Request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

57. (For Newark.)

Charge of the Court

In making the awards in these proceedings, nothing can be allowed on account of the cost of removing the Dyeing Companies' business elsewhere even though such removal might be rendered necessary by the proposed diversions.

41. (For Acquackanonk and Jersey City.)

If, as the dyers claim, after separating the worst part of the polluting matter in their waste waters, viz; 10% thereof, and discharging it into the trunk sewer, what remains would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other source; at all events, to no greater extent than the amount of water they would put into the trunk sewer.

The Court—That I decline to charge except as I have already charged. All the evidence and the deductions to be drawn therefrom are for the Jury. And I make the same ruling in regard to a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

58. (For Newark.)

If, as the dyers claim, after separating the worst part of the polluting matter in their waste waters, viz: 10% thereof and discharging it into the trunk sewer, what remains would be unimpaired in quality within the meaning of the prohibition of the law, then the dyers could use the water over again, and would not be under any necessity to purchase water from any other sources; at all events, to no greater extent than the amount of water they would put into the trunk sewer.

42. (For Acquackanonk and Jersey City.)

When you have determined what sum represents the total depreciation in the value of the real estate of the dyers which will be due to the proposed diversions of water by the City of Jersey City and the City of Newark, the true basis for apportioning such sum representing such depreciation as found by you between these diverters will be the proportions of the current flow of the river diverted by each in times of low water.

The Court—I so charge you, Gentlemen, as I have several times already. And I also charge a similar request submitted by Newark.

(The Request to Charge submitted by Newark to which the Court last refers, is as follows:)

10. (For Newark.)

When you have determined what sum represents the total depreciation in the value of the real estate of the dyers which will be due to the proposed diversions of water by the City of Jersey City and the City of Newark, the true basis for apportioning such sum representing such depreciation as found by you between these diverters will be the proportions of the current flow of the river diverted by each in times of low water.

43. (For Acquackanonk and Jersey City.)

The jury shall not consider nor award to the dyers any compensation whatever by reason of any claim on the part of the dyers because of any loss or injury sustained by them prior to January 30th, 1919, being the date of the filing of the petition in this case.

The Court—I so charge you. And also the Request submitted by Newark of similar purport.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

24. (For Newark.)

The jury shall not consider nor award to the dyers any damages or compensation whatever by reason of any claim on the part of the dyers because of any loss or injury sustained by them prior to January 30th, 1919, being the date of the filing of the petition in this case.

44. (For Acquackanonk and Jersey City.)

The question for the jury to determine is, not what is the value of the real estate to the dyers, nor what damage has been done to their business by the abstraction of water by the condemnor, but the question is, what is the diminution in value of the real estate, as such, of the dyers by reason of the abstraction of the water from the river by said condemnor.

The Court—I so charge you, and also a similar Request submitted by Newark.

(The Request to charge submitted by Newark last referred to, is as follows:)

25. (For Newark.)

The question for the jury to determine is, not what is the value of the real estate to the dyers nor what damage has been done to their business by the abstraction of water by the condemnor, but the question is, what is the diminution in value of the real estate, as such, of the dyers by reason of the abstraction of the water from the river by said condemnor.

45. (For Acquackanonk and Jersey City.)

If the dyers divert water from the river in the future and so use it that it becomes polluted to

the extent that it is unfit for domestic or other reasonable riparian uses, and then return it in such condition to the river, it appreciably impairs the quality of the water and a public nuisance is committed.

The Court—I decline to charge that except as I have already charged, with that goes, also that the Court has said on the question of reasonable use. I also decline to charge a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court is as follows:)

26. (For Newark.)

If the dyers divert water from the river in the future and so use it that it becomes polluted to the extent that it is unfit for domestic or other reasonable riparian uses, and then return it in such condition to the river, it appreciably impairs the quality of the water and a public nuisance is committed.

A Juror—Can we take it for granted that the Passaic Water Company, if Weidmann wanted water from the City pipes, would have to give it to them? If Weidmann says, "I want water from your City Pipe?" Then what easier plan is there than this dyers' pipe?

The Court—The testimony, as I recall it, appears to be, that there is an existing contract between the Weidmann Company and the Passaic Water Company which may be terminated by either one on six months' notice.

The Juror—Suppose they said they wanted water through the City pipes, what would the Water Company have to do?

The Court—Suppose the Water Company said they would not give it to him?

The Juror—Could they say so?

The Court—Well, it is their water.

The Juror—Suppose Weidmann should go to their office and say to them, "Here, I want water, four million gallons a day at our works?"

The Court—Don't you see, all those things depend upon all the circumstances. How much water there is coming through the pipes, how much is there available, where is the water going to, how much have they got to sell, can it be done?. All those things. You must take all of the evidence into consideration in solving these problems.

Mr. Griggs—I will call the attention of the Court to the fact that the Charter of the Passaic Water Company is not in evidence in this case.

Mr. Humphreys—I understood it was.

Mr. Griggs—Let us see it if it is. I understand not. I have always offered it in evidence when I wanted to use it.

46. (For Acquackanonk and Jersey City.)

Where a public nuisance is committed by the dyers in returning to the river polluted water to the extent that it is unfit for domestic or other reasonable riparian uses, the dyers are only entitled to a verdict for nominal damages.

The Court—I charge you that, Gentlemen, in connection with what I have already said about the reasonable use. And I also charge a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court is as follows:)

27. (For Newark.)

Where a public nuisance is committed by the dyers in returning to the river polluted water to the extent that it is unfit for domestic or other reasonable riparian uses, they are only entitled to a verdict for nominal compensation.

47. (For Acquackanonk and Jersey City.)

So long as the dyers divert water from the river and so use it that it becomes polluted to the extent that it is unfit for domestic and other reasonable riparian uses, they are only entitled to nominal damages because the injury they suffer, if any, is that they are deprived of the opportunity of committing a public nuisance.

The Court—That I decline to charge except as I have already charged. And I make the same ruling in regard to a similar request submitted by Newark.

(The Request to charge submitted by Newark, last referred to by the Court, is as follows:)

28. (For Newark.)

So long as the dyers divert water from the river and so use it that it becomes polluted to the extent that it is unfit for domestic and other reasonable riparian uses, they are only entitled to nominal compensation because the injury they suffer, if any, is that they are deprived of the opportunity of commiting a public nuisance.

48. (For Acquackanonk and Jersey City.)

It is the duty of the dyers to return to the river the water they divert therefrom for the purposes of their business, undiminished in quantity and unimpaired in quality, subject to the use thereof for reasonable riparian purposes.

The Court—That I decline to charge except as I have already charged. And I make a similar ruling in regard to a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

29. (For Newark.)

It is the duty of the dyers to return to the river the water they divert therefrom for the purposes of their business, undiminished in quantity and unimpaired in quality, subject to the use thereof for reasonable riparian purposes.

49. (For Acquackanonk and Jersey City.)

If you believe the testimony given by Mr. Cook that there is maintained a flow of water through the canal of the Dundee Water Power and Land Company, at Passaic, for the supply of the mills along the canal, with more than fifteen million gallons of water per day, you may take such fact into consideration as bearing upon the quantity of water flowing by the dyers' properties.

The Court—That I decline to charge except as I have already charged. And I make the same ruling in regard to a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

30. (For Newark.) If you believe the testimony given by Mr. Cook that there is maintained a flow of water through the canal of the Dundee Water Power and Land Company, at Passaic, for the supply of the mills along the canal, with more than fifteen million gallons of water per day, you may take such fact into consideration as bearing

upon the quantity of water flowing by the dyers' properties.

50. (For Acquackanonk and Jersey City.)

If the jury believe that the pipe of the Passaic Water Co., supplying water to certain dye houses running under the streets of the city, is a public use, then such use comes under the control of the Board of Public Utility Commissioners of New Jersey and such body can regulate the price for the supply of such water.

The Court—I will charge that in connection with what I have already told you on that subject. I also charge in the same way a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

31. (For Newark.)

If the jury believe that the pipe of the Passaic Water Co., supplying water to certain dye houses running under the streets of the city is a public use, then such use comes under the control of the Board of Public Utility Commissioners of New Jersey and such body can regulate the price for the supply of such water.

51. (For Acquackanonk and Jersey City.)

Since the dyers' pipe is in actual use, and it is laid under the streets of the city, the contracts made for its use are subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom and the price paid therefor.

The Court—I decline to charge that except as I have already charged. And I also make the

same ruling respecting a similar Request to Charge submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court is as follows:)

32. (For Newark.)

Since the dyers' pipe is in actual use, and it is laid under the streets of the city, the contracts made for its use are subject to the regulation of the Board of Public Utility Commissioners of New Jersey as to the quantity of water used therefrom and the price paid therefor.

52. (For Acquackanonk and Jersey City.)

It is unlawful for the dyers to divert the river water into the trunk sewer.

The Court—I decline to charge that except as I have already charged; and I make the same ruling as to the same request submitted by Newark.

(The Request to Charge submitted by Newark last referred to by the Court, is as follows:

33. (For Newark.)

It is unlawful for the dyers to divert the river water into the trunk sewer.

53. (For Acquackanonk and Jersey City.)

The dyers must return the water taken from the river to the stream undiminished in quantity and unimpaired in quality subject to reasonable riparian uses.

The Court—That I decline to charge except as already charged, and the same ruling as to a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court is as follows:)

34. (For Newark.)

The dyers must return the water taken from the

river to the stream, undiminished in quantity and unimpaired in quality, subject to reasonable riparian uses.

54. (For Acquackanonk and Jersey City.)

There is no difference in practice between an initial purpose to divert water of a stream for the mere purpose of pollution, and a diversion for the purpose of a use which must result in its contamination, for in either case, it is impregnated, when returned, with substances which impair its quality.

The Court—I so charge you, and also charge a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

35. (For Newark.) There is no difference in practice between an initial purpose to divert water of a stream for the mere purpose of pollution and a diversion for the purpose of a use which must result in its contamination, for in either case, it is impregnated, when returned, with substances which impair its quality.

55. (For Acquackanonk and Jersey City.)

If the Jury are of opinion that the Weidmann Silk Dyeing Co. may obtain from the river a sufficient supply of water for the purpose of its business, by the construction of a dam, pool or other arrangement, from which the water flowing in the river may be pumped, it can only recover the cost of such construction and a capitalized sum, the interest of which would pay the charges of maintenance thereof.

The Court—I so charge you. And I also charge a similar request submitted by Newark.

(The Request to charge submitted by Newark, last referred to by the Court, is as follows:)

36. (For Newark.)

If the jury are of opinion that the Weidmann Silk Dyeing Co. may obtain from the river a sufficient supply of water for the purposes of its business, by the construction of a dam, pool or other arrangement, from which the water flowing in the river may be pumped, it can only recover the cost of such construction and a capitalized sum, the interest of which would pay the charge of maintenance thereof.

56. (For Acquackanonk and Jersey City.)

If the Jury are of opinion that the National Silk Dyeing Company may obtain from the river a sufficient supply of water for the purpose of its business, by the construction of intake arrangements from which the water flowing in the river may be pumped, it can only recover the cost of such construction and a capitalized sum, the interest of which would pay the charges of maintenance therefor.

The Court—I so charge you, and I also charge you a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

37. (For Newark.)

If the Jury are of opinion that the National Silk Dyeing Company may obtain from the river a sufficient supply of water for the purpose of its business, by the construction of intake arrangements from which the water flowing in the river may be pumped, it can only recover the cost of such construction and a capitalized sum, the interest of

which would pay the charges of maintenance therefor.

57. (For Acquackanonk and Jersey City.)

If the Jury are of opinion that the normal low flow of the Wanaque River will be increased at all times in the future by the development of the water shed of the said river by the City of Newark, under the contract made between said City of Newark and the North Jersey District Water Supply Commission, they must consider such increase in the normal flow in diminution of any compensation, above nominal, which they may believe the dyers would be entitled to receive from said City of Newark.

The Court—I so charge you, and I charge a similar Request submitted on behalf of Newark.

(The Request to Charge submitted by Newark, last referred to by the Court, is as follows:)

38. (For Newark.)

If the jury are of opinion that the normal low flow of the Wanaque River will be increased at all times in the future by the development of the water shed of the said river by the City of Newark, under the contract made between said City of Newark and the North Jersey District Water Supply Commission, they must consider such increase in the normal flow in diminution of any compensation, above nominal, which they may believe the dyers would be entitled to receive from said City of Newark.

58. (For Acquackanonk and Jersey City.)

The dyers having granted to others the right or privilege to divert for fixed periods on the basis of $100. per year for one million gallons a day,

the price so fixed may be taken by the jury as a declaration by said dyers as the basis upon which the compensation to be recovered in this case is to be limited.

The Court—You may do that, Gentlemen, or you may not, as I said to you before. I charge you the same as to a similar request submitted by Newark.

(The Request to charge submitted by Newark, last referred to by the Court is as follows:)

39. (For Newark.)

The dyers having granted to others the right or privilege to divert for fixed periods on the basis of $100. per year for one million gallons a day, the price so fixed may be taken by the jury as a declaration by said dyers as the basis upon which the compensation to be recovered in this case is to be limited.

59. (For Acquackanonk and Jersey City.)

For the impounding of the waters of the Pequannock and Rockaway Rivers by Newark and Jersey City, in their respective reservoirs in times of flood or high water, the dyers are entitled to no compensation in excess of nominal damages.

The Court—I charge you that, and also charge you a similar request submitted by Newark.

(The Request to charge submitted by Newark, last referred to by the Court, is as follows:)

40. (For Newark.)

For the impounding of the waters of the Pequannock and the Rockaway Rivers by Newark and Jersey City, in their respective reservoirs in times of flood or high water, the dyers are entitled to no compensation in excess of nominal damages.

60. (For Acquackanonk and Jersey City.)

The burden is on the dyers to show depreciation of their real estate by a fair preponderance of the evidence.

The Court—I so charge you and I charge you a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to, is as follows:)

41. (For Newark.)

The burden is on the dyers to show depreciation of their real estate by a fair preponderance of the evidence.

61. (For Acquackanonk and Jersey City.)

The only legitimate purpose for which evidence as to damage done to the business is permitted to be introduced is to illustrate one of the uses to which real estate is adapted.

The Court—I so charge you, and I also charge a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to, is as follows:)

59. (For Newark.)

The only legitimate purpose for which evidence as to damage done to the business is permitted to be introduced is to illustrate one of the uses to which the real estate is adapted.

62. (For Acquackanonk and Jersey City.)

If the Jury should find that the dyers would use the water diverted by Jersey City, if it were not diverted, for the purpose of polluting the river, they are not entitled to more than nominal compensation.

The Court—I so charge you, and the same in

respect to a similar request submitted by Newark.

(The Request to Charge submitted by Newark, last referred to by the Court is as follows:)

60. (For Newark.)

If the Jury should find that the dyers would use the water diverted by Newark, if it were not diverted, for the purpose of polluting the river, they are not entitled to more than nominal compensation.

The Court—Now, there is in Newark's Requests to charge submitted one request which I understand is not included among those submitted by the Acquackanonk and Jersey City. That is number 22. In number 22 do you mean to include the Morris Canal and the Passaic Water Company?

Mr. McCran—Yes, sir.

The Court—You include the Morris Canal and the Passaic Water Company?

Mr. McCran—Yes, sir.

The Court—Then I decline to charge it and will allow an exception to it.

(The Request to Charge referred to is as follows:)

22. (For Newark.)

The dyers have not offered any expert testimony to show the diminution in value of their real estate consequent upon all the diversions. The jury may perhaps make a guess on that subject upon the evidence which has been offered, but the amount of the depreciation in value will not depend upon the quantities of water diverted either by Jersey City, Newark or the Acquacka-

nonk Water Co., but upon the decrease in value of the dyers' real estate consequent upon all diversions.

Mr. Humphreys—Will your Honor direct the Jury with reference to the rate at which they must capitalize?

The Court—No, that request came to me after the summing up started. In view of the fact that I already had a hundred and thirty requests and more to consider I have not had the time to give that consideration. It came too late and I have not had hardly sufficient time to consider the others.

The Court—The property owners ask me to charge you, Gentlemen, as follows:

1. The difference between the market value of the lands of the owner before the taking and after the taking is the measure of the compensation which should be allowed by the jury to the owner for the taking, but for the purpose of determining such compensation, the jury may take into account, if they so find, the fact that the lands and buildings which are a part of the lands are used for dyeing purposes and are worth more for dyeing purposes than for any other purpose.

The Court—I so charge you.

2. The cost of procuring water in substitution of the water taken by these proceedings may be considered in estimating the compensation that should be given to the owners.

The Court—I so charge you.

3. The lands upon which the difference in market value before and after the taking is to be determined, include all fixed and immovable buildings annexed to and part of the land and all

machinery and other physical property which are permanently fixed to the buildings.

The Court—I so charge you, Gentlemen, in connection with what I have said as to fixtures.

4. All compensation for the taking under these proceedings must now be allowed to the owner of the property taken one for all, including all damages that the owner may ever hereafter sustain due to such taking, inasmuch as any damage that the owner may hereafter sustain for all times to come on account of the taking under these proceedings cannot be hereafter recovered.

The Court—I so charge you.

5. In determining the amount which the condemning parties must pay to the owners, no account should be taken of the waters taken by the Morris Canal and Banking Company and the Passaic Water Companies under their respective rights.

The Court—I so charge you.

6. The amount of compensation should be made upon the basis that the condemning parties will make the most injurious use to the owner that can lawfully be made within the right taken by them as disclosed in their petitions.

The Court—I so charge you, as I have already charged.

7. Evidence of the effect of diversions by the takers in the past is admissible in order to show what the probable effect of the future diversions will be.

The Court—I so charge you.

8. The jury may take into account that the owners hereafter may require more water for in-

creased business; also that the price may be greater.

The Court—I so charge you. You may consider all of the evidence on that and determine what you find the reasonable probabilities to be.

9. The uncertain privilege of taking water from the dyers' pipe may be considered by the jury.

The Court—You may so consider, Gentlemen.

10. If the jury shall conclude from the evidence that some treatment of the waste water will need to be made to conform to the law and they shall find that such treatment can be made at an expense that would justify a judicious owner in continuing the business, the cost of such treatment cannot be credited to the takers.

The Court—I decline to charge on that subject except as I have already charged.

11. The probability that the dyers may hereafter be required to procure water from wells, and that to use such water for those parts of the dyeing operation as require soft water the well water will need to be softened, may be taken into consideration by the jury in estimating the damages, and the cost of softening the well water for that purpose must be taken into account.

The Court—I so charge you, Gentlemen; you may take those matters into consideration in determining the value of the property.

12. If the jury find that the owners need for their business a steady and dependable supply of water, instead of an uncertain and intermittent supply, and the takings under these proceedings will render the supply so uncertain and intermit-

tent that it will be of no value for their business, they are entitled to compensation on the basis of a total destruction of the usefulness of the river as a source of supply for the purposes of their business, and so may be considered in arriving at the depreciation of value of land.

The Court—I so charge you.

13. In apportioning the compensation that should be paid between the takers, the jury should make from all the evidence, the best estimate that they are able to make as to the amount of compensation that shall be made by each taker.

The Court—I so charge you.

14. The right of Jersey City as described in its petition to take a quantity not exceeding an average quantity in any year of seventy million gallons of water per day, gives to Jersey City the right to take as large quantity on any day or period as it may choose to take so long as the average quantity in the year does not exceed seventy million gallons per day.

The Court—I so charge you.

The Court—Now, Gentleman, I am sorry I have had to detain you so long with these requests, but they had to be dealt with, and, whether your minds are any clearer by reason of that or not, I don't know, I doubt it. But, take the case, Gentelmen. Lots of these questions, as I said to you before, you cannot answer with any degree of mathematical certainty. You have got to apply your good sense to the facts that are before you and determine what is just compensation, and then you bring in a verdict for compensation in each of these six cases that you will have before

you for the amount that you find from all the evidence is just compensation to the owners for what is taken by these petitioners.

The Court—Now, Gentlemen, are there any exceptions?

Mr. Gourley—If the Court please, Mr. Fletcher would like to ask another question?

The Court—No, we cannot carry the proceedings any further. Are there any exceptions?

Mr. Griggs—Are the exceptions to be taken in the presence of the Jury?

The Court—Yes, and if there are any corrections I can make them before they retire.

Mr. Humphreys—The condemnors ask for an exception to that part of the Court's charge in which the Court excluded from the jury's consideration the diversions by the Morris Canal and the Passaic Water Company.

(Exception allowed.)

Mr. Humphreys—The condemnors also ask for an exception to that part of the Court's charge in which the Court stated that the contracts which were entered into with the various municipalities were not binding upon the dyers but might be used as an illustration, but that they were not binding. We claim that they are binding as against the dyers.

The Court—To whatever I said on that subject I will allow an exception.

Mr. Humphreys—The condemnors also ask an exception to that part of the Court's charge in which the Court said that the owners in using artesian well water may put it back into the river.

The Court—Whatever I said on that subject I will allow an exception to.

Mr. Humphreys—The condemnors also ask an exception to that part of your Honor's charge in which you spoke of the possibility of the Passaic Water Company refusing to furnish water; our insistence being that the Board of Utility Commissioners could compel them to furnish now and in the future.

The Court—Whatever I said on that particular point I will allow an exception to.

Mr. Humphreys—The condemnors also ask an exception to your Honor's refusal to charge the Requests submitted by the Acquackanonk and Jersey City, except as the Court has charged them.

(Exception allowed.)

Mr. Gourley—Your Honor has declined some of the Requests submitted by the Acquackanonk and Jersey City and we ask your Honor for an exception to each request so refused?

The Court—Mr. Humphreys has already taken an exception to that.

Mr. Gourley—We will want to supplement that by pointing out the particular numbers. Your Honor does not know them now and we can arrange that on a later occasion.

The Court—I will allow an exception to the refusal to charge those which I declined to charge.

Mr. Gourley—We also ask for the condemnors an exception to the Court's charging the Owners. Requests to Charge Numbers 1, 5, 8, 11, 12.

(Exception allowed.)

Mr. McCran—The condemnors also ask an exception to that part of the Court's charge in which

the Court eliminated from the consideration of the jury the amount of water diverted by the Morris Canal and the Passaic Water Company.

(Exception allowed.)

Mr. McCran—The Condemnors also ask an exception to that part of the Court's charge in which the Court defines what constitutes real estate in so far as it included a reference to fixtures.

The Court—Why?

Mr. McCran—Because in this case we do not think there is any proof that there were any fixtures which constituted real estate within the meaning of the words.

The Court—I will allow an exception to that.

Mr. McCran—The condemnors also ask for an exception to your Honor's charge in the part where the Court said that the artesian well water that was put into the river replaced water diverted by the dyers.

The Court—Whatever the Court said on that subject an exception is allowed to.

Mr. McCran—In the specific Requests to Charge submitted on behalf of Newark, if your Honor declined to charge any in whole or in part or by saying, "except as I have already charged" the condemnors ask an exception. I can enumerate them if the Court wishes or I can call them off. I will do so.

We except to the refusal of the Court to charge the following Requests submitted on behalf of Newark, viz:

We except to the refusal of the Court to charge

the Request submitted by Newark numbered three—

The Court—I did not refuse it, I said, "except—"

Mr. McCran—The Court did not charge it as excepted.

We also except to the refusal to charge Newark's Request No. 4 as requested.

Also Newark's Request Number eight as requested.

Also Newark's Request Number twelve as requested.

Also Newark's Request Number fifteen as requested.

That is where your Honor said they might put artesian well water into the river—

The Court—You make no point of the slight variation in the language of the two requests?

Mr. McCran—Oh, no, except where the language materially has been changed, I mean—

The Court—If there is any merit in the change I will consider the question.

Mr. McCran—I wont say what Mr. Humphreys' change was, for I have not examined them.

The Court—I can tell you what the difference is; I understand the point of the request is that they cannot take the waste waters and put them into the sewer, and I charged that it might be made up by the waters taken from the artesian wells, and that is the point you object to?

Mr. McCran—Yes, that is the point.

The Court—I will allow an exception to that.

Mr. McCran—The condemnors also except to the refusal of the Court to charge the seventeenth

Request submitted by Newark as requested.

(Exception allowed.)

Mr. McCran—The condemnors also except to the refusal of the Court to charge the eighteenth Request submitted by Newark, as requested.

(Exception allowed.)

Mr. McCran—The condemnors also except to the refusal of the Court to charge the twenty-first Request submitted by Newark, as requested.

The Court—You make no point of the omission of the words "No means exist for making any such computation. You cannot turn gallons of water into dollars and cents."

Mr. McCran—No, sir.

The Court—I will allow an exception to that.

Mr. McCran—The condemnors except to the Refusal to Charge as requested the following numbered Requests submitted on behalf of Newark, viz:

Nos. 43, 47, 48, 49, 51, 52, 53, 54, 56, 58, 26.

(Exceptions allowed.)

Mr. McCran—The condemnors also except to the refusal of the Court to charge as requested the twenty-eighth Request submitted by Newark.

The Court—The only change there as I recall is "Compensation" instead of "damages".

Mr. McCran—That is all, "damage" changed to "compensation."

The Court—That is the only change as I recall it.

Mr. McCran—I think there was some other; I don't know what it is.

The Court—I will allow an exception to that.

Mr. McCran—The condemnors except to the re-

fusal of the Court to charge as requested the following numbered Requests submitted on behalf of Newark, viz:

Nos. 29, 30, 31, 32, 33, 34, 22, 39.

(Exception allowed.)

Mr. McCran—The condemnors also except tc the Court's charge wherein the Court charged the Requests submitted by the Owners, Nos. 1, 6, 9, 12.

(Exception allowed.)

Mr. Harding—On behalf of the Weidmann Silk Dyeing Company and the National Silk Dyeing Company, we wish to except to your Honor's charging certain of the Requests submitted by the condemning parties, and I will enumerate them one after the other if satisfactory, giving the Jersey City Numbers now, as follows.

5, 7, 8, 11, 13, 15, 20, 27, 28, 29, 33, 35, 44, 54, 55, 56, 57, 59, 61, 62.

And we take an exception to the charging of the same requests submitted on behalf of Newark by whatever number they may be known. That is for both property owners, the Weidmann and the National.

(Exception allowed.)

Mr. Harding—The charge of the owners' Requests we think were granted and we have no exceptions to those.

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Verdict **205**

EXHIBITS

Weidmann Exhibit No. 1.

James E. Torrey's estimate of cost of Weidmann buildings.

	Building	Size	Year Built	Area	Replacement Cost	Depreciation	Present Value
No. 2	Boiler House	65'x115'	1911	7475 sq. ft.	$ 58,604.00		
	Chimney				7,504.00		
					66,108.00	6,610.80	59,497.20
No. 3	Black Dye Shop	65'x140'x2	1911	18200 sq. ft.	81,536.00	10,192.00	71,344.00
	Black Dye Shop	65'x170'x1	1911	11050 sq. ft.	49,504.00	7,425.00	42,079.00
	Black Dye Shop	400'x110'	1887	44000 sq. ft.	123,200.00	73,920.00	49,280.00
	Office & Toilets	40'x 13'	1911	520 sq .ft.	1,747.00	175.00	1,572.00
	Wash Room	56'x13'	1918	728 sq. ft.	2,038.00	61.00	1,977.00
No. 4	Office & Receiving Dept.	130'x 42'x2	1901	10920 sq. ft.	48,922.00	7,338.00	41,584.00
No. 5	Strip Dept.	150'x120'	1901	18000 sq. ft.	54,000.00	16,200.00	37,800.00
	Spring Water Filter	18'x 80'	1901	1440 sq. ft.	2,419.00	1,210.00	1,209.00
	Strip Soap Storage	100'x 12'	1901	1200 sq. ft.	2,688.00	393.00	2,295.00
No. 6	Economizer Bldg.	33'x 14'	1906	462 sq. ft.	2,328.00	466.00	1,862.00
No. 7	Boiler House No. 1	104'x 52'	1906	5408 sq. ft.	27,256.00	4,089.00	23,167.00
	Chimney	125'	1906		6,720.00	672.00	6,048.00
	Chimney	165'	1906		9,520.00	1,328.00	8,192.00
No. 8	Ash Hoist Encl.	40'x 60'	1894	2400 sq. ft.	4,032.00	1,008.00	3,024.00
	Hot Water Tank Enclosure	8'x 25'	1894	200 sq. ft.	1,200.00	400.00	800.00
No. 9	Black Dynamite Rm.	40'x 80' plus 52'x23'	1913	4396 sq. ft.	19,654.00	1,965.00	17,689.00
No. 10	Soda Dept.	115'x 48'	1894	5520 sq. ft.	16,560.00	6,624.00	9,936.00
	Motor Room	10'x160'	1914	1600 sq. ft.	6,272.00	439.00	5,833.00
	Dynamite Dept.	176'x 48'	1904	8448 sq. ft.	18,923.00	2,738.00	16,185.00
	Motor Room	10'x100'	1904	1000 sq. ft.	3,920.00	250.00	3,670.00
No. 11	White Shop and Passages	210'x 46' plus 94'x35' plus 15'x15'	1904	13175 sq. ft.	26,561.00	3,984.00	22,577.00
	Passages	105'x 15' plus 37'x18'	1913	2241 sq. ft.	3,137.00	251.00	2,886.00
No. 12	Spring Water Filter House	18'x 65'	1904	1170 sq. ft.	2,359.00	236.00	2,123.00
					$580,604.00	$147,974.80	$432,629.20

Weidmann Exhibit No. 1.

	Building	Size	Year Built	Area	Replacement Cost	Depreciation	Present Value
No. 13	Oil House	15'x 30'x3	1906	1350 sq. ft.	4,736.00	710.00	4,026.00
	Tankhouse	20'x 40'	1906	800 sq. ft.	2,688.00	250.00	2,438.00
No. 14	Power House	65'x 65' plus 16'x25' plus 15'x20'	1904	4925 sq. ft.	8,275.00	1,400.00	6,875.00
No. 15	Filter House & Passages part	60'x150'	1915	11280 sq. ft.	24,004.00	1,200.00	22,804.00
	two stories	38'x 60'					
No. 16	Dry Rooms &	335'x 35'x2	1904	24050 sq. ft.	80,808.00	13,737.00	67.071.00
	Color Finishing	10'x 30'x2					
No. 17	Shipping Dept.	25'x 63'x2 plus 12'x15'	1904	3330 sq. ft.	11,189.00	1,119.00	10,070.00
No. 18	Machine Shop	90'x 45'x2	1908	9119 sq. ft.	30,640.00	2,451.00	28,189.00
	Passage	90'x 10'	1908				
	Timekeeper's Office	7'x 17'	1908				
No. 19	Storehouse	26'x 36'x2	1911	1872 sq. ft.	10,786.00	1,079.00	9,707.00
No. 20	Lumber Storage	35'x 14'	1900	490 sq. ft.	1,098.00	220.00	878.00
No. 22	Tin Reclaiming Room	43'x140'	1905	6020 sq. ft.	33,712.00	6,742.00	26,970.00
No. 23	Tin Dryers & Smelters	40'x 58'	1905	2320 sq. ft.	7,795.00	1,949.00	5,846.00
No. 24	Dressing Room	82'x 53'	1908	4346 sq. ft.	12,169.00	1,217.00	10,952.00
No. 25	Boiler House No. 2		1908	3445 sq. ft.	20,670.00	3,307.00	17,363.00
	Chimney		1908		6,608.00	1,057.00	5,551.00
No. 26	Color Shop	290'x150'—53'x31'	1908	41857 sq. ft.	177,892.00	28,462.00	149,430.00
No. 27	Storehouse	112'x 35'x2	1904	7840 sq. ft.	26,342.00	4,478.00	21,864.00
No. 28	Coppersmith Shop and Asbestos Storage	25'x 44'	1905	1100 sq. ft.	3,696.00	370.00	3,326.00
No. 29	Filter House	46'x 36' plus 45'x15'	1910	2331 sq. ft.	7,840.00	940.00	6,900.00
No. 30	Soap Mfg. Bldg.	194'x 52'	1906	10088 sq. ft.	30,264.00	6,046.00	24,218 00
	Platform & Roof	120'x 14'	1906	1680 sq. ft.	1,882.00	376.00	1,506.00
No. 31	Gambia Boiling	92'x 28' plus 15'x22'	1910	2906 sq. ft.	9,764.00	1,953.00	7,811.00
	Platform & Roof	90'x 14'	1910	1260 sq. ft.	1,411.00	280.00	1,131.00
No. 32	Gambia Storage	43'x80'	1900	3440 sq. ft.	10,320.00	3,302.00	7,018.00
					$524,589.00	$82,645.00	$441,944.00

				$524,589.00	$82,645.00	$441,944.00	

	Building	Size	Year Built	Area	Replacement Cost	Depreciation	Present Value
No. 32a	Red Iron Mfg Bldg.	64'x 52'	1900	3328 sq. ft.	$ 7,455.00	$ 2,485.00	$ 4,970.00
	Platform	62'x 14'	1900	868 sq. ft.	972.00	324.00	648.00
No. 33	Chemical Works	130'x 50'	1900	6500 sq. ft.	14,560.00	4,853.00	9,707.00
No. 34	Laboratory	45'x 44'	1902	1980 sq. ft.	8,870.00)	2,220.00	6,650.00
	Chimney		1902		4,480.00)	1,140.00	3,340.00
No. 35	Soap Oil Reclaiming Room Incl. Pits	75'x 90'	1912	6750 sq. ft.	27,000.00	3,780.00	23,220.00
No. 36	Soda Recovery Bldg.	38'x 88'	1910	3344 sq. ft.	13,108.00	3,277.00	9,831.00
No. 37	Storage Building	19'x 28'	1906	532 sq. ft.	1,787.00	357.00	1,430.00
No. 38	Carriage house & Stable	98'x 75'	1902				
	Garage	60'x 56'	1902	10710 sq. ft.	29,988.00	5,698.00	24,290.00
	Garage	75'x 50'	1918	3780 sq. ft.	16,841.00	505.00	16,336.00
No. 39	Tin Smelters	12'x 15'	1900	180 sq. ft.	500.00	100.00	400.00
No. 40	Oil Reclaiming	73'x 50'	1914	3650 sq. ft.	14,308.00	2,131.00	12,177.00
No. 41	Acid Storage	40'x 45'	1915	1800 sq. ft.	5,040.00	605.00	4,435.00
No. 42	Logwood Cutting Bldg.	43'x 87'	1917	3741 sq. ft.	7,873.00	315.00	7,558.00
No. 43	Laboratory	150'x 48'x3	1918	21600 sq. ft.	43,853.00	1,316.00	42,537.00
No. 44	Water Softener Bldg.	45'x 48'	1918	2160 sq. ft.	9,000.00	270.00	8,730.00
No. 45	Machinery Storehouse	145'x 14'-9"	1918	2139 sq. ft.	2,156.00	129.00	2,027.00
	Wire Fences	600 lin. ft.	1911		1,344.00	448.00	896.00
	Brick fence Walls	338 lin. ft.	1918		3,786.00	388.00	3,398.00
	Paving Belgian Blocks	6050 sq. yds.	1904		16,940.00	5,760.00	11,180.00
	Passage & Pipe Tunnel under Erie R. R.	105' long	1912		7,840.00	1,411.00	6,429.00
					$237,701.00	$37,512.00	$200,189.00

Weidmann Exhibit No. 1.

Year Built	Area	Replacement Cost	Depreciation	Present Value
1920		$ 9,760.00		$ 9,760.00
1920		6,562.00		6,562.00
1920		13,875.00		13,875.00
1920		3,150.00		3,150.00
1920		4,250.00		4,250.00
1920-21		38,336.00		38,336.00
1920		2,640.00		2,640.00
1920-21		12,183.00		12,183.00
1920		11,900.00		11,900.00
1920-21		42,403.00		42,403.00
1920		8,250.00		8,250.00
1920		28,000.00		28,000.00
1920		3,604.00		3,604.00
1920		585.00		585.00
1920-21		7,414.00		7,414.00
1920		7,200.00		7,200.00
1920-21		3,150.00		3,150.00
1920		2,745.00		2,745.00
1880		6,000.00	3,000.00	3,000.00
1916		41,800.00	4,180..00	37,620.00
1904		1,500.00	360.00	1,140.00
1916		1,070.00	54.00	1,016.00
1880		6,750.00	6,075.00	675.00
		$263,127.00	$13,669.00	$249,458.00
	Sheet No. 1	580,604.00	147,974.80	432,629.20
	Sheet No. 2	524,589.00	82,645.00	441,944.00
	Sheet No. 3	237,701.00	37,512.00	200,189.00
	Sheet No. 4	263,127.00	13,669.00	249,458.00
		$1,606,921.00	$281,800.80	1,324,220.20

Weidmann Exhibit No. 2.

(Blue print of the Weidmann buildings.)

Building	
Foundations, Trenches & House for Oil Tanks, 5th Ave.	
Foundations for 3 Oil Tanks—Hawthorne	
Railroad Spur (Hawthorne)	
Partitions Main Office (Bldg. No. 4)	
New Roof—Soda Recovery (36)	
Store House—2nd Story (Bldg. No. 3)	
Roof between Office & Ship. Room (No. 5)	
Power House Addition (No. 14)	
Addition Color Shop (No. 26)	
Turbine House (Replacing No. 21)	
Pump House—Hawthorne	
Bridge	
Pipe Trenches	
Partitions Receiving Dept. (No. 4)	
Intake—Hawthorne	
New Flumes—Pond Improvement—Hawthorne	
Alter. Boiler House (No. 7)	
Dry Rooms—2nd Floor (No. 16)	
House	
Black Iron Bldgs, Pits, etc.	
Storage Shed	
Furnace Room	
Sheds	

May 16, 1921

Weidmann Exhibit No. 3.

1914

(Natural flow of Pequannock at Macopin Dam)

PEQUANNOCK RIVER AT MACOPIN DAM

MILLION GALLONS PER WEEK

Week ending	Natural flow of river	Amount added to or taken from storage	Amount taken through pipe lines	Amount taken from storage and allowed to flow over Intake Dam	Amount actually flowing over Intake Dam
1914					
Jan. 3	634.5	+ 198	257.8		178.7
" 10	697.5	+ 175	282.0		240.5
" 17	319.2	− 56	328.3		46.9
" 24	463.9	+ 15	347.2		101.7
" 31	1286.4	+ 31	310.1		945.3
Feb. 7	1682.7	0	302.1		1380.6
" 14	781.7	0	293.0		488.7
" 21	586.9	− 45	359.6		272.3
" 28	408.1	− 50	384.0		74.1
Mar. 7	466.2	− 253	355.2		364.0
" 14	285.6	− 133	342.4		76.2
" 21	800.7	+ 320	287.1		193.6
" 28	1749.4	+ 161	335.6		1252.8
April 4	2849.2	0	283.6		2565.6
" 11	1647.0	0	298.9		1348.1
" 18	1233.5	0	290.0		943.5
" 25	840.6	0	283.3		557.3
May 2	1351.7	0	245.1		1106.6
" 9	1259.7	0	309.0		950.7
" 16	1306.2	0	317.4		988.8
" 23	621.2	0	285.0		336.2
" 30	445.7	0	320.4		125.3
June 6	346.6	0	294.4		52.2
" 13	176.5	− 150	307.9		18.6
" 20	124.6	− 217	307.1		34.5
" 27	126.6	− 201	306.0		21.6
July 4	277.2	− 87	322.2		42.2
" 11	279.8	− 23	269.5		33.3
" 18	196.8	− 126	307.2		15.6
" 25	113.4	− 237	326.2		24.2
Aug. 1	257.3	− 94	325.3		26.0
" 8	99.0	− 244	323.0		20.0
" 15	111.1	− 207	298.5		19.6
" 22	174.6	− 179	329.8		23.8
" 29	0	− 385	321.6	23.5	23.5
Sept. 5	38.8	− 285	306.1		17.7
" 12	24.9	− 319	335.5		8.4
" 19	0	− 335	308.5	11.8	11.8
" 26	0	− 416	321.4	1.3	1.3
Oct. 3	72.7	− 271	343.7		0
" 10	78.0	− 189	267.0		0
" 17	116.6	− 212	328.1		0.5
" 24	35.7	− 248	283.7		0
" 31	44.8	− 253	297.8		0
Nov. 7	51.3	− 244	295.3		0
" 14	0	− 321	290.5		0
" 21	478.3	+ 225	253.3		0
" 28	193.6	− 85	278.6		0
Dec. 5	181.3	− 111	292.3		0
" 12	415.7	+ 123	292.7		0
" 19	569.3	+ 256	252.3		61.0
" 26	282.0	− 42	324.0		0

Weidmann Exhibit No. 3.

1915

(Natural flow of Pequannock at Macopin Dam)

PEQUANNOCK RIVER AT MACOPIN DAM

MILLION GALLONS PER WEEK

Week ending	Natural flow of river	Amount added to or taken from storage	Amount taken through pipe lines	Amount taken from storage and allowed to flow over Intake Dam	Amount actually flowing over Intake Dam
1915					
Jan. 2	355.1	+ 49	306.1		0
" 9	1226.1	+ 577	335.6		313.5
" 16	2456.1	+ 1509	307.8		639.3
" 23	2201.9	+ 1324	268.1		609.8
" 30	1144.5	+ 653	304.6		186.9
Feb. 6	1665.9	+ 603	295.6		767.3
" 13	1110.3	+ 113	309.7		687.6
" 20	1163.6	+ 32	278.7		852.9
" 27	1576.3	0	278.1		1298.2
Mar 6	955.7	0	304.4		651.3
" 13	569.7	0	290.5		279.2
" 20	429.7	0	286.7		143.0
" 27	387.7	0	288.5		99.2
April 3	263.2	− 35	296.2		2.0
" 10	514.4	+ 35	274.6		205.8
" 17	1447.1	0	291.2		1155.9
" 24	643.0	0	273.1		369.9
May 1	528.2	0	296.8		231.4
" 8	406.6	0	277.1		129.5
" 15	276.4	− 31	286.8		20.6
" 22	357.5	0	286.7		70.8
" 29	529.7	+ 31	271.5		227.2
June 5	255.0	− 45	296.3		3.7
" 12	153.8	− 129	276.8		6.0
" 19	181.1	− 146	323.9		3.2
" 26	221.8	− 100	278.8		43.0
July 3	155.3	− 196	351.3		0.0
" 10	297.3	+ 19	276.6		1.7
" 17	174.5	− 131	305.5		0.0
" 24	115.8	− 186	301.8		0.0
" 31	101.4	− 205	306.4		0
Aug. 7	1330.5	+ 581	181.1		568.4
" 14	1221.7	+ 434	360.5		427.2
" 21	300.9	− 74	374.9		0
" 28	283.5	− 36	319.5		0
Sept 4	305.5	− 22	327.6		0
" 11	118.7	− 154	270.9		1.8
" 18	60.4	− 270	330.4		0
" 25	326.4	− 8	327.3		7.1
Oct. 2	92.3	− 218	310.3		0
" 9	308.4	− 3	309.7		1.7
" 16	165.0	− 145	310.0		0
" 23	193.0	− 116	306.9		2.1
" 30	195.5	− 97	292.3		0
Nov 6	151.4	− 182	332.8		0.6
" 13	121.7	− 179	299.7		1.0
" 20	450.9	+ 27	311.1		112.8
" 27	637	+ 274	273.1		89.7
Dec. 4	414	+ 119	294.4		0.6
" 11	203	− 109	312.0		0
" 18	328	− 97	294.3		130.5
" 25	1258	+ 724	301.4		233.0

Weidmann Exhibit No. 3.

1916

(Natural flow of Pequannock at Macopin Dam)

PEQUANNOCK RIVER AT MACOPIN DAM

MILLION GALLONS PER WEEK

Week ending	Natural flow of river	Amount added to or taken from storage	Amount taken through pipe lines	Amount taken from storage and allowed to flow over Intake Dam	Amount actually flowing over Intake Dam
1916					
Jan. 1	1853.3	+ 670	288.0		895.3
" 8	1372.0	0	294.7		1077.3
" 15	1227.4	0	310.5		916.9
" 22	809.9	0	344.6		465.3
" 29	1838.8	0	321.3		1517.5
Feb. 5	1423.1	0	302.8		1120.3
" 12	818.8	0	318.8		500.0
" 19	615.3	0	322.4		292.9
" 26	877.9	0	347.1		530.8
Mar. 4	1451.8	0	301.2		1150.6
" 11	678.1	0	359.9		318.2
" 18	545.6	0	342.4		203.2
" 25	464.5	0	345.8		118.7
April 1	1897.4	0	323.1		1574.3
" 8	1845.9	0	305.7		1540.2
" 15	1585.3	0	293.3		1292.0
" 22	1361.6	0	313.2		1048.4
" 29	1124.8	0	312.0		812.8
May 6	685.3	0	295.4		389.9
" 13	476.3	0	327.6		148.7
" 20	707.6	0	325.7		381.9
" 27	586.5	0	292.7		293.8
June 3	672.7	0	334.5		338.2
" 10	797.8	0	316.4		481.4
" 17	831.8	0	301.8		530.0
" 24	937.7	0	328.4		609.3
July 1	520.1	0	327.4		192.7
" 8	228.5	− 95	322.8		0.7
" 15	527.5	+ 95	339.0		93.5
" 22	417.9	0	345.5		72.4
" 29	674.7	0	344.8		329.9
Aug. 5	353.5	− 53	347.4		59.1
" 12	179.2	− 180	355.7		3.5
" 19	128.5	− 246	374.5		0
" 26	83.6	− 299	379.8		2.8
Sept. 2	42.7	− 335	376.4		1.3
" 9	26.8	− 331	350.8		7.0
" 16	161.8	− 210	371.8		0
" 23	75.7	− 264	339.7		0
" 30	71.6	− 283	354.6		0
Oct. 7	32.4	− 335	367.4		0
" 14	18.8	− 360	378.8		0
" 21	177.8	− 157	329.6		5.2
" 28	4.9	− 348	352.9		0
Nov. 4	58.8	− 316	374.8		0
" 11	58.4	− 276	334.4		0
" 18	0	− 336	331.4		0
" 25	179.0	− 163	342.1		0.2
Dec. 2	254.2	− 91	325.6		19.6
" 9	193.4	− 128	321.4		0.0
" 16	204.2	− 117	319.4		1.8
" 23	309.7	− 46	334.5		21.2
" 30	580.8	+ 237	340.8		3.0

Weidmann Exhibit No. 3.

1917

(Natural flow of Pequannock at Macopin Dam)

PEQUANNOCK RIVER AT MACOPIN DAM

MILLION GALLONS PER WEEK

Week ending	Natural flow of river	Amount added to or taken from storage	Amount taken through pipe lines	Amount taken from storage and allowed to flow over Intake Dam	Amount actually flowing over Intake Dam
1917					
Jan. 6	520	+ 121	328.7		70.2
" 13	693	+ 369	323.5		0
" 20	974	+ 545	363.5		65.3
" 27	557	+ 198	353.8		5.6
Feb. 3	438	+ 100	331.2		7.0
" 10	232	− 123	348.7		6.7
" 17	168	− 211	379.2		0
" 24	215	− 185	379.6		20.9
Mar. 3	676	+ 327	322.3		27.1
" 10	463	+ 130	332.7		0
" 17	1093	+ 592	349.2		151.5
" 24	860	+ 462	352.9		45.3
" 31	1719	+ 1196	305.5		217.7
April 7	1256	+ 520	348.7		386.9
" 14	1342	+ 500	307.2		535.1
" 21	536	+ 78	339.6		118.9
" 28	412	+ 18	321.0		72.8
May 5	489	0	308.7		180.0
" 12	856	0	311.9		544.4
" 19	507	0	311.7		195.8
" 26	401	0	309.8		91.5
June 2	683	0	314.7		368.3
" 9	625	0	298.3		326.5
" 16	577	0	337.6		239.4
" 23	246	− 71	298.9		17.8
" 30	364	− 20	348.6		35.1
July 7	148	− 185	332.7		0
" 14	343	− 17	308.1		52.3
" 21	359	+ 19	320.0		20.4
" 28	162	− 209	370.6		0
Aug. 4	86	− 235	320.9		0
" 11	58	− 315	373.0		0
" 18	133	− 242	374.9		0
" 25	44	− 279	323.1		0
Sept. 1	180	− 124	364.4		0
" 8	77	− 202	278.6		0
" 15	49	− 299	347.9		0
" 22	30	− 319	348.7		0
" 29	46	− 279	324.9		0
Oct. 6	34	− 294	327.5		0
" 13	72	− 270	341.6		0.7
" 20	88	− 222	308.4		1.3
" 27	463	+ 135	307.1		20.9
Nov. 3	846	+ 506	297.0		43.1
" 10	346	+ 24	322.4		0
" 17	198	− 109	307.5		0
" 24	240	− 62	302.3		0
Dec. 1	238	− 106	312.7		31.5
" 8	362	+ 73	282.4		6.7
" 15	131	− 204	334.2		1.1
" 22	277	− 67	343.9		0
" 29	341	− 48	389.5		0

Weidmann Exhibit No. 3.

1918

(Natural flow of Pequannock at Macopin Dam)

PEQUANNOCK RIVER AT MACOPIN DAM

MILLION GALLONS PER WEEK

Week ending	Natural flow of river	Amount added to or taken from storage	Amount taken through pipe lines	Amount taken from storage and allowed to flow over Intake Dam	Amount actually flowing over Intake Dam
1918					
Jan. 5	103.4	− 240	343.4		0
" 12	257.3	− 160	355.0		62.3
" 19	709.1	+ 336	368.3		4.8
" 26	403.1	+ 38	364.4		.7
Feb. 2	226.6	− 130	356.2		.4
" 9	289.7	− 138	393.0		33.7
" 16	496.2	+ 10	391.9		94.3
" 23	1935.4	+ 1122	389.0		424.4
Mar. 2	2092.6	+ 1365	385.2		342.4
" 9	1100.0	+ 266	385.1		449.9
" 16	1080.4	+ 11	385.0		684.4
" 23	853.1	+ 191	384.7		277.4
" 30	500.5	+ 117	366.2		17.3
April 6	474.0	+ 129	318.0		27.0
" 13	577.5	+ 201	341.5		35.0
" 20	889.5	+ 394	320.1		175.4
" 27	1200.3	− 76	326.3		950.0
May 4	657.8	+ 76	342.4		239.4
" 11	469.4	0	316.1		153.3
" 18	400.6	0	345.5		55.1
" 25	387.7	0	374.8		12.9
June 1	335.3	0	312.5		22.8
" 8	366.9	0	364.5		2.4
" 15	380.5	0	370.4		10.1
" 22	338.0	0	334.6		3.4
" 29	291.2	− 64	352.3		2.9
July 6	137.6	− 190	337.6		0
" 13	101.2	− 230	331.2		0
" 20	132.0	− 226	356.8		1.2
" 27	52.9	− 320	372.3		0.6
Aug. 3	85.0	− 264	355.2		3.8
" 10	70.5	− 284	354.5		0
" 17	136.7	− 340	376.8		99.9
" 24	25.2	− 350	375.2		0
" 31	0	− 384	374.4		0
Sept. 7	89.2	− 247	333.8		2.4
" 14	19.4	− 347	366.4		0
" 21	50.4	− 315	365.0		0.4
" 28	117.7	− 257	374.7		0
Oct. 5	54.8	− 310	364.8		0
" 12	53.2	− 320	373.2		0
" 19	17.5	− 342	359.5		0
" 26	42.5	− 274	316.5		0
Nov. 2	90.4	− 227	317.4		0
" 9	16.4	− 313	329.4		0
" 16	0	− 360	333.5		0
" 23	334.2	+ 39	292.1		3.1
" 30	75.7	− 267	342.7		0
Dec. 7	141.0	− 156	297.0		0
" 14	231.7	− 84	315.7		0
" 21	456.0	+ 148	292.9		15.1
" 28	824.8	+ 497	297.8		30.0

Weidmann Exhibit No. 3.

1919

(Natural flow of Pequannock at Macopin Dam)

PEQUANNOCK RIVER AT MACOPIN DAM

MILLION GALLONS PER WEEK

Week ending	Natural flow of river	Amount added to or taken from storage	Amount taken through pipe lines	Amount taken from storage and allowed to flow over Intake Dam	Amount actually flowing over Intake Dam
1919					
Jan. 4	785.4	+ 433	317.4		35.0
" 11	571.1	+ 268	303.1		0
" 18	405.0	+ 77	328.0		0
" 25	386.4	+ 69	316.9		0.5
Feb. 1	415.6	+ 101	314.6		0
" 8	230.7	− 87	317.7		0
" 15	306.0	+ 18	275.0		13.0
" 22	519.2	+ 139	308.0		72.2
Mar. 1	846.4	+ 443	310.0		93.4
" 8	1666.5	+ 1113	283.0		270.5
" 15	1613.8	+ 949	303.6		361.2
" 22	1031.1	+ 575	303.0		153.1
" 29	1056.1	+ 641	290.6		124.5
April 5	825.1	+ 450	286.6		88.5
" 12	644.3	+ 339	299.1		6.2
" 19	849.1	+ 338	310.9		199.2
" 26	892.4	+ 333	273.7		285.7
May 3	642.3	+ 223	312.7		106.6

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1911.

Day of Month	Jan. Mil.gals.	Feb. Mil.gals.	Mar. Mil.gals.	Apr Mil.gals.	May Mil.gals.	June Mil.gals.
1	44.3	43.5	42.2	42.3	40.7	41.8
2	42.5	43.2	43.7	41.4	41.5	42.4
3	41.9	43.9	43.6	42.5	41.2	42.0
4	43.4	43.3	43.1	42.8	41.6	41.3
5	44.9	42.2	42.6	42.5	38.9	40.9
6	45.6	43.9	42.9	42.1	40.3	42.3
7	44.5	44.6	43.2	42.1	40.7	42.1
8	43.1	43.7	43.4	41.5	39.6	41.5
9	43.8	43.5	43.7	41.0	39.9	41.6
10	43.9	43.9	44.2	42.8	40.1	41.7
11	43.5	43.9	44.4	43.4	40.4	41.3
12	42.9	43.4	43.4	43.1	41.5	41.0
13	42.8	42.5	43.1	44.4	42.7	41.7
14	42.7	42.5	43.7	41.4	42.1	42.2
15	41.0	42.3	43.4	40.9	41.7	42.9
16	42.9	42.4	43.8	40.9	41.7	42.9
17	46.0	42.4	43.9	41.5	41.8	42.9
18	45.5	42.4	43.5	41.0	41.5	42.5
19	45.1	42.2	43.1	40.2	41.4	42.5
20	45.3	43.5	43.5	40.0	41.6	42.6
21	45.2	44.3	44.0	40.3	41.6	43.3
22	42.4	45.1	43.8	39.9	41.8	43.6
23	43.4	45.3	43.6	40.0	41.3	43.5
24	43.6	45.4	43.1	40.0	41.4	43.1
25	43.1	44.6	42.6	40.8	41.2	41.0
26	42.6	42.5	42.6	41.1	41.9	41.4
27	42.1	43.4	42.2	41.2	42.5	41.6
28	42.5	44.3	42.8	41.4	41.9	43.2
29	42.2		42.6	42.0	41.2	44.2
30	43.2		42.8	41.8	42.1	44.2
31	44.4		42.8		42.1	
Total	1350.3	1218.1	1343.3	1246.0	1279.9	1269.2
Av'ge	43.6	43.5	43.3	41.5	41.3	42.3

New Jersey State Library

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1911.

Day of Month	July Mil.gals.	Aug. Mil.gals.	Sept. Mil.gals.	Oct. Mil.gals.	Nov. Mil.gals.	Dec Mil.gals
1	44.4	43.0	40.8	42.4	41.2	42.4
2	44.2	43.7	41.2	42.6	41.5	42.0
3	43.9	43.6	41.1	42.8	41.4	41.7
4	42.5	43.7	41.3	42.7	41.6	42.8
5	43.3	43.2	42.4	41.6	41.3	45.0
6	43.8	41.8	42.7	42.1	41.0	45.4
7	44.4	42.6	42.9	40.5	41.8	46.4
8	44.2	42.4	42.7	41.8	41.2	46.3
9	44.2	42.5	42.2	42.7	41.4	46.0
				(19.5)		
10	44.5	42.5	41.7	39.0	41.7	46.1
11	44.4	42.8	42.1	42.5	40.8	45.8
12	45.1	42.9	42.4	41.7	42.1	43.6
13	45.2	42.9	42.5	42.4	41.0	44.1
14	45.1	42.9	42.5	42.5	41.6	44.2
15	44.1	42.8	42.7	41.4	41.8	43.8
16	42.3	42.9	42.5	42.4	42.2	42.5
17	42.3	42.9	42.5	40.9	42.8	43.0
18	43.1	43.1	42.7	41.0	43.0	44.7
19	43.4	43.1	42.7	40.6	43.5	44.1
20	43.2	42.6	42.4	41.3	43.0	43.8
21	42.5	42.1	42.5	41.3	43.0	43.3
22	43.4	41.7	42.5	41.4	42.3	43.0
23	43.5	42.9	42.6	41.5	42.0	43.9
24	43.9	42.0	42.6	41.4	43.0	41.4
25	42.4	39.6	42.8	41.6	43.5	41.2
26	42.3	37.9	42.7	41.5	43.5	43.7
27	42.6	38.3	42.8	42.5	43.1	42.3
28	42.5	40.8	42.8	42.0	42.5	43.7
29	42.2	42.1	42.3	41.2	42.5	43.5
30	40.9	42.1	42.1	42.5	42.2	44.5
31	42.0	41.1		42.0		45.6
Total	1345.8	1308.5	1269.7	1293.8	1263.5	1359.8
Av'ge	43.4	42.2	42.3	41.7	42.1	43.8

From 10 o'clock Oct. 9th to 11 o'clock Oct. 10th 38.980 000 gals.
From 11 o'clock Oct. 10th to 10 o'clock Oct. 11th 42.650.000 gals.

All meter readings previous to Oct. 10th taken at 12 noon and after Oct. 10th taken at 10 A. M. On this date the works were transferred to Jersey City.

Meter readings at County Inst'ns Oct 10th 734.032.000, on Nov. 30th. 752.038.000, on Dec. 31st 763.584.000.

(This table does not include water received from E. J. W. Co. at Kearney Ave.)

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1912.

Day of Month	Jan. Mil.gals.	Feb. Mil.gals.	Mar. Mil.gals.	Apr. Mil.gals.	May Mil.gals.	June Mil.gals.
1	43.7	50.8	47.8	41.4	44.1	43.7
2	43.7	51.0	48.4	40.6	44.0	44.3
3	43.8	51.4	47.9	40.5	44.4	46.0
4	43.5	50.9	47.2	41.7	43.8	46.7
5	45.8	50.6	48.4	42.9	44.8	46.3
6	50.6	50.9	49.6	42.7	45.1	46.6
7	50.8	51.0	48.6	40.8	42.7	46.8
8	50.6	50.7	48.6	41.4	42.0	46.3
9	50.9	50.8	47.8	40.6	43.7	45.6
10	51.3	51.1	46.7	40.8	44.1	46.1
11	51.7	49.4	48.6	40.6	43.9	47.0
12	51.0	49.8	47.6	40.6	45.0	46.7
13	51.2	50.4	43.2	40.9	44.8	45.8
14	51.2	50.1	45.9	40.0	43.9	46.0
15	50.7	49.2	47.4	41.0	43.9	44.0
16	51.3	48.5	46.4	40.8	44.4	43.4
17	51.0	49.5	45.9	40.3	43.2	45.3
18	51.3	50.0	46.5	40.0	43.8	45.7
19	51.1	49.3	46.5	40.7	44.0	45.6
20	51.5	49.5	47.0	42.0	43.5	45.0
21	50.7	49.5	45.5	42.2	43.9	47.0
22	49.5	47.3	46.5	43.0	43.8	46.7
23	50.2	49.6	46.7	43.3	44.3	46.4
24	46.2	49.3	46.2	44.5	44.7	46.0
25	51.0	49.5	46.2	45.0	45.8	47.1
26	51.2	47.9	44.1	43.3	46.2	46.8
27	51.4	47.5	46.1	46.3	45.7	47.0
28	51.3	48.5	45.8	44.0	45.7	46.6
29	50.3	48.0	44.8	43.3	44.2	46.3
30	51.0		45.2	43.0	43.9	46.3
31	50.9		43.6		43.4	
Total	1.540.4	1.442.1	1.446.7	1.258.2	1.370.7	1.379.1
Av'ge	49.7	49.7	46.6	41.9	44.2	46.0

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1912.

Day of Month	July Mil.gals.	Aug. Mil.gals.	Sept. Mil.gals.	Oct. Mil.gals.	Nov. Mil.gals.	Dec Mil.gals.
1	46.5	46.7	45.3	44.9	45.3	43.8
2	46.2	46.7	44.8	45.4	44.9	44.8
3	44.5	46.3	42.8	45.3	45.3	44.6
4	45.6	46.9	43.2	44.7	45.1	44.9
5	45.4	45.7	44.3	44.5	42.9	44.6
6	44.5	45.2	45.3	44.8	44.9	43.5
7	45.0	45.5	45.2	45.0	43.6	43.2
8	46.7	45.3	45.0	45.3	44.6	43.5
9	46.1	45.7	45.1	45.6	43.5	43.4
10	47.7	45.6	45.1	45.8	42.2	44.1
11	48.0	45.6	45.2	45.9	44.5	45.1
12	48.9	42.8	45.0	45.1	44.8	45.8
13	49.4	42.7	45.7	44.5	45.2	45.7
14	46.6	44.8	45.8	45.1	44.1	45.3
15	47.8	44.2	45.7	43.9	43.9	45.9
16	47.5	47.0	45.8	45.3	43.8	44.8
17	47.3	46.6	45.8	45.3	43.9	45.1
18	46.1	46.9	45.9	45.4	43.3	44.9
19	46.4	45.3	46.1	45.2	43.5	44.5
20	46.8	47.1	47.5	44.7	43.7	44.3
21	46.4	46.1	47.1	45.2	45.3	45.3
22	46.0	46.8	47.3	44.7	45.8	44.6
23	45.8	46.8	48.6	45.1	45.6	44.5
24	46.3	45.9	46.1	45.1	45.5	44.4
25	47.0	46.3	45.2	45.3	45.4	44.4
26	46.6	46.2	45.3	45.3	45.8	44.3
27	46.6	45.2	45.4	44.9	45.8	44.5
28	46.8	45.5	45.1	44.8	45.7	44.6
29	46.3	44.6	45.9	45.5	45.9	43.8
30	46.3	45.0	44.5	45.4	45.1	42.5
31	46.4	45.4		45.4		44.4
Total	1.443.5	1.416.4	1.365.1	1.398.7	1.339 0	1.379.2
Av'ge	46.6	45.7	45.5	45.1	44.6	44.5

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1913.

Day of Month	Jan. Mil.gals.	Feb. Mil.gals.	Mar. Mil.gals.	Apr. Mil.gals.	May Mil.gals.	June Mil.gals.
1	44.6	46.4	46.9	43.8	44.5	43.2
2	43.4	46.0	47.5	44.4	43.6	43.6
3	42.1	46.2	47.60	44.8	45.3	44.3
4	44.8	45.9	47.50	44.1	45.5	44.6
5	45.1	46.3	47.50	44.7	44.5	45.2
6	44.6	47.9	46.5	44.8	45.3	44.2
7	44.6	48.5	48.2	44.2	44.7	45.7
8	45.2	49.7	47.1	48.5	44.9	44.0
9	45.6	49.1	47.5	43.2	44.6	44.0
10	46.0	48.3	47.5	44.1	43.4	44.0
11	46.0	49.0	47.0	42.8	44.5	44.2
12	46.6	49.4	46.5	43.2	43.2	44.7
13	46.6	49.2	46.3	44.0	43.6	44.1
14	45.9	48.7	44.9	44.1	43.7	44.2
15	47.5	49.7	44.7	43.1	43.9	45.2
16	47.4	48.2	46.1	44.3	43.6	44.7
17	47.3	48.4	44.8	43.9	43.9	46.0
18	47.3	47.8	44.4	44.3	43.7	45.4
19	46.0	48.4	45.7	45.1	44.0	45.3
20	45.0	47.0	45.2	44.6	43.9	45.9
21	45.0	46.0	45.4	44.8	43.8	45.5
22	45.7	45.4	45.2	44.0	43.5	46.0
23	46.4	44.6	44.7	44.9	43.5	46.1
24	45.6	45.2	44.8	44.2	44.1	45.6
25	45.3	45.5	44.7	44.3	42.7	45.9
26	45.1	48.6	44.6	43.8	43.9	43.5
27	44.7	46.8	44.2	44.5	44.3	45.8
28	45.6	47.3	44.0	41.5	42.6	45.8
29	45.8		43.7	41.9	43.2	46.3
30	45.3		43.0	42.3	42.9	46.3
31	45.5		42.7		43.1	
Total	1.412.2	1.332.9	1.416.4	1.322.6	1.362.3	1.394.6
Av'ge	45.5	47.5	45.7	44.1	43.9	45.0

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1913.

Day of Month	July Mil.gals.	Aug. Mil.gals.	Sept. Mil.gals.	Oct. Mil.gals.	Nov. Mil.gals.	Dec. Mil.gals.
1	46.4	46.3	45.4	42.8	44.5	44.4
2	46.0	46.5	45.9	44.5	44.8	44.6
3	43.4	46.8	45.9	45.8	44.0	43.8
4	48.7	46.9	46.6	46.9	44.9	44.7
5	47.9	46.8	45.7	45.3	44.0	44.9
6	46.6	47.1	47.4	45.8	44.8	45.2
7	46.5	47.3	47.0	46.4	45.4	44.0
8	46.6	47.3	45.9	45.3	45.6	45.1
9	46.0	47.2	46.6	46.4	43.8	45.4
10	46.3	46.5	46.5	46.9	45.1	46.0
11	44.4	46.7	46.2	45.4	45.7	45.5
12	44.6	48.1	46.7	45.8	45.0	46.1
13	44.5	47.3	46.6	45.1	45.3	45.4
14	46.3	47.1	45.6	45.7	45.1	45.5
15	46.1	47.5	45.9	46.1	45.4	45.4
16	47.2	47.5	45.6	45.6	44.6	45.6
17	46.0	47.5	46.6	45.4	45.2	45.7
18	47.5	47.2	46.7	45.2	45.2	45.8
19	46.6	46.9	45.9	43.9	45.2	45.5
20	45.0	46.2	46.3	44.5	44.3	45.2
21	46.1	47.1	45.9	45.6	44.6	44.6
22	46.1	46.6	45.5	45.2	43.9	44.9
23	47.4	47.7	45.8	45.6	43.1	44.8
24	47.2	48.0	45.1	45.1	43.8	48.4
25	46.4	46.7	45.6	43.4	43.9	43.8
26	46.4	46.3	45.5	44.5	44.6	43.0
27	46.0	46.6	47.1	44.5	44.8	43.4
28	46.5	46.9	47.0	45.4	43.6	43.9
29	46.2	46.2	46.0	44.9	44.1	45.2
30	47.0	46.3	46.6	45.3	43.8	44.4
31	47.2	45.9		44.8		45.4
Total	1.435.2	1.455.1	1.385.3	1.403.4	1.338.4	1.393.8
Av'ge	46.3	46.9	46.2	45.3	44.6	45.0

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1914.

Day of Month	Jan. Mil.gals.	Feb. Mil.gals.	Mar. Mil.gals.	Apr. Mil.gals.	May Mil.gals.	June Mil.gals.
1	45.7	44.6	50.6	48.1	45.1	46.0
2	45.3	44.6	49.3	48.4	45.3	46.4
3	44.6	45.4	49.5	48.2	45.8	46.0
4	44.3	45.3	49.3	46.3	45.8	46.1
5	45.0	46.1	49.4	46.5	44.7	46.0
6	46.3	46.3	48.9	46.2	45.4	45.9
7	43.5	45.7	47.3	46.3	45.7	46.5
8	46.1	48.0	47.7	46.4	45.9	45.9
9	46.2	48.1	48.1	46.4	45.3	46.1
10	46.5	48.7	48.0	47.0	44.4	46.5
11	47.2	49.5	48.9	47.1	46.1	46.8
12	47.7	49.4	48.0	47.1	45.6	47.6
13	49.4	49.0	47.3	46.5	45.4	48.1
14	49.8	49.7	46.7	46.5	45.4	48.9
15	50.3	50.0	47.8	46.3	45.4	47.5
16	50.0	49.3	47.4	46.3	45.7	47.6
17	50.2	48.9	47.4	46.4	44.9	47.6
18	50.5	54.1	47.9	44.7	46.0	47.6
19	49.5	44.1	48.4	45.2	45.4	47.4
20	50.3	49.3	48.3	46.3	46.1	46.8
21	50.2	49.7	49.1	45.5	46.1	46.5
22	49.5	49.9	49.1	45.2	46.9	45.7
23	49.5	50.0	47.9	45.4	47.7	45.9
24	49.7	49.4	49.5	45.6	47.6	47.8
25	47.1	49.5	48.1	45.3	46.5	45.8
26	48.8	49.5	48.8	43.0	46.2	46.2
27	48.4	49.6	48.7	44.7	46.7	47.1
28	47.4	50.7	49.1	45.4	47.3	47.0
29	46.0		49.1	45.0	45.6	47.5
30	46.6		48.0	44.9	46.7	47.2
31	50.0				45.2	
Total	1.481.8	1.385.1	1.454.2	1.382.3	1.422.2	1.403.6
Av'ge	47.8	49.46	48.34	46.08	45.88	46.79

Weidmann Exhibit No. 4.

DAILY AMOUNT OF WATER DELIVERED TO JERSEY CITY

FROM BOONTON RESERVOIR.

From Jan. 1st to Dec. 31st, 1914.

Day of Month	July Mil.gals.	Aug. Mil.gals	Sept. Mil.gals.	Oct. Mil.gals.	Nov Mil.gals.	Dec. Mil.gals
1	46.8	45.0	45.5	47.0	45.0	43.8
2	46.7	44.9	45.6	46.8	44.2	43.7
3	45.7	45.2	45.7	48.2	43.9	43.9
4	44.6	44.5	45.5	47.7	44.0	44.3
5	44.9	45.0	46.3	46.6	44.9	44.9
6	46.2	44.9	47.1	46.4	45.7	44.5
7	46.0	45.4	47.7	46.5	47.4	42.7
8	46.2	47.7	47.0	45.6	45.0	43.4
9	46.6	47.6	45.9	46.1	44.7	44.2
10	46.3	47.8	45.1	46.3	44.6	43.8
11	47.3	48.6	45.0	45.0	44.4	43.9
12	47.4	47.9	45.1	44.5	44.9	43.8
13	47.8	48.0	44.0	45.2	43.8	43.5
14	47.2	48.0	41.2	45.1	43.5	42.9
15	47.5	48.1	40.4	45.1	42.6	45.4
16	47.9	47.6	40.4	43.0	43.8	46.8
17	48.1	46.4	40.4	43.6	42.7	46.8
18	48.1	46.7	39.9	44.2	42.7	47.3
19	48.4	46.8	39.5	43.6	43.5	47.8
20	47.8	46.7	43.4	44.1	43.9	47.6
21	48.0	46.9	45.4	43.9	43.6	49.3
22	47.4	47.3	45.5	44.6	44.0	46.3
23	47.7	47 5	46.2	43.7	43.2	47.6
24	47.9	46.5	46.2	43.2	43.7	45.8
25	48.2	46.5	46.7	44.2	43.1	47.9
26	45.8	48.6	47.7	42.9	42.8	48.0
27	45.1	44.5	48.0	46.4	43.1	48.0
28	45.3	44.5	46.8	44.2	42.8	47.6
29	45.4	46.2	47.0	44.2	43.1	47.6
30	45.3	45.9	46.9	43.3	43.4	47.7
31	45.3	45.5		43.8		48.1
Total	1.449.0	1.444.9	1.354.1	1.396.2	1.321.1	1.421.27
Av'ge	46.76	46.61	45.14	45.04	44.03	45.84

Weidmann Exhibit No. 4.

SCHEDULE

SHOWING DAILY DELIVERY AND CONSUMPTION OF WATER IN JERSEY CITY.

For Month of October, 1914.

Date	Delivered	Consumed	Lost	Gained	Temp.	Overflow	Pressure	Weather
1	46.900	45.700		1.200	58°	—4.02	32	Clear
2	46.760	45.860		.900	62°	—4.17	32	Clear
3	48.230	47.330		.900	67°	—4.32	32	Clear
4	47.700	43.200		4.500	66°	—4.48	31	Clear
5	46.590	41.390		5.200	64°	—4.62	32	Cloudy
6	46.430	47.630	1.200		68°	—4.73	32	Cloudy
7	46.510	45.310		1.200	57°	—4.87	32	Cloudy
8	45.570	45.570			64°	—4.98	32	Cloudy
9	45.630	46.830	1.200		68°	—5.18	32	Clear
10	46.120	46.720	.600		72°	—5.31	32	Clear
11	46.270	44.170		2.100	72°	—5.41	32	Clear
12	44.980	40.480		4.500	66°	—5.62	32	Clear
13	45.260	44.960		.300	58°	—5.71	32	Cloudy
14	45.160	45.760	.600		55°	—5.82	32	Cloudy
15	45.080	45.680	.600		58°	—5.95	32	Cloudy
16	42.960	42.360		.600	64°	—6.01	33	Rain
17	43.580	44.780	1.200		67°	—5.97	32	Rain
18	44.230	43.930		.300	61°	—6.03	32	Rain
19	43.650	40.950		2.700	60°	—6.08	34	Cloudy
20	44.140	46.840	2.700		62°	—6.10	32	Clear
21	43.940	45.140	1.200		64°	—6.12	32	Clear
22	44.630	37.130		7.500	67°	—6.28	32	Clear
23	43.660	50.860	7.200		52°	—6.46	32	Clear
24	43.240	43.240			58°	—6.52	32	Clear
25	44.190	44.190			52°	—6.54	32½	Cloudy
26	42.900	42.900			52°	—6.84	34	Clear
27	46.430	46.430			40°		32	Clear
28	44.220	44.220			40°	—7.11	32	Clear
29	44.160	44.160			48°	—7.23	32	Cloudy
30	43.270	43.270			49°		32	Cloudy
31	43.780	43.780			49°		32	Clear
	1.396.170	1.380.770						
Av.	45.04	44.54						

Delivered to Jersey City	1.396.170.000
Delivered to Secaucus	15.309.000
Delivered to Kingsland	3.277.137
Delivered to N. Arlington	2.503.182
Delivered to Lack. R. R.	53.743.800
	1.471.003.119 Gallons

Total Average 47.45

Weidmann Exhibit No. 4.

SCHEDULE.

SHOWING DAILY DELIVERY AND CONSUMPTION OF WATER IN JERSEY CITY.

For Month of November, 1914.

Date	Delivered	Consumed	Lost	Gained	Temp.	Overflow	Pressure	Weather
1	45.010	43.810		1.200	56°	—7.59	32½	Clear
2	44.250	46.650	2.400		56°	—7.72	33	Clear
3	43.860	42.960		.900	50°	—7.86	32	Clear
4	43.720	42.820		.900	61°	—7.99	32	Clear
5	43.970	44.870	.900		53°	—8.07	32	Clear
6	44.860	45.260	.300		46°	—8.25	32	Clear
7	45.670	44.770		.900	49°	—8.39	32	Clear
8	47.420	45.620		1.800	49°	—8.51	32	Cloudy
9	45.010	36.910		8.100	38°	—8.66	33	Cloudy
10	44.680	44.980	.300		36°	—8.82	32	Clear
11	44.620	44.320		.300	48°	—8.89	32	Clear
12	44.650	44.050		.600	46°	—9.07	32	Clear
13	44.430	43.830		.600	55°	—9.18	32	Clear
14	44.900	44.600		.300	49°	—9.37	32	Clear
15	43.830	40.530		3.300	52°	—9.35	32	Rain
16	43.460	38.660		4.800	49°	—9.07	34	Showers
17	42.610	43.510	.900		34°	—8.04	33	Clear
18	43.760	45.860	2.100		30°	—7.90	32½	Clear
19	42.720	43.620	.900		39°	—7.78	32	Rain
20	42.730	43.330	.600		37°	—7.58	32½	Clear
21	43.510	45.610	2.100		33°	—7.38	32	Clear
22	43.920	42.420		1.500	34°	—7.19	32	Clear
23	43.590	41.490		2.100	25°	—7.21	33	Clear
24	43.970	45.470	1.500		30°	—7.14	32	Clear
25	43.920	45.420	1.500		40°	—7.19	32	Clear
26	43.680	42.180		1.500	50°	—7.22	32	Clear
27	43.100	42.500		.600	56°	—7.33	32	Cloudy
28	42.790	43.390	.600		40°	—7.41	33	Clear
29	43.090	42.190		.900	44°	—7.35	33	Clear
30	43.410	41.910		1.500	44°	—7.37	34	Cloudy
	1.321.140	1.303.540						
	Av. 44.03	43.45						

Delivered to Jersey City	1.321.140.000
Delivered to Secaucus	15.678.000
Delivered to Kingsland	2.850.077
Delivered to N. Arlington	1.017.350
Delivered to Lack. R. R.	52.401.359
	1.393.086.786 Gallons

Total Average 46.43

Weidmann Exhibit No. 4.

SCHEDULE

SHOWING DAILY DELIVERY AND CONSUMPTION OF WATER IN JERSEY CITY.

For Month of December, 1914.

Date	Delivered	Consumed	Lost	Gained	Temp.	Overflow	Pressure	Weather
1	43.850	42.950		.900	48°	—7.29	32	Cloudy
2	43.730	44.030	.300		51°	—7.27	32½	Cloudy
3	43.910	44.110	1.200		54°	—7.29	32	Clear
4	44.270	43.370		.900	42°	—7.35	32	Clear
5	44.920	44.920			39°		32	Cloudy
6	44.520	41.820		2.700	34°	—7.33	32	Rain
7	42.700	39.100		3.600	34°		34	Rain
8	43.440	45.340	.900		34°	—6.77	32½	R'n-Sn'w
9	44.170	45.070	.900		34°	—6.27	32	Cloudy
10	43.840	45.040	1.200		34°	—5.77	32	Clear
11	43.910	45.110	1.200		36°	—5.52	32	Clear
12	43.790	43.490		.300	41°	—5.32	32	Clear
13	43.540	42.940		.600	41°	—5.22	32	Rain
14	42.920	39.920		3.000	36°	—4.66	34	Clear
15	45.380	48.380	3.000		16°	—3.92	32	Clear
16	46.770	50.970	4.200		20°	—3.96	31½	Clear
17	46.760	48.560	1.800		20°	—4.24	31	Clear
18	47.260	47.860	.600		24°	—4.65	31	Clear
19	47.780	49.880	2.100		34°	—5.11	31	Cloudy
20	47.570	44.570		3.000	35°	—5.63	30	Clear
21	49.300	45.100		4.200	36°	—6.02	32	Rain
22	46.300	43.300		3.000	49°	—6.33	30	Clear
23	47.570	49.670	2.100		24°	—6.57	31	Clear
24	45.760	46.660	.900		24°	—6.92	31	Cloudy
25	47.870	46.670		1.200	21°	—6.99	31	Snow
26	47.960	44.660		3.300	10°	—6.97	31	Clear
27	47.970	51.570	3.600		16°	—7.07	30	Clear
28	47.620	50.920	3.300		28°	—7.17	32	Clear
29	47.610	52.710	5.100		33°	—7.26	31	Rain
30	47.660	46.460		1.200	30°	—7.19	31	Clear
31	48.120	49.320	1.200		28°	—7.15	31	Cloudy
	1.421.270	1.423:270						
Av.	45.84	45.91						

Delivered to Jersey City		1.421.270.000
Delivered to Secaucus		14.771.000
Delivered to Kingsland		2.878.146
Delivered to N. Arlington		733.516
Delivered to Lack R. R.		58.952.842
		1.498.605.504
Rec'd. from N. Y. & N. J. Water Co. at P. R. R. Meadows	6.195.591	
At P. R. R. Greenville	453.375	
		6.648.966
		1.505.454.470

Total Average 48.56

Weidmann Exhibit No. 5.

Exhibit Weidmann No. 5.

Agreement, made this 13th day of September, 1905 between The Passaic Water Company, a corporation of the State of New Jersey, party of the first part, and The Weidmann Silk Dyeing Company, a corporation of the State of New Jersey, party of the second part, Witnesseth:

Whereas the party of the second part is carrying on the business of dyeing within the City of Paterson, County of Passaic and State of New Jersey, and is desirous of securing better fire protection and water for use on their premises for other lawful purposes, and is desirous that the party of the first part should furnish them such water in sufficient volume; and

Whereas the filtered water which the party of the first part is distributing to its customers costs too much to purify and deliver, and the mains through which it is distributed are of a size too small to permit of the delivery of water to the party of the second part in sufficient quantity;

Now therefore it is agreed between the parties hereto:

(1) That the party of the first part will, as soon as they reasonably can, lay a forty-two inch main, from the dam of the Society for Establishing Useful Manufactures above the Great Falls of the Passaic River, to a point adjacent to the property of the party of the second part, and out of this main will deliver to the party of the second part, through a meter which shall be furnished by and be under the control of the party of the first part, such quantity as the party of the second part may choose to take (but not exceeding six (6) million gallons per day) of Passaic River water taken from above the dam of the said

THE

SUM

FLOW OF THE PASSAIC RIVER AT PATERSON N.J.

AVERAGE FLOW IN CUBIC FEET PER SECOND FOR EACH WEEK.

		1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	AVER'G	
JANUARY	1		1136	2025	341	308	4380	3130	656	1623	2286	2814	2941	1061	293	1344	844	4651	1508	663	2991	1309	63			1757	1
	2		1303	2311	938	621	1292	2463	532	6006	1957	1522	4667	1345	647	905	614	3144	1240	3431	2198	1424	435			1856	2
	3		1992	2383	1893	781	773	1504	614	1863	1833	1533	4127	586	618	839	504	2283	627	6299	1588	1488	902			1661	3
	4		4674	2810	1954	304	4853	2313	2230	632	1334	1046	2117	800	4502	380	479	1996	1943	3812	2465	1142	489			2026	4
FEBRUARY	5		1952	1944	797	210	1716	2695	1255	711	750	545	2344	544	1730	633	336	1507	3333	3598	2674	973	292			1457	5
	6		1473	1105	2886	178	936	3356	782	849	381	490	1842	840	776	1183	316	757	2037	4448	1655	488	248			1291	6
	7		2502	1156	6094	158	506	3225	505	972	428	403	4287	1818	784	796	253	529	620	2918	953	231	1379			1450	7
	8		6755	2986	4273	193	894	1736	2111	777	1243	320	3624	4668	3314	803	1517	822	688	2643	923	722	4516			2169	8
MARCH	9		2985	5467	5318	169	14079	4545	2389	618	2050	350	4474	4080	5848	1283	2856	1917	597	3695	4520	1414	5220			3515	9
	10		1546	5866	3453	921	7504	3772	4602	876	3947	350	2583	1963	4638	764	1057	1543	1014	1496	1780	1207	3012			2566	10
	11		1111	3756	1841	3353	6211	3053	2969	2277	1421	2617	3447	1389	2162	1417	7629	3717	1673	1090	1255	3269	2676			2750	11
	12		1711	6211	2634	4052	2959	3554	1912	7556	882	6815	3887	1089	1353	1469	4926	4100	2945	744	1096	2525	1788			3058	12
	13		2368	5211	1925	2863	2395	4073	2285	5746	2829	3068	2361	3933	987	2412	4952	5587	6208	544	3717	3486	982			3238	13
APRIL	14		1924	3182	1012	4193	2147	2499	2970	2722	2568	1311	1531	1697	631	2072	3339	2488	4043	775	4273	2708	664			2360	14
	15		1338	3418	815	3082	4443	3841	1356	1911	4533	2327	1510	1874	406	2420	1821	2665	2648	2287	2634	2222	1450			2333	15
	16		1279	1936	1532	3176	1482	5636	726	1091	3560	1536	1062	4802	2784	2010	2066	4433	2074	1614	3286	1062	2241			2352	16
	17		2304	1025	1370	6558	636	1700	640	773	1636	1362	711	3605	5711	1867	1679	2253	2416	840	2076	713	2287			2007	17
MAY	18		2273	675	695	2457	1633	834	1701	488	1031	1332	2087	4368	3149	1008	1697	2140	2163	679	1460	1062	1520			1645	18
	19		4596	628	474	2642	644	539	413	380	944	1557	4788	2098	1326	591	2831	963	2739	542	849	1658	865			1827	19
	20		4606	571	1416	2225	338	377	409	569	890	2182	2452	1116	697	327	2102	568	1971	476	1127	699	896			1239	20
	21		3488	452	2549	1670	507	367	350	405	422	1538	3045	943	1491	835	955	1095	729	1055	1329	471	832			1138	21
JUNE	22		2632	362	825	3060	499	344	590	223	2313	1046	2826	565	1252	201	992	1230	425	543	1387	1518	767			1138	22
	23		1079	271	500	2219	276	228	743	249	904	1531	1557	574	1028	276	643	480	380	231	1134	841	444			740	23
	24		653	231	548	1048	251	1628	646	347	1142	738	875	394	1570	2259	338	228	257	161	1555	927	692			785	24
	25		585	197	275	438	584	2886	234	243	1436	395	1089	782	1727	901	258	228	195	237	1489	672	383			726	25
	26		463	287	196	328	556	2947	193	233	610	345	376	319	785	374	171	189	186	165	955	372	304			493	26
JULY	27		370	201	164	425	456	1689	154	153	1089	321	378	214	286	149	150	118	450	267	354	247	146			371	27
	28		351	302	229	283	236	445	272	141	501	254	227	161	198	145	148	133	287	326	533	513	111			275	28
	29		562	286	211	350	220	385	236	97	550	177	252	164	183	252	157	133	215	283	639	446	150			283	29
	30		734	313	261	210	756	681	133	99	1363	179	486	210	149	281	148	91	253	178	1211	237	71			383	30
	31		603	321	188	216	1379	358	320	291	1656	121	283	155	121	160	138	90	275	1307	1773	74	231			479	31
AUGUST	32		1156	301	145	671	1032	2170	493	106	1365	150	274	143	139	122	218	124	150	3921	1024	66	90			663	32
	33		1016	245	146	607	1849	813	683	391	574	136	225	600	187	146	323	101	113	1796	323	53	147			498	33
	34		622	177	144	5224	748	395	736	323	277	147	300	342	188	136	358	74	122	777	206	89	48			542	34
SEPTEMBER	35	1290	414	179	172	4001	214	1000	404	199	384	160	758	156	119	1219	173	96	120	400	173	109	76			538	35
	36	581	327	259	163	1426	221	671	150	896	240	488	221	119	218	942	259	105	88	239	120	83	108			356	36
	37	409	291	221	154	667	419	322	837	1181	188	297	182	139	142	390	159	89	61	168	151	75	59			345	37
	38	412	239	306	208	689	262	1261	2818	1040	196	280	140	134	101	234	284	151	65	638	299	36	156			453	38
	39	316	309	413	163	283	2820	663	824	468	227	2257	157	179	98	218	461	151	79	641	140	37	139			497	39
OCTOBER	40	293	269	266	97	310	5700	296	276	207	201	1687	196	149	105	608	297	569	66	443	131	71	79			560	40
	41	327	242	268	166	267	5315	16736	327	328	214	2044	164	130	89	636	179	575	64	577	102	105	57			1313	41
	42	325	504	236	206	420	4204	5290	491	486	328	690	159	102	102	1876	156	590	161	518	180	102	47			781	42
	43	560	1144	244	111	359	2958	2034	2363	735	733	664	165	132	145	3160	1246	2382	115	337	205	585	44			928	43
NOVEMBER	44	1212	1135	562	112	362	4083	1059	1087	346	414	6618	437	168	191	1159	1054	1397	79	274	143	1026	57			1044	44
	45	874	779	1053	134	324	2716	783	529	282	320	7341	246	177	714	1067	1663	1538	74	216	135	331	57			971	45
	46	682	1508	638	151	393	2206	824	691	193	433	3953	194	143	232	1365	1432	1786	462	253	130	185	93			825	46
	47	730	3322	484	124	416	1971	1191	983	157	906	3040	240	126	138	2588	1078	1220	539	1073	170	207	311			955	47
DECEMBER	48	1151	2158	304	600	724	2417	649	645	634	377	3427	207	281	238	1666	1369	788	260	668	461	368	199			891	48
	49	1606	3853	301	566	643	2835	584	463	2538	370	2146	296	208	183	963	1426	739	588	367	418	482	183			989	49
	50	4185	1922	383	249	2240	2730	1160	328	1919	612	4353	582	1337	145	1096	886	640	1686	229	478	167	463			1264	50
	51	1388	1656	380	191	2343	8009	2643	376	1363	975	3114	421	867	130	1752	941	507	1245	1631	384	177	770			1421	51
	52	1131	2550	1108	247	3998	4950	2161	859	2178	964	5122	292	235	636	1770	1754	2341	649	3491	1320	164	1405			1787	52
		AVERAGE	1664	1271	985	1440	2373	2096	988	1089	1127	1692	1423	1036	1060	1032	1191	1308	1017	1275	1204	780	784			1282	AVG.

T.B. A.K.

Society, and in full payment of all such water so delivered to the party of the second part the party of the first part will charge and shall receive the sum of fifteen dollars per million gallons; said water to be used for the extinguishment of fires and all other lawful purposes, but only upon the premises of said party of the second part, its lessees and grantees of said premises, and not to be resold to any other corporation or party whatsoever, except said lessees and grantees.

(2) It is agreed by the party of the second part that as soon as said main is laid and the party of the first part offers said water to it, that it will take the same for the purposes aforesaid, and that it will pay to the party of the first part the sum of fifteen dollars per million gallons (subject to the provision hereinafter contained) payable in monthly payments; but it is understood and agreed that said party of the second part, at the end of the first three consecutive months, and at the end of each succeeding three consecutive months thereafter during the term of this contract, after the commencement of the delivery of water by the party of the first part under this agreement, will pay for such additional million gallons of water as shall make the total million gallons paid for during the then next preceding three months one hundred and fifty-six million gallons, whether so many million gallons of water have been taken or not during the said three months; provided that, if said parties hereto or either of them, shall be prevented by any legal proceeding from using said water for dyeing purposes or from discharging the same after such use, during the time of such prevention, the parties hereto respectively shall not be required to de-

liver or pay for said water, and this contract during such time shall not be enforced against either of the parties hereto.

(3) It is hereby further agreed between the parties hereto that the party of the second part will furnish within their buildings and adjacent to the said pipe line sufficient space in which the party of the first part may place the registering apparatus of their said meter, if in the opinion of the engineer of the party of the first part such registering apparatus is necessary; said space to be convenient of approach and accessible for the purpose mentioned.

(4) It is further agreed between the parties hereto that in the event of accident or repair to said pipe line, whereby a temporary discontinuance of supply or reduction of pressure takes place, the party of the second part shall not thereby have any claim for damages due to such reduction of pressure or discontinuance of supply, provided the party of the first part shall promptly cause the necessary repairs to be made.

(5) It is further understood and agreed between the parties hereto that this contract shall not in any wise affect any right or liability whatsoever of either party hereto now existing or hereafter arising as riparian owners, except as to the diversion of water by this said forty-two inch pipe, the right to such diversion being hereby granted.

(6) If at any time during the term of this contract the said party of the first part shall deliver to others, excepting the City of Paterson for the extinguishment of fires or the flushing of sewers, water at a price or rate less than that provided herein, the price or rate herein provided shall be reduced to such less price or rate.

Weidmann Exhibit No. 6.

(7) It is further understood and agreed between the parties hereto that this water is not fit for culinary or drinking purposes, and the party of the second part will hold harmless and protect the party of the first part from any claim for damages arising from the use of the water delivered under this contract for either drinking or culinary purposes.

(8) It is further understood and agreed between the parties hereto that this agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, for a period of ten years from the date hereof.

In witness whereof the parties hereto have by their respective proper officers duly executed these presents the day and year first aforesaid.

The Passaic Water Company,
(Seal) By W. G. Snow,
Vice President.

Attest—
Albert P. Fisher,
Secretary.

The Weidmann Silk Dyeing Company,
(Seal) By J. Weidmann,
President.

Attest—
James H. Rogers,
Secretary.

Exhibit Weidmann No. 6.

Agreement, made this 20th of July, 1918, between The Passaic Water Company, party of the first part, and The Weidmann Silk Dyeing Company, party of the second part, Witnesseth:

Whereas the party of second part is carrying on the business of Silk Dyeing in the City of Pat-

Weidmann Exhibit No. 6.

erson, County of Passaic and State of New Jersey, and is desirous of securing better fire protection, and water for use on their premises;

And whereas the filtered water which the party of the first part is distributing to its customers costs too much to purify and deliver, and the mains through which it is distributed are of a size too small to permit the delivery of water to the party of the second part in sufficient quantity;

Now therefore it is agreed between the parties hereto:

(1) That the party of the first part will deliver to the party of the second part, out of the so-called "Dyers' Pipe" laid from the dam of the Society for Establishing Useful Manufactures, through a meter which shall be furnished by and be under the control of the party of the first part, a supply of water taken from above the dam of the said Society; and in full payment of all such water so delivered to the party of the second part, the party of first part shall charge and shall receive the sum of $25.00 per million gallons for 2½ million gallons per month whether so much be used or not; $20.00 per million gallons for the second 2½ million gallons per month, and $15.00 per million gallons for all water above five million gallons per month. Bills to be rendered monthly upon this basis, and payments to be made on or before the 15th day of the next following month. Failure to make the payment within the time specified shall entitle the party of the first part to cut off this supply of water and to keep the same cut off until payment shall be made.

(2) Said water to be used for the extinguishment of fires and all other lawful purposes, but only upon the premises of the said party of the

second part, its lessees and grantees of said premises, and not to be resold to any other corporation or party whatsoever except said lessees and grantees.

(3) It is further understood and agreed, that if the said parties hereto, or either of them, shall be prevented by any legal proceeding from using said water for dyeing purposes, or from discharging same after such use, during the time of such prevention the parties hereto respectively shall not be required to deliver or to pay for said water, and this contract during such time shall not be enforced against either of the parties hereto:

(4) It is hereby further agreed between the parties hereto, that the party of the second part will furnish within their buildings and adjacent to the said pipe line, sufficient space in which the party of the first part may place the registering apparatus of their said meter, if in the opinion of the engineer of the party of the first part such registering apparatus is necessary; said space to be convenient of approach and accessible for the purpose mentioned, and frost-proof;

(5) It is further agreed between the parties hereto that in the event of accident, repair, or to make connection to said pipe line, whereby a temporary discontinuance of supply or reduction of pressure takes place, the party of the second part shall not thereby have any claim for damages due to such reduction of, pressure or discontinuance of supply, provided the party of the first part shall promptly cause the necessary repairs or connection to be made.

(6) It is further understood and agreed between the parties hereto that this contract shall not in any wise affect any right or liability what-

soever of either party hereto now existing or hereafter arising as riparian owners, except as to the diversion of water by this said 42-inch pipe line, the right to such diversion being hereby granted,

(7) It is further understood and agreed between the parties hereto that this water is not fit for culinary or drinking purposes, and the party of the second part will hold harmless and protect the party of the first part from any claim for damages arising from the use of the water delivered under this contract for either drinking or culinary purposes.

(8) It is further understood and agreed between the parties hereto, that if any charge for diversion of this water is made by the State during the term of this contract, it shall be paid by the party of the second part within thirty days after the said tax or charge has been paid by the party of the first part, and shall be in addition to the price per million gallons herein agreed to be paid. No such tax is now paid.

(9) It is further understood and agreed between the parties hereto, that the party of the first part does not guarantee to deliver, under this contract, any specific quantity of water, nor does it guarantee the quality of the pressure of this water, but will deliver to their combined customers only such water as may be available to it under its agreement with the Society for Establishing Useful Manufactures within the capacity of its pipe already in service. A copy of the clause referred to, in the said agreement between the party of the first part and the said Society, is hereto attached to this agreement.

(10) It is understood and agreed between the parties hereto, that this agreement is for the dura-

tion of one year from September 13, 1918, and thereafter until the same shall be terminated by a six months' notice given in writing by either party to the other.

In witness whereof, the parties hereto have, by their duly authorized executive officers, executed these presents and have caused their common seals, duly attested, to be affixed, the day and year first aforesaid.

The Passaic Water Company,
(Seal) By Edmund LeB. Gardner,
President.

Attest—
Albert P. Fisher,
Secretary.

The Weidmann Silk Dyeing Company,
(Seal) By Aug. Hunziker,
Vice-Pres't.

Attest—
James H. Rogers,
Secretary.

CLAUSE REFERRED TO IN SECTION 9.

"It is understood and agreed between the parties hereto:

* * * * * *

"That whereas the prospective building of a reservoir by the City of Newark on the Wanaque River and the diversion of water from such reservoir, together with the diversion of water by the Morris Canal, coming in conjunction with an unusually dry season, might so deplete the flow of the Passaic River at the Society's dam as to render it impossible for the Society to supply the party of the first part so much as twenty million gallons per day, it is therefore understood and

Weidmann Exhibit No. 7.

agreed, that when necessary, the said Society will, so far as it can by the substitution of electric power, diminish the draft of water by water wheels from their canals, and will themselves refrain from the use of their water wheels in their power station, in order that the flow of water available for the purposes of the party of the first part may be as large as may be; but the Society does not guarantee that the party of the first part can receive the specified amount of twenty million gallons per day, nor any part thereof."

Weidmann Exhibit No. 7.

Agreement, made this 22d day of September, 1905, between The Passaic Water Company, a corporation of the State of New Jersey, party of the first part, and William H. Kearns, of the City of Paterson, New Jersey, doing business under the firm name of Kearns Brothers, party of the second part, Witnesseth:

Whereas the party of the second part is carrying on the business of dyeing within the City of Paterson, County of Passaic and State of New Jersey, and is desirous of securing better fire protection and water for use on their premises for other lawful purposes, and is desirous that the party of the first part should furnish them such water in sufficient volume; and

Whereas the filtered water which the party of the first part is distributing to its customers costs too much to purify and deliver, and the mains through which it is distributed are of a size too small to permit of the delivery of water to the party of the second part in sufficient quantity;

Now therefore it is agreed between the parties hereto:

Weidmann Exhibit No. 7.

(1) That the party of the first part will, as soon as they reasonably can, lay a forty-two inch main, from the dam of the Society for Establishing Useful Manufactures above the Great Falls of the Passaic River, to a point adjacent to the property of the party of the second part, and out of this main will deliver to the party of the second part, through a meter which shall be furnished by and be under the control of the party of the first part, such quantity as the party of the second part may choose to take (but not exceeding one and one half million gal. per day) of Passaic River water taken from above the dam of the said Society, and in full payment of all such water so delivered to the party of the second part the party of the first part will charge and shall receive the sum of fifteen dollars per million gallons; said water to be used for the extinguishment of fires and all other lawful purposes, but only upon the premises of said party of the second part, its lessees and grantees of said premises, and not to be resold to any other corporation or party whatsoever, except said lessees and grantees.

(2) It is agreed by the party of the second part that as soon as said main is laid and the party of the first part offers said water to it, that it will take the same for the purpose aforesaid, and that it will pay to the party of the first part the sum of fifteen dollars per million gallons (subject to the provision hereinafter contained) payable in monthly payments; but it is understood and agreed that said party of the second part, at the end of the first twelve consecutive months, and at the end of each succeeding twelve consecutive months thereafter during the term of this contract, after the commencement of the delivery of

water by the party of the first part under this agreement, will pay for such additional million gallons of water as shall make the total million gallons paid for during the then next preceding twelve months one hundred and fifty-four (154) million gallons, whether so many million gallons of water have been taken or not during the said twelve months, provided that, if said parties hereto or either of them shall be prevented by any legal proceeding from using said water for dyeing purposes or from discharging the same after such use, during the time of such prevention, the parties hereto respectively shall not be required to deliver or pay for said water, and this contract during such time shall not be enforced against either of the parties hereto.

(3) It is hereby further agreed between the parties hereto that the party of the second part will furnish within their buildings and adjacent to the said pipe line, sufficient space in which the party of the first part may place the registering apparatus of their said meter, if in the opinion of the engineer of the party of the first part such registering apparatus is necessary; said space to be convenient of approach and accessible for the purpose mentioned.

(4) It is further agreed between the parties hereto that in the event of accident or repair to said pipe line, whereby a temporary discontinuance of supply or reduction of pressure takes place, the party of the second part shall not thereby have any claim for damages due to such reduction of pressure or discontinuance of supply, provided the party of the first part shall promptly cause the necessary repairs to be made.

(5) It is further understood and agreed be-

tween the parties hereto that this contract shall not in any wise affect any right or liability whatsoever of either party hereto now existing or hereafter arising as riparian owners, except as to the diversion of water by this said forty-two inch pipe, the right to such diversion being hereby granted.

(6) If at any time during the term of this contract the said party of the first part shall deliver to others, excepting the City of Paterson for the extinguishment of fires or the flushing of sewers, water at a price or rate less than that provided herein, the price or rate herein provided shall be reduced to such less price or rate.

(7) It is further understood and agreed between the parties hereto that this water is not fit for culinary or drinking purposes, and the party of the second part will hold harmless and protect the party of the first part from any claim for damages arising from the use of the water delivered under this contract for either drinking or culinary purposes.

(8) It is further understood and agreed betwen the parties hereto that this agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, for a period of ten years from the date hereof.

In witness whereof the parties hereto have by their respective proper officers duly executed these presents the day and year first aforesaid.

The Passaic Water Company,
By W. G. Snow,
Vice President.

Attest:
Albert P. Fisher,
Secretary.

Weidmann Exhibit Nos. 8, 9, 10.

Kearns Brothers,
per William H. Kearns.

Witness as to signature of William
H. Kearns, of Kearns Brothers,
J. L. Leal.

Weidmann Exhibit No. 8.

Contract between Auger & Simon Silk Dyeing Company and the Passaic Water Company, dated September 13, 1905; being the same in form as Exhibit National No. 6, except that the maximum supply is limited to 4,500,000 gallons per day and the minimum to 462,000,000 gallons per annum.

Weidmann Exhibit No. 9.

Contract between E. Geering Silk Dyeing Company and the Passaic Water Company, dated September 13, 1905; being the same in form and with the same maximum and minimum of supply as Exhibit National No. 10.

Weidmann Exhibit No. 10.

Memorandum of agreement, made this day of July, A. D. nineteen hundred and nine, Between Passaic Water Company, a body corporate of the State of New Jersey, party of the first part, and National Silk Dyeing Company, a body corporate of the State of New Jersey, party of the second part.

Whereas, the party of the second part hereto has recently become the owner of the land and premises and plant heretofore used and occupied by the Auger & Simon Silk Dyeing Company and the business there carried on in the City of Pater-

son, County of Passaic and State of New Jersey, and now known as the East Fifth Street Works of the party of the second part, and of the land and premises and plant heretofore used and occupied by William H. Kearns, trading and doing business under the name of Kearns Bros., and the business there carried on in the City of Paterson, County of Passaic and State of New Jersey, and now known as the Wood Street Works of the said party of the second part, and of the land and premises and plant heretofore used and occupied by E. Geering Silk Dyeing Co. and the business there carried on in the City of Paterson, County of Passaic and State of New Jersey, and now known as the Valley Works of the said party of the second part, and of the land and premises and plant heretofore used and occupied by Knipscher & Maass Silk Dyeing Company and the business there carried on in the City of Paterson, County of Passaic and State of New Jersey, and now known as the Van Houten Street Works of the said party of the second part, and at the time of purchasing and taking possession of the said property, plants and business from the respective parties above mentioned, if obtained, by conveyance or assignment, certain contracts which each of the said parties above named had outstanding with the said Passaic Water Company, for a supply of water for the extinguishment of fires and other lawful purposes on said premises, subject to the terms and conditions contained in the said respective contracts, and agreed with the respective parties above mentioned to perform the covenants contained in the said respective contracts, on their part to be kept and performed, and to make the payments to the said Passaic Water Company therein provided for; and,

Weidmann Exhibit No. 10.

Whereas, under the said contracts with the said Passaic Water Company, the respective parties above mentioned have respectively stipulated a minimum quantity of water for which they should pay each year, whether they used the same or not, and the said party of the second part hereto, in conducting its business as the grantee of the said parties above mentioned, finds that it will be beneficial to it and therefore desires to have the right to make use of the aggregate of the said minimum quantity of water fixed in said respective contracts, to be paid for, at such of its said plants as it may desire, and to pay for the said aggregate minimum quantity of water agreed to be taken in said respective contracts, whether the same is used or not, at the price stipulated in the said contracts;

Now, therefore, this agreement witnesseth; That the said parties hereto, in consideration of the sum of One Dollar, paid by each to the other, the receipt whereof is hereby acknowledged, and in further consideration of the premises hereinbefore and hereinafter mentioned, do hereby mutually agree as follows:

(1) That the said party of the second part, for itself, its successors and assigns, does hereby acknowledge that it has taken an assignment of the contract made between the said Passaic Water Company and the Auger & Simon Silk Dyeing Company, bearing date the thirteenth day of September, nineteen hundred and five, and the contract made between the said Passaic Water Company and William H. Kearns, trading and doing business under the name of Kearns Bros.,

Weidmann Exhibit No. 10.

bearing date the twenty-second day of September, nineteen hundred and five, and the contract made between the said Passaic Water Company and E. Geering Silk Dyeing Company, bearing date the thirteenth day of September, nineteen hundred and five, and the contract made between the said Passaic Water Company and Knipscher & Maass Silk Dyeing Company, bearing date the twentieth day of November, nineteen hundred and five, and does hereby covenant and agree to and with the said Passaic Water Company that it holds the said respective contracts under the terms and conditions mentioned in the same, and that it will faithfully keep and perform the covenants and conditions therein contained to be kept and performed by the parties of the second part to said respective contracts, and will make the payments therein provided for, at the times and in the manner therein stipulated, and will pay to the said Passaic Water Company, or its assigns, for the aggregate minimum quantity of water, mentioned in said respective contracts, whether the same is taken and used or not, at the rates therein stated for such minimum quantities.

(2) That the said Passaic Water Company quantities of water, mentioned in the respective contracts, mentioned in the preceding article hereof, and does hereby agree that the said National Silk Dyeing Company, as the grantee or lessee of the respective parties above mentioned may make use of the aggregate of the minimum quantities of water, mentioned in the respective contracts aforesaid, at such of its said plants or works above mentioned, as it chooses, and shall not be restricted to the use at any particular

plant, of the minimum provided in the contract concerning such particular plant, but may distribute such aggregate minimum quantities among its said plants above mentioned, in such quantities as it sees fit; provided, however, that it shall pay the price for the aggregate minimum quantity of water fixed in said respective contracts, on the terms and conditions mentioned in said respective contracts, whether it takes and uses the same or not. The new accounting begins as of the date of this agreement.

In witness whereof, the respective parties hereto have duly executed these presents, and caused their seals to be hereto affixed, the day and year first above written.

National Silk Dyeing Co.,
By C. L. Auger,
Pres.

Attest:
Frank Maass,
Secy.

Passaic Water Company,
By Edmund LeB. Gardner,
Treas.

Attest:
Albert P. Fisher,
Secretary.

Weidmann Exhibit No. 11.

Agreement made this 6th day of August, 1918, between: The Passaic Water Company, party of the first part and National Silk Dyeing Company, party of the second part Witnesseth:

Whereas, the party of the second part is carrying on the business of dyeing and finishing in the

Weidmann Exhibit No. 11.

City of Paterson, County of Passaic and State of New Jersey, and is desirous of securing better fire protection, and water for use on their premises;

And whereas the filtered water which the party of the first part is distributing to its customers costs too much to purify and deliver, and the mains through which it is distributed are of a size too small to permit the delivery of water to the party of the second part in sufficient quantity;

Now therefore it is agreed between the parties hereto:

(1) That the party of the first part will deliver to the party of the second part, out of the so-called "Dyers' Pipe" laid from the dam of the Society for Establishing Useful Manufactures, through meters which shall be furnished by and be under the control of the party of the first part, a supply of water taken from above the dam of the said Society; one of such meters to be located and water to be delivered at each of the following plants of said party of the second part, to wit, the East Fifth Street plant, the Wood Street plant, the East Main Street plant, and the Valley Works plant; and in full payment of all such water so delivered to the party of the second part, the party of the first part shall charge and shall receive the sum of $25.00 per million gallons for 2½ million gallons per month delivered at each plant, whether so much be used or not; $20.00 per million gallons for the second 2½ million gallons per month delivered at each plant, and $15.00 per million gallons for all water above five million gallons per month delivered at each plant; provided, however, that if a 4-inch meter is installed at the Wood Street plant at the expense of the

party of the second part (it being understood that the party of the first part shall install such a meter forthwith) that then the charge for water used at such Wood Street plant shall be for the quantity actually used and at the rate of $25.00 per million gallons for the first 2½ million gallons per month, $20.00 per million gallons for the second 2½ million gallons per month, and $15.00 per million gallons for all over five million gallons per month. Bills to be rendered monthly upon this basis and payment to be made on or before the 15th day of the next following month. Failure to make payment within the time specified shall entitle the party of the first part to cut off this supply of water and to keep the same cut off until payment shall be made.

(2) Said water to be used for the extinguishment of fires and all other lawful purposes, but only upon the premises of the said party of the second part, its lessees and grantees of said premises, and not to be resold to any other corporation or party whatsoever except said lessees and grantees.

(3) It is further understood and agreed that if the said parties hereto, or either of them, shall be prevented by any legal proceeding from using said water for dyeing purposes, or from discharging same after such use, during the time of such prevention the parties hereto respectively shall not be required to deliver or to pay for said water, and this contract during such time shall not be enforced against either of the parties hereto.

(4) It is hereby further agreed between the parties

Weidmann Exhibit No. 11.

hereto that the party of the second part will furnish within their buildings and adjacent to the said pipe line, sufficient space in which the party of the first part may place the registering apparatus of their said meters, if in the opinion of the engineer of the party of the first part such registering apparatus is necessary; said space to be convenient of approach and accessible for the purpose mentioned, and frost proof.

(5) It is further agreed, between the parties hereto, that in the event of accident, repair or to make connection to said pipe line, whereby a temporary discontinuance of supply or reduction of pressure takes place, the party of the second part shall not thereby have any claim for damages due to such reduction of pressure or discontinuance of supply, provided the party of the first part shall promptly cause the necessary repairs or connection to be made.

(6) It is further understood and agreed between the parties hereto that this contract shall not in any wise affect any right or liability whatsoever of either party hereto now existing or hereafter arising as riparian owners, except as to the diversion of water by this said 42-inch pipe line, the right to such diversion being hereby granted.

(7) It is further understood and agreed between the parties hereto that this water is not fit for culinary or drinking purposes, and the party of the second part will hold harmless and protect the party of the first part from any claims for damages arising from the use of the water de-

livered under this contract for either drinking or culinary purposes.

(8) It is further understood and agreed between the parties hereto that if any charge for diversion of this water is made by the State during the term of this contract, it shall be paid by the party of second part within thirty days after the said tax or charge has been paid by the party of the first part, and shall be in addition to the price per million gallons herein agreed to be paid. No such tax is now paid.

(9) It is further understood and agreed between the parties hereto that the party of the first part does not guarantee to deliver, under this contract, any specific quantity of water, nor does it guarantee the quality or the pressure of this water, but will deliver to their combined customers only such water as may be available to it under its agreement with the Society for Establishing Useful Manufactures within the capacity of its pipe already in service. A copy of the clause referred to in the said agreement between the party of the first part and the said Society is hereto attached to this agreement.

(10) It is understood and agreed between the parties hereto that this agreement is for the duration of one year from September 13th, 1918, and thereafter until the same shall be terminated by a six months' notice given in writing by either party to the other.

In witness whereof the parties hereto have, by their duly authorized executive officers, executed

Weidmann Exhibit No. 11.

these presents and have caused their common seals, duly attested, to be hereto affixed, the day and year first aforesaid.

The Passaic Water Company,
By John H. Cook,
Vice President.

Attest:
Albert P. Fisher,
Secretary.

National Silk Dyeing Company,
C. L. Auger,
Pres.

Attest:
Frank Maass,
Secretary.

CLAUSE REFERRED TO IN SECTION 9.

"It is understood and agreed between the parties hereto * * *

"That whereas the prospective building of a reservoir by the City of Newark on the Wanaque River and the diversion of water from such reservoir, together with the diversion of water by the Morris Canal, coming in conjunction with an unusually dry season, might so deplete the flow of the Passaic River at the Society's dam as to render it impossible for the Society to supply the party of the first part so much as twenty million gallons per day, it is therefore understood and agreed that, when necessary, the said Society will, so far as it can by the substitution of electric power, diminish the draft of water by water wheels from their canals, and will themselves refrain from the use of their water wheels in their power station, in order that the flow of water available for the purposes of the party of the first part may be as large as may be; but the Society does not guarantee that the party of first part

can receive the specified amount of twenty million gallons per day, nor any part thereof."

Weidmann Exhibit No. 12.

Cost of Pumping Water
Rate—4 Million Daily

Investment	$19,184.35
Depreciation	748.32
Interest 6%	1,151.06
Taxes 1.68%	322.30
Total	$2,221.68
Total Burden for one year	$2,221.68

Average amount of water pumped per year 1,200 millions.

Average cost of burden per million 2221.68=$1.85

1200

Direct Cost of Water Per Day

Coal	$11.52
Labor	3.065
Repairs	.92
Oil, feed water	.105
Total	$15.61

Average direct cost per day, $15.61.

Average number of gallons per day, 4 million.

Average direct cost per million, $3.90

Total Average Cost Per Million Gallons Pumped

Average direct cost per million	$3.90
Average burden cost per million	1.85
Total average cost per million	$5.75

Weidmann Exhibit No. ——
(Extract from Allen Hazen's report on the Sewage of Paterson.)

Weidmann Exhibit No. 12

"Of the injurious and polluting substances, by far the greatest quantity is carried by a comparatively small volume of concentrated liquor, not exceeding 5, or at most 10 per cent. of the total volume of water used in the dye houses. Certain further quantities of discharge contain some polluting materials, but the great bulk of the discharge consists of wash water, containing only mineral substances, or organic substances, in such small quantities that they do not pollute the river. These wash waters are far cleaner organically than the river water now is, or is ever likely to be. In fact, some of them are purer organically than the river was in its natural state before it received any sewage. This is because a considerable proportion of the water used in the dye houses is ground water obtained from the gravel and rock under the city. This water often contains much mineral matter, but is organically pure. When surface water is used in dye houses, either from the Passaic River at the Falls or from its tributaries, it is often, or usually filtered before use, and the filtration is such as to remove a large part of the organic matter contained in it. The water used in the dye houses thus is water of considerable organic purity. By far the greatest part of the discharges consist only of this water mixed with mineral matters. Such waste are free from organic constituents, and the mineral matters are not of such a nature as to pollute the river. Many organic wastes are too dilute to pollute the river appreciably. It is, therefore, unnecessary and undesirable to attempt to carry away in a trunk sewer, or to purify, more than a small fraction of the total volume of the dye house liquors. If the separation could be accurately made it would suf-

fice to remove from the river about 5 per cent. of the total volume, or 1,000,000 gallons per day. Owing to the difficulty or impossibility of effecting accurately such a separation, the amount actually to be taken care of will, perhaps, be double this quantity."

Weidmann Exhibit No. 13.

(Fifty bottles of water taken from the Passaic River.)

Weidmann Exhibit No. 14.

(Grant to the City of Bayonne to take not exceeding an average quantity of six million gallons a day from January 29, 1919, to October 6, 1929; consideration, $17,600.)

Weidmann Exhibit No. 15.

(Grant to Bloomfield to take three million gallons a day from February 14, 1919, to May 1, 1925; consideration, $1800.)

Weidmann Exhibit No. 16.

(Grant to the Montclair Water Company to take 2.2 million gallons a day from February 4, 1919, to January 1, 1925, consideration, $1320.)

Weidmann Exhibit No. 17.

(Grant to Glen Ridge to take 350,000 gallons per day from February 4, 1919, to January 1, 1925; consideration, $210.)

Weidmann Exhibit No. 18.

(Grant to the Commonwealth Water Company,

that is, West Orange, to take one million gallons per day from February 4, 1919, to January 1, 1925; consideration, $600.)

Weidmann Exhibit No. 19.

(Grant to Nutley to take 750,000 gallons per day from February 4, 1919, to January 1, 1925; consideration, $450.)

Weidmann Exhibit No. 20.

(Grant to Kearney to take six million gallons per day from February 7, 1919, to January 1, 1921, for a consideration of $1,500. This agreement also contains an option to the town for an extension of the contract until January 1, 1925, not exceeding six million gallons per day, for an additional consideration of $3,000, and then a further option of the right to a contract to take ten million gallons per day from 1925 to 1935 for $10,000.)

Weidmann Exhibit No. 21.

(George G. Patterson's diagram showing tank measurements at the Weidmann Works.)

(Extract from the Geological Survey of New Jersey, Vol. III., Water Supply, 1894.) See page 491 of testimony.

National Exhibit Nos. 1, 2, 3, 4, 5, 6.

National Exhibit No. 1.

(Map of East Fifth Street property of the National Silk Dyeing Company.)

National Exhibit No. 2.

(Map of East Fifth Street plant of the National Silk Dyeing Company.)

National Exhibit No. 3.

(Map of East Main Street property of the National Silk Dyeing Company.)

National Exhibit No. 4.

(Map of Wood Street plant of the National Silk Dyeing Company.)

National Exhibit No. 5.

(Map of Ryle Avenue plant of the National Silk Dyeing Company.)

National Exhibit No. 6.

Calculations of the value of the buildings at the four plants of the National Silk Dyeing Company made by Felix G. Pittet showing:—

(a) Value of buildings.

(b) Depreciation in value, if buildings are abandoned as dye houses.

Group "A"
East Fifth Street Works

(a)

Bldg.	Type	Value
1-2-3	Dyehouse, one block, same class construction, divided by brick partitions, one story brick, heavy truss roof with monitor - -	$38,937.

National Exhibit No. 6.

4	Dyehouse, two story brick, truss roof	6,200.
5	Dyehouse, two story, heavy truss roof with monitors - -	13,400.
6	Boiler house, one story brick, truss roof with monitor - -	4,697.
7	One story building, brick, truss roof -	1,716.
8	Filter house with tower, brick, truss roof with monitor - -	5,600.
9-10-11	Store sheds, one story frame, flat roof - - - - -	2,664.
12	Tin pit housing & store building, frame, truss roof with monitor -	6,760.
13	Dyehouse, heavy truss roof with monitor - - -	7,650.
14	Dyehouse, one story brick, truss roof with monitor - -	4,500.
15	Office & shipping room, one story brick, truss roof with monitor -	9,625.
16-17	Two story brick, truss roof -	11,580.
18	Dyehouse, one story brick, sawtooth roof - - -	26,025.
19	Tank house, on story brick, truss roof	500.
20-21	Boiler room & store house, one story brick truss roof with monitor -	6,500.
22-23	Power house, one story brick, truss roof with monitor - -	4,500.
24	Machine shop, one story brick, truss roof - - - - -	4,375.
25	Store house, frame, flat roof -	2,400.
26	Filter building, one story brick, truss roof - - - - -	1,265.
27	Store, one story frame, flat roof -	1,500.
	)One radial stack, 150'-0'', 7'-0'' core	6,000.
28	)One square stack, 125'-0'',5'-0'' core	3,500.
29	Store shed, one story frame -	800.
30	Firep'rf garage, brick, concrete & steel	7,000.

National Exhibit No. 6.

31	Store shed, one story frame -	400.
32	Store shed, one story frame - -	1,080.
33	Two story brick bldg. used as living house & stable - - -	3,060.
34-35-)		
36-37-)	Group of small one story sheds, flat roof - - -	1,500.
38-39-)		
40	New storehouse, one story frame, shed roof, heavy construction -	4,200.
	680 lineal feet of river retaining wall	6,800.
	All underground work, such as sewers, canals, ducts and precipitating pits - - - -	40,000.
		$234,734.

(b) Amount involved in dyehouse, floors, sewers, gutters and underground work, such as foundations, footings for machinery, and pits - - $98,500.

Other conditions, such as the height and elevation of building, size of power plant in proportion to floor area, size of chimney and other things which are not needed for any other class of work other than dyehouse work amounts to - 45,000.

Total amount ..... $143,500.

Group "B"

East Main Street Works

(a)

Bldg.	Type	Value
1	Finishing building, one story brick, flat roof - - -	$6,000.

National Exhibit No. 6.

2	Tank & filter building, frame, heavy construction - -	2,500
3	Pump & washing machinery, frame and brick, truss roof - - -	1,550.
4	Store shed, vault & tin pit, shed roof	1,400.
5	Dyehouse, one story brick, truss roof with monitor - -	18,600.
6	Boiler house, brick, high truss roof with monitor - -	7,600
7	Chemical & mixing room, frame, flat roof - - -	800.
8	Finishing department, two story brick, truss roof - -	7,800.
9	Dyehouse, one story brick, heavy truss roof with monitor - -	9,000.
10	Group of buildings, carpenter shop, machine room and store, frame flat roof - - -	2,000.
11	Two story building, frame - -	4,200.
	150 lineal feet of river retaining wall	2,250.
	Radial stack, 125'-0'', 6'-0'' core -	4,000.
	Tin pit, sewers and machinery foundations - - -	22,000.
		$89,700.
(b)	Amount involved in dyehouse floors, sewers, guttters and underground work, such as foundations, footings for machinery, and pits - -	$32,000.
	Other conditions, such as height and elevation of buildings, size of power plant in proportion to floor area, size of chimney and other things which are not needed for any other class of work other than dyehouse work amounts to - - -	13,500.
	Total	$45,500.

National Exhibit No. 6.

Group "C"

Valley Works

(a)

Bldg.	Type	Value
1	Boiler house, one story brick, truss roof with monitor - -	$3,450.
2	Tank building, frame, heavy construction - - -	400.
3	Store sheds, one story, flat rook -	1,000.
4	Storage buildings, frame, truss roof -	1,500.
5	Old color shop, frame, truss roof -	1,875.
6	Drying room, frame, truss roof -	1,125.
7	Storage building, frame heavy construction - - -	1,250.
8	Tank structures & red iron room, frame, heavy construction, flat roof	1,950
9-10	Preparation building & finishing frame, truss roof - -	4,062.
11	Old office building, two stories, brick, flat roof - - -	1,845.
12-13	Supply building, brick, sawtooth roof - - -	9,375.
14	Machine stock room & tank structure brick, truss roof - -	4,000.
15	Black iron process building, brick, truss roof - - - -	1,250.
16	Black dye shop, brick, truss roof with monitor - - -	5,600.
17	Dye shop & tank structure, brick, sawtooth roof - -	8,750.
18-19-20	Carriage house, paste room & storage space, one story frame -	1,200.
21	Stock room & store, frame, truss roof	1,000.
22	Office building, storage & vaults, two story brick, truss roof - -	18,000

National Exhibit No. 6.

23	Finishing department, two story brick, truss roof - - - -	12,600.
	Engine room, one story brick, truss roof with monitor - -	2,700.
	Boiler room, one story brick, truss roof with monitor - - -	7,125.
24	Pump room, brick, truss roof -	3,150.
	Main color shop, brick, heavy construction, sawtooth roof - -	33,250.
	Dynamite room, brick, heavy construction, sawtooth roof - -	12,000.
25-26-27	Pump, filter & tank structures, frame, heavy timber and truss construction - - - - -	7,200.
28	Store shed, frame, heavy construction	2,400.
	Radial brick stack, 125'-02'' -	4,500.
	275 lineal feet heavy retaining wall at river bank - - - - -	6,800.
	All underground structures, such as sewers, canals, ducts, tin pits and depressions in foundations for machinery - - - - -	20,000.
		$179,357.

(b)	Amount involved in dyehouse floors, sewers, gutters and underground work such as foundations, footings for machinery, and pits -	$74,000.
	Other conditions such as height and elevation of buildings, size of power plant in proportion to floor area, size of chimney and other things which are not needed for any other class of work other than dyehouse work amounts to - - - - -	23,000.
		$97,000.

National Exhibit No. 6.

Group "D"
Wood Street Works

(a)

Bldg.	Type	Value
1	One story brick, heavy truss roof with monitor - - -	$18,000.
2	One story brick, truss roof, with monitor - - - - -	3,402.
3	One story frame, light truss roof construction with monitor - -	3,281.
4	Two story brick, slow-burning construction, flat roof - -	7,055.
5	One story brick, heavy truss roof with monitor - - - -	14,000.
6	One story frame, shed roof -	370.
7-8	Two story frame of same type, connected, light truss roof - -	4,386.
9	One story frame, shed roof -	408.
	River retaining wall - -	5,000.
	Radial smoke stack, 150'-0", 6'-0" core, with foundation - -	4,500.
	Miscellaneous underground work other than foundations of buildings - - - - -	3,500.
		$63,902.

(b) Amount involved in dyehouse floors, sewers, gutters and underground work, such as foundations, footings for machinery, and pits - $24,000.

Other conditions, such as height and elevation of buildings, size of power plant in proportion to floor area, size of chimney and other things which are not needed for any other class of work other than dyehouse work amounts to - - 8,500

$32,500.

Nat. Exhibit Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

National Exhibit No. 7.

(Photograph of a part of the Rockaway river.)

National Exhibit No. 8.

(Photograph of the Rockaway river as it flows into the Boonton reservoir.)

National Exhibit No. 9.

(The same at a different point.)

National Exhibit No. 10.

(Photograph of the Boonton reservoir and spillway.)

National Exhibit No. 11.

(Photograph of the spillway and the bed of the Rockaway river.)

National Exhibit No. 12.

(Photograph of the spillway at the Boonton reservoir.)

National Exhibit No. 13.

(The same from a different point.)

National Exhibit No. 14.

(Photograph of the Rockaway river close to the Dalton farm.)

National Exhibit No. 15.

(Photograph of the Rockaway river a mile and a half below the spillway.)

National Exhibit No. 16.

(Photograph of the Rockaway river two miles below the spillway.)

National Exhibit Nos. 17, 18.

National Exhibit No. ——

(Charter of the Morris Canal and Banking Company.)

National Exhibit No. 17.

The following is a summary of National Exhibit No. 17 as consented to for the purposes of the State of the Case upon the present motion. Said Exhibit is a statement showing the quantity of water taken by the National Silk Dyeing Company from the Little Falls Conduit Supply during each month of the period from January 1st, 1909 to December 31, 1920 together with the amount paid by it, each month, for such water, to the Passaic Water Company. Said exhibit also contains a recapitulation or summary of all such quantities and payments showing the total quantities used at each plant and the total amounts paid during said period to be as follows:

SUMMARY

	gallons	cost
East 5th St. Works to Dec. 31, 1920	6,736,363,166	102,058.43
East Main St. Works to Dec. 31, 1920	1,071,520,000	17,377.45
Valley Works to Dec. 31, 1920,	4,327,468.000	65,958.89
Wood St. Works to Dec. 31, 1920,	37,067,060	585.46
Add minimum	2,206,389,195	33,163.94
Total	14,378,807,421	$219,144.17

National Exhibit No. 18.

(Bills for labor on filters.)

National Exhibit Nos. 19, 20.

National Exhibit No. 19.

NATIONAL SILK DYEING COMPANY

Paterson Plants

Property located on Passaic River only.

Book Values

PLANT ASSETS		
East 5th Street Works		
Real Estate, Land & Water	$ 97,797.63	
Buildings	228,185.81	
Machinery, Fixtures, etc.	486,753.05	
Uncompleted construction	6,836.43	
Total		819,572.92
East Main Street Works		
Real Estate, Land & Water	20,582.29	
Buildings	84,250.76	
Machinery, Fixtures, etc.	79,479.64	
Uncompleted construction	273.42	
Total		184,586.11
Valley Works		
Real Estate, Land & Water	43,876.00	
Buildings	171,404.14	
Machinery, Fixtures, etc.	265,376.25	
Uncompleted construction	461.15	
Total		481,117.54
Wood Street Works		
Real Estate, Land & Water	16,000.00	
Buildings	61,590.96	
Machinery, Fixtures, etc.	28,211.81	
Uncompleted construction	.....	
Total		105,802.77
Grand Total Net		1,591,079.34

National Exhibit No. 20.

(Sample of paste obtained by elimination of waste matter.)

Condemnors' Exhibits Nos. 1 and 2.

Cost of Pumping
Weidmann Silk Company
Paterson, N. J.

Equipment:-

Two Davidson compound, condensing, direct acting, single pumps with independent jet condensers.

Size—16-30x24x24—New 1909
14-24x22x24—New 1903

Steam Pressure ..... 90 lb.
Water Pressure ..... 75 ft. total head

Horizontal return tubular boilers with Wilkinson stokers.

Data for determining cost of pumping:

Cost of pumping plant	$20,000.
Depreciation	4%
Interest	6%
Taxes	$2.84
Labor per day	4.50
Repairs, valves, packing, oil, waste, &c. per day	1.50
Coal—Cost delivered, net ton, in cars, Paterson, good grade semi-bituminous steam coal, about 13,500 B. T. U.	6.00
No. 2 Buckwheat about 12,000 B.T.U.	4.24
Carting and Handling ashes per ton	.50

Steam Consumption of Pump:

3,030 lbs. dry steam per hour when pumping at a rate of 4,200,000 gallons per 24 hours against total head of 55 ft. with steam at 90 lb. pressure. Pump exhaust absorbed in condensing water at 60 degrees temperature, and mixture at 160 degrees used for mill purposes and boiler feed.

Condemnors' Exhibits Nos. 1 and 2

Boiler Efficiency:

Average continuous daily operating boiler efficiency 60%, including making, cleaning and banking fires, stack, furnace, firing, grate, blowoff, radiation and other losses.

Heat in Pump Exhaust:

During average, continuous, daily service 75% of the heat originally contained in the steam at the boilers delivered to the pump, is present and effective in the exhaust steam from the pump, and may be used for heating water used in manufacturing, this heat equivalent to be credited to the boilers as if returned as coal.

The losses at 25% of the original heat of the steam at the boilers include—Work done in pump steam cylinders in doing the work of pumping water—Moisture in steam, pipe and steam cylinder radiation, cylinder condensation leakage, waste and other losses.

Computations on Pumping Cost:

Steam used—When pumping against 75 ft. total head increase rate of 3030 lb. steam for 55 ft. head by 35%.

Steam per hour delivered to pump per mill. gals. rate per 24 hours 75' head ..... 974 lbs.

Coal—Evaporation in Boiler:

Pounds of water evaporated per pound of coal at 60% Boiler Effic.

From and at 212°:

S.B. Coal, 13500 B.T.U. ..... 8.34 lb.

No. 2 Buck 12,000 B.T.U. ..... 7.40 lb.

From 160° water to steam 90 lb.:

S.B. Coal ..... 7.7 lb.

No. 2 Buck ..... 6.8 lb.

Condemnors' Exhibits Nos. 1 and 2

Pounds of coal used per hour per mill. gallon rate used to pump against 75' total head:

S.B. Coal	126.5 lb.
No. 2 Buck	143.2 lb.

Coal Deducted by Heating Water:

Credit 75% of this coal charged to pumping by heating water used in mill.

Coal Charged to Pumping per mill. gals. 75' head per day 24 hrs.:

S. B. Coal	759 lb.
No. 2 Buck	859.2 lb.

Cost Coal per net ton on boiler room floor including handling and ashes:-

S. B. Coal	$6.50
No. 2 Buck	2.74

Cost of coal per day for pumping at 1 mill, rate at 75' Head:-

S.B. Coal	2.47
No. 2 Buck	2.04

Fixed Charges in Pumping Plant:

Investment $20,000

Interest 6%	$1,200
Depreciation 4%	800
Taxes $2.84	568
4 Mill. gal. rate	$2,568

Operating 300 days per year,

Cost per day per mill. gals. $2.14

Total Cost Pumping per 24 hrs. per mill. gals. at 4 mill. rate against 75' H.

Semi Bituminous Coal:

Fixed charges	$2.14
Labor	1.13

Repairs, oil, packing, etc.	.37
Coal	2.47

No. 2 Buckwheat Coal:

Fixed charges	$2.14
Labor	1.13
Repairs, oil, packing, etc.	.37
Coal	2.04
	$5.68

Weidmann Silk Dyeing Co.

Paterson, N. J.

Cost of Pumping Per Million Gallons

Per 24 hours against varied heads and crediting varied amounts of exhaust steam as coal.

Steam Returned %	Total Head Feet	Bituminous Coal	Total	No. 2 Buck Coal	Total
0	75	$9.87	$13.51	$8.15	$11.79
0	65	8.59	12.23	7.10	10.74
0	55	7.31	10.95	6.03	9.67
75	75	2.47	6.11	2.04	5.68
75	65	2.14	5.78	1.77	5.41
75	55	1.83	5.47	1.50	5.14
95	75	.49	4.13	.41	4.05
95	65	.43	4.07	.36	4.00
95	55	.36	4.00	.30	3.94

Condemnors' Exhibits Nos. 3, 4, 5, 6, 7, 8, 9

Condemnors' Exhibits Nos. 3 and 4 for Identification.

(John P. Wentworth's notes of samples and measurements at the Weidmann Works.)

Condemnors' Exhibit No. 5 for Identification

(John P. Wentworth's computation of capacity of tanks at the Weidmann Works.)

Condemnors' Exhibit No. 6 for Identification.

(Stewart F. Coogan's analysis of waste waters at the Weidmann Works.)

Condemnors' Exhibit No. 7 for Identification.

(Benardus Coleman's analysis of water at Little Falls.)

Condemnors' Exhibit No. 8.

(Completed chart of the flow of the Passaic River.

Condemnors' Exhibit No. 9.

Water Delivered to National Silk Dyeing Co. Through Great Falls Conduit

Quantity in Million Gallons.

	1912	1913	1914	1915	1916	1917	1918	1919	1920
Auger & Simon	608.7	483.9	749.4	599.1	628.5	490.7	471.5	429.6	363.8
E. 5th St. Wks.									
Kearns Bros.	2.5	2.9		.8	.7	1.7	1.6	.8	.9
Wood St. Works									
Geering	359.7	215.7		430.4	482.2	466.5	355.9	359.8	310.5
Valley Works									
Knipscher &									
Maass	2.9	7.2		8.5	9.8	52.6			
Van Houten St.									
Wks.									
East Main St.									
Works.				160.2	188.5	126.2	40.7	11.8	4.4
Totals	973.8	709.7	1142.3	1199.0	1309.7	1137.7	869.7	802.0	871.6
Weidmann			749.	795.	780.	712.	700.	302.	376.

CONDEMNORS' EXHIBIT No. 8.

THE

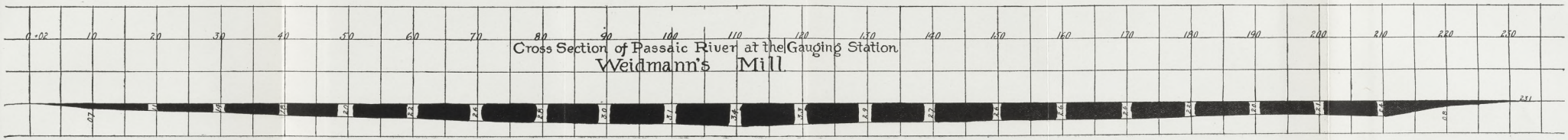
SUM

FLOW OF THE PASSAIC RIVER AT PATERSON N.J.

AVERAGE FLOW IN CUBIC FEET PER SECOND FOR EACH WEEK.

		1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	AVER'G.	
JANUARY	1		1138	2025	341	308	4580	3130	656	1823	2268	2814	2941	1061	293	1344	844	4651	1509	663	2991	1309	63	1711	483	1700	1
	2		1303	2311	938	621	1298	2463	532	6006	1957	1522	4667	1345	647	905	614	3144	1240	3431	2198	1424	435	887	975	1776	2
	3		1992	2383	1893	781	773	1504	614	1863	1833	1533	4127	596	618	839	504	2283	627	6299	1588	1488	902	444	509	1557	3
	4		4674	2870	1954	304	4853	2313	2230	832	1334	1046	2117	800	4502	380	479	1996	1943	3812	2465	1142	489	990	491	1914	4
	5		1952	1944	797	210	1716	2695	1256	711	750	545	2344	544	1730	693	336	1507	3333	3598	2674	973	292	642	402	1376	5
	6		1473	1105	2886	178	986	3358	782	849	381	490	1942	840	776	1183	316	757	2037	4448	1655	488	248	328	423	1211	6
FEBRUARY	7		2502	1156	6094	158	506	3225	505	972	426	403	4287	1818	784	786	253	529	620	2918	953	231	1389	927	516	1387	7
	8		6755	2996	4273	193	894	1736	2111	777	1243	320	3624	4688	3314	803	1517	822	688	2643	923	722	4516	1273	590	2062	8
	9		2985	5467	5318	169	14079	4545	2389	618	2050	350	4474	4080	5848	1223	2856	1917	597	3695	4520	1414	5220	3083	475	3364	9
MARCH	10		1546	5866	3453	921	7504	3772	4602	876	3947	350	2583	1963	4638	764	1057	1543	1014	1496	1780	1207	3012	3212	3340	2628	10
	11		1111	3756	1841	3353	6211	3053	2969	2277	1421	2617	3447	1389	2162	1417	7629	3717	1673	1090	1255	3269	2676	2832	8337	2997	11
	12		1711	6211	2634	4052	2959	3554	1912	7556	862	6815	3887	1089	1353	1469	4926	4100	2945	744	1096	2525	1788	1868	8751	3254	12
	13		2388	5211	1925	2953	2395	4073	2286	5746	2829	3089	2361	3933	927	2412	4952	5587	6208	544	3717	3486	982	2937	6344	3360	13
APRIL	14		1924	3182	1012	4193	2147	2499	2970	2722	2568	1311	1531	1697	631	2572	3339	2488	4043	775	4273	2708	664	1961	4195	2423	14
	15		1338	3418	815	3082	4443	3841	1356	1911	4533	2327	1510	1874	406	2420	1821	2665	2648	2287	2634	2222	1450	1380	3106	2326	15
	16		1279	1936	1532	3176	1482	5636	726	1091	3560	1536	1062	4802	2784	2010	2066	4433	2074	1614	3286	1062	2241	2365	2840	2374	16
	17		2304	1025	1370	6558	636	1700	640	773	1636	1362	711	3605	5711	1867	1679	2253	2416	840	2076	713	2287	1439	2817	2018	17
MAY	18		2273	675	695	2457	1633	634	1701	488	1031	1332	2087	4368	3149	1008	1697	2148	2163	679	1460	1062	1620	1421	1950	1649	18
	19		4596	628	474	2642	644	539	413	380	944	1557	4788	2098	1326	591	2031	963	2739	542	849	1658	865	1770	1230	1525	19
	20		4606	571	1416	2225	338	377	409	569	890	2182	2452	1115	697	387	2102	568	1971	476	1127	699	896	2058	1516	1286	20
	21		3488	452	2549	1670	507	357	350	405	422	1538	3045	943	1491	235	955	1095	729	1055	1329	471	832	1932	1799	1202	21
	22		2632	362	825	3060	199	344	590	223	2313	1046	2826	565	1252	201	892	1238	425	543	1387	1518	767	978	865	1120	22
JUNE	23		1079	271	500	2219	276	228	743	249	904	1531	1557	574	1028	276	643	450	380	231	1134	841	444	377	982	735	23
	24		653	231	548	1048	251	1628	646	347	1142	738	875	394	1570	2259	338	228	267	161	1555	927	692	168	701	755	24
	25		585	197	275	438	584	2886	234	243	1436	395	1089	782	1727	901	259	228	195	237	1489	672	383	223	990	715	25
	26		463	287	196	328	556	2947	193	233	610	345	376	319	785	374	171	189	186	165	955	372	304	433	552	493	26
JULY	27		370	201	164	425	456	1669	154	153	1089	321	376	214	286	149	150	118	450	267	354	247	146	181	976	389	27
	28		351	302	229	283	236	445	272	141	501	284	227	161	198	145	148	133	287	326	533	513	111	105	964	298	28
	29		562	286	211	350	220	385	236	97	550	177	252	164	163	252	157	133	215	283	639	446	150	877	920	337	29
	30		734	313	261	210	756	681	133	99	1363	179	486	210	149	281	148	91	253	178	1211	237	71	6473	1759	708	30
AUGUST	31		603	321	188	216	1378	358	320	291	1656	121	283	155	121	160	136	90	275	1307	1773	74	231	2166	1549	599	31
	32		1156	301	145	671	1032	2170	493	105	1365	150	274	143	199	122	218	124	150	3921	1024	66	90	1484	809	705	32
	33		1016	245	146	607	1849	813	683	391	574	136	225	600	187	146	323	101	113	1796	323	53	147	1403	1587	585	33
	34		622	177	144	5224	748	385	736	323	277	147	300	342	188	136	358	74	122	777	206	89	48	1432	1596	626	34
SEPTEMBER	35	1290	414	179	178	4001	214	1000	404	199	384	160	758	156	119	1219	173	96	120	400	173	109	76	809	1027	569	35
	36	581	327	259	163	1425	221	671	150	896	240	469	221	119	218	942	259	105	88	239	120	83	108	1663	407	412	36
	37	409	291	221	154	667	418	322	837	1181	188	297	182	139	142	390	159	89	61	168	151	75	59	872	1092	398	37
	38	412	239	306	208	689	268	1261	2818	1040	196	280	140	134	101	234	284	151	65	638	299	36	156	632	493	462	38
	39	316	309	413	163	283	2820	553	824	468	227	2257	157	179	98	218	461	151	79	641	140	37	139	1236	235	518	39
OCTOBER	40	293	269	266	97	310	5700	296	276	207	201	1687	196	149	105	608	297	569	66	443	131	71	79	628	3086	668	40
	41	327	242	269	166	257	5315	16736	327	328	214	2044	164	130	89	636	179	575	64	577	102	105	57	525	1169	1275	41
	42	325	504	236	206	420	4204	5290	491	486	328	690	159	102	102	1876	156	590	161	518	180	102	47	1493	572	802	42
	43	560	1144	244	111	359	2958	2034	2363	735	733	664	165	132	145	3160	1246	2382	115	337	205	585	44	1092	393	913	43
NOVEMBER	44	1212	1135	562	112	362	4083	1059	1087	346	414	6618	437	168	191	1159	1054	1397	79	274	143	1026	57	1211	590	1032	44
	45	874	779	1053	134	324	2716	783	529	282	320	7341	246	177	714	1067	1663	1538	74	216	135	331	57	1949	620	997	45
	46	682	1508	638	151	393	2206	824	691	193	433	3953	194	143	232	1365	1432	1786	462	253	130	185	93	1895	541	857	46
DECEMBER	47	730	3322	464	124	416	1971	1191	983	157	906	3040	240	126	138	2588	1078	1220	539	1073	170	207	311	1304	1640	998	47
	48	1151	2158	304	600	724	2417	649	645	634	377	3427	207	281	238	1666	1369	788	260	668	461	368	199	2072	2184	994	48
	49	1606	3853	301	566	643	2835	584	463	2538	370	2146	296	208	183	963	1426	739	588	367	418	482	183	1845	3039	1110	49
	50	4195	1922	383	244	2240	2730	1160	328	1919	612	4353	588	1337	146	1096	886	640	1686	229	478	167	463	2432	2865	1381	50
	51	1388	1656	380	191	2343	8009	2643	376	1363	975	3114	421	867	130	1752	941	507	1245	1631	384	177	770	1521	3068	1494	51
	52	1131	2550	1108	247	3998	4950	2161	859	2178	964	5122	232	235	636	1770	1754	2341	649	3491	1320	164	1405	908	2084	1763	52
		AVERAGE	1664	1271	985	1440	2373	2096	988	1089	1127	1692	1423	1036	1060	1032	1191	1308	1017	1275	1204	780	784	1460	1741	1310	AVG.

CONDEMNORS' EXHIBIT No. 11.



Condemnors' Exhibits Nos. 10, 11, 12, 13.

Condemnors' Exhibit No. 10.

(Map of Paterson sewers.)

Condemnors' Exhibit No. 11.

(Diagram showing a cross section of the Passaic River.

Condemnors' Exhibit No. 12.

(Photograph of Passaic River as a man crossed it on a tight rope.)

Condemnors' Exhibit No. 13.

Contract between CITY OF NEWARK and the NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION, for the construction, maintenance and operation of reservoirs, dams and pipe lines, and the development of a water supply from the Wanaque River, and the furnishing of a potable supply of water to said municipality from said source of supply.

Dated October 31st, 1918.

THIS AGREEMENT made the thirty-first day of October, in the year of our Lord one thousand nine hundred and eighteen, between THE CITY OF NEWARK, party of the first part, hereinafter called the contracting municipality, and the NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION, party of second part, hereinafter called the Commission; WITNESSETH:

WHEREAS, The City of Newark and the City of Paterson, pursuant to the act of the legislature of the State of New Jersey entitled "An Act authorizing the appointment of district boards of water supply commissioners in the water supply districts created by an act entitled 'An Act to create two water supply districts in the State of New

Jersey, to be known respectively as the North Jersey Water Supply District and the South Jersey Water Supply District,' and defining the powers, duties, terms of office, and compensation of such commissioners; and providing for the obtaining, maintenance and operation of water supplies or new or additional water supplies by said commissioners as agents of and by contract with municipal and other corporations in their respective water districts, and further providing for the raising, collecting and expenditure of the moneys necessary therefor,'' approved March sixteenth, nineteen hundred and sixteen, and the several acts supplemental thereto and amendatory thereof, by resolutions of their respective boards having charge of the water supplies of said cities, did determine it to be in the interest of the said municipalities to procure for themselves, from the Commission, a supply of water for public and private use, and did during the year 1916 request the said Commission to prepare and submit maps, plans and specifications for furnishing such supply, together with an estimate of the probable cost of obtaining the necessary lands and water rights, and the cost of construction, operation and maintenance of necessary works, and did, at the time of making such request, provide for the payment and did pay to such Commission a sum to defray the expenses of said Commission in the preparation of said maps, plans and specifications, and the said Commission, pursuant to said acts, and by virtue of the authority conferred thereby, did prepare maps, plans and specifications for the development of the Watershed of the Wanaque River, a tributary of the Passaic River, with reservoirs or necessary works, including pipe lines or conduits

for conveying the water to the said municipalities and others that might contract with the said Commission for a water supply, and providing for a total daily minimum supply of fifty million gallons; together with an estimate of the probable cost of obtaining the necessary lands and water rights, and the cost of construction, operation and maintenance of the necessary works, for such daily supply, and did estimate the total cost for obtaining the necessary lands and water rights, and the cost of the construction of the necessary works for a total minimum daily supply of fifty million gallons, from the said watershed of the Wanaque River, at the sum of nine million, forty-seven thousand, two hundred and fifty dollars ($9,047,250); and the probable annual cost of operation and maintenance, for the quantities herein agreed to be taken at the sum of ninety thousand dollars ($90,000) for the portion of the plant to be used in common by Newark and Paterson, and an additional probable annual cost of operation and maintenance of thirty thousand dollars ($30,000) for pumping, for Paterson, and did submit said maps, plans and specifications and said estimates of the cost of the construction, operation and maintenance to the boards having charge of the water supplies of Newark and Paterson; and

Whereas, the Commission did, at the request of Newark and Paterson, make application to the Board of Conservation and Development of the State of New Jersey for consent to divert the waters of the Wanaque River for the development of a water supply; and

Whereas, said Board of Conservation and Development did grant such consent upon conditions therein set forth; and

Condemnors' Exhibit No. 13.

Whereas, the City of Newark, pursuant to the power and authority conferred by statute, now desires to enter into a contract with the Commission for a supply of water by said Commission, for public and private use, and for the acquisition by the said Commission of the necessary lands, rights in lands, and water rights, and for the construction of the reservoirs, dams, waterworks, pipe lines, conduits and other works necessary and needful to insure and provide for such supply of water, and for the development of the Wanaque Watershed as a source of such water supply, and for the operation and maintenance of said works, when completed; and

Whereas, it is understood that such supply of water shall be furnished and supplied by said Commission from the Wanaque River and from the development of the watershed thereof, as generally set forth and shown in and by said maps, plans and specifications heretofore prepared by said Commission, for a total daily water supply of fifty million gallons, which said maps, plans and specifications are on file in the office of said Commission in the City of Newark; and

Whereas, this contract does generally describe the reservoirs, dams, waterworks, pipe lines, conduits and other works to be constructed, to insure and provide such daily supply; and

Whereas, the said development of the said Wanaque Watershed and the construction of said reservoirs, dams, waterworks, conduits, pipe lines and other necessary works, is to provide for a supply looking to the future requirements of the contracting municipality, and of such other municipalities as may become parties to this Agreement, as hereinafter provided, as well as for the mini-

mum daily supply herein contracted to be furnished to and taken by the contracting municipality, and

Whereas, this Agreement has been duly considered and approved by the contracting municipality, and its execution has been authorized by resolutions of the Board of the contracting municipality vested by law with the duty of providing a water supply for such contracting municipality, and by the North Jersey District Water Supply Commission;

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, and of one dollar, lawful money of the United States of America, by each of the parties hereto paid to the other, the receipt whereof is hereby acknowledged, it is hereby mutually covenanted and agreed as follows:

The contracting municipality authorizes, empowers and directs the North Jersey District Water Supply Commission, at the expense of the said contracting municipality, as hereinafter provided, to erect, build and construct a reservoir or reservoirs upon the Wanaque River and watershed, near Midvale, together with the necessary dams, works, machinery and appliances for the impounding of water sufficient for a daily minimum yield and supply of fifty million gallons of water, for each and every day in the year, and other things requisite or useful for the purposes to be accomplished, and also to construct such pipe line or pipe lines, conduit or conduits, as may be necessary for the distribution to the contracting municipality of not less than three times the minimum supply of water by it herein agreed to be taken; and to acquire lands, rights and in-

terests in lands and water rights, either by purchase or condemnation, as may be necessary for the construction and operation of said reservoirs, dams, waterworks, conduits, pipe lines and other necessary works; in accordance with the terms of the consent of the Board of Conservation and Development.

The said reservoirs, dams, works, conduits and pipe lines to be constructed generally in accordance with the said maps, plans and specifications heretofore prepared by the said North Jersey District Water Supply Commission, now on file in the office of the Commission in the City of Newark, the said Commission, however, reserving the right to depart from said maps, plans and specifications, and to construct said reservoirs, dams, works, pipe lines or conduits in a different way or manner than that shown on said maps, plans and specifications, in the interest of economy or of engineering efficiency, provided the said reservoirs, dams and works are so constructed as to impound sufficient water to insure a daily minimum yield and supply of not less than fifty million gallons of water each and every day in the year, and the said pipe lines or conduits are so constructed as to supply and carry not less than three times the minimum supply herein contracted to be taken; and to employ persons in any capacity needed, in order to carry out and complete the above work.

And the contracting municipality further authorizes and empowers the North Jersey District Water Supply Commission, at the expense of the contracting municipality, as hereinafter provided, to maintain, repair and operate the said reservoirs, dams, works, pipe lines or conduits, when constructed.

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And the Commission hereby covenants and agrees with the said contracting municipality to construct the said reservoirs, dams, works, pipe lines or conduits, with the necessary appurtenances, machinery, appliances and other things requisite or useful for the purposes to be accomplished, and to acquire the lands, rights in lands, water rights, and other property requisite or necessary therefor, and to maintain, repair and operate the said reservoirs, dams, works, pipe lines or conduits, plants and works, as herein provided, at the expense of the said contracting municipality, and the Commission further covenants and agrees with the said contracting municipality not to enter into any contract for, nor in any way to undertake any construction work, without the approval of the entry into such contract, or the undertaking of such work, by the Capital Issues Committee or any committee, board or body succeeding to its powers, if at the time of the proposed entry into such contract, or the undertaking of such work, such committee, board or body shall exist.

The contracting municipality further authorizes, empowers and directs the Commission to expend, in the construction of said reservoirs, dams, waterworks, conduits or pipe lines, plants and works, and in the acquisition of the necessary lands, rights and interests in lands and water rights, and in the payment of expenses under said above mentioned act, administrative, clerical, engineering and legal, the sum of nine million and forty-seven thousand, two hundred and fifty dollars ($9,047,250), which said sum shall be paid by the contracting municipality to the North Jersey District Water Supply Commission, in the sev-

eral sums and proportions, and at the times and in the instalments hereinafter provided.

The following is a general description of the reservoirs, dams and works to be constructed, and of the route, size and capacity of the pipe lines or conduits, the whole to be constructed generally in accordance with the said maps, plans and specifications heretofore adopted by the said Commission, and on file in its office.

DESCRIPTION OF WANAQUE PROJECT.

A large reservoir is to be located on the Wanaque River, near Midvale, Passaic County, New Jersey. It will flood at an elevation of two hundred and seventy-five (275) feet approximately two and two-tenths (2.2) square miles; will be six (6) miles long and one and one-half (1½) miles wide at the widest part.

The dam is to be located on the Wanaque River, crossing the river at or near the Wanaque River Paper Company's mill. The dam will be approximately one thousand, seven hundred and twenty-five (1,725) feet long, one thousand, one hundred and seventy-five (1,175) feet of which will be constructed of earth filling with a concrete core wall. The earth fill dam will be twenty (20) feet wide on top at an elevation of two hundred and eighty-one feet and have a slope of three feet to one foot (3 to 1) upstream and two feet to one foot (2 to 1) downstream. The upstream slope is to be paved.

The core wall is to be constructed of cylopean concrete. Its top will be at an elevation of two hundred and seventy-eight (278) feet and will be one hundred and forty (140) feet high at its highest point. The remainder portion will be constructed of concrete masonry and will act as a

spillway five hundred and fifty (550) feet long. This section will be five (5) feet wide on top with an upstream batter of one (1) inch per foot, and a downstream batter of six (6) inches per foot.

The amount of water drawn from Greenwood Lake will be allowed to pass by or through the dam at all times to flow down the river, as it has in the past, to feed water for the Morris Canal. The Gate House is to be approximately eighteen (18) feet by thirty (30) feet with screen chambers and intake racks, regulation valves, wash pit and stop logs. There will be approximately ninety thousand (90,000) feet of seventy-two (72) inch steel pipe to deliver fifty million (50,000,000) gallons of water per day from the Gate House for that distance, and from there to Newark there will be a sixty (60) inch steel pipe seventy-five thousand (75,000) ft. long, to deliver thirty million (30,000,000) gallons of water per day as far as Newark.

It is understood and agreed that the work to be done by the Commission for the amount of money to be advanced in accordance with the terms of this contract and as above set forth, namely, nine million and forty-seven thousand, two hundred and fifty dollars ($9,047,250), is to provide a gravity water supply along the general lines as described. And it is, therefore, hereby understood and agreed that any additional expense necessary to be incurred for the purpose of constructing and maintaining special connections or branch pipe lines and pumping stations to secure delivery of water to any individual municipality which may hereafter join in the Wanaque development, is to be borne by such municipality applying for and receiving such supply.

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In the event, as herein provided, that any municipality hereafter joining in the Wanaque development shall, of its own action, acquire pumping and filtration works and auxiliary reservoirs and appurtenances, which, in the judgment of the Commission, may be operated by the Commission to the advantage of any such municipality applying for and receiving a water supply from the Wanaque development, it is hereby agreed that the necessary pumping and incidental costs, including overhead charges, if any, for the operation of such plants, or parts thereof for any municipality advantaged, shall be paid by each municipality in proportion to the amount of water taken by each.

And the contracting municipality further covenants and agrees to and with the Commission that it will take from the Commission a daily minimum supply of water, upon the terms and conditions, and pay therefor as hereinafter provided, that is to say: The City of Newark, party of the first part hereto, hereby agrees to take and receive from the Commission, party of the second part hereto, a daily minimum supply of ten (10) million gallons of water, immediately upon the completion of the reservoirs, dams and works, and when the water is ready for delivery, provided, that the total supply of water of said development shall be available to the contracting municipality so long as it remains the sole contracting municipality.

The said daily minimum supply of water so agreed to be taken and received by the contracting municipality is to be paid for by the said contracting municipality, at the cost to be determined

by the Commission, on the basis as hereinafter provided.

And the Commission covenants and agrees with the said contracting municipality to supply the water in the quantities and at the times above set forth, and further agrees to exercise all powers granted by the state laws to remove and prevent pollution, and any expenses incurred thereby shall be considered a part of the cost of operation and maintenance of the works herein provided for.

It is further mutually covenanted and agreed by and between the contracting municipality and the Commission that the amount to be determined and charged to the said contracting municipality for all water hereby agreed to be taken by it, and for all water furnished and delivered by the Commission to the said contracting municipality, under, and by virtue of this agreement, shall be such as shall produce a sum, in the judgment of the Commission, sufficient to meet the payments that the Commission is annually required to make under and by virtue of the act entitled "An Act authorizing the appointment of district boards of water supply commissioners in the water supply districts created by an act entitled 'An act to create 2 water supply districts in the State of New Jersey, to be known respectively as the North Jersey Water Supply District and the South Jersey Water Supply District', and defining the powers, duties, terms of office, and compensation of such commissioners; and providing for the obtaining, maintenance and operation of water supplies or new or additional water supplies by said commissioners as agents of and by contract with municipal and other corporations in their respective water districts, and further providing for the raising, collecting and expendi-

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tures of the moneys necessary therefor," approved March 16th, 1916, and the several acts supplemental thereto and amendatory thereof.

And as provided in said act the total cost of the acquisition of the said water supply herein contracted for shall be borne by the contractor municipality, and the Commission shall have the right to call upon the contracting municipality to pay on account of the cost of the water supply the sums hereinafter specified, at the times hereinafter stated, until the total cost of acquisition and construction of the said water supply has been paid, and the contracting municipality shall make such payments as and when hereinafter agreed to be made, and included in such cost shall be the salaries and expenses of the said Water Supply Commission up to the time of the actual completion of the said plant and the commencement of the actual supply of water therefrom.

And the contracting municipality further covenants and agrees with the Commission that it will raise and pay over to the Commission the several sums of money hereinafter specified, to be used by the Commission for the acquisition of lands and interests in lands and water rights, and for the construction of the said reservoirs, dams, water plants, appliances, pipe lines or conduits, which sums shall be paid in the manner and at the times hereinafter specified, that is to say:

Within thirty (30) days after the execution of this contract, the City of Newark shall pay over to the Commission the sum of one hundred thousand dollars ($100,000).

Within three (3) months after the signing of said contract, upon and beginning with the quar-

ter of the year next succeeding the execution of this contract and each of the three quarters thereafter, that is to say, either on January first, April first, July first, and October first next succeeding such execution, the contracting municipality shall pay over to the Commission the additional sum of one hundred thousand dollars ($100,000) per quarter, so that within a year from the second payment, and including the first payment of one hundred thousand dollars ($100,000) from the contracting municipality, the Commission shall receive from the contracting municipality the total sum of five hundred thousand dollars ($500,000).

If, for any reason, the Commission shall find it advantageous and to the interests of the contracting municipality on account of the acquisition of property, water rights, or for construction purposes, to use during the period aforesaid a greater sum of money than the amount so provided, the contracting municipality may be requested by the Commission to, and if satisfied of the advantage, shall pay such additional sum or sums as may be mutually agreed upon between the contracting municipality and the Commission. In any adjustment of the equities under this contract credit shall be given by the Commission for any additional advance to the extent that such advance shall bring about a payment in excess of the total payments herein agreed to be made.

At or before the beginning of the four quarters subsequent to those above specified, the contracting municipality shall pay over to the Commission the sum of five hundred thousand dollars ($500,000) per quarter, so that the Commission shall be in receipt of the sum of two million dollars ($2,000,000) during these said four quarters.

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At or before the beginning of the next four quarters subsequent to those above specified, the contracting municipality shall pay over to the Commission the sum of eight hundred thousand dollars ($800,000) per quarter, so that the Commission shall be in receipt of the sum of three million, two hundred thousand dollars ($3,200,000) during these said four quarters.

At or before the beginning of the next four quarters subsequent to those last above specified, the contracting municipality shall pay over to the Commission the sum of eight hundred thousand dollars ($800,000) per quarter, except that for the last quarter of this final period an additional sum of one hundred and forty-seven thousand two hundred and fifty dollars ($147,250) shall be paid by the contracting municipality, so that the Commission shall be in receipt of the sum of three million, three hundred and forty-seven thousand, two hundred and fifty dollars ($3,347,250) during these said four quarters.

Any specially agreed upon extra advance, made in accordance with the terms of this contract as hereinbefore provided, shall be credited to the contracting municipality as a payment on account of the last quarter or quarters, as herein specified, so that the total payments to be made by the contracting municipality under this contract shall equal the sum of nine million and forty-seven thousand, two hundred and fifty ($9,047,250).

Should the Commission find that the contracts entered into by it and the payments on account thereof shall not require the advance of moneys to meet its obligations at the times above specified, it shall inform the contracting municipality as to what portion of- said advance should be

made, if any, and the time when the different payments so authorized shall be made, it being the intent of this contract that the Commission shall construct the works at the cost and the expense of the contracting municipality, but that the advances of money to be made by the contracting municipality shall be only such, as in the judgment of the Commission, prudence and good business management shall require for the carrying out of the objects of this contract. The Commission shall use for the benefit of the contracting municipality in the execution of this contract such interest as it may receive on moneys advanced by the contracting municipality and passing through the accounts of the Commission.

Any part of the moneys paid over to the Commission in accordance with this contract, which may remain as a surplus over and above the cost of the construction, shall be retained by the Commission and credited upon operating expenses and be considered as a working capital to be used in the operation of the works for the advantage of the contracting municipality, provided, such surplus shall not exceed $100,000 and that any amount advanced in excess of said $100,000 shall be returned to the contracting municipality.

Any sums of money heretofore advanced to the Commission by the contracting municipality, in connection with the application and development and preparation of plans, estimates and contract for the water supply hereby contracted for, shall be credited by the Commission to the contracting municipality upon and as a part of the first payment hereinabove provided to be made by the contracting municipality.

The contracting municipality further covenants

and agrees that it will, for the purpose of making the payments herein agreed to be made by it to the Commission, sell and dispose of its notes, bonds and obligations, as authorized by the legislature, if it shall be necessary so to do, in order to make the payments herein provided to be made, upon the approval of the issuance of said notes, bonds and obligations by any National or State Commission, board or body whose approval may be necessary and for the approval of which the contracting municipality undertakes to apply.

Any municipality not named herein may become a party to this contract, in accordance with section 18 of Chapter 71, of the Laws of 1916, if the water supply under the control of the Commission is adequate for the supply of said applying municipality, provided the Commission consents thereto by resolution, (after the contracting municipality has been given a full hearing in regard to said application upon thirty (30) days' notice in writing, mailed to the clerk or secretary of the board or body having charge of the water supply of the contracting municipality.)

In computing the equitable share of the cost of constructing, acquiring and operating such supply, for which payment is to be made by any applying municipality for the supply to it of water by the million gallons, or in computing the proportionate share of the cost of acquisition, construction and operation to be paid by a municipality applying to become a part owner of the water supply plant, as the case may be, there shall be included as part of such cost the interest paid by the contracting municipality, during construction, as part of the cost of construction and acquisition to the same extent as if paid interest moneys had

actually been paid to the Commission; and provided further, that in determining the equitable or proportionate cost as aforesaid consideration shall be had, as a part of the maintenance cost, to interest at five (5)per cent. per annum upon moneys advanced by the contracting municipality, counting the time such interest shall be paid as from the date of the completion of such acquisition and construction until the admission of such applying municipality; and provided further, that the Commission may, in the event of any such application for participation being made, whether for a water supply or as part owner, prescribe that such applying municipality, in lieu of a single fixed payment as its equitable or proportionate share in such cost, may make a series of payments covering a period of one or more years, and representing its proportion of the cost or amortization thereof of the whole or a portion of the totals of moneys advanced by the contracting municipality, which shall have issued its bonds or advanced such moneys; and in the event of such payments the Commission shall pay to the contracting municipality within thirty (30) days of the payments thereof to the Commission the sums so received from the applying municipality or municipalities, to the extent that such payments represent the interest and amortization costs of the contracting municipality.

Upon the completion of the water supply herein contracted for, as provided by the act authorizing this contract, the cost of operation shall be estimated yearly in advance and paid by the contracting municipality or apportioned among the municipalities using the same, respectively, if there be others, in proportion to the amounts of

water contracted to be taken by each, and each of said municipalities shall pay said proportion to the Commission quarterly in advance, when requested. The Commission at the end of each year shall make an apportionment of the actual cost of the operation of said plant between the contracting municipality and any other municipality or municipalities which take water therefrom, and said cost shall be apportioned upon the basis of the actual water taken by each municipality, provided that such amount shall be, in no event less than the quantity contracted for. In apportioning said cost no municipality shall be charged with any item of interest or rental upon, or cost of operation of, any part of any water plant which is not used in supplying water to such municipality, but this provision shall not prevent any municipality from contracting to bear the proportionate cost of acquisition and operation of any other plant which may be devoted in whole, or in part, to its service. Each municipality shall be charged with the amounts so apportioned, and credited with the amounts previously paid on account of the estimated operating expenses for each year. Any deficiency shall be paid over to the Commission, and any surplus shall be applied as a part of the next year's advance.

Upon the completion of such water supply plant and appurtenances, the said Commission is authorized and directed to retain and have the sole control and charge of the said water supply plants and works and appurtenances, except such part of of same as the said Commission may convey to the contracting municipality, or to any applying municipality as herein provided; in trust, however, for the contracting municipality, and such other

municipalities as may be entitled to share in the said water supply.

In witness whereof, the contracting municipality, party hereto, has caused these presents to be signed by the proper officers of the board or body having charge of the water supply of said municipality, and has caused to be affixed thereto the corporate seal of said municipality, attested by the City Clerk of said contracting municipality, and the North Jersey District Water Supply Commission has caused these presents to be signed by its president and its seal to be affixed and attested by its secretary, the day and year first above written.

THE CITY OF NEWARK

By

Thomas L. Raymond,
Director, Department of Streets
and Public Improvements.

(Seal)

Attest:
W. J. Egan,
City Clerk.

THE NORTH JERSEY DISTRICT
WATER SUPPLY COMMISSION,

By

Laurent J. Tonnele,
President.

(Seal)

Attest:
Morris R. Sherrerd,
Acting Secretary.

State of New Jersey, }
County of Essex. } ss.

Be it remembered, that on this fourth day of November, Nineteen hundred and eighteen, before me the subscriber, a Notary Public of the State of

Condemnors' Exhibit No. 13.

New Jersey, personally appeared William J. Egan, who being by me duly sworn, does depose and make proof to my satisfaction that he is the City Clerk of the City of Newark, one of the parties to the foregoing agreement; that he well knows the corporate seal of the City of Newark; that the seal hereto affixed is the proper corporate seal of the City of Newark, that the said agreement was signed and delivered by Thomas L. Raymond, who was at the date of the execution thereof the Director of the Department of Streets and Public Improvements of the City of Newark and a member of the Board of Commissioners of the City of Newark; and deponent further certifies that the said Thomas L. Raymond, Director of the Department of Streets and Public Improvements was directed by resolution of the Board of Commissioners of the City of Newark, passed at a meeting held October 31st, 1918, in the City Hall, Newark, to execute on behalf of the Board of Commissioners and for the City of Newark the foregoing agreement between the City of Newark and The North Jersey District Water Supply Commission, and that said Thomas L. Raymond did sign and deliver the said agreement in the presence of the deponent as the volutary act and deed of said City and that thereupon the deponent signed the same as subscribing and attesting witness.

Subscribed and sworn to
before me this fourth
day of November, 1918.

W. J. Egan.

W. G. Dassing,
Notary Public of New Jersey.

Condemnors' Exhibit No. 13.

State of New Jersey,
County of Essex. ss.

Be it remembered, that on this second day of November, Nineteen hundred and eighteen, before me the subscriber, a Notary Public of New Jersey, personally appeared Morris R. Sherrerd, who being by me duly sworn, does depose and make proof to my satisfaction that he is the Acting Secretary of the North Jersey District Water Supply Commission, one of the parties to the foregoing agreement; that he well knows the corporate seal of the North Jersey District Water Supply Commission; that the seal thereto affixed is the proper corporate seal of the North Jersey District Water Supply Commission; that the said agreement was signed and delivered by Laurent J. Tonnele, who was at the time of the execution thereof the President of the North Jersey District Water Supply Commission; and deponent further certifies that the said Laurent J. Tonnele, President of the North Jersey District Water Supply Commission was directed by resolution of the North Jersey District Water Supply Commission passed at a meeting held October 31st, 1918, to execute on behalf of the North Jersey District Water Supply Commission the foregoing agreement between the City of Newark and the North Jersey District Water Supply Commission, and that the said Laurent J. Tonnele did sign and deliver the said agreement in the presence of the deponent as the volutary act and deed of said Commission, and that thereupon the deponent signed the same as subscribing and attesting witness.

Subscribed and sworn to
before me this second
day of November, 1918.

Morris R. Sherrerd.

W. G. Dassing,
Notary Public of New Jersey.

Condemnors' Exhibit No. 14.

Condemnors' Exhibit No. 14.

December 19, 1916.

North Jersey District Water Supply Commission
Mr. Morris R. Sherrerd, Engineer
City Hall, Newark, N. J.

Dear Sirs:

The Board of Conservation and Development today approved the application of the North Jersey District Water Supply Commission for the diversion of water from the Wanaque River, subject to the following terms and conditions:

1. The North Jersey District Water Supply Commission shall pay or cause to be paid to the State on behalf of each of the municipalities supplied with water under this approval, such annual charge as is now made or may be hereafter authorized by law.

2. This approval shall not become operative unless said Commission shall have filed with this Board within ninety days from date hereof its written agreement accepting the terms and conditions hereby imposed.

3. The North Jersey District Water Supply Commission shall in good faith begin the construction of the storage reservoir mentioned in its application within one year from the date of this approval and shall complete the same within five years.

4. The maximum diversion from the Wanaque River authorized by this approval is an average of 50,000,000 gallons per diem for any period of tl irty consecutive days.

5. The dry season flow of the Wanaque River below the dam must at all times be maintained at a minimum of 12,000,000 gallons per diem.

Condemnors' Exhibit No. 15.

6. This approval is given subject to the vested rights of all persons, corporations, or municipalities affected by the proposed plan.

7. In the event that any of the conditions herein imposed are violated such violation shall be established to the satisfaction of this Board, this assent shall thereby be abrogated.

A certified copy of the formal approval signed by the members of this Board will be sent you as soon as it can be prepared.

Yours very truly,
(sgd) Henry B. Kummel,
Acting Director.

Department of Conservation & Development
State House, Trenton.

(Seal) Dec. 20th, 1916.

I hereby certify the above to be a true copy.

M. R. Sherrerd,
Acting Sec.
N. J. Dist. W. S. Com.

Condemnors' Exhibit No. 15.

Table Showing Flow of the Passaic River in Million Gallons.

1915	872 million	gallons,	31st week
	2,614	"	" 32d week
	1,198	"	" 33d week
	518	"	" 34th week
	266	"	" 35th week
	160	"	" 36th week
	112	"	" 37th week
	426	"	" 38th week
	428	"	" 39th week
	296	"	" 40th week
	384	"	" 41st week
	346	"	" 42d week

Condemnors' Exhibit No. 15.

1916	1,182	million	gallons	31st week
	682	"	"	32d week
	216	"	"	33d week
	138	"	"	34th week
	116	"	"	35th week
	80	"	"	36th week
	100	"	"	37th week
	200	"	"	38th week
	94	"	"	39th week
	88	"	"	40th week
	68	"	"	41st week
	120	"	"	42nd week
1913	80	million	gallons	27th week
	88	"	"	28th week
	88	"	"	29th week
	60	"	"	30th week
	60	"	"	31st week
	82	"	"	32nd week
	68	"	"	33rd week
	50	"	"	34th week
	64	"	"	35th week
	70	"	"	36th week
	60	"	"	37th week
	100	"	"	38th week
	100	"	"	39th week

Condemnors' Exhibit No. 16.

1914	100 million gallons		32nd week
	76 "	"	33rd week
	82 "	"	34th week
	80 "	"	35th week
	58 "	"	36th week
	40 "	"	37th week
	44 "	"	38th week
	52 "	"	39th week
	44 "	"	40th week
	42 "	"	41st week
	108 "	"	42nd week
	76 "	"	43rd week
	52 "	"	44th week
	50 "	"	45th week

Condemnors' Exhibit No. 16.

(Map of the Passaic River watershed.)

EXHIBITS BY AGREEMENT OF COUNSEL

Petitions

(Filed January 28, 1919.)

The Acquackanonk Water Company
against
Weidmann Silk Dyeing Company.

To the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey:

The petition of the Acquackanonk Water Company respectfully shows:

1. That your petitioner is a corporation of the State of New Jersey, duly so created under a special act of the Legislature of New Jersey entitled "An Act to incorporate The Acquackanonk Water Company," approved March 9, 1871; the term of existence of the corporation is unlimited, and the purposes of the formation of the company are (among others) the constructing, maintaining and operating of water works for the purpose of supplying what at the time of the incorporation of said company was known as the Village of Passaic, covering territory now comprising the Cities of Passaic and Clifton, with water; and your petitioner has power to take water rights and property for its said purposes.

2. Your petitioner has constructed its water works and is engaged in supplying water to the said Cities of Passaic and Clifton (which are coincident with what was formerly known as the Village of Passaic) and their inhabitants for public water supplies, and has for several years past been taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls

in Passaic County, through the dams, filtration works and pumping station located at that place, and such continued taking and diversion thereof is required and necessary for the public purposes aforesaid; and your petitioner has therefore determined to acquire for public use for the purposes aforesaid and under its charter rights and the authority conferred by the aforesaid act and the several supplement thereto and amendments thereof, and the general laws of this State, the rights and property of which the following is a particular description to wit:

The right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:—

First Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1,180 feet.

Second Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by East Eleventh Street and on the West by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the North by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the East by East Twelfth Street, and on the West by East Eleventh Street and containing 30-½ City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the North by the Passaic River; on the South by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on the West by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/155ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:—

First Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands

of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100th acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded Northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the South by the Passaic River; on the East by lands of the New York, Susquehanna and Western Railroad Company, and on the West by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands of the Erie Railroad Company, and on the West by lands of the Hawthorne Development Co. and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1,664 feet.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works which consist of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies. The lands of the owners hereinafter mentioned lie upon the said Passaic River, and the diversion is made above their said lands of water which would otherwise flow past and over their said lands by reason whereof they claim compensation and damages.

Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is Weidmann Silk Dyeing Company, which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages, (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The Acquackanonk Water Company
By Humphreys & Sumner, Attorneys,
First National Bank Bldg.,
Paterson, N. J.

State of New Jersey,
County of Passaic. ss.

Richard Rossiter, being duly sworn, on his oath, says: That he is the agent of The Acquackanonk Water Company petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Directors of said Company, that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by

said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with Weidmann Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. August J. Hunziker of said Company, to whom he made a cash offer orally and also in writing for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said August J. Hunziker indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agrement with him, or with said Weidmann Silk Dyeing Company.

Richard Rossiter.

Subscribed and sworn to this 24th
day of January 1919, before me.

James Feeney,
M. C. C. of N. J.

Petitions.

The Acquackanonk Water Company
against
National Silk Dyeing Company.

To the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey:

The petition of The Acquackanonk Water Company respectfully shows:

1. That your petitioner is a corporation of the State of New Jersey, duly so created under a special act of the Legislature of New Jersey entitled "An Act to incorporate The Acquackanonk Water Company," approved March 9, 1871; the term of existence of the corporation is unlimited, and the purposes of the formation of the company are (among others) the constructing, maintaining and operating of water works for the purposes of supplying what at the time of the incorporation of said company was known as the Village of Passaic, covering territory now comprising the Cities of Passaic and Clifton, with water; and your petitioner has power to take water rights and property for its said purposes.

2. Your petitioner has constructed its water works and is engaged in supplying water to the said Cities of Passaic and Clifton (which are coincident with what was formerly known as the Village of Passaic) and their inhabitants for public water supplies, and has for several years past been taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls in Passaic County through the dams, filtration works and pumping station located at that place, and such continued taking and diversion thereof is required and necessary for the public purposes

aforesaid; and your petitioner has therefore determined to acquire for public use for the purposes aforesaid and under its charter rights and the authority confered by the aforesaid act and the several supplements thereto and amendments thereof, and the general laws of this State, the rights and property of which the following is a particular description, to wit:

The right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street and running thence (1) westerly along the northerly line of said Branch Street two hundred and seventy-eight feet and thirty-four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and

fifty-five feet more or less to the Passaic River, thence (4) northeasterly, along the same down stream the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred and seventy-seven feet more or less to the place of beginning, containing fifty-seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady street and bounded on the east by Shady street, on the north by Woods street, on the south by Lowe street and on the westerly side by the Passaic river as it runs in its course, being lots numbers, 2, 4, 6, 8, 10, 12, 14 and 16 Woods street, 1 & 3 Lowe street, and numbers 62, 64, 66, 68, 70, 72, 74 & 76 Shady st., as laid down on the map of the City of Paterson and being known as the Wood street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main St., at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight street, and running thence (1) southeasterly parallel with North Straight street, one hundred eighty four and seventy seven hundredths feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic river; thence (3) up said river to the easterly line of East Main street, and thence (4) northerly along said easterly line of East Main

street, one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company dated Jan. 2d, 1909 and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pp. 60 &c., and is now known as the Valley Works of the National Silk Dyeing Company.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works which consist of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies. The lands of the owners hereinafter mentioned lie upon the said Passaic River, and the diversion is made above their said lands of water which would otherwise flow past and over their said lands by reason whereof they claim compensation and damages.

Your petitioner has been for fourteen years past

and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is National Silk Dyeing Company which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

By Humphreys & Sumner, Attorneys,
First National Bank Bldg.,
Paterson, N. J.

State of New Jersey,
County of Passaic. ss.

Richard Rossiter being duly sworn, on his oath, says: That he is the agent of The Acquackanonk Water Company petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Directors of said Company, that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase

of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with The National Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. Chas. A. Auger of said Company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said Chas. A. Auger indicate in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agreement with him, or with said National Silk Dyeing Company.

Richard Rossiter.

Subscribed and sworn to this 17th day of February 1919, before me.

Filbert L. Rosenstein,
An Attorney at Law of New Jersey.

Before Honorable James F. Minturn, Justice of New Jersey Supreme Court.

The Acquackanonk Water Company
against
National Silk Dyeing Company.

Upon reading the consent at foot hereof, and it appearing that the above named petitioner has determined to take for public use the right to take and divert continuously until January 1st, 1925, from the Passaic River at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day for the purposes of said municipal corporation as against the lands described in the schedule hereto annexed and hereby made a part hereof as well as against the lands described in said petition; and it further appearing that the said petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price:

It is thereupon, on this first day of March, 1919, upon motion of Humphreys & Sumner, attorneys for the petitioner, ordered that the petition heretofore filed in this matter be, and the same hereby is, amended by adding to the description therein contained of the land and property against which the right to take said water is required, the land and property described in said schedule hereto annexed, to the end that said petition shall, for all purposes, have the same force and effect as if the land and property described in said schedule had, at the time of the filing of said petition, been inserted therein immediately following the description of the lands therein contained.

James F. Minturn,
J. S. C.

I hereby consent to the entering of the above order.

William I. Lewis, Attorney for the
National Silk Dyeing Company.

All those tracts or parcels of land and premises hereinafter particularly described situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGray's to Paterson and in the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hopper's, thence (2) along said road south fifty three degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty five minutes west five chains and forty one

links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate lying and being in the Borough of Hawthorne in the County of Passaic, State of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the land hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's office of Passaic County in Book X-3 of Deeds on pages 122 &c. said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen ft. and seven inches to lands of Richard DeGray, thence (3) along the same the same southeasterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) northeasterly along the same to the place of beginning; excepting and reserving out of the above described tract the following tract of land, beginning at a point in

the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwesterly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet and forty five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

The Mayor and Aldermen of Jersey City
against
Weidmann Silk Dyeing Company

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The petition of the Mayor and Aldermen of Jersey City respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and containing 17-3/10th City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the North by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line

of Fifth Avenue; on the East by East Twelfth Street, and on the West by East Eleventh Street and containing 30½ City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the North by the Passaic River; on the South by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on the West by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:—

First Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100 acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the South by the Passaic River; on the East by lands of the New York, Susquehanna and Western Railroad Company, and on the West by lands of

the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the North by the Wagaraw Road; on the South by the Passaic River; on the East by lands of the Erie Railroad Company, and on the West by lands of the Hawthorne Development Co. and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works, which consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages. Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is Weidmann Silk Dyeing Company, which is the only person appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to

the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The Mayor and Aldermen of Jersey City.
By Collins & Corbin, Attorneys,
243 Washington Street,
Jersey City, N. J.

State of New Jersey,
County of Passaic ss.

Richard Rossiter being duly sworn, on his oath, says: That he is the agent of The Mayor and Aldermen of Jersey City, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Commissioners of said City, that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase of the property and right of diver sion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner de-

scribed in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with Weidmann Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. August J. Hunziker of said Company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said August J. Hunziker indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agreement with him, or with said Weidmann Silk Dyeing Company.

Richard Rossiter.

Subscribed and sworn to this 24th day of January, 1919, before me.

James Feeney,
M. C. C. of N. J.

The Mayor and Aldermen of Jersey City
against
National Silk Dyeing Company.

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The petition of the Mayor and Aldermen of Jersey City respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been

able to acquire said property by agreement with the owner by reason of disagreement as to price.

2. The following is a particular description of the property required:

The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day; the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street and running thence (1) westerly along the northerly line of said Branch Street two hundred and seventy eight feet and thirty four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and fifty five feet more or less to the Passaic river, thence (4) northeasterly, along the same down the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred

and seventy seven feet more or less to the place of beginning, containing fifty seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods Street, on the south by Lowe Street and on the westerly side by the Passaic River as it runs in its course, being lots numbers 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street, 1 and 3 Lowe Street, and numbers 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street, at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty four and seventy seven hundredths feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street, and thence (4) northerly along said easterly line of East Main Street, one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract; Being a tract of land bounded by

and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Ave. distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly, an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company dated Jan. 2nd, 1909 and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pp. 60 &c. and is now known as the Valley Works of the National Silk Dyeing Company.

3. Said property and rights are necessary for and are taken for and form part of your petitioner's water works, which consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. Said river is a tributary of the Passaic river upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages. Your petitioner has been for fourteen years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is National Silk Dyeing Company which is the only person appearing of record to

have any interest in said property.

5. Your petitioner has endeavored in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The Mayor and Aldermen of Jersey City
By Collins & Corbin, Attorneys,
Jersey City, N. J.

State of New Jersey,
County of Passaic ss.

Richard Rossiter, being duly sworn, on his oath, says: That he is the agent of The Mayor and Aldermen of Jersey City, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Commissioners of said City, that the matters stated in the foregoing petition are true, and that deponent was, by said resolution, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners

because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition and the said water is required and the taking thereof is necessary for the public water supply of said petitioner.

Deponent's efforts to agree with National Silk Dyeing Company for the taking of property and rights required as aforesaid, consisted of a personal application to Mr. Charles A. Auger of said company, to whom he made a cash offer orally and also in writing, for the lands and rights required and described in the petition, which offer was rejected, and no counter-offer was made, nor did the said Chas. A. Auger indicate, in any way, any willingness to agree on any terms whatever, and deponent can not, nor can the petitioner, make any agreement with him, or with said National Silk Dyeing Company.

Richard Rossiter.

Subscribed and sworn to this 17th day of February, 1919, before me.

Filbert L. Rosenstein,
An Attorney at Law of New Jersey.

Before Honorable James F. Minturn, Justice of New Jersey Supreme Court.

The Mayor and Aldermen of Jersey City,
against
National Silk Dyeing Company.

Upron reading the consent at foot hereof, and it appearing that the above named petitioner has determined to take for public use the right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for

the public and domestic uses of the public water supply of said municipal corporation not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation as against the lands described in the schedule hereto annexed and hereby made a part hereof as well as against the lands described in said petition; and it further appearing that the said petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price;

It is thereupon, on this first day of March, 1919, upon motion of Collins & Corbin, attorneys for the petitioner, ordered that the petition heretofore filed in this matter be, and he same hereby is, amended by adding to the description therein contained of the land and property against which the right to take said water is required, the land and property described in said schedule hereto annexed, to the end that said petition shall, for all purposes, have the same force and effect as if the land and property described in said schedule had, at the time of the filing of said petition, been inserted therein immediately following the description of the lands therein contained.

James F. Minturn,
J. S. C.

I hereby consent to the entering of the above order.

Wm. I. Lewis,
Attorney for the National
Silk Dyeing Company.

All those tracts or parcels of land and premises hereinafter particularly described situate lying

and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard DeGray's to Paterson and in the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hopper's thence (2) along said road south fifty three degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land leased to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty five minutes west five chains and forty one links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870 and recorded in the Clerk's office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same southeasterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) northeasterly along the same to the place of beginning; excepting and reserving out of the above described tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwesterly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet

and forty five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

(Filed January 30, 1919.)

New Jersey Supreme Court.

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The Petition of the City of Newark respectfully shows:

1. Your petitioner is a municipal corporation of the State of New Jersey, having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply, for which purpose it is required and necessary; and your petitioner has not been able to acquire said property after negotiation, by agreement, with the owner by reason of failure to agree upon the price.

2. The following is a particular description of the property required:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of the City

of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Company. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River; on the South by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and Containing 17-3/10ths City Lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street, and on the west by East Eleventh Street; and containing 30½ City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the

Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland, and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet, southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 city lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune, and on the west by lands of the New York, Susquehanna & Western Railroad Company, containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River, on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Devel-

opment Co. and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

3. Said property and rights are necessary for and are taken to form part of your petitioner's water works, the supply part of which consists in general of impounding reservoirs located in Sussex, Morris and Passaic Counties on the Pequannock River, a branch of the Passaic River, including in the area tributary to and above the Macopin Intake, approximately 63 square miles of drainage area—said impounding reservoirs being known as the Oak Ridge, Clinton and Canistear Reservoirs and the use of a natural lake called Echo Lake with a small reservoir at Macopin Intake and two main conduit lines leading from said Macopin Intake to the City of Newark with the rights of way for said conduits and the water rights to divert from the Pequannock River, the water needed. Said impounding reservoirs have a capacity of over 10,000,000,000 gallons of water and are designed to hold the flood flows in times of heavy rainfall and are sufficient in themselves to supply The City of Newark for a period of 200 days; the impounding of the flood waters being necessary to make it possible to maintain the necessary supply for the works since the natural low flow of the Pequannock River for the portion embraced above the Macopin Intake is less than an average of 7,000,000 gallons of water per day. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which in part would otherwise flow past and over their said lands, by reason whereof they claim

compensation and damages. Your petitioner has been for 26 years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is Weidmann Silk Dyeing Company, Paterson, New Jersey, which is the only person or corporation appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The City of Newark,
By Thomas L. Raymond, Director of the Department of Streets and Public Improvements of the City of Newark.

State of New Jersey,
County of Essex ss.

Jerome T. Congleton, being duly sworn according to law, upon his oath deposes and says: I am City Counsel of the City of Newark; that by resolution of The Board of Commissioners of The City of Newark, adopted January 16, 1919, I was duly authorized by said The City of Newark to negotiate for the purchase of the property and

right of diversion of waters described in the petition, and have in good faith endeavored to agree with the owners for the same, but have not been able to agree upon the price and damages, and the petitioner cannot acquire such right by agreement with the owners thereof because unable to agree with them as to the price and damages; that petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition; and the said water is required and the taking thereof is necessary for the water supply of The City of Newark.

My efforts to agree with the Weidmann Silk Dyeing Company for the taking of property and rights required as aforesaid consisted of a personal application to John W. Griggs, Esquire, secretary and general counsel of said company, to whom I made a cash offer for the rights required and described in the petition, which offer was rejected; and deponent cannot nor can the petitioner make any agreement with him or with said Weidmann Silk Dyeing Company.

Jerome T. Congleton.

Subscribed and sworn to before me this 30th day of January, 1919.

Geo. E. Carpenter,
A Master in Chancery of New Jersey.

State of New Jersey,
County of Essex ss.

Thomas L. Raymond, of full age, being duly sworn according to law, on his oath says: I am Director of the Department of Streets and Public Improvements of The City of Newark, New Jersey; that the charge of the water system in The

City of Newark has been placed by the Board of Commissioners of The City of Newark in said Department of Streets and Public Improvements; that I have read the foregoing petition; that the matters and things therein contained, insofar as I have personal knowledge thereof, are true, and as to those matters of which I have no personal knowledge, I believe them to be true.

Thomas L. Raymond.

Subscribed and sworn to before me this 30th day of January, 1919.

Geo. E. Carpenter,
A Master in Chancery of New Jersey.

(Filed February 24, 1919)
New Jersey Supreme Court.

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to National Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The Petition of the City of Newark respectfully shows:

1. Your petitioner is a municipal corporation of the State of New Jersey, having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply, for which purpose it is required and necessary; and your petitioner has not been able to acquire said property after negotiation, by agreement, with the owner by reason of failure to agree upon the price.

2. The following is a particular description of the property required:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz.:

First Tract: Beginning at the corner formed by by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet; thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet more or less, to the place of beginning. Containing 57.19 city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning

at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street; on the north by Woods Street; on the south by Lowe Street; and on the westerly side by the Passaic River as it runs in its course. Being lots Nos. 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street; 1 & 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson, and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street; and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of E. Geering Silk Dyeing Co., more particularly described in a deed made

by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2, 1909, and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pages 60 etc., and is now known as the Valley Works of the National Silk Dyeing Company.

3. Said property and rights are necessary for and are taken to form part of your petitioner's water works, the supply part of which consists in general of impounding reservoirs located in Sussex, Morris and Passaic Counties on the Pequannock River, a branch of the Passaic River, including in the area tributary to and above the Macopin Intake, approximately 63 square miles of drainage area—said impounding reservoirs being known as the Oak Ridge, Clinton and Canistear Reservoirs and the use of a natural lake called Echo Lake with a small reservoir at Macopin Intake and two main conduit lines leading from said Macopin Intake to the City of Newark with the rights of way for said conduits and the water rights to divert from the Pequannock River, the water needed. Said impounding reservoirs have a capacity of over 10,000,000,000 gallons of water and are designed to hold the flood flows in times of heavy rainfall and are sufficient in themselves to supply the City of Newark for a period of 200 days; the impounding of the flood waters being necessary to make it possible to maintain the necessary supply for the works since the natural low flow of the Pequannock River for the portion embraced above the Macopin Intake is less than an average of 7,000,000 gallons of water per day. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of

water which in part would otherwise flow past and over their said lands by reason whereof they claim compensation and damages.

Your petitioner has been for 26 years past and is now receiving its water supply from said source through said works.

4. The name and residence of the occupant of said property is National Silk Dyeing Company, Paterson, New Jersey, which is the only person or corporation appearing of record to have any interest in said property.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The City of Newark,
By Jerome T. Congleton,
City Counsel.

State of New Jersey,
County of Essex. ss.

Thomas L. Raymond, of full age, being duly sworn according to law, on his oath says: I am Director of the Department of Streets and Public Improvements of the City of Newark, New Jersey; that the charge of the water system in The City of Newark has been placed by the Board of Commissioners of the City of Newark in said De-

partment of Streets and Public Improvements; that I have read the foregoing petition; that the matters and things therein contained, insofar as I have personal knowledge thereof, are true, and as to those matters of which I have no personal knowledge, I believe them to be true.

Thomas L. Raymond.

Subscribed and sworn to before me this twenty-first day of February, A. D. 1919.

Geo. E. Carpenter,
A Master in Chancery of New Jersey.

State of New Jersey,
County of Essex ss:

Jerome T. Congleton, being duly sworn, according to law, upon his oath deposes and says; I am City Counsel of The City of Newark; that by resolution of The Board of Commissioners of The City of Newark I was duly authorized by said The City of Newark to negotiate for the purchase of the property and right of diversion of waters described in the petition, and have in good faith endeavored to agree with the owners for the same, but have not been able to agree upon the price and damages, and the petitioner cannot acquire such right by agreement with the owners thereof because unable to agree with them as to the price and damages; that petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition; and the said water is required and the taking thereof is necessary for the water supply of The City of Newark.

My efforts to agree with the National Silk Dyeing Company for the taking of the property and rights required as aforesaid consisted of a person-

al application to William I. Lewis, Esquire, counsel of said company, to whom I made a cash offer for the rights required and described in the petition, which offer was rejected; and deponent cannot nor can the petitioner make any agreement with him or with said National Silk Dyeing Company.

Jerome T. Congleton.

Subscribed and sworn to before me this 21st day of Feb., 1919.

Geo. E. Carpenter.
A Master in Chancery of New Jersey.

(Filed May 14, 1919).

Before Honorable James F. Minturn, Justice of New Jersey Supreme Court.

In the matter of the application of The City of Newark for the appointment of Commissioners to fix the compensation to be paid to National Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

Upon reading the consent at foot hereof, and it appearing that the above named petitioner has determined to take for public use the right to take and divert continuously the quantity of waters of the Pequannock River above the Macopin Intake, necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or in the future may be supplied from the municipal water plant of said City of Newark, as against the lands described in the schedule hereto annexed and hereby made a part hereof as well as against the lands described in said petition; and it further appearing that the

said petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price;

It is thereupon, on this tenth day of May, 1919, on motion of William J. Kearns, Esquire, attorney for the petitioner,

Ordered, that the petition and the order appointing commissioners, heretofore filed in this matter, be and the same hereby are amended by adding to the description therein contained of the land and property against which the right to take said water is required, the land and property described in said schedule hereto annexed, to the end that said petition and order shall, for all purposes, have the same force and effect as if the land and property described in said schedule had, at the time of the filing of said petition, been inserted therein immediately following the description of the lands therein contained.

James F. Minturn,
J. S. C.

I hereby consent to the entering of the above order.
W. I. Lewis.
Attorney for National Silk Dyeing Co.

All those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Tract One: Beginning in the middle of the road leading from Richard Degrays to Paterson and in the line of said Degray and running thence (1) north 24 west along the line of said Degray 5 chains to the middle of the road leading from said Degray's to Cornelius P. Hoppers; thence (2) along said road South 53 degrees west 2 chains;

thence (3) south 24 degrees east to the middle of the first mentioned road leading to Paterson; and thence (4) north 38 degrees east along said road 2 chains and 20 links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty, his wife, and on the middle of the public road leading from Morrow's factory to Oldham; running thence (1) along the lands of Henry A. Zabriskie south 15 degrees east 6 chains and 54 links to the middle of the public road leading from Morrow's factory to Paterson; thence (2) along the same north 39 degrees and 30' east 3 chains and 26 links to a corner of the lands of Thomas Morrow; thence (3) along the same north 23 degrees and 45' west 5 chains and 41 links to the middle of the aforesaid public road leading to Oldham; thence (4) along the same south 54 degrees and 45' west 2 chains and 3 links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills, where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's Office of Passaic County in Book X3 of Deeds on pages 122, etc., said beginning point being 76 feet and 2 inches northeasterly from the point in the easterly line of said road where a line drawn along the norther-

New Jersey State Library

ly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same; and running from thence (1) south 40 degrees and 30' east 96 feet and 9 inches along the line of said lands of James H. Peterson (now of Kievit); thence (2) north 51 degrees and 36' east 18 feet and 7 inches to the lands of Richard Degray; thence (3) along the same southeasterly to the Passaic River; thence (4) southerly up the stream thereof 1 chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road; and thence (6) northeasterly along the same to the place of beginning. Excepting and reserving out of the above described tract the following tract of land: beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills 50 feet southwesterly from the beginning point of the whole tract above described; and running thence (1) southeasterly at right angles from said road 120.46 feet; thence (2) southwesterly deflecting 85 degrees and 46' to the right from the first course 92.45 feet to the line of lands formerly of John Earl; thence (3) northwesterly along the line of lands formerly of John Earl 127.37 feet to the easterly line of said road; and thence (4) northeasterly along same 105.78 feet to the place of beginning.

Order Appointing Commissioners

(Filed March 10, 1919.)

ORDERS APPOINTING COMMISSIONERS.

Before Honorable James F. Minturn Justice of the Supreme Court of the State of New Jersey:

The Acquackanonk Water Company
against
Weidmann Silk Dyeing Company

Upon this first day of March Nineteen hundred and nineteen, being the date fixed by me for the hearing upon the petition in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Humphreys & Sumner of counsel with the petitioner, and Griggs & Harding appearing on behalf of Weidmann Silk Dyeing Company.

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint Jacob W. DeYoe, Clifford L. Newman and James L. Brown three disinterested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving

the same to their attorney appearing for them on this application.

And it is ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the first day of October next.

James F. Minturn,
Justice of the Supreme Court of the State of New Jersey.

(The same commissioners were appointed in all the other cases by similar orders.)

REPORTS OF COMMISSIONERS.

Before Hon. James F. Minturn, Justice of New Jersey Supreme Court.

The Acquackanonk Water Company
against
Weidmann Silk Dyeing Company

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above preceedings by an order made therein on March 1, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey on the application of the above named The Acquackanonk Water Company, a corporation of New Jersey, made in writing, by petition, to the said Justice, to examine and appraise certain property of the Weidmann Silk Dyeing Company, being the right to take water described in the said petition filed in said proceedings, and to assess the damages, if any, by reason of the taking of said property so described as aforesaid, on at least six days notice, to be given as in said order directed, and that said Commissioners should file their report with the Clerk of Passaic County, on or before the first day of October then next; and the said time to file said report having been extended by said Justice of the Supreme Court made upon good cause shown, to the first day of September, 1920; we do respectfully report as follows:—

We, the said Commissioners, having on the 24th day of March, A. D. 1919, first duly taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, said owner of said property, that we would meet at the best of our skill and understanding did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, said owner of said property, that we would meet at the meeting rooms of the Board of Freeholders in the Court House in the City of Paterson, N. J., on April 14, 1919, at 10 o'clock in the forenoon, which said notice was given and served pursuant to the statute in such case made and provided; and the said petitioner and the said owner having been represented before us, we the said Commissioners, did meet at the time and place aforesaid, and we thereafter viewed and examined the said property described in said petition as aforesaid; we further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner for said property and the damage aforesaid to be paid by said petitioner, The Acquackanonk Water Company, to the said the Weidmann Silk Dyeing Company for the use said as of the date of the filing of the said petition and order aforesaid taking and damage aforesaid, and that said just and

equitable appraisement and said assessment of the amount to be paid by said petitioner for said property and said damage so made by us as aforesaid, is the sum of $5,400.00, which we award to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

Reports of Commissioners

(Filed August 26, 1920.)

Before the Hon. James F. Minturn, Justice of the Supreme Court of the State of New Jersey.

The Acquackanonk Water Company
against
National Silk Dyeing Company

We, Jacob W. DeYoe, Clifford L. Newman, and James L. Brown, Commissioners appointed in the above stated proceeding by an order made therein on March 1st, 1919 by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise the property, being the right to take water in the petition in said proceeding described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days notice, to be given by the petitioner as in said order directed, and that said commissioners should file their report with the Clerk of the County of Passaic, on or before the first day of October, then next; and said time to file our report having been extended by order of said Justice of the Supreme Court, made upon good cause shown, to the first day of September, 1920, we do respectfully report as follows:—

We, the said Commissioners having, on the 24th day of March, A. D. 1919 first taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding did, on April 4th, 1919, give notice to said National Silk Dyeing Company that we would meet at the meeting rooms of the Board of Freeholders in the Court House, in the City of Paterson, on April 14th, 1919, at ten o'clock in the

forenoon to proceed with our duties and to appraise the said property so to be taken as aforesaid, and to make an impartial estimate and assessment of the damages to be sustained by its taking; which said notice was in writing, and, on April 4th, 1919 was given to William I. Lewis, the attorney appearing for said National Silk Dyeing Company on said application, and to said petitioner.

We do further report that at the time and place appointed as aforesaid we did meet and in the presence of the respective attorneys of the petitioner and said National Silk Dyeing Company proceeded to view and examine the said property being the right to take water in said petition described, and to make a just and equitable appraisement of the value of the same, and an assessment of the amount to be paid by the petitioner for such property and damage aforesaid, as of the date of the filing of the petition and order thereon.

And we do further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by the petitioner for said property and the damage aforesaid to be paid by said petitioner for the said taking and damage aforesaid as of the date of the filing of the petition and order aforesaid, and that such just and equitable appraisement and said assessment of the amount to be paid by the petitioner for said property and such damage so made as aforesaid is the sum of $5,400.00, to be paid by said petitioner to said National Silk Dyeing Company.

Jacob W.DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

Reports of Commissioners

(Filed August 26, 1920.)

Before Hon. James F. Minturn, Justice of the Supreme Court of the State of New Jersey.

The Mayor and Aldermen of Jersey City
against
Weidmann Silk Dyeing Company

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above proceedings by an order made therein on March 1, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey on the application of the above named The Mayor and Aldermen of Jersey City, a municipal corporation of New Jersey, made in writing, by petition, to the said Justice, to examine and appraise certain property of the Weidmann Silk Dyeing Company, being the right to take water described in the said petition filed in said proceedings, and to assess the damages, if any, by reason of the taking of said property so described as aforesaid, on at least six days notice, to be given as in said order directed, and that said Commissioners should file their report with the Clerk of Passaic County on or before the first day of October then next; and the said time to file said report having been extended by said Justice of the Supreme Court made upon good cause shown to the first day of September, 1920; we do respectfully report as follows:—

We, the said Commissioners, having on the 24th day of March, A. D. 1919, first duly taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and un-

derstanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, owner of said property, that we would meet at the meeting rooms of the Board of Freeholders in the Court House in the City of Paterson, N. J., on April 14, 1919, at 10 o'clock in the forenoon, which said notice was given and served pursuant to the statute in such case made and provided; and the said petitioner and the said owner having been represented before us, we the said Commissioners, did meet at the time and place aforesaid, and we thereafter viewed and examined the said property described in said petition as aforesaid; we further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner for said property, and the damage aforesaid to be paid by said petitioner, The Mayor and Aldermen of Jersey City, to the said the Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of the said petition and order aforesaid, and that said just and equitable appraisement and said assessment of the amount to be paid by the said petitioner for the said property and of said damage so made by us as aforesaid, is the sum of $97,-350.00, which we award to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

Reports of Commissioners

(Filed August 26, 1920.)

Before Hon. James F. Minturn, Justice of the New Jersey Supreme Court.

The Mayor and Aldermen of Jersey City
against
National Silk Dyeing Company

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above stated proceeding by an order made therein March 1st, 1919 by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise the property, being the right to take water in the petition in said proceeding described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days notice, to be given by the petitioner as in said order directed, and that said commissioners should file their report with the Clerk of the County of Passaic, on or before the first day of October, then next; and said time to file our report having been extended by order of said Justice of the Supreme Court, made upon good cause shown, to the first day of September, 1920, we do respectfully report as follows:—

We, the said Commissioners, having on the 24th day of March, A. D. 1919 first taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding did, on April 4th, 1919, give notice to said National Silk Dyeing Company that we would meet at the meeting rooms of the Board of Freeholders in the Court House, in the City of Paterson, on April 14th, 1919, at ten o'clock in the fore-

noon to proceed with our duties and appraise the said property so to be taken as aforesaid, and to make an impartial estimate and assessment of the damages to be sustained by its taking; which said notice was in writing, and on April 4th, 1919, was given to William I. Lewis, the attorney appearing for said National Silk Dyeing Company on said application, and to said petitioner.

We do further report that at the time and place appointed as aforesaid we did meet and in the presence of the respective attorneys of the petitioner and said National Silk Dyeing Company proceeded to view and examine the said property being the right to take water in said petition described, and to make a just and equitable appraisement of the value of the same, and an assessment of the amount to be paid by the petitioner for such property and damage aforesaid, as of the date of the filing of the petition and order thereon.

And we do further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by the petitioner for said property and the damage aforesaid to be paid by said petitioner, for the said taking and damage aforesaid as of the date of the filing of the petition and order aforesaid, and that such just and equitable appraisement and said assessment of the amount to be paid by the petitioner for said property and such damage so made as aforesaid, is the sum of $97,350.00, to be paid by said petitioner to said National Silk Dyeing Company.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

Reports of Commissioners

(Filed August 26, 1920.)

New Jersey Supreme Court.

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above proceedings by an order made therein on March 1, 1919, by the Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey on the application of the above named The City of Newark, a municipal corporation of New Jersey, made in writing, by petition, to the said Justice, to examine and appraise certain property of the Weidmann Silk Dyeing Company, being the right to take water described in the said petition filed in said proceedings, and to assess the damages, if any, by reason of the taking of said property so described as aforesaid, on at least six days notice, to be given as in said order directed, and that said Commissioners should file their report with the Clerk of Passaic County on or before the first day of October then next; and the said time to file said report having been extended by said Justice of the Supreme Court made upon good cause shown to the first day of September, 1920; we do respectfully report as follows:—

We, the said Commissioners, having on the 14th day of April, A. D. 1919, first duly taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and un-

derstanding, did on April 4, 1919, give notice in writing to said the Weidmann Silk Dyeing Company, said owner of said property, that we would meet at the meeting rooms of the Board of Freeholders in the Court House in the City of Paterson, N. J., on April 14, 1919, at 10 o'clock in the forenoon, which said notice was given and served pursuant to the statute in such case made and provided; and the said petitioner and said owner having been represented before us, we the said commissioners, did meet at the time and place aforesaid, and we thereafter viewed and examined the said property described in said petition as aforesaid; we further report that we have made a just and equitable appraisement of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner for said property, and the damage aforesaid to be paid by said petitioner, The City of Newark, to the said, the Weidmann Silk Dyeing Company for the said taking and damage aforesaid as of the date of the filing of the said petition and order aforesaid, and that said just and equitable appraisement and said assessment of the amount to be paid by the said petitioner for the said property and said damage so made by us as aforesaid, is the sum of $48,675.00, which we award to be paid by said petitioner to said Weidmann Silk Dyeing Company as aforesaid.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

Reports of Commissioners.

(Filed August 26, 1920.)

Before Hon. James F. Minturn, Justice of the New Jersey Supreme Court.

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to National Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

We, Jacob W. DeYoe, Clifford L. Newman and James L. Brown, Commissioners appointed in the above stated proceeding by an order made therein on March 1st, 1919 by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise the property being the right to take water in the petition in said proceeding described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days notice, to be given by the petitioner as in said order directed, and that said commissioners should file their report with the Clerk of the County of Passaic, on or before the first day of October, then next; and said time to file our report having been extended by order of said justice of the Supreme Court, made upon good cause shown, to the first day of September, 1920, we do respectfully report as follows:—

We, the Commissioners having, on the 14th day of April A. D. 1919, first taken and subscribed an oath faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding did, on April 4th, 1919, give notice to said National Silk Dyeing Company that we would meet at the meeting rooms of the Board of Freeholders in the Court House, in the City of Pater-

son, on April 14th, 1919, at ten o'clock in the forenoon to proceed with our duties and to appraise the said property so to be taken as aforesaid, and to make an impartial estimate and assessment of the damages to be sustained by its taking; which said notice was in writing, and, on April 4th, 1919 was given to William I. Lewis, the attorney appearing for said National Silk Dyeing Company, on said application, and to said petitioner.

We do further report that at the time and place appointed as aforesaid we did meet and in the presence of the respective attorneys of the petitioner and said National Silk Dyeing Company proceeded to view and examine the said property being the right to take water in said petition described, and to make a just and equitable appraisement of the value of the same, and an assessment of the amount to be paid by the petitioner for such property and damage aforesaid, as of the date of the filing of the petition and order thereon.

And we do further report that we have made a just and equitable appraisement, of the value of said property, being said right to take said water, and the assessment of the amount to be paid by said petitioner, for the said taking and damage aforesaid paid by the petitioner for said property and the damage aforesaid as of the date of the filing of the petition and order aforesaid, and that said just and equitable appraisement and said assessment of the amount to be paid by the petitioner for said property and such damage so made as aforesaid is the sum of $48,675.00, to be paid by said petitioner to said National Silk Dyeing Company.

Jacob W. DeYoe,
Clifford L. Newman,
James L. Brown,
Commissioners.

NOTICES OF APPEAL TO CIRCUIT.

Passaic County Circuit Court.

The Acquackanonk Water Company
against
Weidmann Silk Dyeing Company

To the Circuit Court of the County of Passaic in the State of New Jersey, and to the Weidmann Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having, on the application of your petitioner, The Acquackanonk Water Company, filed in the Passaic County Circuit Court on the 28th day of January 1919 by his order made March 1, 1919 and filed in said Passaic County Circuit Court on March 10, 1919, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown, of the County of Passaic, commissioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to Regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900; and having directed by said order that the said commissioners should file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by order of said Justice of Supreme Court made September 23, 1919 and filed on same date in the Passaic County Circuit Court until December 31, 1919; and said time having been again extended by order of said

Justice of Supreme Court made December 6, 1919 and filed December 22, 1919 in said Passaic County Circuit Court until February 20, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920 and filed June 19, 1920 in said Passaic County Circuit Court until August 1st, 1920; and said time having been again finally extended by order of said Justice of Supreme Court made July 28, 1920 and filed July 30, 1920 in said Passaic County Circuit Court until September 1, 1920; and the said commissioners having by their report filed on the 26th day of August, 1920 in the Clerk's Office of said County of Passaic, appraised the lands and rights in land of the said Weidmann Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition described, and having assessed the damages to be paid therefor by your petitioner at the sum of Five Thousand Four Hundred Dollars ($5,400); and your petitioner feeling dissatisfied and aggrieved by the decision of the commissioners aforesaid, and desiring an appeal therefrom to this court—please take notice that an appeal from said award and report of said commissioners has been, and is hereby, made by your petitioner, the said The Acquackanonk Water Company, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10:30 o'clock in the forenoon, at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue and to fix a day for striking a jury and a view of the premises and a day for the

trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)," approved March 20, 1900.

Humphreys & Sumner,
Attorneys for Petitioner.

Dated September 10th, 1920.

Passaic County Circuit Court.

The Acquackanonk Water Company
against
National Silk Dyeing Company

To the Circuit Court of the County of Passaic in the State of New Jersey, and the National Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having, on the application of your petitioner, The Acquackanonk Water Company, filed February 20, 1919, which petition was amended by an order of said Justice of Supreme Court made March 1, 1919 and filed March 10, 1919 by his order dated March 1, 1919 and filed March 10, 1919, with the Clerk of the Passaic County Circuit Court, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown of the County of Passaic, commissioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled

"An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900; and having directed by said order that the said commissioners should file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by order of said Justice of Supreme Court made September 23, 1919 and filed same day in the Passaic County Circuit Court until December 31, 1919; and said time having been again extended by order of said Justice of Supreme Court made Dec. 6, 1919 and filed December 22, 1919 in said Passaic County Circuit Court until February 10, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920 and filed June 19, 1920 in said Passaic County Circuit Court until August 1st, 1920; and said time having been again finally extended by order of said Justice of Supreme Court made July 28, 1920 and filed July 30, 1920 in the Passaic County Circuit Court until September 1st, 1920, and the said commissioners having by their report filed on the 26th day of August, 1920 in the Clerk's Office of said County of Passaic appraised the lands and rights in land of the said National Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition described, and having assessed the damage to be paid therefor by your petition at the sum of Five Thousand Four Hundred Dollars ($5,400); and your petitioner feeling dissatisfied and aggrieved by the decision of the commissioners

aforesaid, and desiring an appeal therefrom to this Court please take notice that an appeal from said award and report of said commissioners has been, and is hereby made by your petitioner, the said The Acquackanonk Water Company, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920 at 10:30 o'clock in the forenoon at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic to frame the issue and to fix a day for striking a jury and a view of the premises and a day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)," approved March 20, 1900.

Humphreys & Sumner,
Attorneys for Petitioner.

Dated September 10th, 1920.

Passaic County Circuit Court.

The Mayor and Aldermen of Jersey City, a municipal corporation
against
Weidmann Silk Dyeing Company

To the Circuit Court of the County of Passaic in the State of New Jersey, and to the Weidmann Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having, on the application of your petitioner, The Mayor and Aldermen of Jersey

City, a municipal corporation, filed January 28, 1919, by his order made March 1st, 1919 filed Mar. 10, 1919, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown of the County of Passaic commissioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900, and having directed by said order that the said commissioners file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by an order made by said Justice of the Supreme Court on September 23, 1919, filed on the same day in the Passaic County Circuit Court until December 31, 1919, and said time having been again extended by order of said Justice of Supreme Court made December 6, 1919 and filed December 22, 1919 in said Passaic County Circuit Court until February 10, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920, filed June 19, 1920 in said Passaic County Circuit Court until August 1, 1920; and said time having been again finally extended by order of said Justice of Supreme Court made July 28, 1920 and filed July 30, 1920 in said Passaic County Circuit Court until September 1, 1920; and the said commissioners having by their report filed on the 26th day

of August, 1920 in the Clerk's Office of said County of Passaic appraised the lands and rights in land of the said Weidmann Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioner, to wit, the right to take the water in said petition described, and having assessed the damages to be paid therefor by your petitioner at the sum of Ninety-seven Thousand Three Hundred and Fifty Dollars ($97,350); and your petitioner feeling dissatisfied and aggrieved by the decision of the Commissioners aforesaid and desiring an appeal therefrom to this Court—please take notice that an appeal from said award and report of said commissioners has been, and is hereby, made by the petitioner, the said The Mayor and Aldermen of Jersey City, a municipal corporation, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10:30 o'clock in the forenoon, at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue and to fix a day for striking a jury and a view of the premises, and a day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900.

Collins & Corbin,
Attorneys for Petitioner.

Dated September 10th, 1920.

Notices of Appeal to Circuit

Passaic County Circuit Court

The Mayor and Aldermen of Jersey City, a municipal corporation,

against

National Silk Dyeing Company

To the Circuit Court of the County of Passaic in the State of New Jersey, and to the National Silk Dyeing Company, its attorneys and agents.

The Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, having on the application of your petitioner, The Mayor and Aldermen of Jersey City, a municipal corporation, filed February 20, 1919, which petition was amended by an order dated March 1, 1919, filed March 10, 1919 by his order made March 1, 1919, filed March 10, 1919 with the Clerk of the Passaic County Circuit Court, appointed Jacob W. DeYoe, Clifford L. Newman and James L. Brown of the County of Passaic, commisioners to examine and appraise the lands in the petition described, to wit, the right to take the water in said petition described, and to assess the damages, if any, by reason of the taking of the same by your petitioner under the provisions of an Act of the Legislature entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)" approved March 20, 1900, and having directed by said last mentioned order that the said commissioners should file their report with the Clerk of the County of Passaic on or before the first day of October, Nineteen Hundred and Nineteen, and said time to file said report having been extended by order of said Justice of Supreme Court made Sep-

tember 23, 1919, and filed the same day in the Passaic County Circuit Court until December 31, 1919, and said time having been again extended by order of said Justice of Supreme Court made December 6, 1919, and filed December 22, 1919 in said Passaic County Circuit Court until February 10, 1920; and said time having been again extended by order of said Justice of Supreme Court made June 18, 1920 and filed June 19, 1920 in said Passaic County Circuit Court until August 1st, 1920; and said time having been again finally extended by order of said court made July 28, 1920 and filed July 30, 1920 in said Passaic County Circuit Court until September 1, 1920; and the said commissioners having by their report filed on the 26th day of August, 1920 in the Clerk's Office of said County of Passaic appraised the lands and rights in land of the said National Silk Dyeing Company described in your petitioner's petition referred to in said order appointing said commissioners, to wit, the right to take the water in said petition described, and having assessed the damages to be paid therefor by your petitioner at the sum of Ninety-seven Thousand Three Hundred and Fifty Dollars ($97,350); and your petitioner feeling dissatisfied and aggrieved by the decision of the commissioners aforesaid, and desiring an appeal therefrom to this court please take notice that an appeal from said award and report of said commissioners has been, and is hereby, made by your petitioner, the said The Mayor and Aldermen of Jersey City, a municipal corporation, to the Circuit Court of the County of Passaic, and that on the ninth day of October, 1920, at 10.30 o'clock in the forenoon, at the Court House in the City of Elizabeth, New Jersey, your petitioner will apply to the Honorable

George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue and to fix a day for striking a jury and a view of the premises and a day for the trial of said appeal in accordance with the provisions of said Act entitled "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One Thousand Nine Hundred)", approved March 20, 1920. Dated September 10th, 1920.

Collins & Corbin,
Attorneys for Petitioner.

(Filed September 12, 1920)
New Jersey Supreme Court

In the matter of the application of The City of Newark for the appointment of Commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

Notice is hereby given that an appeal has been taken by The City of Newark to the Passaic County Circuit Court from the award of J. Willard De Yoe, Clifford L. Newman and James L. Brown, Esquires, who were duly appointed by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, under the provisions of an act of the legislature of the State of New Jersey, entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use," approved March 20, 1900, and the acts amendatory thereof and supplemental thereto, Commissioners to examine and appraise the following described right and property:

The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by lands of the Erie Railroad Company; and on the west by lands of the National Silk Dyeing Company. Containing 131-72/100ths city lots or 7-56/100ths acres, and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street; and on the west by lands of the Erie Railroad Company; and containing 17-3/10ths city lots or 1-00/100ths acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street; and on the west by East Eleventh Street; and containing 30½ city lots or 1-75/100ths acres; and having

a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland; and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 city lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet.

Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune; and on the west by lands of the New York, Susquehanna and Western Railroad Company. Containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company; and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Development Company and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres and having a frontage along the Passaic River of about 1664 feet.

Respectfully,
William J. Kearns,
City Attorney.

Dated: September 9, 1920.

(Filed September 10, 1920)
New Jersey Supreme Court

In the matter of the application of The City of Newark for the appointment of Commissioners to fix the compensation to be paid to National Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

Notice is hereby given that an appeal has been taken by The City of Newark to the Passaic County Circuit Court from the award of J. Willard De Yoe, Clifford L. Newman and James L. Brown, Esquires, who were duly appointed by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, under the provisions of an act of the legislature of the State of New Jersey, entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use," approved March 20, 1900, and the acts amendatory thereof and supplemental thereto, Commissioners to examine and appraise the following described right and property:

The right to take and divert continuously such

of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows viz.;

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet, more or less, to the place of beginning. Containing 57.19 city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by

Shady Street; on the north by Woods Street; on the south by Lowe Street; and on the westerly side by the Passaic River as it runs in its course. Being lots Nos. 2, 4, 6, 8, 10, 12, 14, and 16 Woods Street; 1 and 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson, and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street; and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street; and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main Street works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2, 1909 and recorded in the office of the Register of Pas-

saic County in Book Y-19 of Deeds, pages 60, etc., and is now known as the Valley Works of the National Silk Dyeing Company.

Respectfully,

William J. Kearns,
City Attorney.

Dated: September 9, 1920.

(Filed September 9, 1920.)

New Jersey Supreme Court

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting water of the Pequannock River.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey.

To the City of Newark, its attorneys and agents:
Gentlemen:

Take notice, that Weidmann Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the Weidmann Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said Weidmann Silk Dyeing Co. the owner thereof; which report and award of the said commissioners was filed in the County Clerk's Office of the County of Passaic, on the 26th day of August, 1920.

Also take further notice that the said Weidmann

Silk Dyeing Company, on the 9th day of October, 1920 at 10.30 o'clock in the forenoon, at Court House in the City of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Dated Sept. 7, 1920.

Respectfully yours,
Griggs & Harding,
Attorneys of the Weidmann
Silk Dyeing Company.

Before Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey.

The Mayor and Aldermen of Jersey City,
against
Weidmann Silk Dyeing Company.

To the Mayor and Aldermen of Jersey City, its attorneys and agents:

Gentlemen:

Take notice, that Weidmann Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the Weidmann Silk Dyeing Company, situated in the city of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said Weidmann

Silk Dyeing Co. the owner thereof; which report and award of the said commissioners was filed in the County Clerk's office of the County of Passaic, on the 26th day of August, 1920.

And take further notice that the said Weidmann Silk Dyeing Company, on the 9th day of October, 1920 at 10.30 o'clock in the forenoon, at Court House, in the City of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Dated Sept. 7, 1920.

Respectfully yours,
Griggs & Harding,
Attorneys of the Weidmann
Silk Dyeing Company.

New Jersey Supreme Court

The Mayor and Aldermen of Jersey City
against
National Silk Dyeing Company.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey.

To the Mayor and Aldermen of Jersey City, its attorneys and agents.

Gentlemen:

Take notice, that National Silk Dyeing Company hereby appeals to the Passaic County Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jer-

sey, to examine and appraise certain property of the National Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said National Silk Dyeing Company, the owner thereof; which report and award of the said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920.

And take further notice that the said National Silk Dyeing Company, on the 9th day of October, 1920 at 10.30 o'clock in the forenoon, at the County Court House, in the City of Elizabeth, New Jersey will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Dated, Sept. 7th, A. D. 1921.

Respectfully yours,
William I. Lewis,
Attorney of the National
Silk Dyeing Company.

(Filed September 9, 1920.)
New Jersey Supreme Court

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to National Silk Dyeing Company, a corporation of New Jersey, for diverting water of the Pequannock River.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey.

Notices of Appeal to Circuit

To the City of Newark, its attorneys and agents.
Gentlemen:-

Take notice, that National Silk Dyeing Company hereby appeals to the Passaic County, Circuit Court from the report and award of the commissioners heretofore appointed in the above entitled matter by the Honorable James F. Minturn, one of the Justices of the Supreme Court of New Jersey, to examine and appraise certain property of the National Silk Dyeing Company, situated in the City of Paterson, Passaic County, New Jersey, being the right to take water described in the petition filed in said matter, and to assess the amount to be paid and the damages for the taking of said property sustained by the said National Silk Dyeing Company, the owner thereof; which report and award of the said commissioners was filed in the County Clerk's Office of the County of Passaic on the 26th day of August, 1920.

And take further notice that the said National Silk Dyeing Company, on the 9th day of October, 1920 at 10.30 o'clock in the forenoon, at the County Court House, in the City of Elizabeth, New Jersey, will apply to the Honorable George S. Silzer, a Judge of the said Circuit Court of the County of Passaic, to frame the issue between the parties and fix a day for striking a jury, and a day for the trial of the appeal in the above mentioned matter.

Dated, Sept. 7th, A. D. 1920.

Respectfully yours,
Wm. I. Lewis,
Attorney of National
Silk Dyeing Company.

ORDERS FRAMING ISSUE

Passaic County Circuit Court

The Acquackanonk Water Company
against
Weidmann Silk Dyeing Company.

The Acquackanonk Water Company having given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the Acquackanonk Water Company, and the appellant having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court, at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day, to frame the issue on said appeal and to fix a day for the striking of a jury and a day for the trial of said appeal; and the hearing of said notice of said motion having been postponed from time to time to the 1st day of March, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said Weidmann Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that the said The Acquackanonk Water Company are taking by condemnation certain property of said Weidmann Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously un-

til January 1st, 1925, from the Passaic River at Little Falls in Passaic County, New Jersey the quantity of water necessary for the public and domestic uses of the public water supply of the cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:-

First Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths city lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street; and on the west by lands of the Erie Rilroad Company, and containing 17-3/10ths city lots or 1-00/100ths acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street, and on the west by East Eleventh Street and contain-

ing 30½ city lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the East by lands now or formerly of Cornelius D. Vreeland, and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 city lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:-

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company, and on the west by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company, and on the west by lands of the Hawthorne Development Co. and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

Said property and rights are necessary for and are taken for and form part of your petitioner's water works which consist of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies. The lands of the owners hereinafter mentioned lie upon the said Passaic River, and the diversion is made above their said lands of water which would otherwise flow past and over their said lands by reason whereof they claim compensation and damages.

It is on this eleventh day of April, 1921, on motion of Humphreys & Sumner, Attorneys for the appellant, the said The Acquackanonk Water Company, in the presence of and with the consent of Griggs & Harding, Attorneys for the Weidmann Silk Dyeing Company, ordered, that Monday the Sixteenth day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeal before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the

value of and the assessment of the amount which the said The Acquackanonk Water Company should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic, New Jersey, and Clifton, New Jersey, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purpose of said municipal corporations, as against the said lands and property of said Weidmann Silk Dyeing Company as in said petition described, and also for the damages to be sustained by the said Weidmann Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said land and property by the said the Acquackanonk Water Company.

And it is further ordered that a jury be struck for the trial of said appeal at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

George S. Silzer,
Judge.

Passaic County Circuit Court

The Acquackanonk Water Company
against
National Silk Dyeing Company.

The Acquackanonk Water Company having

given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the Acquackanonk Water Company, and the appellant having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court, at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day, to frame the issue on said appeal and to fix a day for the striking of a jury and a day for the trial of said appeal; and the hearing of said notice of said motion having been postponed from time to time to the 11th day of April, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said National Silk Dyeing Company is the owner of certain lands and property described in the petition and the order amending said petition, filed in the above entitled matter, and hereinafter described, and that the said The Acquackanonk Water Company is taking by condemnation certain property of said National Silk Dyeing Company particularly described in said petition as follows:

The right to take and divert continuously until January 1st, 1925 from the Passaic River at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Clifton, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and neces-

sary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All these certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz.:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street, and running thence (1) westerly along the northerly line of said Branch Street two hundred and seventy-eight feet and thirty-four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and fifty-five feet more or less to the Passaic River, thence (4) northeasterly, along the same down stream the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred and seventy seven feet more or less to the place of beginning, containing fifty seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods Street, on the south by Lowe Street and on the westerly side by the Passaic River as it runs in its course,

being lots numbers, 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street, 1 and 3 Lowe Street, and numbers 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street, at a point distant one hundred and six and fifty six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty four and seventy seven hundredths feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westterly line to the Passaic River; thence (3) up said river to the easterly line of East Main St., and thence (4) northerly along said easterly line of East Main St. one hundred and seventy and eighty eight hundredths feet to the point of beginning, being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly, an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company dated Jan. 2nd, 1909,

and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pp. 60 &c., and is now known as the Valley Works of the National Silk Dyeing Company.

And, also, all those tracts or parcels of land and premises hereinafter particularly described situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:-

Tract One: Beginning in the middle of the road leading from Richard DeGray's to Paterson and in the line of said DeGray and running thence (1) north twenty four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers thence (2) along said road south fifty three degrees west two chains thence (3) south twenty four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty eight degrees east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty four links to the middle of the public road leading from Morrow's factory to Paterson thence (2) along the same north thirty nine degrees and thirty minutes east three chains and twenty six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty three degrees and forty five minutes west five chains and forty one links to the

middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty four degrees and forty five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate lying and being in the borough of Hawthorne in the County of Passaic and State of New Jersey.

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in the Clerk's office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and thirty minutes east ninety six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty one degrees and thirty six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same south-easterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) northeasterly along the same to the place of beginning; excepting and reserving out of the above described

tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty six hundredths of a foot thence (2) southwesterly deflecting eighty five degrees and forty six minutes to the right from the first course ninety two feet and forty five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty seven feet and thirty seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy eight hundredths of a foot to the place of beginning.

It is on this eleventh day of April, 1921, on motion of Humphreys & Sumner, Attorneys for the appellant, the said The Acquackanonk Water Company, in the presence of and with the consent of William I. Lewis, Attorney for the National Silk Dyeing Company, ordered, that Monday, the 16th day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeal before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involvel between the parties is hereby framed and the issue is, the value of and the assessment of the amount which the said The Acquackanonk Water Company should pay to said National Silk Dyeing Company, owner of said lands and property for the said right to

take and divert continuously until January 1st, 1925, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic, New Jersey, and Clifton, New Jersey, not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purpose of said municipal corporations, as against the said lands and property of said National Silk Dyeing Company as in said petition described, and also for the damages, to be sustained by the said National Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The Acquackanonk Water Company.

And it is further ordered that a jury be struck for the trial of said appeal at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

Geo. S. Silzer, J.

We consent to the making of this order.

Humphreys & Sumner,
Attorneys for The Acquackanonk
Water Company.

Wm. I. Lewis,
Attorney for National Silk
Dyeing Company.

We hereby consent and agree to the making of the foregoing order and that the provision of the

statute that the day agreed for striking of the jury in the foregoing order be at least ten days before the day agreed for trial of the appeal shall be and hereby is waived and that day fixed for striking of the jury in said order shall be the day fixed for the trial of said appeal.

Humphreys & Sumner,
Attorneys for the Acquackanonk
Water Company.

Wm. I. Lewis,
Attorney for National Silk
Dyeing Company.

Passaic County Circuit Court

In the matter of the application of The Mayor and Aldermen of Jersey City, a municipal corporation, to acquire the right to divert and take water as against lands of Weidmann Silk Dyeing Company.

Both the Mayor and Aldermen of Jersey City and Weidmann Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of The Mayor and Aldermen of Jersey City, and each of the appellants having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10.30 o'clock in the forenoon of that day to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said mo-

tion having been postponed from time to time to the 1st day of March, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said Weidmann Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that the said The Mayor and Aldermen of Jersey City are taking by condemnation certain property of said Weidmann Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the East by lands of the Erie Railroad Company, and on the West by lands of the National Silk Dyeing Co. Containing 131-72/100ths city lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1180 feet.

Second Tract: Bounded on the North by the Passaic River; on the south by Fifth Avenue; on the East by East Eleventh Street, and on the West by lands of the Erie Railroad Company, and containing 17-3/10ths city lots or 1-00/100 acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street, and on the west by East Eleventh Street and containing 30½ city lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland, and on the West by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 city lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the East by lands now or formerly of Cornelius T. Terhune, and on the West by lands of the New

York, Susquehanna and Western Railroad Company, containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the East by lands of the New York, Susquehanna and Western Railroad Company, and on the West by lands of the Erie Railroad Company. Containing about 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by the lands of the Erie Railroad Company, and on the west by lands of the Hawthorne Development Co. and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1664 feet.

Said property and rights are necessary for and are taken for and form part of your petitioner's water works, which consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages.

It is on this eleventh day of April, 1921, on mo-

tion of Collins & Corbin, Attorneys for the appellants, The Mayor and Aldermen of Jersey City, and on like motion of Griggs & Harding, attorneys for the appellant, Weidmann Silk Dyeing Company, ordered, that Monday the Sixteenth day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of said appeals before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the value of and the assessment of the amount which the Mayor and Aldermen of Jersey City should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously and perpetually from the Rockaway River at Boonton, in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purpose of said municipal corporation as against the said lands and property of Weidmann Silk Dyeing Company as in said petition described, and also for the damages, if any, to be sustained by the said Weidmann Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The Mayor and Aldermen of Jersey City.

And it is further ordered, that a jury be struck for the trial of said appeals at the time and place

and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

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

Geo. S. Silzer,
J.

Passaic County Circuit Court.

In the matter of the application of The Mayor and Aldermen of Jersey City, a municipal corporation, to acquire the right to divert and take water as against lands of National Silk Dyeing Company.

Both The Mayor and Aldermen of Jersey City and National Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of The Mayor and Aldermen of Jersey City, and each of the appellants having given notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court at the Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10:30 o'clock in the forenoon of that day to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the 11th day of April 1921, at the Court House, in the City of Paterson, at 10:30 o'clock A. M. and counsel for both parties consenting to the making of this order:

And it appearing that the said National Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that the said The Mayor and Aldermen of Jersey City are taking by condemnation certain property of said National Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch Street with the westerly line of East Fifth Street and running thence (1) westerly along the northerly line of said Branch Street two hundred and seventy-eight feet and thirty-four hundredths of a foot, thence (2) northerly at right angles from Branch Street one hundred feet, thence (3) westerly, parallel with Branch Street one hundred and fifty-five feet more or less to the Passaic River, thence, (4) northeasterly, along the same down

stream the various courses thereof to the westerly line of said East Fifth Street thence (5) southerly along the westerly line of East Fifth Street five hundred and seventy-seven feet more or less to the place of beginning, containing fifty-seven and nineteen hundredths city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street, on the north by Woods Street, on the south by Lowe Street and on the westerly side by the Passaic River as it runs in its course, being lots numbers 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street, 1 and 3 Lowe Street, and numbers 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson and being known as the Wood Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street, at a point distant one hundred and six and fifty-six hundredths feet southerly from the southerly line of North Straight Street, and running thence (1) southeasterly parallel with North Straight Street, one hundred eighty-four and seventy-seven hundredths feet to the westerly line of lands conveyed by Thomas Holt to Catharine Sprattler and Christian Mennel, thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street, and thence (4) northerly along said easterly line of East Main Street, one hundred and seventy and eighty-eight

hundredths feet to the point of beginning, being knwn as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about four hundred and fifty feet; the easterly line of said tract runs irregularly, in a northwesterly direction to a point on Ryle Avenue distant about five hundred feet, from the Passaic River, and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentined company to the National Silk Dyeing Company dated Jan. 2, 1909 and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pp. 60 &c., and is now known as the Valley Works of the National Silk Dyeing Company.

And also all those tracts or parcels of land and premises hereinafter particularly described situate lying and being in the Borough of Hawthorne in the County of Passaic and State of New Jersey:—

Tract One: Beginning in the middle of the road leading from Richard DeGrays to Paterson and in the line of said DeGray and running thence (1) north twenty-four degrees west along the line of said DeGray five chains to the middle of the road leading from said DeGray's to Cornelius P. Hoppers thence (2) along said road south fifty-three degrees west two chains thence (3) south twenty-four degrees east to the middle of the first mentioned road leading to Paterson and thence (4) north thirty-eight feet east along said road two chains and twenty links to the beginning.

Tract Two: Beginning at the southeast corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty his wife and on the middle of the public road leading from Morrow's factory to Oldham running thence (1) along the lands of Henry A. Zabriskie south fifteen degrees east six chains and fifty-four links to the middle of the public road leading from Morrow's factory to Paterson thence (2) along the same north thirty-nine degrees and thirty minutes east three chains and twenty-six links to a corner of the lands of Thomas Morrow thence (3) along the same north twenty-three degrees and forty-five minutes west five chains and forty-one links to the middle of the aforesaid public road leading to Oldham thence (4) along the same south fifty-four degrees and forty-five minutes west two chains and three links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey,

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870; and recorded in the Clerk's Office of Passaic County in Book X-3 of Deeds on pages 122 &c., said beginning point being seventy-six feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same and running from thence (1) south forty degrees and

thirty minutes east ninety-six feet and nine inches along the line of said lands of James H. Peterson (now of Kievit) thence (2) north fifty-one degrees and thirty-six minutes east eighteen feet and seven inches to lands of Richard DeGray, thence (3) along the same southeasterly to the Passaic River, thence (4) southerly up the stream thereof one chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road and thence (6) notheasterly along the same to the place of beginning; excepting and reserving out of the above described tract the following tract of land, beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills fifty feet southwesterly from the beginning point of the whole tract above described and running thence (1) southeasterly at right angles from said road one hundred and twenty feet and forty-six hundredths of a foot thence (2) southwesterly deflecting eighty-five degrees and forty-six minutes to the right from the first course ninety-two feet and forty-five hundredths of a foot to the line of lands formerly of John Earl thence (3) northwesterly along the line of lands formerly of John Earl one hundred and twenty-seven feet and thirty-seven hundredths of a foot to the easterly line of said road and thence (4) northeasterly along the same one hundred and five feet and seventy-eight hundredths of a foot to the place of beginning.

It is on this eleventh day of April, 1921, on motion of Collins & Corbin, attorneys for appellants, The Mayor and Aldermen of Jersey City, and on like motion of William I. Lewis, attorney for the appellant, National Silk Dyeing Company, ordered, that Monday the 16th day of May 1921, at ten o'clock in the forenoon, be and the same hereby is

fixed as the time for the trial of said appeals before the Passaic County Circuit Court, at the Court House at Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is, the value of and the assessment of the amount which the Mayor and Aldermen of Jersey City should pay to said National Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously and perpetually from the Rockaway River at Boonton, in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation as against the said lands and property of National Silk Dyeing Company as in said petition described, and also for the damages, if any, to be sustained by the said National Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The Mayor and Aldermen of Jersey City.

And it is further ordered that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th, 1921 made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

George S. Silzer, J.

We consent to the making of this order.

Collins & Corbin,

Attorneys for The Mayor and Aldermen of Jersey City.

William I. Lewis,

Attorney for National Silk Dyeing Company.

We hereby consent and agree to the making of the foregoing order and that the provision of the statute that the day agreed for striking of the jury in the foregoing order be at least ten days before the day agreed for trial of the appeal shall be and hereby is waived and that the day fixed for striking of the jury in said order shall be the day fixed for the trial of said appeal..

Collins & Corbin,

Attorneys for The Mayor and Aldermen of Jersey City.

William I. Lewis,

Attorney for National Silk Dyeing Company.

(Filed June 24, 1921.)

Passaic County Circuit Court.

In the matter of the application of the City of Newark for the appointment of Commissioners to fix the compensation to be paid to the Weidmann Silk Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

Both the City of Newark and the Weidmann Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the City of Newark, and each of the appellants having given

notice of a motion to be heard before Honorable George S. Silzer, Judge of said Circuit Court, at the Court House, in the City of Elizabeth, New Jersey, on October 9, 1920, at 10:30 o'clock in the forenoon of that day, to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the 1st day of March, 1921, at the Court House, in the City of Paterson, at 10.30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said Weidmann Silk Dyeing Company is the owner of certain lands and property described in the petition filed in the above entitled matter and hereinafter described, and that the City of Newark are taking by condemnation certain property of said Weidmann Silk Dyeing Company particularly described in said petition as follows.

"The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain tracts and plots of land and premises, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Pas-

saic River; on the south by Fifth Avenue; on the east by lands of the Erie Railroad Company, and on the west by lands of the National Silk Dyeing Company. Containing 131-72/100ths City Lots or 7-56/100ths acres and having a frontage along the Passaic River of about 1,180 feet.

Second Tract: Bounded on the north by the Passaic River; on the south by Fifth Avenue; on the east by East Eleventh Street and on the west by lands of the Erie Railroad Company, and containing 17-3/10ths City Lots or 1-00/100ths acres, and having a frontage along the Passaic River of about 93 feet.

Third Tract: Bounded on the north by the Passaic River; on the south by a line of lots distant 175 feet northerly from the northerly line of Fifth Avenue; on the east by East Twelfth Street, and on the west by East Eleventh Street; and containing 30-½ City Lots or 1-75/100ths acres, and having a frontage along the Passaic River of about 220 feet.

Fourth Tract: Bounded on the north by the Passaic River; on the south by River Street; on the east by lands now or formerly of Cornelius D. Vreeland, and on the west by lands formerly of James Bell. The easterly line of said tract intersects the northwesterly line of River Street at a point distant about 218 feet southwesterly along said line from the intersection thereof with the northerly line of First Avenue. Containing 27 City Lots or 1-55/100ths acres, and having a frontage along River Street of 300 feet and a frontage along the Passaic River of about 307 feet. Also

All those certain tracts of land and premises situate, lying and being in the Borough of Hawthorne,

in the County of Passaic and State of New Jersey, and more particularly described as follows:

First Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands now or formerly of Cornelius T. Terhune, and on the west by lands of the New York, Susquehanna and Western Railroad Company, containing about 14-74/100ths acres, and having a frontage along the Passaic River of about 1,215 feet.

Second Tract: Bounded northerly by lands of the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company; on the south by the Passaic River; on the east by lands of the New York, Susquehanna and Western Railroad Company and on the west by lands of the Erie Railroad Co. containing 6 acres, and having a frontage along the Passaic River of about 760 feet.

Third Tract: Bounded on the north by the Wagaraw Road; on the south by the Passaic River; on the east by lands of the Erie Railroad Company and on the west by lands of the Hawthorne Development Co. and the American Silk Dyeing and Finishing Co. Containing about 42-44/100ths acres, and having a frontage along the Passaic River of about 1,664 feet.

Said property and rights are necessary for and are taken to form part of your petitioner's water works, the supply part of which consists in general of impounding reservoirs located in Sussex, Morris and Passaic Counties on the Pequannock River, a branch of the Passaic River including in the area tributary to and the above the Macopin Intake, approximately 63 square miles of drainage area—said impounding reservoirs being known as the Oak Ridge, Clinton and Canistear Reservoirs and the use of a nat-

ural lake called Echo Lake with a small reservoir at Macopin Intake and two main conduit lines leading from said Macopin Intake to the City of Newark with the rights of way for said conduits and the water rights to divert from the Pequannock River, the water needed. Said impounding reservoirs have a capacity of over 10,000,000,000 gallons of water and are designed to hold the flood flows in times of heavy rainfall and are sufficient in themselves to supply the City of Newark for a period of 200 days; the impounding of the flood waters being necessary to make it possible to maintain the necessary supply for the works since the natural low flow of the Pequannock River for the portion embraced above the Macopin Intake is less than an average of 7,000,000 gallons of water per day. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which in part would otherwise flow past and over their said lands by reason whereof they claim compensation and damages."

It is on this Eleventh day of April, 1921, on motion of William J. Kearns, attorney for the appellant, the City of Newark, and on like motion of Griggs & Harding, attorneys for the appellant, Weidmann Silk Dyeing Co., ordered, that Monday the 16th day of May, 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeals before the Passaic County Circuit Court, at the Court House in Paterson, N. J.

And it is further ordered, that the issue for the trial of the question herein involved between the

parties is hereby framed and the issue is the value of and the assessment of the amount which the City of Newark should pay to said Weidmann Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake as are necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation, as against the said lands and property of Weidmann Silk Dyeing Company as in said petition described, and also for the damages to be sustained by the said Weidmann Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The City of Newark.

And it is further ordered that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th, 1921, made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

Geo. S. Silzer,

J.

(Filed June 24, 1921.)

Passaic County Circuit Court.

In the matter of the application of the City of Newark for the Appointment of Commissioners to fix the compensation to be paid to the National Silk

Dyeing Company, a corporation of New Jersey, for diverting waters of the Pequannock River.

Both the City of Newark and the National Silk Dyeing Company, having respectively given notice of appeal from the award of Jacob W. DeYoe, Clifford L. Newman and James L. Brown, who were appointed Commissioners by the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, on the application of the City of Newark, and each of the appellants having given notce of a motion to be heard before Honorable Geo. S. Silzer, Judge of said Circuit Court, at Court House in the City of Elizabeth, New Jersey, on October 9, 1920, at 10:30 o'clock in the forenoon of that day, to frame the issue on said appeals and to fix a day for the striking of a jury and a day for the trial of said appeals; and the hearing of said notice of said motion having been postponed from time to time to the 11th day of April, 1921, at the Court House, in the City of Paterson, at 10:30 o'clock A. M.; and counsel for both parties consenting to the making of this order:

And it appearing that the said National Silk Dyeing Company is the owner of certain lands and property described in the petition and in the order amending said petition filed in the above entitled matter, and hereinafter described, and that the City of Newark is taking by condemnation certain property of said National Silk Dyeing Company particularly described in said petition as follows:

"The right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake necessary for the public and domestic uses of the public water supply of The City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the

same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property against which said right to divert and take water is required, is described as follows, to wit:

All those certain lands and premises, with the appurtenances, situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey, consisting of several tracts of land more particularly described and bounded as follows, viz:

First Tract: Beginning at the corner formed by the intersection of the northerly line of Branch St. with the westerly line of East Fifth Street; and running thence (1) westerly along the northerly line of said Branch Street 278.34 feet; thence (2) northerly at right angles from Branch Street 100 feet; thence (3) westerly parallel with Branch Street 155 feet, more or less, to the Passaic River; thence (4) northeasterly along the same down stream the various courses thereof to the westerly line of East Fifth Street; thence (5) southerly along the westerly line of East Fifth Street 577 feet, more or less, to the place of beginning. Containing 57.19 city lots, and being known as the East Fifth Street Works of the National Silk Dyeing Company.

Second Tract: Being a tract of land beginning at the corner formed by the intersection of the northerly line of Lowe Street with the westerly line of Shady Street and bounded on the east by Shady Street; on the north by Woods Street; on the south by Lowe Street; and on its westerly side by the Passaic River as it runs in its course. Being lots Nos. 2, 4, 6, 8, 10, 12, 14 and 16 Woods Street; 1 and 3 Lowe Street; and Nos. 62, 64, 66, 68, 70, 72, 74 and 76 Shady Street, as laid down on the map of the City of Paterson, and being known as the Wood

Street Works of the National Silk Dyeing Company.

Third Tract: Being a tract of land beginning in the easterly line of East Main Street at a point distant 106.56 feet southerly from the southerly line of North Straight Street; and running thence (1) southeasterly parallel with North Straight Street 184.77 feet to the westerly line of lands conveyed by Thomas Holt to Catherine Sprattler and Christian Mennell; thence (2) southerly along said westerly line to the Passaic River; thence (3) up said river to the easterly line of East Main Street and thence (4) northerly along said easterly line of East Main Street 170.88 feet to the point of beginning. Being known as the East Main Street Works of the National Silk Dyeing Company.

Fourth Tract: Being a tract of land bounded by and extending along the Passaic River as it runs for a distance of about 450 feet; the easterly line of said tract runs irregularly in a northwesterly direction to a point on Ryle Avenue distant about 500 feet from the Passaic River; and thence the boundary line of said tract runs southerly an irregular course to the Passaic River; said tract was formerly the property of the E. Geering Silk Dyeing Company and more particularly described in a deed made by the last mentioned company to the National Silk Dyeing Company, dated Jan. 2, 1909, and recorded in the office of the Register of Passaic County in Book Y-19 of Deeds, pages 60, etc., and is now known as the Valley Works of the National Silk Dyeing Company.

And also, all those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey.

Tract One: Beginning in the middle of the road

leading from Richard DeGrays to Paterson and in the line of said Degray and running thence (1) north 24 degrees west along the line of said Degray 5 chains to the middle of the road leading from said Degray's to Cornelius P. Hoppers; thence (2) along said road south 53 degrees west 1 chains; thence (3) south 24 degrees east to the middle of the first mentioned road leading to Paterson; thence (4) north 38 degrres east along said road 2 chains and 20 links to the beginning.

Tract Two: Beginning at the southwest corner of the lot and northwest corner of a lot of land released to Henry A. Zabriskie and Patty, his wife, and on the middle of the public road leading from Morrow's factory to Oldham; running thence (1) along the lands of Henry A. Zabriskie south 15 degrees east 6 chains and 54 links to the middle of the public road leading from Morrow's factory to Paterson; thence)2) along the same north 39 degrees and 30' east 3 chains and 26 links to a corner of the lands of Thomas Morrow; thence (3) along the same north 23 degrees and 45' west 5 chains and 41 links to the middle of the aforesaid public road leading to Oldham; thence (4)along the same south 54 degrees and 45' west 2 chains and 3 links to the place of beginning.

Tract Three: All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Hawthorne, in the County of Passaic and State of New Jersey:

Beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills, where it is intersected by the dividing line between the lands hereby conveyed and the lands conveyed to James H. Peterson by Cornelius B. Peterson and wife by deed dated April 30, 1870, and recorded in

the Clerk's Office of Passaic County in Book X-3 of Deeds on pages 122, etc., said beginning point being 76 feet and two inches northeasterly from the point in the easterly line of said road where a line drawn along the northerly line of the dwelling house formerly belonging to Cornelius B. Peterson if continued westerly would intersect the same; and running from thence (1) south 40 degrees and 30' east 96 feet and 9 inches along the line of said lands of James H. Peterson (now of Kievit;) thence (2) north 51 degrees and 36' east 18 feet and 7 inches to the lands of Richard Degray; thence (3) along the same southeasterly to the Passaic River; thence (4) southerly up the stream thereof 1 chain; thence (5) northwesterly along the line of lands formerly of John Earl to the easterly line of said road; thence(6) northeasterly along the same to the place of beginning. Excepting and reserving out of the above described tract the following tract of land; beginning at a point in the easterly line of the road leading from Paterson to Morrow's Mills 50 feet southwesterly from the beginning point of the whole tract above described; and running thence (1) southeasterly at right angles from said road 120.46 feet; thence (2) southwesterly deflecting 85 degrees and 46' to the right from the first course 92.46 feet to the line of lands formerly of John Earl; thence (3) northwesterly along the line of lands formerly of John Earl 127.37 feet to the easterly line of said road; and thence (4) northeasterly along same 105.-78 feet to the place of beginning.

It is on this eleventh day of April, 1921, on motion of William J. Kearns, attorney for the appellant, The City of Newark, and on like motion of William I. Lewis, attorney for the appellant National Silk Dyeing Company, ordered, that Mon-

day the 16th day of May 1921, at ten o'clock in the forenoon, be and the same hereby is fixed as the time for the trial of the said appeals before the Passaic County Circuit Court, at the Court House in Paterson, New Jersey.

And it is further ordered, that the issue for the trial of the question herein involved between the parties is hereby framed and the issue is the value of and the assessment of the amount which the City of Newark should pay to said National Silk Dyeing Company, owner of said lands and property for the said right to take and divert continuously such of the waters of the Pequannock River above the Macopin Intake as are necessary for the public and domestic uses of the public water supply of the City of Newark and such territory as is now or may in the future be supplied from said municipal plant, the same being required and necessary to be taken for the purposes of said municipal corporation, as against the said lands and property of National Silk Dyeing Co. as in said petition described, and also for the damages to be sustained by the said National Silk Dyeing Company, owner as aforesaid, in consequence of the taking of said water rights as against said lands and property by the said The City of Newark.

And it is further ordered that a jury be struck for the trial of said appeals at the time and place and in the manner provided in an order made herein dated April 11th 1921 made at the time of this order pursuant to the stipulation of the above parties thereto annexed.

And it is further ordered that a view of the premises and the property be had.

Geo. S. Silzer,

J.

Orders Framing Issue

We consent to the making of this order.

Wm. J. Kearns,
Attorney for the City of Newark.
Wm. I. Lewis,
Attorney for National Silk Dyeing Company.

We hereby consent and agree to the making of the foregoing order and that the provision of the statute that the day agreed for striking of the jury in the foregoing order be at least ten days before the day agreed for trial of the appeal shall be and hereby is waived and that the day fixed for striking of the jury in said order shall be the day fixed for the trial of said appeal.

Wm. J. Kearns,
Attorney for the City of Newark.
Wm. I. Lewis,
Attorney for National Silk Dyeing Co.

VERDICT.

The evidence and argument of Counsel being closed, the Jury after a charge from the Court retire at 2.55 P. M. to consider upon their verdict, two constables being sworn to attend them.

The Court orders a recess at 3.40 P. M. until the Jury returns into Court.

The Jurors return into Court at 8.22 P. M. and say they have agreed upon their verdict and by their foreman say:

"We find that The City of Newark is to pay to The Weidmann Silk Dyeing Co. the sum of Seventy-seven Thousand Seven Hundred and Sixty Dollars; The Mayor and Aldermen of Jersey City are to pay to The Weidmann Silk Dyeing Co. the sum of One Hundred and Forty-nine Thousand and Forty Dollars; The Acquackanonk Water Co. is to pay to The Weidmann Silk Dyeing Co. the sum of Nine Thousand Eight Hundred and Sixty-four Dollars:

"The City of Newark is to pay to The National Silk Dyeing Co. the sum of Thirty-two Thousand Four Hundred Dollars; The Mayor and Aldermen of Jersey City are to pay to The National Silk Dyeing Co. the sum of Sixty-two Thousand One Hundred Dollars; The Acquackanonk Water Co. is to pay to The National Silk Dyeing Co. the sum of Four Thousand One Hundred and Ten Dollars," and so say they all.

46-47-48-49

New Jersey Court of Errors and Appeals

The Acquackanonk Water Co., Petitioner-Appellant, vs. Weidmann Silk Dyeing Co., Defendant-Respondent.	On Appeals from judgments of New Jersey Supreme Court, affirming judgments of Passaic Circuit Court in Condemnation Proceedings
The Acquackanonk Water Co., Petitioner-Appellant, vs. National Silk Dyeing Co., Defendant-Respondent.	
The Mayor and Aldermen of the City of Jersey City, Petitioner-Appellant, vs. Weidmann Silk Dyeing Co., Defendant-Respondent.	
The Mayor and Aldermen of the City of Jersey City, Petitioner-Appellant, vs. National Silk Dyeing Co., Defendant-Respondent.	

Brief for Appellants

These appeals bring up for review a judgment entered in each of the above entitled causes in the Supreme Court affirming the judgment of the Circuit Court of Passaic County on an appeal in that court from the award of Commissioners in condemnation proceedings.

Two of said proceedings were instituted by the Acquackanonk Water Company (hereinafter called "the Acquackanonk"), and two by the Mayor and Aldermen of Jersey City (hereinafter called "Jersey City"). There were two other proceedings which were instituted by the City of Newark, the proceedings in all six cases being printed in the state of case, but as the City of Newark is represented by separate counsel, and is evidently abiding the result of this appeal before appealing itself, no reference will be made to its appeals in this brief, except so far as may be necessary to elucidate the situation and the argument in the other appeals.

1. The first proceeding was brought by the Acquackanonk against the Weidmann Silk Dyeing Company (hereinafter called "Weidmann"). By its petition the Acquackanonk sought to condemn as against the land and property of Weidmann, described in said petition,

> "The right to take and divert continuously until January 1, 1925, from the Passaic River at Little Falls in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the Cities of Passaic and Cilfton not exceeding an average quantity in any year of nine million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation."

The petition alleged, among other things, that the petitioner was a corporation of the State of New Jersey, created under a special act of the

Legislature of New Jersey entitled "An act to incorporate the Acquackanonk Water Company", approved March 9th, 1871, and that the purposes of the formation of the company were, among others, the constructing, maintaining and operating of water works for the purpose of supplying what at the time of the incorporation of said Company was known as the Village of Passaic, covering territory now comprising the Cities of Passaic and Clifton with water, and that the petitioner had power to take water rights and property for its said purposes.

That the petitioner had constructed its water works, and was engaged in supplying water to the said Cities of Passaic and Clifton and their inhabitants for public water supplies, and had for several years past been taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls in Passaic County through the dams, filtration works and pumping station located at that place, and that such continued taking and diversion thereof was required and necessary for the public purposes aforesaid.

That the property and rights sought to be condemned were necessary for and were taken for and formed part of the petitioner's water-works, which consisted of a dam, canal, pumping station and filtration plant at Little Falls in the County of Passaic on the Passaic River, and a conduit leading therefrom to the Cities of Clifton and Passaic with the needed reservoirs, rights of way and water rights to divert from the Passaic River the water needed for the supplies.

New Jersey State Library

That the lands of the owners lay upon the said Passaic River, and that the diversion was made above their said lands of water which would otherwise flow past and over their said lands by reason whereof they claimed compensation and damages. (Book V, pages 88-92.)

2. The second proceeding was brought by the Acquackanonk against National Silk Dyeing Company (hereafter called the "National"), and by its petition filed in that proceeding the Acquackanonk sought to condemn the same rights as against the lands and property of the National described in its petition as amended as it had by the first proceeding sought to condemn as against Weidmann. (Book V., 94-103.)

3. The third proceeding was brought by Jersey City against Weidmann. By its petition in that proceeding Jersey City sought to condemn as against the land and property of Weidmann described in said petition

> "The right to take and divert continuously and perpetually from the Rockaway River at Boonton, in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation not exceeding an average quantity in any year of 70 million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation."

The petition alleged, among other things, that the petitioner was a municipal corporation having

power to take land and property for public use, and had determined to take for public use the property therein described for the purpose of its water supply, for which purpose it was required and necessary.

That said property and rights were necessary for, and were taken for, and formed part of the petitioner's water works which consisted of an impounding dam across the Rockaway River at Boonton, in the County of Morris and a conduit leading therefrom to Jersey City with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. That said river was a tributary of the Passaic River upon which the lands of the owners therein mentioned lay, and that the diversion was made above their said lands of water which would otherwise flow past and over their said lands, by reason whereof they claimed compensation and damages.

That the petitioner had been for fourteen years past and was then receiving its water supply from said source through said works. (Book V., p. 103 to p. 108.)

The fourth proceeding was brought by Jersey City against the National, and by its petition filed in that proceeding Jersey City sought to condemn the same rights as against the lands and property of the National described in its petition as amended, as it had by its petition against Weidmann sought to condemn as against it. (Book V., p. 108 to p. 117.)

We have referred to the above proceedings as first, second, third and fourth proceedings. They were in fact all instituted at the same time, the petitions being filed in all four cases in January or February, 1919. (Book V., p. 88 to p. 117.)

Orders were made in each case by the Honorable James F. Minturn, Justice of the Supreme Court, appointing commissioners to examine and appraise the lands in the petitions described, and to assess the damages, if any, by reason of the taking of the same by the petitioners, and the Commissioners filed their reports or awards in each case and appeals were taken to the Passaic County Circuit Court by both sides in the Jersey City cases, and by the Acquackanonk alone in its two cases.

The appeals were tried before the Honorable George S. Silzer, Judge of the Passaic County Circuit Court and a jury, and verdicts were entered as follows:

1. Verdict in favor of Weidmann against the Acquackanonk for $9,864.00

2. Verdict in favor of National against the Acquackanonk for $4,110.00

3. Verdict in favor of Weidmann against Jersey City for $149,040.00

4. Verdict in favor of National against Jersey City for $62,100.00
(Book V., p. 205.)

Rules to show cause why said verdicts should

not be set aside and new trials granted were allowed by his Honor, Judge Silzer, who, after hearing the arguments, dismissed the rules, whereupon the following judgments were entered:

Aug. 8, 1922, Weidmann Silk Dyeing Co. vs. Acquackanonk Water Company, Judgment for $11,291.65 made up as follows:

Verdict	$ 9,864.00	
Interest thereon from Jan. 28, 1919, the date of filing the petition, etc. until May 25, 1921—	1,377.65	
Costs	50.00	
		$11,291.65

(Book I, p. 30.)

Aug. 11, 1922, National Silk Dyeing Co. vs. Acquackanonk Water Co., Judgment for $4,718.27 made up as follows:

Verdict	$4,110.00	
Interest on same from Feb. 20, 1919, the time of filing the said petition, etc., to May 25, 1921	558.27	
Costs	50.00	
		$4,718.27

(Book I, p. 68.)

Aug. 8, 1922, Weidmann Silk Dyeing Co. vs. The Mayor & Aldermen of Jersey City, Judgment for $169,905.86 made up as follows:

Verdict	$149,040.00
Interest on same from Jan. 28, 1919, the time of filing	

the petition, until May 25, 1921	20,815.86	
Costs	50.00	
		$169,905.86

(Book I, p. 100.)

Aug. 11, 1922, National Silk Dyeing Co. vs. The Mayor and Aldermen of Jersey City, Judgment for ..... $ 70,585.25
made up as follows:

Verdict	$ 62,100.00	
Interest on same from Feb. 20, 1919, the time of filing the said petition, etc., until May 25, 1921	8,435.25	
Costs	50.00	
		$ 70,585.25

(Book I, p. 139.)

In granting the rules to show cause the Circuit Court Judge expressly provided in said rules that the granting thereof should not operate as, or be a bar against the condemning parties taking or prosecuting appeals from the judgments which should be entered upon said verdicts upon certain points which were thereby expressly reserved by the rules. (See state of case, Vol. I, pp. 23-26; Vol. I, p. 61-64; Vol. I, pp. 93-96; Vol. I, pp. 131-134.)

These points so reserved were the subjects of the appeals to the Supreme Court and are now the subjects of the appeals to this Honorable Court, the Supreme Court having affirmed the judgments of the Circuit Court. By the ninth point so reserved it was provided that if on the hearing of the rules

to show cause the Circuit Court should decide the question of allowance or non-allowance of interest on the amount of awards, that question might also be reserved by both parties, and be the subject of appeal.

The Passaic Circuit Court allowed interest on the amounts of the verdicts from the respective dates of filing the petitions in the condemnation proceedings, and that interest was included in the judgments above set forth. In allowing said interest the court filed an opinion, a copy of which is set forth in Book I, page 217 et seq. The opinion of the Supreme Court affirming the judgment of the Passaic Circuit Court is set forth in Book I, page IX et seq.

In charging the jury how, having fixed the total damages the dyers could sustain, by reason of the proposed takings of water, that is, the depreciation in the values of their properties which would result from such takings, they (the jury) should divide such damages, when ascertained, among the various diverters, the trial court said:

> "The rights that the parties had were those rights which existed before these three diverters took, and the other five water companies (took) which were forced to take under the Chancellor's orders. That is the condition that must be considered." (Book IV., p. 13, line 33 et seq.)

Whereupon the following colloquy between a juror and the court took place:

"A Juror—May I ask, in connection with your last remark, these other diverters who took under the Chancellor's orders, we are to figure that they are diverters also?

"The Court—Yes, I am going to charge you this, Gentlemen, on that proposition, that you do not take into consideration in figuring the proportions, the diversions which were made by the Morris Canal nor the Passaic Water Company. * * * * Those were the two who have prescriptive rights in that stream. But these various companies who have been mentioned to you here, and I won't take the trouble to repeat the names, who were restrained by the Chancellor and told that they had to make arrangements or condemn, as these three companies here condemning are, that all of those people together and including these three, that was the amount of water which was in the stream and the parties who are taking now must pay for their proportion in the way I will indicate to you later, in the proportion that their proportion bears to the whole amount that is taken by these three and those who were before the Chancellor in that proceeding." (Book IV., p. 14, line 1 et seq.)

The court declined to charge the following request to charge made by counsel for the Acquackanonk and Jersey City:

Request No. 9: When you have determined what sum represents the total depreciation in the value of the real estate of

these dyers which will be due to the proposed diversions of water by the Acquackanonk Water Company, Jersey City and Newark, and to the diversions of the Montclair Water Company, Commonwealth Water Company, Glen Ridge, Bayonne, Kearney, Bloomfield and Nutley, and to the diversions of the Passaic Water Company and the Morris Canal Company, the true basis for apportioning such sum representing such depreciation as found by you among these various diverters will be the proportions of the current flow of the river diverted by each in time of low water, (Book IV., p. 31, line 20 et seq.) the refusal of the court to charge as so requested evidently being that the diversions by the Passaic Water Company and the Morris Canal Company were included in the request whereas the trial court was of the opinion that they should be excluded, for the court charged Request No. 10, (Book IV., p. 32, line 19 et seq.), which was precisely the same as Request No. 9, except that any reference to the Passaic Water Company or the Morris Canal Company was omitted from Request No. 10.

In response to the Acquackanonk Water Company and Jersey City's request to charge Request No. 22:

"You must bear in mind that it is impossible to deduce from the quantities of water diverted by the various diverters the amount of damages which these dyers sustained. No means exist for making such computation.

You cannot turn gallons of water into dollars and cents. All these dyers can recover is Newark's and Jersey City's share of the diminution in value of their real estate consequent upon all the diversions" the court said:

"And I add to that, 'Except the Morris Canal and the Passaic Water Company.' I charge you that and I charge you in the same way as to Newark's same request." (Book IV., p. 44, line 33 et seq.)

The Court declined to charge Request No. 26 for Acquackanonk and Jersey City:

"In making their calculation the jury should first consider what will be the fair market value of the Dyeing Companies' properties if the river were in its natural state; that is to say, if no water were diverted from the river by the Morris Canal, Passaic Water Company, or by any of the cities or corporations which the evidence shows are now diverting water from the river; and having determined what would be the fair market value of said properties if the river were in its natural state, the jury should then determine what would be, in their opinion, the fair market value of the properties after taking into consideration all the water being diverted from the river by all parties now doing so; that is to say, the Morris Canal, the Passaic Water Company, and all the cities and corporations which the evidence shows are now diverting

water from the river, and adding to that total amount the amount which the cities of Newark and Jersey City and the Acquackanonk Water Company propose to divert thus arriving at the total amount of water which will be diverted from the river after the rights to divert have been acquired in these proceedings by the present condemning parties. Having determined the diminution in the fair market value of the Dyeing Companies' properties by the method indicated, it must be presumed that the total diminution in value is caused proportionately by the amount being diverted by each city and corporation which the evidence shows is now diverting water from the river; that is to say, the jury having determined the amount of the diminution in the value caused by all the diversions, including those proposed by the three present condemning parties, and having found from the evidence the total amount of water measured by millions of gallons being diverted from the river by all the cities and corporations now diverting water therefrom, including the three present condemning parties, the amount of such total diminution in value, for which any one of the said three condemning parties can be required to pay by these proceedings, is that proportion of the total diminution in value which the amount of water such party acquires the right to divert by these proceedings bears to the total amount diverted by all the cities and corporations diverting the water from the river, including among the others, the Morris Canal and the Pas-

saic Water Co." (Book IV., p. 48, line 30 to p. 50, line 10.)

Point I.

The Court erred in excluding from the jury's consideration the diversions from the Passaic River or its tributaries by the Morris Canal & Banking Company and the Passaic Water Company, and also erred in its instructions to the jury that in apportioning the damages among the various diverters the diversions by the Morris Canal & Banking Company and the Passaic Water Company must be disregarded.

It was admitted in the case that the Morris Canal Company and the Passaic Water Company had prescriptive rights to divert water from the Passaic River. (Book II, p. 135, line 21 et seq.)

It was also admitted into the case, though it was a mere unverified statement on the part of Mr. Vermeule, consulting engineer, contained in a book entitled "Geological Survey of New Jersey, John D. Smoot, State Geologist" that the lowest flow in the Passaic River in the driest season before the diversions were made by any other water company than the Passaic Water Company and the Morris Canal Company was 100 million gallons of water per day. (Book II, page 489, line 18 et seq.)

Mr. John H. Cook testified (and his testimony was not contradicted) that the amount of water taken by the Passaic Water Company from the plant at Little Falls for the last three or four years had not varied materially from ten million gallons

a day, and that the quantity of water that was taken by the Morris Canal Company in times of low flow from the river was approximately also ten million gallons a day. (Book III., p. 544, line 10 et seq.)

After the following question had been put to Mr. Cook,

> "Taking the various diversions in times of low flow to be as follows: Passaic Water Company, ten million gallons; Morris Canal, ten million gallons; Newark, 7.1 million gallons; Jersey City, 13.6 million gallons; Acquackanonk Water Company, nine million gallons; Montclair, 2.2 millions gallons; Commonwealth Water Company for West Orange, one million gallons; Glen Ridge, 350,000 gallons; Bayonne, 16 million gallons; Kearny, 6 million gallons; Harrison, three million gallons; East Newark, 800,000 gallons; Bloomfield, three million gallons; Nutley, 750,000 gallons; Commonwealth Water Company and East Orange from Canoe Brook, three million gallons; making a total diversion of 85,800,000 gallons, and assuming that the damages when ascertained are to be divided between all these parties in the proportion of the current flow diverted by each in times of low flow, have you made any calculation as to what percentage each amount of each diverter is to the total diversions, namely 85,800,000 gallons?"

and Mr. Cook had answered the question as follows:

> "I have made such a calculation, and it was offered before, and if somebody will give

me the testimony it is easier for me to read it from that",

the following colloquy occurred between the court and counsel:

"Mr. Griggs—I object to it because it is irrelevant and immaterial. I apprehend that the Court is not going to charge the jury that compensation is to be divided on any such percentages. I apprehend that the Court will charge the Jury that the prescriptive rights of diversion of the Passaic Water Co. and the Morris Canal are not to be taken into account and that these condemnors are not entitled to have a percentage charged against them. Therefore, the testimony is irrelevant, and, if given would be based on figures which have no relation to the case. And we might just as well, perhaps understand now, once for all, whether these ancient diversions are to be counted as takings of water against these parties which are to be founded in determining the proportions. We insist that they are not. We insist that the situation is that during all these years that these dyers have been going on the Passaic Water Company—

"The Court—Didn't I eliminate these in the damage suit at the time of Auger & Simon and Weidmann? Didn't I eliminate these same two companies?

"Mr. Humphreys—I think your Honor did eliminate them, at the same time we would want to go to the higher Court on that point and I think it would be convenient to have it on the record anyway.

"The Court—I will overrule the question and allow an exception.

"(The exception is entered for all the Condemnors.)" (Book III., pp. 553-555.)

Counsel having been thus prevented from taking into consideration the diversions by the Passaic Water Company and the Morris Canal Company the proportion which each diverter should contribute to the damages excluding those two diversions were then stated by Mr. Cook. He gave them first of all as if all the diversions were to be perpetual as follows:

Newark	10.8% of 65.8 mill. gallons
Jersey City	20.7% of 65.8 mill. gallons
Acquackanonk Water Co.	13.7% of 65.8 mill. gallons
Montclair Water Co.	3.3% of 65.8 mill. gallons
Commonwealth Water Co.	1.5% of 65.8 mill. gallons
Glen Ridge	0.5% of 65.8 mill. gallons
Bayonne	24.3% of 65.8 mill. gallons
Kearney	9.1% of 65.8 mill. gallons
Harrison	4.6% of 65.8 mill. gallons
East Newark	1.2% of 65.8 mill. gallons
Bloomfield	4.6% of 65.8 mill. gallons
Nutley	1.1% of 65.8 mill. gallons
Commonwealth and East Orange	4.6% of 65.8 mill. gallons
	100.

(Book III., p. 558.)

It is very evident that if the diversions by the Morris Canal Company and the Passaic Water Com-

pany were included, these proportions would be largely reduced.

In Weidmann Silk Dyeing Company vs. Newark, 83 N. J. L., 50, the rule is laid down which was followed in the subsequent cases in 91 Atl. Rep., 335, 337 and 338, that the total amount of damages caused by the illegal diversions of the several defendants having been ascertained, such amount should be apportioned in "the proportion of the current flow diverted by each in time of low water."

Judge Swayze, who delivered the opinion of the Supreme Court, said:

> "The defendant was not the only diverter. Other municipalities and the East Jersey Water Company had diverted water. The judge correctly charged the rule of Jenkins v. Pennsylvania Railroad, 38 Vroom 331, that it was for the good sense of the jury, as reasonable men, to form, from the evidence, the best estimate that can be made under the circumstances as a basis of compensatory damages for the actual injury. He, however, permitted them to adopt the theory of the plaintiff that the total damages might be apportioned among the diverters in proportion to the amount of water each consumed. The result was to charge the city of Newark with about one-third of the damage. Newark diverted only the waters of the Pequannock with a drainage area of sixty-two and one-half square miles, while the whole drainage area of the Passaic back of the Great Falls at Paterson and above the plain-

tiff's land was eight hundred square miles. The City of Newark accumulated in its reservoirs water in times of flood or high water in order to be able to supply its needs in times of low water. At the latter times the natural flow of the Pequannock watershed was insufficient to supply the city's needs. Obviously, then, at such times, the amount of the City's consumption was no measure of the extent of its diversion. The impounding of water in the City's reservoirs in time of flood, or high water, was no injury to the plaintiff. At such times the supply in the river was adequate for them, and it might even be to their adavantage to have the water impounded in time of flood. The injury to them came only in time of low water when it was impossible to pump the necessary supply from the river. The true basis for apportioning the loss among the diverters was the proportion of the current flow diverted by each in times of low water when the plaintiff could not obtain its supply by pumping. This, of course, affects only the question of apportionment and not the total of the plaintiff's loss; since they had to make a contract for a continuous supply even though they needed it only during low water, they are entitled to be repaid what it cost."

The following diversions of water, lawful and unlawful, as the case may be, are at present being made:

By Passaic Water Co.
for Paterson 10 mill. gal. per day

By Morris Canal	10	mill. gal. per day
By Newark	7.1	mill. gal. per day
By Jersey City	13.6	mill. gal. per day
By Acquackanonk Water Co. to Jan. 1st, 1925	9	mill. gal per day
By Montclair Water Co. to Jan. 1st, 1925	2.2	mill. gal. per day
By Commonwealth Water Co. to Jan. 1st, 1925	1	mill. gal. per day
By Borough of Glen Ridge to Jan. 1st, 1925	.35	mill. gal. per day
By City of Bayonne to October 6th, 1929	16	mill. gal. per day
By Kearney to Dec. 29th, 1920	6	mill. gal. per day
By Harrison to March 19th, 1929	3	mill. gal. per day
By East Newark, including Clark Thread Co.	.80	mill. gal. per day
By Bloomfield to May 1st, 1925	3	mill. gal. per day
By Nutley to Jan. 1, 1925	.75	mill. gal. per day
By Commonwealth Water Co., East Orange	3	mill. gal. per day
	85.8	

As the Passaic Water Company and the Morris Canal Company have acquired by prescription the right to divert the water they divert from the river, it must be presumed that they have obtained ancient grants from the owners permitting such diversions, and that the former owners of the rights so granted have been paid a fair value for the easements given to divert the water.

Care must be taken not to confuse the **right** to divert water from the stream with the actual diversion. Because the right to divert may have been acquired by the Morris Canal Company and the Passaic Water Company in years past, the stream must not be treated as if the water had actually been diverted so as to make it appear that the condemning parties, who would not be trespassers so far as future diversions by them were concerned, were diverting water from the balance left over after the legal diversions had actually been made. Assuming that the natural flow of the stream was 100 million gallons per day, and that in some past time some one had acquired a legal right to divert 10 million gallons per day, that is no reason that the stream should be treated as if at present it only contained 90 million gallons per day, whereas in fact it still contains the original 100 mill. gal. per day, from which 10 million gallons per day is continuously being diverted. So that when another diverter attemps to divert another 10 million gallons per day, he also is diverting from the natural flow, and not from 90 million gallons per day left after the legal diversion has been made. Out of the natural flow of 100 million gallons per day, there would, in the case supposed, be 20 million gallons per day being diverted, which would leave only 80 million gallons per day available to the owners. The fact that only 80 million gallons per day were left available to the owners would be due to the simultaneous action of the two parties; the action of the party who was legally diverting 10 million gallons per day, and of the other party who was originally illegally diverting the same amount per day. It would be untrue to assert, under the case supposed, that there were only 80 million gallons of

water per day left in the stream because some one was taking out 10 million gallons per day out of the original 100 million gallons per day. The balance of 80 million gallons per day left in the stream would be due to the fact that two people were each diverting 10 million gallons per day. To hold the condemning diverter liable because there were only 80 millions gallons per day left in the stream would be to hold him liable not only for his action in taking out 10 million gallons per day, but also for the action of the other party in taking a similar amount.

In considering this subject the mind will be aided by imagining the diversions by each diverter, whether originally legal or illegal, as being made through openings or apertures opposite each other, the legal diversions on one side of the river and the originally illegal diversions on the other side. It will then be clearly appreciated that the diminution in the natural flow of the river below the points of diversion is due just as much to the legal diversions as to the originally illegal diversions in the proportions of the quantities of water which each takes out of the flow of the river in the times of low flow thereof.

There might be force in the argument that the diversions by the Morris Canal Company and the Passaic Water Company should be excluded if we were to suppose a stationary body of water instead of a constanly changing body, as in a flowing stream, and if we were further to suppose that the legal authorized extraction or diversion were made in point of time prior to the other diversions so that the other diversions were made out of the balance in the stationary body left after the legal

diversions. For instance, suppose a reservoir with no inlet containing 25 million gallons of water belonging to "A" as his property and he required 10 million gallons for his own business, and he should sell 10 million gallons to "B" and "B" should actually withdraw that amount so that there would only be left 15 million gallons in the reservoir, and that after the reservoir had been reduced to that volume "C", took out 10 million gallons, leaving only five; it might be that under such circumstances "A" could hold "C" liable for his entire damage caused by his diversion. But that is not the situation in the instant case where, under the Jenkins vs. Pennsylvania Railroad case, each diverter is only bound to pay for the damage done by his own diversions. Furthermore, what may have been originally illegal diversions now become, by these condemnation proceedings, legal diversions.

The importance of the fact that the jury were instructed that they were not to take into consideration in figuring the proportions the diversions which were made by the Morris Canal and the Passaic Water Company is apparent from the manner in which the jury evidently reached their verdicts.

The amounts of the verdicts were:

Acquackanonk Water Co. vs. Weidmann S. D. Co.	$ 9,864
Acquackanonk Water Co. vs. National S. D. Co.	4,110
Jersey City vs. Weidmann S. D. Co.	149,040
Jersey City vs. National S. D. Co.	62,100
Newark vs. Weidmann S. D. Co.	77,760

Newark vs. National S. D. Co. 32,400
(Vol. V., p. 205.)

It becomes evident upon a simple calculation that in the cases of Jersey City and Newark against the two Dyeing Companies the amounts of the verdicts were found by the jury by following the court's instructions in regard to the method by which the damages to be paid by these two municipalities were to be apportioned between them, the Acquackanonk Water Co. and the other Water Companies and municipalities which were forced to take under the Chancellor's orders (erroneously referred to by the trial Judge as five in number). (Vol. IV., page 13 of charge, line 35 to page 14, line 32.)

In the case of the Acquackanonk Water Company the verdicts seem to have been reached in the manner we shall hereinafter point out.

The proportions of the total diversions by the thirteen diverters to which the court's instructions apply were the proportions testified to by Mr. Cook in his testimony. (Vol. III of Testimony, p. 558.) He testified that Newark's proportion was 10.8%, Jersey City's 20.7% and the Acquackanonk Water Company's (based on a perpetual right) was 13.7%.

Assuming that the jury adopted these figures, and it is evident they did, it follows that the jury found that the total diminution in the value of the Weidmann Company's property, due to the total diversions by the thirteen diverters, was $720,000.

This is evident, because 10.8%, Newark's proportion of $720,000, amounts to $77,760, the amount of the verdict against Newark in the Weidmann Case; and because 20.7%, Jersey City's proportion of the said total sum of $720,000, is $149,040, which is the amount of the verdict against Jersey City in the Weidmann case.

In the same way it is evident that the jury found that the total diminution in the value of the National's property was $300,000, because 10.8% of that sum amounts to $32,400, which is the amount of the verdict against Newark in the National case; and 20.7% of $300,000 amounts to $62,100, which is the amount of the verdict against Jersey City in the National case.

In the case of Acquackanonk Water Company, the evidence was that its proportion of the diversions, based upon a perpetual right, was 13.7%. Based upon that percentage upon the total sum of $720,000, taken as the total diminution in the value of the Weidmann property, the verdict against the Acquackanonk Water Company would have been $98,640.

However, the Acquackanonk Water Company was condemning only until January 1, 1925, approximately six years, and the verdict against it in the Weidmann case was $9,864, which amount is exactly one-tenth of what the verdict would have been, based upon the above figures and percentages.

Likewise in the National case the verdict against

the Acquackanonk Water Company, based upon a percentage of 13.7% for a perpetual right upon the total sum of $300,000, taken as the total diminution in the value of the National property, would have been for $41,100. The amount of the verdict actually was $4,110, or exactly one-tenth of the amount which it would have been for a perpetual right based upon 13.7% of $300,000.

In the Acquackanonk Water Company cases the jury seems to have concluded that the right to divert for a period of six years was worth one-tenth of the right to divert perpetually, but there was no evidence submitted upon that question, and no rule was laid down to the jury to that effect. (See page 566, Vol. III, Testimony.)

The award of the Commissioners in the Acquackanonk Water Company cases was for $5,400 in each case, which was the amount offered by that Company in each case, and that offer was based upon the calculation of $100 per million gallons per annum, which for nine million gallons per annum for six years (the amount and period being condemned) would amount to said sum of $5,400. The jury's verdict was for less than that amount in the National case, and for more in the Weidmann case. It is very evident that the jury took the sum which the Acquackanonk Water Company would (according to their assessment of the damages) have had to pay, were its diversion to be perpetual, as the basis of their calculation, and then allowed two years interest at 5% per annum on that sum as the amount of their verdicts against the Acquackanonk Water Company. The Ac-

quackanonk Water Company asked the right to divert for six years. The jury must have concluded that so far as four years of that period were concerned (two of which had already expired during which the pollution of the river by the dyers had continued) the dyers would continue to pollute the river, and would not be entitled to any damages during those four years. Therefore they allowed two years interest only at 5%.

However that may be, the foregoing calculations clearly establish the fact that the jury took, as the basis of their verdict, the sum of $720,000 as the amount of the total diminution in the value of the Weidmann property caused by the diversions of the thirteen parties which the court instructed the jury they must take into consideration in apportioning the damages among all of them; and that $300,000 was the amount of the total diminution of the National property caused in the same manner, so arrived at by the jury.

The following were the total diversions from the Passaic River as established by the evidence:

Montclair Water Co.	2,200,000
Commonwealth Water Co.	1,000,000
Glen Ridge	350,000
Bayonne	16,000,000
Kearny	6,000,000
Harrison	3,000,000
East Newark	800,000
Bloomfield	3,000,000
Nutley	750,000
Morris Canal	10,000,000

Passaic Water Co.	10,000,000
Jersey City	13,600,000
Newark	7,100,000
Acquackanonk Water Co.	9,000,000
Commonwealth, East Orange	3,000,000
	85,800,000

The following were the percentages testified to by Mr. Cook based on the diversions only aggregating 65,800,000 gallons:

Montclair Water So.	2,200,000	3.3%
Commonwealth Water Co.	1,000,000	1.5%
Glen Ridge	350,000	.5%
Bayonne	16,000,000	24.3%
Kearny	6,000,000	9.1%
Harrison	3,000,000	4.6%
East Newark	800,000	1.2%
Bloomfield	3,000,000	4.6%
Nutley	750,000	1.1%
Jersey City	13,600,000	20.7%
Newark	7,100,000	10.8%
Acquackanonk Water Co.	9,000,000	13.7%
Commonwealth, East Orange	3,000,000	4.6%
	65,800,000	100.

Had the diversions aggregated 85,800,000 gallons per day, as they would have, if the diversions by the Morris Canal and the Passaic Water Company had been included, Newark's diversion, 7.1 million gallons per day, would have been only 8.2% of the total diversions (85,800,000 gallons per

day). Acquackanonk's would have only been 10.5%, and Jersey City's only 15.8%.

So that taking the total damages as found by the jury in the Weidmann cases to be $720,000, Jersey City's share would only have been $113,760 instead of $149,040; Newark's would have only been $59,040 instead of $77,760, and the Acquackanonk's based on a perpetual diversion would have been $75,600 instead of $98,640, and as the jury calculated its verdict at one-tenth of the Acquackanonk's share had its diversion been perpetual, the verdict against it would have been $7,560 instead of $9,864.

Similarly, in the National cases, taking the total damages as fixed by the jury to be $300,000, Jersey City's share of that would have only been 15.8% thereof, viz., $47,400 instead of $62,100; Newark's share would have only been $24,600 instead of $32,400, and the Acquackanonk's share would have only been $3,150 instead of $4,110.

It must be concluded, we submit, that the jury must have fixed (because they had no other means of fixing) the damages ($720,000) as the difference between the value of the Weidmann's property today with the flow in the river that is in it today, which flow is of course daily affected by the diversions of the Morris Canal and the Passaic Water Company, and what the value of that property would have been were the natural flow of the river still there, namely, what the natural flow would have been without any diversions by any body, and yet although it must be

concluded the jury arrived at their damages in that way, they were instructed to leave out of consideration the diversions by the Morris Canal and the Passaic Water Company, thus throwing the burden of those diversions and the obligation for the part which those diversions took in making up the aggregate damage, upon Jersey City, Newark and the Acquackanonk Water Company.

We submit that the instructions by the court to the jury that they should leave out of consideration the Morris Canal's diversions and the Passaic Water Company's (both of which continue today and will continue day by day hereafter) was error prejudicial to the appellants, and for that reason a new trial should be granted.

Whatever may be the true method of computing damages in cases where a Water Company or municipality is *unlawfully* (as against the lower riparian owner) abstracting water from the stream; whether in such a case the offending party, being a trespasser as against the plaintiff, who is suing it for damages, must pay the whole damage without taking into consideration the diversions by some legal diverters whose diversions do not *per se* damage the plaintiff, we submit that in condemnation proceedings, when the Water Company or municipality seeks to secure the *legal right* to abstract the water by paying for it, such Water Company or municipality is not a trespasser in the eyes of the law, and can only be held liable for the diminution in the value of the plaintiff's lands as that value exists with all diverted water by whomsoever diverted taken out of the

river, and what that value would be if the whole flow were there without any water diverted from it at all, and that then the Water Company or municipality can only be held liable for that portion of said diminution in value (representing the damages) which its diversions bear to the total diversions by all parties. Otherwise, each of ten diverters of water might, month after month, bring condemnation proceedings to condemn the right to divert water, and if the aggregate of their diversions amounted to one million gallons per day, and the owner only needed for his business purposes 100,000 gallons per day, the unfortunate tenth condemnor, whose condemnation proceedings were last on the string, would have to pay the whole damages, and the other nine, who had obtained their rights of diversion a few months previously, would have got those rights for nothing. Surely, we submit, this cannot be the law.

If the Morris Canal Company and the Passaic Water Company had only recently obtained contractual rights along with Bayonne and the other water companies and municipalities to divert the water they divert at the present time, then it was conceded by Judge Silzer (for he so held with reference to the diversions by Bayonne and the other water companies and municipalities who had thus recently obtained contractual rights to divert) that the diversions by the Morris Canal and Passaic Water Company would have to be taken into consideration just the same as the diversions by Bayonne and the other water companies and municipalities were taken into consideration. The diversions by the Morris Canal Company and the

Passaic Water Company are taking place, and will continue to take place, concurrently with the diversions by Jersey City, Newark, the Acquackanonk Water Company, Bayonne and the other water companies and municipalities who recently obtained contractual rights to divert, and it is impossible to distinguish between their diversions and those of the condemning parties as to which of them, to the extent of its diversions, is today in fact injuring the owners. It is their united diversions that injure the owners, and there is no means whereby the mind can separate them. What possible distinction can be made between Bayonne, who only recently obtained the contractual right to divert the water, and the Morris Canal Company and the Passaic Water Company, who, it must be presumed, acquired their contractual rights years ago?

Point II.

The Court erred in allowing interest on the amount of the verdicts from the dates of the filing of the petitions for the appointment of Commissioners, or from any other dates than the dates of the verdicts themselves.

This point may be best considered under three subdivisions:

Subdivision I

The statute concerning eminent domain in this State is not framed so as to cover a case where the property sought to be condemned has been taken by the condemning parties in advance of the condemnation proceedings and it consequently contains no provision for the allowance of interest from the

date of filing the petition and order thereon. (Comp. Stat. of N. J., Vol. 2, p. 2181.)

It is apparent from an examination of Sections 7, 8, 13 and 14 that the draughtsman of the Act drew it upon the theory that the property sought to be condemned would not be taken possession of until payment or tender of payment of the amount awarded, and this notwithstanding the phraseology of Section 6 of the statute.

Section 6 of the Act prescribes that:

> "The Commissioners * * * 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 appraisement 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, as of the date of the filing of the petition and order thereon * * *."

It appears from this section of the statute that besides viewing the premises the Commissioners have two other things to do; (1) to make a just and equitable appraisement of the land or other property as of the date of the filing of the petition and order, and (2) to make an assessment of the amount to be paid by the petitioner for such land or other property and damage aforesaid as of the date of the filing of said petition and order.

It would seem to follow from the above that the

amount of the award relates back to the time of the filing of the petition and order, and determines the amount which should be paid for the property and damage on the date of the filing of said petition and order.

Section 7, however, provides in clear and unambiguous language that:

> "Upon the filing of the report of the Commissioners, and upon payment, or tender of payment, *of the amount awarded (not of such amount with interest from the date of filing the petition, but of the amount awarded without any reference to interest)* as hereinafter provided, the petitioner is hereby empowered to enter upon and take possession of said land or other property for the purposes for which the same was authorized to be taken, and the said report together with the petition and orders, or a copy of said report, petition and orders, certified by the Clerk of the County, and proof of payment or tender *of the amount awarded (not of such amount with interest from the date of filing the petition, but of the amount awarded without any reference to interest)* shall be at all times considered as plenary evidence of the right of the petitioner to have, hold, use, occupy, possess and enjoy the said land and other property * * *."

Section 8 of the statute provides that:

> "In case the party entitled to receive *the*

amount assessed by the Commissioners shall refuse, upon tender *thereof, (not upon tender thereof with interest, but upon tender thereof without any reference to interest)* to receive the same, or shall be out of the State, or under any legal disability, or in case several parties being interested in the fund shall not agree as to the distribution thereof * * *, or in case for any other reason the petitioner cannot safely pay the *amount awarded* to any person, in all such cases, on petition to the Chancellor, to which shall be annexed a copy of the petition in condemnation, and of the report of Commissioners, *the amount awarded (not the amount awarded with interest from the date of fiing the petition, but the amount awarded without any reference to interest)* may be paid into the Court of Chancery by order of the Chancellor, and shall there be distributed according to law on the application of any person interested therein; and written notice given to the owner or owners, and to persons interested, *that such money* has been so paid into court shall have the same effect as *if the money so awarded* had been actually tendered to the owner or persons entitled thereto * * *."

Section 13 of the statute provides 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 dam-

ages sustained; and if they shall find a greater sum than the Commissioners awarded, then judgment, with costs (*but without any reference to interest from the date* of the petition), shall be entered against the petitioner, and execution awarded therefor; but if said jury shall be applied for by the owner, and shall find a less sum *than the Commissioners awarded,* then costs shall be paid by said appellant, and ether deducted out of said sum *found by the jury,* or execution awarded therefor, as the court shall direct. Where payment of *the amount found by the Commissioners* (*not of the amount with interest from the date of filing of the petition, but of that amount without any reference to interest*) has been made before the trial of the appeal to the owner or into court, as above provided *and the amount found by the jury* shall be a less sum than was awarded by the Commissioners, the petitioner may recover back the amount paid less the *amount found by the jury,* and on proof of such payment judgment may be entered by order of the court in favor of the petitioner against the owner or owners, or either of them, for the excess recovered by him, or either of them respectively, and execution therefor may be issued against any owner to recover the amount received by him; and the petitioner shall have such further remedies in law or equity as may be appropriate for the recovery of the amount paid in excess of the *true value as found by the jury.*"

Section 14 provides that:

> "The taking of an appeal by either party shall not prevent the petitioner from taking the land or other property upon filing the report of the Commissioners and making tender and payment, or payment into court, as above provided, *of the award (not of the award with interest from the date of filing the petition, but of the award without any reference to interest)* at any time before the verdict of the jury on appeal, etc."

It is very evident from the language of these sections that their draughtsman had no intention to provide that interest on the award or verdict should run for any other periods than from their respective dates.

While the fifteenth section of the Act provides that: "Nothing in this Act contained shall limit or restrict any right to enter upon and take property in advance of making compensation therefor which has been, or may hereafter be, granted to any municipal corporation, or to the State, or to the authorities of the County, or to any other of the public agencies of the State * * *," the machinery of procedure supplied by the rest of the Act does not provide any means for the enforcement of the payment of such interest.

Subdivision II

If however it be conceded (as we are forced to concede under the ruling in Metler vs. Easton & Amboy Railroad Company, 37 N. J. L., 222) that in cases where the property sought to be condemned has been taken possession of at the time of, or in

advance of the filing of the petition, equitable principles would require in view of the language of Section 6, that interest should run from the date of filing the petition as the means of reaching the full measure of the just compensation which, by the constitution, the owner is entitled to receive for his property, there is nothing in the statute contained to forbid the commissioners or the jury from directing that the award or verdict, (as the case may be), shall carry interest from the date of filing the petition.

The mere fact that the Commissioners are required to make a just and equitable appraisement of the value of the property sought to be condemned as of the date of the filing of the petition, and an assessment of the amount to be paid by the petitioner for the property and damage *as of the same date,* does not either expressly or impliedly prohibit the Commissioners or jury from directing as part of their award or verdict (as the case may be) that the same shall carry interest from the date of filing the petition. Had this been done, and had the interest been included in the verdict, the Constitutional objection to our construction of the statute which counsel raises would have been clearly avoided.

In the case of Metler vs. Easton & Amboy Railroad Company, supra, cited by counsel, the jury itemized their verdict, separating the interest they allowed from what they found to be the value of the land and damages incident thereto.

That the allowance of interest, however, in any given case is a question for the jury, and not for the Court, seems to necessarily follow from Judge Depue's opinion in the case last cited. That was

a case where the verdict of the jury had, under the statute there being made use of, to relate back to the time when the appraisement was made by the Commissioners, precisely analogously to the case at bar, where admittedly the verdict of the jury has to relate back to the time of the filing of the petition. Judge Depue said in that case, "The time when the appraisement was made by the Commissioners is the period with reference to which the valuation of the land and damages for the taking is to be made by the jury on the trial of the appeal," and the *jury* actually found as part of their verdict for interest between the date when the appraisal was made by the Commissioners and the date of their verdict the sum of $225.92.

Judge Depue further said in that case:

> "This general rule for the allowance of interest is liable to be controlled by the circumstances of each particular case. If the owner has not been disturbed in the possession, and has had a profitable use of the premises, or has received the rents for them pending the appeal, these circumstances should be taken into account and the interest abated accordingly. Possibly, the like effect may be given to a tender and payment into court, where the statute provides for such proceeding.
>
> "But whatever effect the fact that the owner has enjoyed a profit from the lands pending the appeal, should have on the allowance of interest, advantage must be taken of it at the trial. It is said in this case that the property condemned was a

> house and lot, and that the plaintiff continued to receive rents after the report of the commissioners was filed. If that be so, the proof should have been laid before the court at the trial, and the attention of the judge called to it, with the request that he instruct the jury to take into consideration the rents received in making an allowance of interest. On this application we must assume that this question was correctly dealt with by the court; and that no abatement should have been made on the grounds just referred to."

It is perfectly clear from this citation that proper practice requires that inasmuch as this general rule for the allowance of interest is held to be controlled by the circumstances of each particular case, the allowance of interest should be asked for at the trial, and that its allowance is solely and exclusively a jury question. There is no hint in any of our New Jersey cases that the trial judge has any authority to add interest to a verdict of a jury from a date antecedent to that verdict, and the cases cited by counsel have no binding force to govern or bind a New Jersey court, and are diametrically opposed to the practice existing in New Jersey, as evidenced by the practice adopted in the case of Metler vs. Easton & Amboy Railroad Company, to which we have referred.

Kilgus vs. Wayne Co. (Ct. of E. & A. of N. J.) 85 L. 351 and cases therein cited.)

We have examined the charter of the Easton &

Amboy Railroad Company (Act 1872, p. 317), under the eighth section of which the condemnation proceedings were brought in the Metler case, and we find that it does not state the time when compensation shall be assessed and paid to the owner. With that one exception the provisions of that charter are almost identical with Sections 7, 8, 13 and 14 of the present Eminent Domain Act. *No reference is made in either statute to interest,* except the reference made in Section 7 of the latter Act to the imposition of interest after the certification of the Commissioners' award, which clearly relates to the date of the report. What possible distinction can be drawn between the power of the jury in the Metler case to allow interest from the date of the Commissioners' award to the time of the trial, and the power of the jury in the case at bar, to allow interest from the date of the filing of the petition to the date of the trial. The only difference between the two cases is that in the one case (the case at bar) the statute points out the time with reference to which the valuation of the land and damages for the taking is to be made by the jury on the trial of the appeal, whereas, in the other case (the Metler case) the *court* lays down the rule and points out what that time shall be, viz., the time when the appraisement was made by the Commissioners. The fact that in the one case the time is fixed by statute and in the other case by the court, cannot affect the power of the jury, and the exclusive power of the jury to deal with the question of interest.

We are not concerned, in referring to the ap-

peal proceedings in the Circuit Court to consider what the situation would have been if no appeal had been taken; whether, in order to render the statute constitutional, the court would not have held it to be the duty of the Commissioners in making their award, as it was the duty of the jury in the Metler case in rendering their verdict, to have added interest (in a proper case) from the date of filing the petition to the date of the award, or to state, as part of their award, that it was to carry interest from the date of the filing of the petition to the date of the award, or whether in that situation the court would have adopted our opponent's mode of rendering the Act constitutional by mutilating its phraseology, as we shall hereafter show it would have to be mutilated for that construction to be given effect to. Of course in the Metler case the Commissioners would have had no interest to add, as the time with reference to which their award was to be made was the date of their award. We submit with great confidence that the court would adopt our view, even in the case of the Commissioners, and would say that just as in the Metler case, though the charter of the Easton & Amboy Railroad Company availed of in that case contained no mention of the right of the jury to allow interest, yet they allowed it, so in the case at bar, though there is nothing in the sixth section of the Eminent Domain Act to require the Commissioners to allow interest, yet to render the statute constitutional they should, in a proper case, allow it. It must be remembered that interest from the date of the filing of the petition to the date of the award would in most cases be negligible.

It seems to us impossible to believe that this Court will prefer to put a construction upon Sections 7, 8, 13 and 14 of the Eminent Domain Act which it is impossible for those sections to bear without inserting additional phraseology in each section, as hereinafter pointed out, sooner than give the Commissioners, by implication, the same power in regard to interest as the jury have always had on an appeal.

Subdivision III

For the Court to add interest to the verdict from the date of filing the petition would necessitate a judicial amendment of Sections 7, 8, 13 and 14 of the statute, which the court has no power to make, whereas if the question of interest had been submitted to the commissioners or jury, it would have formed part of the award or verdict, and Sections 7, 8, 13 and 14 of the statute would have been precisely applicable in the form in which the legislature has written them. It necessarily follows that the legislature recognized that the interest question would be taken care of by the Commissioners or jury and included in the award or verdict, and so it framed Sections 7, 8, 13 and 14 in the language in which it did frame them.

The action of the court below, in adding to the verdict interest from the date of the filing of the petition, necessitates a construction of Sections 7, 8, 13 and 14 of the statute so as to read as follows:

> Section 7. "Upon the filing of the report of the Commissioners, and upon payment, or tender of payment, of the amount awarded (*with interest or without interest, as the court may find the facts warrant* * * *) and proof of payment or tender of the amount awarded (*with interest, if any*)

shall at all times be considered as plenary evidence, etc."

Section 8. "In case the party entitled to receive the amount assessed by the Commissioners shall refuse, upon tender thereof, to receive the same (*with interest, if any*) or shall be out of the State, or under any legal disability * * *, or in case for any other reason the petitioner cannot safely pay the amount awarded (*with interest, if any*), to any person, in all such cases, on petition to the Chancellor * * * the amount awarded (*with interest if any*) may be paid into the Court of Chancery, etc."

Section 13. "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; and if they shall find a greater sum than the Commissioners awarded, then judgment with costs (*and interest, if any*) shall be entered against the petitioner and execution awarded therefor, etc., etc."

Section 14. "The taking of an appeal by either party shall not prevent the petitioner from taking the land or other property upon filing the report of the Commissioners and making tender and payment, or payment into court, as above provided, of the award (*with interest, if any*) at any time

> before the verdict of the jury on appeal, etc. * * * upon the finding by the jury, the amount so found, or so much thereof, as shall not have been paid (*with interest, if any*) shall be tendered, or paid into court in like manner as above provided for the payment of the award; and if possession shall not have been taken before the finding by the jury, then the petitioner, upon payment as aforesaid, or payment into the Court of Chancery of the amount due as found by the jury (*with interest, if any*) may enter upon, etc."

We of course recognize the rule that where the words of an act admit of two meanings, one of which would make the Act unconstitutional, and the other not, it will be held that the legislature intended to use them in the sense which would be in accordance with the Constitution.

Colwell vs. May's Landing Water Power Co., 19 N. J. Eq., 245.

But the words we have cited from the sections above do not admit of two meanings, but only of one meaning, and if the effect of that meaning be to render the statute unconstitutional, this court, we respectfully submit, has no power to add words to the statute so as to render it constitutional, whereas if the question had been properly left to the jury, as it should have been, there would then be no question as to the constitutionality of the Act precisely in the language in which it is drawn.

The result, as we see it, of the construction of the statute urged by our adversaries would be that in cases where the property has not been taken before the filing of the petition, or before the filing of the report of the Commissioners, or before the verdict of the jury on the appeal (it does not particularly matter which), the Act should be strictly construed *according to its letter,* and neither the award nor the verdict should carry interest from the date of filing the petition; whereas in cases where the property has been taken in advance *the court* would have the right to add interest to the awards, and this it could only do by inserting the matter which we have inserted in brackets into the various sections of the statute above set forth. This, we submit, would be so violent an alteration of the language of the statute as to be unsupported by any rule of construction hitherto adopted by our courts, and as we have already pointed out, no alteration of the statute at all is necessary if the question of interest is decided by the jury, as was done in the Metler case, because then the interest becomes part of the verdict, and the language of the sections of the statute we have referred to become exactly applicable.

If it be asked, what practical difference would it make whether the jury added the interest, or the court, the answer to that question is that no one can tell what effect instructions to the jury that they should add interest to their verdicts would have had upon the amount of their verdicts. They might have thought that their verdicts, without interest, were sufficient. Juries' and judges' minds unfortunately (and sometimes fortunately) do not

always operate in the same channel, but the point is that we were entitled to have the jury instructed on the subject, and that the language of the statute, as we have endeavored to point out, expressly negatives the idea that the court, after the award or verdict of the Commissioners or jury, has any power to add interest to the amounts found thereby. Moreover, while courts enforce justice, they also avoid laying down precedents which may result in injustice in future cases.

The construction we place on this statute in this brief is consistent with the constitutionality of the statute in the very language in which it is framed, whereas the construction called for by our adversaries requires a judicial mutilation by the court of the language of the statute, for which we find no precedent. We submit that it was counsel's duty to have requested the trial court to charge the jury on the question of interest, and by his failure to do so he is without remedy in the matter. Had the Circuit Court declined his request it would have been a ground for appeal.

It is not at all clear, however, that the jury's verdict would have been any different had they received express instructions on the subject of interest.

This is not a case where the condemning parties are unreasonably withholding money justly due to the owners. The condemning parties are proceeding in an orderly manner, following the requirements of the statute concerning eminent domain and the rules and practice of the courts in this

State, to ascertain how much money they actually owe to the owners, the owners having declined the offers which they originally made to them, and until they know how much that sum is, it is impossible for them to make tender of the amount due.

The charter of the Acquackanonk Water Co., approved April 6, 1867 contains no provision for the payment of interest. It provides that the commissioners shall report in writing to the parties interested the whole amount which the company must pay each owner, which said report the company shall have filed in the office of the Clerk of Passaic. * * * And it shall be the duty of said company to pay the owner or owners the amounts assessed as aforesaid. It provides for an appeal to the Circuit Court, but says not a word about interest.

The act empowering cities to condemn (P. L. 1895, p. 769) provides that upon an appeal the court shall enter judgment for the amount of the verdict with or without interest and costs according to the provisions of this act, and the principles of law applicable to the trial of similar issues in other cases. Note, that in no other similar case does interest run, except from the time of the verdict, judgment being entered as of the date of the verdict *nunc pro tunc.*

Section 6 of the Revision of 1900 on Eminent Domain requires the Commissioners to make a just and equitable appraisement of the land or other property, and an assessment of the amount to be

paid by the petitioner for such land or other property and damage aforesaid *as of the date of the filing of the petition and order thereon.* There is no right of entry given the petitioner until the filing of the report and the payment or tender of payment of the amount awarded.

Section 7 provides that the said report, together with the petition and order, or a copy, certified by the Clerk of the County, shall be plenary evidence of the right of the owner to recover the amount awarded with interest (evidently meaning interest running from the filing of the report) and costs in an action upon contract in any court of competent jurisdiction in a suit to be instituted against the petitioner after neglect to pay the same for twenty days after filing the report, and shall, from the time of filing the report, be enforceable as a lien upon the property taken and any improvements thereon.

Manifestly, if the legislature had intended interest to run from the date of the filing of the petition, the statute would have said so, and provided that the verdict should be entered as of that date.

It may be argued that there is no right of entry until payment and tender, and that therefore during the period between the filing of the petition and the filing of the report of the commissioners the diversions were tortious in character and could be sued for. If so, to such a suit we would have the defense that during that period the dyers were using the water for an unriparian use,

but the complete answer to such an argument is that the award covers all damage done to the property from the filing of the petition forever afterwards. Nevertheless the statute gives no remedy for delay in paying the verdict until it is reduced to an unappealed report filed by the commissioners, or to judgment entered in the Circuit Court.

In Pennsylvania Co. vs. City of Philadelphia, (Supreme Court of Pennsylvania), 112 Atl. Rep., 76, the head note reads:

> "The owner of property taken under condemnation is entitled to compensation for delay in payment of damage which begins to run from date of appropriation and is to be measured by an interest rate; and where there is no evidence as to normal commercial rate it will be presumed to be the legal rate then in effect to be recovered as damages."

In that case and in Hoffman vs. Philadelphia, 104 Atl., 674, and in Whitcomb vs. Philadelphia, 107 Atl., 765, the *jury* were directed to find damages for delay in payment equivalent to interest. The court did not attempt to mould or change the verdict so as to include interest, but instructed the jury to include the interest.

In re Parkway between City Hall and Fairmount Park (Supreme Court of Pa., April 19, 1920), 110 Atl. Rep., 144, the head note reads:

"In proceedings by city to condemn un-

> opened portion of parkway, it would have been better practice if jury of view, after finding value of property as of date of taking and compensation for delay, had automatically calculated latter, stating award as a total, but the method to award the value of the property with 6 per cent interest from the date of taking, there having been some seven years delay, did not change the real character of the award."

It does not of course follow that the jury, in the cases at bar, would have found as large verdicts as they did find had they understood that there would have to be added to the amount of their verdicts interest from the time of the taking, viz., from the date of the filing of the petition up to the date of their verdicts.

In Pennsylvania there is this statute (P. L. 1915, p. 685):

> "That in all cases where private property is taken, injured, or destroyed by municipal corporations invested with the privilege of taking private property for public use, the damages caused by such taking, injury or destruction shall bear interest, at the rate of six per centum per annum, from the date of such taking, injury, or destruction thereof."

(Note that there is no similar statute in the State of New Jersey.)

In Butte Elec. Railway Co. vs. Matthews, 87 Pac., 460:

"The Court instructed the jury that for the purpose of assessing the compensation and damages the right thereto should be deemed to have accrued at the date of the summons, and that the actual value at that date should be the measure of compensation for all the property taken. * * * The jury were also directed to allow interest upon the amounts so found from * * * the date the plaintiff took possession. * * *. The theory of the instruction is, however, that since the plaintiff took possession on October 15, 1900, the defendant should be allowed interest from that date * * * The correctness of this theory is not questioned, but the contention is made that the court had no power to direct judgment for any other sum than that mentioned in the verdict, and we think this contention must be sustained. Section 1102 of the Code of Civil Procedure provides: 'When a verdict is found for a plaintiff in an action for the recovery of money * * * the jury must also find the amount of the recovery.' This is a clear direction that the jury must find the amount of the verdict, and evidently the jury in this case did, for the concluding language of the verdict is: 'The total amount awarded to the answering defendants being $1200; thus indicating that the jury followed the instructions given by the court, and made all allowances to which the defendants were entitled. Furthermore, there is no principle of law more firmly established than that the judgment must follow

> and conform to the verdict or findings. (11 Enc. Pl. & Pr., 905.) If the jury had found the amounts to which the defendants are entitled, and had specified that these amounts should draw interest from October 15th, 1900, upon the principle that that which can be made certain must be regard as certain, the court might very well have computed the interest, and included it in the judgment; but such was not the case, and the only thing left for the court to do was to render judgment for the amount found by the jury, leaving it to the defendants, if they were not satisfied, to move for a new trial on the ground that the verdict did not follow the instructions of the court. But, since the jury evidently intended that its findings should include all the allowances to which defendants were entitled, we do not think that even this contention would have been meritorious."

In this connection observe the language of the verdicts in the cases at bar as indicating that the jury intended that its findings should include all allowances to which defendants were entitled. The language of the verdicts was this: "We find that the City of Newark is to pay to the Weidmann Silk Dyeing Company the sum of $77,760; the Mayor and Aldermen of Jersey City are to pay to the Weidmann Silk Dyeing Company the sum of $149,040; the Acquackanonk Water Co. is to pay to the Weidmann Silk Dyeing Co. the sum of $9,864," and precisely similar language was

used in regard to verdicts recovered in favor of the National.

In Blackwell E. & S. W. Ry. Co. vs. Bebout, 91 Pac. 877, the fourth head note reads:

> "Where the person in whose favor a verdict is rendered is entitled to interest, and there is nothing in the record from which it can be determined whether or not the jury took into consideration the matter of interest in fixing the amount of the award, it will be presumed that they included interest."

To conclude our discussion of this interest question, may we point out that in the ordinary case, where the commissioners or jury have to make a just and equitable appraisal of the value of land and assess the damages *as of the date of the filing of the petition,* the date of the filing of the petition has great significance, because the value of the land to be taken might, by improvements, or for other reasons on the one hand, or by reason of fire or some form of damage or destruction on the other, materially increase or decrease between the date of the filing of the petition and the date of the award or verdict? But where the task of the jury is to assess damages for the proposed perpetual diversion of water from a river, and they have to consider not only present damage, but probable future damage, lasting for all time, involving calculations alike of interest and discount in regard to the various elements going to make up the damage, and in regard to the periods when

such damages will arise, the date of the filing of the petition has no logical significance or relevancy whatever. It would be a physical impossibility in such a case as in the cases at bar for the jury honestly and intelligently to say—in January 1919 (when the petitions were filed) all the various calculations we have had to go into in arriving at the amount of our verdict justified us in fixing our verdict against Jersey City at $149,040 *as of that date,* whereas if we had had to assess the damages on August 8th, 1922 (the date when the judgment was entered) *as of that date* we would have fixed the damages at $169,855.86.

For the above reasons we submit that the court had no power under the Eminent Domain Act to add interest to the verdicts, and for that reason and the reasons stated under Point I the judgment of the Supreme Court should be reversed.

Respectfully submitted,

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William B. Gourley,
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No. 47-48-49

New Jersey Court of Errors and Appeals

The Acquackanonk Water Co.,
Petitioner-Appellant,
vs.
The Weidmann Silk Dyeing Co.,
Defendant-Respondent.

The Acquackanonk Water Co.,
Petitioner-Appellant,
vs.
The National Silk Dyeing Co.,
Defendant-Respondent.

The Mayor and Aldermen of the City of Jersey City,
Petitioner-Appellant,
vs.
The Weidmann Silk Dyeing Co.,
Defendant-Respondent.

The Mayor and Aldermen of the City of Jersey City,
Petitioner-Appellant,
vs.
The National Silk Dyeing Co.,
Defendant-Respondent.

On appeal from judgments of New Jersey Supreme Court affirming judgments of Passaic Circuit Court in condemnation proceedings

Brief for Respondents

The record in these cases contains the proceedings of the *City of Jersey City*, the *City of Newark* and the *Acquackanonk Water Company* to condemn rights of diversion of water from the Passaic River

as against two riparian owners, namely, the Weidmann Silk Dyeing Company and the National Silk Dyeing Company. The proceedings in condemnation were brought in consequence of an injunction granted by the Chancellor and affirmed by the Court of Errors and Appeals enjoining the condemnors from diverting water from the river unless condemnation proceedings were inaugurated within a stipulated time (see, *Weidmann Silk Dyeing Company v. Jersey City,* 88 Equity, page 397).

The cases were by consent tried together before Commissioners and, on the appeal, before the Court and jury at the Passaic Circuit Court.

After the verdicts were rendered rules to show cause were granted by the Circuit Court with the reservation that the granting of the rules should not operate as or be a bar against the condemnors taking or prosecuting an appeal from the judgment upon the specific points alleged as grounds of appeal.

The Circuit Court Judge heard the rules to show cause and after thorough argument and consideration of all the matters involved in the rules to show cause discharged the rules to show cause.

One hundred and twenty or more requests to charge were submitted by the condemnors, some of which were charged as requested, others were charged with modifications and others were refused.

An appeal was taken by the city of Newark, together with the appeals of the other appellants, to the Supreme Court but the City of Newark has taken no appeal from the judgment of the Supreme

Court to this Court. On the appeal before the Supreme Court many points were argued relating to the points reserved based upon the charge of the Court and refusal to charge requests.

All of the seven points argued before the Supreme Court have been abandoned by the appellants except the two points now argued in their brief. Therefore, we shall confine our discussion to these two points.

POINT I.

THE DYEING COMPANIES ARE ENTITLED TO THE TOTAL DAMAGES WHICH THEY WILL SUSTAIN UNDER RIGHTS ACQUIRED BY THE PERSONS WHO ARE TAKING BY THE CONDEMNATION PROCEEDINGS.

In making such awards the appellants contend, that the jury should have taken into consideration the diversions by the Passaic Water Company and the Morris Canal and Banking Company who took water by prescriptive rights.

Our contention is, that in making such award no consideration whatever should be given to these diversions by these two companies for the following reasons:

1. These are condemnation proceedings, in which proceedings, under the petitions therefor and the instructions of the Court, the diversions of the Passaic Water Company and the Morris Canal and Banking Company are wholly immaterial and inapplicable. By each of these proceedings

the cendemnors acquire the right to take and divert certain quantities of water from the Passaic River and its tributaries as against the lands of the several owners, which water would otherwise flow past the lands of the owners and be used by them. (See petitions for condemnation, Case. Vol. V., pp. 88 to 132.)

The compensation allowed to the owners for such taking was the difference between the value of the owners' property as a unit at the time of the taking and its value after the taking. Manifestly, therefore, in order to determine this difference, the material question was, what was the whole quantity of water, to which the owner had the right *at the time when the condemnation took place?* It was of no consequence, that many years before the condemnation took place the Passaic Water Company and the Morris Canal and Banking Company had acquired prescriptive rights to take water, because the condemnors were by their petitions not taking from such rights as the owners had before the Passaic Water Company and The Morris Canal and Banking Company had acquired their rights, but were merely taking certain quantities of water from such rights as the owners had whatever they were at the time of condemning, and the compensation was based entirely upon the difference between the value at the time of the taking and after the taking. In other words, the condemnation has no relation whatever to the quantity of water or water rights that the owner may have had prior to the condemnation but only to such as existed at the time of the condemnation.

If such diversions under prescriptive rights

should be deducted from the total compensation given by the verdicts against the appellants, the result would be that the appellants would not pay the whole compensation due to their taking, since according to their taking as fixed by their petition and under the instructions of the Court to the jury, nothing was allowed to the owners except the difference between the value of the owners' property at the time of the taking and its value after the taking, so that the owners received nothing whatever for diversions under the prescriptive rights. The Court after stating that the owners' right in the water were part of his real property, clearly so instructed the jury as follows:

> "The compensation for taking is the difference between the value of the real estate, in the way I have indicated to you considered as a unit before the taking and its value of it after the taking."
>
> (See charge, case Vol. IV., p. 11, and to the same effect on pages 12 and 13.)

2. In the several actions for damages to the owners' business on account of diversions, which heretofore have been argued before The Supreme Court and before this Court, the diverters unsuccessfully contended that the *damages* in those actions among the diverters should have been apportioned by charging the Passaic Water Company and the Morris Canal and Banking Company with a share of the damages due to their diversions.

In those cases the evidence showed that, not-

withstanding the diversions under the prescriptive rights of the Passaic Water Company and The Morris Canal and Banking Company, the owners would have had more than the amount of water necessary for their business if there were no other takings by the defendants, so that such prescriptive rights were altogether immaterial. Likewise in the present condemnation proceedings the evidence shows that the owners, notwithstanding the prescriptive rights, had many times more water than would be needed if there were no other diversions.

(Case, testimony Vol. II, pp. 280, 281, & 161, 162.)

We have already shown, that in the present condemnation proceedings which relate entirely to the value of the owners' water right *at the time of the condemnation,* the question of the diversions of the Passaic Water Company and the Morris Canal and Banking Company under their prescriptive rights are wholly immaterial and inapplicable, but we also contend that they were properly deemed immaterial even in those actions for damages, inasmuch as the owners, notwithstanding the diversions under such prescriptive rights would have more than the amount of water necessary for their businesses if there were no other takings.

The case is the same as if an owner of a mill with water power, having much more water power than he would ever need, had sold or leased part of it to a third party, and some other party should come and take the surplus. Evidently, if the surplus so taken was amply sufficient for the owner's use, the one who takes the surplus is responsible

wholly for that taking. It may be that the whole property may be worth somewhat less than it previously was by reason of the sale or lease, but the question is not what it once was worth, but what it is worth at the time of the present taking and the present taking alone constitutes the whole damages.

The prescriptive rights, sale or lease in such a case is no more material than would be the decrease of the ancient flow of a stream by any natural or physical cause. It might as reasonably be said that because a hundred years ago the river had more flow and had decreased because of cutting timber, cultivation of the soil at the sources, and the like, such decrease should be material in awarding damages for a present taking.

The question whether plaintiff could recover their whole damages against the defendants without taking into account the diversions of the Passaic Water Company and the Morris Canal & Banking Company was a question involved, litigated and decided in the former cases in the Supreme Court.

In the second case of *Weidmann Silk Dyeing Co. v. Newark,* 91 Atl. Rep., 335, at page 336, the opinion shows that in fixing Newark's proportion of damages at one-sixth of the total damages, the Court had first expressly excepted the abstraction of the Passaic Water Company. This clearly appears at page 336, where the Court, in fixing Newark's proportion of all the damages, excludes the 10,000,000 gallons taken by the Passaic Water

Company and fixes the total flow for which all the diverting defendants are liable at 30,000,000 gallons per day, five or six million gallons of which are charged to Newark, 10,000,000 gallons to Jersey City Water Supply Company and 15,000,000 gallons to the East Jersey Water Company.

Moreover, the opinion of the Supreme Court expressly held in the first and second cases against Newark (91 Atl., p. 335), that plaintiff was entitled to its total damages against the defendants who were sued, according to the proportions as fixed by the rule laid down in that case. This necessarily held that diversions other than defendants' could not be included, so as to relieve the defendants from any part of the damages, because if they were included, the plaintiff would not have been entitled to its total damages against the defendants; whereas, as we have said, the Supreme Court held that the defendants who had been sued were liable for plaintiff's total damages in the proportion of their diversions during times of low flow, and so decided the same question which is now involved.

While in the first case against the East Jersey Water Company the Supreme Court did not expressly in the opinion refer to this point, the opinion did state that the latter suit was similar in theory in its main aspects to the case against Newark, and the same question was involved and in fact, litigated in the first case against the East Jersey Water Company.

In the record of the first case against the East

Jersey Water Company excessive damages were made a reason for new trial. The printed transcript in that case shows, on page 440, that the defendants' fifth request to charge in that case was "that the defendant is responsible to the plaintiff only for the injury occasioned to the plaintiff by its own acts, and as the evidence shows that the injury to the plaintiff, if any, was caused by the acts of others beside the defendant, who are not parties to the suit, the defendant can be held liable for only so much of the total injury, including that caused by pollution, as well as diversion as is proved in the case to be occasioned by the acts of the defendant."

This transcript of the evidence in that case shows that the only diversions other than those of the defendants to which this request to charge refers were those of the Passaic Water Company and the Morris Canal & Banking Company.

And the defendants' printed brief in that case states on the first and second pages thereof:

> "There were other diverters, namely, The Passaic Water Company, the Society for Useful Manufactures, and the Morris Canal & Banking Company. These last mentioned diverters were ignored by the plaintiff because their diversions were supposed to be non-actionable, as non-actionable, as they had been diverters for more than twenty years and the plaintiff sought to impose upon the three diverters first named (the defendants) its entire supposed damages in proportion to the amount of diversion."

The question thus litigated was involved and inferentially decided against the defendant, since the verdict was affirmed without any reduction of damages, which, if the defendants' contention had prevailed, should have been reduced.

Again in the suit of *Weidmann Silk Dyeing Company vs. Jersey City Water Supply Company,* 91 *Act. R.* 337, on rule to show cause why the verdict should not be aside, the question whether the plaintiff could recover its whole damages against Jersey City Water Supply Company, the East Jersey Water Co. and the City of Newark, without taking into account the diversions of the Morris Canal and Banking Company and the Passaic Water Company, was involved, litigated and decided.

In the printed record of that case, pp. 79, 80, 81, 152, 235 and 203, the quantity of diversions by the Morris Canal and Banking Company and the Passaic Water Company was shown.

The defendants' 6th request to charge (Printed Record, p. 311) is as follows:

> "6. The defendant is responsible to the plaintiff only for the injury occasioned by the plaintiff by its own acts and as the evidence shows that the injury to the plaintiff, if any, was caused by the acts of others besides the defendant, who are not parties to this suit the defendant can be held liable for only so much of the total injury as is proved in this case to be occasioned by the acts of the defendant."

Counsel for Jersey City Water Supply Company in their brief in that case argued that the diversions of the Morris Canal and Banking Company and the Passaic Water Company should be charged with a proportion of the damages.

On page 1 of their brief they state as follows:

> "The plaintiff is a silk dyer, with works located on the Passaic River at Paterson, below the Great Falls. Its suit was for damages claimed to have been sustained by reason of scarcity of water in the Passaic river for dyeing purposes, which scarcity was alleged to be due to diversion from the water shed of the Pequannock, a tributary of the Passaic; by the City of Newark for its water supply; by the defendant, contractor for a water supply for Jersey City, by diversion from the water shed of the Rockaway, another tributary of the Passaic; and by direct diversion from the Passaic by the East Jersey Water Company at Little Falls, some miles above Paterson. There were other diverters, as will be hereinafter shown, but as their diversion was non-actionable because of continuance for more than twenty years the plaintiff ignored it and sought to impose upon the three diverters above named its entire alleged damage in proportion to the amount of diversion."

In arguing that the damages were excessive because the diversions of the Morris Canal and Banking Company and the Passaic Water Company had not been taken into account, they argue on pages 5 and 6 of their brief as follows:

"The Morris Canal and Banking Company diverts water from the Passaic at the Pompton feeder. This company, during the summer months and low flow, appropriates the water directly from the river and not from storage reservoirs. Mr. Cook testifies: 'Whenever they take water at the Pompton feeder, and there is no water wasting over the feeder dam, they then take the entire flow (p. 81). They take from 14 to 20 million gallons per day' (pp. 81 and 236).

The Passaic Water Company diverts water to the extent of ten million gallons per day (p. 8).

The S. U. M. is another diverter. It has the practice, when the water is low in the river from Saturday noons until Monday mornings, of appropriating all the water in the stream so that none is allowed to pass down and this makes the flow of the river more or less irregular past the plaintiff's plant, so that there would be very little water in those periods in the river below the dam (p. 230)."

On pages 9 and 10 they further argue as follows:

"The court charged the jury that the true basis for apportioning the loss of the plaintiff is a proportion of the current flow diverted by each diverter of low water when the plaintiff could not obtain its former supply (p. 309, lines 25-30).

Applying this rule to the case in hand the low flow of the Pequannock river might

have been estimated by the jury under the 125,000 gallon rule at seven million gallons per day and there should be credited thereon five million gallons daily returned to the stream. The flow of the Rockaway River by the same rule would be thirteen million, eight hundred and seventy-five thousand gallons upon which there should be credited ten million gallons returned again to the stream from this river.

The Morris Canal and Banking Company takes from fourteen to twenty million gallons from the flow itself.

The East Jersey Company takes fifteen million gallons.

The Passaic Water Company takes ten to fourteen million gallons per day.

The diversions of the S. U. M. are also to be considered.

The court laid down the rule without excepting any of the diverters from its application, and the verdict must be anchored on the court's charge and not on doctrines advanced by the plaintiff that the S. U. M. and the Morris Canal and the Passaic Water Company should be excepted from the rule; otherwise, the defendant will be deprived of its right to have such a dioctrine tested in the Court of Errors and Appeals. Apportioning these damages therefore according to the testimony a verdict of $21,503.36 (p. 320) is plainly outside of the scope and range of the testimony and grossly excessive.

Applying the rule of the Supreme Court (84 Atl. Rep., 273) that the true basis for

apportioning the loss of the plaintiff among the diverters is to charge each the proportion of the current flow diverted by it in time of low water, we have the following result:

	Gallons per day.	
City of Newark (in low flow of the Pequannock)	7,000,000	
Less contribution from stored water,	5,000,000	2,000,000
Jersey City Water Supply Company (in low flow of the Rockaway)	13,875,000	
Less contribution from stored water	10,000,000	3,875,000
East Jersey Water Company (direct draft from Passaic) say	15,000,000	
Passaic Water Company (direct draft from Passaic) say		10,000,000
Morris Canal & Banking Co. (direct draft from Passaic) say		14,000,000
		44,875,000

We have put the draft of the Morris Canal and Banking Company and the Passaic Water Company at the lowest estimate given in the testimony, and have omitted the draft of the S. U. M., which is very considerable. On this basis, the share of plaintiff's loss chargeable to the Jersey City Water Supply Company would be only about one-fourteenth."

Notwithstanding this argument in their brief urging that the verdict was excessive because the total damages were apportioned among the Jersey City Water Supply Co., The East Jersey Water Co. and the City of Newark only, without taking into account the diversions of the Morris Canal and Banking Company and the Passaic Water Co., the Supreme Court held that the damages were properly apportioned inasmuch as they had been apportioned according to the apportionment in the case of *Weidmann v. City of Newark*, 91 *Atl.* 335, already referred to, where the diversion of the Morris Canal and Banking Co. and the Passaic Water Company were not taken into account.

This appears in the opinion of *Weidmann Silk Dyeing Company v. Jersey City Water Supply Co.*, 91 *Atl.* 337, as follows:

> "This litigation is similar in character to that dealt with and disposed of at this term in the case of this plaintiff against the mayor and common council of the city of Newark, 91 Atl. 335. In this case the plaintiff's total damage, with interest, amounted to $65,153.32, and the amount of the verdict was $21,503.36. Upon the basis arrived at in the other case, that is, assuming that the flow of the Pequannock was 5,000,000 gallons per day, and that of the Rockaway 10,000,000 gallons per day, and that of the Passaic 15,000,000 gallons per day, making a total flow, in times of low water, of 30,000,000 gallons per day, this defendant would be chargeable with two-fifths of the total amount of damage shown; and, as this amounts to more than the verdict, we do not think that it is excessive."

This last excerpt from the opinion in the case of Weidmann v. Jersey City Water Supply Company was quoted by the counsel for the Jersey City Water Supply Company in their petition for re-argument to the Court and they comment on such excerpt from the opinion at page 2 of the petition as a reason why there should be a re-argument as follows:

> "This recital omits as not pertinent the ten million gallons per day taken for Paterson and Passaic."

This petition for re-argument was refused.

The question was also involved in the case of *Auger & Simon v. East Jersey Water Co., et al.*, 88 *N. J. L.* 368 in this Court and appears in the 6th ground of appeal on page 624 of the printed record of that case as follows:

> "6. Because the Court in charging the defendant's third request as follows: 'The fact that the Passaic Water Company, the Acquackanonk Water Company and the Morris Canal Company, or any one or more of them, may have a prescriptive right to divert water, is no reason why the defendant companies should be held liable for water which such company or companies having such prescriptive right to have diverted' qualified that part of its charge by saying, 'The plaintiffs, as I understand it, make no claim whatever against the defendants except for what they did themselves, namely,

that they, in connection with Newark, diverted water, and that they produced a situation in the river which compelled them to seek some reasonable means of getting water in place of that which they had had theretofore."

It also appeas in the 15th and 16th grounds of appeal in the case of *Weidmann v. East Jersey Water Co. and others,* 88 *N. J. L.* 400, in this Court on pages 623 and 624 of the printed record of that case as follows:

"15. Because the Court in dealing with the defendants' third request to charge, as follows: 'the fact that the Passaic Water Company and the Morris Canal Company, or either of them, may have had a prescriptive right to divert water, is no reason why any of the defendants should be held liable for water which such company or companies having such prescriptive right have diverted,' disposed of it by saying, 'I do not understand, Gentlemen, that any claim is made by the plaintiff of that kind, and of course, you are only to hold these defendants if they are held at all, for what they did themselves,' and subsequently declined to charge such request any further than he had thus stated.

16. Because the Court refused to charge the jury as requested by the defendants' fourth request to charge that

"Each defendant can at most only be held

> liable for the proportion of the damages actually sustained by the plaintiff which the number of millions of gallons of water per day in times of low flow of the river during the periods covered by these suits, which it itself has actually diverted from the river, bears to the total number of millions of gallons of water per day in times of low flow of the river during the same period, which all the defendants themselves and all other diverters of water, whoever they may be, with prescriptive rights or without them, have actually diverted from the river."

This court inferentially decided the question adversely to the appellants in those cases by reversing the judgments on an entirely different ground.

POINT II.

THE COURT PROPERLY ALLOWED INTEREST ON THE SUMS ALLOWED BY THE JURY FROM THE TIME OF FILING THE PETITIONS FOR CONDEMNATION.

The question of the allowance of interest was thoroughly argued before Judge Silzer at the time of the argument of the rules to show cause, and after careful consideration Judge Silzer rendered his opinion thereon which appears in Vol. 1 of the printed case on pages 217 to 221. To his opinion thereon we refer at the outset of the discussion upon this point.

The cases were tried on the theory adopted by the trial judge and counsel for the parties, that by

the act of 1900 (*P. L.* 1900, *p.* 79) *under which the proceedings were taken, the jury were merely to find what sums the owners were entitled to be paid as of the day of filing the petitions, without allowing any interest and the jury was so charged.*

The petitioners who were compelled to take these proceedings by the decree of the Court of Chancery have had possession of the property taken at and since the time of filing the petitions. Therefore, since under the instructions of the court the jury did not allow interest, it is evident that unless the court can allow interest on the verdict, the owners will be deprived both of the value of the use of their land and the money awarded therefor since the time of filing the petitions until the verdict, and so would be deprived of their constitutional right to just compensation.

We contend first, that the act of 1900 contemplates and provides for the procedure taken in these cases whereby the court allowed the interest, and secondly, that the procedure was proper whether or not the act so provides.

(1.) *Prior to the act of* 1900 *the several statutes relating to condemnation, did not expressly provide that the amount appraised for the value of the propery taken and damages due to the taking should be assessed and paid to the owner as of any particular time.*

For instance, the act approved March 17, 1891, P. L. 1891, p. 172, General Statutes 43 Sec. I, p. 1383, which empowered cities to acquire property

for public use by condemnation provided generally that the Commissioners should "appraise the said land" and "assess the damages" and "make a just and equitable appraisement and assessment as aforesaid, to be paid by the city."

Likewise the act approved April 1, 1895, P. L. 1895, p. 769, General Statutes 57, Sec. I, p. 1388, which empowered cities to acquire land and other property for public use by condemnation, which expressly provided for condemning water rights, provided generally that the Commissioners should "appraise the said lands, water, water rights or other property and assess the damages" and "make a just and equitable appraisement and assessment as aforesaid to be paid by the said city."

Likewise the general Railroad Act, Revision Sec. 100, p. 920, General Statutes Sec. 102, p. 2665, 2666, empowering railroads to condemn lands, provided generally that the Commissioners should examine and "appraise the lands" and "make a just and equitable estimate or appraisement of the value of the same and assessment of damages."

In connection with such statutes provision was also made for an appeal from the award of the Commissioners and trial by a struck jury on an issue to be fixed by the Court, and provision was likewise made generally that such jury shall "assess the value of the land in question and the damages sustained, if any." General Statutes 44, Sec. 2, p. 1384, 58 Sec. 2, p. 1389, 1390. 103 Sec. 12, p. 2666.

Under such general provisions which do not expressly provide as to what particular time the compensation shall be assessed and paid to the owner, it has been generally held that the time when the award of commissioners was made, is the time as to which compensation was to be made, and that compensation as to that time was to be made by the jury on appeal, and under such general statutes juries on appeal have been permitted to add to the amount found for such value of the property taken and the damages, the interest from the time of the award to the time of the verdict, in cases where the condemnors had the use of the property from the time of the award until the time of the verdict.

Thus in the case of *Metler v. Easton and Amboy Railroad Co.* 8 *Vroom,* 222, interest was so allowed as shown by the opinion of Mr. Justice Depue speaking for the Supreme Court at pages 224 and 225, as follows:

> "The time when the appraisement was made by the Commissioners is the period with reference to which the valuation of the land and damages for the taking is to be made by the jury on the trial of the appeal. Montclair Railroad Co. v. Benson, 7 Vroom 557. On such valuation, interest from the date of the Commissioners' award to the time of trial or the coming in of the postea, should, as a general rule, be allowed. The report of the Commissioners is regarded as the time when the condemnation is affected, for the purpose of fixing the time, as of

> which the valuation is to be made. But the title of the owner is not divested until his compensation has been determined by a jury, if desired, and has been paid. Interest for the intermediate period is allowable, not strictly as damages for the taking, but as an equitable mode of compensating the owner for the necessary delay in ultimately ascertaining the amount he is entitled to be paid, and as the means of reaching the full measure of the just compensation which, by the constitution, must precede the taking of the property of a private citizen for public use."

The right of the owner *as part of his just compensation under the constitution* to have interest allowed on the amount given for the value of the property taken and damages from the time of taking under such general provisions as existed prior to the act of 1900, is recognized in different forms of proceedings in the following cases:

N. H. C. R. R. Co. v. Boordem, 1 *Stew. Eq.* 450.
N. Y. G. L. R. R. Co. v. Stanley, 8 *Stew.* 283.
Watson v. Jersey City, 55 *Vr.* 422.

(2.) *These general provisions of the Statutes existing prior to the act* 1900, *which made no express provisions as of the time when the amount assessed was to be assessed and paid, have been superseded by the act of* 1900, *which governs the present proceedings and makes such express provision.*

Section 6 of the act of 1900, 2 Compiled Statutes p. 2184, expressly provides, that the Commissioners

shall "make a just and equitable appraisement of the value of the same (the property taken) and an assessment of the amount *to be paid* by the petitioner for such land or other property and damage aforesaid *as of the date of the filing of the petition and order thereon.*"

It is to be observed that by the language of this provision it is expressly stated, not only that the assessment of the amount is to be of the date specified, but also that the amount assessed is to be paid as of that date.

The purpose and effect of this provision is to definitely fix the time of the filing of the petition and order thereon as the time at which both the value should be appraised and the amount thereof paid, and in such case the duty of the Commissioners is limited to an appraisal of the value which *should be paid as of the time of filing the petition and order.* In other words, the statute means that the Commissioners are not to add to such valuation any interest due to the deferred payment, but that they are simply to determine and find when they make their report what sum *should have been paid at the time of filing the petition and order,* and if thereafter the owner is deprived of his property before he receives the amount awarded, the owner's right to payment of legal interest on that sum during such time that he is so deprived until payment is necessarily implied under section 6 of the act, otherwise the owner would not be given his full and just compensation guaranteed by the constitution. Such design of the statute accords with the principle stated in *Parks v. Boston,* 15 *Pick.* (*Mass.*) 198, 208, quoted with approval by the New

Jersey Court of Errors in *Watson v. Jersey City*, 55 *Vr. p.* 426, as follows:

> "It is the purchase of a public easement, the consideration for which is settled by appraisement only because the parties are unable to agree upon it. The true rule would be, as in the case of other purchases, that the price is due and ought to be paid at the moment the purchase is made, when credit is not especially agreed on. And if a pie powder court could be called on the instant, and on the spot, the true rule of justice for the public would be to pay the compensation with one hand, whilst they apply the axe with the other; and this rule is departed from only because some time is necessary, by the forms of law, to conduct the inquiry; and this delay must be compensated by interest."

As a matter of fact the Commissioners in the present cases so made their assessments in their reports in the following language, "the assessment of the amount to be paid by said petitioner for said property, and the damage aforesaid *to be paid* by said petitioner to the said Weidmann Silk Dyeing Company for the said taking and damage aforesaid, *as of the date of filing said petition and order aforesaid* is the sum of &c." (Case pp. 13, 14, 82, 83, 155, 156. Notice of appeal and Judgment Records, Vol. 1.)

Section 13 of the act of 1900 shows that when the appeal is taken and the issue framed pursuant

to the act of 1900, the act contemplates that the jury on the appeal shall likewise appraise and assess the amount to be paid as of the date of the petition and order thereon in the same manner as the Commissioners shall have done. Thus section 13 provides that on appeal from the Commissioners' award the jury on the trial of the issue shall assess the value of the property taken and the damages sustained, and if the jury shall find a greater sum than the Commissioners awarded then judgment with costs shall be entered against the petitioner and execution awarded therefor, but if the jury shall be applied for by the owner and shall find a less sum than the Commissioners awarded, then costs shall be paid by the appellant and either deducted out of the sum found by the jury or execution awarded therefor as the court may direct, and where payment of the amount found by the Commissioners has been made before the trial of the appeal to the owner or in court as above provided and the amount found by the jury shall be a less sum than was awarded by the Commissioners the petitioner may recover back the amount paid less the amount found by the jury.

From these provisions of section 13 it is apparent, in order to determine whether the jury finds a greater or less sum than the Commissioners found so as to entitle the parties to such costs or recovery back or deduction as is therein provided, that the design is that the commissioners and jury on appeal shall make their respective awards payable as of the same time, so that if section 6 designed that the commissioners should award the payment

as of the time of filing the petition, section 13 designed that the jury on appeal should likewise make the amount awarded by them payable as of the same time.

(3) *The trial Judge in his charge to the jury expressly instructed the jury to find by their verdict what compensation the owners were entitled to be paid as of the day of filing the petition and order, and by no reasonable construction can the charge be deemed as directing the jury to add any interest to such compensation.*

Upon this subject the Court charged the jury as follows:

> "Now this compensation, Gentlemen, you will want to know what time it starts from. The compensation that is awarded in this case begins at the time the petitions are filed. The dates are on the petitions, but, speaking generally from about February first, 1919. They vary in date somewhat, but that, generally speaking, is the time; you will find the filing marks on the papers themselves, so that the condemnation starts from that time. Now that means this, Gentlemen, that your compensation must be made from that time. Of course part of that period has gone by. These land owners could not sue the Water Companies for anything that has happened, by way of damages between the time of the filing of the petitions and today, because that is supposed to be contemplated in this taking as of that date; in other words, it not being

> taken as of today, but being taken as of t
> date of filing the petition."

(See printed charge, pp. 10, 11.)

Again on page 12 of the printed charge, the charge and colloquy of a juror is as follows:

> "But that is the rule. How much less is this property, as a unit, worth, than it would have been worth if the diversion had not taken place? A Juror—From what date? The Court—As of the date of filing the petition? The Juror—1919? The Court—Yes."

Again the Court in its charge at page 13 illustrates the time as of which the compensation is to be fixed by referring to "a man who comes to buy as of the first of February, 1919."

It is difficult to see how the court could have used more apt language than that above quoted to instruct the jury that they were to simply determine what compensation the owners were entitled to as of the time of filing the petitions on or about February 1, 1919; from the fact that they were not instructed to allow interest in fixing that sum, and nothing was said about interest, the Court clearly implied that the jury were not to consider interest or determine anything other than what compensation the owners were entitled to as of February 1st, 1919; and it is unreasonable to suppose that they construed this language of the charge as permitting them to allow interest or that they allowed it in fixing the compensation that the

owner was entitled to as of the day of filing the petition.

Moreover the findings of the trial Judge on the motion to allow the interest shows clearly that it was the judge's intention to instruct the jury to merely find what compensation the owners were entitled to be paid as of the time when the petitions were filed.

(See opinion of Judge Silzer, Case, p. 217, Notices of Appeal and Judgment Records, Vol. I.)

(4.) *Inasmuch as the jury were thus instructed not to allow interest and therefore must be presumed not to have allowed it, and inasmuch as the petitioners have in fact had the use of the property taken since the time of filing the petition, the owners will be deprived of their constitutional rights to just and full compensation unless the construction of the act which we contend for is adopted.*

The Act is susceptible of the meaning which we contend for and if two constructions are permissible, one which would make the act constitutional and another which will make it unconstitutional, the former will be adopted.

Colwell v. Mays Landing W. P. Co. 19 *N. J. Eq.* 245.

(5.) *Counsel for the petitioners urge against our contention several matters which we wish to answer, which are as follows:*

They argue that interest should not be added

to the verdicts because section 7 of the Eminent Domain Act (2 Comp. Sts. p. 2185) provides that "the said report * * * shall be plenary evidence of the right of the owner to recover the amount awarded with interest and costs, &c."

Counsel contended that from this language there is some implication that the interest herein referred to means interest only from the time *when the award was made.*

But we claim that this language does not say or imply that interest shall be allowed only from the time when the award was made, but it does say that the owner is entitled to recover *the amount awarded with interest.* The question is what is *"the amount awarded"* upon which the interest is to be paid as provided in the preceding section (Sec. 6).

The amount awarded in the report of the commissioners as we have heretofore shown, is by the express provisions of section 6 "an assessment of the amount *to be paid as of the date of filing of the petition and order thereon."* When, therefore, Section 7 says that interest shall be paid upon the amount awarded by Section 6, it means that interest shall be paid upon the amount awarded *as of the time of filing of the petition and order,* as provided in section 6, which also means that interest is to run upon the amount of the award from the *time of filing the petition and order* and not from the time of *making the award.*

In their argument counsel for the petitioners also refer to several different provisions of the act of 1900, relating to different subjects where the amount awarded is referred to without any express reference to interest, and counsel agrue that

because such provisions referred to the "amount awarded" or "amounts assessed" without any express reference to interest, there is an implication that no interest can be allowed from the time of filing the petition.

Our answer is, that the "amount awarded" in each instance where such phrase occurs means the amount awarded to be paid as of the time of filing the petition referred to in section 6.

In this connection we do not claim that section 6 *expressly* provides that the court shall add interest, but we claim that Section 6 does by apt language expressly provide that the jury shall merely fix the amount that should have been paid *when the petition was filed, and that from such provision it must be necessarily implied* that the court shall add interest in order that the owner's constitutional right to just compensation may be preserved in such cases as these where the owner's property has been taken and held by the condemnors since the filing of the petition.

This implication in Section 6 which is necessary to give the owner his constitutional right to just compensation where his land has been taken and held by the condemnor since the filing of the petition, seems to be conceded by the petitioners, if Section 6 is considered alone, but it is argued that doubt is cast upon it by subsequent sections of the act.

It is argued that such doubt arises from the provision in section 7 which expressly provides that the owner may recover the amount awarded with interest and costs after neglect to pay the award within 20 days, whereby, it was argued, an implication arises that no interest whatever other than in the contingency of such neglect expressly referred

to, can in any event be recovered. If it should be held that by this provision of Section 7, it is necessarily implied from the mere fact that the recovery of interest is expressly provided for *only in a suit after such neglect,* that there can be no recovery of interest in any other event, then the appalling consequence would be that under no circumstances could the jury or court within the design of the statute permit the owner to have anything for the deprivation of his property and delay in payment of the money awarded to him for it, no matter how long the delay might be, even if an appeal were taken causing such delay by the condemning party.

Such a construction which would deprive an owner of his constitutional rights, would be invalid and should not be adopted when the act is susceptible of another construction preserving such constituional rights.

There is no such implication in section 7. The draftsman of the act in section 7 evidently did not intend to affect in any wise the provisions of section 6, wherein as we say, the allowance of interest in these particular cases is necessarily implied in order to give just compensation, but this provision in section 7 relates to a subject entirely distinct from the general subject in section 6. The subject provided for in section 7 is that the report, petition and orders shall be plenary evidence of the right of the owner to recover the amount awarded with interest and costs in an action. The principal subject in section 7 in the mind of the draftsman of the act is the right to bring an action and the effect of the report, petition and orders as evidence therefor in the contingency mentioned; and in providing that interest and costs should be allowed, which is merely incidental to the main subject, the drafts-

man of the act as is customary in such cases simply had in mind that interest and costs had customarily been given in such actions and he therefor made the express provision for interest as merely declaratory and descriptive of the right existing in such cases when the act was drawn, and out of abundant caution in order to prevent any possible implication that no interest or costs would be recovered unless they were *expressly* provided for. There was no intent apparent in the mind of the draftsman that this provision of section 7 should affect the necessary implication that we have shown arises from the provision of section 6.

Moreover, the recovery of "interest" is directly coupled with that of "costs." The right to recover costs in such cases was governed by general Statutes which existed when the act was drawn, and it might as well be said that there was the same implication in section 7, that no costs could be recovered except in the contingency stated.

The provision for "costs" was designed merely to express, declare and describe an existing right so as to prevent a possible implication against such existing right if it were not expressed, and the provision for "interest" directly coupled with costs had the same design.

Counsel for the petitioners further argue that the act of 1900 is not framed so as to cover a case where the property sought to be condemned has been taken in advance of the condemnation proceedings, and that the act consequently contains no allowance for interest from the date of filing the petition and order thereon.

To this we answer that the act by the generality of its language embraces within the scope of its provision any corporation having the power to condemn whether or not it has taken the property prior to the condemnation. This scope of the act is shown both by its title and by the first section of the act.

The title is "to regulate the ascertainment and payment of compensation for property condemned or taken for public use."

Section I applies to "any municipal corporation, or any other corporation, public or private, having power to take land or other property for public use."

By this language any corporation having power to condemn is included within the provisions of the act and no such corporation is excluded from the provisions of the act because it may have taken the property before condemnation proceedings are started.

Indeed, the condemning parties in all of the instant cases have taken these proceedings under the act of 1900 and in every respect have conformed with the provisions of the act, notwithstanding the fact that they had taken the water prior to the condemnation proceedings.

In each case the petitioner expressly set forth in the petition that the petitioner had so taken the water for several years and was taking it at the time of filing the petition and the petitioner evidently set forth these facts as showing some special ground for its right to condemn.

Taking for example the petition of Newark to condemn the Weidmann property, the allegation in the petition is as follows:

> "Said River (i. e. the Pequannock where Newark took) is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which in part would otherwise flow past and over their said lands by reason whereof they claim compensation and damages. *Your petitioner has been for* 26 *years past and is now receiving its water supply from said source through said works.*"

(See printed Book of Exhibits, Vol. V, pp. 126, 127.)

The same allegation is contained in the petition in each case, except that Jersey City and Acquackanonk Water company allege that they had taken the water for 14 years.

(See Printed Book of Exhibits, Vol. V, pp. 92, 106.)

These petitioners who thus took the water before and at the time of the condemnation proceedings, and so alleged in their petitions and who have taken and carried through these proceedings in conformity with the act of 1900, have admitted and now are estopped from denying that every provision of the act of 1900 is designed to apply to them who had so taken water as well as to any other persons contemplated within the act who had not taken the water and who were given the right to condemn.

We contend therefore, that section 6 of the act, as well as any other section necessarily applies to

the petitioners in these cases *as persons who were taking the water before and at the time of filing the petition, and whose status was so fixed by the allegation of their petition and the proof in the case.*

The Statute of 1900 thus applies both to cases where the petitioners take the property from the time of filing the petition and where they take it after the petition is filed. In either case the act designs that the jury shall simply allow the sum that should be paid to the owner as of the time of filing the petition, and, in order that the owner's constitutional rights to full compensation may be preserved the act necessarily implies that since the jury is not to allow interest for delay in payment, the court shall allow such interest from the time when the facts show that the owner is entitled to such interest. When, as in these cases, the facts show that the petitioners have possessed the property from the time of filing the petitions until the verdict, it is implied by the statute that the court shall add interest during that time to the verdict and if the facts show that the petitioners had possession of the property at some time after the filing of the petitions until the verdict, the interest during such latter time should be added to the verdict by the court.

(6.) *If the act of* 1900 *means to allow interest to the owners from the time of filing the petitions where as in these cases the petitioners had the use of the property since the time of filing the petitions, the action of the trial judge in instructing the jury to simply find the amount of compensation which the owners were to be paid as of the time of filing*

the petition, and the addition of the interest by the judge was entirely proper.

Otherwise in the present cases the judge would have been required to go through the useless ceremony of charging the jury that they must first find what compensation the owners were entitled to be paid as of the day of filing the petition and that they then *must* add to it the interest.

The 6th Section of the act indicates that it was the intention that the court should adopt the simple and direct procedure that was adopted in these cases.

(7.) *In many analogous condemnation cases the Court has added interest to the verdict in order that the owner might have his just and full constitutional compensation.*

In the case of *Reed v. Chicago, M. St. P. R. R. Co.* 25 *Fed.* 886 *in the Circuit Court of Iowa, Eastern Division,* condemnation proceedings were originally commenced before a Sheriff's jury in Iowa for the purpose of assessing the damages for the taking of the owner's property. Appeal was taken from the award of the Sheriff's jury under the provision of the State Statute to the Circuit Court of Linn County, from which the cause was removed to the Federal Court and the appeal was there tried and a verdict rendered by the jury.

Although it does not appear that there was a statute in that case as in this case, expressly fixing the time as of which the award should be made and paid, the court expressly instructed the jury to ascertain and assess the damages at the

time the condemnation proceedings were had under the statute and the assessment was made by the Sheriff's jury.

Judge Shiras in his opinion at page 886 says that one of the questions was: "Can the Court, in the order to be made for the recording of the verdict provide for the payment of interest on the damage assessed by the jury?"

The condemning party in that case contended that admitting such interest should have been allowed, it should have been included in the verdict of the jury, and if it was not, then the court could not provide for the allowance thereof as that would be assessing the damages by piecemeal, and cited in support of that contention the case of Hayes v. Chicago &c. R. R. Co. 64 Iowa 753. Judge Shiras, however, says at page 887, that in that case "it was not determined that the Court might not provide for interest upon the amount of damages awarded by the jury, but only that a failure to provide therefor would prevent the property owner from maintaining another action for the recovery of interest, as that would be adjudicating the damages by piecemeal".

Judge Shiras thereupon, in his opinion considered the impropriety of the jury's consideration of the allowance of interest in certain situations applicable to the present case at page 888, as follows:

> "If the jury assess interest until the date of trial, and no more is allowed, then the property owner is deprived of part of that which is his due; and on the other hand, if the jury assess interest to date of trial, and

> interest is allowed on that sum until paid, then the company is compelled to pay compound interest on part of the verdict. These and like considerations show that in cases of this character *being proceedings of a peculiar nature,* the only way in which the rights of all can be fully protected is for the *jury* to assess the damages *as of the date of the assessment by the Sheriff's jury,* and *then* upon the rendition of the verdict *for the court* to make the proper order touching the question of interest."

He further says:

> "The Court can make the proper order, and the same will form part of the adjudication setting the damages. The order should fix the date when interest begins to run i. e. the time when the company deprives the owner of the use of his property and from that date interest will run until the damages are paid. Under the facts of this case the plaintiff is entitled to interest upon the amount of damages as ascertained by the verdict of the jury, from the time the defendant took possession of the right of way over plaintiff's lands, to wit, up to the time the defendant pays the damages awarded the plaintiff."

In Allloway v. Nashville in the Supreme Court of Tennesee 8 *Lawyers' Reports Annotated, p.* 123, *which was a* condemnation proceeding where no instruction on the subject of interest was given or requested, as in the present case, interest was

allowed by the court after verdict, as appears from the opinion of the Supreme Court at page 128, as follows:

> "The jury allowed no interest. No instructions on that subject were given or requested; but after the verdict was returned, and before judgment was entered, Alloway and wife moved the court to add interest. This the court refused to do; and his action in that regard is now assigned as error. The statute authorizing the condemnation of private property for public use, and prescribing the mode of proceeding, is silent on this subject; and the General Statutes (Id. sec. 2702) which enumerates instruments that bear interest as a matter of law, does not embrace a case like that before us. Nevertheless we have no hestitation in holding, upon general principles, that interest should have been allowed from the time of the appropriation of the property. From that time the original owner was deprived of the use and possession of the land taken. The liability of the city accrued at that date, though the amount thereof is not determined finally until long thereafter. Damages are properly assessed with reference to the value of the land taken, and the depreciation of the residue at the time of condemnation. The legal rights of both parties, so far as the damages are concerned are fixed at that time. Subsequent enhancement or dimunition of the value, though ever so great, cannot be considered

by the jury in estimating damages. Witnesses are examined as to the amount of damages at the time of appropriation and not at the time of the trial. That method was properly adopted in this case. The City especially, asked her witnesses the value of the property 'in August, 1887'."

"In the case of East Tennessee & G. R. Co. vs. Burnett, 11 Lea, 526, the jury of inquest, though reporting several years after the land was appropriated, failed to allow the interest. The petitioner did not appeal, and have a trial de novo, but excepted to the report because it did not include interest. The exception was overruled, and the petitioner prosecuted a writ of error. This court allowed the interest. Id. 527.

A discussion of the subject is found in sec. 499, Lewis, Em. Dom. Refusal to allow interest was error. In the language of one of the counsel for the appellants: 'If the party in whose favor there is a verdict, is, as a matter of law, entitled to something additional, the court may allow it.' Inasmuch as the error can be readily corrected here, that will be done, instead of reversing and remanding. This court will render the judgment that should have been rendered below. The land was taken about the tenth of August, 1887; hence judgment will be entered for the amount of the verdict, with interest from that date."

Likewise in *Lough vs. Minneapolis &c. R. R. Co.*, 116 *Iowa,* 31, it was held that in condemnation pro-

ceedings by a railroad company, where the evidence is undisputed as to when possession of the condemned land is taken, the court should allow interest on the value of the land as found by the jury from such date and need not submit the question to the jury.

In that case the Court said:

> "There was evidence tending to show that defendant took possession of the land in the month of September, 1899. This would have justified an award of interest after October of that year. It was a matter for the court to act upon, and need not have been submitted to the jury, for no disputed questions of fact were involved."
>
> "And where the jury did not include interest in their verdict, the allowance of interest by the court from the time of the appropriation to the date of judgment was held not erroneous. Hollingsworth vs. Des Moines & St. L. R. Co. 63 Iowa 443, 19 N. W. 325."
>
> "Where it was apparent from the verdict that the jury did not include interest, and the party was entitled to interest in addition to the amount stated in the verdict, and the interest could be computed from uncontroverted facts, it was held that the court could compute the interest and add such sum to the verdict. St. Louis, E. R. & W. R. Co. vs. Oliver, 17 Oklahoma, 589, 87 Pac. 423, 10 A. & E. Ann. Cas. 748."

Since the argument of the present cases before

the Supreme Court the case of *Seaboard Airline Railway vs. United States* was decided by the United States Supreme Court, Reported in United States Supreme Court Advance Opinions No. 11, April 2nd, 1923, at pages 391 to 394. In that case the facts and conclusions are stated by Mr. Justice Butler who delivered the opinion of the Court as follows:

> "The Jury returned a verdict as follows:"
>
> "We find that the fair and reasonable value which would constitute a just compensation to be paid for the taking for public purposes on 23 May, 1919, of the lands mentioned and described in the petition, under the issue herein to be $6000.
>
> Judgment was entered for $6000. with interest from May 23, 1919, at the rate of 7% per annum (the statuatory rate in South Carolina).
>
> The United States objected to the interest allowed and took the case to the Circuit Court of Appeals, and that Court reversed the judgment of the District Court and awarded a new trial, unless the owner file a remittitur abating all interest. The owner refused and brought the case here on writ of error.
>
> Did the district court err in allowing interest on the amount of the verdict?
>
> The rule is that, in the absence of a stipulation to pay interest or a statute allowing it, none can be recovered against the United States upon unpaid accounts of claims. United States v. Rogers, 255 U. S. 163, 169, 65 L. ed. 566, 569, 41 Sup. Ct. Rep. 281; United States v. North American Transp. & Trading Co., 253 U. S. 330, 46 L. ed. 935, 40

Sup. Ct. Rep. 518; United States v. North Carolina, 136 U. S. 211, 216, 34 L. ed. 336, 338, 10 Sup. Ct. Rep. 920; United States ex. rel. Angarica v. Bayard, 127 U. S. 251, 260, 32 L. ed. 159, 162, 8 Sup. Ct. Rep. 1156; Harvey v. United States, 113 U. S. 243, 28 L. ed. 987, 5 Sup. Ct. Rep. 465.

Section 10 of the Lever Act authorizes the taking of property for the public use on payment of just compensation. There is no provision in respect of interest. Just compensation is provided for by the constitution, and the right to it cannot be taken away by statute. Its ascertainment is a judicial function. Monongahela Nav. Co. v. United States, 148 U. S. 312, 327, 37 L. ed. 463, 468, 13 Sup. Ct. Rep. 622.

The compensation to which the owner is entitled is the full and perfect equivalent of the property taken. Monongahela Nav. Co. v. United States, supra, it rests upon equitable principles, and it means substantially that the owner shall be put in as good a position pecuniarily as he would have been if his property had not been taken. United States v. Rogers (C. C. A. 8th C.) 168 C. C. A. 437, 257 Fed. 397, 400. He is entitled to the damages inflicted by the taking. Northern P. R. Co. v. North American Teleg. Co. (C. C. A. 8th C.) L. R. A. 1916E, 572, 144 C. C. A. 489, 230 Fed. 347, 352, and cases there cited.

The United States in effect claims that the owner is entitled to no more than the value of the land, as of date of taking, to be paid at a later time, when ascertained. The owner

has been deprived of his land and its use since the taking, May 23, 1919. The value of the property as ascertained by the President was $235.80 and this was allowed with interest from date of taking. But as judicially determined later, the value when taken was $6000.

The owner's right does not depend on contract, express or implied. A promise to pay is not necessary. None is alleged. This suit is a part of the authorized procedure initiated by the United States for the condemnation of land. The owner was not satisfied with the amount fixed by the President and sued. A necessary condition of the taking is the ascertainment and payment of just compensation. Monongahela Nav. Co. v. United States, 148 U. S. 312, 337, 37 L. ed. 463, 471, 13 Sup. Ct. Rep. 622; Searl v. School Dist. 133 U. S. 553, 562, 33 L. ed. 740, 746, 10 Sup. Ct. Rep. 374; United States v. Jones, 109 U. S. 513, 518, et. seq., 27 L. ed. 1015, 1017, 3 Sup. Ct. Rep. 346; United States v. Sargent, 89 C. C. A. 81, 162 Fed. 81, 83. It is not suggested in this case that the provisions of P. 10 of the Lever act do not meet the constitutional requirement. The only question here is whether payment at a subsequent date of the value of the land as of the date of taking possession is sufficient to constitute just compensation.

In support of its contention the government cites United States v. North American Transp. & Trading Company, 253 U. S. 330, 64 L. ed. 935, 40 Sup. Ct. Rep. 518. That

case does not sustain its contention. That was a suit in the Court of Claims, based on an implied promise of the United States to pay for property appropriated by it. It was not a condemnation case. The distinction between that case and a condemnation case is pointed out in the opinion. It was there suggested, without so deciding, that in the case of condemnation of land, interest might be collected, even in the absence of state enactments allowing it, adopted by the conformity provisions.

The case of United States v. Rogers, 255 U. S. 163, 65 L. ed. 566, 41 Sup. Ct. Rep. 281, is a condemnation case and it was held that the owner was entitled, as a part of the just compensation, to interest on the confirmed award of the commissioners from the time when the United States took possession. The land was situated in New Mexico, and the proceedings were had under the conformity act of August 1, 1888, chapter 728, 25 Stat. at L. 357, Comp. Stat. P6909 8 Fed. Stat. anno. 2nd ed. p. 1111. Interest was allowed, not by virtue of state statute, but as constituting a part of the just compensation safeguarded by the constitution. Speaking for the Court Mr. Justice Day said, "Having taken the lands of the defendants in error, it was the duty of the government to make just compensation as of the time when the owners were deprived of their property." (Citing Moonngahela Nav. Co. v. The United States, supra, 341.)

It is obvious that the owner's right to just

compensation cannot be made to depend upon state statutory provisions. The constitution safeguards the right and P10 of the Lever Act directs payment. The rule above referred to, that, in the absence of agreement to pay or statute allowing it, the United States will not be held liable for interest upon unpaid accounts and claims, does not apply here. The requirement that "just compensation" shall be paid, is comprehensive, and includes all elements, *and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation. Where the United States condemns and takes possession of land before ascertaining or paying compensation, the owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value, paid contemporaneously with the taking. Interest at a proper rate is a good measure by which to ascertain the amount so to be added.* The legal rate of interest, as established by the South Carolina Statute was applied in this case. This was a "palpably fair and reasonable method of performing the indispensable condition to the exercise of the right of eminent domain, namely of making 'just compensation' for the land as it stands, at the time of taking." United States v. Sargent, (C. C. A. 8th C.) 89 C. C. A. 81, 162 Federal 81, 84.

The addition of interest *allowed by the District Court* is necessary in order that the owner shall not suffer loss and shall have

"just compensation" to which he is entitled.

The decree of the Circuit Court of Appeals is reversed and that of the District Court is affirmed."

It is to be observed that in the case last cited, as in the present cases, the *jury* simply found what would be just compensation as of the day of the taking, and the interest on that sum from that date was added by the court in entering the judgment, and that, although in that case there was no statute providing for interest, the Court held that interest must be added to the amount as of the time of the taking, in order that just compensation should be given to the owner.

No cases are cited that deny the power of the court to enter judgment allowing interest in such cases as the present cases or that deny the principle of the cases hereinbefore cited, which sanctions such practice.

The general principle of certain cases cited by counsel, that where the jury has the right to consider interest on a verdict and there is nothing in the record from which it can be determined whether the jury took into consideration the matter of interest, it will be presumed that they included it, is beside the point of our contention.

Our contention is, that by the act of 1900, in cases like these where the condemnors have had the use of the property since filing the petition, the jury were not to consider interest or anything other than what compensation the owner was entitled to as of the time of filing the petition; that

the court in effect clearly and explicitly so charged the jury; and, therefore, the presumption is, that the jury did just what it was charged to do and did not include interest in the award; that where such presumption appears, the cases cited by us afford abundant authority for such entry of judgment as we are applying for.

(8.) *Even if it should be held that from a consideration of all the provisions of the act of* 1900, *it is not implied that the court should allow interest on the verdicts from the time the petitions were filed, nevertheless, such interest should be so allowed in these particular proceedings.*

If on the one hand our right to have the court allow such interest is not implied by the act, on the other hand, the act does not and should not deprive us of the constitutional right to have interest during the time of delay in the payment of the award and during which the condemnors had our property, and inasmuch as the trial judge in effect instructed the jury not to allow interest we submit that we are entitled to have the court allow such interest under the authority of the line of cases hereinbefore cited, whether or not any statute provides for it.

In the case of *Reed v. Chicago &c., supra,* although it appears that there was no statute expressly fixing the time as of which the award should be paid, the Court *expressly instructed the jury as in the instant cases to ascertain and assess the damages at the time when the condemnation proceedings were had under the statute and the assessment was made by the Sheriff's jury.*

Precisely the same argument was made in that case as in these proceedings, viz; that, the interest should have been included in the verdict and that the court had no power to allow it.

The Court overruled these objections and held. *such proceedings to be of a peculiar nature,* and that the court should allow interest. In the cases of *Alloway vs. Nashville, supra,* although there was no statutory provision respecting interest, though there was no statute governing the case, nevertheless the Court held on general principles that interest should be allowed by the Court, in order to give to the owner just compensation. All the other cases heretofore cited where the court added interest to the verdict, were cases where there was no statutory provision respecting interest, and they are decided upon the general principle that *where such cases were so submitted to the jury and no interest was allowed by the jury,* the Court allowed it *as a special kind of proceeding,* in order to give just compensation.

(9.) *The present cases were tried upon the theory that the jury were merely to allow what compensation should be allowed to the owners as of the day of filing the petitions without allowing any interest. By the act, consent and acquiescence of the petitioners and the owners the judge was induced to so instruct the jury upon that theory.*

The petitioners, therefor, should not now be permitted to raise some objection, to the theory of trial which the Court adopted with their acquiescence and approval.

Hinners vs. Edgewater & Fort Lee R. R. Co. 46 *Vr.* 514.

The condemnors, as we have shown, stated in their petitions that they had been taking the water before that time and started and carried on the proceedings pursuant to the act of 1900. All parties before the commissioners agreed that the Commissioners under the 6th section of the act should assess the amount to be paid as of the date of filing the petition and the Commissioners so made their awards. On the trial of the appeals all parties maintained the same attitude.

The jury were clearly instructed to simply determine what compensation was to be awarded as of the time of filing the petition, from which it must be presumed that the jury did not allow any interest, but merely allowed what should have been given at the time of filing the petitions.

The cases thus having been tried and the jury instructed upon the theory *agreed to by all parties,* that the jury was to simply make its award without considering interest, it follows that, since we are clearly entitled to interest, the court should allow it.

The justice of our contention may stand out more strikingly in the following supposition:

Suppose that there is no statute applying to the question but that all the parties at the trial had *expressly* stated and claimed that the jury were merely to consider what sum should have been paid at the time of filing the petition and were to have nothing to do with the allowance of interest, and the court had expressly charged the jury as follows: "You are simply to determine what the owner should have been paid at the time of filing the petitions and you are not to allow any in-

terest, but interest will be allowed by the court", we apprehend that it could not be successfully argued that the court has no power to allow the interest in such case.

We submit that the attitude of the parties and the charge of the court in these cases had substantially the same effect as would have existed in the supposititious case.

The only possible objection that the petitioners can have in these cases is that they were entitled to have the court instruct the jury to allow interest which must be allowed as a matter of course instead of having the court allow it as a matter of course.

In such case, even if the petitioners had such perfunctory right to have the jury instead of the court allow the interest, it was merely a technical right, which the petitioners waived by not claiming such right at the trial when the judge charged the jury.

(10.) *There is nothing in the case of Metler vs. Easton and Amboy Railroad Co., 37 N. J. L. 222, inconsistent with the cases heretobefore cited.*

The Metler case was a case where there was no statute fixing the time as of which the jury should assess the damages.

The opinion of the Supreme Court, page 225, shows that the condemnors in that case claimed that the property condemned was a house *and that the owner had continued to receive rents therefrom after the reports of the Commissioners had been made.*

In that case on the trial in the court below there was not only involved the owner's right to interest as a part of the award, but also how much, if anything, should be set off against such interest for rents received by the owner.

The question of how much interest should be allowed thus depended upon how much rent should be offset against the interest. In such case the court obviously had no power to determine this question which was thus mixed and disputed and was peculiarly a question for the jury. Therefore in that case the court below left the question to the jury. The Supreme Court merely approved of the trial court's procedure *under the circumstances in that case,* in leaving the question of interest and the offset against interest for rents to the jury.

But there is nothing in that case implying that the Supreme Court would not have approved the action of the court in that case, if it had added interest to the verdict, in case it had clearly appeared in that case as it does in these cases, that the owner had been wholly deprived of his property so that there was no offset for rent or use during the definite time for which he was entitled to interest, so that his right to interest was definite and undisputed, and if it had also appeared that the case had been tried upon the theory that the jury were not to allow interest and were so charged and that they did not allow it.

In that case the only thing that the Supreme Court held should be necessarily left to the jury was the disputed question *whether the rent should be set off against the interest,* (See opinion p. 225), which was evidently a question exclusively for the jury.

There is, therefore, nothing in the Metler case inconsistent with the line of cases hereinbefore quoted in which the court has allowed interest under such facts as exist in these cases, even where there is no statute fixing the time as of which the damages are assessed, and the judgments should be affirmed.

We submit that there is no error in the Record and the judgments should be affirmed.

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