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TESTIMONY.

For Petitioner.

Herman De Selding:

Direct	30
Cross	37
Redirect	55
Recross	57

Thomas A. Ryer:

Direct	58
Cross	60
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For Respondent.

Frederick Dunham:

Direct	64
Cross	65

ADDITIONAL PAPERS TO NEW JERSEY COURT OF
ERRORS AND APPEALS.

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Writ of Certiorari.

NEW JERSEY, ss.

(SEAL) The State of New Jersey to the State
Board of Taxes and Assessment and the
City of Hoboken, GREETING:

10

We being willing, for certain reasons, to be certified of the assessments of taxes made by said City of Hoboken for the years 1921 and 1922 on property of the Hoboken Ferry Company and the Delaware, Lackawanna & Western Railroad Company, its lessee, situated in the City of Hoboken, County of Hudson and State of New Jersey, and described for the purpose of taxation as follows:

20

Plot B 2, Ward 2, situated at the foot of 14th street, running south 106 feet and north 175 feet from the center line of 14th street and extending to pierhead line, including lands under water.

Do COMMAND YOU that the said assessments of taxes, including the valuations upon which the same are based; all proceedings on appeal therefrom to said State Board of Taxes and Assessment; the final determination and judgment of said Board thereon; and all matters and proceedings touching and concerning the said assessments of taxes, to our Supreme Court at Trenton, on the twenty-six day of February, 1924, you certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done.

30

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1924 FEB 26

Petition of Appeal.

NEW JERSEY STATE BOARD OF TAXES AND ASSESSMENT.

In the Matter
of

10 The application of the DELAWARE,
LACKAWANNA AND WESTERN
RAILROAD COMPANY, and the
HOBOKEN FERRY COMPANY, for
the reduction of the tax assess-
ment for the year 1921, on prop-
erty situate in the City of Hobo-
ken, County of Hudson, State of
New Jersey.

20 To the New Jersey State Board of Taxes and As-
sessment:

The petition of the Delaware, Lackawanna and
Western Railroad Company, lessee, and the Hobo-
ken Ferry Company, respectfully shows:

30 1. That your petitioners, The Delaware, Lacka-
wanna and Western Railroad Company, a corpo-
ration of the State of Pennsylvania doing business
in New Jersey under legislative sanction, lessee,
and The Hoboken Ferry Company, a corporation
of the State of New Jersey as owner as their sev-
eral interests may appear, all being taxpayers in
the City of Hoboken, show that they are owners
or lessees of certain property situate in the taxing
district of the City of Hoboken, County of Hud-
son, described as follows on the assessment books
of the City of Hoboken, viz:

Petition of Appeal.

“Ward 2 Property marked Plot B 2 on City
Assessment Map. Property situated at
the Eastern Terminal of 14th Street produced
and commonly known as 14th Street Ferry,
running south 106 ft. and north 175 ft. from
center line of 14th Street, together with lands
under water appurtenant thereto used for
ferry purposes and possessing an additional
value by reason of the fact that all other lands
along the river front are restricted against
use for ferry purposes excepting property
known as Hoboken Ferry and marked Plot A
on city assessment map. Ferry buildings,
bridges, racks, etc., used for ferry purposes
including 3 boats.”

10

2. That they are aggrieved by the assessed valu-
ation of their property in the City of Hoboken
for the year 1921, and are discriminated against
by the assessed valuation of other property in
the City of Hoboken, and in other taxing districts
of Hudson County, because:

20

(a) The assessment for 1921, of your petition-
ers' property is in excess of its true value on the
day as of which the assessment was by law re-
quired to be made.

30

(b) The said assessment is at a rate in excess
of the rate of assessments levied against proper-
ties of like character and similarly situated in the
same locality and taxing district.

(c) Your petitioners' property is not valued and
assessed in the same relative proportion to true
value as the other properties assessed in said tax-
ing district of the City of Hoboken, and is largely
and intentionally assessed in excess of and dis-

Petition of Appeal.

proportionally to the assessment placed upon the property of other owners in said taxing district contributing to the same common burden of taxation therein, whereby your petitioners are discriminated against.

10 (d) The said valuation and assessment are in the aforesaid particulars and in divers other respects excessive, illegal, irregular, informal and incorrect to the detriment of your petitioners.

(e) That said property has been assessed for taxation for the year 1921, at a valuation of

Land	\$670,300
Buildings	50,000
Chattels	48,000

20 Total\$768,300

(f) That your petitioners are of the opinion that, from the evidence that can be produced, the fair and true value of said property on the 10th day of January, 1921, did not exceed

Land	\$428,960
Buildings	50,000
Chattels	48,000

30 Total\$526,960

(g) That, in any event, the fair and true value of said property on the 10th day of January, 1921, did not exceed the value determined and fixed by the New Jersey State Board of Taxes and Assessment by their judgment dated April 20, 1920, in the matter of the appeal of Director-General of Railroads, the Delaware, Lackawanna and Western Railroad Company and the Hoboken Ferry

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Petition of Appeal.

Company, from the assessment of the same property (hereby appealed) in the City of Hoboken, County of Hudson, for the year 1919, viz:

Land	\$458,931
Buildings	50,000
Chattels	48,000

10

Total\$556,931

(h) The value was also determined and fixed for the year 1920, by the Hudson County Board of Taxation, upon the consent of the City of Hoboken, by judgment dated August 10, 1920, in the matter of the appeal of the Delaware, Lackawanna and Western Railroad Company and the Hoboken Ferry Company from the assessment of the same property (hereby appealed) in the City of Hoboken, County of Hudson for the year 1920, viz:

20

Land	\$459,000
Buildings	50,000
Chattels	48,000

Total\$557,000

Wherefore your petitioners pray that the assessment of said property for the year 1921, be reduced to the true value thereof, viz:

30

Land	\$428,960
Buildings	50,000
Chattels	48,000

Total\$526,960

Or, in any event, that the assessment of said property for the year 1921, be determined and fixed by your Honorable Board at not to exceed

40

Petition of Appeal.

the above-stated value as fixed for 1920, by the Hudson County Board of Taxation on the same property as is hereby appealed, viz:

	Land	\$459,000
	Buildings	50,000
10	Chattels	48,000
		\$557,000
	Total	\$557,000

3. That your petitioners appealed within the time limited by law to the Hudson County Board of Taxation setting forth its grievances substantially as above; and that Board held no hearing thereon but under date of August 27, 1921, gave your petitioners notice that the valuation had been "Affirmed without Prejudice"; copy of said notice is hereto attached and marked Schedule "A."

Your petitioners therefore pray that your Honorable Board will take due order respecting this appeal and summarily hear and determine the complaints herein contained, and reduce, revise and correct said assessment, in accordance with the true value of said taxable property, and give to your petitioners the relief above indicated.

All of which is respectfully submitted this 28th day of September, 1921.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
THE HOBOKEN FERRY COMPANY.

By E. T. LUKENS,
Real Estate and Tax Agent.

Petition of Appeal.

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

EDMUND T. LUKENS, being duly sworn, says: That he is the Real Estate and Tax Agent of the Delaware, Lackawanna and Western Railroad and of the Hoboken Ferry Company; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EDMUND T. LUKENS.

Sworn and subscribed to before me this 28th day of September, 1921.

ERIC T. DALBERG,
Notary Public, N. J.

(SEAL)

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Schedule A, attached to Petition.

Schedule A.

HUDSON COUNTY BOARD OF TAXATION

570

10 Clarence T. Van Deren, Pres. Court House
Christopher C. McMahon Jersey City, N. J.
Philip McGovern

Aug. 27, 1921.

Mr. E. T. Lukens,
c/o Delaware, Lackawanna R. R.
Hoboken.

Your appeal has been considered by this Board
and the valuation of your property has been
Affirmed without Prejudice

20 Taxing) Book 2
District { Hoboken Block Lot B 2

Apply to your collector for New Tax Bill.

JOS. P. McLEAN,
Secretary.

Endorsed:

NEW JERSEY STATE BOARD OF
TAXES AND ASSESSMENT.

30 PETITION OF APPEAL.

The Delaware, Lackawanna and Western
Railroad Company, The Hoboken Ferry
Company.

vs.

City of Hoboken.

1921

Filed, September 30, 1921.

Judgment.

Service acknowledged Sept. 28/21.

JOHN J. FALLON,
Attorney for Hoboken.

E. T. LUKENS,
Real Estate & Tax Agent,
115 Ferry Street, 10
Hoboken, N. J.

Service Acknowledged

Hudson County Board of Taxation

JOS. P. McLEAN,
Secy.

September 23, 1921.

Judgment.

STATE OF NEW JERSEY. 20

STATE BOARD OF TAXES AND ASSESSMENT.

In the Matter

of

APPEAL OF DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY and the HOBOKEN
FERRY COMPANY from the As-
sessment of Property in Hobo-
ken, Hudson County, for the
Year 1921. 30

An appeal in writing having been filed with the
State Board of Taxes and Assessment, duly veri-
fied according to the rules of practice prescribed
by said Board, by Delaware, Lackawanna and

Judgment.

Western Railroad Company and the Hoboken Ferry Company, in which it is alleged that an injustice has been done the said complainant by the assessment of real property for taxation for the year 1921, located at Hoboken, in the County of Hudson, consisting of Plot B 2—Ward 2, situated at the foot of 14th street, running south 106 feet and north 175 feet from the center line of 14th street, and extending to Pier Head Line including lands under water, and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainants, and the said respondent, and the argument of M. M. Stallman for complainants, and Horace L. Allen, city attorney for the City of Hoboken, and after considering the same, it is on this 13th day of November, 1923, at a session of the State Board of Taxes and Assessment,

ORDERED, ADJUDGED AND DECREED, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$670,300 upon said lands be and the same is hereby reduced to \$603,252, and that the total assessment of said lands, together with the buildings and chattels thereon be reduced from \$768,300 to \$701,252.

JAMES BAKER, President.
FRANK B. JESS,
HARRY W. MUTCHLER,
M. R. MARGERUM,
ISAAC BARBER,

State Board of Taxes and Assessment.

Attest:

FRANK D. SCHROTH,
Secretary.

Judgment.

Endorsed:

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND
ASSESSMENT.

In re Appeal of

Delaware, Lackawanna & Western
Railroad Company and The Hoboken
Ferry Company, 10

vs.

City of Hoboken,
County of Hudson.
For the year 1921.

JUDGMENT.

Decided and filed.
November 13, 1923. 20

FRANK D. SCHROTH,
Secretary.

State Board of Taxes and Assessment.

Petition of Appeal.NEW JERSEY STATE BOARD OF TAXES AND
ASSESSMENT.

In the Matter

of

10 The application of the DELAWARE,
LACKAWANNA AND WESTERN
RAILROAD COMPANY, and the
HOBOKEN FERRY COMPANY, for
the reduction of the tax assess-
ment for the year 1922, on prop-
erty situate in the City of Hobo-
ken, County of Hudson, State of
New Jersey.

20 To the New Jersey State Board of Taxes and
Assessment:

The petition of the Delaware, Lackawanna and
Western Railroad Company, lessee, and the Ho-
boken Ferry Company, respectfully shows:

1. That your petitioners, the Delaware, Lacka-
wanna and Western Railroad Company, a corpo-
ration of the State of Pennsylvania doing business
in New Jersey under legislative sanction, lessee,
30 and the Hoboken Ferry Company, a corporation
of the State of New Jersey as owner as their sev-
eral interests may appear, all being taxpayers in
the City of Hoboken, show that they are owners
or lessees of certain property situate in the taxing
district of the City of Hoboken, County of Hud-
son, described as follows on the assessment books
of the City of Hoboken, viz:

40

Petition of Appeal.

“Ward 2 property marked Plot B 2 on City
Assessment Map. Property situated at the
Eastern Terminal of 14th Street produced and
commonly known as 14th Street Ferry, run-
ning south 106 feet and north 175 feet from
center line of 14th Street together with land
under water appurtenant thereto used for
10 ferry purposes and possessing an additional
value by reason of the fact that all other lands
along the river front are restricted against
use for ferry purposes excepting property
known as Hoboken Ferry and marked Plot A
on city assessment map. Ferry buildings,
bridges, racks, etc., used for ferry purposes,
including 3 boats.”

2. That they are aggrieved by the assessed valu-
ation of their property in the City of Hoboken for
the year 1922, and are discriminated against by
the assessed valuation of other property in the
City of Hoboken, and in other taxing districts of
Hudson County, because:

(a) The assessment for 1922 of your petition-
er's property is in excess of its true value on the
day as of which the assessment was by law re-
quired to be made.

(b) The said assessment is at a rate in excess
of the rate of assessments levied against proper-
ties of like character and similarly situated in the
same locality and taxing district.

(c) Your petitioners' property is not valued
and assessed in the same relative proportion to
true value as the other properties assessed in said
taxing district of the City of Hoboken, and is
largely and intentionally assessed in excess of and

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Petition of Appeal.

disproportionally to the assessment placed upon the property of other owners in said taxing district contributing to the same common burden of taxation, therein, whereby your petitioners are discriminated against.

10 (d) The said valuation and assessment are in the aforesaid particulars and in divers other respects excessive, illegal, irregular, informal and incorrect to the detriment of your petitioners.

(e) That said property has been assessed for taxation for the year 1922, at a valuation of

Land	\$670,300
Buildings	50,000
Chattels	48,000

20 Total\$768,300

(f) That your petitioners are of the opinion that, from the evidence that can be produced, the fair and true value of said property on the first day of October, 1921, did not exceed

Land	\$428,960
Buildings	50,000
Chattels	48,000

30 Total\$526,960

(g) That, in any event, the fair and true value of said property on the first day of October, 1921, did not exceed the value determined and fixed by the New Jersey State Board of Taxes and Assessment by their judgment dated April 20, 1920, in the matter of the appeal of Director General of Railroads, the Delaware, Lackawanna and Western Railroad Company and the Hoboken Ferry Company, from the assessment of the same prop-
40

Petition of Appeal.

erty (hereby appealed) in the City of Hoboken, County of Hudson, for the year 1919, viz:

Land	\$458,931
Buildings	50,000
Chattels	48,000

Total\$556,931 10

(h) The value was also determined and fixed for the year 1920 by the Hudson County Board of Taxation, upon the consent of the City of Hoboken, by judgment dated August 10, 1920, in the matter of the appeal of the Delaware, Lackawanna and Western Railroad Company and the Hoboken Ferry Company from the assesment of the same property (hereby appealed) in the City of Hoboken, County of Hudson, for the year 1920, viz:

Land	\$459,000
Buildings	50,000
Chattels	48,000

Total\$557,000 20

Wherefore your petitioners pray that the assessment of said property for the year 1922 be reduced to the true value thereof, viz:

Land	\$428,960
Buildings	50,000
Chattels	48,000

Total\$526,960 30

Or, in any event, that the assessment of said property for the year 1922, be determined and fixed by your Honorable Board at not to exceed
40

Petition of Appeal.

the above-stated value as fixed for 1920, by the Hudson County Board of Taxation on the same property as is hereby appealed, viz:

Land	\$459,000
Buildings	50,000
Chattels	48,000
	<hr/>
Total	\$557,000

10

3. That your petitioners appealed within the time limited by law to the Hudson County Board of Taxation setting forth is grievances substantially as above; and that Board held no hearing thereon but under date of August 31, 1922, gave your petitioners notice that the valuation had been "Affirmed without Prejudice"; copy of said notice is hereto attached and marked Schedule "A."

20

Your petitioners therefore pray that your Honorable Board will take due order respecting this appeal and summarily hear and determine the complaints herein contained, and reduce, revise and correct said assessment, in accordance with the true value of said taxable property, and give to your petitioners the relief above indicated.

30

All of which is respectfully submitted this 27th day of September, 1922.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

THE HOBOKEN FERRY COMPANY.

By E. T. Lukens,
Real Estate and Tax Agent.

40

Schedule A, attached to Petition.

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

EDMUND T. LUKENS, being duly sworn, says: That he is the Real Estate and Tax Agent of the Delaware, Lackawanna and Western Railroad and of the Hoboken Ferry Company; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

10

EDMUND T. LUKENS.

Sworn and subscribed to before me }
this 27th day of September, 1922. }

20

CLARENCE J. WYCKOFF,
Notary Public for
the State of New Jersey.

(Seal.)

Schedule A.

HUDSON COUNTY BOARD OF TAXATION.

Christopher C. McMahon, Pres.
Philip McGovern,
Clarence T. Van Deren.

30

Court House, Jersey City, N. J.

Aug. 31, 1922.

Land & Tax Agent, Lackawanna B. R.,
Hoboken Station,
Hoboken.

Your appeal has been considered by this Board

40

Schedule A, attached to Petition.

and the valuation of your property has been
Affirmed without Prejudice.

Taxing } Plot 2 B
District } Hoboken Block Lot

Apply to your collector for New Tax Bill.

10

JOS. P. McLEAN,
Secretary.

Endorsed:

NEW JERSEY STATE BOARD
OF TAXES AND ASSESSMENTS.

PETITION OF APPEAL.

The Delaware, Lackawanna and
Western Railroad Company,
The Hoboken Ferry Company,

20

vs.

City of Hoboken.

1922.

Service acknowledged September
27, 1922.

John J. Fallon,
Atty. for Hoboken.

30

Filed, September 29, 1922.
E. T. Lukens,
Real Estate & Tax Agent,
115 Ferry St.,
Hoboken, N. J.
M. M. Stallman,
Counsel.

40

Judgment.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENTS.

In the Matter

of

APPEAL OF DELAWARE, LACKA-
WANNA & WESTERN RAILROAD
COMPANY and the HOBOKEN
FERRY COMPANY from the As-
sessment of Property in Hobo-
ken, Hudson County, for the
Year 1922.

10

An appeal in writing having been filed with
the State Board of Taxes and Assessment, duly
verified according to the rules of practice pre-
scribed by said Board, by Delaware, Lackawanna
& Western Railroad Company and the Hoboken
Ferry Company, in which it is alleged that an in-
justice has been done the said complainant by the
assessment of real property for taxation for the
year 1922, located at Hoboken, in the County of
Hudson, consisting of Plot B 2, Ward 2, situated
at the foot of 14th Street, running south 106 feet
and north 175 feet from the center line of 14th
Street, and extending to pierhead line, including
lands under water, and that said property is as-
sessed higher than the true value thereof;

20

30

After hearing evidence produced on the part of
said complainants and the said respondent and
the argument of M. M. Stallman for complainants,
and Horace L. Allen, City Attorney, for the City

40

Judgment.

of Hoboken, and after considering the same, it is on this 13th day of November, 1923, at a session of the State Board of Taxes and Assessment,

10 ORDERED, ADJUDGED and DECREED, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$670,300 upon said lands be and the same is hereby reduced to \$603,252, and that the total assessment of said lands, together with the buildings and chattels thereon, be reduced from \$768,300 to \$701,252.

JAMES BAKER, President,
FRANK B. JESS,
HARRY W. MUTCHLER,
M. R. MARGERUM,
20 ISAAC BARBER,

State Board of Taxes and Assessment.

Attest:

FRANK D. SCHROTH,
Secretary.

Endorsed:

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND
ASSESSMENT.

30 *In re* Appeal of

Delaware, Lackawanna and Western
Railroad Company and the Hoboken
Ferry Company

vs.

City of Hoboken,
County of Hudson,
For the year 1922.

Judgment.

JUDGMENT.

Decided and Filed November 13,
1923.

Frank D. Schroth,
Secretary,

State Board of Taxes and Assessment. 10

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

I, FRANK D. SCHROTH, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTIFY, that the foregoing are true copies of the petitions, judgments and proceedings in the matter of the appeals of The Delaware, Lackawanna and Western Railroad Company, The Hoboken Ferry Company, from the assessment of property in the City of Hoboken, County of Hudson, for the years 1921 and 1922, as the same are taken from and compared with the originals filed in the office of the State Board of Taxes and Assessment, on the thirtieth day of September and other dates, A. D. 1921, 1922 and 1923, and now remaining on file and of record therein. 20

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
(SEAL) official seal of the Board, at Trenton,
this twenty-six day of February, A. D.
1924. 30

FRANK D. SCHROTH,
Secretary.

Reasons.

NEW JERSEY SUPREME COURT.

10	THE HOBOKEN FERRY COMPANY and the DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, its lessee, <p style="text-align: right;">Prosecutors,</p>	}	On Certiorari.
	<p style="text-align: center;"><i>v.</i></p> THE STATE BOARD OF TAXES AND ASSESSMENTS AND THE CITY OF HOBOKEN, <p style="text-align: right;">Defendants.</p>		

20 The prosecutors assign the following reasons why the assessments for taxation in the above-entitled cause should be set aside, reduced and modified:

1. Because said assessments are in excess of the true value of said lands.
2. Because said assessments are in excess of the market value of said lands.
3. Because there is no evidence to support said assessments.
- 30 4. Because the said assessments are arbitrary and have no relation to the true or market value of said lands.
5. Because said assessments should have been made according to the true market value of said lands, whereas said assessments are based upon and include a valuation of the ferry franchise in addition to the value of said lands.

Testimony.

6. Because said assessments were computed upon an erroneous and illegal principle.

7. Because said assessments are discriminatory.

8. Because said assessments are otherwise excessive, inconsistent, oppressive and illegal.

10

9. Because said assessments are made and based on a valuation equivalent to \$98,000 per acre, whereas the true value of said lands does not exceed a valuation equal to \$65,000 per acre.

CONGLETON, STALLMAN & HOOVER,
 Attorneys for Prosecutors.

Testimony.

STATE BOARD OF TAXES AND
 ASSESSMENT.

20

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, <p style="text-align: right;">Petitioner,</p>	}
<p style="text-align: center;"><i>v.</i></p> CITY OF HOBOKEN (2138), <p style="text-align: right;">Respondent,</p>	

30

Court House, Jersey City, N. J.,
 Wednesday, Oct. 24, 1923.

Present:

Mr. Baker, President; Mr. Magerum, Mr. Mutchler, Mr. Jess, Dr. Barber.

Testimony.

Appearances:

M. M. Stallman, Esq., for the petitioner.

Horace Allen, Esq., for the respondent.

10 19. THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
v.
 CITY OF HOBOKEN (2138).

This case was listed for June 28th and adjourned on request of counsel for petitioner.

Assessment of 1921 on the following property:

20 "Ward 2. Property marked Plot B 2 on City Assessment Map. Property situated at the Eastern Terminal of 14th street produced and commonly known as 14th street Ferry running south 106 feet and north 175 feet from center line of 14th street, together with lands under water appurtenant thereto used for ferry purposes and possessing an additional value by reason of the fact that all other lands along the river front are restricted against use for ferry purposes excepting property known as Hoboken Ferry and marked Plot A on city assessment map. Ferry Buildings, Bridges, Racks, etc., used for ferry purposes including three boats." Assessed as follows:

	Assessed	Wants Reduced to
Land	\$670,300	\$428,960
Bldgs.	50,000	50,000 (No appeal.)
Chattels	48,000	48,000 " "
	<hr/>	<hr/>
	\$768,300	\$526,960

Testimony.

Petitioner appealed to Co. bd., but assessment was affirmed "without prejudice."

NOTE: This property was before the Board for the year 1919 from the assessment of \$634,200 as follows:

	Assessed	State Board Action
Land	\$536,200	\$458,931
Bldgs.	50,000	50,000
Chattels	48,000	48,000
	<hr/>	<hr/>
	\$634,200	\$556,931

20. THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
 THE HOBOKEN FERRY COMPANY,
v.
 CITY OF HOBOKEN (2470).

This case was listed for hearing on June 28th, and adjourned on request of counsel for petitioner.

Assessment of 1922 on the following property:

30 "Ward 2. Property marked Plot B 2 on City Assessment Map. Property situated at the eastern terminal of 14th street produced and commonly known as 14th street Ferry, running south 106 feet and north 175 feet from center line of 14th street, together with land under water appurtenant thereto used for ferry purposes and possessing an additional value by reason of the

Testimony.

fact that all other lands along the river front are restricted against use for ferry purposes excepting property known as Hoboken Ferry and marked Plot A on city assessment map. Ferry Buildings, Bridges, Racks, etc., used for ferry purposes including three Boats," assessed as fol-

10

	Assessed	Wants Reduced to	
Land	\$670,300	\$428,960	
Bldgs.	50,000	50,000	(No appeal.)
Chattels	48,000	48,000	" "
	\$768,300	\$526,960	

Petitioner appealed to County Board, but assessment was affirmed "without prejudice."

20

Mr. Stallman: If the Board please, I assume that we will take up these appeals for the year 1921 and 1922 together, and have the same record apply to both cases, and for the information of the Board I would like to make a preliminary statement.

30

These appeals involve what is known as the Upper Ferry in Hoboken, a tract of land which I think contains six acres, running between the exterior line of the piers,—or at least the exterior end—yes, the exterior line of the piers, and back to and including some back lands behind the bulkhead line. A part of that property, a part of the property of the Hoboken Ferry Company at that place, is used by that Company and its lessee, the Delaware, Lackawanna & Western Railroad Company, for the repair of the ferry boats which are used in connection with the lower ferry that runs from the D. L. & W. station. The portion so used by the railroad com-

40

Testimony.

pany in connection with its other ferry, about an acre and a half, and because of that use it is assessed in the first instance by this Board as second-class railroad property, but that area is a part of the whole property of the company at that point.

10

In the year 1920 your Board, acting as the Board making the first assessment, valued that part of the land used by the Railroad Company for the maintenance of boats and so forth, and designated as second-class railroad property, at \$53,544 per acre. In the same year, almost simultaneously with the Board's assessment, the City of Hoboken valued the adjacent property—is the property that is now under appeal—at \$74,500 an acre. I give you those figures merely as a matter of information, because the 1920 val-

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uations are not involved in this case. The following year your Board valued that part of it which is designated as "second-class railroad property" at \$75,000 an acre, and the City of Hoboken valued the property, that part of the property which is under appeal, at \$108,900 per acre. Those assessments were simultaneous and on different portions of the same property.

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For 1922 the situation is the same. After your Board had assessed the part which is designated as second-class railroad property at \$75,000 an acre, the City of Hoboken again assessed that part which is used for purely local purposes at \$108,900 an acre.

So I call your attention in the first place to what seems to us to be a very obvious and unjustifiable discrimination between parts—in the valuation of parts of the same property, a part

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of which is assessed by your Board sitting as original assessors, and the part of the same property assessed by the City of Hoboken, a difference of more than 50 per cent.

10 We will contend, of course—I desire to have this noted very clearly on the record—that the difference in the valuation of these two parts of this same property is a discrimination which is in conflict with the guarantees of the State Constitution and of the Federal Constitution; it is a taking of our property without due process of law, and a denial of the equal protection of the laws as guaranteed by the 14th amendment.

20 Cases of this character have been before the United States Supreme Court on several occasions very recently, and that Court has determined that a discrimination of that kind cannot be sustained.

Now, I would like to call as our first witness Mr. de Selding. May I ask the Board and the representatives of the city whether they wish Mr. de Selding's qualifications spread upon the record?

Mr. Allen: I have no desire to.

The President: The Board has no desire to do so, then.

30 Mr. Stallman: It may be noted on the record then that Mr. de Selding is a qualified expert.

Mr. Allen: You don't have to do that if I don't oppose it. There is no use for it.

HERMAN DE SELDING, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. Stallman:

40 Q. Mr. de Selding, are you familiar with the

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property under appeal, being the so-called 14th Street Ferry property in Hoboken, comprising, I think, about six acres of land? A. I am.

Q. And have you personally examined that property? A. I have.

Q. Have you arrived at any conclusion as to the fair market value of that property for the year, 1921? A. I have. 10

Q. That is, as of October 1, 1920? A. I have.

Q. And have you also arrived at a conclusion as to the value of that property for October 1, 1921? A. I have.

Q. Which would be for the tax year 1922? A. Yes, sir; I have.

Q. Now, will you state to the Board your valuations of that property for these respective years and the reasons for your conclusions? A. I find 20 the property described in the complaint, the 14th Street property of the Delaware, Lackawanna and Western Railroad, having a frontage of 281 feet, with an irregular depth to the pier line. It has an area of upland of 54,085 square feet, with an area under water to the pier line of 214,015 square feet, making a total square foot area of 268,100 square feet.

In fixing a valuation of this property and considering all of the things that I thought made up that valuation, I reached a figure for the upland of \$2.30 a square foot, or \$124,396, and for the land under water \$1.15 a square foot, or \$246,117. Making a total for upland and land under water of \$370,513, which means \$1.382 to the square foot. 30

Q. That was as of October 1, 1920? A. As of October 1, 1920, yes, sir.

Q. And have you made any change in that valuation for the following year? A. I have not. 40

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Q. You think that that assessment, that valuation, applies to both years? A. I do.

10 Q. Now, will you give the Board the reasons for your conclusions? A. In taking into consideration the value of the water front property from an experience of a number of years I have come to the conclusion that by reason of the general shipping situation and manufacturing situation around the harbor of New York, that there has been no change during the period to which I have affixed these figures.

20 You have a piece of property that is situated at the foot of the principal street in Hoboken, 14th Street, 281 feet in width. It is occupied by the uses of the ferry to 23rd Street, Manhattan. The trolley cars make a turn in front of the ferry and facilities are offered for the transfer of passengers from the cars to the ferry.

I have believed that the only possible citations of similar property in that section to apply to the property under consideration have been the sale of the Hoboken Manufacturers' property, a frontage of 190 feet; the sale of the Manor property and the Ocean Steamship property to the south. I do not consider the sale of the International Company at the foot of Essex and Sussex Street to be at all pertinent, by reason of the great difference in location.

30 I do not consider the sales that have been brought before the attention of this Board of the Cunard, Shamburg, Hamburg-American, North German Lloyd and a number of other pieces running down the coast to Bayonne, of which there has been a good deal said—I don't consider that they have any similarity, because in those cases,

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with the exception of the International there is an opportunity given for expansion which appeals to the commercial buyer, the buyer for manufacturing interests, the import and export business that we have to take into consideration in acquiring water front facilities.

10 Q. Mr. de Selding, do you consider this parcel of land now under review would be a desirable parcel for manufacturing or commercial uses? A. I do not. And the reason for that I would like to set forth in the use that I had thought at one time perhaps it might be put to in turning it into a commercial proposition, the use for factory and dock bulkhead purposes, where ships might come and land their cargoes into a warehouse.

20 Q. Do you think that is the highest use to which this property can be put; that is, the use which would bring in the greatest revenue per square foot? A. I think that it is perhaps the only use to which it might be put economically, would be for that purpose, for warehouse and steamship purposes.

Q. In that combination? A. That combination, where a ship might discharge and receive cargoes from trackage and warehouse adjacent.

30 Q. But, in other words, that is the best use to which the property could be put, in your judgment? A. In my judgment it is the best use.

Q. Now, if that is so, how do you create value, your value, out of that use? A. I didn't catch that question. How do I do what?

40 Q. Create your values out of that assumed use? A. Well, I have put it to the test in erecting hypothetically a warehouse on the upland, building a pier running from the bulkhead out to the pierhead line, with slips on either side, and using

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the figures that are in vogue and of which there are many citations as to cost of an investment of that character, and then applying the rental possibilities of the warehouse and pier to that. I have reached the conclusion that a profit might be obtained, but not at the figures at which this property is now assessed.

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Q. What are your figures? What revenue could be derived from this property? A. I have made a study of that and find as follows:

I have taken my entire upland, 281 feet frontage on the upland, as a warehouse site of 153,266 square feet. I have built a pier 100 by 403, containing 40,300 square feet. I have allowed a slip-room on either side for the proper handling of the vessel for loading and discharging cargo, of 37,266 square feet on either side. That takes up my 268,100 square feet in accordance with a survey which I now have.

20

On that upland property, allowing for a passageway around a warehouse of 20 feet, as well as for the bulkhead in front, I have built a warehouse of six stories of concrete, allowing a 20 per cent. discount in area for stairs, elevators, hatches and so forth, and I have given myself a cubic contents of building of 7,308,540 cubic feet, which I have assumed could be built for 40 cents a cubic foot.

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I have built a pier running out from the bulkhead containig 40,300 square feet, with a corrugated iron warehouse or shed, at \$4 a foot, and I have found that the total cost of the land, the warehouse and pier, the land item being the figure to which I have testified as my belief as to its value—I find the total investment to be \$3,455,129.

I have assumed in a rental proposition on such a property that from a net floor area of ware-

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Herman De Selding, direct.

house of 584,682 square feet rented at 45 cents a square foot, and for a pier having 40,300 square feet at 70 cents, which is the rental received by the City of New York from the Chelsea piers, almost directly opposite on Manhattan, and I reach a gross rental of \$291,317, which equal 8 per cent. gross, plus a small fraction.

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From that is to be deducted items of which I have no figures, as to taxes, insurance, water, repairs and vacancies.

Q. Well, your estimated revenue of 8 per cent. gross certainly would be first subject to a tax rate of about 3 per cent.? A. If not in excess of that.

Q. Yes. That would reduce your revenue to 5 per cent. to start with? A. It would.

Q. And then you would have to have all your operating expenses taken off of that? A. I would, as recited.

20

Q. Then, as I understand your testimony—and you will correct me if I am wrong—even at your valuation of \$370,000 for this property, if it should be developed as an industry for the highest use to which you think it can be put, the revenues to be derived from that use would not support even the estimated value that you have placed on the property? A. It would not.

Q. Is this value which you have given us, of \$2.30 on the upland and \$1.15 on the land under water, making an average for the whole of \$1.38 per square foot—is that also based upon your general knowledge of the value of water front property on the Jersey side of the Hudson River? A. Knowledge of values and of the sales as made.

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Q. You are familiar with all the sales that have taken place over how many years? A. I have been familiar for over 25 years with all the sales, I be-

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Herman De Selding, direct.

lieve, that I have been able to obtain, throughout the harbor of New York. I have sold some ten properties in the vicinity of Bayonne and Staten Island. I have leased piers for the Erie. I have been in litigation as representing the railroads for a number of years past.

10 Q. I didn't want you to go into all of that. What I mean was whether or not this judgment that you have expressed as to the value of this property is based upon, and you have taken into consideration, all of these sales that have taken place on the Hudson River in the last 20 years? A. I have, sir.

Q. Your valuation, your average valuation, then, of \$1.38 a square foot, roughly \$58,000 an acre— A. A little in excess of that.

20 Q. Between \$58,000 and \$59,000 an acre? A. Yes, sir.

Q. Do you think, Mr. de Selding, that this property to which you have testified, which is used for the local ferry, is of a different value, substantially different value, than the portion of it which is used as second-class railroad property, being a strip 69 feet wide immediately adjoining on the south? A. It is a part, but hardly can be considered, if taken as a separate piece, as having an exact similarity, because one is more restricted in area than the other. The 69 feet by itself would not possess the potentialities of the larger piece in seeking a revenue from the investment.

30 Q. But looking at it as part of the one tract—that is, part of a tract in one ownership, I think the Board might be interested in knowing whether, in your judgment, there is any substantial difference in the value of the unit of the property used for ferry purposes and the property used for railroad purposes? A. No, sir; under one own-

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Herman De Selding, cross.

ership I do not so consider it. There might be some very small recession in value to that part taken by itself, if it was in another ownership, but under one ownership the value of one is the value of the other, if combined.

Q. Let me ask you this: In the year 1920 the State Board valued the 69-foot strip at \$53,544 per acre? A. Yes. 10

Q. The figures you have given us on the 281-foot strip are a little better than \$58,000 per acre? A. Yes.

Q. Does that difference of about \$5,000 per acre represent your judgment as to the difference in the value of those two tracts? A. No, sir; that figure would be excessive—

Q. There is not \$5,000 difference? A. No, sir; under one ownership. 20

Q. Assuming that the valuation of this property was established and known in 1920, October 1, 1920, has anything occurred, any development, any sales or anything else of importance, which would indicate an increase in the value of this property since 1920? A. Not in my opinion. There has been no increase, in my opinion.

Q. Then if this property was worth between \$55,000 and \$60,000 an acre in 1920, do you still think that those values should obtain for the years 1921 and 1922? A. I do. 30

Mr. Stallman: Cross examine.

Cross examination by Mr. Allen:

Q. Do you think that this 14th Street Ferry's only use, economic use, should be for warehouse purposes? A. I didn't hear the last part of your question.

Q. Do you think that this 14th Street Ferry 40

Herman De Selding, cross.

property should only be used, as you say economically, for warehouse? A. That, I think, is the highest use, the best use.

Q. Did I understand you to say the only use, economically, of this property is for warehouse property? A. I didn't say the only one. I said the best use. 10

Q. Did I make a mistake when I put down the word "only"? A. I think so.

Q. Didn't you say "only"? A. Not to my knowledge.

Q. That the only use economically for this property was for warehouse? A. I think I said the best economic use to which the property could be put.

Q. Then in your opinion it would be advisable for them to abandon the ferry purpose and use it for this warehouse purpose? A. I am not aware of the figures of the operation of the Ferry Company as such, and consequently I couldn't answer that in figures. 20

Q. All right. Then, can you assume what would be the best use of this property unless you know the earning capacity and the monies taken in by the Ferry Company? A. No, sir; because I think that the operation of that company, whatever it might be, is of so transient a nature in its potential value that I would not go into the ferry item as such. 30

Q. You never, in the formation of your opinions as to the value of the 14th Street Ferry property—you never took into consideration what was the earning capacity of that ferry, did you? A. No, sir; I did not.

Q. You have always testified that you disre-

Herman De Selding, cross.

garded that? A. I think so. I won't say positively.

Q. In other words, you didn't care how much money they earned as a ferry proposition? A. In the years 1920 and 1921 I considered that we were nearing a point when the use of that ferry is almost to be nullified. 10

Q. Hasn't this always been the extent of your testimony as to this Hoboken Ferry property, that you always disregarded the earning capacity of that company as a ferry? A. In figures, yes.

Q. Then if you disregarded it and don't know what they earn, how are you in a position to say what is the best economic use of the property?

Mr. Stallman: I would like to interpose an objection to that question on the ground that it is entirely irrelevant, for this reason— 20

Mr. Allen: It is proper cross examination.

Mr. Stallman: You have no objection to my stating my objection, have you?

Mr. Allen: I beg pardon. Go to it.

Mr. Stallman: For this reason: That the earnings of the Ferry Company, of course, are the earnings under a franchise, which is in itself subject to taxation; that the earnings depend very largely upon the investment in marine equipment; the earnings depend very largely upon the maintenance of other terminals somewhere else at the other end of the ferry. There isn't any way in which anybody can determine the earnings from the bare physical and— 30

Mr. Allen: I don't like to interrupt, but

Herman De Selding, cross.

this is not the statement of an objection to my question; this is the giving of just the kind of testimony that perhaps Mr. Selding would be qualified to give. It is merely for the purpose of assisting him in his answer. It is not the statement of an objection.

10 The President: Objection overruled.

By Mr. Allen:

Q. If you haven't taken into consideration the earning capacity of the ferry, the 14th Street Ferry, how do you think you are in a position to make a statement as to what is the best economic use of that property, to wit, warehouse purposes? A. Only to the extent of the decline in the value of ferry property, as evidenced throughout the entire harbor of the City of New York. We have seen one ferry after another between Manhattan and Brooklyn and Third Street, Fulton Street, Wall Street—the Wall Street Ferry has been entirely eliminated—we have seen the operation of those ferries at very great cost to the operator. There have been deficits throughout.

20 Now, I have watched the operation of the 14th Street Ferry and the Lackawanna road for a number of years, and I note a distinct diminution in the number of passengers that are being carried over that ferry. The main portion of the business as I have seen it comes from the carriage of vehicles and vehicular things. Now, I realize that the life of that class of business is very short.

30 Q. Are you answering my question? A. I am trying to.

Q. You think you are? A. I think so.

Q. Well, you are not. A. Will you tell me where I am not?

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Herman De Selding, cross.

Q. Because my question was: If you do not know what is the earning capacity of the 14th Street Ferry, whether it comes from money received from pedestrians or whether it comes from vehicles, which may be more lucrative—if you don't know that, how can you tell what is the best economical use for that ferry property, to wit, a warehouse? Now, can't you answer that? A. Yes—

10

Q. Without making a long speech? A. By saying that the operation of that ferry is becoming obsolete. Whatever it might be, it is of short duration. The life of your investment is drawing to a close.

Q. Now, then, do I understand that your opinion is based upon your present statement that the use of the 14th Street Ferry has been obsolete for these two years? A. I said is becoming obsolete.

20

Q. Becoming. That may mean ten years from now. A. Not at all.

Q. In 1921 and 1922, do you know anything about the traffic across that 14th Street Ferry? A. I do. Those are the ferries —

Q. How many vehicles a day go over there? A. I couldn't answer that.

Q. Then you don't know? A. I do know that the—

30

Q. How much do you know about the traffic on that 14th Street Ferry during these two years, if you know anything at all about it?

Mr. Stallman: If the Board please, this is not a murder trial. I think we can get along here without so much vehemence and let the witness answer the questions without being interrupted.

40

Herman De Selding, cross.

Mr. Allen: I haven't interrupted him.

The President: Have you any knowledge,

Mr. Witness, of the earning capacity of the ferry during the two years under appeal?

A. In dollars and cents, no.

10 *By Mr. Allen.*

Q. As to the number of vehicles carried? A. No, except they seem to be the capacity of the boats at certain periods of the day.

Q. Have you ever examined any of the records of the Ferry Company to ascertain how many vehicles cross the 14th Street Ferry during either of these years? A. Absolutely no.

20 Q. Have you ever stood upon 14th street for any period of time on any day or any night and counted yourself and watched the number of vehicles? A. I have. I have tried to—

Q. Have you got a record of it? A. No, except—

Q. When did you do it? A. When did I do it? During the summer, last summer, the year before, and probably the year before that, summer and fall. I have tried to cross the ferry in a car and I have—

Q. How long did you stay there?

30 Mr. Stallman: Wait a minute. Now, I demand for this witness the right to answer, to finish his answer. If we are going to make such a hullabaloo about it, let's get the record straight.

The President: Read the question.

(Question read: "How long did you stay there?")

40 A. I have waited a quarter of an hour; I have waited a half hour, and I have waited longer than

Herman De Selding, cross.

half an hour in order to get across the ferry, by reason of the chain of vehicles that were ahead of me, who were waiting for their turn to fill up the very old-fashioned and obsolete boats in which I was to cross at 23rd street. We used to cross in boats that were lamentable looking, comparing them with the modern ferry boats that operate in other parts of the city. 10

The President: They are not models of marine architecture, are they?

The Witness: They are not models of marine architecture, no—that is, not 20th Century models.

The President: Not as compared with the municipal ferry boat between New York and Fort George. 20

The Witness: New York and Fort George, no.

Q. Do I understand that the only occasions when you observed this traffic on 14th Street Ferry was when you were endeavoring to cross in some car that you were about to cross in? A. No, sir; in the study of the question that was put up to me I have gone over as a foot passenger, my office at that time having been at 23rd street and Manhattan. I have gone over to Hoboken and I have crossed the ferry and re-crossed and re-crossed, and I have stood at the corner of Hudson street, at the entrance of the ferry, and I have tried to see what was the reason for the continuance of the operation of a ferry in this very old-fashioned manner. I have found that there were portions of the day when, I should say, it didn't seem to me there were fifty people on the boat; at the same time there was sufficient truck- 30 40

Herman De Selding, cross.

age to keep those boats practically full throughout the day.

In the morning and evening my experience was that the number of vehicles seeking accommodation on the boats was very great, as evidenced by the line of waiting vehicles back in the hinterland.

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The President: That is the experience of those who operate Ford cars, too, and who await at the ferry?

Mr. Stallman: Only Ford cars?

The President: That is about all we can operate on what we receive.

Mr. Allen: Now, if you have completely finished answering my question—

The Witness: I want to answer all the questions you give me.

20

Q. Do you think you can answer this question? Have you ever endeavored to ascertain the extent of the traffic on the 14th Street Ferry, for the purpose of putting yourself in a position of knowing whether or no the ferry was earning money, and if so, how much, and whether that was the best purpose it could be put to, rather than this mythical warehouse you speak of? Have you ever done that? A. My answer would be no.

30

Q. Now, you gave an average price of \$1.38 a square foot? A. \$1.38—a little in excess of that.

Q. And that figure that you gave, that is your opinion? That is your best judgment? A. That is my best judgment, after a study of the value of the property.

Q. And in that study you disregard all the sales of higher value along the Hudson River on our side that exceeded \$1.38? A. No, sir; I do not.

40

Herman De Selding, cross.

Q. You don't disregard them? A. I made no such statement.

Q. Well, did you consider them? A. I did consider them, yes.

Q. Wherever you found a higher price than your price you didn't consider that the property was comparable, did you? A. On the contrary, I looked into it very carefully to see what it was that gave it an added value, to the figure that I have in my own mind.

10

Q. You have had this low figure in your mind a good many years, haven't you? A. Since 1919.

Q. And prior to that you have even a lower figure? A. In the years gone by I can conceive that I may or may not have had. I am not addressing myself to that subject.

Q. And when the State Board rendered its judgment as to the adjoining property and fixed an assessment of \$2.25 a square foot, did that influence you at all? A. No, sir.

20

Q. The only body that is authorized under the law to fix a final determination as to value, you don't consider that at all? A. I consider the findings of this Board are entitled to the very greatest respect. If I differ with them I want to know why, because I sometimes think that they perhaps may know more about it than I do. I am trying to see, trying to learn. I am a student.

30

Q. You still want to stick to your \$1.38, notwithstanding the adjudication of adjoining property at \$2.25? A. I do.

Mr. Stallman: I object to that. There is no proof before us that I know of that the State Board has assessed adjoining property at \$2.25.

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Herman De Selding, cross.

By Mr. Allen:

Q. Have you examined the determinations of the State Board on the adjoining properties to the 14th Street Ferry north and south? A. I assume that I have. I read the reports of the State Board with a good deal of interest.

10 Q. All right. What determination did they figure? A. Offhand, I couldn't answer that question.

Q. You don't even know that? You couldn't answer that? A. I have heard it, yes. I heard you state it a moment ago. That is hearsay knowledge, however.

Mr. Stallman: Well, so that we won't have any mistake about it, the Board's assessment on the adjoining property last year was \$75,000 an acre.

20 Mr. Allen: I don't ask you to give me that information. I know what the assessment was, Mr. Stallman. I am asking this witness.

Q. Have you paid any attention to the determination of the State Board? A. I have.

Q. And has that caused you to change your opinion from \$1.38? A. It has not.

30 Q. All right. Now, you have not taken into consideration the exclusive privilege or right—franchise—that this company has to operate the ferry, have you? A. Not in recent years, no.

Q. As long as you haven't considered their earning capacity you don't take that into consideration, do you? A. Not at all.

40 Q. Shouldn't an expert take that into consideration, in your opinion? A. In my opinion, in this particular case, because of the evanescent character of the value of that franchise, no.

Herman De Selding, cross.

Q. You say the character is evanescent? A. I think so.

Q. Well, how long has it existed? A. I think ever since we have known that we are going to have a vehicular tunnel. That was a very bad blow to the ferry interests around New Jersey.

Q. Well, until the tunnel is constructed the privilege that it has is not at all evanescent. It is there, isn't it? A. I think so. I think it is an axe hanging over their head like the sword of Damocles.

Q. But the traffic is going on? A. Yes.

Q. The earning capacity is there, isn't it? A. The earning capacity as it at present exists, yes, sir.

Q. Well, is your figure based upon this hypothetical structure that you make? A. It is supported by it.

Q. Supported by that? A. Yes.

Q. Are you sure it is supported by that? A. Well, if I am going to look into the future it may be.

Q. At the present time. Suppose you had this mythical warehouse of yours constructed there; does it support the figure \$1.38 or does it justify a lower assessment than that? A. I think if I was to be forced to look at the return I should say it justified a lower figure than that.

Q. Then it doesn't support the figure? A. It does.

Q. It rather runs it down. A. If I thought we were going to stop right now; that there was to be no future; if I thought we were never going to get more than 45 cents a square foot for warehouse space; if I thought that the building operations were going to be carried on on a basis of

Herman De Selding, cross.

40 cents instead of 20, as I have known it to be a few years back, why then I would say I have got hold of the bull's tail.

Q. Admitting that you have got the wrong end of the bull at the present time— A. I wouldn't let got, nevertheless.

10 Q. All right. You have then constructed a mythical warehouse and taken into consideration the earning capacity from that warehouse, haven't you? A. I have.

Q. In justifying your figures. A. In supporting my figures—one of the considerations to which I look.

Q. But it does not support your figure; it even militates against it, doesn't it? A. At this particular time.

20 Q. At this particular time? A. Yes.

Q. Now, then, if you will go into the realms of constructing some mythical building and go into some mythical earning capacity, why wouldn't you take into consideration the earning capacity afforded the company by this exclusive right that it has? A. Because I look upon the ferry as something that has become obsolescent.

30 Q. It would be rather dangerous to take into consideration the earning capacity of the Ferry Company by reason of this exclusive right? A. Yes, because it would show, perhaps, that the property was not worth what we figure it as a ferry proposition.

Q. And it might show that you are low in your estimate. A. No, I don't think so. If—

Q. Suppose it shows—

Mr. Stallman: Let him answer the question.

40

Mr. Allen: All right.

Herman De Selding, cross.

A. If the Ferry Company was a prosperous company, I assume that they would put on a higher class of boats to operate that ferry. Why is it that I have noticed for these years that the Lackawanna, a rich company, has continued to operate an obsolescent sort of a craft called a ferry boat, the Muskanetcon, and boats of that kind, which were simply—they were relegated to the discard years ago. If it was a good proposition, a business proposition, the Lackawanna road would put on such a ferry boat as they operate from Hoboken now to Cortlandt street or 23rd street.

10

Q. That is your opinion of what they would do?

A. That is the opinion of any man who looks into the economies of commercial activity, in my opinion.

20

Q. You don't consider this exclusive privilege, that that takes this property out of the ordinary category? A. No, not now. Not during the years 1919, 1920 and 1921.

Q. Why do you say "not now"? A. During this period.

Q. Why? A. The gong has sounded. The death knell of that ferry has been sounded.

30 Q. By what? A. By the action of the two States, of New York and New Jersey, in agreeing to construct a vehicular ferry—tunnel, which is to take away from the Lackawanna Ferry the larger part—let us say the largest part—of the earnings from the 14th Street Ferry. Therefore, if the operation even was a good one today, it is not going to continue. Its life is short.

Q. Have you again finished? A. I have finished.

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Herman De Selding, cross.

Q. Then your reason is given now on account of the prospective tunnel? A. One of the reasons.

Q. One of the reasons? A. Yes.

Q. Now, when you testified years ago and disregarded the earning capacity of the 14th Street Ferry and the exclusive privilege, put that all in the discard in those days, was that—you didn't know anything about the tunnel then, did you?

Mr. Stallman: I object to that question. The record of any previous testimony is not before you.

By Mr. Allen:

Q. Do you recall that you previously testified that several years ago, at the hearings on the 14th Street Ferry property, you disregarded the exclusive use and the earning capacity of the company? A. I very clearly recall that I gave it an added value in those days because of its exclusive privilege of operating a ferry from that point.

Q. You do recall that? A. I most decidedly do.

Q. Now, suppose this tunnel should not be able to carry away the gases from the automobiles and should be a failure and have to be shut up during part of the day—

Mr. Stallman: I don't think we should go into the possible technical defects of the proposed tunnel.

Mr. Allen: He speaks of a proposed tunnel that is going to affect this business. I would like to find out if he has taken that into consideration.

A. I have.

Mr. Margerum: Is the Board interested

Herman De Selding, cross.

in that in any way at all? The Board wants to know what the value of the property was on the assessment date. That is all we are asking for, not in the future.

The President: I think he has gone into it to a sufficient extent when he says that the tunnel in its operation simply spells the demise of the ferry. Is that the idea?

The Witness: Yes.

Mr. Allen: He said that. Mr. Stallman brought that out. I was perfectly right under cross examination in asking him whether or no he has taken into consideration the fact that the tunnel might not be successful.

Mr. Stallman: It is altogether speculative.

Mr. Allen: But if the Board don't care for it I will withdraw it.

Q. Have you taken into consideration any sales which justify your opinion of the \$1.38 valuation?

A. I have.

Q. What sales? A. The sale of the Hoboken Manufacturers Railroad Company.

Q. When was that? A. I have taken—

Q. When was that? A. That was about 1919—1918 or 1919.

Q. All right. A. I have taken into consideration that of the Ocean Steamship Company.

Q. When was that? A. That was December 28, 1915.

Q. 1915? A. Yes. The Hoboken—

Q. Give us your other sales. A. The Manor Realty Company.

Q. What year was that? A. That was March 22, 1916.

Herman De Selding, cross.

Q. Are those the only three that you have taken into consideration? A. Those are the only three properties that I think have any relevancy of any kind or description.

Q. They are all old ones? A. All old?

10 Q. 1915, 1916 and 1918? A. Yes, at a period when prices were mounting higher and higher and higher on account of the war.

Q. And have you studied recent sales? A. I have, sir. There have been no recent sales.

Mr. Stallman: If you are going to ask the witness that question, I think it ought to be clear as to what you mean by "recent sales."

Mr. Allen: Something more recent than 1918.

20 Q. Have you considered any sales of water front property made at a more recent period than back in 1918? A. I have considered any sale that has come into my notice up to date.

Q. But none of those have caused you to change your opinion as to this \$1.38? A. No, sir. The Cunard sale, which is the most prominent one, has no more to do with the 14th Street Ferry than if it was a different class of property.

30 Q. And your opinion is principally formed on this construction of the mythical warehouse? A. Not at all, sir. It is one of the supports. I reached my figure \$1.38 before I ever thought of a mythical warehouse, as you call it.

Q. Have you tried any other mythical enterprises to see how they figure out? A. I have tried to think of other methods by which I could make that property earn its money, its return, and they have all fallen down before a warehouse, which you speak of as a "mythical ware-

40

Herman De Selding, cross.

house"; I do not. I went through the operations to which I testify here in the construction and erection of the great warehouse of the Austin Nichols Company at Green Point, which is almost exactly a similar proposition.

Q. Why did you go into the earning capacity of a mythical warehouse to be constructed on this ferry property, if you don't even consider, find out and ascertain what is the earning capacity of the Ferry Company, with this exclusive privilege?

10

A. Because if you erect a warehouse—which you term "mythical," but which I do not—it is going to be good 50 years, 100 years from today. It is a going concern. One is a concern that is about to become less valuable as the years go on; consequently, whatever value I would give to it would be a lessening value, evanescent, as I have described it.

20

Q. Do I understand you now—let's have it absolutely fixed, so that it may be certain—in giving your estimate as to the valuation you didn't in any degree bother yourself to find out what this Ferry Company's business was, whether it was lucrative or otherwise, and what the exclusive privilege meant to it? A. I think I have answered that several times.

Q. And it is "No," that you did not? A. It is "No," in dollars and cents, but it also is accompanied with the fact that I made a very studious determination as to the business that is now being carried and what it amounted to, and how it might be classified.

30

Q. Now, Mr. de Selding, if it were possible by legislation to provide that Mr. de Selding should have the exclusive right of testifying as a real

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Herman De Selding, cross.

estate expert on water front properties—in other words, it being limited to you as the only one that could be hired, so that nobody else could encroach on your business—don't you think that your emoluments would rather increase, get a little better?
 10 A. Only for a short time. I am afraid paresis would come in and nullify whatever value I might have.

Mr. Jess: I just want to get my own mind clear on this. Following out that same analogy would Mr. de Selding's perquisites under those circumstances that you have named have any market value, unless the purchaser had the same sort?

Mr. Allen: Well, that is too far fetched.

20 Mr. Jess: But I have been thinking, as you pursued this line of questioning, is that a real element of the market value of this property?

Mr. Allen: Yes, I think so.

Mr. Jess: It is to the company, of course, undoubtedly.

30 Mr. Allen: It would seem to me that where they have an exclusive privilege, operating a ferry, that that gives that property a higher degree of value than the adjoining properties would have. A special franchise right of that kind certainly gives property enhanced value. It does so practically. Of that there cannot be any denial. If it was not so they would abandon the ferry immediately. They don't have to operate the ferry.

40 Q. Mr. de Selding, you have been talking about old ferry boats used on the 14th Street line, and the evanescent character of the business, and how

Herman De Selding, redirect.

the death knell has been sounded. Do you know anything about having recently put on two new ferry boats? A. I know that they have recently put on so-called two new ferry boats. I have watched them.

Q. What were they? A. What are their names?

10 Q. Yes. A. I don't remember. They have extraordinary names on the 14th Street Ferry boats. I have been rather unable to get away with it.

Q. Are you familiar with the new ferry boat that bears the peculiar and marvelous name of "Hoboken," christened recently by Mayor Griffin's daughter? A. I don't think I have any personal knowledge of that particular vessel, no, sir.

20 Q. Then if it is true that they have recently put on two new ferry boats, do you think that would jibe, dovetail in with your evanescent character of the business, and the death knell? A. Yes, because any new ferry boat there is hardly better than an old one.

Mr. Stallman: Now, I want to put this objection on the record, that there is no proof that two new boats have been put on that ferry.

Mr. Allen: That's all.

30 *Redirect examination by Mr. Stallman:*

Q. Now, Mr. de Selding, let me ask you this question: If the title of the Hoboken Ferry Company to this piece of land contains a covenant that the said land shall not be used for any other purpose than a ferry, what, in your opinion—how, in your opinion, would that affect its market value for the years 1920 and 1921?

40 Mr. Allen: I submit the question is improper because he has already testified that

Herman De Selding, redirect.

he disregarded the special privilege of the Ferry Company in the making up of this figure. He disregarded that altogether.

Mr. Stallman: He did not. He said he went there and studied the traffic, watched it, went over on the boats. Now, I ask the witness, if in the title to that property there was a covenant that it shall be used for no other purpose than a ferry, how would that affect its value, in his opinion?

Mr. Allen: I submit the question is improper cross examination—improper redirect examination—for the reason that this witness has maintained that he did not take into consideration this exclusive privilege of the Ferry Company in making up his opinion.

The President: The question is objected to.

Objection overruled. You may answer.

A. It would depreciate it, sir. That property would be depreciated if the only use to which it could be put would be for ferry purposes, in my opinion.

By Mr. Stallman:

Q. Could you say, with your knowledge of the property and your knowledge of river front property in general, to what extent that depreciation would go? A. I could not say, sir, but any property that is set aside and differentiated from adjacent property, unless the use to which it is differentiated is so unquestionable a thing that would add value, it would take it out of the market. Very few people in the free, untrammelled market are looking round to buy ferry property. I doubt

Herman De Selding, recross.

if there is a ferry operated anywhere in and around the harbor of New York that breaks even.

Q. Do you happen to know that the Municipal boats to Staten Island are operated at a loss? A. I do, sir. And I know that the 3rd Street Ferry from Manhattan to Brooklyn—I have seen the figures on it—showed a very heavy loss before it was sold by the Bird and Cutting interests to the City of New York, and operated as a municipal ferry. And also the St. George ferries are operated at a loss.

Mr. Stallman: That's all.

Recross examination by Mr. Allen:

Q. Well, if you have looked at the figures of operation of the ferries in New York where they have got bridges, why haven't you endeavored to look at the figures of this 14th Street Ferry Company that hasn't got the competition of bridges? A. The reason, sir, is plain. I am testifying in a case now between the City of New York and the Cutting Estate, in which the question that is uppermost and is being contested requires me to get the answer to that question.

Q. Well, Mr. de Selding, you have now expressed the opinion that if there was a covenant running with the land, which would require the operation of this property as a ferry, for ferry purposes, that that covenant militates against and depreciates the value of the land. A. It certainly would.

Q. That is on the assumption that the ferry business is a poor business and is on the decline, isn't it? A. And is a peculiar and special occupation.

Q. Now, suppose that the special occupation was extremely lucrative, wouldn't it then be a benefit? A. As I say, if that lucrative income had

Thomas A. Ryer, direct.

any basis of maintenance, any stability, it would, unquestionably. Any dollar that will earn 10 per cent. is better than the dollar that will only earn 5.

10 Q. Then until you know what the present dollar earns, you are not a position to say whether or not this covenant militates or whether it assists the value of the land? A. Not at all. I do not understand that there is any restriction which would require the specific use of this property for that purpose; it had a specific use and could be occupied voluntarily, but there was nothing to—as I understand it—to take that property out of the class of ordinary property that is found in and around the harbor of New York.

Mr. Allen: I think that's all.

20 (Witness Excused.)

Mr. Stallman: We will call Mr. Ryer.

THOMAS A. RYER, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. Stallman:

30 Q. Mr. Ryer, have you formed a conclusion as to the valuation of the 14th Street Ferry property for the assessment years 1921 and 1922? A. I have.

Q. Give the Board your figures, please. A. \$393,400 for both years.

Q. And reduced to unit terms, what is that? A. That is at the rate of about \$64,000 per acre, or \$1,400 a front foot.

40 Q. How did you construct that figure? A. I valued this property in the same manner as I valued all of the railroad properties to which I testified before this Board for the years 1921 and 1922.

Thomas A. Ryer, direct.

Q. Well, this is property that is not classified as second-class railroad property; it has not been originally assessed by this Board, and your reasons do not appear before this Board except in the record of the case on appeal, so I want you to just state, briefly, for this record, the basis of your conclusions. A. I made a study of all of the water front properties on the Hudson River in arriving at my valuations. In these various railroad cases I have valued practically all of the water front property from Weehawken down to Bayonne. I have valued all of the properties at a front foot value, and after a study of these sales, and the valuation that I have placed on this property is \$1,400 a front foot, after taking into consideration all of the water front sales as indicated in a schedule which I submitted to the Board in those cases. 10

Q. That is, you considered the location of these properties that have been sold, their frontage on the river and their depth? A. All of the elements that went in to make up value. And I also took into consideration in this case the location of the property in question. 20

Q. Now, Mr. Ryer, are you also familiar with a portion of this same property which is assessed by this Board as second-class railroad property? A. I am, and testified to that in the first-class railroad cases. 30

Q. In your judgment, is there any substantial difference in the value of that part which has been assessed by the City of Hoboken and that part which has been assessed by this Board as railroad property? A. There is no difference in the character of the land, with the exception of the fact that this third-class property has some upland, which the first-class or second-class rail- 40

Thomas A. Ryer, cross.

road property did not contain, and the valuation of the parcel in question at the present time would be slightly greater for that reason only. This is all one parcel of land in one ownership and is merely divided up for the purpose of taxation.

Mr. Stallman: You may cross examine.

Cross examination by Mr. Allen:

Q. Your valuation of the 14th Street Ferry, as I understand it, is at \$1,400 a front foot? A. It is.

Q. And would—how does property at the foot of 14th Street in Hoboken, on the water front, in your opinion, compare with unimproved land up in North Bergen on the water front? A. How do you mean “compare,” Mr. Allen?

Q. In value per front foot. A. I think this is more valuable.

Q. Fourteenth Street Ferry is more valuable? A. Taking it—of course, the same kind of land and the same size land, the same shape, it would be more valuable at 14th Street, Hoboken, in my judgment, than in North Bergen.

Q. How much per front foot? A. I don't know that.

Q. Why wouldn't you know? A. I can't tell you offhand. If you can give me any particular location I can give you the value of it.

Q. Take the property in North Bergen that the New York Central Realty and Terminal Company purchased. A. I should say the property of the New York Central Realty and Terminal Company, if it had the same depth and the same width as this particular piece of property, would be worth—oh, possibly half.

Q. As much? A. Yes.

Q. And yet it sold in 1920 for \$100 more per square foot? A. How much?

Thomas A. Ryer, redirect.

Q. One hundred dollars more than your valuation. A. And it sold in 1920, also, for one-third of this value.

Q. Well, didn't it sell in 1920 for \$1,500 a front foot? A. It did.

Q. Although in your opinion— A. That was the second sale, you know.

Q. Although in your opinion it is only worth about half as much as the 14th Street property. A. Correct, and only sold for that just prior to the large sale to the New York Central.

Mr. Allen: That's all.

Redirect examination by Mr. Stallman:

Q. You knew of the sale to the New York Terminal Company of these lands in North Bergen; that was by the Woodcliff and the Edgecliff Land Company, was it not? A. It was the Twombly property, part of the property, and part of the Woodcliff property that was sold by the Edgecliff Company to the New York Central—part that they had just previously purchased.

Q. You didn't consider that those sales had any bearing on the determination of the value of the 14th Street property? A. Well, I did think they had some bearing. I didn't think that the latter sales were at market value, the properties within three months having been sold for a great deal less money, and having heard Mr. Clark's testimony and knowing what the New York Central had done in connection with the purchase of that property.

Q. Do you know, Mr. Ryer, whether or not the contemplated development of properties in North Bergen has suffered any relapse in the last few years? A. They have.

Thomas A. Ryer, redirect.

Q. Do you know that the Lord Dry Dock Company are about to abandon their properties up there? A. I don't know that. I understand it, but I don't know it.

Mr. Allen: I object to what he understands.

10

Mr. Stallman: He said he don't know.

Q. Do you know that the proposed establishment of a passenger steamship terminal by the Cunard Company has been abandoned? A. I do.

Q. Do you know that the Cunard Company has cancelled their lease of lands from the New York Central? A. I do.

20

Q. That the Cunard Company has sold its Delaware and Hudson property to the New York Central? A. I do.

Q. Has there been any development in North Bergen in the last five years that has been completed—any development of water front land? A. There has not.

Q. Do you know that there were several prospects discarded? A. There were.

30

Q. Let me ask you, Mr. Ryer, do you think that the assessment by the State Board of Assessors of the second-class part of this property for the year 1920 at \$53,000 an acre was a fair adjustment of the value of that land? A. It was very close to its value, in my judgment.

Q. Now, since that time has anything occurred in the way of sales or development or anything else to increase that value per acre of water front lands in the vicinity of 14th Street? A. There has not.

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Q. Do you consider that the present assessment

Thomas A. Ryer, recross.

of \$108,900 an acre is excessive? A. That is indicated by my appraisal of \$60,000 an acre.

Mr. Stallman: That's all.

Recross examination by Mr. Allen:

Q. You say that you know that the Cunard Terminal Company has sold to the New York Central? A. I do.

10

Q. What tract is that? A. That is the old D. & H. property. It was purchased by the Cunard from the Delaware and Hudson Company.

Q. When was that sold? A. Why, I do not know—within a very short period of time, Mr. Allen.

Q. What was it sold for? A. I do not know that, offhand.

Q. Oh, then, that's bad. That's all.

20

Mr. Stallman: That's all.

If the Board please, there has been a great deal of testimony taken generally on the value of water front lands in the 1922 second-class case, and I would like to offer in this case the record in that case for such information as it contains, and particularly the various statements of sales and the general investigation that was made in that case for the purpose of determining the value of the water front lands in general on this side of the Hudson River.

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Mr. Jess (presiding): I suppose there is no objection to that?

Mr. Allen: I don't like to—he desires to offer all the previous testimony taken on the water front cases?

Mr. Jess: Not that it be made a part of

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Frederick Dunham, direct.

the record in this case at all. It is very voluminous.

Mr. Stallman: No, not have it made a part of the record, but to offer it as compiled here.

Mr. Jess: To be considered by the Board?

10 Mr. Stallman: To be considered by the Board. The testimony on both sides will be in that.

Mr. Allen: Oh, yes, I have no objection.

Mr. Jess: It may be received.

Mr. Stallman: I ask that that be marked our Exhibit No. 1.

(Testimony referred to received in evidence and marked Exhibit P. 1.)

20 And I would like to ask now whether or not the Board desires any additional copies of this printed record?

Mr. Jess: Well, I don't know. We will let you know. Mr. Schroth will advise you.

PETITIONER RESTS.

Mr. Allen: I will call Mr. Dunham.

30 FREDERICK DUNHAM, a witness produced on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination by Mr. Allen:

Q. Mr. Dunham, have you placed a valuation on this 14th Street Ferry property of the D., L. & W. Company for the years 1921 and 1922? That would be as of October 1st. A. October 1st, 1920 and 1921; I have.

40 Q. Do they differ? A. No.

Frederick Dunham, direct.

Q. It is the same valuation? A. The same valuation.

Q. The same valuation for both those periods—both those dates? A. Yes.

Q. Will you state briefly what is your valuation of the lands of the D., L. & W. Company at the 14th Street Ferry? A. I value them at the rate of 10 \$3.00 a square foot, a total of \$804,300.

Q. At the rate of \$3.00 a square foot, what does that total for the land? A. \$804,300. There are 268,100 square feet at \$3.00.

Q. So your valuation at \$3.00 a square foot aggregates \$804,300? A. Yes.

Q. The assessment is how much? A. I don't know.

Mr. Stallman: Two dollars and fifty cents a square foot. 20

By Mr. Allen:

Q. And that valuation of \$3.00 a square foot is based upon what, Mr. Dunham? A. It is based upon sales and my general knowledge of water front values.

Q. And what sales do you refer to? A. I refer to all water front sales which took place between the years 1915 and 1921.

Q. Have you got any thing more recent than 1918 30 that your opinion is based on? A. There were quite a number of sales that took place during the year 1920.

Q. Well, I think this previous testimony that has been offered as an exhibit contains all that.

Mr. Jess: All those sales?

Mr. Allen: All those sales, yes.

A. I haven't made a valuation of all the Hobo-

Frederick Dunham, direct.

ken water front properties north and water front properties south of Hoboken in the different municipalities, and I also place the valuation of the City of Hoboken upon adjoining properties to the ferry for the years 1921 and 1922, but I will say this, that I have placed upon the ferry property
 10 an additional 20 per cent due to its location, over the valuation which I placed upon adjacent property.

Q. Due to location? A. Due to location.

Q. Not due to the franchise? A. No, I didn't take into consideration the use.

Q. What is the location? Describe that. A. The property is located at the foot of 14th Street, which is the business street, and is adjacent to higher values. It is in the same category as most ferry
 20 properties located in the city. There is a zone of high values created behind the ferries, which is reflected somewhat in the properties themselves. Of course, that is due to location and to the trolley and other facilities which the property has.

Q. That location—that is, a main artery like 14th Street, with trolley facilities—does that give other lands that abut on 14th Street a greater valuation, say, than one of the adjoining streets, like 13th street or 12th street, that lack those facilities? A.
 30 Yes, there is a higher zone of value.

Q. Higher value with other real estate? A. Yes.

Q. And you assign 20 per cent, as I understand it— A. 20 per cent, yes.

Q. To the adjoining lands on the water front? A. I assigned 20 per cent increase to this property over the value of adjacent lands. I valued adjacent lands at \$2.50 a square foot.

Q. That is both north and south of this 14th Street Ferry? A. Yes. And I add 20 per cent to
 40

Frederick Dunham, cross.

the 14th Street Ferry property because of its location.

Q. If that land in North Bergen was sold at \$1,500 a square foot—\$1,500 a front foot, and is worth but half as much as the Hoboken Ferry property—if that opinion is a correct one, does that sustain your figure of \$3.00? A. Well, if the
 10 Hoboken Ferry property is worth twice as much as the North Bergen property, the North Bergen property sold for \$1,500 a front foot, then the ferry property would be worth \$3,000 a front foot.

Q. And what does that mean? A. 281 feet would make the value \$843,000.

Mr. Allen: You may cross examine.

Cross examination by Mr. Stallman:

Q. That is practically your assessment, isn't it, Mr. Dunham? A. No, I valued it at \$804,300.
 20

Q. Well, pretty nearly the same. A. There is a difference of—

Q. Within two or three per cent. You say you valued all of this property at an average value of \$3.00 a square foot. That includes about—a little more than an acre of upland and about five acres of land under water? A. Yes, that's about right.

Q. And you say that you have based that upon all of the sales in your general knowledge? A. Yes.
 30

Q. There has been no land sold on the Hudson River for \$3.00 a square foot, has there? A. No.

Q. What is the highest price per square foot ever obtained for land on the Hudson River? A. I think the highest price ever obtained was the sale to the International Elevating Company at the foot of Morris and Essex Streets, Jersey City.
 40

Frederick Dunham, cross.

Q. Of the American Coal Company's property?

A. Yes, sir. By the way, that was over \$3.00 a square foot.

10 Q. Now, just a minute, Mr. Dunham—when you take the area as described in the deed, the land under water and running back to the westerly boundary of that land, it will amount to considerably less than \$3.00 a square foot, would it not? In other words, the figures of that sale, which was the highest sale, are about \$68,000 an acre? A. That is the way the railroad witnesses construed it, yes, about \$68,000 or \$70,000 an acre, but they didn't get that much.

20 Q. Well, your only quarrel with that conclusion is on the question of the title or the riparian rights or something of that kind. Isn't that so? A. I have no quarrel with it. The State says they haven't.

30 Q. Yes, but there was conveyed all of the rights and interest originally belonging to the company in New Jersey, and taking that area to be the area of the lot, that sale was about \$68,000 an acre, wasn't it? A. No, even under the most liberal interpretation, assuming that they had the right to go to the old pier head line, it was greater than \$70,000 an acre. It was nearer \$85,000 an acre. But \$70,000 an acre is obtained by assuming that they have the right to go out to the last pier head line established by the Government.

Q. All right, then. On that assumption, \$70,000 an acre is about right? A. On that assumption.

40 Q. And that is the highest price at which land has been sold in Hudson County on the river front? A. No, \$70,000 is not the highest price, because they didn't get that amount of land. In other words—

Frederick Dunham, cross.

Q. Well, now, assuming that that computation of the area out to the exterior line of the piers is right, then that would be the highest priced sale of which we have any record? A. I am not making any such assumption. You can assume that, but I am not assuming anything.

10 Q. All right. Let's take then—let's leave out the American Coal Company's sale. What is the next highest price? A. The next highest price was the sale to the Cunard.

Q. That was subsequent to the American Coal Company sale? A. That sale, the American Coal Company sale was—

Q. 1915, wasn't it? A. July 24, 1916. The sale to the Cunard was August 26, 1920.

20 Q. That was about \$1.50 a square foot, wasn't it? A. About that, yes, but a different location, a different class of property.

Q. But that is the highest price that was ever gotten in Hudson County for river front land, outside of the one that we are having the quarrel about? A. Well, I wouldn't say that, no. I wouldn't say that.

Q. I am speaking of water front land. A. That is the highest price ever obtained for water front property in Weehawken.

30 Q. Well, where in Hoboken or Jersey City has land been sold—or Weehawken—for more than \$1.50 a square foot? A. There were no sales in any of those localities at that time. There were old sales made years before that at lower figures.

40 Q. Now, Mr. Dunham, you say that you appear here for the City of Hoboken; that you valued a lot of land on the river front in the neighborhood of 14th Street at \$2.50 a square foot; then you took this parcel belonging to the Ferry Company and

Frederick Dunham, cross.

added 20 per cent. because of this adjacency to 14th Street. As I understand it you added this 20 per cent. to other lands than the 14th Street property, because they made good business properties, people going by these properties making them particularly valuable for stores and so forth? A. No.

10 Q. Is that what you mean? A. No, access and facilities for reaching the property, and the influence of higher adjacent property.

Q. Well, I am talking about the higher adjacent property. You say you put 20 per cent. more on the 14th street property, and you naturally carried that proposition into the ferry property? Is that right? A. Yes, that is location value.

20 Q. All right. Now, what is there about this ferry property that makes it valuable on account of its location? A. The surroundings.

Q. It is largely surrounded by water, isn't it? A. No.

30 Q. The last time I was up there, there was water to the east of it, water to the south of it. A There is water around some of it. It faces on the bulkhead, but it is surrounded on the south by the Hoboken Land Improvement Company's property, on the north by the Hoboken Land Improvement Company's property, on the west by the City of Hoboken.

Q. But what makes it worth 20 per cent. more than the property on each side of it? A. Because it is better located.

Q. For what? A. For access and facilities. It has a trolley there and it is at the end of the main street, the main artery. You find that anywhere. This is not peculiar to this property.

40 Q. Supposing the ferry was discontinued to-

Frederick Dunham, cross.

morrow, would you still say that the 20 per cent. additional value would obtain? A. No, I might take 20 per cent. off then.

Q. Then, as I understand your testimony, because there is a ferry there it increases 14th street values? A. The ferry has increased the values. You can't get away from that. 10

Q. And after you have gone back and found that 14th street frontage increased values, you come back and put it on the ferry? A. Sure. The ferry created it. It's there.

Q. Now that you have got a larger value on the ferry, why don't you go back and put more on 14th street? A. There is more values on 14th street because of the ferry.

Mr. Allen: Certainly, we assess that a great deal more. 20

By Mr. Stallman:

Q. And you say that you have not valued this ferry property on account of its use? A. No.

Q. Do you know anything about the value of its use? A. No.

Q. You don't think that it is necessary to know that in order to value it? A. No.

30 Q. You think that it takes its value from the established value of lands in the immediate vicinity? A. Yes.

Q. And that irrespective of use? A. Yes.

Q. So that if the value of comparable land in the immediate vicinity is known, then the value of this land is easily determined? A. Yes.

40 Q. And that has nothing to do with whether it is used for a ferry or a warehouse or for some other use to which it could be put? A. No, it is the market value for any available use.

Frederick Dunham, cross.

Q. Now, do you consider that any part of this entire plot is worth more than any other part of the plot? A. No.

10 Q. And you do not consider the parts that are used for a ferry to be of any greater value than that part which is used by the railroad company for general railroad purposes? A. No, I haven't looked at it that way at all. I considered it as an entire tract of property in one ownership.

Q. Then are we to understand that the part that is used for a ferry has no greater value than the part which is not used for the ferry? A. I haven't looked at it that way. If you sold it, maybe you would get a higher price for that portion of it.

20 Q. But in your judgment, as to the way that property ought to be valued and the basis of the valuation, taking it from the surrounding property, you would not say that any part of the property of the Hoboken Ferry there had a greater or less value than another part of it? A. No, not as is.

Mr. Stallman: I think that's all.

Mr. Allen: That's all.

30 Mr. Stallman: Then, I think, if the Board please, the testimony being closed, I would like to be heard for a minute and let the case close.

This, if the Board please, being an appeal from the judgment of the Board of Taxation of Hudson County affirming an assessment by the City of Hoboken, it seems to me that with the record in the other cases before you there should be no difficulty in determining the merits of this case, with the knowledge that the Board has of values of property in Hoboken.

Frederick Dunham, cross.

The property has been assessed for these two years at \$109,000 an acre. We question that assessment and have shown you that there have been no sales to justify that assessment. It must be arbitrary in the sense that it has been created without any fact of any sales, any development, anything at all which could be cited, which could 10 be relied upon to sustain that value.

Now, your Board has assessed a part of this property at \$75,000 an acre. We have not been satisfied with your determination in that respect, thinking that it is excessive, and appealed to the courts; but if it was your judgment that that property at the foot of 14th street was worth \$75,000 an acre, and the respondent in this case, the City of Hoboken, now comes before you and produces as an expert witness Mr. Dunham, who swears that no part of this property is worth any more than any other part of the property, and you gentlemen can determine from your investigation that this part is worth \$75,000 an acre, it stands to reason upon the confession of the City of Hoboken that the part used for ferry purposes is not worth any more. Just what argument could be advanced against that I don't know. 20

The President: Pardon me, Mr. Stallman; I am trying to visualize that particular tract of ground. How much is there of it? How much of an area is there in that part which is assessed at \$75,000 an acre? Do you recall? 30

Mr. Stallman: Yes, it is a rectangular piece of land. The dividing line comes down—an imaginary dividing line, because it is all one piece—this is 281 and this is 69 (indicating on map).

Frederick Dunham, cross.

The President: What is the area of that strip, approximately, that is assessed at \$75,000?

Mr. Stallman: It is about as 1 to 4. This is 1.6 and this is 6. This is a little more than a quarter as large.

10 The President: Isn't that in the shape of a wedge?

Mr. Stallman: No; it is absolutely straight.

The President: And it adjoins the ferry?

Mr. Stallman: It is all one piece; one parcel, with this imaginary line drawn down, because on this side the railroad company has used that part of it for the laying up of ferry boats for repairing purposes. This part the railroad company used to run the boats in and out, and—well, now, that strip is 210 feet, and then there is a strip 71 feet. 20 You see there is another strip there that is absolutely identical with this one on this side (indicating).

This is a strip of land 71 feet wide that runs past the back lands, back to the 14th street land. Here is a strip of land 69 feet wide that runs back to that.

Now, you assessed originally this strip (indicating); the Town of Hoboken originally assessed all the rest of it. We have sworn testimony here by Mr. Dunham, the only witness produced by the City of Hoboken, and he tells us that there is no part of this strip, this parcel of land, that is worth more than any other part of it. And I think he is right. That has been our contention right along, and once the City of Hoboken and we agree that you can't take this land under water and this land under water—the same drop of water flows over both; they are both located in the same place; it isn't a bit further from this corner to the center 40

Frederick Dunham, cross.

of 14th street than from this corner to the center of 14th street—absolutely the same land. You can't create values by drawing arbitrary lines. You can't draw an imaginary line through this court house and say that this part of the grand jury room is worth so much and that part of the grand jury room is worth so much more. You can't make land values that way. 10

I agree with Mr. Dunham that the value of that land is the same in every part of it. It is only a small piece of land. That parcel of land don't begin to compare with the railroad yards of the Erie and the Pennsylvania and the Lackawanna, that have 1,200, 1,800 and 2,000 feet frontage on the Hudson River. Why, the whole area of this—the whole frontage of this parcel is only 351 feet. It is a small thing, but because of the fact that the railroad company uses a part of it for the downtown ferry and a part of it for the uptown ferry, this imaginary line has been drawn, and that is all it amounts to. 20

Now, if it is true that each part of that is worth the same value, and you—

The President: That is the south side of the ferry?

Mr. Stallman? Yes, just the same as this portion of it here is on the north side of the ferry. The ferry boats only lay in there because they have got no other place to go. 30

The President: This is a marine morgue here, is it?

Mr. Stallman: No, no.

The President: Where is it that the boats are taken that have passed into disuse?

Mr. Stallman: Whose boats?

Frederick Dunham, cross.

The President: I don't know just who owns them.

Mr. Stallman: The Weehawken Dry Dock is up the river here a little ways. This is the storage place for boats.

10 The President: That is what I am getting at. I thought it was a morgue for boats.

Mr. Stallman: The boats run in here for repair. Oh, no, we have no morgue. Sometimes you have got to have extra boats on hand. If one boat goes out of commission you have got to put another boat in its place.

The President: Then I have seen them when they were not moving.

20 Mr. Stallman: Certainly, you have seen them in here being repaired when they were not moving. There is always a little extra equipment, just the same as you find it in railroad yards. You will find empties standing around a railroad yard, but that is not a morgue by any manner of means.

The President: No, I am quite sure I am familiar with the territory. I have proselyted there.

Mr. Allen: Mr. de Selding's property.

The President: I proselyted about there during the last gubernatorial campaign.

30 Mr. Stallman: Well, I hope you got some converts.

The President: Judging from the returns, I was successful.

Mr. Stallman: It seems to me that we cannot escape the idea that the Town of Hoboken has been guilty in this case of discrimination which is not justified. There hasn't been a word introduced here that I have heard to justify any different valuation on this part of the property marked in blue than your determination of an-

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Frederick Dunham, cross.

other part of the same premises at \$75,000 an acre. Now, I don't know what more there is to be said.

If your judgment confirmed by the Supreme Court establishes the value of the parcel in white we can't get away from that. Now, what has been produced here to lead you gentlemen to say that you were mistaken and that your assessment of this property for these years has been all wrong? Because that is the only conclusion you can arrive at, if the City of Hoboken's assessment is right. I don't think there is anything more to be said about it.

10

Mr. Allen: The position of the city is simply this: This water front property in Hoboken has—the valuations have been fixed by the State Board for these years. They have fixed the valuation of the land on the south and the land on the north of this 14th Street Ferry, as I understand it, at \$2.25 a square foot.

20

Mr. Stallman: For what years?

Mr. Allen: These years, 1921 and 1922—the adjoining properties, in other words.

Mr. Stallman: Seventy-five thousand dollars an acre. You don't dispute that, do you?

Mr. Allen: I think I am correct when I say that the adjoining water fronts have been valued by the State Board at \$2.25 a square foot in the south and north.

30

Mr. Stallman: On appeal from the local assessment.

Mr. Allen: Yes, on all the water front disputes that we have had. We maintain that this is a little more valuable, worth at least \$2.50, because it is right in front of 14th Street, at the foot of 14th Street. That is the position that the city is in, and that is what the State Board is confronted with.

40

Frederick Dunham, cross.

Now, you can't twist Mr. Dunham's testimony around to have him say anything other than what he has said. He considers that he has looked upon this entire plot as a ferry company property, and he considers every bit of it of the value that he places on it. He don't agree with the State Board's assessment for second-class railroad property at all; he says that every bit of that is worth at least \$3.00 a square foot, and his reason for that is a very logical reason. It is a reason that every practical real estate operator is familiar with. Undoubtedly the location, the accessibility, gives a valuation to property that other property may not possess. Undoubtedly all the lands on 14th Street in Hoboken are worth more than, say, 12th Street and 11th Street and 10th Street, or 15th Street. Fourteenth Street is one of the most busy thoroughfares that we have in the City of Hoboken. It is one that compares with Washington Street. Washington Street and 14th Street are the two important thoroughfares.

You may recall Newark Street and the ferry approach, the other one down in the southern end of the city. Undoubtedly that location—property in that zone has an enhanced value. Probably the property of an individual that abuts on 14th Street has greater value than the property of an individual on some other street in that zone, and so we take it that this water front property, water accessibility right at the foot of 14th Street, is of greater value than the property that abuts on the south and the property that abuts on the north. Those values you placed at \$2.25 a square foot, and we should think you should sustain this assessment of \$2.50 a square foot.

Mr. Stallman: I don't know whether it is neces-

Frederick Dunham, cross.

sary, but I have not offered any proof of the Board's assessment on the part of this property. I assume that the Board, of course, will take judicial notice of that.

The President: Surely. We usually do—much to the discomfiture of some.

Mr. Stallman: Now, I offered during your absence, Mr. Chairman, a copy of the record in the Second-class Railroad case, and stated to the members of the Board that if the Board requires any copies of this record as exhibits in this case, we shall be glad to furnish them.

The President: Very well.

Mr. Schroth: I think we have one copy, Mr. Stallman. Will you send us a set?

Mr. Stallman: Yes. I offered it, and I should not furnish a copy if the Board has sufficient copies without sending another.

Mr. Schroth: No, we have not.

Mr. Stallman: All right, I will send this down.

(The hearing was thereupon adjourned at 12:50 o'clock P. M.)

Opinion, Filed April 1, 1925.
NEW JERSEY SUPREME COURT.
 No. 212. JANUARY TERM—1925.

THE HOBOKEN FERRY Co., *et als.*,
 Prosecutors,

v.

STATE BOARD OF TAXES AND
 ASSESSMENT, *et als.*,
 Defendants.

On Cer-
 tiorari.

Submitted January Term, 1925. Decided March
 31st, 1925.

Before Justices KALISCH, BLACK & CAMPBELL.

For the State: EDWARD L. KATZENBACH,
 Attorney-General.

For the City of Hoboken: HORACE ALLEN,
 Esq.

For the Prosecutors: MESSRS. CONGLETON,
 STALLMAN & HOOVER.

PER CURIAM:

This writ of certiorari was issued to review the
 assessment made by the local assessors in Hobo-
 ken, for the years 1921 and 1922, on a tract of
 land of the prosecutor, at the foot of 14th Street.

The assessment is on a part of a rectangular
 piece of land containing about six acres, the mid-
 dle of which is coincident with the center line of
 14th Street in Hoboken, running south 106 feet
 and north 175 feet from the center line of 14th

Opinion.

Street. The part under review is used exclusively
 for ferry purposes. The southerly portion of the
 tract is assessed by the State Board of Taxes and
 Assessment, as second class railroad property at
 \$75,000 per acre. The balance of the tract Plot
 B2 on the city assessment map of Hoboken, is
 assessed by the local assessors of Hoboken at
 \$108,900 per acre. This assessment was reduced
 on appeal to the State Board of Taxes and Assess-
 ment to \$98,000 per acre. Why this discrepancy
 in valuation between the two portions of the same
 tract of land is not apparent from the record. Mr.
 Ryer and Mr. Dunham testified, there is no sub-
 stantial difference in value. Mr. Herman de
 Selding testified, there was very little difference.
 The prosecutor called two expert witnesses, as to
 the value of this plot of land. Mr. Herman de
 Selding fixed the value at \$58,000 per acre, Mr.
 Thomas A. Ryer at \$64,000 per acre or \$60,000 per
 acre. Mr. Frederick Dunham called by the de-
 fendant valued it at \$3.00 per square foot or some-
 thing around \$130,000 per acre.

There was some sales of other lands put in evi-
 dence and also, the printed record of the assess-
 ments in the railroad tax cases, for the year 1922
 (Ex. P. No. 1, Record, p. 68).

The certiorari was issued in this case under
 P. L. 1918, p. 870, Sec. 512, which provides, if it
 shall appear to the satisfaction of any Court,
 wherein any certiorari is or may be brought, "That
 the value of taxable property, for which any per-
 son is therein assessed, is too great, said Court
 shall amend such assessment and reduce the same
 to the proper and just amount," &c.

We think the assessment is excessive and too
 great as shown by the evidence. It should be re-

Rule for Judgment.

duced to the amount fixed by State Board of Taxes and assessed on the southerly part of said tract of land, viz.: at \$75,000 per acre and such will be the order of the Court.

Rule for Judgment.

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NEW JERSEY SUPREME COURT.

THE HOBOKEN FERRY Co., *et als.*,
Prosecutors,

v.

STATE BOARD OF TAXES AND
ASSESSMENT, *et als.*,
Defendants.

No. 212.
January
Term, 1925.

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This matter coming on to be heard at the January, 1925 term of this court in the presence of M. M. Stallman, counsel for the prosecutor and Edward L. Katzenbach, Attorney General, and Horace L. Allen, Esq., counsel for defendants, on return to the writ of certiorari in this cause, with proofs taken therein, and the Court having inspected the said writ, and the reasons filed, and the proofs taken; and having heard the arguments of counsel thereon, and considered the same, and being of the opinion that the assessments complained of should be modified and reduced as being unreasonable and excessive,

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It is ORDERED that the assessment for the year 1921 upon certain lands and property of the prosecutors situate in the taxing district in the city of Hoboken, county of Hudson and described on the assessment books of the city of Hoboken as follows:

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Rule for Judgment.

“Ward 2 property marked Plot B 2 on City Assessment Map. Property situated at the Eastern Terminal of 14th street produced and commonly known as 14th street Ferry, running south 106 feet and north 175 feet from center line of 14th street together with lands under water appurtenant thereto used for ferry purposes and possessing an additional value by reason of the fact that all other lands along the river front are restricted against use for ferry purposes excepting property known as Hoboken Ferry and marked Plot A on City Assessment Map. Ferry buildings, bridges, racks, etc., used for ferry purposes including 3 boats,”

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and containing 6.155 acres, and assessed for taxation for the said year of 1921 at the valuation of \$670,300, which assessment upon said lands was reduced by the State Board of Taxes and Assessment by its judgment made and entered on the 13th day of November, 1923 to the sum of \$603,252 be and the same are hereby reduced and fixed at a valuation equivalent to \$75,000 per acre or a total valuation for said land of \$461,625, and that the said assessments be corrected accordingly.

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30

And it is further ORDERED that the assessment for the year 1922 upon certain lands and property of the prosecutors situate in the taxing district in the city of Hoboken, county of Hudson and described on the assessment books of the city of Hoboken as follows:

“Ward 2 property marked Plot B2 on City Assessment Map. Property situated at the

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Rule for Judgment.

10 Eastern Terminal of 14th street produced and commonly known as 14th street Ferry, running south 106 feet and north 175 feet from center line of 14th street together with lands under water appurtenant thereto used for ferry purposes and possessing an additional value by reason of the fact that all other lands along the river front are restricted against use for ferry purposes excepting property known as Hoboken Ferry and marked Plot A on City Assessment Map. Ferry buildings, bridges, racks, etc., used for ferry purposes including 3 boats,"

20 and containing 6.155 acres, and assessed for taxation for the said year 1922 at the valuation of \$670,300, which assessment upon said lands was reduced by the State Board of Taxes and Assessment by its judgment made and entered on the 13th day of November, 1923 to the sum of \$603,252, be and the same are hereby reduced and fixed at a valuation equivalent to \$75,000 per acre or a total valuation for said land of \$461,625, and that the said assessments be corrected accordingly.

30 Rule entered on motion of
M. M. STALLMAN,
Attorney of Prosecutor,
on the 11th day of April, 1925.

A True Copy.

EDWARD J. KELLEHER,
Clerk.

Notice of Appeal.

NEW JERSEY SUPREME COURT.

THE HOBOKEN FERRY COMPANY and
the DELAWARE, LACKAWANNA &
WESTERN RAILROAD COMPANY, its
lessee,

Prosecutors-Respondents,

v.

THE STATE BOARD OF TAXES AND
ASSESSMENT AND THE CITY OF
HOBOKEN,

Defendants.

On Certiorari.

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To

CONGLETON, STALLMAN & HOOVER, Esqs.,
Attorneys of Prosecutors:

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TAKE NOTICE that the defendant, The City of Hoboken, by the Mayor and Council of the City of Hoboken, appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause, on the following grounds:

1. The assessed valuations of the property in question, as fixed and determined by the State Board of Taxes and Assessment, were supported by the evidence before it and, therefore, should have been affirmed by the New Jersey Supreme Court.

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2. The reductions in the assessed valuations of said property, as made by the Supreme Court, are arbitrary and regardless of the evidence before the State Board.

Notice of Appeal.

3. The reduced valuations of said property, as fixed and determined by the Supreme Court, for the years 1921 and 1922 respectively, are greatly below the market value thereof on the day as of which the assessments were, by law, required to be made.

10 4. There was no evidence before the State Board to justify the reductions in the assessed valuations of said property as made by the Supreme Court.

5. The reductions in the assessed valuations of said property, as made by the Supreme Court, are based upon valuations arrived at by the use of erroneous principles and illegal rules.

20 6. The Supreme Court disregarded the evidence before the State Board as to the market value of said property on the day as of which the assessments were, by law, required to be made in reducing the assessed valuations thereof.

30 7. The Supreme Court, in reducing the assessments of this property, did not have before it the testimony taken by the State Board on the value of water front lands for the year 1922, being Exhibit P-1, in the railroad tax cases for that year. That evidence, contained in Exhibit P-1, was before the State Board, but was not contained in the printed State of the Case before the Supreme Court.

8. The Supreme Court, in reducing the assessments of this property, ignored the right of the State Board to use its own personal knowledge as to the value of this property in reviewing the conflicting testimony before it.

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Notice of Appeal.

9. The assessments of said property, as fixed and determined by the Supreme Court, are insufficient and unlawful.

10. The reduced valuations of said property, as fixed and determined by the Supreme Court, are not justified by any evidence before the State Board. 10

11. There was no error in the assessments or assessed valuations of said property as made by the State Board and, therefore, they should have been affirmed by the Supreme Court.

12. There was evidence before the State Board to sustain the assessed valuations of said property. The State Board had before it all of the testimony as to the value of water front lands in the year 1922, Exhibit P-1, which was not before the Supreme Court. The State Board, in reviewing the evidence, was entitled to use its own personal knowledge and judgment as to the value of said property (a capacity with which the Supreme Court was not endowed). The State Board having fixed assessed valuations based upon the evidence and its own personal knowledge, the Supreme Court should not have reduced them. 20

13. The Supreme Court said: "The southerly portion of the tract is assessed by the State Board of Taxes and Assessment, as second class railroad property at \$75,000. per acre. The balance of the tract Plot B 2 on the city assessment map of Hoboken, is assessed by the local assessors of Hoboken at \$108,900 per acre." There was no evidence whatsoever in the case as to what assessment was made by the State Board against the plot adjoining Plot B2 in Ward 2 of the City of 30

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Notice of Appeal.

Hoboken on the south, nor was there any evidence to show that the plot adjoining was a portion of the tract, nor was there any evidence in the case of similarity between Plot B2, Ward 2, and the adjoining plot on the south which would furnish a reasonable basis for comparison.

10 14. The decisions or valuations made by the State Board were made by a unanimous Board and they should not have been set aside by the Supreme Court in as much as it was not entirely clear that the evidence did not fairly support them.

20 15. The Supreme Court, in disregard of the evidence, assumed important matters and facts which were not in the case and which were not before the Supreme Court under the Writ of Certiorari, and arbitrarily substituted its judgment of the valuations of the said property for that of the State Board.

30 16. The Supreme Court arbitrarily assumed that a narrow strip (second class railroad property) which was but a water way or slip and is land under water, adjoining, on the south, Plot B2, Ward 2, Hoboken, as similar in value to Plot B2, Ward 2.

HORACE L. ALLEN,
Attorney for defendant, The
City of Hoboken,, appellant.

[5053]

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17 MAY.T.1926

New Jersey Court of Errors and Appeals

IN THE LAST RESORT OF ALL CAUSES.

THE HOBOKEN FERRY COMPANY
and the DELAWARE, LACKA-
WANNA & WESTERN RAILROAD
COMPANY, is lessee,
Prosecutors-Respondents,

v.

THE STATE BOARD OF TAXES AND
ASSESSMENT and THE CITY OF
HOBOKEN,
Defendants-Appellant.

On Appeal
from Supreme
Court.

BRIEF FOR APPELLANTS.

This appeal brings up for review the judgment of the Supreme Court reducing the assessments of taxes for the years 1921 and 1922, made by the local Assessors on "a plot or tract of land known as Plot B-2 on City Assessment Map, being property situated at the Eastern Terminal of Fourteenth Street produced and commonly called or known as Fourteenth Street Ferry, running south 106 feet and north 175 feet from the centre line of Fourteenth Street, together with the land under water appurtenant thereto, used for Ferry purposes and possessing an additional value by reason of the fact that all other lands along the river front are restricted against use for ferry purposes excepting property known as Hoboken Ferry and marked A on City Assessment Map."

The local assessors of the City of Hoboken made the original assessment upon said plot at \$670,300. The Hoboken Ferry Company having appealed from the local assessment to the State Board of Taxes and Assessment had the assessment reduced by the State Board of Taxes from \$670,300 to \$603,252. Similar assessments and similar reductions were made for each of the years 1921 and 1922.

The Ferry Company then brought the assessments so reduced and the proceedings had thereon to the Supreme Court by certiorari with the result that the Supreme Court further reduced said assessments for each of the years 1921 and 1922 to \$461,625, being at the rate of \$75,000 per acre.

BRIEF OF THE ARGUMENT.

POINT I.

There was no evidence to support the finding of fact made by the Supreme Court.

The Supreme Court in its opinion states:

"The southerly portion of the tract is assessed by the State Board of Taxes and Assessments as second class railroad property at \$75,000 per acre. The balance of the tract, Plot B-2 on the City Assessment Map of Hoboken, is assessed by the local assessors of Hoboken at \$108,900 per acre. This assessment was reduced on appeal to the State Board of Taxes and Assessment to \$98,000 per acre. Why this discrepancy in valuation between the two portions of the same tract of land is not apparent from the record, etc."

There does not appear anywhere in the case any evidence or the slightest attempt on the part of the Hoboken Ferry Company to introduce any evidence before the State Board of Taxes and Assessment to prove:

1. That some plot adjoining Plot B-2 in question, known as Fourteenth Street Ferry, on the south, was a part of that plot or in the same ownership.

2. That it was comparable and similar in value.

Nor was any proof submitted as to what assessment had been made by the State Board of Taxes and Assessment on the plot adjoining on the south as second class railroad property for said years.

The writ of certiorari, tested February 18th, 1924, required the State Board of Taxes and Assessment to certify to the Supreme Court the assessments of taxes made for the years 1921 and 1922 on Plot B-2 (Fourteenth Street Ferry) situated at the foot of 14th Street, running south 106 feet and north 175 feet from the center line of 14th Street, and extending to Pier Head Line including lands under water, including the valuations upon which the same are based; all proceedings on appeal therefrom to said State Board of Taxes and Assessment; the final determination and judgment of said Board thereon; and all matters and proceedings touching and concerning the said assessments of taxes. Neither this writ nor the return brought before the Supreme Court the assessment made by the State Board of Taxes and Assessment upon the adjoining plot to the south of Plot B-2.

If an attempt had been made by the Ferry Company, in its appeal to the State Board, to compare Plot B-2 with the plot adjoining on the south, the City could readily have met any such comparison and could readily have disproved the similarity between them. *At least the City would have had an opportunity to do what the Supreme Court has, in effect, denied it.*

There is no similarity between the Plot B-2, Ward 2, Hoboken, and the strip adjoining on the south. The plot in question, which comprises 6.155

acres, is mostly upland, paved, built up, and just abreast of and a continuation or extension of Fourteenth Street, one of Hoboken's most prominent Streets. Upon part of this upland, the trolley cars and vehicles operate, and there are stores and shops thereon, while the narrow strip or plot (2nd Class Railroad Property) adjoining on the south, with which the Supreme Court made a comparison and held them to be comparable, is but a water way or slip, and is land under water; the water covering practically all of the land contained in the strip.

POINT II.

The Supreme Court was in error in holding that Plot B-2 was of no greater value than a plot adjoining on the south.

While there was no evidence before the Supreme Court as to what the assessment against the plot adjoining on the south was, the Supreme Court did not have before it any evidence that the 14th Street Ferry tract was similar and of equal value with the plot adjoining on the south.

On the contrary, De Selding, one of the two witnesses for the Ferry Company, testified (Case, p. 31, lines 29 to 35):

"In fixing a valuation of this property and considering all of the things that I thought made up that valuation, I reached a figure for the upland of \$2.30 a square foot, or \$124,396 and for the land under water \$1.15 a square foot, or \$246,117. Making a total for upland and land under water of \$370,513 which means \$1.382 to the square foot."

So that, according to this witness, *the valuation of the upland in Plot B-2 (14th Street Ferry) was double the value of the land under water.* Therefore the plot adjoining Plot B-2 on the south, being

practically all land under water, was but one-half the value of the upland contained in Plot B-2.

Further, De Selding was asked (Case, p. 36, lines 21 to 32):

"Q. Do you think, Mr. De Selding, that this property to which you have testified, which is used for the local ferry, is of a different value, substantially different value, than the portion of it which is used as second-class railroad property, being a strip 69 feet wide immediately adjoining on the south?"

and he answered:

"A. It is a part, but hardly can be considered, if taken as a separate piece, as having an exact similarity, because one is more restricted in area than the other. The 69 feet by itself would not possess the potentialities of the larger piece in seeking a revenue from the investment."

The other witness, Ryer, called by the Ferry Company was asked (Case, p. 59, lines 32 to 39, p. 60):

"Q. In your judgment, is there any substantial difference in the value of that part which has been assessed by the City of Hoboken and that part which has been assessed by this Board as railroad property?"

and he answered:

"A. There is no difference in the character of the land, with the exception of the fact that this third-class property has some upland, which the first-class or second-class railroad property did not contain, and the valuation of the parcel in question at the present time would be slightly greater for that reason only. This is all one parcel of land in one ownership and is merely divided up for the purpose of taxation."

POINT III.

The appraisals made by witnesses for the Ferry Company were erroneous and far below the judgment of the Supreme Court.

Contention is here made that the two witnesses for the Ferry Company used erroneous principles and illegal rules in arriving at the then valuation of Plot B-2.

De Selding zoned the property giving the upland a value of \$2.30 a square foot or \$124,396 and for the land under water \$1.15 a square foot or \$246,117. Taking the total of both valuations he obtains a mean or average figure of 1.382 to the square foot. By this method of arriving at a valuation of the entire plot, it is apparent that the greater the quantity of the upland the greater would be the value placed by this method on the land under water, and the greater the quantity of the land under water the value of the upland would accordingly be diminished.

Every part of this plot, B-2, 14th Street Ferry, depends for its value, in some measure, on every other part. In its entirety it is peculiarly adaptable to the business of the Ferry Company.

Long Dock v. State Board of Assessors, 89 L., 108;
New York, etc. v. Yard, 43 L. 632.

It is submitted that the valuation of the plot in question devoted to one enterprise and in one ownership should be valued in its entirety instead of computing the value of that portion of the plot that is under water, computing the value of that portion of the plot that is upland and striking an average for the whole.

Furthermore, De Selding's estimates of valuation are based upon his inferences and deductions

that if the ferry uses were ended and a mythical warehouse were constructed, then by computing the costs of construction of the warehouse and the revenue expected to be received from that use, the net income would not justify a greater valuation for the land contained in Plot B-2 than \$1.38 per square foot.

Any such means of ascertaining the value of the land in question is purely speculative and to a greater or less extent uncertain. It furnishes no criterion of value.

Ryer failed to detail the facts upon which his estimate that the valuation of Plot B-2 was at the rate of \$64,000 per acre.

Ryer's estimate, inference or conclusion should be disregarded.

Morrell v. Preskel, 74 Atl., 994.

His estimate was evidently disregarded by the Supreme Court as it was \$11,000 per acre less than the determination made by the Supreme Court which was \$75,000 per acre.

The appraisals furnished by De Selding and Ryer were much below the valuations as determined by the Supreme Court and, therefore, do not support them.

POINT IV.

The Supreme Court did not base its reductions upon the evidence.

After the Ferry Company has offered the testimony of De Spalding and Ryer, counsel for the company, then offered all of the testimony taken generally on the value of water front land in the 1922 second-class railroad case and particularly the various statements of sales and the general investigation that was made in that case for the pur-

pose of determining the value of the water front lands in general on this side of the Hudson River.

This voluminous record with the testimony on both sides was received in evidence by the State Board of Taxes and Assessment without objection on the part of the City and marked Exhibit 1.

The Supreme Court did not have this record contained in Exhibit 1 before it while the State Board of Taxes and Assessment did have it and it is to be presumed made use of it.

POINT V.

There was no "palpable error" in the assessments and the Supreme Court should have affirmed them.

In *Central Railroad Company v. State Board of Assessors*, 49 N. J. L., 1, Chief Justice Beasley said:

"We do not consider that we have the right to alter or annul any of the proceedings of this body of officers except for palpable error, for it is not to be overlooked that the statute in question expressly declares that these assessors shall be entitled to use their personal knowledge and judgment as to the value of property, a capacity with which this Court is not endowed by the Legislature."

and Mr. Justice Swayze, speaking for this Court, said in *Long Dock Co. v. State Board of Assessors*, 86 N. J. L., 592:

"This palpable error did not appear in that case (*Central R. R. Co.*, *supra*) since the Prosecutors failed to show that the valuation might not be justified by the personal knowledge of members of the State Board, which the Court did not possess."

and in *Long Dock Co. v. State Board of Assessors*, 82 N. J. L., 21, Mr. Justice Garrison said:

"The valuations on which the present assessments were made is supported by the return of the State Board, to which the Legislature has given express authority 'to use their personal knowledge and judgment as to the value of property.' It is also purported by some of the testimony taken under these writs while opposed by other testimony so taken. We are unable to say that the latter testimony so preponderates as to overcome the judgment of the Board, and the testimony that supports it, as to make it our clear duty to substitute our judgment for the State Board upon a question of value. If it were a question of law our opinion might be of more worth than that of an administrative board, but upon a question of value the presumption is rather the other way,"

and refused to disturb the assessments of the State Board.

See also, *Perth Amboy v. Board of Public Utility Com'rs*, 118 Atl. (N. J. L.), 782.

In the instant case, the Court below did not find that the testimony of the railroad witnesses preponderated the testimony of the Experts for City. Appellants' testimony as to valuations supported the assessments, but respondents' testimony was far below the judgment of the Supreme Court, and below the State Board's assessments. Surely, the latter could not outweigh the assessments at bar.

The Court in the *Long Dock Co.* case, said:

"Where there is conflicting evidence the Court may properly refuse to interfere with the decision of the State Board who may have decided upon the weight and value of the evidence before them, in the light of their own knowledge, whatever it may have been, as jurors may and as the statute permits."

The Supreme Court in *United New Jersey Railroad & Canal Co. v. State Board of Taxes and Assessment*, 128 Atl. Rep., pages 427-431, held:

“We cannot reverse in whole or in part such assessments, either under the Certiorari Act (P. L. 1907, p. 95, 1 Comp. Sts., N. J., p. 406, §11), or under the Tax Railroad Act (P. L. 1888, p. 277; 4 Comp. Sts., N. J., p. 5270, §457), because ‘the amount of tax is excessive,’ or because the ‘principle upon which the assessment is made is erroneous.’”

It is submitted that the gist of these decisions is that the State Board is entitled to use its personal knowledge and judgment as to the valuation of railroad property, and if, on review by it of its original assessment there is evidence to support same or the evidence as to value conflicting, the Supreme Court should not disturb it.

For the reasons above stated, it is respectfully submitted that the judgment of the Supreme Court should be reversed and the final determination of the State Board affirmed.

HORACE L. ALLEN,
Counsel for Appellant,
The City of Hoboken.

New Jersey Court of Errors and Appeals

HOBOKEN FERRY CO. and DELA-
WARE, LACKAWANNA & WEST-
ERN RAILROAD Co., its lessee,
Prosecutors-Respondents,

vs.

STATE BOARD OF TAXES AND AS-
SESSMENT and the CITY OF
HOBOKEN,
Defendants-Appellants.

*On Appeal
from
Supreme
Court.*

BRIEF OF RESPONDENTS.

The facts in this case are stated in the opinion of the Supreme Court which is appended hereto.

The assessment is on a *part* of a rectangular piece of land containing about six acres, the *middle* of which is coincident with the *center line* of Fourteenth street.

That part involved in this case extends 106 feet south and 175 feet north of the center line of Fourteenth street, and is used exclusively for local ferry purposes.

The southerly portion (used for the repairing of boats) extends to a point 175 feet south of the center line, and was assessed by the State Board as second class railroad property, at \$75,000 per acre.

The portion involved in this case is designated by the local taxing district as Plot B 2 on the assessment map and was assessed at \$108,900 per acre, or in other words, \$2.50 per square foot.

On appeal to the State Board as a reviewing tribunal, it fixed a value of \$98,000 per acre, which was still about 30% higher than its concurrent original assessment of \$75,000 per acre on the lower portion of the same tract, and the State Board's findings were thereupon removed to the Supreme Court on certiorari. The Supreme Court said:

"Why this discrepancy in valuation between the two portions of the same tract is not apparent from the record. Mr. Ryer and Mr. Dunham testified that there is no substantial difference in value. Mr. De Selding testified that there was very little difference."

It is manifest that the placing of different valuations on two portions of a small tract of land in the same ownership is making two bites of a cherry. The Lackawanna yard in Hoboken and Jersey City contains 175 acres, comprising land under water, upland, backland, interior land, street frontages and presenting a variety of conditions, but it is assessed like all other yards, as a unit. The whole tract under consideration contains about six acres, and has 350 feet frontage on the river, equally divided with reference to the center line of Fourteenth street. The Lackawanna Railroad occupies and uses the whole tract, part for the operation of the 14th street ferry, and the southerly part for boat repairs. The Supreme Court has found as a fact in the case, from the evidence of all the witnesses, that one part of this small tract does not differ in character and value from the other part, and that the portion under review should be assessed at the valuation placed on the lower portion by the State Board in the first instance, to wit, \$75,000 per acre. This revision and correction of the assessment was made by the Supreme Court pursuant to the provisions of Section 512

of the Tax Act of 1918, P. L. page 870, which provides:

"If it shall appear to the satisfaction of any court wherein any certiorari is or may be brought, that the value of taxable property * * * is too great, said court shall amend such assessment and reduce the same to the proper and just amount."

I.

The judgment of the Supreme Court is supported by the evidence.

Mr. De Selding, a witness for the prosecutor, of admitted qualifications (p. 30), testified that the land in question was worth \$1.382 per square foot, which amounts to \$60,200 per acre (p. 31).

Thomas A. Ryer testified that the land was worth \$64,000 per acre (p. 58).

The assessment of the State Board on a portion of the same property was \$75,000 per acre (p. 29).

Mr. Dunham, the only witness for the city, testified that the land in question has no different value from that part which was assessed by the State Board at \$75,000 per acre (p. 72).

There is therefore ample evidence in this record to support the findings of fact of the Supreme Court. Therefore

II.

This Court will not review a finding of fact by the Supreme Court where there is any evidence to sustain it.

Chancellor Magie, writing for the Court of Errors in *Yellow Pine Co. v. State Board of Assessors*, 72 N. J. L. 182, said,

"This court has uniformly held that the adjudication of the Supreme Court on ques-

tions of fact is a finality, and not open to review here, if there were before that court any facts upon which their adjudication could rest. *Moran v. Jersey City*, 29 Vroom 653; *Vreeland v. Bayonne*, 31 *Id.* 385; *Morris & Cumming Dredging Co. v. Jersey City*, 35 *Id.* 587. The same rule is evidently to be applied to cases in which the Supreme Court has determined disputed questions of fact under the provisions now applicable and contained in section 11 of the present certiorari act."

In *Lehigh & W. B. Coal Co. v. Junction*, 75 N. J. L. 922, this Court said:

"This court has no power to review the facts on certiorari * * * This proposition has been repeatedly affirmed in cases where the statutes, of which the [tax] act in question is a revision, have been construed."

The rule is also illustrated or followed in
Montclair v. Scala, 76 N. J. L. 137;
Ryer v. Turkel, 75 N. J. L. 677;
Atlantic City Water Works v. Read, 50 N. J. L. 665;
Suburban Land Co. v. Vailsburg, 68 N. J. L. 311;
Borough v. State Water Supply Comm., 85 N. J. L. 673.

The brief of the appellants contains some errors.

It is stated that it does not appear in the record that the assessments complained of were on a part of the same tract which is assessed directly by the State Board. This situation and the resulting discrimination however was fully outlined before the State Board (Case, pp. 29, 73), and not controverted. The witness, De Selding, was asked about it on direct (p. 36) and cross examination (p. 46), as was Mr. Ryder

(pp. 59, 62) and Mr. Dunham (p. 72) and there was a further discussion between counsel and the president of the Board at (pp. 73, 74).

"The personal knowledge and judgment" of the members of the State Board of Assessors, is not an element to be assumed or considered in a case arising under the general tax act. That language is only found in the railroad tax law.

For the reasons stated the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

MAXIMILIAN M. STALLMAN,
 Of Counsel with Respondents.

APPENDIX

NEW JERSEY SUPREME COURT.

THE HOBOKEN FERRY Co., <i>et al.</i> , <i>Prosecutors,</i> <i>vs.</i> STATE BOARD OF TAXES AND ASSESSMENT AND CITY OF HO- BOKEN, <i>Defendants.</i>	}	<i>On</i> <i>Certiorari.</i> <i>Local</i> <i>Assessments,</i> <i>1921-1922.</i>
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OPINION.

Filed March 31, 1925.

Before Justices Kalisch, Black and Campbell.
 PER CURIAM:

This Writ of Certiorari was issued to review the assessment made by the local assessors in Hoboken, for the years 1921 and 1922, on a tract of land of the prosecutor, at the foot of Fourteenth street.

The assessment is on a part of a rectangular piece of land containing about six acres, the middle of which is coincident with the center line of Fourteenth street in Hoboken, running south 106 feet and north 175 feet from the center line of Fourteenth street. The part under review is used exclusively for ferry purposes. The southerly portion of the tract is assessed by the State Board of Taxes and Assessment as second class railroad property at \$75,000 per acre. The balance of the tract, Plot B2 on the city assessment map of Hoboken, is assessed by the local assessors of Hoboken at \$108,900 per acre. This

assessment was reduced on appeal to the State Board of Taxes and Assessment to \$98,000 per acre. Why this discrepancy in valuation between the two portions of the same tract of land is not apparent from the record. Mr. Ryer and Mr. Dunham testified there is no substantial difference in value. Mr. Herman De Selding testified there was very little difference. The prosecutor called two expert witnesses as to the value of this plot of land. Mr. Herman De Selding fixed the value at \$58,000 per acre, Mr. Thomas A. Ryer at \$64,000 per acre or \$60,000 per acre. Mr. Frederick Dunham, called by the defendant, valued it at \$3.00 per square foot or something around \$130,000 per acre.

There was some sales of other lands put in evidence and also the printed record of the assessments in the railroad tax cases for the year 1922, Exhibit P. No. 1, Record, p. 68.

The certiorari was issued in this case under P. L. 1918, p. 870, sec. 512, which provides, if it shall appear to the satisfaction of any Court wherein any certiorari is or may be brought "That the value of taxable property for which any person is therein assessed is too great, said Court shall amend such assessment and reduce the same to the proper and just amount," etc.

We think the assessment is excessive and too great as shown by the evidence. It should be reduced to the amount fixed by State Board of Taxes and assessed on the southerly part of said tract of land, viz., at \$75,000 per acre, and such will be the order of the Court.