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WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

COLLINGSWOOD SEWERAGE COMPANY, *Prosecutor,* vs. BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND BOROUGH OF COLLINGSWOOD, *Respondents.*	WRIT OF CERTIORARI.

NEW JERSEY, to wit:

The State of New Jersey, to the Board of Public Utility Commissioners of the State of New Jersey, and the Borough of Collingswood,

GREETING:

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the fourth day of April, A. D. one thousand nine hundred and seventeen, by the Honorable Board of Public Utility Commissioners of the State of New Jersey in the matter of the application of the Collingswood Sewerage Company for the approval of a new schedule of rates to be

charged by said company for service rendered to its customers,

We do command you that the said determination and judgment together with all proceedings for the making of the same and all things touching and concerning the same, as fully and entirely as before you they remain or are in your custody and control, you certify and send, together with this writ, to our Justices of our Supreme Court of Judicature, at Trenton, on the seventh day of May, A. D. one thousand nine hundred and seventeen, that therein may be caused to be done what of right and according to law ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of the Supreme Court of New Jersey, at Trenton, this 26th day of April, A. D. 1917.

Clerk.

J. Fithian Tatem,
Gilbert Collins,
Attorneys for Prosecutor.

[ENDORSED]

Issued Apr. 26, 1917.
Returnable May 7, 1917.
This writ is allowed. Let it be sealed.
C. G. Garrison,
Justice of the Supreme Court.
Dated April 26, 1917.

REASONS.

NEW JERSEY SUPREME COURT.

COLLINGSWOOD SEWERAGE COMPANY,
Prosecutor,
vs.
THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE BOROUGH OF COLLINGSWOOD,
Respondents.

ON CERTIORARI.

REASONS.

The prosecutor, by J. Fithian Tatem, its attorney, comes and prays that the order of the Board of Public Utility Commissioners of the State of New Jersey, dated April 4th, 1917, which order dismissed the petition of the prosecutor for the approval of an increased schedule of rates, may be set aside, reversed and for nothing holden, for the following reasons:

1st. Because the commission erred in its method of determining the value of the property used by the prosecutor in rendering service to its customers and the public.

2nd. Because the commission erred in determining the value of prosecutor's property by failing

to make any allowance for intangibles, development cost, working capital or other proper items.

3rd. Because the commission erred in limiting the value of the prosecutor's property to its reproduction cost less accrued depreciation.

4th. Because the valuation placed by the commission on prosecutor's property is less than the true value thereof.

5th. Because the commission erred in determining that the prosecutor was earning over 3 per cent. per annum upon the value of its property, whereas in fact it was earning less than 2 per cent. per annum on such value.

6th. Because the commission erred in finding that the return which the prosecutor receives under its present schedule of rates is not so inadequate as to prevent the rendering of safe, adequate and proper service.

7th. Because the commission erred in finding that the rates now in force are not confiscatory.

8th. Because the commission erred in refusing to grant its approval of rates in excess of the maximum rates set forth in the consent of the municipality to the incorporation of the prosecutor.

9th. Because the act entitled, "An act for the construction, maintenance and operation of systems of sewerage in any municipality in this state," approved June 13th, 1898, is unconstitutional in that it attempts to delegate to municipalities the rate

making power over sewerage companies, without any limitation as to time.

10th. Because the schedule of rates attached to said consent do not constitute a continuing contract to furnish service at said rates.

11th. Because the commission is in duty bound to approve and fix such rates as shall enable the prosecutor to render safe, adequate and proper service.

12th. Because the prosecutor is unable to render safe, adequate and proper service under its existing rates which are the maximum rates set forth in the consent mentioned above.

13th. Because the finding of the commission is unjust and oppressive.

14th. Because the result of the finding of the commission is to confiscate prosecutor's property.

15th. Because the result of the finding of the commission is to take prosecutor's property for public use without just compensation.

J. Fithian Tatem,
Attorney for Prosecutor.

TESTIMONY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

Camden, N. J., Sept. 30th, 1914.

COLLINGSWOOD SEWERAGE COMPANY, in re rates.

Before the following commissioners:
R. W. E. DONGES, ESQ.
T. J. HILLERY, ESQ.
J. J. TREACY, ESQ.
P. BETTS, Chief Inspector.

For the petitioner appears J. FITHIAN TATEM, ESQ.
For the borough of Collingswood appears F. D. WEAVER, ESQ.
For the citizens of the borough of Collingswood appears J. W. WESCOTT, ESQ.

Commissioner Donges: I think this matter comes up on the application of the sewerage company for an increase of rates.

Mr. Tatem: For an increase of rates. Your Honors, I will make a very brief outline of the matter

which is to be presented before your Honors today. The Collingswood Sewerage Company is a private company organized under the laws of this state in the year 1900, and it provides sewage facilities for the borough of Collingswood.

Commissioner Donges: Let me ask whether all of the plant is within the borough limits.

Mr. Tatem: I think it is entirely within the limits of that one borough. The superintendent advises me it is. The company, as I said, was organized in the year 1900 and shortly thereafter began rendering service. At the time of its organization plans were prepared which provided for a gravity method of disposal. These plans were approved by the local board of health, they were also approved by the state board of health and by the local municipal authorities, that is the borough council. Predicated upon that method of disposing of the sewage, a schedule of rates was attached to or included in the ordinance, the municipal ordinance which gave the company the privilege to use the streets of the municipality. That ordinance provided that the charges should not exceed a certain maximum therein set forth. Before the plant was built, the state board of health in regard to its control over sewage matters was practically superseded by the State Sewerage Commission and the company was immediately advised that the method of gravity disposal would not be satisfactory at all, that an entire change in the plans must be made and a disposal plant subject to the approval of the sewerage commission must be installed before the company could be permitted to carry on its business. That was done. It was done at an additional expense of more than

fifty per cent. of the original estimated cost of the plant and the company of course, since that time ——

Commissioner Donges: How long after the company started to serve the residents of Collingswood was that change made?

Mr. Tatem: Practically before any service was rendered. After the company was incorporated and the ordinance passed but before service was actually rendered, this change was made. The company, of course, then provided a disposal plant subject to the approval of the State Sewerage Commission and since that time, in fact, since 1901 or 1902 has been operating in Collingswood and operating that plant. Of course, the additional expense to which the company was subject was not only the interest upon the cost of the disposal plant but the former system would have been practically a self-operating system, almost without expense, while with the disposal plant the sewage had to be pumped to that plant and then disposed of, treated and disposed of over filter beds and other methods of disposal, so the added expense was not only the interest on the additional investment, but a very heavy item in the cost of operation, all of which we will show in detail, as to what part of the expense of operation is chargeable to being obliged to operate the disposal plant. The rates, however, have never been changed. The company has been charging the schedule of rates, has been limiting itself to the schedule of rates set forth in the ordinance. With the most strict and careful economy in regard to operation,—the company has from time to time been obliged to make extensions, Collingswood being a very sparsely settled community and embrac-

ing a very large acreage, and with the most careful and economical administration, the company has been losing thousands of dollars each year in the operation of its plant on the old schedule. That was the reason why a new schedule of rates was prepared, based upon the interest on the money invested in plant and the present cost of operation with the disposal system. That schedule of rates was filed with your Honors and the hearing today is upon that schedule. The question that we have to determine and on which we desire to present our evidence is simply this; what is the value of that plant, and we therefore ask your Honors to determine what is the amount on which the Collingswood Sewerage Company is entitled to earn a return. Our desire is simply, that our rates may be fixed at such a point as will enable us to earn a legitimate return, such as to your Honors will seem proper, be that percentage what it may, on the amount which we have invested in the plant and the amount which has necessarily been spent to develop the business.

Commissioner Donges: Quite regardless of the ordinance provisions.

Mr. Tatem: Quite regardless of the ordinance provisions. We say frankly, that had the disposal plant been in contemplation when the ordinance provisions as to maximum rates were taken up, any one could have seen at a glance that those rates in a sparsely settled community like Collingswood would have been absolutely impossible. I want to emphasize this one fact—we will prove it in detail, but I want to emphasize this; we have over twenty miles of mains, we have about fourteen hun-

dred connections on those twenty miles of mains, so that the average frontage per connection is seventy-five feet. That is the average throughout the entire borough, or those portions of the borough to which our pipes extend. That means, in other words, that we only get one connection to every seventy-five feet, and that is one of the principal reasons why it is impossible to provide sewerage in that community at anything like the same charge per fixture or per room or per connection as it would be where the frontage were twenty-five, thirty or even fifty feet.

Another item which ought to be taken into consideration, and that is that the people of Collingswood are most fortunate in having right in the center of their borough a park of some eighty acres which was set aside by the owner of it years ago as a public park. It is one of Collingswood's greatest assets. It adds more, I would say, to the desirability of Collingswood as a residence section, as a residence community, than any other one thing, but it means that from the sewerage point of view, it means that in the geographical center of our territory there is a park of seventy-five or eighty acres from which we do not obtain any revenue whatever and which makes it necessary for our pipes and services to run around the outside of it. I simply quote that to show that not only the fact that we only get one connection in seventy-five feet, but the fact that we are obliged to take our pipes around that part of seventy or eighty acres in the center of the town increases very greatly the cost, increases very greatly the cost of the installation of this plant. With this brief introduction I propose to take up at once the question of the valuation of the plant in detail and to present it before your Honors in as brief and concrete a form as possible.

Commissioner Treacy: I understand you to say that before you began any service the method of disposal of the sewage was changed by the State Sewerage Commission?

Mr. Tatem: Yes.

Commissioner Treacy: Why didn't you at that time attempt to have the ordinance changed?

Mr. Tatem: I really don't know, except that I suppose the situation was this; I suppose that the people in charge of the plant were hopeful that the development growth would be so rapid that they might be able to operate on that ordinance.

Commissioner Donges: No steps were taken?

Mr. Tatem: No steps were taken, I believe, at that time. The secretary advises me that no attempt to change the ordinance was made before service was begun but that shortly thereafter, or that sometime thereafter the matter was taken up with council and the statement was made to council by the company that they found it was absolutely impossible for them to operate on that basis, but council refused to do anything.

Mr. Wescott: Why didn't you back out?

Mr. Tatem: I don't know about that. We were probably hoping for things to get better.

Commissioner Treacy: You had the plant constructed at that time?

Mr. Tatem: We had our plant in operation at that time.

Mr. Weaver: The actual date of that application to the borough council was May 22d, 1912?

Commissioner Treacy: And the company was in operation since when?

Mr. Tatem: The company has been in operation since about 1901 or 1902, organized in 1900.

Commissioner Treacy: The application for a change of the ordinance was made in 1912?

Mr. Weaver: May 22nd, 1912.

Commissioner Donges: Under the ordinance the maximum cost is nine dollars per year, isn't it?

Mr. Weaver: Nine dollars.

Mr. Tatem: The rate for dwelling houses containing nine or less rooms per annum, nine dollars, and for each additional room over nine rooms, per annum twenty-five cents. The schedule which has been filed is based, rather than on the number of rooms, is based I think on the fixture rate.

Commissioner Donges: Entirely on the fixture basis.

Mr. Tatem: Entirely on the fixture basis except for school houses and so forth.

WILLIAM H. BOARDMAN, sworn on behalf of petitioner.

Direct examination.

By Mr. Tatem:

Q. Mr. Boardman, what is your profession?
A. Civil, hydraulic and sanitary engineer.
Q. How long have you been engaged in that line of work?
A. In active practice uninterruptedly since June, 1884.
Q. You have had considerable experience in regard to sanitary engineering?
A. I have.
Q. You have prepared plans and superintended the building of sewers and sewage disposal plants, from time to time?
A. I have.
Q. During all that period?
A. I have.
Q. Have you made a personal examination of the property of the Collingswood Sewerage Company which furnishes sewerage to the borough of Collingswood?
A. I have.
Q. Have you prepared an appraisal or valuation of the plant of that company?
A. Yes, sir.
Q. Have you your data with you?
A. I have a copy of it, yes, sir. I have some additional copies here for the commission if you would like to have them.
Q. In making your valuation of the plant, have

you divided the part which comprises the collecting system from that which comprises the disposal plant?

A. Yes, sir.

Q. Upon your valuation of the physical property of the company what do you find to be the value of the collecting system?

A. On the collecting system; separated into items, the real estate ——

Q. First give the totals and we will take the items paragraph by paragraph.

A. The total on the collecting system is $111,-703.74 and on the disposal plant is $48,735.68.

By Mr. Weaver:

Q. What was the amount of the collecting system?

A. $111,703.74 and the disposal plant $48,735.68.

By Mr. Tatem:

Q. Will you take up these items in detail? First take the collecting system, the different items which make up your total for that.

A. There is one lot, real estate, one lot six hundred dollars, another one $125; they are rights of way.

By Commissioner Donges:

Q. They are not title to the land, simply rights of way?

A. Six hundred dollars is the right of way purchased from Mr. Reed and the right of way purchased from Mr. Kercher, $125.

By Mr. Tatem:

Q. I might say, in basing your estimate of those values you were advised that was what was actually paid for those lots?

A. Yes, sir. You have witnesses here to testify to that. The collecting system; the pipes, manholes and so on, $74,512.99. Resurfacing of streets, $8,-592.24, making a total of $83,830.23.

By Commissioner Donges:

Q. Resurfacing streets; just what is included in that?

A. That is where you take up the macadam and Belgian block and amesite and have it to replace.

Q. Is that the original construction or is that repairs, repairs included?

A. Some original construction and some repairs.

Q. Are you able to say what amount is chargeable against original construction and what amount against repairs?

A. That I am not. The superintendent might do that.

Q. How did you arrive at this figure of $8,592.24?

A. We took the length of the sewerage system and the width of the ditch and took the square feet and took so much a square foot for replacing it.

Q. Only in streets where it had actually been replaced or did you take the entire system as it was laid under surfaced streets?

A. We measured the length of the surfaced streets and took it under that; the actual length of the sewers laid under surfaced streets.

Q. Under all surfaced streets?

A. Under all surfaced streets.

Q. And that regardless of whether the street might have been surfaced after the sewer was laid?

A. Regardless of that, because I don't have any way of ascertaining that. That makes a total of $83,830.23. We figure the engineering at seven per cent. which amounts to $5,868.12 and the organization expenses, which I obtained from the books of the company $5,807.85.

Q. The organization expenses you took from the books of the company?

A. From the books of the company. They have witnesses here and books too. That makes a total of $95,506.20. Interest during construction, two years; average of one year at six per cent. amounts to $5,730.37, a total of $101,236.57. The discount on bonds, that is, you could not sell them at par, taken at eighty-five and a third, which was what they actually sold at.

Q. All of the bonds?

A. All of the bonds. I understand the secretary here can give those figures.

Mr. Tatem: The average value, according to the books.

Witness: That makes a total of $116,174.52. I deducted for depreciation $4,470.78. That makes a total of $111,703.74 for the collecting system.

Q. What percentage did you deduct for depreciation?

A. I took it at a different percentage on the various items, so much on the pumping machinery and so on.

Q. You didn't take any flat basis?

A. No flat basis. Some of it the life is longer than

other portions of it. As to the disposal plant, the real estate, there is four acres, purchased from the Collingswood Land Company at four thousand dollars. That I got from the books of the company. The lot at the northeast corner of Comly and Harrison Avenues, extending two hundred feet on Comly Avenue and one hundred feet on Harrison Avenue is $2,071.59. The pumping wells in pumping station $5,546.92. The iron siphon line and the air pumping line $7,535.50. The pumps, engines, air pumps, dynamos and pipe connections in the pumping station $3,253.88. The weir, receiving chamber, septic and settling tanks, $4,824.07. The contact beds $10,810.91. Lumber for sluices and in the office building $228.30. The sludge beds $1,449.25, making a total of $39,720.42. Engineering seven per cent., $2,780.43, making $42,500.85. Organization expenses, $2,735.98, making $45,236.83. Interest during construction, two years; average of one year is $2,714.21. The discount on bonds is $7,038.58, making $54,989.62, with a depreciation of $6,253.94, making a total of $48,735.68; making a total for both the collecting system and disposal plant of $160,439.42. The cost of developing the business to December 31st, 1913, as per tabulated statement thereof furnished by the Collingswood Sewerage Company is $92,832.75.

By Mr. Tatem:

Q. Add that to the cost of the value of the physical property would make a total of what?

A. $253,272.17.

Q. You have embraced in your report the detailed estimates as to the costs of the different parts of this plant, the different size pipe and the different size fittings and so on?

A. Yes, sir.

Q. And in your judgment, the prices which you have estimated here are fair prices in view of your experience in this line of work?

A. Yes, sir.

Q. The prices which you have estimated for the labor necessary are fair prices in view of your experience and in view of the physical conditions of the territory in which this plant operates?

A. Undoubtedly.

By Commissioner Donges:

Q. Have you taken as the basis for your calculations as to labor, the cost of labor, the present prices?

A. We figured about $1.75 a day.

Q. The present price?

A. The present price, that is $1.75; that has been the average for some years.

Q. You have taken throughout the present cost?

A. Present cost.

Q. To duplicate?

A. Yes, sir.

By Mr. Tatem:

Q. Reproduction cost I would call that.

A. Reproduction.

Mr. Tatem: If your Honors please, I would like to have Mr. Boardman's report in this detail offered in evidence and the other side given an opportunity to cross-examine in detail.

Commissioner Donges: It will be admitted and marked as an exhibit.

(Report of Mr. Boardman, entitled "Collingswood Sewerage Company, appraisal of the value of the plant, September, 1914," received and marked Ex. P1.)

Cross-examination.

By Mr. Weaver:

Q. Mr. Boardman, are these figures that you have submitted here—do they represent the present value of the plant or the cost to reproduce the plant?

A. That would be the cost of reproducing the plant.

Q. Have you made any estimate of the present value of the plant?

A. The bottom figures. I took off the depreciation, $160,439, I would consider the value of the plant today.

Q. Included in that calculation you have added discount on bonds sold?

A. Yes.

Q. Why do you figure that in?

A. In financing a proposition of this kind, a sewerage or water company, it is absolutely impossible to sell its bonds at par, particularly sewer bonds, very little market for them. You must sell at a discount. I asked the sewerage company what the bonds were sold at. They say that was the average price at which they were sold, 85-1/3. Their books will show that and the secretary will so testify.

By Commissioner Donges:

Q. Do you know what rate of interest these bonds bear?

A. I think they are five per cent.; five per cent.

By Mr. Weaver:

Q. The land on which the disposal works are situated, you have taken that from the books of the company?

A. From the statements of the company, yes, sir.

Q. You made no examination?

A. No personal knowledge of it, no, sir.

Q. You have no personal knowledge of the value of the lot at Comly and Harrison Avenues?

A. Not personally; I took that from the books of the company.

By Commissioner Donges:

Q. That is what you understand to be the price paid for it?

A. I understand the price they paid for it, as I understand. The value of it, as I understand.

Q. The value or the price paid?

A. The value of the land they told me.

Mr. Tatem: Mr. Boardman, of course, has no personal knowledge in regard to the land. As a matter of fact, part of the land is at the price actually paid and another portion of it is at a valuation, and we will have to prove that valuation by other witnesses.

By Mr. Weaver:

Q. Is that true of the right of way, too?

A. True of the right of way, too, yes, sir.

Q. In regard to the collecting system; you have in your calculation $74,512.99?

A. Yes, sir.

Q. You arrived at that from calculating the present price of the material and labor to reproduce that plant, that collecting system?

A. Yes, sir; the reproduction cost.

Q. That would be the cost of production today?

A. In my opinion, yes, sir.

Q. Do you take that at the market figures of material and labor today, or the market figures of material and labor covering a period of an average period, of five years?

A. It would be impossible to say just what they paid in 1901 or 1902. The plant could be duplicated for that today, in my opinion.

By Commissioner Donges:

Q. The price you have taken ——

A. The price I have taken is what you could buy the material at today; reproduction cost.

By Mr. Weaver:

Q. Is that true of the rest of the figures you have presented here for the pumping station and siphon and the rest of the plant?

A. That is true of the whole statement; it is a reproduction value.

Q. Is your figure for engineering at seven per cent. a fair basis of value; isn't that high?

A. No, sir, not for sewerage work, no, sir; that is usual.

Q. Is it higher for sewerage work than for other kinds?

A. Higher than it is for water works.

Q. Respecting organization expenses you got those from the books of the company?

A. From the statement of the company. The sec-

retary is here to testify to that and submit such statements.

Q. Respecting the figures for depreciation; how do you arrive at those?

A. The depreciation? The collecting system was built from time to time from 1902 to 1914, an average time of six years. I took depreciation at one per cent. on the $74,512.99 for the six years. On the disposal plant, the pumping wells in pumping station, estimated cost $5,546.92 for twelve years at one per cent. is $665.63. The iron siphon and air pumping lines, cost $7,535.50; they have been in use twelve years. I deducted twenty-five per cent., $1,883.86. The pumps, engines, air pumps, dynamos and pipe connections in pumping station, estimated cost $3,253.88; they have been in there twelve years, I took fifty per cent. off of them, that makes $1626.94. The weir and receiving chamber, septic and settling tanks, cost $4824.07, twelve years at one per cent. is $578.89. The contact beds, cost $10,810.91, twelve years, twelve per cent. off, $1297.31. Lumber for sluices and office building, cost $228.30; we took off twelve per cent., $27.40. The sludge beds, cost $1449.25, we took off twelve per cent., $173.91.

Q. When you say the estimate of cost detailed here; do you get those figures from the books of the company or are they your estimates?

A. They are my estimates of reproduction cost.

Q. What length of time did you figure on this depreciation?

A. Various items; machinery, I took off fifty per cent. because the life of it is about twenty-five or twenty-six years, might outgrow that, but the concrete would run one hundred years, no depreciation to it practically. The same way with the vitrified salt glazed pipes.

Q. Did you figure the average length of life of this sewerage system in arriving at that?

A. Just from the depreciation I have stated on different percentages. The concrete would last much longer than the wrought iron pipe line. The concrete and stone in the beds would last longer than the machinery.

By Commissioner Hillery:

Q. You did not calculate an average at all?

A. I did not take it on an average.

Q. But you arrived at this ——

A. I did not take any average. I just separated it into different items.

By Commissioner Donges:

Q. I didn't hear how you arrived at the inventory, the quantities.

A. The quantities; I took the plans and their records from the office of the sewerage company and went on the ground and made actual surveys and investigations and checked them up as far as it is possible to do it.

Q. The unit prices applied are your own?

A. My own prices. Of course, we took the plans and scaled over the distance and checked them up.

By Mr. Weaver:

Q. Isn't it probable, Mr. Boardman, that a system of this kind would have to be reproduced in order to keep it to standard, up to proper standard and in that way this system would depreciate much more rapidly than you have allowed here?

A. Yes, but a company should put back into that property every year enough for renewals to keep up the integrity of the plant. It would not do to start the plant and allow it to go to destruction, but you ought to put enough back every year for renewals to maintain the integrity of the property. It should be out of the receipts, out of the earnings of the property.

Q. Why, therefore, shouldn't you allow a greater amount of depreciation in the time you have figured here than you have already allowed?

A. Sir?

Q. Shouldn't you allow a greater amount of depreciation than you have already allowed on that?

A. No, sir, for this reason; the originally built sewerage disposal plant has actually been rebuilt two or three times; the contact beds have just been constructed within recent years, practically new.

By Mr. Wescott:

Q. Do you happen to know what the par of the bonds is?

A. No, sir, I do not.

Q. Do you happen to know what they are selling at now?

A. I don't know anything about their financial proposition.

Q. How big a place is this Collingswood?

A. Collingswood; they have at present fourteen—I think 1368 connections.

Q. Do you know how many they had at the outstart?

A. No, sir, they have a statement there that gives

Q. If you don't know, don't undertake to tell me. They have how many at the present time?

A. I think 1368 or 1386, close to fourteen hundred connections.

Q. That number of connections implies a plant of what value?

A. That would depend altogether on the location of the plant and the frontage of lots and so on.

Q. You are an expert in this business, aren't you?

A. I don't know as I claim to be an expert. I have had experience in it. Take the Riverside plant for instance, for ten miles of sewers there we have about nine hundred connections; the plant is in operation about four years.

Q. This is a flat community, isn't it; no hills there at Collingswood?

A. The territory drained by this company lies in two watersheds, part in Newton Creek and part in Cooper's Creek. It is flat.

Q. Taking the character of the country into account and the number of connections, that would imply a plant of about what value?

A. The connections? The value of the plant is as I have stated here, the present existing plant.

(Question read.)

Witness: You could not fix any value for a plant on the number of connections. It depends on the topography, the length of the outfall sewer, the size of the disposal beds and so many different items that enter into it. There is no general figure that could be placed on a sewerage plant.

Q. Would it imply a plant of the value of $253,000?

A. That $253,000 ——

Q. Would it imply a plant of the value of $253,000?

A. Not to be a good business proposition, no; not for a good business proposition.

Q. Would it imply a plant of considerable more value than that; would it?

Commissioner Donges: The witness said, to be a good business proposition that investment ought not to be in a plant to serve that many connections, if I understand it.

Witness: That is right.

Commissioner Donges: As I understand the witness, he said an investment of $253,000 is higher than is warranted for the number of connections served by this company. The investment is greater than is warranted by the number of connections.

Q. That is what you mean, is it?

A. That is what I said, yes, sir.

Q. As an expert, how do you account for such large value, such large investment here?

A. The item of $92,000 which is the cost of developing the business to December 31, 1913, as per tabulated statement thereof furnished by the Collingswood Sewerage Company seems large.

Q. What is the cost of developing the business?

A. They say in this plant about $92,000.

Q. What is the cost?

A. It generally runs about twenty-five per cent.

Q. What is developing the business?

A. That is to take the plant from its installation and build it up until it becomes a paying business.

Q. What do you do to do that; put agents out and solicit connections?

A. No, you carry the plant, pay your deficit, pay

the interest on the deficit, operate the plant and so on.

Q. This development idea contains all the losses of the company?

A. Precisely.

Q. Interest on its losses?

A. As I understand it, yes, sir.

Q. Compounded?

A. I don't know. The secretary has a statement here and will testify to that.

Q. Can you tell, as an expert?

A. I didn't make the statement and don't care to testify to it.

Q. If it was a bad business venture at the outstart your idea is that the losses on that bad business venture ought to go into the development expenses and the rates now ought to be charged according; is that your idea?

A. The development of the business is the amount of money you put into it until you bring it up to a paying investment.

(Question read.)

Witness: The rates should be sufficient to pay interest on the investment, the operating cost and an amount for renewals.

Q. And the losses?

A. The rates should be sufficient to carry the property after three or four years without all these accumulated losses.

Q. The rates ought to be now sufficient to carry the losses, shouldn't they?

A. I shouldn't say it should include all the losses. It should include a fair price for development.

By Commissioner Donges:

Q. What is that?

A. It should include a fair return for the development of the property.

By Mr. Wescott:

Q. In that you have the element of losses?

A. You have the element of losses until you build up the business.

Q. Tell me how much the losses have been.

A. They claim $92,832.75, from the tabulated statement they will submit here today.

Q. That is actually what they lost?

A. Yes, sir.

Q. That ninety-two thousand is an element in your computation to guide this important body in determining what the citizens out there ought to pay to reimburse this company?

A. Yes, sir.

Q. In other words, the bad business venture of this company ought to be borne now by the individual owners of the property?

A. No, they simply submit that to show what money has actually gone into the property. The commission will decide best what they are going to allow.

Q. In other words, the cost of this bad venture ought to be borne now by the innocent property owners in that community?

A. That is a question for the commission to decide, not for me.

Q. Somebody has to lose it; either the company who made fools of themselves in going into the venture or the innocent people who did not make fools

of themselves and are being fooled by the company; one party or the other ought to bear this loss.

A. It bears an element in the fixing of the rate.

Q. One party or the other ought to bear the loss. In your opinion the property holders, the individual citizens out there ought to bear this loss?

A. In my opinion, the property holders ought to pay a fair rate.

Q. They ought to bear this loss?

A. A portion of it, I should say.

Q. What portion ought these property holders to bear?

A. My experience has been that development cost usually runs about twenty-five per cent. It is sometimes exceeded. This $92,000 is high.

Q. How much do you think the innocent property holders ought to pay of this ninety-two thousand—twenty-five per cent.?

A. The usual development cost runs to twenty-five per cent. In this property it runs about ninety-two thousand, according to the statement they will submit.

Q. You think they ought to bear about twenty-five per cent. of the $92,000?

A. Twenty-five per cent. of the investment is the general run for development cost.

Q. I am talking about the ninety-two thousand loss.

A. That is the cost of developing the thing.

Q. How much ought the people to bear of that, in your opinion as an expert?

A. It has gone into the property and is part and parcel of the property.

Q. And, therefore, the people ought to bear it?

A. It ought to be considered in fixing the rate.

Q. Why?

A. Because it is money that has gone into that installation.

Q. Did the people cause that, the property holders cause this loss to this company?

A. What the company should have done is had the rates increased long ago and not gone on so long with it.

Q. As an expert, have you an idea that the people out there who patronized this company had anything to do with this bad business venture and therefore ought to carry the property?

A. They took the rates offered to them. The company should have had the rates increased years ago.

Q. Shouldn't the company had the rates increased before they commenced?

A. No, because they were all right on their original proposition with a dilution disposal, where you run the pipes to the nearest creek.

Q. Before they began business they changed the whole business; why didn't the officers jump on the people and make them pay?

A. That is what they should have done.

Q. Should have done?

A. Yes.

Q. Having gone along all these years from 1901, you think they ought to make the jump now in order to catch up?

A. No, they ought to have a readjustment of the rates.

Q. In other words, for this foolish investment these people ought to be made to pay?

A. No; made to pay a fair rate for the service they get. That is what I mean.

Q. Have you any idea what the usual rates are in other plants of about this size?

A. They usually charge so much a room.

Q. Have you any idea what the usual rates are in other plants of about this size?

A. At Riverside they fix it on a property, first so much per foot front of his property, then the operating cost is paid by the connection.

Q. How is it at Haddonfield?

A. I don't know.

Q. The rates are a great deal lower there?

A. I haven't the slightest idea.

Q. Than in Collingswood now?

A. I don't know. Collingswood is a peculiar proposition, because there is so much pumpage. About half of that property, the sewage is pumped twice.

Q. Isn't it a proposition that is peculiar all the way through?

A. You have to pump the sewage twice there at Collingswood.

Q. It is so peculiar that this plant now ought to be considered worth nearly $253,000 and the rates ought to be regulated on that basis, in your judgment as an expert?

A. That is right.

Q. This company would come out pretty good at that rate?

A. Not up to date. There is nothing in the financial statement that would show it.

Q. They would get their losses back?

A. They ought to be entitled to some of them back.

Q. They ought to have kept out in the first place?

A. Correct.

By Mr. Betts:

Q. In the unit prices used in connection with mains do the unit prices represent the prices that would be paid a contractor for that work?

A. That is about the prevailing price today for this kind of work.

Q. And the unit price includes whatever profit there might be to the contractor who would do that work?

A. Yes, sir.

Re-direct examination.

By Mr. Tatem:

Q. What are the elements that enter into the cost of a sewerage system in relation to the number of connections which that system may have?

A. As to the operation of it?

Q. I mean as to the construction of it.

A. The number of connections would depend on the size of the frontage of the lots. Sometimes you get them at sixteen feet, eighteen feet front. Here the frontages run very large.

Q. Is there what you would call any ordinary relation between the number of connections and the cost of a sewerage system?

A. No, sir.

Q. Wouldn't the cost of the system per connection depend entirely upon a number of elements, such as grades, the number of connections per mile of pipe and so forth?

A. It depends on the grades, the cuts, the depths of the sewers, the size of the sewer, the size and kind of disposal plant, the miles of sewer that are laid.

Q. In your judgment is the plant as installed in Collingswood a suitable and proper method; or is the plan of the plant in Collingswood a suitable and proper plant for serving that district?

A. Yes, sir; the separate system of sewerage is just the plant for that district.

Q. In your experience as an expert, would you say that the territory covered could be satisfactorily provided with sewerage in any way to be much more economical than the plan adopted?

A. I don't think it could be, no, sir.

Q. You stated that the development cost which had been given you by the company as $92,000 was, in your judgment, above the average of such cost?

A. Yes, sir.

Q. And you stated, as I understood it, that in your experience the average of such cost was about twenty-five per cent. of the replacement value of the property?

A. Yes, sir.

Q. Taking your figures as the replacement value of the property as $160,000, then the average development cost would be twenty-five per cent. of that or in round figures, $40,000?

A. I should say about $40,000.

By Commissioner Donges:

Q. Ordinarily what items are included in development cost of a sewerage business?

A. The cost of carrying the property until such times as the revenue will pay the operating cost and interest on the investment and so on.

Q. What else? I want you to enumerate what items, in your judgment, are properly included as development cost in sewerage business?

A. The drumming up of the business, encouraging consumers to connect and so on.

Q. They are the only items that occur to you as being properly included?

A. Carrying deficits and interest on deficits and so on, until such time as the property becomes a paying proposition.

Q. In your experience about how long a time elapses before a sewerage company carries itself?

A. It probably ought to pay in four or five years. The rate should be sufficient to do that in four or five years.

By Mr. Wescott:

Q. So if it cost a million to encourage the people to patronize the company, that million ought to go in operation expenses and the patrons ought to be made to pay it?

A. It would be a bad investment to take over a property of that kind.

Q. That is your theory?

A. You wouldn't carry it out in practice. Nobody would undertake to.

Q. They are attempted to be carried out so far as getting about $92,000 by order of this commission out of the innocent people down there?

A. No, unless your exchequer could pay the deficits you would be in the receiver's hands.

Q. Has the board of health anything to do with procuring these connections of the company?

A. Sometimes the local board of health will pass a resolution directing every property holder to connect to it. I don't think that has ever been done in Collingswood.

Q. You don't think it has ever been done?

A. I don't think so.

Q. All the connections were the results of drumming on the part of the company?

A. Soliciting business, and from a welfare standpoint.

Q. Under the theory they would be charged, I think, $9; so they drummed on the theory that the people would be charged nine dollars?

A. No, most people connect for the convenience.

Q. Now, you want to charge them how much?

A. I don't know how much they want to charge them. That is up to the commission. People connect usually to a sewer on account of it being more sanitary and the convenience there is in it, rather than have cesspools and the cost of cleaning them.

By Mr. Tatem:

Q. Judge Wescott asked you if you knew anything about the comparison between the rates charged in Haddonfield, and those charged in Collingswood; do you happen to know whether Haddonfield is a municipally owned and operated plant or not?

A. I think it is a municipally owned plant and paid for by bond issue, I understand.

Mr. Wescott: And a good deal cheaper and better.

Witness: I don't know about that. They have their own troubles.

By Mr. Weaver:

Q. You have figured the construction of this plant to cover a period of two years; is that correct?

A. I figured the interest on investment covering two years. To lay twenty miles of sewers and build a plant of that kind it would take about two years. That would be an average of one year and I figured one year's interest on the investment.

W. H. Roth, sworn on behalf of petitioner.

Direct examination.

By Mr. Tatem:

Q. Mr. Roth, what is your connection with the Collingswood Sewerage Company?

A. Assistant secretary.

Q. How long have you been connected with this company?

A. Since about 1908.

Q. In carrying out your duties as assistant secretary have you charge of the books and records of the company?

A. Yes, sir.

Q. You are the officer of the company that is particularly familiar with those books and records, are you not?

A. Yes, sir.

Q. Mr. Roth, I would like to call your attention to the summary of Mr. Boardman's report. You have a copy of that, have you not?

A. Yes, sir.

Q. There are a few items there which Mr. Boardman testified he took his figures from the books of the company and I thought we would take up those figures first. I am now referring to Mr. Boardman's

summary which is in evidence, the item, real estate under collecting system; right of way purchased from Reed, $600; does that item represent the amount actually paid for that right of way?

A. Yes, sir.

Mr. Wescott: How does he know; he was not connected with the company then.

Witness: I have taken this from the records of the company.

Q. Was that prior to your connection with it?

A. It was purchased prior to my connection with the company. The company's books, however, show that.

Commissioner Donges: The witness is testifying from the records of the company. We will take it for what it is worth.

Mr. Wescott: He don't know anything about it. They may offer the record and the record speaks for itself.

Q. Mr. Roth, under the disposal plant, the item of $2071.59 for real estate; what does that represent?

A. That represents the cost of the lot at the corner of Comly and Harrison Avenues on which is located a tank for the siphon line and that is the exact cost of that land to the company and the land had to be condemned in order to secure it.

Q. That proceeding was had since your connection with the company?

A. Yes, sir.

Q. The items which Mr. Boardman has shown on his summary as the organization expenses, he testified that he had obtained those figures from the company. Will you tell me what those items include and how they were arrived at?

A. They include attorneys' fees.

By Mr. Wescott:

Q. How much are the attorneys' fees?

A. I haven't all the details of all the items that enter into it. I can only say it includes all the costs incident to the organization of the company which includes, state fees, attorneys' fees and matters of that kind.

Q. How much is the total?

A. $8,543.83.

By Mr. Tatem:

Q. The item, discount on bonds sold at 85-1/3 per cent.; from the records of the company is that the average price at which the bonds were sold?

A. Yes, sir, it is.

By Commissioner Donges:

Q. How many bonds have been issued?

A. $150,000.

Q. At what times and in what amounts and for what amounts were they sold?

A. In 1901 there was one bond issued at par, $1,000; in 1902 there were $39,000 of bonds issued at 95; in 1903 there were $10,000 bonds issued at 75; in 1906 there were $34,500 issued at 80; in 1906 there were $4,000 more issued at 80; in 1907 there were

$8500 issued at 80; in 1908, $17,000 at 80; in 1909, $23,500 at 80, making a total of $150,000 and the average rate, 85-1/3 per cent.

Q. How are the bonds held?

A. How are they held now? The bonds are now held by—there are $148,000 of them held by one company and the other two in the hands of the public.

Q. This item of organization expenses you have not given the details of it.

A. That was before my connection with the company and I can only say what the record shows. That shows that much was spent for that purpose.

Q. How is the sum total allocated between collecting system and disposal plant?

A. I think Mr. Boardman separated that in accordance with the percentage that one bears to the total.

Q. The valuation of it?

A. Yes, sir, I think so. We did not separate that. Mr. Boardman did that.

By Mr. Tatem:

Q. Mr. Roth, from the records of the company, I am going to ask you to take up the number of consumers or the number of patrons that this company has had each year from the time it began operation down to the present time.

A. At the end of 1902 there were 88 connections; 1903, 143; 1904, 203; 1905, 314; 1906, 430; 1907, 576; 1908, 865; 1909, 1013; 1910, 1123; 1911, 1274; 1912, 1346; December 31, 1913, 1360.

Q. Approximately, what is the total mileage of the collecting pipe in this system?

A. About twenty miles.

Q. From the books of the company I would like you to give us the gross receipts during each year of operation.

A. In 1902 the gross income was $499.20.

Q. I might say it would probably be better for you to read the gross income and the total expense each year.

A. And the net result?

Q. And the net result each year.

A. In 1902 gross income $499.20, total expense, including interest, operating expenses, depreciation and taxes, $5,059.21.

By Commissioner Donges:

Q. What depreciation?

A. We calculated one per cent.

Q. And included that?

A. Yes, sir.

Q. In operating expenses?

A. Yes, sir. In 1903 the gross income was $996.-87.

Q. A net loss of about $4500?

A. Yes, sir, the deficit, $4560.01.

By Mr. Tatem:

Q. Suppose you testify to that briefly and we will offer the tabulated statement in evidence.

Commissioner Donges: The other side has a copy of this?

Witness: Yes, sir, several of them. In fact, I gave all the engineers a copy of it. This statement shows the company's investment in property, in-

cluding the cost of developing the business to December 31, 1913. It shows the cost of the physical property with the additions in each year. The interest is figured on the basis of six per cent. and on the additions each year on the basis of three per cent., being an average of six months' interest on additions. Depreciation is figured on the basis of one per cent. and on the additions each year one-half of one per cent., being an average of six months. The operating expenses including taxes and insurance are the actual expenditures for operating charges, including labor, material, and other expenses incident to operating the plant. The gross income is the entire amount of earnings each year from sewer connections and the deficits are the differences between the gross income and the total expense. The accumulated deficits on the basis of the foregoing is $92,832.75, making the company's investment in plant at the end of 1913, $244,754.71.

By Commissioner Donges:

Q. Actual expenditure, plus development?
A. Yes, sir.

Mr. Tatem: I would like to offer that tabulated statement in evidence.

Commissioner Donges: It will be admitted and marked as an exhibit.

(Statement entitled, "Collingswood Sewerage Company, investment including cost of developing business, Dec. 31st, 1913," received and marked Ex. P2.)

By Mr. Tatem:

Q. Mr. Roth, you have had experience in the operation of other public utility plants, have you not, including sewerage companies?

A. Yes, sir.

Q. And you are personally familiar with the plant of the Collingswood Sewerage Company?

A. Yes, sir.

Q. In your judgment, has the operating expense of that plant, considering the character of the plant and the work done; has that been above or below the average?

A. I think it is below the average.

Q. Mr. Roth, will you take up a little in detail as to how the operating expenses are made up? I think that is rather an important item.

A. In 1913 the details of the operating expenses are as follows: office expenses, $281.41; office rent, $60; general expenses, $353.76; salaries, $900; pumping station wages, $988.80; miscellaneous wages, $1,069.97; fuel, $797.62; pumping station expenses, $43.10; legal expense, $1038.75; tools, $118.38; repairs to machinery, $36.84; repairs to pipe system, $304.70; repairs to building, $7.10; taxes, $1,114.34; insurance, $11.75, total operating expenses, $7,226.52.

Q. How does that compare with the year previous, for instance, 1912?

A. It is approximately $1300 less than the previous year.

Q. What portion of the operating expense can properly be chargeable to the disposal plant?

A. Of the total operating expense there would be properly chargeable to disposal works, the following items: pumping station wages, $988.80; fuel,

$797.62; pumping station expense, $43.10; a portion of the tools; just how many, I haven't the details here; repairs to machinery, $36.84; repairs to building, $7.10; and a considerable portion of the taxes and insurance and overhead costs, such as salary of the superintendent and other employees engaged in the operation of the plant. I had the details, but I seem to have mislaid them.

Q. The items which you have mentioned there are items which would not have to be taken into account had the original system of disposal of sewage without a disposal plant been carried out?

A. Yes, sir, that is true.

By Commissioner Donges:

Q. How many men are employed?

A. Four; two of them do not devote all their time to the company's affairs. That is what helps to keep down the operating costs. There are two engineers, one day and one night man, a superintendent and one other man. They are regularly employed.

Q. What is the cost of such labor?

A. The engineers, I have forgotten what they get, something like $50 a month apiece; and the cost of the two other men is $100 a month for the two.

Q. What are the duties of the others?

A. The rendering of bills, collections, keeping accounts, and the general administration other than general bookkeeping which costs the company nothing. The only office rent they pay is five dollars a month for the use of a desk in the president's house. There is no charge against the plant for any expense other than that which is actually incurred in the operation of the work. It has no administration charge.

Q. No administration at all?

A. No, sir. There isn't any outside labor employed except when it is absolutely needed to open up stoppage or something of that sort. The men are then employed by the hour. That also keeps down the expense.

Q. Not permanently employed?

A. No, sir.

Q. What part of the expense of the engineers and the superintendent have you placed against the disposal plant?

A. I had it all in detail. If I might be permitted to produce that at the next hearing, if we have another. I would like to go into that, because I have it worked out.

Q. I notice you have each year charged interest on the amount of investment as set out at the rate of six per cent.

A. Yes, sir.

Q. Why did you fix six per cent.?

A. Because that is the legal rate of interest and the lowest rate of return we should be allowed to earn.

Q. You have arbitrarily fixed six per cent. as being a fair return?

A. Not a fair return, but the lowest return we should have. The depreciation is figured only on physical cost and not on investment.

Q. You have taken on additions each year, three per cent. being the average of the year, taken six months?

A. Yes, sir.

By Mr. Tatem:

Q. Mr. Roth, at the new schedule of rates as submitted by the company, what would be the income

of the company for the year 1914, for instance, assuming that the number of connections, the number of fixtures, remained the same as it is at the present time, that there were no disconnections because of the increase in rates?

Commissioner Donges: And assuming the present installation of fixtures?

Mr. Tatem: Yes, assuming the present installation of fixtures.

A. Assuming that no one would cut off any of the fixtures which they now have, on the basis of our new schedule of rates, the total income would be $19,250.

Q. On that basis how would that make your—you testified that on the new schedule of rates assuming there was no change in the number of fixtures that the gross income would be $19,250?

A. Yes, sir.

Q. What was the gross income of the company for the year 1913, under the old schedule of rates?

A. $12,433.36.

Q. That would be an increase in round figures of about $6,800?

A. Yes, sir.

Q. On the basis of earning, gross earnings of $19,250, after deducting the operating expenses, assuming the operating expenses were the same as last year; what return would that show upon the company's investment?

A. Using the company's investment as $244,754.71 as a basis, and assuming that the operating expenses would be the same as it was in 1913, and assuming that the income would be $19,250, there

would be a deficit at the new rate of $4,181.02, on a six per cent. basis and one per cent. for depreciation.

Q. As I understand then, allowing a one per cent. depreciation on the basis of the new rates yielding $19,250, with the same operating expenses, there would still be a deficit of $4181 on the basis of a six per cent. return?

A. Yes, sir.

Q. In other words that would be about a four per cent. return, would it not?

A. I haven't figured that. On a seven per cent. return it would be a deficit of $6,628.57 and on an eight per cent., $9076.12.

Recess from 12.45 to 1.45 P. M.

AFTER RECESS.

W. H. Roth resumes the stand.

Mr. Tatem: I asked Mr. Roth sometime ago, if he could divide the operating cost between that which was directly attributable to the change in system to the disposal plant and that which was not. He said he had such a memorandum among his papers but could not find it. He has found it during recess and I would like to have it read into the record because it puts that part of the case in more definite form.

Q. Mr. Roth, of the operating expenses based on your report for 1913, what portion of those operating expenses was directly chargeable to the installation and operation of the disposal system?

A. $3,091.82, arrived at in the following manner: pumping station wages $988.80; fuel, $797.62; oil, waste and packing, $33.40; miscellaneous pumping station expenses, $127.62; repairs to machinery, $36.-84; repairs to building, $7.10; insurance on building, $13.50; liability insurance, $5.39; taxes, $107.51; superintendence, $240; depreciation on disposal works assumed at 1-1/2 per cent. on $48,936.57 which is our cost, $734.04; making a total exclusive of interest, $3,091.82.

By Commissioner Donges:

Q. That is for the year 1913?
A. Yes, sir.

Cross-examination.

By Mr. Weaver:

Q. Mr. Roth, in your statement of investments you include cost of development, December 31, 1913; you start off with a debit item under date of 1902 of $61,028.07; will you tell us how that is made up, or where did you get those figures, first?

A. From the books of the company. That was the cost of the plant or that portion of the cost which had been paid up to the end of the year 1902.

Q. Where do you get that, from the books of the company?

A. Yes, sir.

Q. Have you any knowledge of that expenditure of your own?

A. Only what I get from the records.

Q. Only what you get from the records?

A. Yes, sir.

Q. You don't know whether that sum was actually expended by the company or not?

A. I believe it was.

Q. But of your own knowledge you don't know that?

A. I had nothing to do with the disbursing of it, no, sir.

By Commissioner Treacy:

Q. You don't know whether it was disbursed or not, of your own knowledge?

A. No, sir, not of my own knowledge; the books show it was.

By Mr. Tatem:

Q. You were not connected with the company at that time?

A. No, sir.

By Mr. Weaver:

Q. From the books is it indicated that $61,028.07 includes any operating expense?

A. I think not.

Q. You are not sure of that?

A. I might say I am sure, because for the same year I have found the operating expenses were $719.

Q. Does it include any expenditure for taxes?

A. Yes, sir.

Q. That $61,028?

A. No, sir; the $719 includes the taxes.

Q. Does it include any organization expenses?

A. It may include a portion or all, for that matter, of the organization cost. Of that I cannot say.

Q. Does it include the discount on your bonds?

A. If there were any issued in 1902 it does. Yes, I think it would include $1950 of discount on bonds, because in 1902 there were $39,000 issued at 95. Five per cent. of $39,000 would be $1950.

Q. How much of the organization expenses does it include?

A. That I cannot say.

Q. Wouldn't it include all the organization expenses?

A. It would if they were paid on or prior to December 31st, 1902, but I cannot say that from my knowledge.

Q. The organization expenses were all incurred prior to 1902, weren't they?

A. I cannot say that because I was not connected with the company at that time.

By Commissioner Treacy:

Q. Have you any statement showing what that $61,000 does include?

A. Not here, no, sir. That was the total cost up to that time. I did not go into all the details.

By Mr. Weaver:

Q. You don't know of your own knowledge?

A. I went into the details of the total cost to the end of December, 1913, but not by years.

Q. You don't know of your own knowledge whether that $61,028.07 is the actual cost of construction up to 1902 or not, do you?

A. Physical construction, you mean?

Q. Yes.

A. No, I cannot say that. Just a moment, Mr.

Weaver. That $61,028.07 does not include discount on bonds. I see there is added in 1902, $1950. That, I presume, was the discount on bonds, because that was the discount that year.

Q. How much of the plant had you constructed up to 1902?

A. I don't know that.

By Commissioner Donges:

Q. You say the $1950 added in 1902 as shown on Ex. P2, is bond discount?

A. I presume it is. It happens to be the same amount as the discount on the bonds issued in that year.

By Mr. Weaver:

Q. You have no way of informing this commission just how that $61,028.07 was expended, have you?

A. Not from my personal knowledge, no, sir.

Q. Let us take up the question of organization expenses. It amounts in round numbers to $8500. Will you tell us whether that was expended in the organization of this company in its incipiency; when it was first organized?

A. I cannot tell you that, Mr. Weaver.

Commissioner Donges: Is it your purpose, Mr. Tatem, to produce anybody who is familiar with the affairs of the company in the early years?

Mr. Tatem: I really had not taken that matter up; I don't know.

Q. Have you any means of informing the commission what that $8500 consists of, the items that go to make it up?

A. It consists, as I said before, of legal expenses, services, and other expenses properly chargeable to organization.

Q. But the detail of that you have no knowledge of?

A. I have not the details, no, sir.

By Commissioner Donges:

Q. Have you the items; have you taken the items from the books, that go to make up this sum?

A. I have some of them here, but not all of them.

By Mr. Weaver:

Q. You have had experience in organizing sewer companies, haven't you?

A. Not in the organization of them, no, sir.

Q. How many bonds of this company are issued and outstanding?

A. $150,000.

Q. And how were they sold; were they sold on the open market?

A. No, sir.

Q. Or sold at private sale?

A. Sold at private sale.

Q. Do you know whether they brought a figure that was adequate?

A. I think they did. I don't believe that they would have sold at anything like the price they brought if they had been offered publicly, because the plant could not show sufficient earnings to pay the interest on them.

Q. Were those bonds sold for cash; did the company get cash money and put it in its treasury and deposit it in the bank for those bonds that were sold?

A. No, the company got cash or its equivalent.

Q. What was the equivalent?

A. Property, construction, pipe lines and so on.

Q. The bonds were traded in for construction work or for property purchase?

A. The construction work was paid for in bonds.

By Commissioner Donges:

Q. The construction work being done by contract?

A. Yes, by contract, yes, sir.

By Mr. Wescott:

Q. Have you the contract?

A. No, sir.

By Mr. Weaver:

Q. How can you say then that at that time those bonds were not worth more than the figures realized by the company?

A. Because investors generally won't pay par for bonds on which the interest is not being earned and usually will not pay anything like that even if the interest is being earned, on a plant that is just built.

Q. How are these bonds held, or who did these bonds go to at the time they were traded for property and construction work?

A. They went to the contractor.

Q. Who was the contractor?

A. The original contractor was the National Gas & Construction Company.

Q. And how are they held now?

A. They are now held; $148,000 of them are held by the American Pipe & Construction Company and $2,000 in the hands of the public.

Q. Has interest been paid on those bonds?

A. Yes, sir.

Q. Paid regularly on the bonds?

A. Paid regularly, the company borrowing the money to pay the interest.

Q. And how much capital stock has this company issued and outstanding?

A. $150,000.

Q. Is that held—is that in the hands of the public?

A. About forty-nine per cent. of it is in the hands of the public.

Q. And no dividend has been paid on that stock?

A. None paid nor earned.

Q. Was that stock issued for property purchased?

A. It was issued to the contractor along with the bonds, practically a bonus, which was permitted in those days.

Q. So there was no cash came into the treasury from the sale of that stock?

A. I think not.

Q. Mr. Roth, what is the present number of your subscribers?

A. About 1368 at this time.

Q. At the present time?

A. I think that is the number.

Q. Did you have that number of subscribers in 1913?

A. 1340.

Q. A slight increase?

Commissioner Donges: 1360 you said, at the end of 1913.

A. 1360. I think it is something like 1368 or 1370 now. There has been some increase. This does not mean 1360 active customers. It means 1360 connections to the sewer main, whether the houses are in course of construction or actually pay sewer rents. In other words, each time a connection is made, which very often is done at the time the cellar is built, an account is opened and this 1360 represents the number of accounts with customers, whether they are active customers or not. There may be, and I know there are, a great many of them that were not paying sewer rents because they were not receiving service.

Q. Will you receive revenue in 1915 for at least 1360 subscribers?

A. That depends on how many in the meantime become occupied.

Commissioner Donges: You mean in 1913, don't you, Mr. Weaver?

Mr. Weaver: What I wanted to get at was the probable number of subscribers actively taking sewerage in 1915.

Witness: That is hard to get at.

By Commissioner Treacy:

Q. How about 1913; did you receive rent from 1360?

A. No, sir. My recollection is we actually got rental from somewhere between 1200 and 1300. There are always a number of houses in course of construction, some unoccupied for long periods and during that time we get no sewer rent.

By Mr. Weaver:

Q. What would be your increase then of subscribers in 1914, say over 1913? If between 1200 in 1913, what would be the number of subscribers in 1914?

A. I don't know exactly. I should say not over fifty, if that many.

Q. Would the same increase hold good probably for 1915?

A. If building continues at the same rate it might.

Q. From your experience can you give us any idea?

A. This is a bad time, we all know; building operations have been seriously retarded since the war started.

Q. There is a relative increase in subscribers each year, is there not?

A. Yes, sir, there has been an increase each year. The increase, by the way, in 1913 was much less than the increase in the previous years.

By Commissioner Donges:

Q. How many?

A. The increase in 1913 over 1912 was only fourteen.

Q. And in 1912 over 1911?

A. In 1912 over 1911 it was 72.

Q. And in 1911 over 1910?

A. In 1911 over 1910 it was 151. In other words, I think the town has about reached a point where the growth will just be normal from now on. We were getting an abnormal growth for several years, a large number of small houses built for a while, and now it seems the growth is just gradual, as all towns seem to work into after a while.

Q. Mr. Roth, your statement shows gross income

1913 of $12,433.36; does that represent your actual collections?

A. No, sir, that represents earnings whether collected or not. That represents the amount of the bills actually rendered to the customers and has no relation to the cash collections. That would be the maximum, in other words. If we lost any of it, that would be deduced.

Q. It would have to come off of that amount?

A. Yes, sir.

Q. So far as your collections are concerned you are able to collect your bills regularly, aren't you; your losses are very small?

A. They are comparatively small. We do lose some, of course.

By Mr. Wescott:

Q. Who built this plant down there in the first place?

A. The Collingswood Sewerage Company contracted with the National Gas & Construction Company to build the plant.

Q. What was the National Gas & Construction Company?

A. The National Gas & Construction Company was a construction company.

Q. When did the American Sewer Company ——

A. The American Pipe & Construction Company.

Q. When did they take charge of the thing?

A. I think about 1908, if I remember right.

Q. Did they furnish the material in the first place?

A. No, sir.

Q. Who did?

A. The National Gas & Construction Company.

Q. What was that company; where did it exist?

A. A new Jersey corporation.

Q. Is it in existence yet?

A. I think it is.

Q. When did the other company come in?

A. About 1908 according to my recollection.

Q. When the other company came in who held the bonds?

A. The National Gas & Construction Company.

Q. Did the Gas & Construction Company make the pipes?

A. No, sir.

Q. Where did they get the pipes?

A. Bought them in the open market, I presume. Sewer pipe is not a pipe that is made by the American Pipe & Construction Company. They make water pipe.

Q. At any rate the company that furnished the pipes took the bonds?

A. Yes, sir.

Q. And those bonds were probably on their face very much in excess of what the pipes cost? Probably fifty per cent., weren't they?

A. I wouldn't say that, no, sir.

Q. Pretty near that, weren't they?

A. No, sir, I don't think so.

Q. Do you know what they were?

A. No, I don't know, but I doubt that very much.

Q. You don't know but you doubt it?

A. Yes, sir.

Q. Whatever profit there was was evidenced by the bonds, of course?

A. I can say this ——

Q. Whatever profit there was was evidenced by the bonds?

A. No, I cannot say that either.

Q. They were not paid in money?

A. They were not paid in money, no, sir.

Q. But were paid bonds?

A. Paid bonds, yes, sir.

Q. So they furnished the material with one hand and took the bonds with the other?

A. Yes, sir.

Q. That was the transaction at the beginning. Have you any idea what the American Pipe & Construction Company paid for these bonds or how it got them?

A. I don't recall the details of that. They had some business connection with the National Gas & Construction Company and in some deal which they had they took these bonds, and along with the bonds got control of the stock. Since then it has operated the plant.

Q. You probably used some money in the construction of this plant; where did you get it?

A. The National Gas & Construction Company furnished that money out of its capital, that is the way I understand it.

Q. Have you any idea how much money it furnished?

A. I have not, sir.

Q. Very little money?

A. I don't know.

Q. Its own men built the sewers?

A. I don't know who they employed to build the sewers.

Q. They furnished the pipe and all material and so on?

A. Yes, sir, they did that.

Q. So it did not require any cash to speak of?

A. Yes, it did. They had to buy the pipes; they didn't make them.

Q. How do you know they did not?

A. I know the National Gas & Construction Company was not a manufacturing company.

Q. How do you know that?

A. I know from the character of the business they did.

Q. You don't know from whom they got the pipes?

A. No, I do not.

Q. Nor what they paid for them?

A. No, sir.

Q. How much of the stock was issued as a bonus?

A. Well, I don't recall that offhand, but there wasn't any money paid into the treasury of the company on any of the stock, I don't think.

Q. I understand it cost about $162,000 or $160,000 to build this plant?

A. I did not say that.

Q. What did it cost?

A. Mr. Boardman testified that was its value.

Q. What did it cost to build it?

A. The cost of that plant including the discount on bonds ——

Q. Leave out the discount; what did it cost?

A. That is included in my cost, was $151,932.01, on December 31st, 1913, up to that time.

Q. How much of that was cash?

A. It was all represented by cash, except the discount on bonds.

Q. If you had twenty million of bonds it would represent cash. I want to know how much cash was put in.

A. I don't know.

Q. Have you any way of finding out?

A. Yes, sir, by deducting the discount on bonds from that amount. That would give the amount of cash represented in that account.

Q. How much was that?

Commissioner Donges: You mean by your ques-

tion, Judge Wescott, how much cash was actually paid by bond purchasers to the company, not property, but how much cash actually was exchanged?

Mr. Wescott: I want to know how much was pure speculation and how much was actual cash.

Witness: Yes, sir, I can give you that. The actual cash cost of the property was $132,974.47.

Q. How did you reach that conclusion?

A. By taking the cost which I previously gave, $151,932.01 ——

Q. What was that?

A. That is the total cost including discount on bonds, and the discount on bonds issued in payment for the plant amounted to $18,957.54, and deducting that from the $151,000, leaves the cash cost $132,-974.47. That is the physical plant.

By Commissioner Donges:

Q. That is to say, bonds were issued for that amount in payment of property and work done under these contracts you have stated?

A. Yes, sir.

By Commissioner Treacy:

Q. You say the bond discount was eighteen thousand?

A. Eighteen thousand of bond discount is included in that one hundred and fifty-one thousand cost, according to the books.

Q. Mr. Boardman's figure was twenty-two thousand.

A. He has the discount on the entire bond issue, because his valuation exceeds the bond issue. I have here only that portion of the cost which actually went into the plant. The balance of the bond discount I have put into expenses, because it covered bonds issued for operating deficits and I have eliminated that from the physical cost.

By Commissioner Donges:

Q. $133,000 of bonds includes some operating charges?

A. No. There was $132,000—there was sufficient plant cost, which when the bonds were issued for that cost at the various rates which I have given would make a bond discount of $18,957.54 on bonds actually issued to pay for plant. Any other bonds which were issued to make up deficits or to get money for the corporate purposes of the company were charged to expense account. That is, the discount was charged to expense account. The total discount on the bonds was $21,976.53, but I have put in against the cost of plant only that portion of discount on bonds issued for plant directly.

By Mr. Wescott:

Q. Have you any way of telling us how much the American Sewer Pipe Company paid for these bonds?

A. The American Sewer Pipe Company is not the company. That is the name of a company, but not the one I speak of; the American Pipe & Construction Company.

Q. The American Pipe & Construction Company.

A. Yes, sir. No, I cannot tell you that.

Q. What company holds the bonds now?

A. The American Pipe & Construction Company.

Q. You have no way of telling us how much they paid for them?

A. Not from any records I have here.

Q. Did they ever pay anything for them?

A. Yes, sir, they paid something.

Q. How do you know they did?

A. Because I am connected with the American Pipe & Construction Company.

Q. You have some knowledge?

A. It has been some years ago, I don't recall the details of the transaction.

Q. Can you find out so as to let us know tomorrow how much the present holders of those bonds paid for them?

A. Yes, I can find out.

Q. You find out. I am interested about this legal expense.

A. The 1913 legal expense?

Q. And all the years since the company was formed. How much for legal expense?

Commissioner Donges: You mean the item of organization expenses?

Mr. Wescott: Everything; legal expense.

Witness: I have here the details of the operating expenses for the last five years only and I will give you the legal expenses in each of the last five years. It is the only period I took off separately. In 1909 the legal expense was $286.28; in 1910, $25; in 1911, $426.31; in 1912, $1631.12; in 1913, $1038.75.

Q. And the preceding years was the legal expense about the same?

A. I imagine so. There weren't any in particular.

By Commissioner Donges:

Q. Didn't you say $1600?

A. In 1912. I thought the Judge meant preceding these five years.

By Mr. Wescott:

Q. Yes. The legal expenses run up into thousands of dollars?

A. The last couple of years, yes, between one and two thousand.

Q. If you take the preceding years, about the same?

A. They are not. 1909, 1910, 1911 were all low.

Q. What were the legal expenses for?

A. In 1911 or earlier some of the residents in Collingswood brought suit against our company on the ground that we were ——

Q. And the company was indicted?

A. Yes, charged with committing a nuisance and in defending that suit these expenses were incurred.

Q. And the other expenses; have you any other idea what they were about, the several thousand dollars?

A. Which others?

Q. The other expenses, I don't know the details.

A. The other expenses are operating expenses.

Q. No, legal expenses, talking about legal expenses.

A. That is all we had of any consequence that large suit, and by the way, the state board of health testified the plant was run in a proper manner according to their instructions.

Q. Why do you tell us that?

A. Because the suit was brought through no fault of the company.

Q. You want the future consumers, users of your company to pay those expenses?

A. No, sir, we do not. They have already been paid for.

Q. Don't you use them as a part of the basis for applying to this commission for an increase in rates?

A. They are set forth in our expenses, yes, sir, and naturally increase the deficit.

By Commissioner Donges:

Q. They enter into this item of $92,000?

A. Yes, sir.

By Mr. Wescott:

Q. This town down there, Collingswood, I understood you to say had gone through a period of abnormal growth, is that correct?

A. Yes, I did say that. There were several years there where the growth was quite rapid, yes, sir.

Q. Abnormal?

A. I would call it so, yes.

Q. That period of abnormal growth occurred under the present system of rates, didn't it?

A. Yes, sir.

Q. And before the people down there had trouble over their water?

A. I don't know about the water question.

Q. Is it your idea that the town won't grow quite so rapidly in the future?

A. I didn't say that, sir. It was a comparatively new town and for some years the growth was quite

rapid and all towns settle down to a normal growth directly.

Q. Is it your idea that if this commission doubles the rates for sewerage and the water rates at the same time are raised that will stop the abnormal growth of the town?

A. I don't think it would.

Q. You think it would grow abnormal, notwithstanding ——

A. No, I did not say that. I said, in the future, I thought the growth would be more nearly normal than the past. I think it has struck its stride.

Q. The abnormality of the growth would probably be much prompted by doubling the sewerage and light expenses of the community?

A. Personally I don't think the rate charged by any utility has very much, if any, effect upon the growth of any town. People will live where they want to live regardless of rates.

Q. Regardless of expense?

A. Yes, I think so.

Q. Therefore the true argument would be to raise the rates regardless of the interest of the community, because the size of the rates would have nothing to do with its development?

A. No, sir, I don't think that at all. I don't believe any utility should increase its rate beyond what would give it a fair return on the cost of serving the public.

Q. But a fair return in this case, is a return upon legal expenses, profits to the people that furnished the material to construct this plant, discount on bonds, compound interest; what else have you got?

A. That is about all, I think.

Q. Your idea is that an institution like the Utilities Commission of New Jersey ought to see to it

that a corporation that undertook this business and it turned out to be a little unprofitable, that that should all be made up to them because the people flock to the community no matter how severe the burdens of the community are for such expenses as light, water and sewerage; is that your idea?

A. I don't care to express any opinion on that, sir.

Q. But you are pretty positive that the commission ought to give this company with which you are connected a fair return on everything it has lost?

A. On the fair value of the property as it stands today, including the value of the business attached to the plant.

Q. With the interest on its unprofitable investment?

A. That would be included in what would be considered a fair value for the property, plus the running of the business.

Q. Suppose you personally were the community down there, would you still entertain the view that the commission ought to squeeze you that way?

A. I don't regard it in that light, sir.

Q. Do you imagine it would make any difference if you were the fellow that was getting squeezed?

A. Knowing what I do about public utility companies, it would not. All I would ask is, that I be served at a rate which would not be exorbitant and which would not afford the utility more than a fair return on the value of its plant.

Q. But it ought to be a fair return?

A. A fair return, yes, sir.

Q. To the exclusion of competition, I suppose?

A. My idea on competition is, there should not be any.

Q. There should not be any?

A. No, sir.

Q. There ought to be no competition and the utility commission ought to see to it that the non-competitive corporation was properly remunerated for its monopolistic work?

A. We should be required to give safe and adequate service at reasonable rates.

Q. And the people should be required to pay for it?

A. If they did not pay it to us they would have to pay it if they operated the plant themselves. It don't make any difference who owns it.

Q. Would they have to pay so much?

A. I think they would, probably more.

Q. Your idea is ——

A. I don't think it would be any less, because our operating expenses are exceedingly low.

By Commissioner Donges:

Q. You assume that this company is beyond the development stage?

A. Yes, sir, I do. I think it has been in operation long enough to be considered beyond that.

Q. When would you say it had passed beyond the development stage?

A. That is difficult to answer, because if the rate had been fixed in the first place on the basis of the character of service demanded, I might be able to form some idea from the income and the expense after the first four or five years, but as it was not, it is very hard.

Q. In your judgment that would not continue the corporation in the development stage, the fact that its business did not pay expenses?

A. My judgment would be that with a rate based upon one method of disposal and then being required to furnish another method of disposal would set the

development period very much farther ahead than if the rate originally fixed had been carried out as originally intended, that is through gravity disposal entirely.

Q. At what period then, at what time would you say that the development stage had been passed?

A. That is just the point; I cannot say that for that reason, because the conditions are so different.

Q. In your calculation of the deficits, you have made an allowance of six per cent., and if your other statement that the $1950 added in 1902 is bond discount is so, you have allowed six per cent. on that, from the time this company began its operation; that is true, isn't it?

A. I don't say positively that was what it was. It happens it is the same amount.

Q. You have charged against the property six per cent.?

A. Yes, six per cent.

Q. From the time the first investment was made?

A. Yes, sir.

Q. And you have allowed nothing during the development stage, no period of time during which, in other words, you think the company should not have been afforded a return of six per cent. on its investment?

A. I don't quite get your meaning, Mr. Donges.

Q. In your estimate you have allowed six per cent. as a fair return on the investment from the time that the first investment was made, haven't you?

A. Yes, sir.

Q. During no time of this company's history have you regarded it as in the development stage and entitled to earn less than six per cent. You have assumed the company would be entitled to earn on all of its investment from the first day it began business, at the rate of six per cent.; isn't that true?

A. I might state that a little differently.

Q. Have I stated the fact with respect to your compilation of figures?

A. That is the way that has been figured, but as to the time ——

Q. And it is upon that basis that you arrived at your figure of $92,832?

A. Yes, sir, that is true.

Q. Is it your judgment that from the time a company begins business it should earn throughout the development period, whatever time that may be extended, six per cent. upon its property?

A. My thought on that is this; that no company can expect to earn in the first few years of its existence a fair return on the cost but after several years or whatever number of years is determined to be the development period, there should be a recapitalization, you might say, which would include the development cost to that point.

Q. Including a return of six per cent.?

A. Yes, sir, and from that time forward it should get a return on the cost to that time, which would include the cost of developing the business.

Q. In that cost of development it is your judgment that a return of at least six per cent. should be added?

A. Yes, sir. I think that is fair, because if the community owned the plant itself it would pay interest on it from the beginning.

Q. You think there should be no consideration or allowance for risk on the part of the investor?

A. Yes, I think we are taking a risk when we assume the lowest rate of interest. We take the interest whether or not we make any profits; that does not assume any profits.

Q. Doesn't this assume a profit retained of six per cent.?

A. Would you regard that as profit? That is in-

terest on your money. You are entitled to that. That isn't a profit, as I view it.

Q. Then your thought would be a profit of at least six per cent. over and above the normal rate of interest for money invested?

A. No, sir, not that; one or two per cent., I should say, above six per cent. would be sufficient on a utility that is furnishing a necessity.

By Mr. Wescott:

Q. Has this company got out of the development period?

A. I just answered that question. In view of the conditions under which that plant was operated, I don't know.

Q. You don't know whether it is out of the development period or not?

A. No, sir.

Q. If you don't know that, have you any idea whether it will ever get out?

A. I hope it will. We would like to have it get out.

Q. But as long as it is struggling through the development period, you will have to depend on an increase of rates to sustain its developmental process?

A. If this plant has been operated long enough, so that the physical cost or value of the plant, plus what the business is worth, added together, ought to be the basis upon which a return should be earned.

Q. Notwithstanding the capacity of the people to pay that return?

A. I doubt very much if the rate we have asked is beyond the means of the people.

Q. You want the rates doubled, don't you?

A. No, sir, we do not.

Q. I thought it would take double the rates.

A. No, sir, in the majority of cases it is 33 1/3 per cent. increase.

By Commissioner Donges:

Q. How much?
A. Thirty-three and a third per cent.

By Mr. Wescott:

Q. What?
A. In the majority of cases this increase is thirty-three and a third per cent.; from $9 to $12.
Q. And in other cases what is the increase?
A. It varies according to the size.
Q. From what to what?
A. From nine dollars to whatever number of fixtures they may have. I haven't the individual list of properties.
Q. From nine per cent.?
A. No, from nine dollars.
Q. Up to what?
A. I don't know the highest.
Q. Some as high as eighteen or nineteen?
A. It may be, if it is a large property with a large number of water fixtures.
Q. Some a little higher?
A. It may be. I don't know what the individual houses will be rated at.
Q. How much will the company take for that caboose; what will you sell it for?
A. We will sell that at a price to be fixed by arbitration, if the borough would like to buy it.
Q. If they could get it anywhere near its value they would like to have it.
A. They would?

Q. Yes, very much.

A. We would be very glad to enter into negotiations with the borough for the sale of that plant, very glad indeed.

Q. Would your negotiations exclude the compound interest and all that?

A. That is a leading question. I think we better leave that to the negotiations.

Q. They would like very much to get it.

A. We would like very much to sell it, sir. We ought to be able to get together.

Q. If you can get a big profit?

A. We will sell it any way; very glad to sell it.

By Mr. Weaver:

Q. If you believe that in the development of a plant of this kind there should be a period in which it would not be entitled to full six per cent. interest on its investment and this statement has been presented to the commission has been made on that basis, on the basis of six per cent. from the inception of the plant; what value to this commission is this statement you have presented here?

A. I did not say that. I said, while I thought the company should forego a return at six per cent. for the first few years, I also said, at the end of a certain period what it had foregone should be added to the cost of the property to that time and on the total of those two we should be allowed a fair return. In fact, if that were not true, the first few customers would pay such an enormous rate you could not get any customers.

Q. This statement is made up on the basis of a full six per cent. interest on the investment?

A. Yes, because that is what we have foregone from the beginning.

Q. Then there would not be any period of development of this company in which you believe they should forego the full six per cent. interest?

A. Yes, because if in any of those years from the beginning to date we had earned a surplus it would have reduced our investment by the amount of surplus; the public would get credit for that surplus, while being charged with the deficit, that is all there is to it.

Q. Mr. Boardman in his appraisal of the value of the plant has added to the cost of the system discount on bonds to the amount of $21,976.53. If all of those bonds were not used or sold for the building of the plant then he has added a sum in excess of the cost of the plant, has he not?

A. No, he has not, for this reason; Mr. Boardman asked us what the average rate of discount on all bonds issued was. We told him. His valuation is such that the entire bond issue would not have been sufficient to cover, therefore he assumes discount on the entire bond issue, not on what our books show as to the distribution of the discount, but on his own valuation, with which we had nothing to do.

Q. Haven't you already testified that part of these bonds were sold to cover operating expenses?

A. True, I have, yes.

Q. Then that amount of bonds that were sold to cover operating expenses should not be added to the cost of the plant, should they?

A. In Mr. Boardman's statement I think it should. His statement has nothing to do with mine; gotten up on different purposes.

By Mr. Wescott:

Q. What are these bonds worth on the market now?

A. I don't know. There has not been a bond sold for years. We cannot sell them if we wanted to.

By Commissioner Donges:

Q. Have there been any offerings?

A. We have had it up with different people, but we could not sell them because of the condition of the earnings.

By Mr. Wescott:

Q. Because what?

A. Because of the condition of the earnings.

Q. Suppose the Utility Commission ordered increased the rates which your patrons have to pay so as to assure you an income of six per cent.; what would they be worth then?

A. That would depend on market conditions.

Q. Would they be worth any more than they are now?

A. They would, yes, sir.

Q. A great deal, wouldn't they?

A. I don't know how much. They would be worth some more.

Q. Who would make by the transaction?

A. Who would make? I think the people that owned the bonds would get their money.

Q. Money they did not pay for the bonds, so far as you know?

A. Oh, no. I think that is not so.

Q. If they got the bonds in trade, you say, for fifty per cent. of their value, the act of the commis-

sion would put them in pocket at the expense of the consumers down there, the full face of the bonds?

A. If that were true, yes, but it is not.

Q. You don't know?

A. I know enough about it, that could not be true.

By Mr. Betts:

Q. You said the company ought to be entitled to earn on its investment in plant, plus an allowance for the value of the business. This estimate which has been made up of the accrued deficits amounting to ninety-two thousand odd; do you consider that represents the value of the business or the cost of the business?

A. That is the cost of the business. When I said value, I mean all the terms that are used in applied going value, cost of development and all those terms which are sometimes very much mixed up. I am not an expert, so I am not qualified to discuss that feature, but I think I know about what it means.

Q. Do you take the cost of establishing the business and the value of the business as being synonymous terms?

A. No, I don't think so, not in the sense that I understand it. As I understand the method of some engineers, they project a hypothetical plant in the future and estimate the difference between the income and cost for a certain number of years and the difference between the two is their going value, but we take this on what we know by actual experience and this would not be anything like what it is had not the disposal works proposition come up. I think that plant would have been on a paying basis years ago at the old rate under proper conditions.

Q. Granting this table is computed correctly, that represents the cost of establishing the business?

A. Yes, sir, it does.

Q. Considering the value of the business, that is, a figure that would be used in connection with the sale or purchase, and the question arises there, would the value in this attached business in connection with a company that has not been successful, would that value be represented by the cost of establishing the business?

A. I think that is largely a matter of opinion. It has some value; whether it is that or some other figure, I don't know. I can only say that is what it figures up from past experience.

Q. We are told the proper definition of value is, the measure of desire that one party may have for a certain object, something of that kind. If that is correct, the value of this property including its business would be what a willing purchaser would pay for it; wouldn't that be correct?

A. From one standpoint, yes, from another, no.

Q. I am using only the word value now, in reference to what it cost?

A. The plant may cost $200,000 to reconstruct and it may be worth $175,000, but if the buyer is only willing to pay $150,000, that would not fix the value, not according to my idea of value.

Q. It would not fix the basis on which you would claim the right to a return?

A. It would not do that, no.

Q. It might fix the value, might it not?

A. It would fix a value, but whether it would be the value, that is another question. I don't know.

Q. With regard to this development period of which there has been some discussion; doesn't the development period close at the time when the company is serving from its existing system the largest number of people that can ordinarily be served from

that system, whether the business is successful by that time or not?

A. That has been thought the proper time by some people. Where a plant is in a territory where there are so many unoccupied lots along their lines, it may never reach that point.

Q. In this given territory, it has been shown that, roughly, there is one service for about every seventy-five feet of main, in this territory; if for a good many years to come there will be only one house for every seventy-five feet of main; doesn't that indicate that the property is now from that standpoint at the point of—hasn't it reached its development?

A. Do you mean that, if no other extensions are made?

Q. No, I mean if other extensions are made; they would continue to furnish the customers.

A. And the average frontage per customer would still continue to be seventy-five feet?

Q. Yes.

A. I think the same thing would be true, the development stage would still be going on, because until a number of those lots now unoccupied are built up, I don't see how we are going to get out of the development stage, on that basis.

Q. Don't you confuse the development stage with the period during which there are losses? In other words, hasn't the property reached its full development as soon as there is the normal number of connections per mile of main, irrespective of whether the property is earning or not?

A. I think there is something in that, and that is why I said a little while ago that I believe from now on the growth there will be what might be termed normal. I think Collingswood has reached a point where the number of properties built per year will

drop back, not to where it has been for two or three years where several hundred built a year, but a reasonable number and if that is so, then I think we have reached the end of the development stage.

By Commissioner Donges:

Q. You think up to this time you have been in the development stage?

A. I think so, yes, sir, and more especially from the earning standpoint.

By Commissioner Hillery:

Q. You have a fear though there might be perpetual youth about it?

A. I think it would be if we continued the former rate.

Q. This sum of $92,000 represents about sixty per cent. of the $160,000, the cost as fixed by the engineer; do you know of a case where it has ever been figured at that sum?

A. Not of my own knowledge, no.

Q. For going business or development period, or anything like that, that percentage?

A. That has actually been allowed, or figured out that way?

Q. No, that actually has ever been allowed?

A. No, I don't know, I am sure.

By Commissioner Donges:

Q. You wouldn't say, would you, Mr. Roth, that as long as extensions are necessary in order to serve prospective customers that a company is in the de-

velopment stage? I understood you a moment ago to say that might be.

A. No, I don't mean that, because a utility is never done if there is any growth at all, extensions must be made. We want to make extensions. That is the life of the business.

Q. But you have not yet fixed your mind upon any point or time when it might be said the development period is over?

A. I think the time, if I might be allowed to say, is now, that we ought to start fresh, because we cannot give the people what they want. They want extensions all the time and we cannot give them the extensions under existing conditions. I think we should call the development period over now and start fresh with a rate of return on the reasonable value of the plant as it stands.

Q. You think all this time it ought to be regarded as in the development stage?

A. I think it is.

Q. Because of the bad bargain as to rates?

A. I don't think it a bad bargain if the other side of the agreement had been carried out, if we had been permitted to give the service that the rate was fixed on.

Q. It was a bad bargain as it turned out, from your point of view?

A. It turned out that way through no fault of ours.

Q. Leaving out every other consideration, because you think the rate was inadequate, the company would continue in the development stage?

A. I think so.

Re-direct examination.

By Mr. Tatem:

Q. Mr. Roth, you stated on cross-examination that the probable increase, so far as you can judge, of the subscribers the next year over last year, under normal conditions would be, you think, about fifty.

A. I didn't think it would exceed fifty. That is a mere guess.

Q. As a matter of fact from the experience of the last two or three years, where additional subscribers are taken on, is it not necessary for the company to make extensions in order to get that new business?

A. Very often, yes.

Q. And the probability is that even with the increase of the next two or three years in the number of subscribers, the number of feet of pipe per consumer will probably remain approximately as it is now?

A. I think the chances are it will.

Q. Then the additional business would, so far as the pipe lines of the company is concerned, probably require a corresponding increase in the investment?

A. I think there is no doubt of that.

Q. Mr. Roth, from the books of the company, what is—irrespective of the cost of the item known as cost of developing the business, what do the books of the company show the cost of the plant to be?

A. $151,932.01.

Q. That is in round figures about eight thousand less than Mr. Boardman's estimate as to its reconstruction value, is it not?

A. Yes, sir.

Q. The item of $92,832 about which there has been so much discussion is the amount which is shown by

your computation as having cost the company because it has not received income sufficient to yield operating expenses and six per cent. upon the money invested, and the accumulated deficits?

A. That is true, yes, sir.

Q. And that amount is tabulated by you entirely independent of the question as to what percentage of the actual physical value of the plant should be allowed for intangibles or going value?

A. Absolutely independent. I don't know anything about that feature.

Q. You don't claim to be an expert as to what would be the proper allowance for the intangible values, intangible or going value of the plant as based upon a certain percentage of its physical valuation?

A. I do not, no.

Mr. Tatem: I wish to bring out the idea that the witness did not express the opinion that this ninety-two thousand is the estimate of the value of the intangible property of this plant, but simply what the tabulation showed the amount they had run behind.

I feel I ought to call your attention possibly to a few of the items which make up the schedule of rates which we have asked for the approval, and wherein this schedule differs from the old schedule.

Commissioner Donges: Before you take that up; I haven't clearly in mind just how you arrive at this figure of two hundred and forty-four thousand, plus, and why you charged six per cent. interest during each year. I understand this plant was entirely built by contract.

Witness: The original plant.

New Jersey State Library

By Commissioner Donges:

Q. And that extensions have been financed and that the original plant was paid for by bonds, paid for with bonds?

A. Yes.

Q. And that extensions have been paid for by the issue of bonds?

A. Yes, sir.

Q. So that the outstanding stock does not represent any money whatever?

A. That is so.

Q. And that all the investment properly capitalized has been paid for by the issue of bonds?

A. Not all, because there is some floating debt.

Q. How much?

A. On December 31st, 1913, bills payable amounted to $42,346.26.

Q. And that represents amounts paid or borrowed for extensions and also for deficits in operating?

A. Yes, sir, that is right.

Q. And how long had that approximately ——

A. Been accruing?

Q. Yes.

A. Since 1909 when the bond issue was closed.

Q. So that prior to 1909 all extensions, all capital outlays and any deficits in operating expenses had been made up from the bond issues?

A. Up to that time, yes, sir.

Q. Then do these figures on Ex. P2, in the first column, the first being in 1902, $61,028.07 represent the expenditures made in that year on capital account?

A. It represents the additions to capital account plus the accumulated deficits each year, that deficit being added to the capital expenditure to get the investment at the end of that year.

Q. If that is true and in each case you have taken the capital expenditure as being the amount of bonds issued, why is six per cent. added instead of five per cent., which is the amount paid upon the par of the bonds?

A. I don't understand that the rate of interest on the bonds has any effect upon ——

Q. I understood you to say sometime back in answer to my question that what you was doing was not adding six per cent. because that was a fair return, but because that was the cost of the money to the corporation, the cost of money used in establishing the business?

A. If I said that I made a mistake. What I mean is, that the company should be allowed not less than six per cent.

Q. Whatever the money costs?

A. Yes, sir.

Q. In the development stage and at all times?

A. I think that is fair.

Q. If the extensions prior to 1909 were financed by bond issues and they amounted to $150,000 and the bond discount amounted to $18,000 it would leave the value, actual value at that time at approximately $132,000, wouldn't it?

A. Approximately that, yes, sir, although that discount would have gone into the other end. I don't see it would make much difference.

Q. That would be actually, wouldn't it, what would at that time have been taken as the value of the work done, the physical value?

A. The physical cost, yes, sir, that is right, yes, but what I mean is, if it had not been put in one portion of the statement it would have been amortized in another part of the statement and the result would be somewhat alike, it would not be exactly the same, depending on the period.

Commissioner Donges: Mr. Boardman's figures of physical value are $160,000 with bond discount of $22,000, which would leave the physical valuation about $138,000 as against $132,000 on your figures.

By Mr. Tatem:

Q. I wish, Mr. Roth, to call your attention to the new schedule. You have testified that under the new schedule of rates, assuming that the number of connections remained the same the income of the company would be increased from $12,433 to $19,250. There is a different basis of charge in the new schedule over the old, is there not?

A. Yes, sir.

Q. What is that difference?

A. Under the old schedule the charge was based on the number of rooms in a house. Under the new schedule it is based on the number of water fixtures in use.

Q. If you know, what was the idea of the company in suggesting the change of the method of determining the charge?

A. We think it is the fair way on which to base the rate. The size of the house frequently does not indicate the number of occupants nor the amount of water used.

Q. Is it your idea that as near as possible it would be fair that the sewage charge in the property should approximate the amount of water used, which passes through the sewer in that property?

A. Yes, if that could be arrived at. There are no known methods of measuring sewage that goes out of the house. If there were, we could get at it accurately that way.

Q. Under the proposed schedule of rates the dwell-

ing house minimum is raised from nine dollars to twelve dollars, is it not?

A. Yes, sir.

Q. There are two or three items I would like to call your attention to on the new schedule. There is a charge of ten dollars for the original connection to the sewer main; that I think was the same on the old schedule, was it not?

A. That is the same, yes, sir.

Q. There is also a charge of ten dollars for a re-connection; is that charge a new charge?

A. No, that is just the same as it was.

By Commissioner Donges:

Q. Is it in exactly the same form?

A. I don't know that the wording is exactly the same. The charge is. The wording may be a little different, but it means the same.

Mr. Tatem: That is section five on the old schedule. I did not know it was on there.

Q. What do you take in that paragraph "in case the sewer connection is cut off from any premises, either on the written order of the owner or for any other cause," to mean?

A. Non-payment for instance.

Q. You take that "for any other cause" to mean the cause for which the customer is responsible?

A. No matter under what condition it is cut off; it is never cut off unless he orders it cut off or for non-payment of sewer rent.

Q. Suppose it should be discontinued for some cause over which he had no control; the charge under this rule would be made?

A. If it was something that was our fault or chargeable to us, we would not make the charge.

Q. Wouldn't it be better to say, "or any other cause for which the consumer is responsible"?

A. We would be very glad to change that to any way at all. That is what it means, however. We have never enforced that except where it really has been the fault of the customer.

By Mr. Tatem:

Q. The items of the charge for schools, for each room per year ten dollars; what was the charge made under the old schedule for school houses?

A. There wasn't any definite method of arriving at it before. There were various rates. Sometimes the school would be rated at $75 without any real reason as to why $75 was charged. The rates were fixed years ago and were continued.

By Commissioner Donges:

Q. Simply an arbitrary charge?

A. I think it was. I never knew just how they got at it. I think there was times when they did try to consider about how many scholars were there, but they increased right along so there wasn't any definite method of arriving at it. That is why we did not fix it on the basis of the number of scholars, because it fluctuates so.

By Mr. Wescott:

Q. The chairman of the commission brought out an interesting circumstance, that this company owes money. How much does it owe?

A. On December 31st, 1913, which is the end of the last fiscal year, it owed on notes, bills payable $42,346.26, and had open accounts payable, which included accrued interest on bonds, as well as some materials for extensions, and operations, $8,946.63.

Q. From whom did you get the money?

A. Borrowed it from the stockholders.

Q. From whom?

A. From the stockholders.

Q. What stockholders?

A. The majority stockholder.

Q. Borrowed all this debt?

A. Yes, sir.

Q. This company entered upon a venture that was not successful?

A. It seems so.

Q. A foolish venture?

A. I would not regard it as foolish.

Q. Folly is measured by failure. I would regard it as foolish.

A. Brought about, however, through legal reasons over which it had no control.

Q. Regardless of how it was brought about it is a failure?

A. It has been a losing proposition.

Q. And in the ordinary course of events it would go the way that all other failing institutions go?

A. I don't know whether it would or not.

Q. But for one thing, that is, you call it a utility, and you are asking now this commission to save this foolish institution or failing institution, by making the people come to time and turn over so much money to you, because it is a utility; isn't that correct?

A. No, because ——

Q. Because it is what then?

A. Because it cost at least what we are asking, to furnish the service for them.

Q. Is it a utility for a tailor to furnish you a suit of clothes?

A. No, because he can move from one community to another if he wants and take his investment with him. We cannot.

Q. Is it a utility for a farmer to raise food to feed the people?

A. I should not think so.

Q. The only thing that is a utility then is that with which this commission has to do?

A. I don't feel qualified to define utility.

Q. But at any rate because it is a utility you are asking this commission to save it from a natural death?

A. Not to save it from a natural death, but to give us a fair return on the value of our property used and useful in public service.

By Commissioner Treacy:

Q. If it was not a utility, you could probably charge your own rates to the public?

A. Yes, sir, we could.

Q. You are coming to the utility board, because you cannot charge any rate you may see fit, but must charge such a rate as the utility board deems reasonable?

A. That is true.

By Mr. Wescott:

Q. And if there weren't any utility board, you would charge all the rates the people could stand?

A. No, they wouldn't stand for it.

RICHARD T. COLLINGS, sworn on behalf of petitioner.

Direct examination.

By Mr. Tatem:

Commissioner Donges: Mr. Tatem, has the schedule of rates been put in as an exhibit?

Mr. Tatem: The schedule of rates was attached to the petition originally, but suppose we put in a copy.

(Schedule entitled "Collingswood Sewerage Company schedule of rates, effective September 1st, 1914," received and marked Ex. P3.)

Q. Mr. Collings, are you connected with the Collingswood Sewerage Company?
A. Yes, sir.
Q. What position?
A. President of the company.
Q. Are you in the real estate business in Collingswood?
A. Yes, sir.
Q. How long have you been engaged in that business there?
A. Thirty-five or forty years.
Q. Are you familiar with the value of real estate in the locality where the disposal plant of the Collingswood Sewerage Company is located?
A. Yes, sir, somewhat.
Q. Have you bought and sold property in that locality?
A. Yes, sir.

Q. Have you bought and sold property in that part of the borough of Collingswood which property has water front along the Newton Creek, the same as the property of the Collingswood Sewerage Company?

A. Yes, sir, quite a good bit.

Q. In your judgment, basing your opinion upon sales which you know to have been made in that locality, what is a fair value of the four acres of land used by the Collingswood Sewerage Company in its disposal plant?

A. Four thousand dollars is our value there and I think it is a very low estimate in comparison.

Q. Do you know of other property located along Newton Creek that has been sold, in that neighborhood, that has been sold at a higher price than one thousand per acre?

A. Yes, sir, I have plans right here of tracts that I have sold from one thousand, fifteen hundred, up to twenty-five hundred an acre and all being settled for, and have been settled for.

Q. In your judgment then, the estimate Mr. Boardman places as the value of that four acres of land at four thousand dollars or one thousand an acre, is a reasonable valuation?

A. A reasonable valuation.

Q. Mr. Collings, are you familiar with the matter as to the cost of the right of way purchased by the Collingswood Sewerage Company from one, Reed?

A. Yes, sir.

Q. What did that right of way cost the company?

A. I think that was—the Reed right of way?

Q. There were two of them, Reed and Kercher.

A. The Reed right of way, I think was six hundred dollars and the Kercher, $125. That is exact what we paid for them.

By Commissioner Donges:

Q. What do those rights consist of, Mr. Collings?
A. The right to lay pipe and go over and maintain the system.
Q. Across their lands?
A. Across their lands, yes, sir. It was done to reduce the depths on account of the quicksand district. Instead of going along that way, we went this way. We would have been sixteen feet one way, but go down to nine by dividing the distance and buying rights of way.
Q. By purchasing those rights of way the cost of installing the plant was reduced?
A. Yes, and on account of quicksand it was impossible to lay it there. A suggestion of mine, and I purchased the property.

Mr. Weaver: No questions.

Mr. Tatem: I think that is our case, if your Honors please.

G. L. Robinson, sworn on behalf of objectors.

Direct examination.

By Mr. Weaver:

Q. Mr. Robinson, what is your business or profession?
A. Civil and sanitary engineer.
Q. And how long have you been engaged in that profession?
A. About twelve years.

Q. What experience have you had in the matter of sewerage plants?

A. During the last six or seven years, ten years. I have had experience which enabled me to design and have charge of the construction of disposal works. The largest one of which I think is for the city of Mt. Vernon, treating 3,000,000 gallons a day.

By Commissioner Donges:

Q. Mt. Vernon, New York?

A. New York.

By Mr. Weaver:

Q. Have you had charge of the construction of other plants?

A. A number of them.

Q. Were you employed to examine and make a valuation of the plant of the Collingswood Sewerage Company?

A. Yes, sir.

Q. Did you make that examination?

A. The report which I have here is compiled from the result of my personal observation of the plant and the sewers as they exist today and based, with certain verification, upon the drawings and maps furnished by the sewerage company.

Q. Did you go over the plant?

A. A number of times.

Q. As a result of that inspection or examination, you have made this report?

A. Yes, sir.

Q. Will you state what your valuation of the sewerage system is there in Collingswood and how you arrived at your figures?

A. The valuation which we have placed upon the sewer system, disposal plant including the land, using the word "value" to mean the reproduction of the plant today under existing conditions with labor and material as it is in the market, but not taking account of any item of depreciation or going value or anything of that kind, is $121,799. That item includes, however, fees for engineering, lawyers, printing, advertising and so forth which might be incidental to the issuing of bonds for securing funds to build such a plant if the municipality did it.

By Commissioner Donges:

Q. And organization expenses?

A. It would not include anything aside from the mere machinery of issuing bonds by the municipality itself. I mean to say, it might be fair to say that the organization of the municipality would be such that incidental to its existence it would handle that part of the work for a town or community.

By Commissioner Hillery:

Q. Where you use the word municipality, you mean corporation?

A. Corporation; I really do mean municipality, however, in the sense ——

Q. If the municipality was building it?

A. If the municipality were building this plant.

By Commissioner Donges:

Q. You said you have not allowed anything for depreciation in the figure given?

A. Not in this net cost to reproduce the plant today.

Q. It is reproduction cost new?
A. Quite so.

By Mr. Weaver:

Q. Did you get from the sewerage company the depth at which the pipes are laid in the borough of Collingswood in order to enable you to make this estimate?

A. Yes, I was given information as to depths of the sewer and in company with the superintendent of the sewerage company went with him to visit the deepest sewers, emphasizing the point on deep and we also examined the points where they were at the shallowest and a number of places at average cuts; so arriving at this cost, I have assumed certain cuts which seemed to me to be fair for work of this kind, taking into account the cost of pipe, excavation and so forth and in addition to that I have allowed a certain number of feet for wet trench and for the return of pavement.

Q. You think those prices are about what current prices would be for the establishment of such a plant?

A. At this time.

Q. How do those prices compare with the average prices for the past five years?

A. I think they are low for the past five years.

By Commissioner Donges:

Q. Your figures are somewhat lower than the average for the past five years?

A. I think for the past five years, although I think the work could be done at these prices today, based on the fact I have had occasion during the last few weeks to see a number of bids which have been received on work somewhat similar.

Q. How do your figures compare with the figures in these bids you have seen?

A. I should say a little bit higher than some I have seen.

Q. Your figures are higher?

A. A little bit.

By Mr. Weaver:

Q. Mr. Robinson, what would you add if you were taking the average price for the cost of a plant of this kind; what would you add to your estimate?

A. I think it is possible it might be safe to add to the net cost here about ten per cent.

By Commissioner Treacy:

Q. What for?

A. Because during the last few years the price of labor, particularly two years ago, was very high. It went fully to two dollars and sometimes more and it was very difficult to get it. Taking the average for five years it would be safe, easily safe, to add ten per cent.

By Mr. Weaver:

Q. Have you anything else to say to the commission in furtherance of your report here?

A. I have a report here which at the request of the committee is generalized somewhat beside the mere statement of our opinion as to the reproduction of the plant approximating it in design and construction as it is today. I have also added here a little statement as to what it seemed to us might be a fair working charge on a new system; that is, including

the interest on investment, operating expenses, repairs and depreciation and then I have also arrived at a little statement here which may or may not be relevant. I might read this page referring to this summary. "The foregoing does not take into account the going value of the existing plant which has been in use now for twelve years."

Mr. Tatem: May I ask what page?

10

Witness: Page 10. "From the statement which the Collingswood Sewerage Company have given us, you will see that, starting in 1902 with an expenditure of $61,028 with the additions in each year through 1913 they show a total physical investment in plant of $151,918. It is fair to allow 10% on this, or $15,192 for going value. Our estimate for reproduction is $121,799, giving a net difference of $30,119. This sum might represent the cost from the com-
20 pany's standpoint of the work they have been required to do by the state department of health. We have, of course, no means of checking this statement. You will notice that in their statement they add each year their deficit to the investment item of the year following. This confuses the item of investment from year to year as opposed to the net physical value of the plant and is not consistent with accepted standards of financiering. The following is a copy of the company's statement." In conclusion I have
30 said here, that the working charges on the new system assuming it could be reproduced as indicated might be the interest on $121,799 at six per cent., $7307, the operating expenses I put at three per cent. which is $3,653, repairs and depreciation one per cent., $1217 or a cost of $12,179. Accepting the sewerage company's statement as given us by them, we

find, not allowing the yearly deficit charge, as follows: Interest on $151,911, at six per cent. $9115; operating expenses, taxes and insurance, $7,226; depreciation and repairs $1,519, or $17,860. We find there are 1360 connections which bring in in 1913, $12,433 approximately. This would show a deficit of $5427, which we believe not counting the accumulated deficit charges would represent a fair accounting of their net loss.

Q. What have you to say as to the method which the sewerage company have taken to arrive at their depreciation of the plant?

A. There has been so much said as to the methods of arriving at that item that I am not in a position to express an opinion.

Q. Respecting the statement that has been prepared here by the sewerage company showing their accumulated cost of $92,000, as being the method of calculation to arrive at the cost of the plant; what have you to say as to that?

A. I should say it appealed to me as being a remarkable way of charging up a deficit for the purpose of carrying interest charges and increasing,—to increase the income. In other words, it seems to me that the actual physical value within reason should govern the income, allowing for operation and depreciation and so forth.

Q. What is the usual cost of engineering in building a plant of this kind?

A. It has been my experience that it is usual in designing works of any size for the engineer to receive a lump fee for the preparation of the plans, it being understood that the plans shall meet the approval of the state board of health and so on, and so forth, and that after that, during the construction of the work he shall receive six or seven per cent. as it may be

the case, and if the work should continue beyond a certain time fixed in the contract, that the contractor should bear the additional expense of engineering beyond that time.

Q. Would you think an engineering cost of seven per cent. was high?

A. My feeling is that it is a very fair charge.

Q. What have you to say as to the method used here to arrive at the physical valuation of this plant in adding to the cost of the plant the discount on bonds?

A. I don't see that obtains as an element in the physical value, the physical value of the plant.

Q. To build a plant of this kind would two years be an excessive period?

A. It seems to me it should be built easily in one year.

By Commissioner Donges:

Q. Do you take into consideration the plant as it now exists?

A. As it now exists.

Q. Have you observed the allowances for depreciation in Mr. Boardman's estimate?

A. No, sir, I have never seen Mr. Boardman's report.

Q. You have not estimated any depreciation in your appraisal?

A. None at all, it is merely assuming the plant to be reproduced as nearly as possible, immediately.

By Commissioner Treacy:

Q. And have it all new, reproduction value new?

A. Reproduction value new, or real reproduction

of the items as they exist today, the same pumps, same contact bed and everything. That makes no comment on design.

Q. It is your appraisal of this plant if it were constructed new?

A. Yes, I think so.

By Commissioner Donges:

Q. Are you able to say whether the plant is adequate for present needs of this community?

A. I think the plant as it exists today is a very fairly good plant, due to the fact that the owners have been largely stimulated by the advice of the state board of health and have followed out certain suggestions by the state board of health.

Q. Have you made any calculation of the depreciation, of proper depreciation allowance?

A. No, sir.

By Mr. Weaver:

Q. Mr. Robinson, what would you say as to organization expenses as set out here by the company of $8500? In forming or organizing a company of this kind, would you say that was high or low?

A. You mean necessary to organize the company and issue bonds and legal fees and so forth?

Q. Yes, that sort of thing.

A. I should think that was a question I could not determine. It might—take some group might accomplish it at one price and another at another.

By Mr. Wescott:

Q. That is to say, one lawyer charged five or six times what another would?

A. Quite so.
Q. For the same work?
A. Quite so.

By Mr. Weaver:

Q. What have you to say to the commission here as to the schedule of rates proposed by this company, if you have any criticism to make of them as to the fairness of them?

A. Yes, I think it is unfair.

Q. In what respect?

A. I do not believe it gives the proper average or method of arriving at the sewage production per person per day. I mean to say by that, fixtures might not necessarily indicate the amount of sewage produced in a certain house. For example, one house in which ten people lived might have limited fixtures and another house in which three or four people lived might have a great number of fixtures and to assess on fixtures in that proportion is unbalanced.

Q. In this schedule it is provided that a kitchen sink, the rate, annual rate for a kitchen sink shall be $6, the annual rate for a water closet is $3, for a bath tub is $3, for a washstand $1, making a total of $13. The average small house contains all of those necessary fixtures. Would you think that rate was fair for a small property?

A. No, I would not.

Q. Will you explain to the commission why you feel that is an unfair charge?

A. The reason that I think that is not a just method at arriving at an assessment for the sewer service is this, that investigating the water supply we find that the use of water is a hard and fixed fact, each house consumes so much water, and domestic sewage

is nothing but the transformation of the incoming pure water to impure water, and taking account of the fact that a certain amount is used for sprinkling lawns and so forth, it very nearly approximates the amount of water, so if a house consisting of five or six people used forty or fifty or even one hundred gallons per person per day, it would seem to me the proper way, particularly in Collingswood, where the entire community is metered, would be to arrive at some scheme by which the assessment could be carried by the amount of sewage produced based on the population of the house, rather than by the number of fixtures. This suggestion is not original with me, but was brought out by Mr. Hering who is here today and who would probably be able to elaborate and explain that better than I can, but in general that is my strong opinion.

Q. In making up your report here and suggesting what would be a fair schedule of return for this company, you have accepted the sewerage company's statement as to the amount of their investment?

A. Yes, sir.

Q. If it should appear to the commission that the amount of their investment was less than given to you, then, of course, your schedule of return to come in would be less?

A. In direct proportion.

By Commissioner Donges:

Q. Your idea about the sewer charge then would be, based upon the number of occupants of the house, giving to each an arbitrary allowance of water?

A. That was my suggestion previously, that if you could arrive by an observation of the meter results so as to fix a fair number of gallons per person per

day for sewage production and charge them on that rather than on fixtures that it would be a more equitable way of doing.

By Mr. Wescott:

Q. Determine that by a meter?

A. The water is metered. It would be difficult to meter the sewage.

Q. But meter the water?

A. Meter the water and control that absolutely.

Q. Sewage is absolutely nothing but impure water?

A. That is it.

Q. Meter the pure water and you get the quantity that is used?

A. Quite so. The sewerage company would get a slight benefit in such an arrangement, so far as measuring is concerned, because a certain amount of the water does not reach the sewer. It would possess the value of being able to separate absolutely the ground water which is received at the plant from the domestic sewage, as a matter of comparison, and if the sewers are leaking the responsibility of excess pumping would be thrown on the plant rather than on the citizens of the borough.

Cross-examination.

By Mr. Tatem:

Q. Mr. Robinson, has your experience in the construction of sewer plants been where the topography of the land and the soil was the same as in the vicinity of Collingswood?

A. Somewhat, yes, sir. I just had charge of the adjacent borough, which is as near as I could get without being in Collingswood.

Q. And your estimates of costs and prices, of course, are based upon the conditions as you understand them to obtain in Collingswood?

A. As I could observe them without making borings and surveys.

Q. Of course, you were not able to do that, and you took the statement which was furnished by the company in regard to the matters of the different pipes, of course, as being correct?

A. I took not the statement of the company, but the drawings of the company and scaled them up and I found that apparently they were very much the same as their statements.

Q. Turning to your report on page five, under the sewerage system, in estimating the cost of the laying of the different sizes of pipe, I suppose you took the depths which appeared on the plans?

A. I was governed by that and averaged the depths as nearly as possible right through. These are somewhat of an average.

Q. For that portion of the plant your total is $85,395.20?

A. That is for the sewer.

Q. Let us take up a little more in detail the question of the disposal works. How did you estimate the material used in the disposal works?

A. The only way at the time this was prepared, of estimating the material, was to take the drawings which your company kindly furnished and take off the quantities as the plant was indicated on your drawings, and we think that we covered everything on the drawings.

Q. Mr. Robinson, in your item of land, how did you arrive at the valuation of $3900?

A. The item of land was entirely a question of my personal opinion as to the value of swamp land sub-

ject to flood. Down by the marsh the disposal plant is located on low ground, a considerable portion of which is subject to flood and I placed that at four hundred dollars an acre. The additional part which goes to make up the $3900 was taken from the statements of your superintendent and others as to the cost actually paid for rights of way and so forth.

Q. In other words, where the question was the rights of way purchased and that land condemned, you took the value which they had actually paid?

A. Yes.

Q. In regard to the land where the disposal beds are located, you made an estimate of the fair value of that being four hundred dollars an acre?

A. Yes, in my opinion. I had no knowledge as to what had been paid.

Q. I understood you to say, Mr. Robinson, that the item of $121,799 which is as I understand it, the reproduction value of the physical property, which in your judgment it could be reproduced for today?

A. Yes, sir.

Q. But you think that prices at the present time are somewhat lower than they have been during the period of years last past?

A. Yes, sir.

Q. And that it would therefore probably, considering this plant was built over a period of years, it would probably be fair to say there ought to be about ten per cent. added to that in order to be safe?

A. Yes, sir.

Q. In your experience as an engineer in estimating the value of such property as that is, it is usually customary to allow in addition to the physical value of the property a certain amount for what is known as intangibles or good will or development cost, is it not?

A. Yes, sir.

Q. What, in your judgment as an engineer, is a normal and fair allowance for such elements?

A. That is a very difficult thing for me to arrive at in this particular case, but I have allowed under going value, intangible value of the plant as established, being there on the ground and serving the people, ten per cent.

Q. You have allowed ten per cent.?

A. In addition to the net physical value, not counting the deficit charges.

Q. How do you fix that at ten per cent. rather than at a higher percentage?

A. As I said before it is a question which has been much discussed and there have been a great many methods of arriving at this put forward, and I took that rather arbitrarily as what seemed to me personally as a fair value.

Q. As a matter of fact that allowance is often made by engineers as high as twenty or twenty-five per cent., is it not?

A. I would not say often. I know of it having been allowed.

Q. It is sometimes?

A. It has been allowed higher than that.

Q. In regard to the cost of rebuilding such a plant as this; if it were built from time to time or piecemeal and not all as one operation, the cost would probably be greater, would it not?

A. Yes, sir.

Q. How much would you suppose that would add to the cost?

A. The supposition is too vague. It would depend entirely upon the number of operations necessary to complete the work.

Q. If fifty per cent. of that plant had been built from time to time covering a period of ten years, and

fifty per cent. of it had been built when the plant was first installed, how much would that probably increase the cost of construction.

A. Laying aside the variation of price, I should say possibly ten per cent.

Q. Is it your idea that a plant of that size could be profitably built within one year, taking into consideration the usual weather conditions and the liability of quicksand and wet work and so on?

A. Yes, sir; profitably particularly, the quicker done the more profit there would be.

Q. Let us take up the question of the rates. From your point of view, Mr. Robinson, as I understand it, there are two methods in general use for fixing upon rates for sewer service, one by the fixtures and the other by the number of rooms in a building, that is true, is it not?

A. No, because the designation general is not a happy one, for the simple reason that the privately owned sewer system is a very rare thing.

Q. You have known those two systems to be in use?

A. I have, yes.

Q. I did not quite understand what your suggested plan of determining the rate was, except that it should have a definite relation to the consumption of water. Will you kindly elaborate on that point, so I may understand? That idea was a new one to me and I would like to know what your idea was about fixing such a rate.

A. In Collingswood it apparently is possible to determine very closely the number of gallons of water used per person per day and it is fair to assume that if you know, that you know quite closely the amount of domestic sewage produced daily, consequently it seems to me it would be possible and proper to establish a schedule based on the popula-

tion of the houses which would represent the number of gallons of sewage produced as compared to the water rate, which would enable the borough to arrive at a fairer distribution of the assessment than by the fixtures.

Q. Wouldn't that plan be possible only where the municipality or the same private company operated both the water and sewer system?

A. I don't see why it should be impossible.

Q. How could the Collingswood Sewerage Company determine how much water the inhabitants of a certain house were using and therefore how much sewage they should be charged for?

A. My suggestion would be that they determine not how much sewage certain individuals in certain houses produce, but they should arrive at an average, a fair average, based on the observations of the meters throughout the town. That is merely a suggestion at how that might be arrived and there may be intelligence greater than mine could think out a better way.

By Commissioner Treacy:

Q. How would your proposed plan work out in a tenement house district for instance, where a number of people would be moving in and out several times during the year and the size of the family would fluctuate?

A. In that case, of course, I don't know. I mentioned this particularly with regard to Collingswood. In a tenement house district, as a rule, the sewers in such a district are municipally owned. I don't know of any private plant that is not in an outlying suburban place.

Q. Your plan has particular application ——

A. I think it would fall down somewhat in that thing. It seems chiefly applicable to just such conditions as here prevail.

Q. I don't understand how you could work that plan. Take this case; suppose a certain property on the corner of First and A Streets has ten rooms and suppose it is occupied by a man and his wife who are the sole occupants from the first of January until the first of July; on the first of July the former tenant moves out and a man and his wife and six children and two maids move in (perfectly possible for them to live in the same house); you have then increased the number of occupants from two to ten; is it your idea that every time there is a change in the number of people who live in the house that the sewerage charge for that house has got to be changed?

A. Any considerable change such as you describe.

By Commissioner Donges:

Q. Under your plan, the only real accurate method of testing the amount of sewage would be by reading the water meter?

A. Quite so.

Q. And disregarding the number of persons occupying the house?

A. That is it.

By Mr. Tatem:

Q. Then if the only—in reply to the commissioner's question you said that really such a system should be based on the reading of the water meter; how would that information be possible in case the sewer plant was operated by one private corporation

and the water company by another private corporation?

A. This is merely a suggestion. The details of the arriving at cooperation between the two corporations I am not prepared to solve. It is merely a suggestion along a line of thought which might afford a better arrangement than the one proposed.

Q. Mr. Robinson, in your testimony you were asked by Mr. Weaver the definite question as to whether you considered a rate of thirteen dollars for a house which contained a kitchen sink, a water closet, a bath tub and a washstand as a fair rate, and you testified that in your judgment such a rate was not fair. Will you kindly explain to me what is the determining factor in stating whether a rate is or is not fair?

A. The determining factor in making that answer was, that I felt the question of fixtures was the element of unfairness, because it puts a premium on plumbing, as it were.

Q. A penalty?

A. Penalty is a better word. In other words, the obvious thing will be for all people living in Collingswood, to limit themselves to the minimum number of fixtures and when I answered that question it was with the thought that the elements of fixtures entered into it rather than perhaps the question of money.

By Commissioner Donges:

Q. You mean the number of fixtures does not indicate or control the quantity of sewage?

A. Sewage produced; quite so.

By Mr. Tatem:

Q. When you stated that in your judgment that rate was not fair, you meant not that the sum of the rate, $13 was necessarily an unreasonable rate ——

A. No, sir, I did not mean that.

Q. —— but that the method of determining the amount to be paid by the number of fixtures installed in accordance with the proposed rates as filed by the company was not a fair method of determining the amount of the rate?

A. That is it.

By Commissioner Donges:

Q. Are you familiar with the rates of any company that is somewhat similarly situated to this one in Collingswood, privately operated?

A. Yes, but I haven't the memorandum with me. Englewood, New Jersey, and various other places have rates, but it seemed to me it was unfair to compare the rates, rate by rate here with any other town without giving value to the conditions which led up to these rates.

Q. Are you able to say upon what basis the Englewood rates, for example, are fixed?

A. They are based, as I remember it, they are based on fixtures.

By Mr. Tatem:

Q. What would be your idea, Mr. Robinson, as to the relative merit of a rate based upon fixtures and such a rate based upon the number of rooms in a house?

A. I think the question of rooms and fixtures are

so similar that they ought—they are both unfair. It should be in some way worked out so you can charge for the sewage that you treat and handle, rather than what the house is, its size or the number of fixtures or how many chimneys it has.

Q. In other words, your idea is that each householder should pay for the service rendered him in the disposal of his sewage?

A. Quite so.

Q. As nearly as possible in proportion to the use which he makes of the sewage system?

A. Quite so.

Q. Your idea, as I understand it, further is, that a charge which is based either upon the fixtures or upon rooms is open to the objection that there is no necessary relation between the number of fixtures or the number of rooms in a house and the use which the occupants of that house make of the sewerage system?

A. Quite so.

Q. What is that?

A. Yes, the population, without relation to rooms or fixtures.

By Commissioner Donges:

Q. Do you know of any place where your method, suggested method of measuring sewage is used?

A. No, I do not.

Q. Have you ever made any study as to what would be a fair rate for the Collingswood plant to charge for any quantity of sewage?

A. No, because in making this report our chief interest at the time was to arrive at the—for the benefit of the citizens' committee—the condition of the plant and its physical value rather than solving a method of assessment.

By Mr. Tatem:

Q. I think you stated, Mr. Robinson, that you did not think in determining the question of the cost of the property that the item of bond discount should be taken into consideration. May I ask how you would take off, as is usually the case, the bonds issued for the installation of public utilities are not sold at par—what method you would suggest to take care of the item represented by the discount on those bonds?

A. The discount item, of course, would have to be covered. What I meant to convey in the answer to the previous question was, that in arriving at this estimate I wish to—I brought it out as a net cost exclusive of that, and that it represented a purely physical cost of the plant in cement, pipe and so forth.

Q. Then, as I understand, as a practical matter such an amount as would represent the difference between the par value of the bonds and the best market price at which those bonds could be disposed of should be allowed for bond discount and would have to be added to the physical value of the plant?

A. It would have to be added if it were a real item; whether you added it to the physical value as such or not would depend upon the bookkeeping.

By Commissioner Donges:

Q. Wouldn't the better plan be to amortize the bond discount during the life of the bonds and pay it out of earnings?

A. Yes, sir.

Q. It would increase the operating expenses.

Mr. Tatem: The operating expenses by the interest on the amount and by the amount necessary to set aside until the bonds should be paid.

Q. Isn't that, however, the plan ordinarily adopted now and the one that is regarded as better practice?
A. Quite so.

By Mr. Tatem:

Q. In your report on page—the last page of your report, you have placed—where you say, as to the working charges of the new system, you have placed the operating expense at three per cent. What are the elements that would go to make up that operating expenses?
A. I have assumed in placing so low a rate as that, that the operating of the plant by the municipality, the borough, could perhaps be reduced in that it would obviate taxes, it would eliminate taxes and the collection of bills and such things of that kind. In other words, I took arbitrarily a three per cent. operating expense.
Q. In your opinion it would be absolutely impossible for a private corporation to operate the plant on any such basis, would it not?
A. Yes, I think it would; not absolutely impossible, but I should say that was the very minimum operating charge.

By Commissioner Donges:

Q. It does not include any overhead, does it?
A. No, none at all. That is merely the net operating cost of the plant.

By Mr. Tatem:

Q. What, in your opinion, would—how many men would have to be employed at that pumping station?

A. I think that it might be possible to rearrange the pumping plant so it could be made automatic.

Q. That would be with a very considerable additional expense, would it not?

A. It would cost quite a little.

Q. Just what sort of an arrangement would that consist of?

A. That would require some study; I cannot express just what.

Q. Taking the plant as it is, you have seen it, it would be quite impossible to operate on anything like a three per cent. basis?

A. Yes, I think that three per cent. would be low for operating as it is today.

Q. What, in your judgment, would be a fair allowance for the fuel to operate that plant as you find it?

A. I should say about six hundred or seven hundred dollars a year.

Q. And what salary would probably have to be paid to the superintendent who had charge of the plant?

A. That depends largely upon the qualifications and certain conditions which might surround the superintendent. I think it might be possible to get a rather highly educated and informed young chemist from a technical school to take charge of the plant for a considerable time and do it efficiently for a very reasonable consideration.

Q. What would be your idea, a thousand a year?

A. I think he would work probably for fifty dollars a month.

Q. What would be his duty on that basis?

A. He would have charge of the plant as to oper-

ating, and superintending the general operation; taking tests and so forth.

Q. Would you say that the charge, the cost which is shown by the books of the company of approximately seven thousand dollars for operating including taxes, insurance, was an unreasonable charge?

A. Not including taxes and insurance, not an unreasonable charge.

Q. The question as to whether it might be operated more economically would have to be worked out experimentally, would it not?

A. It would, yes, sir.

(Informal discussion regarding adjournment.)

Mr. Weaver: I want to offer in evidence the report.

(Report of C. L. Robinson received and marked Ex. O1.)

Mr. Weaver: I want it to be understood that the ordinance of the borough of Collingswood is offered in evidence. I think it is part of your record.

Mr. Wescott: And any record in respect to this matter between the company and the borough we want to offer.

Commissioner Donges: I think you better designate what that record consists of.

Mr. Wescott: I don't know what it consists of.

Commissioner Donges: Mr. Weaver now offers a copy of the ordinance granting the right to the Col-

lingswood Sewerage Company to lay its pipes in the streets?

Mr. Tatem: That is all right.

Commissioner Donges: It will be admitted.

(Ordinance of Collingswood referred to above received and marked Ex. O2.)

Mr. Weaver: I also want to offer the application that was made to the borough council of the borough of Collingswood asking these rates be increased.

Commissioner Donges: The application that was referred to as having been made in May of 1912?

Mr. Weaver: May, 1912.

Commissioner Donges: That will be admitted.

(Application of the company to the borough council referred to above, received and marked Ex. O3.)

Mr. Tatem: No objection to those.

Commissioner Donges: You will produce certified copies of each of the papers, the ordinance and the new application to the municipality.
It is your desire to withdraw this witness?

Mr. Weaver: Yes.

RUDOLPH HERING, sworn on behalf of objectors.

Direct examination.

By Mr. Weaver:

Q. Where do you reside?
A. Montclair, New Jersey.
Q. And your place of business?
A. Is in New York.
Q. What is your profession?
A. Consulting sanitary and hydraulic engineer.
Q. What experience have you had along those lines?

Mr. Tatem: We will acknowledge this man's pre-eminence in that field. You don't need to qualify him.

Q. Have you examined this sewerage plant at Collingswood?
A. I have, I was there last Friday.
Q. Were you there in consultation with Mr. Robinson, the previous witness on the stand?
A. I was.
Q. Have you gone over the report that he has just made to the commission here?
A. I went over it.
Q. How carefully did you examine that report?
A. I examined it with sufficient care to say that I agree substantially with the statements contained therein.

By Commissioner Donges:

Q. You mean as to quantities and units of price?
A. Yes. I might, if I made the report myself,

change one thing or another, but on the whole it would not have made much difference.

Q. Do you think that his estimate of the value of the plant similar to the one in Collingswood at the present time, the cost of building one, is about correct?

A. Well, it is conservative; it is about correct. I might have made it a little higher if I had done it, but substantially it is right.

Q. When you say a little higher, how much higher?

A. Perhaps five or ten per cent.

By Commissioner Donges:

Q. That is to say you would have taken five or ten per cent. added to Mr. Robinson's conclusion, to be the reproduction value new of this system?

A. Yes, including some features which I think are reasonable. I think something should be allowed in such estimates for getting the plant on its feet. There is always more or less expense necessary before you can start.

Q. That is the development?

A. Yes, before you really get to work.

Q. You would not include that in the list of tangibles?

A. No.

Q. The value of the tangibles is ——

A. Is about right, yes. That is about as I would make it.

Q. Is it your judgment that five or ten per cent. should be added to the value of tangibles, or would you have added five or ten per cent. as the value of intangibles?

A. No, I should have added to the value of the tangibles something here and there, and also some-

thing for intangibles, making perhaps—I haven't figured it out in detail—but perhaps ten per cent.

Q. Added to the tangibles?

A. Added to Mr. Robinson's estimate.

Q. Tangibles?

A. Yes.

By Commissioner Treacy:

Q. Mr. Robinson's estimate is based on physical value?

A. Added to the physical value as represented by Mr. Robinson's estimate.

By Mr. Weaver:

Q. You have heard the testimony here respecting the statement made by the company wherein they want the cost of developing this business from 1902 to December 31, 1913, amounting to $92,732.75; what have you to say as to that method of calculating the physical valuation of a property of a sewerage company such as this?

A. I should not include it.

Q. You should not?

A. No, sir. I don't think it represents any physical value, excepting if I remember, that some of that was spent for enlarging the plant or extending it. Of course, that was spent for physical plant, but as has been testified here the value of the plant is that amount of money which was paid for it, which it cost or that amount of money which represents the value of today.

By Commissioner Donges:

Q. Do I understand, Mr. Hering, that in fixing a rate for this company you would not include any part of the item of $92,000 which has been added as development expense; you would not add that to what is found to be the value, reproduction value or value at this time of the plant?

A. I would not. I would use the value of the plant today, physical value and add an allowance for the intangible quantities.

Q. What would that include?

A. That would include in the first place some money, how much I don't know, it has been variously estimated (every company practically has its own value); I would estimate the amount of money which was reasonably spent before a income was obtained for the money invested in this plant.

Q. Before any income ——

A. Before any income. That would include for instance, the interest on the money that is invested before the plant is finished and before it can possible return any income, the interest on the money which is being invested in the plant. That does not receive any income until the plant is finished and, of course, the company had to have the money, it should be paid interest on it, it should be paid something on it.

Q. If I gather your view, it is, that after the company begins operation and an income is received that that allowance should be no longer made?

A. No longer made.

By Commissioner Treacy:

Q. Although the income received may be disproportionately small in comparison with the expenses?

A. If a "going value" is estimated, which I was going to put at the other end, it would cover this, I think, and that is the amount which is at the other end. For instance here is a plant in full operation. That has a value which has been variously termed, two or three different words, the usual one is "going value." What is that? That is a value which this plant has because it is in operation and is earning money right along.

By Commissioner Donges:

Q. Doesn't that include the expenditures necessary to attach the business? Wouldn't it include this item which you have spoken of before as the outlay during the years when it is not in operation?

A. I think that practically covers that.

Q. Wouldn't "going value" or "going concern value" include that outlay?

A. Yes, I think it would, and I would put it this way. I have done so on water works values. It is that amount of money which would represent the interest of the capital that is being invested in a new plant which would be started and finished and could then take over the users from the other company. That is the way that "going value" has been estimated a large number of times. That is, for instance, if it takes two years to build a work, two years to build a work and get the new consumers taking the water, then the going value has been estimated as being that which represents the loss to a company, which was selling its works, for instance, to the state, during those two years.

Q. Added to physical value?

A. Add that to the physical value as the "going value."

Q. In other words, it is the amount which it would cost that company to get the business?

A. To get business.

Q. And not any more?

A. And not any more.

Q. Then you would exclude as a factor in determining the rate, any losses which a company had sustained during operation after business was started, after customers were attached?

A. I would exclude that because I may have paid a lot of money for improvements which I thought might be improvements and yet they were not improvements and I would have to pocket the loss.

Q. You take it that is the risk of the investor?

A. That is the risk of the investor. The physical value is that which represents the cost of reproducing the plant as it should be today, as I would build it today.

Q. And for the purpose of fixing the rate you would add what it cost to attach the business?

A. Attach the business.

Q. Down to the time when income was first received?

A. First place to get the business and then to turn it over to somebody else.

By Mr. Weaver:

Q. The company's engineer has first estimated the cost of this collecting system and the disposal plant and added to that an engineering cost of seven per cent.; is seven per cent. high or low for engineering work?

A. That depends generally on the size of the work or the elaborateness. For instance, the engineering for the New York water supply is about eighteen per

cent. The estimate on another work that I know of, of large size, for engineering has only been five per cent., and I myself in the construction of a sewerage work had an estimate allowance and contract for six and a half per cent. That was the city of York, Pennsylvania, and that just about covered the cost.

Q. What would you say as to a piece of work such as has been constructed here at Collingswood?

A. I would say the smaller the work the higher usually is the percentage, therefore I think seven per cent. is a very fair allowance for this work here.

Q. What do you say after adding to the cost of the plant the engineering cost, of adding the organization expense of the company; do you think that is proper?

A. That is what I mentioned at the outset. It is that amount of money that is necessarily invested for legal expenses and other expenses to get the company organized and in working order and then get the consumers under operation.

Q. So you would add the organization expenses to the cost of the plant?

A. Yes; not in addition to what I have already stated.

Q. How about the length of time a plant of this character should be built in?

A. I think this plant could be easily built in one year; starting, however, early in the spring and you could get it finished late in the fall. Plans would have to be made in the winter and all previous organization, so you could let the contract early in the spring and then it could all be built, all the sewers laid in town and the disposal works built at the same time, simultaneously. That is, of course, the best way to build it and it could all be done before the winter.

Q. What would you say as to the method of adding to those costs which I have enumerated, discount on bonds sold below par; do you think that should be added to the cost of the plant?

A. That is a financial question outside of engineering. I do not wish to give any opinion on that, because I haven't any.

Q. It would not be a part of the cost of the plant?

A. No, sir.

Q. If after there was added the several times I have mentioned and the engineer's estimate of the cost was $160,439.42, what would you say as to the adding to that $160,439.42 the cost of developing the business covering a period of twelve years amounting to $92,832.75?

A. I would not estimate it that way.

Q. Then would you think that the valuation of this plant at $253,272.17 was high or low?

A. That is very high, I think.

Q. Those figures would not change your estimate as approved by you as made by Mr. Robinson?

A. No.

Q. What have you to say, if anything, regarding a charge for sewage disposal in a borough such as Collingswood, of a yearly charge for so much for each room or fixture used?

A. There are very few cases, comparatively speaking, where a company takes care of sewage disposal of the town, so there is no established precedent that I know of, and we have rather been having our ideas about such a question and my own has been, although I could not tell you that it is anywhere in practice, that since sewage is wasted water supply of the house, that it ought to be paid for similarly, as a fraction of the water supply. Formerly we paid for our water supply by the fixtures. Philadelphia still

does that, to a very large extent. We have, however, in the last twenty years introduced meters to pay for water. Europe almost entirely uses the meter system. We are spreading it very rapidly and we think it is altogether the best system because it is the fairest. We pay for what we use. So long as we have meters in our houses, as is the case in Collingswood, as I understand, it is a very simple matter in my opinion, to pay for the sewage at the same rates, that is to say, pay in proportion to the amount of sewage which a person discharges, a house discharges. For instance, the water rates I understand are thirty cents a thousand gallons and that is what we have to pay; a certain fixed rate. Now, then, I have for the last half dozen years, I have been thinking we ought to pay for the sewage in the same way, as a fraction of the water, because that is absolutely just. We use more water, we send more sewage through the city sewers and more sewage to be purified at the works. If we use less water we send less sewage out and there is less to be purified. We, therefore, ought to pay for our sewage in the same proportion that we pay for our water. It is only a question to establish what is the fraction. I made a few calculations for the conditions in Collingswood. I found varying from one-third to one-half of the water rates should pay the interest on a fair investment and the operation of pumping and purifying the sewage.

By Commissioner Donges:

Q. In other words, from ten to fifteen cents per thousand gallons of sewage treated would afford the company a fair return on the investment?

A. Something like that, although I would not be

positive about the figures. I haven't the data to make an accurate calculation. If it were one-half, fifty per cent. it would be 15¢. I would not like to fix those figures though, I have not made the calculations definite.

Q. Do you recall what you figured as the average consumption of water in Collingswood per day?

A. In this rough estimate I figured 375,000 gallons per day. That was the figure that was given to me.

Q. That is an average consumption?

A. Yes, sir. The number of houses ——

Q. Would the number of houses ——

A. No.

Q. They would not be a factor except in the cost of operation and installation?

A. No.

Q. What did you estimate at 15¢ the income of the company, the sewerage company would be?

A. About $18,000 per year or more than that. I haven't the exact figure here.

Q. That makes it approximately twenty thousand.

A. It would probably be short of that. Of course, I don't say that 375,000 gallons is a correct figure. This was merely a note that I made; but what I have been thinking of for some years was, that we should have a more rational way of paying for our public supplies. I am delighted to see the meter is now being introduced more and more as it has been in Europe and I believe we ought to pay for our sewage in a proportionate way.

By Mr. Weaver:

Q. Mr. Hering, you have approved of the estimate of Mr. Robinson here of the physical valuation of

this plant, which according to his figures amounts to $121,799. Then to be safe you have added to that, ten per cent., making, as I understand it, a total estimate of the cost of the plant $133,978; am I correct in that?

A. Something like that, yes.

Q. What percentage—in order that the company might arrive at a just return, what percentage would you allow then on that $133,978; five per cent. or six per cent.?

A. I think I figured five, but I am not at all fixed on that. I haven't given it much thought, but it should get the interest on that amount of money, and it should also earn a percentage for depreciation.

Q. But do you think that you would say that they ought to pay over five per cent.? In your judgment wouldn't five per cent. be a fair ——

A. That is usual.

Q. Five per cent. would be a fair return?

A. I think so. That is for a financier to say.

Q. In addition to that you have the cost of operating expenses?

A. Surely.

Q. Do you think their operating expenses are too high or too low here?

A. I think they are very low here now.

Q. Then you would give them a percentage for depreciation in addition to that, would you or not?

A. I would give them a sufficient amount of money to make all repairs which are necessary to keep the system in perfect working order and to install, now and then, improvements which have become established as such and which, of course, a progressive city should adopt.

Q. Would you have them pay for that out of rates?

A. Not anything very much. For instance, if they

would have to rebuild the disposal works that I would not, but if it was putting in some small additions, I would, yes. If the rates will stand it, I don't know. It depends altogether on how the rates are fixed. If they barely cover the interest and the running expenses, then, of course, it would be unreasonable to expect them to pay for additions or improvements.

Q. No. The question is, whether the rate should be sufficient to pay the operating expenses, five per cent. upon the invested capital and pay for extensions and improvements?

A. My personal opinion is, that it should, it should keep the plant up to modern progress, up to date.

Q. Do you mean replacements or do you mean extensions?

A. Extensions. Extensions only. As I said, if you had to rebuild the entire disposal works I would not think the rates should pay for that, unless the company would go to the city and have an agreement for increased rates for that purpose, because it is something that is quite indefinite, nobody can tell anything about it beforehand. I don't expect there is going to be any great revolution in sewage disposal, but we cannot tell. For instance, this is built ten years ago. Today we would build it differently, but this plant is a good one as it is now, in my opinion, although it needs some changes, I think, and some improvements.

Q. In order to render more efficient service or efficient service, or in order to reduce expenses?

A. No, not to reduce expenses, because I think they are very low, but to make it more efficient. In this way, there is an odor there now. In my opinion, that odor can be removed in full by putting the sewerage system in a better condition than it is now,

which conclusion is based on the fact that you can perceive an offensive odor of the sewage when it reaches the work. That should not be. That is not necessary. If the sewers are flushed, which costs money, that odor could be eliminated and then I would make some rearrangement of the works to prevent the odor.

Mr. Tatem: No questions.

W. DeWitt Vosbury, sworn on behalf of objectors.

Direct examination.

By Mr. Weaver:

Q. Mr. Vosbury, what is your business?
A. Civil engineer.
Q. Where are you practicing your profession?
A. In this city.
Q. What experience have you had?
A. I have had about fourteen years' experience in various departments of civil engineering, various branches.
Q. Have you made an examination of the Collingswood Sewerage Company?
A. I have.
Q. Have you made a report and statement in furtherance of that examination?
A. Yes.
Q. Have you a copy of that for the commission?
A. I have already handed the commission a copy.
Q. How about a copy for Mr. Tatem?
A. I have handed him a copy also.

Commissioner Donges: No objection, I suppose to this. Let it be admitted and marked now as an exhibit.

(Appraisal and valuation of Collingswood Sewerage Company, prepared by Mr. Vosbury, received and marked Ex. O4.)

Q. Who were you employed by to make this examination?

A. Employed by the borough of Collingswood.

Q. Did you make a careful examination of that plant?

A. I did.

Q. The report you have in your hand is the result of that examination?

A. It is.

Q. Will you just tell the commission, in your own way, first, what you think it would cost to reproduce this plant, secondly, the present value of the plant and under what circumstances you arrived at your figures?

A. In making a valuation of this plant we tried to arrive at the cost to reproduce the physical plant under conditions existing today, and the present value of the plant. In order to do that, we have divided the system into six accounts, with subdivisions under the fifth account in order that we may give different rates of depreciation, scrap value and so forth to the different parts of the plant that seem to be most appropriate. Each account is taken up separately by itself and the overhead charges are made in accordance with the table which you will find in the back of the report. It is the first table, table #1, A. This table #1, A shows the overhead charges that have been adopted for the different ac-

counts and each account has a summary which gives the present value, the cost to reproduce based on the overhead charge, on the net cost, the rated depreciation, the depreciation amount and the present value. The prices that have been used in determining unit prices for various accounts are based as near, wherever possible, on a five year average. The cost of terra cotta pipe was obtained by giving average discount for each year for the past five years and taking the list, determining the cost of the pipe, F.O.B. Collingswood, from, as I said before, the actual average price for five years. Then the cost of laying pipe in the trench is calculated exclusive of trench working, merely hauling the pipe to the work, unloading it, loss due to breakage and the various other charges, and then the cost of trenching is calculated in a separate table for each size of pipe and for each depth of trench. The two tables are then brought together to form one table showing the total net cost of the pipe laid in the trench for any foot in depth. Then there follows a table showing the cost of the manholes. These costs for the manholes are based upon actual costs of constructing manholes. They were itemized by the superintendent on the work showing the number of bricks used, cement, labor charges and so forth for about 100 manholes constructed under identically the same conditions and I have averaged those and taken the average cost of the manholes for all depths as the cost to use, because you will notice in the tables, as the deeper the depth goes the price goes up to a certain peak and then drops down in cost per foot; as you get lower the cost goes up, the cost per foot and the average price I have assumed of $3.60 a foot, exclusive of cover, is a little higher than the largest number of manholes, the depth of the largest number of man-

holes which is about seven feet, from five, six, seven feet. The summing up on the first sheet of the report I find the cost to reproduce the plant, the physical cost, leaving out all intangible values, which I have not tried to fix, but including interest charges during the period of one year at the rate of six per cent., amounts to $149,733.22. After deducting the depreciation amounts and depreciations due to obsolescence, especially under account 5-E, I find the present value of the plant is $128,408.56.

Q. Mr. Vosbury, taking for example the cost of the land and the cost of the right of way; was that your estimate or was that the figures given to you by the company?

A. The cost of the land itself was based upon our judgment. The overhead charges fourteen per cent., was based on five per cent. brokerage, an investment of six per cent. for one year and taxes at three per cent., making a total cost of the land at the end of the period of construction of one year, equal to $4560. The cost of the land at the corner of Comly and Harrison Avenue, account #1, sheet #2, I obtained from the company. I had no other way to obtain it and I used their figures as being correct. I have a letter from them giving me the cost as $2382.33, which includes the cost of the land and the expenses of condemnation. Then I have given an overhead charge on that land at the rate of six per cent. for one year, plus taxes of three per cent., making a total cost of the lot at the corner of Comly and Harrison Avenue equal to $2596.74.

Q. What method did you pursue in regard to the property which is included in the right of way?

A. The property included in the right of way which is account #2, I obtained the cost of the right of way from the company. I have used their figures

and simply charged interest for one year giving the present value $874.16.

By Commissioner Donges:

Q. You say you took the company's figures?
A. I took the company's figures in this case.
Q. How do you arrive at $824.68?
A. I had a letter from them to that effect, stating the cost was that amount. There was no other way.

By Mr. Weaver:

Q. Have you that letter with you?
A. Yes, sir, I have.

Commissioner Donges: The figure testified to was $725.

Mr. Tatem: I think Mr. Vosbury's item is correct and I think the reason is simply this: when they spoke of $725 for those rights of way, that was the money which was actually paid to the people of whom the rights of way were purchased, but the incidental expenses necessary to put through that transaction brought it up in this instance, nearly $100. Mr. Vosbury's figures in regard to both those items, namely, the lot at twenty-three hundred, is correct and also in this, because the other did not include the incidental expenses.

Q. Will you tell the commission on what basis you have arrived at the present value of this plant after arriving at the cost to reproduce?
A. The present value of the plant has been arrived at by charging off a certain rate of depreciation for

each account and you can find that at the end of each account. I will read them off. The land, of course, there is no depreciation rate charged for the land and the same value appears on both accounts, present value cost of reproduction. Under account #3, page six, there is a summary of the account giving the net cost of this account $73,892.72; to the net cost the overhead is added giving a total cost to reproduce $94,213.22.

By Commissioner Donges:

Q. What is included in overhead for which you allow 27.5 per cent.?

A. That is referring to table #1. Assuming that $100 is the basic or prime cost to that is added for contingencies and omissions by the contractor at the rate of three per cent. of the basis cost; then there is a charge for office watchman and so forth of one per cent., making contractor's cost 104%. With the contractor's profit at the rate of ten per cent. brings it up to 114.4 per cent. of the basic cost. Engineering and supervision I have taken at the rate of five per cent., for the reason that is the rate that we obtain now. Very difficult to get work at five per cent., not only now, but last year and expect to next year. In fact, I consider myself lucky if I can get five per cent. all the time, so I had assumed that as being correct. The interest rate at six per cent. per annum has been charged on the basis of one year's period of construction and based upon the contractor's price, plus the investment that goes into the cost of engineering, and allowed for the full rate of time, the full six per cent., assuming that no money and no interest is received by the principal before the contractor is paid. Then that gives a total overhead charge for

that one item of 27.5 per cent. Account #3 has been given a life of seventy-five years. It is very difficult to tell what would be the age of a sewer system. There is very little precedent and experience you can go by, but the fact that this system has a good deal of six-inch pipe in it which in due course of time, much less than 75 years will be way overtaxed, portions of the system now taxed to capacity, would cause those parts to be renewed much sooner, so I have had to assume some rate, and have taken a long life of seventy-five years which gives it at the age of eight years a depreciation of 10.6 per cent. The depreciation on account #4, siphon and air line, life of thirty years, age of four years, straight line depreciation, and amounts to 13½ per cent. Account #5-A which is the pumping system, the life is taken at forty years, age twelve years, depreciation thirty per cent. The only item that should be called to your attention is for mechanical equipment where I have allowed a scrap value of $500 for the value of the mechanical equipment at the end of its life. The life is here taken at twenty years, with present age of six years. The last account, account 5-E, sheet 15; what I class as the sludge bed here is really a portion of the original plant and is not used for the purpose that it was intended at first. The cost to reproduce that original portion as near as I could get at it without having the actual engineering data before me was $2995.42 and I allow a scrap value of $400 for the siphons and give it a depreciation due to obsolescence of eighty per cent. which left me a value of $519.08, which I estimated would be amply sufficient to produce a sludge bed of sufficient capacity to treat all of the sludge produced by the plant and thereby give the old, out-of-date structure the full value to which it is used for today. The cost of a

sludge bed for a plant of that size would be anywhere from $200 to $500 depending a good deal upon conditions. It is hard to determine; probably large for a plant of that kind, because they use a sludge that has a high percentage of water, a settled sludge.

Q. Why did you add the value of the company's tools there?

A. Because I consider that to be a part of the tangible property. That is what I have tried to estimate, the cost to reproduce and the present value.

By Commissioner Donges:

Q. Mr. Vosbury, are you able to say whether your measurements agree with those of Mr. Boardman?

A. I am, because I have the original tabulations here. I took off my own quantities of pipe, manholes and so forth and then compared them with the list furnished to me by the company and in a few cases I found where I was in error due to the fact I had not been able to get the correct information from the drawings and had to assume something. One place I assumed terra cotta pipe where it was cast iron pipe, so I corrected my list wherever in my judgment I should do so, to conform with the other. Our total lengths of pipe are very close, not one-fiftieth of one per cent. out of the way.

Q. Do you know whether the same is true of Mr. Robinson's quantities?

A. I do not.

Cross-examination.

By Mr. Tatem:

Q. Mr. Vosbury, you have had considerable experience in the installation of sewer plants where the

conditions are nearly the same as they are in Collingswood, have you not?

A. I have had experience in constructing sewerage disposal plants, but every plant has widely varying conditions.

Q. Every plant varies according to its own individual conditions?

A. It does.

Q. The tabulation which you have given showing the cost to reproduce is $149,000. To that, in your judgment, in estimating the value of this property there should be added a certain element for what is known as intangibles or going value, should there not?

A. I would rather not express an opinion upon that because it is not a sphere in which I am hardly qualified to fly at present. I have endeavored to make a good valuation of the cost to reproduce and present value, but as far as intangible values go, it is more a matter of finance to me than strict engineering.

Q. In your estimate of reproduction cost of $149,000 there is no allowance for intangibles, nor for what has been testified to in general terms as the cost of building up a business?

A. No, nothing, with the single exception—to make this clear so it won't be confused—that there has been an allowance made for the money that is invested in the plant before it can be expected to return a revenue. The actual amount of money invested, at the rate of six per cent., during the period of construction.

Q. You have allowed as your total statement shows, interest on capital invested during construction?

A. Oh, yes, yes, sir.

By Commissioner Donges:

Q. And the period of construction is one year?
A. One year with interest allowed at the full rate for that time.

By Mr. Betts:

Q. Speaking of overhead charges, have you figured out what the average rate of overhead charge is over the whole amount?
A. No, I have not, only for each account.
Q. Can it be figured out from the figures you have there?
A. Yes, I have a table here, yes, sir.

Adjourned until Thursday, October 1st, at the Court House, Camden, N. J., at 10.30 o'clock.

Camden, N. J., Thursday, October 1st, 1914.

Before Commissioner R. W. E. Donges.
P. Betts, Chief Inspector.

For the petitioner appears J. Fithian Tatem, Esq.
For the borough of Collingswood appears F. D. Weaver, Esq.
For the citizens of the borough of Collingswood appears J. W. Wescott, Esq.

G. L. Robinson resumes the stand for cross-examination.

Cross-examination.

By Mr. Tatem:

Q. Mr. Robinson, referring to your report on page five where you give the unit prices for different size pipe, will you kindly tell me what items enter into and make up those prices?

A. The items which go into the price you mean, six-inch pipe, vitrified pipe?

Q. Yes, 60¢ and 12″, 72¢.

A. That is pipe laid in the trench, including excavation.

Q. That would include then the cost of the pipe delivered in Collingswood and the cost of the digging of the trench, placing the pipe in the trench and refilling the trench?

A. Yes, that is right.

Q. And making the joints in the pipe?

A. Yes.

By Commissioner Donges:

Q. Is the trenching by hand or with a trenching machine?

A. That would be ordinarily by hand, but it would be possible to use a ditch digger here, I should imagine.

Q. How have you estimated the cost?

A. In this particular case I have assumed the minimum cost for hand digging, although I should be very sure that with the long stretches of level street that if it were done at one time, the whole

job done at one time, it might be possible to do the excavation with the ditch digger.

By Mr. Tatem:

Q. Does that include the cost of the Y branches?

A. Yes, that would include everything right straight through.

Q. In your judgment would it be possible to use a ditching machine in the character of soil that there is at Collingswood?

A. Over a consideration portion of the work.

Q. What allowance is made in that cost, that unit cost, for contractor's profit?

A. About ten per cent.

Q. Does that cost include such charges as watchman and office during construction and also interest on capital during construction?

A. The total sum here indicated for the sewers would include the contractor's profit and the incidental expenses due to construction.

Q. According to your estimate, Mr. Robinson, you have charged plain concrete at $6 a cubic yard. In your judgment isn't that a very low price?

A. That is a very low price.

Q. And you would say that concrete could be put in at $6 a yard under those conditions and still allow the contractor a ten per cent. profit?

A. I think not, on that item.

Q. As a matter of fact wouldn't possibly $7.50 be a fairer price?

A. I think that would be a fairer price but I have known of concrete to be put in for much lower than $6.

Q. Under conditions as they exist there?

A. Hardly the conditions.

Q. And, of course, you don't know whether the contractor made or lost money?

A. I do not absolutely, but I have seen some—of course, the price of concrete is necessarily governed somewhat by the amount and the manner in which it is put in.

Q. In looking over your report I fail to notice any mention of the twelve-inch cast iron pipe under the lake, of which there is 250 feet on heavy pile.

A. If that is so it was because we were unable to find such an item on the blueprint. I would be willing to concede there is such a thing and if it was omitted it was because we were unable to find it from the data from which we worked.

Q. I notice in Mr. Vosbury's estimate that that pipe in place including the cost of the pipe and piling and so forth amounted to about between eleven and twelve hundred dollars, and you would say that if it does not appear in your estimate it was probably because the blueprint did not show that material in position?

A. Yes.

Q. I also fail to notice any allowance in your estimate for the grading of the lot for the installation of this disposal plant. In both the other estimates which have been submitted by Mr. Boardman and also by Mr. Vosbury, I notice an allowance of 7800 yards of grading at 25¢ a yard.

A. I think that might possibly be a fair item to allow.

Q. I understand from inquiry from them, it was necessary to do that grading before the building of the plant could actually be begun.

A. If that were so it would be a fair item to allow.

By Commissioner Donges:

Q. Do your quantities agree with Mr. Boardman's generally speaking?

A. I have not seen Mr. Boardman's report nor the other report until they came in here. All I know is hearsay.

Mr. Tatem: I think in most instances they substantially agree.

Commissioner Donges: They were all taken from the maps furnished by the company.

Mr. Tatem: I think all taken from maps and data furnished.

Commissioner Donges: And should coincide approximately?

Mr. Tatem: And should coincide approximately, yes.

By Commissioner Donges:

Q. In your allowance for resurfacing of streets, have you made allowance for every street that is now surfaced?

A. No, sir.

Q. On what basis have you made your estimate?

A. I took an arbitrary distance of five miles, I think it was, and allowed a trench three feet wide to be returned, taking an average cost of six cents a square foot. It is very difficult to determine absolutely on these things and it is usual in drawing a contract to provide for unit prices to cover a

plus or minus which may be encountered by the contractor. For instance, if there is piping it is not usually included as a lump sum but more often as a price per pile and the same thing obtains where there is any indeterminate quantity. On this work there is a good deal of indeterminate quantity and this report is arrived at partially by our experience in general in similar work.

Q. Why did you take five miles, there being twenty miles of pipe; what made you assume five miles?

A. Because I find there is some of the sewer on the sides of the street which might not interfere seriously with the paving. I also find a considerable portion of the paving is of such a character or in such a condition that its return is a matter of largely putting the material back and rolling it once, which would reduce the cost of six cents a foot very much.

Q. No concrete work?

A. No concrete work on a considerable portion of the distance.

Q. What amount is included in your estimate for such work?

A. $9,480.

Mr. Tatem: The allowance, I notice in Mr. Robinson's estimate and Mr. Boardman's estimate are very nearly the same on that item.

Commissioner Donges: Mr. Boardman's is $8,592.24 and Mr. Robinson's is $9480, a difference of about $900 in favor of Mr. Robinson.

By Mr. Tatem:

Q. As I understood, Mr. Robinson, you made an estimate that five miles of lineal trench would be

approximately fair and therefore you based your estimate on that?

A. Yes.

Commissioner Donges: You mean as to resurfacing?

Mr. Tatem: As to resurfacing of streets, yes.

Q. That five miles is about one-fourth of the total mileage of the sewerage company, is it not?

A. Yes.

By Mr. Weaver:

Q. Your estimate for resurfacing is based on a reproduction of the plant?

A. Entirely so.

Q. On the probable cost of reproduction of the plant?

A. Yes.

Mr. Betts: With regard to the inventory itself, there is no dispute as to quantities?

Commissioner Donges: Mr. Robinson answered the question to me a few moments ago and said he had not gone over Mr. Boardman's inventory and could not say whether his coincided with the quantities in Mr. Boardman's or not. Mr. Tatem says he thinks there is no substantial difference.

Mr. Tatem: Except as I have called Mr. Robinson's attention to and as he has frankly stated, in regard to the few items his estimate did not include. One, for instance, in regard to a lot of

large cast iron pipe under the lake, because he said he did not think that was on the blueprint and he said he was perfectly willing to add the cost of that to his estimate and also said in his estimate he had not allowed for the preliminary grading of the land for the disposal plant and that he thought Mr. Vosbury's and Mr. Boardman's estimate of that of 7800 yards at 25¢ was probably fair. I think I stated that correctly.

Witness: Yes, that is quite true.

W. DEWITT VOSBURY, recalled for cross-examination.

Cross-examination.

By Mr. Tatem:

Q. Mr. Vosbury, you just called my attention to one slight error in your repaving estimate.

A. Yes.

Q. Making that correction what would that item then stand?

A. That item would stand $11,295.20 in place of $15,032.

By Commissioner Donges:

Q. What page is that?

A. Sheet number six, account number three, item of repaving.

By Mr. Tatem:

Q. Just explain to the commissioner how that correction was made.

A. The error in the sum is not due to an error in quantity or in the unit price, but an error in pointing off a decimal place. It should have been $415 instead of $4,150, in round numbers.

Q. Mr. Vosbury, in making your estimate of reproduction cost, you have taken normal costs of reproduction for labor and material as they exist at the present time?

A. I have taken, as near as possible, the average cost for the last five years, not taking into consideration the present low cost of material and labor.

Q. The percentages which you have added under the head of overhead charges, in view of your experience and accepted custom in engineering, you believe them to be the fair and ordinary additions which should be made in such a plant as this?

A. I believe them to be very fair, yes.

Q. In making your estimate, no allowance, I suppose, was made for working capital but it was only for the construction of the plant?

A. I would like to have that question explained.

Q. In your estimate you have allowed for interest on the investment during the period of construction, as I understand?

A. Yes, I have.

Q. But your estimate then does not include any allowance to the company for working capital when it should begin operation?

A. No.

Q. Reference was made yesterday to a sewer rate as charged in the neighboring borough of Haddonfield; your firm are the borough engineers for Haddonfield, are you not?

A. We are.

Q. Could you tell us whether the plant in Haddonfield is or is not a municipally owned and operated plant?

A. I believe it is a municipally owned plant.

Q. Can you tell us as to whether on the installation of that plant a frontage charge of so much per foot was made against all abutting property owners?

A. I cannot; I am not sufficiently informed as to the construction and operation of the plant. I believe Mr. Remington can tell you that.

Mr. Weaver: That is our case.

J. C. Remington, sworn on behalf of petitioner.

Direct examination.

By Mr. Tatem:

Q. Mr. Remington, you are the borough engineer of the borough of Haddonfield, are you not?

A. I am.

Q. You were borough engineer at the time of the installation of the sewer system?

A. No, shortly after.

Q. You are familiar with the conditions governing that installation?

A. I am.

Q. It is a municipally owned and operated plant, is it not?

A. It is.

Q. At the time the plant was installed a frontage

assessment was made and laid upon the abutting property owners for the purpose of bearing a portion of the expense of the installation of the plant?

A. It was.

Q. And the disposal plant and the intersections were paid for by a bond issue by the borough?

A. And also an exemption of corner properties.

Q. Those were paid for by bond issue by the borough?

A. Yes.

Cross-examination.

By Mr. Weaver:

Q. Are you familiar with the rates in Haddonfield for house connection?

A. I am to a certain extent.

Q. What is the prevailing rate there?

A. The average rate is about $12 a year, payable semi-annually.

Q. Does that depend on the size of the house?

A. They regulate their rates on the fixture charges there, the old method.

By Commissioner Donges:

Q. Is there any minimum?

A. No, I don't think—I am not prepared to state that.

Commissioner Donges: Doctor Betts has made a table of rates and methods adopted for the establishment of rates by the various sewer companies reporting to this board which may be useful for the purpose of comparison, if there is no objection

to it. He also prepared to testify as to what the board's classification of accounts requires with respect to organization expenses. It might be well to put that in the record.

P. Betts, sworn on behalf of commission.

First with regard to the definition of organization. The board has promulgated classifications of accounts for different classes of utility companies and in connection with the fixed capital accounts has used the same definitions for the account no matter what class of company was concerned. That is, water, gas, street railway, electric light, telephone and all other companies are required to charge to organization in accordance with this definition. "Charge to this account all fees paid to governments for the privilege of incorporation, and all office and other expenditures incident to organizing the corporation or other enterprise and putting it in readiness to do business. This includes cost of preparing and distributing prospectuses, cost of soliciting subscriptions for stock, but not for loans nor for the purchase of bonds or other evidences of indebtedness, cash fees paid to promoters and the actual cash value at the time of organization of securities paid to promoters for their services in organizing the enterprise, counsel fees, cost of preparing and issuing certificates of stock and cost of procuring certificates of necessity from state authorities and other like costs. Like costs incident to preparing and filing certificates of authorization of increase in capital stock, and to the negotiation and issue of stock thereunder, and cost of

preparing and filing certificates of amendment of articles of incorporation should also be charged hereunder. This account shall not include any discounts upon stocks or other securities issued, nor shall it include any costs incident to negotiating loans or selling bonds or other evidence of indebtedness.''

By Commissioner Donges:

Q. That is found on what page of the reports?

A. In the classification of accounts for water utilities it is given as account No. 101, found on page 27. It should be noted that does not include franchise. Account 102 includes franchise and perhaps it would be well to read that because the question of obtaining franchises has been referred to as one of the costs of organization, although in our classification we separate it from that. ''Charge to this account the amount (exclusive of any tax or annual charge) actually paid to the state or any political subdivision thereof as the consideration of such franchise.'' Then there is a note; see section 3, paragraph 18-F, chapter 195, laws of 1911. That section I might state is a prohibition in the public utility act against capitalization of franchises in excess of the amount paid for them. ''If any such franchise is acquired by mesne assignment, the charge to this account in respect thereof must not exceed the amount actually paid therefor by the corporation to its assignor, nor shall it exceed the amount specified in the statute above quoted. Any excess of the amount actually paid by the corporation over the amount specified in the statute shall be charged to the account 'other intangible capital.' If any such franchise has a life of not more than one year after the date when it is placed in

service, it shall not be charged to this account but to the appropriate accounts in 'operating expenses,' and in 'prepayments' if extending beyond the fiscal year. Annual or more frequent payments in respect of franchises must not be charged to this account but to the appropriate tax or operating expense account."

Some questions were asked but not answered, with reference to the average, if there was any average value of plant per connection. Under my general direction the information found in the annual reports submitted by the companies has been tabulated under certain heads and in connection with the sewerage company ——

Q. You now refer to sewerage companies?

A. Now referring to sewerage companies. The list of data, the table of data concerning sewerage companies includes less than half of the sewerage companies that we have in the state. The reason for not including the others was that the data was too imperfect and too incomplete to warrant including it in tables such as this. There are three items of information in addition to the name of the company that I think it would be well to read into the record. They are, first, the number of house connections; second, the operating revenues per house connection; and third, the cost of plant per house connection. In this figure, cost of plant, it should be remembered this is the reported cost of plant in the companies' annual report and has not been checked up by an appraisal of the property.

Atlantic City Sewerage Company: house connections 9922, operating revenues per house connection $11.86, cost of plant per house connection, $108.96.

Long Branch Sewer Company, 1599 connections, operating revenues per house connection $17.14, cost of plant per house connection, $172.93.

Englewood Sewerage Company, 1479 house connections, operating revenue $15.35, cost of plant, $107.54.

Ocean City Sewerage Company, 1446 house connections, operating revenues $8.58, cost of plant $113.56.

Collingswood Sewerage Company, $8.73, cost of plant per house connection $219.46.

Q. The number of connections in Collingswood?

A. 1346. This is at the end of the year 1912.

Burlington Sewerage Company, 1205 house connections, operating revenues $7.01, cost of plant $130.64.

Essex Fells Electric Light & Water Company, this refers to the sewerage system. 83 house connections, the operating revenues $25.07, the cost of plant $163.51.

Rumson Land & Development Company, having 32 connections, operating revenues $55.44, cost of plant per house connection, $468.70. It should be noted that the Rumson territory consists of a number of very large estates so that the number of houses per mile of main would be very small.

South Side Sewer Company of Leonia, 137 house connections, operating revenues per house $12.10, cost of plant per house connection $54.74. That is without a treatment system. That system has been taken over by the borough of Leonia just prior to the installation of the treatment system that was ordered by the state board of health.

North Side Sewer Company of Leonia, 108 house connections, operating revenues $9.38, cost of plant per house connection, $76.39. The same is true regarding that sewer system. There was no disposal system, it having been installed afterwards by the borough of Leonia.

Q. All the Leonia systems were taken over by the borough?

A. All of them. There were three, only two given in this table of data.

Something was also said with regard to the proper basis on which to make up rate schedules for sewerage service, and I have here a list of the sewer rates charged by the companies in this state, which is not entirely complete, but I will read into the record the basis on which the rates are made up.

Atlantic City Sewerage Company is based primarily on the number of rooms. The conditions in Atlantic City are so diverse, however, that special rates are made for saloons, restaurants, school houses, shooting galleries, hotels, stables and so on, but the primary basis is the number of rooms in the building.

The Burlington Sewerage Company is based on the fixtures, a different rate being named for each fixture, sink or bath tub or washstand and so on.

Central Sewer Company of Leonia, based on fixtures.

Citizens' Sewer Company of Leonia, that was not named in here, an assessment of $1 per year for each connection. That, however, was part of a land development scheme and is hardly a basis for comparison.

Collingswood Sewerage Company was based on the number of rooms.

Englewood Cliffs Sewerage & Drainage Company, based on fixtures.

Englewood Sewerage Company, based on fixtures.

Lakehurst Sewer Company, based on fixtures.

South Side Sewer Company of Leonia, based on fixtures.

Lock Arbor Sewerage Company, supplying a por-

tion of the territory adjacent to Allenhurst at a rate for each dwelling house per annum of $10 and in that territory there is only one building, I think, that is not a dwelling house and that is a hotel and it is provided that other than dwelling houses would have special rates.

Long Branch Sewer Company is based on the assessed valuation of the property, without any reference to fixtures or the number of rooms or anything of that kind. I will read a part of that: "That all property assessed by the assessors of the city at a valuation not exceeding $5,000, occupied by private family, shall not be charged more than $10 per annum for the annual use of said sewer and that all property assessed as aforesaid at a higher valuation than $5,000 shall not be charged for the use of said sewer a greater price than two mills on the dollar as per assessed valuation."

North Side Sewer Company of Leonia, a rate of $12 a year.

Ocean City Sewer Company, based on the number of rooms for private dwellings and number of sleeping rooms for hotels.

The Rumson Land & Development Company has a method which involves a rating of each house, probably in accordance with the judgment of the superintendent of the land company.

Swedesboro Sewer Company, $5 for each house or household.

Woodstown Sewer Compay, based on fixtures. Those are all the rates that are readily available from our files.

By Mr. Wescott:

Q. Has your study led you to devolve any equitable scheme for determining these charges, yourself?

A. No, I cannot say I have given sewerage rates very much thought. There is one other sewerage company that I have in mind in the state which starts out as a water company and its sewerage service, extending to the greater portion of its territory, of the territory served with water, has a rate schedule which includes both the sewerage and water service. Meters are used in all houses.

By Commissioner Donges:

Q. For the measuring of water?

A. For the measuring of water, and the charge made for water includes both the water service and the sewer service. That is Lakewood, that is a private company. That schedule in that way, runs along the line of Mr. Hering's thought. I might say this with regard to Mr. Hering's statements yesterday. I happen to know this; Mr. Hering has been very active in his study and criticism both favorable and unfavorable of the plans of the Passaic Valley Sewerage Commission. It appears that the method of dividing the assessment for the cost of that system on the various municipalities to be served by it, about twenty in number altogether, was originally planned on the basis of the assessed valuation of the property in the various municipalities. Mr. Hering insisted that was a wrong idea, that it ought to be based on the relative use made of this sewer system by each of the municipalities and he has been contending for that, but in view of the fact that the matter has ever come up for any real public discussion, nothing has been done to make any change in the plans, so that the cost of that sewer system is being divided over the municipalities in accordance with the original plan, that is, the relative

assessed valuation. He insisted and insists yet, in a system of that kind it would not be impossible, in a case of that kind, where twenty municipalities are served by one intercepting main, it would not be impossible once in five years to make a fairly close estimate of the use made of the system by each municipality; but with regard to his line of thought yesterday, I have never given any further consideration.

By Commissioner Donges:

Q. You are not able to say whether in your judgment there are insuperable difficulties to establishing sewer rates on the basis of water consumed, assuming that all water is measured?

A. I think that rates based in that way would be more likely to be fair, excepting for one trouble, and that is the fact that quite a little water is used for sprinkling by some people and practically none by other people and water used in sprinkling lawns is not, of course, returned into the sewer system, under ordinary conditions, so that the water actually furnished to houses would not always be a fair measure of the sewerage service. It seems to me we will have to stick, at least with our present knowledge, to the method of rating by fixtures as being the best measure of the use that is obtained by the people of the sewer system. Municipalities usually charge in one of three ways; either by fixture method or by a front foot method which has no relation whatever to use, or charge the entire cost of operation to taxes, but the taxes in that way, of course, are levied on the valuation of property and that does not have any necessary relation to use made of the system. Those are three methods usually in use where the municipality controls it.

Mr. Tatem: When Mr. Roth read yesterday the date of the issue of the bonds by the company he neglected to give the date of the maturity, which might be an important matter in taking up the question of amortization of bond discount and I would just like to have it noted that the $150,000 of bonds of the company mature May 1st, 1936.

Commissioner Donges: That mortgage is closed?

Mr. Tatem: That mortgage is closed; it is a closed mortgage.

Adjourned until Tuesday, October 20th, at State House, Trenton, N. J., after noon recess and then subject to the calendar, for oral argument.

Trenton, N. J., Thursday, October 22, 1914.

Before the following commissioners:
R. W. E. Donges, Esq.
T. J. Hillery, Esq.
J. J. Treacy, Esq.

For the petitioner appears J. Fithian Tatem, Esq.
For the borough of Collingswood appears F. D. Weaver, Esq.
For the citizens of the borough of Collingswood appears J. W. Wescott, Esq.

Mr. Tatem: I offer this map. It shows the collecting system of the sewerage company.

Commissioner Donges: It will be received and marked.

(Map showing collecting system of Collingswood Sewerage Company received and marked Ex. P4.)

Mr. Tatem: If your Honors please, the case I am to present on behalf of the Collingswood Sewerage Company is, as your Honors know, an application for the approval of a new schedule of rates, which rates show substantial increases over the rates now in force.

At the outset it was shown that the Collingswood Sewerage Company has been in operation since about 1901 or 1902, that the original plan as shown by the ordinances and which had the approval of the local and state authorities contemplated a gravity system, but that before the plant was built changes were made in state regulations so that it was necessary to have a disposal system. The adoption of this disposal system rather than the gravity system entailed very great additional expense. That expense consisted not only of the building of the disposal beds, septic tank and so on, but it made it necessary that all the sewage should be carried from the different parts of the borough to one particular disposal point, making it so a great deal of it had to be pumped twice. It also necessitated running the pipes at a great deal greater depth than would otherwise have been necessary. The ordinance under which the company operated—at that time, of course, there being no Public Utility Commission controlling the sum set for a schedule of rates—provided the company should not charge more than a maximum rate set forth in that ordinance. The company until the present time has

been operating under that schedule of rates. The testimony which is before your Honors has shown two things: first, that the receipts of the company are hopelessly inadequate to pay the operating expenses, allow for a proper depreciation and pay any substantial return whatever on the money invested, and secondly, the testimony, not only of the company and its experts, but of the experts for the objectors is that the company is now and has been operated in an efficient and economical manner. In other words, the rates which were provided in this ordinance have been entirely inadequate to give proper and satisfactory and efficient service. It has only been, as your Honors know, within a very brief period that your Honors have actually in other cases, notably those of the Phillipsburg Horse Railroad Company and of the Butler Water Company—held that this board has the authority and will exercise the authority under its general provisions of seeing that satisfactory service at proper and reasonable rates is rendered to the public, to override or set aside any restrictions or limitations which may be contained in ordinances granted by the municipal authorities, provided the board is satisfied that it is for the best interests of the public to do so. Up until the board took that attitude it was the impression not only of this company but the impression, I think, of practically every company operating a utility, that the limitation of rates to be charged embodied in an ordinance or a franchise consisted a continuing contract and that they were bound to abide by it. That is the reason why no effort has been made by this company which has been running behind for a number of years, to attempt to raise its rates before the present application.

I will say that the testimony also shows that

something like two years ago an application was made to the borough authorities for the passage of an amendment to the ordinance allowing the rates to be increased but that the borough authorities refused to accede to that request.

We are, therefore, to consider in this case the business aspect of this company, the service which it is obliged to render, the value of its plant based upon what, I would say, now is a well recognized system of valuation and system of valuation which has been recognized not only by this commission but by commissions in sister states and also upheld by the courts, namely, that the amount of money on which a utility is entitled to earn interest, represents the reproduction value or reproduction cost of the plant from which should be deducted the accrued depreciation as appears by the testimony, and to which should be added a certain amount, be it less or more, a certain percentage usually based on reproduction cost, for what may be called intangibles, going value, cost of developing the business, or whatever other term may be particularly applied to it. The board has recognized that method of valuation, and that method of determining the amount on which a company is entitled to earn interest.

Let us therefore consider those matters in relation to the company which is now before your Honors and see what the result is. Let us take in the first place the reproduction cost. I have never been in a case where the reproduction costs as testified to by the experts on both sides have been almost entirely coincident as they have in this case. Another interesting fact is that they coincide almost exactly with the cost of the plant as shown on the company's books, or the report which the company is obliged to make to this board each year.

I want to call your Honors' attention to that fact in detail. According to the books of the company—I will use only the round thousand dollars for the sake of clearness—according to the books of the company, the plant cost $151,000. According to Mr. Boardman's estimate, the engineer produced on behalf of the company, its reproduction value is $149,000. According to Mr. Vosbury its production cost—Mr. Vosbury being an expert produced by the objectors—is $144,000. According to Mr. Robinson— Mr. Robinson's estimate however requires some correction, and according to Mr. Robinson, it is $149,980. Mr. Hering testifies that Mr. Robinson's figures if we will add ten per cent. to the tangibles—that he thinks he is ten per cent. low—are correct. We therefore have all these figures, including the company's books, the difference between the lowest and the highest of them is not over seven thousand, or a variation of less than five thousand on a base cost of $150,000. I therefore say to your Honors, it seems we must assume then that the reproduction cost of this plant new is from $145,000 to $150,000. There is one of the valuation which I wish to take up in detail and that is Mr. Robinson's. Mr. Robinson's reproduction cost as testified to by him was $121,799. He admitted on cross-examination that his estimate for concrete was too low by $1.50 a yard on 750 yards, which made $1125. He stated he had omitted the item for cast iron pipe under the lake because it did not appear on the plans and that a fair price for that was $1190. He admitted on cross-examination that a fair allowance for grading to prepare for the beds before the beds themselves should be built was $1950, making $126,064. He further was frank enough to state that the prices which he had figured on were absolutely

minimum prices and that for a fair price about ten per cent. should be added to the value of the tangibles. Adding that ten per cent. or $12,177, we have $138,242. Mr. Robinson also testified that he had no personal knowledge of the value of the land used by the company and that his estimate was a mere guess. Mr. Vosbury's estimate of the land, which was admitted to be correct was $7,156.74, as against Mr. Robinson's $3900. If we add to Mr. Robinson's total the difference in the value of the land which is admitted, this difference amounts to $3,256.74, and brings Mr. Robinson's total up to $141,499. Mr. Robinson also testified that he did not add anything for interest during construction and that a fair allowance would be six per cent. interest for one year, which on the above amount is $8,489, which added to the previous total makes $149,989, or a few hundred dollars higher than Mr. Boardman's total. It is an interesting fact that Mr. Hering, another expert on behalf of the objectors, stated that Mr. Robinson's figures for general work were ten per cent. too low, in his judgment and that Mr. Robinson stated he had taken minimum figures and it would be fair to add ten per cent., so the result is this: Mr. Boardman and Mr. Robinson give the reproduction value of the plant as between $149,000 and $150,000. Mr. Hering says Mr. Robinson's figures are correct. Mr. Vosbury makes it $144,000.

On the item of depreciation we have some difference. On that item, I would say that Mr. Vosbury allows a greater depreciation than Mr. Boardman, Mr. Robinson or Mr. Hering, neither of them figured any depreciation in their report. Mr. Boardman allows a depreciation of $10,700. Mr. Vosbury places the accrued depreciation at $20,000. There are two items, two principal items that make the

difference in this depreciation amount; one is that Mr. Vosbury computed the life of the permanent part of the plant, that is the tank and the collecting system, on the basis of seventy-five years, while Mr. Boardman computed on the basis of one hundred years. That made a difference of between three and four thousand. The question as to whether you would take in a life of ten years, ten-seventy-fifths, as your depreciation factor or ten one-hundredths. Then Mr. Vosbury also allowed a very heavy depreciation on what is called the sludge bed, because he said that was practically used very little at the present time. He allowed an eighty per cent. depreciation on that item which amounted to about $1600 over the normal depreciation, so those are the principal items in which his depreciation is greater than that of Mr. Boardman. Of course, so far as the company is concerned, it is almost as broad as it is long, because if the greater depreciation should be allowed, then we must be allowed rates which will enable us to set aside out of our earnings a greater depreciation reserve in each year. In other words, if the life of the plant be shorter, then we must earn during the life of the plant not only the interest on the investment but such a sum as will retire the securities issued against the plant when the plant becomes obsolete.

Another item to which I would call the board's attention for a minute is that of the cost of resurfacing the streets. Mr. Boardman's estimate was $8,500. Mr. Robinson's $9,400 and Mr. Vosbury's $10,900. They arrived at those estimates in different ways, taking some of them, an arbitrary distance and in others taking what they can see to be the distance of actually surfaced streets. It is not possible, I take it, to present to the board, and

therefore we could not do it, testimony showing along just what streets the sewer pipes were laid before the street was improved and under just what streets they were laid after the street was improved. In other words, it was impossible for us to produce evidence to the board showing just what had been the actual expense to which the company was put for resurfacing streets, and I submit to your Honors, that if the matter of valuation goes on the basis of the reproduction value, it would seem that in all fairness, the question as to whether the pipes were laid before the streets were improved or not should have no bearing. The reproduction value is what would it cost to reproduce the plant as it now is. Therefore in every street which is now surfaced, if the plant were to be reproduced, we would have to cut up that pavement and put it down again. I know that that has not been the view probably adopted by your Honors, in some of the matters which have come before you, although I don't know that you have taken a definite and positive stand on it or not. I was much interested in reading the discussion of that particular question by the Appellate Division of the New York Supreme Court. Your Honors are doubtless familiar with that Kings County Lighting Company case and the statement which was made there, which was extremely clear. Quoting from the opinion of Justice Clark in that case, he says: ——

Commissioner Donges: Where is it found?

Mr. Tatem: That is found in the law reports and session laws of the state of New York, 156 Appellate Division, page 609, a case decided about a year ago. The situation there was a most interesting one.

The company had been in business for many, many years, something like three-quarters of a century and the evidence was that as nearly as could be ascertained they had spent originally twelve thousand dollars in resurfacing the streets. The engineers who appeared before the commission showed that if those pipes were to be laid now, it would cost from $212,000 to $264,000 to resurface the streets. They took the minimum estimate or $212,000. The company spent $12,000, the reproduction cost would be $212,000 and the commission allowed the $12,000 but disallowed the $200,000. The matter was taken to the Appellate Division and the Appellate Division overruled the commission and sent the case back with instructions to allow that $200,000.

Commissioner Donges: That opinion is written by Judge Clark?

Mr. Tatem: That opinion is written by Judge Clark. The statement here is so clear that I burden your Honors by reading a few lines. He says: "The construction expense of the buildings and of the pipe systems of the company under the streets, which now consist of a continuous sheet of asphalt over granite has enormously advanced. The value of the investment of any manufacturer in plant, factory or goods or all three, is what his possessions would sell for upon a fair transfer from a willing vendor to a willing buyer and it can make no difference that such value is affected by the efforts of himself or others, by whim or fancy or what is really the same thing, by the advance of land values in the opinion of the buying public. It is equally immaterial that such value is affected by the difficulties of reproduction. If it be true that a

pipe line under the New York of 1907, is worth more than was a pipe line under the city of 1827, then the owner thereof owns that value and that such advance arose wholly or partly from difficulties of duplication created by the city itself is a matter of no moment. Indeed the causes of either appreciation or depreciation are alike unimportant if the fact of value be conceded or proved."

In other words, I am simply suggesting to the commission that if the reproduction cost is the basis on which we are figuring, the cost of reproduction must include the surfacing of the streets, whether they were done by the company or whether they were not. We have therefore an investment of approximately $150,000 from which should be deducted the accrued depreciation which varies according to the different estimates submitted by the engineers anywhere from $10,000 to $20,000, and to which should be added a certain allowance for intangibles, going value, cost of building up the business, whatever term may be used. I prefer in this particular case to say that should be, "losses sustained in the development of the business," because as usually happens it is impossible to determine just what those losses have been, but in this case it is before the commission that this company has lost money from the very first year and that it has been impossible for it to do anything but lose money under the schedule of rates it was charging. There is in evidence a detailed statement showing that if the company had earned six per cent. on its investment and a reasonable depreciation of say, one per cent., it would have had to have received $92,000 more than it has received. I don't want the commission to think that we claim we should be allowed to capitalize the whole of that $92,000. Our position is

frankly this; that there is a certain intangible value which in this particular case represents good money actually spent or interest foreborne in bringing this plant up to this point, therefore, this is a case in which the allowance for development cost should be the maximum, whatever the commission may determine is a fair maximum. In other words, this is a case that appeals to the conscience of the commission, because the books show this money was actually lost. It is not a question between the hypothetical plant which has the business attached and the hypothetical plant which is to be built and which is to be projected into the future and carried until such a time as it will be self-supporting. This is actually good money which we have lost. Under those circumstances, therefore, the commission should allow a liberal percentage for intangibles, or for the development cost in the business. It is not, as I said before, with the idea that we ask to capitalize. We believe it would be unreasonable that we should be allowed to capitalize that entire $92,000, but we do feel that we should be allowed to capitalize a very substantial part of it, because it represents absolute loss, and that amount that we shall be allowed to capitalize, we leave with the commission.

Commissioner Donges: You mean loss in so far as a part of it represents money actually put in in addition to the cost of plant in developing the business, the balance being earnings or dividends foreborne.

Mr. Tatem: Interest foreborne. In other words, if we figure it that the money, as soon as it was put in, was entitled to earn six per cent., then it

shows we would have had to had $92,000 more than we have. That is the situation. There was some testimony in regard to the condition of the plant. I hardly think that is pertinent in this rate question but I want to just quote two or three extracts from the testimony of the engineers who were on the stand on behalf of the objectors. Mr. Robinson was asked by Commissioner Donges on page 104 of the testimony: "Are you able to say whether the plant is adequate for present needs of this community?" Answer: "I think the plant as it exists today is a very fairly good plant, due to the fact that the owners have been largely stimulated by the advice of the state board of health and have followed out certain suggestions by the state board of health." In his report which is in evidence, Mr. Robinson, on page three states as follows: "The disposal plant at present seems to be working fairly well for a plant of this type. It is of a design which has been considered good practice in sewage treatment. The changes made under the suggestions of the state board of health have brought it up to date in such a way that with very careful operation it should give fair results with a flow of domestic sewage of approximately 500,000 gallons a day." Mr. Robinson also says on page four of his report: "The plant is now being operated well and with much intelligence."

Mr. Hering, who we will admit is one of the leading engineers of the country in this particular line, says on page 136 of the testimony: "I don't expect there is going to be any great revolution in sewage disposal but we cannot tell. For instance, this is built ten years ago. Today we would build it differently, but this plant is a good one as it is now, in my opinion, although it needs some changes, I think, and some improvements."

Question: "In order to render more efficient service or efficient service, or in order to reduce expenses?"

Answer: "No, not to reduce expenses, because I think they are very low, but to make it more efficient. In this way, there is an odor there now. In my opinion, that odor can be removed in full by putting the sewerage system in better condition than it is now, which conclusion is based on the fact that you can perceive an offensive odor of the sewage when it reaches the work. That should not be. That is not necessary. If the sewers are flushed, which costs money, that odor could be eliminated and then I would make some rearrangement of the works to prevent the odor."

Some testimony was offered before your Honors as to the best method of fixing upon a charge for sewer service, and I think it was the opinion of Doctor Betts and I believe it is the opinion of all of us that provided the charge be a fair one the charge which is based upon the fixtures installed is as fair in its application as any charge that can be devised. Mr. Robinson and Mr. Hering you will remember, suggested a theoretical method of charging which should have reference to the amount of water consumed in the community, but I think we can accept it as settled that a fixture charge, provided the charge be fair, is as equitable and just in its distribution of the charge as any method that can be devised. I am not going to go into that with any detail.

Just one more word, and that is in regard to the contemplated income under the new schedule and the cost of the company. It was taken for granted by the witnesses that went on the stand, Mr. Hering among them, that we are to operate properly and to

have a reasonable return on the money invested. Without regard to the intangibles this company must have an income of from $18,000 to $20,000 a year. In other words, that the present operating expenses were very low, that in order to operate the plant with greater efficiency they would have to be slightly increased, that there ought undoubtedly to be allowed a depreciation reserve, which we have never been able to do, except theoretically, and that on the basis of six per cent. on the investment this company would have to have—six per cent. on the money actually invested irrespective of intangibles, this company would have to have from $18,000 to $20,000 of income.

Commissioner Donges: Let me ask; this item of $92,000 or thereabouts, which has been referred to as development expenses; do I understand the view of the company as expressed by the witnesses for it and by yourself in this discussion, that that $92,000 deficit, for want of a better word, is due largely to the failure of the company to receive adequate rates?

Mr. Tatem: That is undoubtedly.

Commissioner Donges: If that be true can it be fairly said that that deficit or that sum not received by the company can be fairly regarded as development expense?

Mr. Tatem: Probably not all of it, no, probably not all of it, but I think it shows the development expense in this community was above the average.

Commissioner Donges: Wouldn't it be—occupy

somewhat the same position as if the deficit were due to a failure to operate economically?

Mr. Tatem: I would say not, for this reason, that in one case if it were a failure to operate economically that would be directly chargeable to the company.

Commissioner Donges: Isn't it directly chargeable to the company? That is just exactly the point I was leading to.

Mr. Tatem: I would say not, because the company were helpless.

Commissioner Donges: Wasn't the deficit due to a bad bargain entered into by the company at the time this franchise ordinance was received?

Mr. Tatem: I think the deficit was due to this; the bargain if they had been able to carry it out as originally planned without the disposal plant, would have pretty near paid its way on those charges. Now, if there was any negligence on the part of the company it was that they did not lay down when they found they had to treat this sewage in disposal beds. You see the ordinance was passed, and the engineers figured the cost of this plant on a gravity system. Up to that time it was perfectly possible to have sewered that community with the approval of the state board, by running one line of trunk sewer into Newton Creek on one side, one water shore, and the other line into Cooper's Creek on the other side. The result would have been that the cost of the plant would not have been more than two-thirds what it was. It is in evidence that

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the cost is about two-thirds and one-third. In other words, that the additional cost because they had to adopt that system was about fifty per cent. more than it otherwise would have been and the additional operating expenses were over sixty per cent. increased, because before it would have been a gravity system and now they had to pump it.

Commissioner Donges: Yes, but the precise question I had in mind and wanted to get your view was as to just what part of that loss due to the change in plans, the construction of a system not contemplated when the ordinance was passed can be charged to development.

Mr. Tatem: That I don't know. I would say that really there are three parts. In the first place, in any plant there would be a certain amount which would be necessary to be expended for development to bring the plant up to the time where it could be reasonably expected to earn a return. If this plant had been built without the disposal system, of course, if the rates were proper, if the rates were fair, that time would probably have come at the end of five, six or seven years, whenever it might be. Now, then, the plan was entirely changed. In other words, the company made an agreement in its ordinance to sewer the borough of Collingswood on a certain basis. It predicated its charges on the old system. Now, it is obliged to expend, we will say, fifty thousand dollars more money than it otherwise would. I don't think there is any way of determining what portion of the accrued deficit can absolutely be charged or set off and say, this is normal development, and this is the abnormal condition due to the fact that your ordinance was too

low and due to the fact you had to spend this extra forty thousand dollars.

Commissioner Donges: Isn't it true that in your view, the development stage would never pass in the history of this company if it went on for a hundred years?

Mr. Tatem: The development stage would never pass in the history of this company at present rates. It could not pass on present rates, it is absolutely impossible.

Commissioner Donges: And the more customers it takes the greater its loss?

Mr. Tatem: Not necessarily that.

Commissioner Donges: If extensions are required?

Mr. Tatem: If extensions are required which do not reduce the average frontage I would say that was true, which shows that the rate is inherently too low for this system of disposal.

Commissioner Donges: In the application of the principle of development charge, is there contemplated when an allowance is made therefor that failure by contract to exact adequate rates is included?

Mr. Tatem: I don't think it is. I don't think that is true. I say, I don't think that is contemplated. Our position is simply this: in introducing that testimony it is to show that the development cost here was an actual cost. It represents actual

money. As a rule development costs are very uncertain because they are simply an estimate as to what the development cost of a new plant would be, and I say this, that there is a great deal of that ninety-two thousand that is not strictly development cost, a great deal of that ninety-two thousand is due to the failure, you can say, on the part of the company or any one to exact a paying rate, and a great deal of it is also due to the fact they had to make a fifty per cent. additional investment which no one contemplated.

Assuming that there would be no fixtures cut off, and I think that is a rather hazardous assumption on the part of the company, the income from the new schedule would be approximately $19,250. That is the gross amount of rentals for every property connected there. From that we would have to deduct probably five to ten per cent. for bills which are not paid and particularly for houses which are unoccupied, where there is no charge made during a considerable period of vacancy, so I suppose we can say that about eighteen thousand or not over $18,500 would be the maximum which the company could charge upon its books. I believe that there would be a substantial number of fixtures cut out. I believe those fixtures cut off however, would probably be just about taken care of for the next couple of years by the new houses which were built and I think they would therefore be safe to assume that on the new schedule the company would actually receive about $18,500.

The question as to the operating expenses, the allowances for depreciation and so forth are all in the tables which have been presented to your Honors and I will not go into them now, except to call your Honors' attention to this fact, that the tables

show and the testimony of the experts on the other side show, that in their judgment, in order to operate this company, not profitably, but to yield a return on the investment, there ought to be an income of about from eighteen to twenty thousand dollars. The present gross income, the income under the present schedule last year was $12,400. I want to say this to your Honors also in regard to the proposed new schedule; it is the general result that that schedule was aimed to accomplish. If it should appear to the members of the board that certain specific charges which have been made or suggested in that schedule are onerous or unfair, the company does not insist upon those charges, but it does say it thinks some plan, some schedule ought to be approved which would give it substantially the same income. In other words, the question has arisen as to the relative charge for one fixture or another, the relative charge for different classes of buildings. We have endeavored to present in that schedule what seemed to us a fair and reasonable distribution of the charges, bearing as much of a relation as possible to the amount of use made of the sewer, but we do not insist upon the approval by the board of every particular and specific item there if it should seem that an adjustment which would produce substantially the same results would be more equitable.

Commissioner Donges: I do not recall that there was put in the testimony a statement as to the number of customers using one or more fixtures and the effect upon such customers of the new schedule.

Mr. Tatem: I think not, your Honor, and we would be only too glad, if your Honors would care

to have that, to have such a list prepared. You will remember it was asked for in the Burlington case and was furnished. We will be glad to furnish that list and furnish a copy to the other side. It will take a few days to get it off, but we will be glad to get it off. I think it is a matter of importance, because that shows just how the houses with any combination of fixtures will be affected by the proposed change of rates.

Commissioner Donges: If there is no objection, Mr. Weaver and Mr. Attorney General, we would like very much to have that put in. It will show definitely just how each householder will be affected according to the number of fixtures used, by the change in schedule.

Mr. Weaver: In approaching this matter, we shall present it in somewhat a different angle from that presented by Mr. Tatem. I am going to first take up the report of the engineer who was produced on the part of the sewer company. Mr. Boardman's total estimate of the value of this plant was $253,-272.17. In reaching those figures—of course, as I go along, I bear in mind the fact that Mr. Tatem here has stated that Mr. Boardman's estimate was $149,000, but what I am going to say somewhat bears on what he had to say later. As to this $92,-000, Mr. Boardman states in his report here, that the cost of developing the business to December 31, 1913, as per tabulated statement furnished him was the sum of $92,832.75, and added that to his tabulation of values. I say, that no part of that sum of $92,000 should be allowed this sewerage company, for the reason that that $92,000 is made up in an arbitrary manner without any basis of proper value

or accounting at all. Mr. Roth stated in his testimony that the company arrived at these figures by taking a sum which was debited to this account on the books of the company of $61,000, some $61,000, as I recall the testimony, in round figures, that he found on the books of the company; he knew nothing about it, did not know how it came there, what it represented or how those figures are made up. If the premises are wrong—if that $61,000 is not shown, has not been shown to this commission to be properly expended or expended in the development of this plant in any way at all or in a proper way, it seems to me it must be eliminated entirely, because if the premises are wrong, if the $61,000 was not expended and if it was not expended properly, this whole sum then—they proceeded to add to their cost the additional money they spent and added six per cent. interest on the cost of all this sum of money, and compounded the interest and accumulated the sum of $92,000 in that way. As I was going to say, if that $61,000 is made up in that way and not made up in such a way as the commission can judge that there was any proper expenditure there, it should fall entirely. If the $61,000 falls, because it is not before the commission in such a way as to determine how it was expended or by what methods it was expended and whether it is a proper expenditure, the whole thing must fall and it seems to me the $92,000 must go, because there is no testimony here, nothing at all, from which the commission can draw any conclusion that that $61,000 is a proper charge and it seems to me to pass on that sum you must have something before you that would make it clear that the $61,000 means something, that it means money, it don't mean that some bookkeeper has written a debit on their books of $61,000. That means

nothing, and, therefore, I say, that should come out and bear no relation to the proceeding here before the board. In addition to that, in Mr. Boardman's report, he charges discount on bonds. Mr. Tatem don't make any argument to sustain that and it is practically eliminated but just a word on that point; your engineer has testified here that from the regulations of the board, as I understand it, discount on bonds would not be allowed by the commission, where the bonds were sold at a discount the money represented in discount should not be taken into consideration as part of the value of the plant and properly it should not be taken into consideration because on that basis they can sell these bonds at any discount at all they see fit, and if you are going to make an allowance in one instance you should make it in the other. Take the bonds at fifty cents on the dollar and come along and say there is fifty per cent. which is lost, and should be capitalized, which would be in my judgment, unfair. Furthermore, they may trade these bonds in for work and material, as apparently was done in this case here and in that way the corporation, the constructing company who takes the contract and takes the bonds, makes a profit both ways, in building the plant, and therefore on good sound business reasons no discount should be taken into consideration. As to the rest of Mr. Boardman's statement, here he allows something for organizations expenses, about seven thousand. That may be high or may be low. I don't know what to say about that, but assuming that is a proper charge, we then have, taking off this cost of development, based on this arbitrary figure of $61,000 and the discount on the bonds, we have Mr. Boardman's cost brought down to about in round figures, $138,000 as the cost of the plant and

that is allowing them, not only large organizing expenses, allowing engineering expenses of seven per cent. and allowing them interest, an average interest of six per cent. for one year on the cost of the construction of the plant, so that everything is put in here in the interest of the company, and Mr. Boardman's estimate, if anything, is probably as high as could possibly be made out here from the standpoint of the company, so I say, if we deduct those figures and they seem to be properly deducted, we would have a round cost of $138,000 on Mr. Boardman's figures.

Now, the next is the estimate of Mr. Robinson. Mr. Robinson's estimate was the lowest of any and according to his summary from his report, copies of which are filed with the commission, we have a cost of the plant $121,799.80. Now, Mr. Robinson was very frank and admitted there were certain factors, just as Mr. Tatem has stated here, that he could not calculate on, because—there was one item for example, the cost of grading the disposal beds and the other item, the cost of pavement and he thought he might be low and he frankly admitted that was the best estimate he could give under the circumstances and he might be low. Mr. Hering backed up Mr. Robinson in his report, said he had gone over it and thought it was correct and proper but he would add, after hearing the testimony of the other engineers and after cross-examination of Mr. Robinson, he admitted that perhaps Mr. Robinson was low and he would add ten per cent. to Mr. Robinson's engineering statement and that ten per cent. added to the $121,000, as testified to by Mr. Robinson, would make the round cost of the plant, $134,000, on which he said he thought they ought to have an income of at least five per cent., but as I will

go on, it appears to me they are not entitled to any increase in rates here in order to acquire an additional income and I will proceed to make that clear, if possible. That leaves in Doctor Hering's statement a valuation of $134,000. It leaves Mr. Boardman, if my deductions have any value at all, $138,000, so they are only about four thousand apart and those estimates are somewhat near perhaps correct. Now, there was another estimate made here by Mr. Vosbury. His estimate of the present value was $123,000, his estimate of the cost to reproduce was $144,000, but his estimate of the cost to reproduce the plant, of the present value of the plant $123,000, that is a little higher than Mr. Robinson's report and a little lower than the estimate given by Doctor Hering as he judged from the figures made here by Mr. Robinson and the testimony he heard here as to the proper valuation of the plant.

Here in this case there is a contract and it seems to me that when the sewer company accepted this franchise from the borough, they accepted the risks of this business and one of the risks was that future legislation in this state might require a different method of disposal. It don't seem to me it is up to the commission here to guarantee a dividend or even an interest on these bonds to this company, because it made a bad bargain, and, therefore, it does not seem that these rates should be changed.

Of course, the commission has got to take the three of these reports and with the aid of their engineer can somehow arrive at a valuation of this plant as between these three reports. Of course, they vary in some instances, and in some instances the cost of certain articles are higher in one and lower in the other, but as Mr. Tatem says it is re-

markable the unanimity of the engineers as to the valuation of this plant; but assuming that Mr. Hering has some value with the commission and that his estimate of $134,000 of the value of this plant is correct, then I want to make this deduction; the present income of this company as testified to here was $12,433, it was testified that that was based on last year's income and that they have some additional consumers this year and that there has been a gradual increase of consumers or customers under the present conditions. That is at the present rate. At an increased rate, no doubt the consumers might fall off to some extent but under the present rate, it is fair to assume they would have a gradual increase of consumers, so that with the increase this year—they admitted, I think it was forty,—and with the probable increase next year, they would have next year an additional income of at least $500. I think that can be deducted fairly from the testimony. The probabilities are with the increased building operations in Collingswood they would get enough additional consumers to give them an additional income of $500. That gives them a total income—because we must look to the future in this thing; as I say, they took the risk of this business and, of course, if the business grows they are going to profit by it and that ought to be taken into consideration here, so with the additional $500, they would have a total income of $12,933. That is my estimate of the income next year. It might be a trifle high or low, but it will approximate $13,000 on their present rates. They have testified their operating expenses were $7,226. The plant is operated economically and it would be to their interest to keep on operating it economically and the additional number of consumers would hardly increase

the operating cost of this plant because after all, they can take on a great many additional customers and their cost of operating would not be much greater. I don't know the details of this $7,226, but that is made up of wages and so forth. Mr. Hering thought they ought to have one per cent. for depreciation. On the basis of $134,000 we get $1340, and if that is added to $7226, we have a total of $8566. There is no claim here that they have not sufficient money to properly operate the plant. The plant has been properly operated and proper service is being given. This $1340 and the $7226 makes a total of $8566, which deducted from $13933, which I have estimated next year, the early part of the year as their income, you have net revenue over and above all operating expenses and one per cent. for depreciation, of $4367 and that leaves them three and a quarter per cent. on the present valuation of the plant, so that they are getting a fair return for their investment. Their books show that their cost was $151,000 but in that is included the deduction on these bonds. They are taking these bonds at par. The discounts, according to Mr. Boardman, on the bonds was $21,000. If that is taken from the $151,000 you have about $130,000 as the value of the plant, the actual cost of the plant was at $130,000. That is the sum, it seems to me, on which their income should be estimated, not on the $150,000 which the plant did not cost. That $150,000 is their book value. I am allowing on my basis of calculation the value of $134,000 which, after all, is an estimate. All these engineers' reports here must be taken as estimates. You have an actual income on $134,000 of three and a quarter per cent. above all operating expenses and an allowance of one per cent. for depreciation. That being the case,

and bearing in mind that there is a contract here with the borough, that this company took the risks of this business, there is no reason why they should, —they should not come to this commission under the circumstances and ask for an increase of rates. There is no reason why this commission should pick this company out, or any other public utility, and guarantee to the men who put their money in the business, to do well or authorize whatever the exigencies of the situation may be, and guarantee them that their money they put in there should be worth one hundred cents on the dollar. This commission, in the case of the application of rates by the Wildwood Water Company, wrote this—and I believe in the Wildwood case there were no rates by ordinance fixed.

Commissioner Donges: Yes, that was by contract; that is to say, the theory upon which the petition was filed was.

Mr. Weaver: There was a contract?

Commissioner Donges: Yes. The contract fixed a price of twenty-five cents a thousand gallons.

Mr. Weaver: "While this board has power to fix rates and establish rules and practices governing service without regard to ordinance provisions or contracts between municipalities and utilities, we would not feel disposed to exercise such power to relieve a utility from the burden assumed by such ordinance or contract in any case where it appeared that a municipality or its inhabitants would, under such ordinance or contract, receive rates or service more advantageous than this board would be justi-

fied in ordering, unless it appeared that such ordinance or contract imposed terms involving such loss and hardship as to make it impossible for the company to render safe, adequate and proper service."

There is no question here but that this company is rendering safe, proper and adequate service. The only question here is to give them six per cent. on their investment instead of three and a quarter, and right here, even if we take the figure at $150,000 and assume that to be right, and I say there was no testimony, the book value is $150,000 and if you take $20,000 off for bonds they are brought down to $130,000 so they have not $150,000 upon which to base an estimate from which they should be paid six per cent. interest, but they should not be entitled to six per cent. interest on this money; they are getting three and a quarter per cent. on their investment and that is one of the risks of their business, one of the risks they took when they established this business. Therefore, it seems pertinent to me to quote from what the commission said in this Wildwood case. "A company may agree to give rates and service upon terms that will not accord to its stockholders a fair return upon the capital invested. We would not be disposed to permit an increase of rates in any case where an agreement between a municipality and a utility exists if the only benefit from such increase of rates is an increase of dividends."

The increase of dividends here is nothing but an increase of interest on bonds. The bondholders took the risk of a return on these bonds when they took them from the sewer company for their debts or however they took them, whether they bought them; they bought them and took that risk. There is no reason why, because they have taken these bonds

at a discount, they should be made good by this commission and given security that is worth par because this commission makes it so.

"In such case the company would be presumed to have acted with a knowledge that its earnings would be reduced by such terms and to be willing to wait for adequate returns upon the investment."

Therefore, under what the commission has already said in this Wildwood case it would seem to me no case had been made out here which would permit the commission to raise these sewer rates, and under the circumstances it seems to me, even if their plant is worth $150,000, I was going to say with the surplus over and above their operating expenses and one per cent. for depreciation, they would have between two and three per cent. on their investment, and as I said before ——

Commissioner Donges: Suppose the two or three per cent. in excess of actual operating expenses should be insufficient to pay fixed charges upon funded debt; would you say then that the stockholders should be required to make up from their own purses the deficiency?

Mr. Weaver: Yes; I don't see why a stockholder should be put in any different position than the bondholders are who took these bonds. They took them at their own risk, and why should they, any more than any other business enterprise, be guaranteed this return?

Commissioner Donges: Don't you meet this practical difficulty, however, with the bondholder; that he has a written contract which affords him a certain return with a lien upon the property of the

company subject to foreclosure and sale—isn't the company in danger and the public at the same time, the one in danger of losing its property and the other in danger of losing service?

Mr. Weaver: In the first instance, in no more danger than any other citizen is who puts money out on investment, and why should he be protected? I cannot understand that principle—it may be proper—but I don't believe it is a sound one.

Commissioner Donges: I am simply asking whether the company ought to be accorded rates which are adequate to pay fixed charges. Are not the debts of the company, fixed debts like a mortgage, indebtedness of such a nature that in order to protect the property of the company and at the same time that means protection of service, rendering of adequate service, ought not the company to secure sufficient to pay such charges? That leaves out of consideration a return on any stock.

Mr. Weaver: No. From my viewpoint I cannot see why the bondholder who took these bonds—take a railroad company, you would not guarantee, you could not guarantee a return of rates to a railroad company that would guarantee a return on their bonds, or interest on their bonds.

Commissioner Donges: Don't you meet the practical difficulty—I want to get this view to you so as to have you express yourself on it—don't you then meet the practical difficulty that in case of foreclosure, assuming the holders of the bonds should foreclose for non-payment of interest, and suppose that the principle should be broadly as-

serted by commissions and adopted as public policy, state policy, that investors in securings of that character will not be permitted to earn sufficient to pay interest charges, would it be possible to secure capital upon, let us say the sale of that property in the first instance for a mortgage debt, would it be possible to secure capital to carry afterward the enterprise if such investors cannot be reasonably sure of the payment of interest charges?

Mr. Weaver: What would happen would be this; and what should happen would be this: The mortgage bondholders would foreclose their mortgage and operate the plant.

Commissioner Donges: Would they, or would they sell?

Mr. Weaver: If they did not, the municipality would do it, the people would get their just rights in the matter.

Commissioner Donges: Doesn't it mean then—wouldn't that mean that, carried to its logical conclusion, it would be difficult to secure private capital for the operation of these utilities?

Mr. Weaver: Of course, it might be. Then the municipalities would be obliged to serve their own people and they would have no trouble at all to get the capital, so the people would not suffer.

Commissioner Donges: I want to get your view, I am not expressing any view myself.

Mr. Weaver: That is my view. I am radical on this point. It seems to me, under the circumstances here, there should be no increase in rates.

Mr. Wescott: You cannot beat a corporation. The people of the United States have been trying now for several generations to surround them, hold them in check, keep them within bounds, and this commission scheme was devised for that purpose. I used to love to contemplate it as an animal with teeth that would catch these corporations and hold them, and I have no doubt that the great public impulse which found its expression in this commission was stimulated by that idea, hope and prayer. Now, we find that through the very instrument that we devised to hold them in check they may become our masters. You have got here a concrete case, you haven't a generalization. You have a case, you have a fact and not a principle, so the very questions that the chairman put to Mr. Weaver are inappropriate, I respectfully suggest. It is not a question of what a general principle ought to be, it is a question of this case now, here before you. What is this case? I have not studied it carefully but I am very much interested in this idea of reconstruction principles and society and government and all that. This case is this; about 1901, if I recall it, some people, I don't know who, I don't know whether your Honors know, took it into their heads that they saw a chance to make some money at Collingswood by building a sewer system, and they built it. That was ten years before this commission ever came into existence or was thought of, and the people that went into that venture then were not relying on this commission yet to be born, ten or twelve years, to come to their rescue and help them. They took their chances. Exactly what was done this commission don't know, any more than I know. You have here some figures in a book. That is all the proof you have. You haven't a living

witness or a single fact to tell you how much this property cost. You have two things to figure upon, first, the figures in those books, and next what you think the plant would cost now if somebody built it. What the plant would cost now is one thing. What it did cost is another thing, and what it did cost this commission don't know and has no means of finding out and the people who have made this application were careful not to produce any proof here except figures in a book. Figures lie as much as anything else and when corporations are dealing with them they are very apt to take on varying hues, qualities and degrees of potentiality, accuracy and inaccuracy, according to the question involved. Who holds the stock and who holds the bonds of this institution don't appear before this commission. How much the labor cost, how much the pipes cost, don't appear except from these books. What do they prove? What do they prove? I will venture the assertion that if we could get at the truth of this thing that this institution did not cost two-thirds or one-half of what these books show. Take the bondholders and stockholders; how much money did they part with for bonds and stocks? Lord only knows; I don't. I would like to have them all now if I was sure that this commission would do what this corporation is praying it for to do. Now, mark you, this sewerage company for ten years I will assume, nine or ten years, after establishing this plant went on and did business and they were content; they did not go into bankruptcy, they did not suspend and the presumption is they were satisfied with what they were getting or they would not have gone on with their business. Now, I say, that when you come to this fraudulent pretense of $60,000 development money, that that development money

should be taken into account by three conscientious men for the purpose of salting the consumers in Collingswood to the advantage of stockholders and bondholders who hold the stock and bonds of this company, for what cost the Lord only knows, I say it is a fraud and don't hesitate to say so. I say that figuring up compound interest and all, that is evidence of bad faith and it justifies me in saying you cannot beat a corporation. Give them the opportunity and you cannot beat them; open the door and they will go through it.

Now, these people for ten years have been satisfied with this business and have been making money enough out of it to keep their mouths shut until pursuit it was brought to their attention that the great utilities commission of the state of New Jersey would breathe new life into their business, would raise their bonds from fifty per cent. to a premium by the stroke of a pen that would take their stock that was valueless on the market and valueless in the pockets of the holders and give it value, all in the public interest. It is a fraud. The efforts to fool this commission do not commend this application in my judgment. Now, I say, they haven't gone on with this business for nine or ten years silently and satisfied, they are estopped now from complaining and the statute of limitations, if it could ever apply to a case in the Lord's world, ought to apply now, and your Honors ought to say, your claim of $60,000 is ruled out, is too old, too stale, it looks too much like fraud, it looks too much like old fish or smells like them. It ought to be ruled out. This is serious business. I have a little sympathy for the people down in Collingswood. What guarantee have they that this corporation will keep on serving them? Suppose it quit, suppose it quit. You can-

not make them go on, this commission has no power to compel this corporation to go on with its business. Suppose it quit; what would the people do then? They are asking you under these uncandid circumstances by your decree to breathe, by the stroke of a pen, great value into stocks and bonds that apparently have very little value, and in the face of the fact that for ten or eleven years they have been satisfied to go on and do this business with such income as they have. I reiterate you cannot beat a corporation. Here they have a chance, because they call themselves a utility, of coming before this body and saying we want you, notwithstanding what we have done, notwithstanding we have been silent, we have been silent for the last year,—they just got onto this trick—notwithstanding they have been content to go on they want you now to double the value of their property by a stroke of the pen. It ought not to be done.

As an American citizen, I have been led to believe that there are certain sound positions to be taken by those who are responsible to the public. The fundamental principle upon which any body should act is, that every citizen, corporate or natural, in the state of New Jersey stands equal before the law. It is the very essence of our form of government, that nobody should be protected by the government as against somebody else. The doctrine of special privileges we are condemning constantly from morning until night. You are asked now not only to increase the value of the stocks and bonds in this case, double the income of this company, but thereby to give it perpetuity. You cannot weaken the force of that statement by saying they may quit, if you give them enough to keep on. They are asking you in effect to guarantee, and you will, if you

grant their prayer, the perpetuity of this institution, because of its value. You will guarantee the gilt-edgedness of the bonds and stocks of this company if you grant their prayer. That is a special privilege. Somebody may criticise that statement and say, "Oh, no, it is not, because this is a public utility. To give this commission any footing at all there had to be a definition of what constituted a public utility and it is defined." My good friend here, at my request, brought me a copy of the act and I reread that section to see what public utilities are. In order to make any progress at all with this great principle of public commissions you had to have a definition of public utility. The difficulty of the situation is—you will pardon me for suggesting it—in my humble judgment, you cannot make a valid distinction between a public utility and a private utility. What is the difference? If I am a farmer and bring potatoes at your door, I am bringing you a utility. It is just as essential to your comfort and existence as it is to mine, but if I am a dozen farmers in one and the utility takes on a different quality and a different nature entirely, but it is a utility all the same. If I am furnishing electric light, it is a utility. It is no more useful than the clothes I wear on my back or the food I put in my stomach. You say, your criticism is wrong because as a farmer, when you produce potatoes and cabbage and bring them to my door, while they are a utility it is not a general utility. My rejoinder is, it is a general utility, everybody eats cabbage and potatoes or some other form of food, and it is not true that everybody consumes electricity or gas; only a few consume electricity and gas and those are the few that are crowded in a spot and to whom it is a great convenience.

I am interested in this thing in a little way and thinking about it, because I see how important it is, and I have seen some concrete cases. For instance, I have seen another commission in this state called the water commission; I have seen this particular borough apply to that commission for permission to supply its citizens with water and I have seen that commission deny that application on the ground that the citizens of the borough were supplied with water by a corporation. You cannot beat a corporation. I said to them right away, why, ain't you discriminating there; ain't you establishing a monopoly there; ain't you compelling these free people to accept water from this corporation against their will? It may be no bigger than a man's eye, but it is a cloud in the sky, and as soon as the people in this state and this country find that the doctrine of special privilege, the principle of monopoly, are being established by commissions, then those commissions will go out of existence. I don't say this commission will, but such a commission as that water commission. The people of this country are not going to stand for discriminations in favor of anybody, natural or artificial. They are not going to stand for special privilege in favor of anybody, natural or artificial. You cannot get up a scheme of that sort which public conscience and intelligence will sustain. Therefore, while I appreciate the necessity of this commission as a great instrument for good and while I bow before it, its splendid work done up to this time, I have seen one or two mistakes, one or two departures from the great principles of equality before the law, and I have confidence in this commission, I have confidence in its personnel. While I know you all, the president of this commission I know intimately and

I have as much confidence in him as I have in my own conscience, I have confidence in his judgment and I have confidence in the judgment of the three men constituting this commission, and I cannot persuade myself to believe that under the circumstances of this concrete case, when these people entered into this scheme with their eyes open, when they pursued it for eleven years with entire satisfaction as to their income and profit, that in bad faith, with deception in their mouths and lying figures on their tongues they can come to this commission and say, make us perpetual, make us a monopoly by guaranteeing the value of our bonds and stock and property, by compelling the individual consumer to pay more for the service rendered than they have ever paid before, notwithstanding the equitable—the binding in my judgment—arrangement originally entered into between the body politic corporate down there and this corporation that the rates should not exceed a certain limit. This corporation was satisfied with those rates until it saw an opportunity to come here and say we ought to have six per cent. and more than that, we ought to have a guarantee. That would be an abuse of power, that would be taking sovereignty and backing this corporation to the extent of its assuring its value, assuring its income at the expense of helpless people. I don't believe the judgment of this commission will allow it to go that far. These people went into this thing with their eyes open, they were satisfied, they have enough now—if they haven't, let them quit. That brings us right face to face in the last analysis of the doctrine of competition. If you say no, we won't let them quit, by your judgment, we won't let them quit, we will make them stay there, first, I say, you cannot make them stay there. Of

course, you will make them stay if you give them enough to make them stay there. A man won't run away from money. I say, if by your decree, if you do answer their prayer, you not only perpetuate them as an artificial reality, but you necessarily exclude the possibility of competition. You say, why, how? Because they get so much profit out of this undertaking that no other body or set of men will undertake to render the same service. You say, that don't hold good. I say it does hold good, because if some other body of men, seeing how profitable this thing is, by the judgment of the utilities commission of the state of New Jersey, undertake to supply those people through another corporation with the same service, what position will the situation then be in? In undertaking to do that, they may expend five hundred thousand dollars and do it honestly, not only have their books, but have their proof before you that they have expended five hundred thousand dollars to prepare themselves to render the same service. Well, then, to be consistent, what would you have to do? Decree that the consumers pay enough to guarantee them six per cent. interest on this vast expenditure of money or if you don't do that then these two companies would have to compete with each other irrespective of this commission and if they went to competing with each other irrespective of this commission, then what would happen? Rates would go down. But according to the argument of my friends here, then they would both be entitled to appeal here to this commission in order that rates might go up. You see, the problem is not without its difficulty and my suggestion is—pardon me for making it—my suggestion is, that these people ought to be content with what they have got. They have been, and you

ought not to increase the burden of these helpless consumers under the circumstances in view of the enormous consequences and difficulties of the problem that is involved and what it may lead to in the end. Don't, in other words, encourage these people too much. Take a railroad company, take any other company, take some of the oldest corporations in the state, fifty or sixty years old. Suppose they should come to you now, bring their books and say, Oh, we have some millions in development, in sustaining ourselves, now we are entitled to have six per cent. on all those millions. It is a dangerous principle, it is a principle that this commission, I respectfully and earnestly suggest, ought not to sanction unless the situation be one where it was necessary that this commission should intervene in behalf of the corporation, it ought not to do it. In this case, it is not necessary.

Commissioner Donges: What situation would you regard as one of necessity?

Mr. Wescott: It is difficult for me to conceive of a situation that would be necessary.

Commissioner Donges: Would you say, if a corporation, a public utility was not earning sufficient to pay operating expenses, that it ought to be afforded rates even if they were in conflict with a contract?

Mr. Wescott: If I was the utilities commission, I would not even allow that. I would say to them, stand on your own bottom just as every creature must. If you haven't the gumption and ability to make this business go, get out and try some other

business. Since the world began the principle of competition has been the guiding principle of human conduct. All animal life is based on that principle. That is the important test. The best minds of the world are devising schemes and ways to circumvent and depart from the great principle of competition. I don't believe it can be done. I have read everything that has been written, practically, on the subject, worth reading. I have looked at it in my feeble way from every angle and every standpoint and the more I contemplate it the more I am convinced that any human effort to avoid competition is fatal. You cannot do it. That don't destroy altruism because the brother who is competing with you and fails will, by his failure, appeal to your helping hand and you will give him, but here the attempt is to destroy competition, to create a condition of things which amounts to a perpetuity so far as this institution is concerned. I say again, in answer to your Honor's question, that if a utility defined under this act, comes before this commission and presents a state of facts which shows that utility has not friends or money or quality to reach success on sound business and competitive methods and principles, then this commission is not justified in saying that in those circumstances we will assure your success by making helpless people pay for it. That is the answer to your Honor's question.

Commissioner Treacy: How do you make the helpless people pay for it? They don't have to take the utility if they don't want it.

Mr. Wescott: If they don't, then comes the board of health right to them; tie up to this institution, says the board of health. If you don't, we will get the constable after you.

Commissioner Treacy: You take in every utility, a public telephone utility?

Mr. Wescott: Yes; there they don't.

Commissioner Treacy: Mr. Attorney General, before I came on this board I entertained somewhat similar views as to yours, as to the necessity of competition in the field of public utilities. I found there were principles laid down by this board and utility boards in other states which conflicted with that notion and which apparently held that competition amongst public utilities is not, as a general rule, for the benefit of the public.

Mr. Wescott: Yes, I am well aware of that.

Commissioner Treacy: And that where a utility is operated in a given locality it is entitled to earn an income sufficient to pay on its investment.

Mr. Wescott: Yes.

Commissioner Treacy: And that the reason, the only reason why public utility boards do not look with favor upon competition of other utilities in that district is, that eventually the competition will be wiped out either by an arrangement or combination between the companies, between the utilities or that both will go to the wall, and in either event the community at large suffers. I would like to know what your view on that is.

Mr. Wescott: My view on that is very clear. I know that is the reasoning of some of the commissions in the union. The fallacy of that reasoning

is just as I say; that if you protect the utility against competition, you fasten upon the community a master in the shape of a monopoly, that in your effort to escape what you call waste, you do that thing. You are overturning equality before the law in the last analysis and I find no way to escape the consequences. If A and B are in competition, it involves a waste necessarily. If A and B as natural persons are in competition ——

Commissioner Donges: Pardon me; doesn't that theory at the same time involve necessarily permission to the person furnishing the service or commodity, of the privilege of charging whatever competition will permit to be charged, whatever that utility can levy? Doesn't it work both ways, and wouldn't that principle, the application of the thought that you are expressing, deny the right to regulate and fix rates if they were regarded as being too high and unreasonable, at the same time? I wanted to suggest that thought to you.

Mr. Wescott: I haven't quite finished my answer to Judge Treacy, but you see the point I have in mind. I say waste is involved in a system of competition. A and B can never succeed in the same measure and same degree, but the importance of having A and B strive in competition, human experience and history have proven to be so vastly important that the ingenuity of man cannot substitute therefor a better scheme. It is nature's scheme, yet it involves waste. So, the establishment of two utilities under the definition of this act in the same community, may be prohibited as it has been on the ground that it is an unnecessary waste, but you cannot escape the repudiation by that view of the doc-

trine and the actuality of competition, and I say now in answer to the chairman, that if there be but one utility in a community and if nobody else wants to take on the exercise of that utility in that community, then you have an ideal situation for applying the principle and regulation. You can apply it perfectly, and you can apply it beautifully and you can apply it humanely and with great justice and equity. You can say to that single utility, we are satisfied from investigation that a competitor in the same business would produce a return or level of rates so and so and so and so, therefore, in equity and justice to the whole community, protecting you at the same time, we will impose this, that and the other regulation, but the very instant you get a position where competition can be exercised it is very dangerous and un-American to deny the competition. I reiterate again, if by your judgment you should grant the prayer in this case and give the stocks and bonds of this institution such fixed value as they ask you for, you would then be destroying competition and fixing upon this community a monopoly and I cannot see it in any other way.

Commissioner Hillery: Assume the reproduction cost of this plant as figured out by these various engineers and which are almost identical with the cost to the community of a plant necessary to furnish the community, the municipality would have to pay rates commensurate with that investment?

Mr. Wescott: Sure.

Commissioner Hillery: Would it be just as fair to permit a private company operating in that municipality and with the same investment, rates that

would be commensurate with that investment, no matter what their past history was?

Mr. Wescott: I don't catch the question.

Commissioner Hillery: If a municipality built a plant necessary to supply itself, assuming this reproduction cost is about correct, it would spend about that much money. You would have to pay rates commensurate with that investment. Is it fair to permit this private company which is now operating to earn on the same basis?

Mr. Wescott: It might be, but the trouble is this, if you grant their prayer, then you exclude the possibility of another company establishing a plant there.

Commissioner Hillery: What benefit would it be to the municipality to have another company?

Mr. Wescott: It would be this benefit, that competition would reduce rates.

Commissioner Hillery: Sometimes it drives them up.

Mr. Wescott: It does, sometimes.

Commissioner Hillery: Especially if they get together.

Mr. Wescott: Mr. Commissioner, I beg you to understand I am working at the enormous consequences of the principle involved, not what may happen in the case of A, B or C. It is the principle

involved; and I would like to say further to Judge Treacy I have observed a growing antagonism to some of our utility commissions and it arises out of the very circumstances you suggest. It arises out of the very ideas I have roughly suggested, therefore, in order to preserve the immense usefulness of this body it ought to exercise its judgment with great care and in this case ——

Commissioner Donges: Let me ask—you have read the board's opinion in the North Wildwood case in which it was said that where a contract had been entered into between a municipality and a utility respecting the rates to be charged that it would not permit an increase of rates if the result is merely to afford stockholders ——

Mr. Wescott: And bondholders.

Commissioner Donges: Nothing said about bondholders, not a word about bondholders. It did not deal with the situation with respect to bondholders and that is why I asked Mr. Weaver whether there was any difference, whether he regarded it as being any different in case that one is capital invested by persons who do not expect a profit out of the venture, as the stockholder does, or a person who advances capital for the purpose of creating the property and who under the contract with the utility is guaranteed a certain return upon the mortgage; are your views in conflict with the view expressed by this board in the North Wildwood case?

Mr. Wescott: No, I don't think it is. I was a great deal delighted with that Wildwood case.

Commissioner Donges: Do you see any difference, is the question I put to Mr. Weaver, because it is a question I think we ought to consider. Is there any difference in capital, in the way it should be regarded by this board in fixing rates and the return, between capital put in by a stockholder with a view to profit and with a view to taking chances undoubtedly upon the success of the venture, and that of a person who says I have a lien upon the property and I anticipate the guarantee of return and no more; should they be regarded in any different light?

Mr. Wescott: Undoubtedly they should, I think you recognize the difference.

Commissioner Donges: I should like to have your view on that subject.

Mr. Wescott: I don't suppose you think it of any consequence to answer your question.

Commissioner Donges: It is, because it is a question the commission ought in some cases to deal with and it is possible it is a question we may have to deal with in this case, and for that reason, before passing upon it, we should like to have the views of counsel, if it becomes necessary to deal with that phase of the question.

Mr. Wescott: I don't believe it will become necessary in this case, because on their own figures they are not entitled to it, just as Mr. Weaver demonstrated. My talk was one of a general character.

Report

REPORT.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the Collingswood Sewerage Company for Approval of a New Schedule of Rates.	REPORT.

J. Fithian Tatem, for the company.
F. D. Weaver, for the borough of Collingswood.
J. W. Wescott, for citizens of the borough of Collingswood.

This case is governed by the views expressed by the board in the Burlington sewerage case just decided. The petitioner was organized under the "Sewerage Company Act" of 1898 and was incorporated in 1900. Pursuant to the provisions of that act it applied to the borough of Collingswood for the necessary consent to establish its plant and distribution system and the borough passed an ordinance granting the consent and fixing the maximum rates to be charged by the company. The company established its plant and for the last thirteen or fourteen years has been operating under the rates fixed by that ordinance and consent. It does not appear that the refusal to allow the increase of rates

requested will result in the rendition of unsafe, inadequate or improper service to those to whom the company is under obligation to serve with its present facilities, nor does it appear that the rates are so low as to be confiscatory. No question of discrimination in rates arises. The board is not inclined therefore to set aside a contract solemnly entered into between the borough and the petitioner.

The following statement will show that the company earns a return of more than three per cent. upon the valuation of its property as testified to by the company's expert and also as taken from the books of the company.

Boardman's estimate of cost to reproduce	$149,187.61
Company's book cost	151,918.00

As Boardman's estimate of depreciation was $10,724 and the amount carried on the company's book is $12,142, the present value of the plant, used and useful in the public service is about $139,000. The gross income for the year 1913 (the last year in evidence), was $12,433.36. The operating expenses, taxes and insurance were $7,226.52, leaving a balance of $5,200, which, as above stated, furnished a revenue of more than three per cent. upon the company's property investment.

Counsel for the petitioner suggested in his opening remarks at the first hearing the possibility of the existence of exceptional conditions in this case, which, if proven, might be sufficient to distinguish it from the Burlington Sewerage Company case. His statement was that the Collingswood Sewerage Company, when it accepted its charter and the authorization and consent from the borough of Collingswood to install its plant and distribution system in that borough, contemplated the establishment of a dis-

posal system which at that time appeared to be legal and satisfactory to the state board of health and had proceeded with the work in reliance upon the sanction given by the state board of health; and after the expenditure of a considerable amount of money in the construction of a disposal plant, the sewerage commission, which came into existence at that time, ordered the installation of a different kind of sewage disposal system, thereby increasing the investment cost. This suggestion, however, was not followed up by proof, and for the purposes of this case must be considered as abandoned by the petitioner.

Preceding the filing by the petitioner of its proposed new schedule of rates the board received numerous applications for orders requiring the petitioner to make extensions of its service. Hearing was held on these applications and the conditions pertaining to the same were investigated by the board's engineer. It appears those desiring to connect to the company's system cannot do so unless the system is extended at an expenditure of upwards of seven thousand dollars.

The statute provides that the board may order extensions where (subdivision (c) section 17, Public Utility Act):

> "* * * * in the judgment of the board such extension is reasonable and practicable, and will furnish sufficient business to justify the construction and maintenance of the same, and when the financial condition of the said public utility reasonably warrants the original expenditure required in making and operating such extension."

While it appears that the board would not be justified in annulling against the protest of the munici-

pality the contract under which the company is bound to afford service at its existing rates to those who can be given the same with the distribution system as now constructed, it does not appear that the financial condition of the company is such that it can be reasonably expected to obtain the seven thousand dollars of new capital needed to make extensions. There appears to be no doubt of the desirability of these extensions, but the board is unable to find that it is reasonable and practicable for the company in its present financial condition to make them. We must therefore decline to order them. It seems to us that this is a matter which should be given serious consideration by the borough as it may be that relief can be had only by municipal action which will make it possible for the utility to obtain new capital.

Dated March 22nd, 1916.

BOARD OF PUBLIC UTILITY COMMISSIONERS.
By
(Signed) JOHN J. TREACY,
(Signed) JOHN W. SLOCUM,
Commissioners.

(SEAL)

Attest:

(Signed) ALFRED N. BARBER,
Secretary.

I Hereby Certify the foregoing to be a true copy of report made and filed by the Board of Public Utility Commissioners at a meeting held Wednesday, March 22nd, 1916.

(Signed) ALFRED N. BARBER,
Secretary.

DISSENTING OPINION.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the Collingswood Sewerage Company for Approval of a New Schedule of Rates. } DISSENTING OPINION.

By Commissioner Donges:

I vote to deny the application for an increase of rates for the reasons expressed by me "In the matter of the application of Burlington Sewerage Company for approval of a new schedule of rates."

Dated March 22nd, 1916.

(Signed) RALPH W. E. DONGES,
Commissioner.

I Hereby Certify the foregoing to be a true copy of dissenting opinion filed by Commissioner Donges at a meeting held Wednesday, March 22nd, 1916.

(Signed) ALFRED BARBER,
Secretary.

PETITION FOR REHEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF NEW JERSEY.

In the Matter of the Application of the Collingswood Sewerage Company for Approval of a New Schedule of Rates.	PETITION FOR REHEARING.

To the Board of Public Utility Commissioners of the State of New Jersey:

Your petitioner, Collingswood Sewerage Company, respectfully represent: That in the year 1914 it filed with your honorable board a proposed new schedule of rates for sewer service in the borough of Collingswood and asked that your board approve the same; that testimony was taken and argument had upon said application, and a report thereon filed by your honorable board on March 22d, 1916, but that no order has as yet been entered in this matter; your petitioner prays that your honorable board will grant to your petitioner a rehearing on the matters embraced in its said application for the approval of a new schedule of rates, and that upon said rehearing your board may take into consideration the conditions under which your petitioner has been obliged to operate its plant from January 1st, 1914, to the

present time, and the conditions which render your petitioner unable to continue to render safe, adequate and proper service.

In particular your petitioner begs to call the attention of your honorable board to the following facts:

1. Your petitioner has endeavored to follow out the suggestion contained in the report of your honorable board that action by the municipal authorities of the borough of Collingswood might possibly be obtained in order that your petitioner might finance some much needed extensions of its sewerage system in said borough. With this end in view the officers of your petitioner had several interviews and meetings with the mayor and borough council of the borough of Collingswood in June, 1916, for the purpose, if possible, of arriving at some arrangement whereby a schedule of rates might be adopted which would be mutually satisfactory to the borough and to your petitioner, and which would make possible the extension of the service of your petitioner to certain sections of the borough which were badly in need of said service. Your petitioner regrets to say, however, that no agreement was arrived at as the municipal authorities evidently believed that this matter should be determined by your honorable board. Your petitioner also expressed to the Collingswood borough council the willingness of your petitioner to refer this whole matter to arbitration, if they should so desire. As stated above, no progress has been made towards the adjustment of the difficulties in question.

2. During the years 1914 and 1915 extensions were made to petitioner's sewer system at a cost of $2531.18, but your petitioner was obliged to require

those desiring these extensions to provide the funds necessary to pay for the same. At the present time written requests have been presented to your petitioner for extensions to serve ninety-five buildings actually erected or in course of erection, which extensions it is estimated would cost $11,668.25. In addition to the above, extensions have been requested to take care of houses to be built in the immediate future, which extensions, it is estimated, would cost $3920. All of the above extensions should be made promptly if your petitioner is to render proper service, and the development of the community is to receive reasonable encouragement. Your petitioner is, however, unable to provide the funds necessary to make such extensions.

3. The conditions at your petitioner's pumping station urgently require the erection of a new pump house at an estimated cost of $2500. This replacement petitioner is not at the present time in a position to finance, because of its meagre revenue.

4. Since the hearing before your honorable board the taxes on the property of petitioner have been nearly doubled. The assessment of petitioner's personal property has been increased from $34,100 in 1913 to $71,000 in 1915, an increase of more than 100%. The total taxes of petitioner for the last five years are as follows:

1911	$929.17
1912	992.58
1913	1114.34
1914	1450.15
1915	2012.97

5. In the report of your honorable board it was assumed that the sum upon which your petitioner

should be allowed to base a fair return was the reproduction value of its property, less the accrued depreciation. Your honorable board is reminded of the fact that in determining this figure no allowance was made for unearned depreciation, nor for the cost of developing the business, which items have heretofore been considered by your board in similar cases. Neither was any allowance made for annual depreciation, which, according to the repeated rulings of your board, must be considered and provided for. It is generally conceded that at least one and one-half per cent. for annual depreciation of a sewer property should be allowed. The value taken as a basis for the allowance of a return in the report of your honorable board was $139,000. It must be noted, of course, that this includes no item for unearned depreciation nor any development cost whatsoever. The extensions made in 1914 and 1915 cost $2531.18, which, added to the above valuation, makes in round figures $141,500 as the value arrived at in the manner stated above. The absolutely necessary allowance of 1½% in annual depreciation, which amounts to $2122.50, together with the increase of the item of taxes by nearly $1,000, as above set out, will undoubtedly reduce the annual return upon the $141,500 above mentioned to much less than 3%. It must not be forgotten that the above valuation takes no account of unearned depreciation and intangibles which have heretofore always been considered by your honorable board in determining the base upon which a public utility company is entitled to earn a reasonable return.

Your petitioner therefore respectfully represents that the schedule of rates under which it is at present operating fail to yield sufficient revenue to enable your petitioner to render safe, adequate and proper

service; and your petitioner therefore asks that your honorable board will grant a rehearing of its petition for the approval of a new schedule of increased rates, and will fully examine this entire matter, with particular reference to the conditions as they have existed since the hearing aforesaid and as they now exist, and grant your petitioner such relief in the premises as may seem adequate to enable your petitioner to carry on the purposes for which it was incorporated.

And your petitioner will ever pray, etc.

COLLINGSWOOD SEWERAGE COMPANY,
By RICHARD T. COLLINGS,
President.

Attest:
H. BAYARD HODGE,
(SEAL) *Secretary.*

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, *ss.*

H. BAYARD HODGE, of full age, being duly sworn according to law, on his oath says that he is the secretary of the Collingswood Sewerage Company; that deponent has read the foregoing petition, and that the same is true to the best of his knowledge and belief.

H. BAYARD HODGE.

Sworn and subscribed to before me this 31st day of October, A. D. 1916.

A. REYNOLDS COLESBERRY,
(Seal) *Notary Public.*
My commission expires March 1, 1919.

REPORT.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the Collingswood Sewerage Company for Approval of a New Schedule of Rates. } Report.

Wescott & Weaver, for Collingswood.
J. Fithian Tatem, for the company.

For the reasons stated in the matter of the Burlington Sewerage Company application the company will be allowed to file a new schedule of rates, sufficient to earn an additional return to the amount of the taxes imposed by the municipality since the former report and order in this matter.

The order heretofore entered, denying the increase in rates is reaffirmed, except to the extent of allowing an increase sufficient to pay the increased taxes referred to herein.

Permission to file a new schedule as above suggested is granted.

Dated March 21st, 1917.

BOARD OF PUBLIC UTILITY COMMISSIONERS.
(Signed) JOHN J. TREACY,
(Signed) JOHN W. SLOCUM,
Commissioners.

(Seal)
Attest:
(Signed) ALFRED N. BARBER.

DISSENTING OPINION.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the Collingswood Sewerage Company for Approval of a New Schedule of Rates. } DISSENTING OPINION.

Wescott & Weaver, for Collingswood.
J. Fithian Tatem, for the company.

By Commissioner Donges:

Application was made by the company for further consideration of its petition for leave to increase rates. The board, on such rehearing, approved a limited increase of rates, but denied the general advance prayed for. An appeal from such finding now appearing certain, I feel it is due to the parties interested and to the Court, to express more fully the considerations which moved me to vote to deny any of the increases sought by the company.

(1) The first question to be considered is whether this board has power to fix rates in disregard of ordinances and contracts of municipalities fixing such rates in the absence of legislative authority to enter into an irrevocable contract.

The jurisdiction of the board as a legislative agent to supervise and regulate utilities, both as to service and rates, has been dealt with by the board in numerous cases.

See Butler vs. Butler Water Company;
Re: Approval of Wildwood Water Works Company;
Van Riper Mfg. Co. vs. Passaic Water Company.

In the case of Butler vs. Butler Water Company, the board said, referring to the power of the board to disregard the provisions of a municipal ordinance claimed to establish a contract between the municipality and a utility:

> "The municipality in imposing the terms contained in the ordinance simply acted as an agency of the state. The legislature might directly abrogate, modify or alter, so far as the municipality is concerned, the terms imposed by the municipality. While the legislature has not done this directly, yet it has by the creation of this board with powers stated, constituted a body whose orders in fixing just and reasonable rates, setting standards of proper and adequate service and establishing just and reasonable practices, rules and regulations may indirectly have that result."

This view is supported by decisions of the New Jersey Supreme Court in several cases; notably in Public Service Railway Company vs. Board of Public Utility Commissioners, et al., 85 N. J. Law, p. 123; The State, Inhabitants of Phillipsburg, et al., vs. Board of Public Utility Commissioners, et al., 85 N. J. Law, p. 146.

In the Phillipsburg case, the Supreme Court, speaking through Mr. Justice Minturn, held:

> "The power conferred upon the town of Phillipsburg to regulate the exercise of the franchise of the railroad company within the town is in the nature of a police power which may be modified or repealed by the legislature as public expediency may require.
>
> "The fact that the town in the exercise of the power to regulate, passed an ordinance which the railroad company accepted as a condition upon which it might exercise its franchise, does not constitute a contract which the town can interpose as a barrier to the exercise of its general police power in the supervision of street railways.
>
> "The state by conferring upon the municipality the power to regulate street railways, does not thereby deprive itself of the power by vesting general jurisdiction of the subject-matter in a state board, and conferring upon it ample powers to that end even though the effect may be, so far as the municipality is concerned, to revoke the powers conferred upon it, by prior legislation."

There are numerous cases as to the effect of legislation, delegating power to a state body, upon contracts touching rates and service entered into by municipalities and utilities, whether by ordinance or otherwise, where the municipal action has not specific statutory sanction. These cases uniformly hold that the power of the state is supreme; that such power may be delegated to a commission such as this board, and, when so delegated, the orders of the commission supersede contracts, valid when made, but later

found to be in conflict with the requirements of justice and reasonableness as to rates or service.

When, therefore, the legislature vests this board with the powers enumerated in the act, its authority, as a state agency, is superior to the power of a municipality, acting without express legislative delegation, to fix rates, set standards of adequate and proper service, and establish just and reasonable practices, rules and regulations.

Menasha Wooden Ware Co. vs. Minneapolis St. P. & S. S. M. Ry. Co., 150 N. W. 411;
Manitowac vs. Manitowac & Northern T. Co., 129 N. W. 925;
LaCrosse vs. LaCrosse Gas & Electric Company, 130 N. W. 530;
Kenosha vs. Kenosha Home Telephone Company, 135 N. W. 848.

(2) I now turn to the question of the statutory direction to the board to fix rates.

The statute of 1911, known as the Public Utility Act (P. L. 1911, p. 374), provides among other things, that the board shall have power:

> "(c) After hearing, upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility as herein defined, whenever the board shall determine any existing individual rate, joint rate, toll charge or schedule thereof or commutation, mileage or other special rate to be unjust, unreasonable, insufficient or unjustly indiscriminatory or preferential."

It will be noted that the duty of the board is to fix "just and reasonable" rates, whenever any *existing* rate is "unjust, unreasonable, insufficient or unjustly discriminatory or preferential." It is clear from this language that the board is definitely directed to increase or decrease, as may be necessary, in order to fix a just and reasonable rate. The use of the words "*unjust, unreasonable, insufficient,*" seems to leave no room for doubt that the legislative direction to the board is to *increase* whenever the rate is found to be "unjust and unreasonable" because "insufficient," and *decrease* whenever it is found to be "*unjust* and *unreasonable*" because excessive.

The power and duty of the board to inquire into the "insufficiency" of rates in this case would appear clear from a reading of the statute, if the municipality had not assumed to fix the rates to be charged by a utility.

(3) What was the authority of the borough of Collingswood to prescribe rates and what was the effect of the provision in the ordinance fixing rates?

It has been repeatedly held that the power to regulate rates is a sovereign power of the state, to be exercised by the legislature, or by an agency of the state through specific and definite authorization by the state. I think these propositions are so well settled that no serious question can be entertained concerning this soundness.

In the case of Home Telephone Company vs. Los Angeles, 211 U. S. pp. 265, 273, Mr. Justice Moody speaking for the Supreme Court of the United States, said:

> "The power to fix, subject to constitutional limits, the charges of such a business as the furnishing to the public of telephone service is

among the powers of government, is legislative in its character, continuing in its nature, and capable of being vested in a municipal corporation.

"The surrender, by contract, of a power of government, though in certain well defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature (in this case, the legislature of the state), has the authority to make such a surrender, unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality or of any other political subdivision of the state are not sufficient. Specific authority for that purpose is required. This proposition is sustained by all the decisions of this court, which will be referred to hereafter, and we need not delay further upon this point.

"It has been settled by this court that the state may authorize one of its municipal corporations to establish by an inviolable contract the rates to be charged by a public service corporation (or natural person), for a definite term, not grossly unreasonable, in point of time, and that the effect of such a contract is to suspend, during the life of the contract, the governmental power of fixing and regulating the rates. Detroit vs. Detroit Citizens' Street Railway Company, 184 U. S. 368, 382; Vicksburg vs. Vicksburg Water Works Co., 206 U. S. 496, 508. But for the very reason that such a contract has the effect of extinguishing *pro tanto* an undoubted power of government, both its existence and the authority to make it such clearly and unmis-

takably appear, and all doubts must be resolved in favor of the continuance of the power."

It appears from this case and the cases therein cited, that the power to fix rates resides in the supreme legislative body (in this case, the legislature), and may be exercised by a municipal corporation whenever there is express authorization by the legislature. But as was said in the Home Telephone Co. case, "both its existence and the authority to make it must clearly and unmistakably appear," and "The general powers of a municipality * * * * are not sufficient, specific authority for that purpose is required."

In the case of Manitowac vs. Manitowac and Northern Traction Co., 129 N. W. 925, the Court was dealing with the right of a municipality to adopt an *ordinance* fixing rates. The statute conferred power to fix rates by ordinance but, instead, a *contract* was entered into. Because of the failure of the municipality to exercise the definite power delegated, which was legislative and not contractual, it was held that no statutory power had been exercised and that the state commission might fix just and reasonable rates.

In discussing this phase of the case the Court said:

> "We next come to a consideration of the question of the extent to which the contract before us is binding and enforceable. That the legislature of the state might expressly empower cities to make such contracts as the one in question is well settled."
>
> Again, "Statutes granting to cities the right to make long time contracts binding on the public, and fixing a rate to be charged by a public service corporation, are not looked upon with

favor, and will be strictly construed. It is only where the right is very clearly conferred that the state will be held to have relinquished its power to enact laws regulating tolls."

Many cases are cited in support of the Court's conclusions.

The Supreme Court of Appeals of West Virginia, in City of Benwood vs. Public Service Commission (W. Va.), 83 Southeastern Rep. 295 (Oct., 1914), deals with this subject, and in a well-considered opinion, says:

"Though the grant and acceptance of the franchise wherein certain rates were fixed, created a contract between the water company and the city of Benwood, the rates thereby fixed are nevertheless cognizable for revision by the Public Service Commission under the broad power delegated thereto, unless, prior to the delegation of those powers the legislature had expressly delegated power to the city of Benwood which authorized the city to contract inviolably for the rates mentioned in the franchise for the period stated therein. Rate making is a legislative act. It is inherent in and belongs primarily to the legislature. The rate making power is a power of government—a police power of the state. The city of Benwood, at the time of the granting of the franchise, had no rate-making power that could bind the state, if the legislature of the sovereign state had not theretofore delegated the same to the city. And if such delegation or grant of rate-making power was made to the city prior to the delegation of general and state-wide powers in the same particular by the legislature to the Public Service Commission, the language

> relied upon as evidence of such delegation or grant to the city must be clear and express. The presumption is against exclusive delegation of the legislature's sovereign rate-making power to a municipality. Unless there has been such delegation by clear and express terms, the power is reserved in the state, which can exercise it at such times and to such extent as may be found advisable."

It is perfectly clear then that the power of the state over rates is supreme; that such power may be delegated by the legislature to a commission; that the power may be delegated to a municipality, but there must be clear and undoubted delegation in such case; that, unless there is prior specific delegation of the power to a municipality and an exercise of such power within the limits of the delegation, the power of a duly authorized commission is superior to that of a municipality.

(4) In the instant case, therefore, this board clearly may establish just and reasonable rates, regardless of the ordinance unless the legislature prior to the adoption of Chapter 195, Laws of 1911, granted to the borough of Collingswood the power to fix the rates of the sewerage company by inviolable contract.

Application for permission to use the streets of Collingswood was made in accordance with Chapter 210, Laws of 1898, p. 484.

Section one of that act provided that not less than seven persons may organize "a company for the purpose of constructing, maintaining and operating a system of sewerage in any municipality in this state."

Section two provides as follows:

"Such persons desirous of forming a company for such purpose shall make, sign and acknowledge, before some officer authorized to take acknowledgments of deeds, a certificate in writing which shall state the corporate name adopted by the company, the amount of the capital stock, the term of existence, the number of directors, the names of those who shall manage the affairs of the company for the first year, or until their successors are elected and qualified, and the name of the municipality in or for which such sewerage system is to be constructed and the business of such company carried on; such certificate shall be filed in the office of the secretary of state, *together with the consent in writing of and the terms and condition or conditions upon which the consent has been granted by the corporate authorities*, if any, of the municipality in which such sewerage system is to be constructed; Provided, However, that the corporate authorities of any municipality shall not give said written consent unless a petition shall have been presented requesting the granting of such consent, which petition shall be signed by the owners of real estate in said municipality to the extent of at least one-half of the number of persons who, in the last preceding municipal assessment of taxes, have been assessed as the owners of real estate in all that portion of the said municipality designated as within the limits of the proposed sewerage system on the maps and specifications of the same in this act provided for."

The act then provided that when such "certificate, conditions and consent shall have been filed as afore-

said," the persons shall be a body politic and corporate, and give certain powers to it, such as the right of entry upon lands, and to condemn lands necessary for its corporate purposes.

Section twelve provides:

"Upon application to the corporate authorities of any such municipality for the consent of such authorities as provided in section two of this act, said authorities may, by ordinance, provide that such consent shall be conditioned upon the payment to such municipality of a specified sum of money, or upon the quarterly, semi-annual or annual payment to said municipality of a specified sum of money or upon payment specified quarterly, semi-annual or annual percentage of the gross receipts of the corporation to be formed pursuant to such consent; *and said corporate authorities shall annex to such consent the maximum prices or rents that may be charged property owners or others for the use of such sewerage system,* and any further or other terms and condition or conditions upon which said consent is granted; if the certificate referred to in section two hereof be filed, there shall be annexed thereto and filed therewith a copy of the terms and condition or conditions upon which such consent is granted, and such filing shall be conclusive evidence that said corporation has assented to said terms and condition or conditions, and the same shall be deemed and taken to be binding and operative upon said corporation, its successors and assigns."

Section fourteen reads as follows:

"Said company may contract with property owners and others for the use of said system of

sewerage for such price or prices, or quarterly or annual rents, and such restrictions as said company may think proper; Provided *that the same shall in no case exceed the maximum rates which may be named in the terms and condition or conditions on which the consent of the corporate authorities shall have been obtained.*"

The borough council, in compliance with the statutory direction that they "annex to such consent the maximum prices or rents that may be charged" in section two of the ordinance of March 2nd, 1900, provided that the charges for sewerage service should not be less than five dollars nor more than nine dollars per year for a property containing nine rooms or less, and twenty-five cents additional for each and every room exceeding nine rooms.

The company, in section 14, is given power to contract with customers for the use of sewerage system and the payment for such use, provided, that the rates to be charged shall not exceed the maximum rates named in the terms on which the consent is obtained.

The borough of Collingswood was expressly authorized to fix the maximum rates to be charged for the service to be rendered. To this extent, there was a clear and unmistakable delegation of the state's power to fix rates. The acceptance of the franchise affected a contract between the utility and the municipality that this board is not at liberty to disregard.

There is nothing in the act of 1911 conferring general power upon this board to regulate rates to indicate a purpose on the part of the legislature to repeal the act of 1898 under which the municipal consent was granted, or that the power delegated by

the latter act was to be superseded by the orders of this board. The power of this board in the premises is to fix and establish just and reasonable rates that are within the maximum allowance established by the municipality in its consent. This conclusion is consistent with the acts of the legislature and gives force to the acts adopted by it. To conclude otherwise would be to utterly disregard the statutory direction to the municipality. There is nothing to indicate that a municipality would not now, if application were made under section two of the act of 1898, be required to establish the limits of charges to be made. That provision appears still to be in effect.

In view of the power delegated to the municipality to fix a maximum rate for a sewerage service, which "shall be deemed and taken to be binding and operative upon said corporation." I conclude that a schedule providing for rates in excess of such maximum cannot be approved.

I do not deal with the question as to whether the act of 1898 is unconstitutional on the ground that it delegates the rate-making power without any limitation of time.

In the report filed by me in the original Burlington sewer rate case, I indicated my opinion that the determination of the validity of a statute is not within the province of this board, but is the function of the courts.

In my judgment the same position must be taken with respect to the validity of an ordinance adopted in conformity with the provisions of a statute.

The conclusion reached, renders it unnecessary to consider whether present rates or those provided for in the supplemental report of the majority of the board, are adequate for the service rendered, since

under this conclusion as before stated this board is without authority to sanction any increase beyond the maximum established by the ordinance.

Dated March 21, 1917.

(Signed) RALPH W. E. DONGES,
Commissioner.

I Hereby Certify that the foregoing is a true copy of dissenting opinion filed by Commissioner Donges at a meeting held Wednesday, March 21st, 1917.

(Signed) ALFRED M. BARBER,
Secretary.

ORDER.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the Collingswood Sewerage Company for Approval of a New Schedule of Rates.	ORDER.

The Collingswood Sewerage Company having by letter to the board dated June 20th, 1914, submitted a new schedule of rates proposing increases in its charges for service, and the board having investi-

gated the questions of the reasonableness of the proposed increases and of its power to grant the same, and having on March 22nd, 1916, and March 21st, 1917, filed reports containing its findings of fact and conclusions thereon, which said reports are hereby referred to and made parts hereof, the board disapproves the proposed new schedule of rates referred to herein, and

It Is Hereby Ordered that the application made to the board for its approval of said schedule be and the same hereby is DISMISSED.

Dated April 4th, 1917.

BOARD OF PUBLIC UTILITY COMMISSIONERS.
(Signed) RALPH W. E. DONGES,
President.

(Seal)
Attest:
(Signed) ALFRED N. BARBER,
Secretary.

I Hereby Certify the foregoing to be a true copy of order adopted by the Board of Public Utility Commissioners at its meeting held Wednesday, April 4th, 1917, and recorded in the minutes of said meeting.

Secretary.

EXHIBIT P1.

COLLINGSWOOD SEWERAGE COMPANY.
Appraisal of the Value of the Plant
by Wm. H. Boardman, C. E.
September, 1914.

1. *Real Estate—*			
Right of way purchased from Reed		$600.00	
Right of way purchased from Kercher		125.00	
Four acres purchased from Collingswood Land Company		4,000.00	
Lot N. E. corner Comly & Harrison Avenues extending 200′ on Comly Ave. and 100′ on Harrison Ave., containing 20,000 sq. ft., on which tank for siphon line is constructed. This lot was condemned and the total cost was		2,071.59	
		$6,796.59	
2. *Collecting System—*			
63584′ 6″ pipe 0-6′ deep	@ $.48	$30,520.32	
9611′ " " 6-8′ " "	.60	5,766.60	
7510′ " " 8-10′ " "	.75	5,632.50	
2400′ " " 10-12′ " "	.90	2,160.00	$44,079.42
4576′ 8″ pipe 0-6′ deep	@ .52	2,379.52	
2054′ " " 6-8′ " "	.65	1,335.10	
1400′ " " 8-10′ " "	.80	1,120.00	
160′ " " 10-12′ " "	.95	152.00	

180′ " " 12-14′ " " 1.25	225.00	
440′ " " 14-16′ " " 1.55	682.00	5,893.62
2922′ 10″ pipe 0-6′ deep @ .67	1,957.74	
270′ " " 8-10′ " " 1.09	294.30	
50′ " " 10-12′ " " 1.20	60.00	
200′ " " 12-14′ " " 1.70	340.00	
900′ " " 14-16′ " " 2.35	2,115.00	4,767.04
3056′ 12″ pipe 6-8′ deep @ $.80	$2,444.80	
930′ " " 12-14′ " " 1.90	1,767.00	4,211.80
222′ 6″ cast-iron pipe under railroad @ 1.25	277.50	
456′ 8″ cast-iron pipe under railroad and along private right of way	632.47	
250′ 12″ cast-iron pipe under Newton Lake @ 3.00	750.00	1,659.97
1—12″ cast-iron ¼ bend @ .03	10.98	
1—6″ cast-iron Y @ .03	5.43	16.41
1—8″ wrought-iron ell	2.18	
1—8″—13½ wrought iron flange	1.56	3.74
66—10″ x 6″ terra-cotta Ys @ $.96	63.36	
8—8″ x 8″ terra-cotta Ys @ .66	5.28	
102—8″ x 6″ terra-cotta Ys @ .66	67.32	
25—8″ x 5″ terra-cotta Ys @ .66	16.50	
1580—6″ x 6″ terra-cotta Ys @ .48	754.40	

302—6″ x 5″ terra-cotta Ys @ .48		144.96	
2—8″ x 6″ terra-cotta tees @ .66		1.32	
2—8″ terra-cotta ¼ bends @ .50		1.00	
6—6″ x 4″ terra-cotta tees @ .48		2.88	
2—6″ terra-cotta ¼ bends @ .36		.72	
2—6″ terra-cotta ⅛ bends @ .36		.72	
12—6″ terra-cotta elbows .36		4.32	
10—6″ terra-cotta branches .48		4.80	
4—6″ terra-cotta bends .36		1.44	
92—6″ terra-cotta split pipes .10		9.20	
1512—6″ terra-cotta stoppers .05		75.60	1,153.82
Manholes, including frames, covers, dirt-pails, step-irons, flagstones, bottoms, etc.			
4—drop manholes @ $80.00	$	320.00	
22—plain manholes @ 45.00		990.00	
137—intersection manholes @ 60.00		8,220.00	9,530.00
4—4″ brass-mounted valves @ 5.70			22.80
52—piles in Newton Lake under 12″ cast-iron pipe = 416 feet @ .40			166.40
1000 lin. ft. shingling lath		5.00	
1 box 24″ x 20″ x 12′—2″ hemlock		2.00	
1 bundle cedar pickets		10.00	
319 ft. B. M. white pine @ 50.00		15.95	
429 ft. B. M. oak @ 50.00		21.45	
3053 ft. B. M. yellow pine @ 40.00		122.12	

8155 ft. B. M. sap pine @ 40.00	326.20	
11955 ft. B. M. box @ 40.00	478.20	
16621 ft. B. M. spruce fencing @ 40.00	664.84	
45407 ft. B. M. hemlock @ 30.00	1,362.21	3,007.97
		74,512.99

3. *Pumping Wells in Pumping Station—*

Outer well 40′ diam. x 22′ deep		
Inner well 16′ diam. x 18′ deep		
1231 cu. yds. excavation @ $.50	$615.50	
106900 bricks @ 10.00	1,069.00	
Laying 106900 bricks @ 6.00	641.40	
409 barrels cement @ 2.00	818.00	
93 cu. yds. broken stone @ $2.50	232.50	
110 cu. yds. sand @ 1.25	137.50	
133 ft. 7″, 15# per foot, I beams, 1995# @ .035	69.83	
4 plates 12″ x 16″ x 1″—200# @ .03	6.00	
4 bolts each 1½″ x 34″ (nut and washer)	)	
27 bolts each ⅞″ x 33″ (nut and washer)	)	
2 tie rods ¾″ x 24′ (2 nuts and washers)	) 16.00	
2 tie rods ¾″ x 6′ 8″ (nuts and washers)	)	
130—⅜″ (buttonhead) bolts 3½″ long (1 nut and washer)	)	
4 turnbuckles	)	
20 ladder steps (each 14.18#) @ $.03	8.51	
250 ft. ¼″ wire rope @ .05	12.50	
3 strap rings (as per sketch)		

	20 lbs. 60 penny nails @ .03	.60
	35 lbs. 20 penny nails @ .03	1.05
	40 lbs. wire shingle nails @ .03	1.20
	1 keg 8 penny nails (100#) .03	3.00
	90 lin. ft. two rail pipe @ .40	36.00
	4 wire cylinders ¼″ mesh 4″ diam. closed at one end, 8″ long @ 2.50	10.00
	Pipe screen	50.00
10	4 supports (as per sketch)	10.00
	4 flat circular screens, ½″ mesh on ¼″ iron ring, galv.	10.00
	1 30″ "star" ventilator with glass (skylight) top	25.00
	12″ sewer inlet with bend	10.00
	8″ septic outlet with flange and bend	10.00
	8″ overflow, straight, 12′ long	7.32
	4″ foot valve	2.00
20	Elbow 4″ x 4″ x 2½″	.54
	Short nipple, 4″	.17
	Coupling, 4″	.25
	Plug, 4″	.12
	48 ft. 2½″ galv. pipe (with couplings) and 2½″ hose connection @ .19	9.12
	506 ft. 1″ galv. pipe (with couplings) @ .055	27.83
	4—1″ galv. ⅛ bends @ .04	.16
30	8—1″ galv. ¼ bends @ .035	.28
	4—1″ brass nipples, 2″ long, threaded	.90
	4 special brass sleeves, threaded @ .15	.60
	174 ft. 4″ galv. pipe, including fittings (as per sketch) @ .40	69.60

4″ galv. ⅛ bend	.75
4—4″ galv. tees @ .95	3.80
4—pieces 4″ galv. pipe, each 4′ long @ 1.60	6.40
4—4″ galv. couplings @ .35	1.40
4—4″ brass plugs, iron pipe threads, perforated by 1″ cock as per drawing @ 1.21	4.84
1—door frame 3′ x 6′	8.00
6000—shingles, #1 cypress, 6″ x 24″ @ $10.00	60.00
1—crown plate or circle 48′ x 10″	50.00
1—white pine door	5.00
294 ft. B. M. sap box @ 40.00	11.76
1027 ft. B. M. yellow pine @ 40.00	41.08
48047 ft. B. M. hemlock @ 30.00	1,441.41
	5,546.92

4. *Iron Siphon and Air Pumping Lines from West Collingswood—*

3062 ft. 8″ W. I. pipe @ $ .85	$2,602.70
12—8″ W. I. ells @ 1.83	21.96
1—8″ W. I. ¼ bend	2.40
2—6″ Y branches @ 2.49	4.98
14—8″ nipples @ .80	11.20
2—8″ line sockets @ 1.36	2.72
1—8″ x 2″ clamp	2.25
4—8″ flanged tees @ 6.95	27.80
58—8″ x 13½″ flanges @ 1.30	75.40
1—2″ x 13½″ blank flange	1.95
1—13½″ blank flange	1.71
30—8″ x 13½″ x ⅛″ gaskets @ .30	9.00

1163 ft. 2″ galv. pipe air-line @ .125	145.50	
4—2″ malleable tees @ .21	.84	
4—8″ gate valves @ 16.20	64.80	
1—2″ brass gate valve	2.25	
444 ft. 6″ C. I. pipe @ .45	199.80	
336 ft. B. M. hemlock @ 30.00	10.08	
2997 ft. B. M. yellow pine @ 40.00	119.80	3,307.14
Laying—3062′—8″ W. I. pipe 0-8′ deep @ .90	2,755.80	
Laying—444′—6″ C. I. pipe, submerged pipe @ 2.00	888.00	
Laying—1163′—2″ air-pipe @ .12	139.56	3,783.36
2—screen chambers	126.00	
Valve chamber	21.00	
Collecting tank	298.00	445.00
		7,535.50

5. *Pumps—Engines—Air Pumps—Dynamo and Pipe Connections, in Pumping Station—*

2—200 gallon oil-tanks and connections @ $50.00	$100.00
1—14 volt 6 ampere dynamo	50.00
Electric wiring	50.00
1—15 H. P. Otto gas engine, shafting and belting	729.00
1—10 H. P. Otto gas engine, shafting and belting	559.00
1—5 H. P. Otto gas engine, shafting and belting	396.00

2—4¾″ x 4¾″ air-pumps 100.00	200.00	
1—3 M—Type B magneto, with bracket	20.00	
11′ 7″—8″ W. I. pipe .85	10.20	
4—6″ siphons and chamber @ $125.00	500.00	
1—5″ Advance type plunger pump	45.00	
3—3″ Morris type centrifugal pumps @ 75.00	225.00	
3—3″ Gould type ditch pumps @ 20.00	60.00	
Pipe and fittings	59.68	
Erection	250.00	3,253.88

6. *Weir—Receiving Chamber—Septic and Settling Tanks—*

Receiving Tank

15 cu. yds. excavation @ $ .50	$ 7.50	
8.8 cu. yds. concrete @ 10.00	88.00	
Weir-plate	10.00	105.50

Septic Tanks

95′ x 30′ x 7′

792 cu. yds. excavation @ $ .50	396.00	
220 cu. yds. concrete @ 10.00	2,200.00	
180′—8″ C. I. drain @ .90	162.00	
1—Weir-gate & guides @	10.00	
82′—4″ terra-cotta pipe 5′ deep @ .40	32.80	
185′—8″ terra-cotta pipe 2′ deep @ .30	55.50	
113′—8″ terra-cotta pipe 9′ deep @ .80	90.40	

107′—8″ terra-cotta pipe 4′ deep @ .52	55.64	
35′—8″ terra-cotta pipe 6′ deep @ .52	18.20	
12′—6″ terra-cotta pipe 4′ deep @ .46	5.52	
527′—8″ terra-cotta pipe 4′ deep @ .52	274.04	
50′—6″ terra-cotta pipe 4′ deep @ .46	23.00	
82′—6″ terra-cotta pipe under contact beds @ .46	37.72	3,360.82

Settling Tank

240 cu. yds. excavation @ $ .50	120.00	
99 cu. yds. concrete @ 10.00	990.00	
130 ft. 12″ terra-cotta pipe @ .85	110.50	
45 ft. 12″ terra-cotta pipe, 13′ deep @ 1.25	56.25	
2—Y. P. baffles @ 20.00	40.00	
1—Y. P. division wall @ 30.00	30.00	
1—12″ x 36″ sluice @ 10.00	10.00	1,356.75
		4,824.07

7. *Contact Beds—*

6—contact beds, each 40′ x 60′ x 5′, 14″ brick and concrete walls, and concrete bottom, 527 cu. yds. @ $10.00	5,270.00	
356 cu. yds.,—4′ depth in each bed,—of broken stone @ 2.50	890.00	
6—runways, 40′ long	100.00	
12—size 8 circular sluice gates @ 36.00	432.00	

100 ft. 8″ terra-cotta pipe @ .52	52.00	
1512 ft. 6″ terra-cotta pipe @ .48	725.76	
1953 ft. 4″ terra-cotta pipe @ .40	781.20	
200 ft. 8″ channel pipe @ .12	24.00	
800 ft. 4″ channel pipe @ .08	64.00	
24—screens and fresh-air inlets @ .50	12.00	
4—8″ hub-end valves @ 16.20	64.80	
14 cast-iron slide-gates @ 3.00	42.00	
Accessories	100.00	
Lumber	303.15	
7800 yds. grading @ .25	1,950.00	10,810.91

8. *Lumber for Sluices and Office Building—*

In Constructing Sluices

2592 ft. B. M. hemlock @ $30.00	$77.76	
978 ft. B. M. yellow pine @ 40.00	39.12	116.88

In Office Building

3 cu. yds. concrete foundations @ 10.00	30.00	
175 ft. B. M. #2 N. C. beaded @ 40.00	7.00	
60 ft. B. M. Star cypress siding @ 50.00	3.00	
144 ft. B. M. hemlock @ 30.00	4.32	
368 ft. B. M. yellow pine @ 40.00	14.72	
300 cypress shingles @ 10.00	3.00	
3 sashes @ 2.50	7.50	
199 sq. ft. cement floor @ .12	23.88	
2 small doors @ 5.00	10.00	
1 sliding door	8.00	111.42
		228.30

	9 *Sludge Beds*—		
	549 cu. yds. excavation @ $. 25	$137.25	
	556 cu. yds. coke @ 2.00	1,112.00	
	20 cu. yds. concrete in collecting chambers @ 10.00	200.00	1,449.25
	10. *Resurfacing Streets*—		
	166098 sq. ft. Macadam @ $.03	$4,982.94	
	29472 sq. ft. Amiesite @ .12	3,536.64	
10	1038 sq. ft. Belgian blocks @ .07	72.66	
		8,592.24	
	Depreciation		
	Collecting System—		
	Built, 1902—1914.		
	Average time,—6 years.		
	1% on $74,512.99 for 6 years		$4,470.78
	Disposal Plant—		
20	Pumping Wells in Pumping Station.		
	Cost, $5,546.92—12 years—12%	$665.63	
	Iron Siphon and Air Pumping Lines.		
	Cost $7,535.50—12 years—25%	1,883.86	
	Pumps—Engines—Air Pumps—Dynamo and Pipe Connections, in Pumping Station.		
	Cost, $3,253.88—12 years—50%	1,626.94	
	Weir—Receiving Chamber—Septic and Settling Tanks.		
30	Cost, $4,824.07—12 years—12%	578.89	
	Contact Beds.		
	Cost, $10,810.91—12 years—12%	1,297.31	
	Lumber for Sluices and Office Building		
	Cost, $228.30—12 years—12%	27.40	

Sludge Beds.		
Cost, $1,449.25—12 years—12%	173.91	6,253.94
		$10,724.72

SUMMARY.

	Cost of Plant Collecting System	Disposal Plant
1. Real Estate)	$600.00	$4,000.00
)	125.00	2,071.59
2. Collecting System	74,512.99	
3. Pumping Wells in Pumping Station		5,546.92
4. Iron Siphon and Air Pumping Lines		7,535.50
5. Pumps — Engines — Air Pumps — Dynamo and Pipe Connections, in Pumping Station		3,253.88
6. Weir—Receiving Chamber —Septic and Settling Tanks		4,824.07
7. Contact Beds		10,810.91
8. Lumber for Sluices and Office Building		228.30
9. Sludge Beds		1,449.25
10. Resurfacing Streets	8,592.24	
	83,830.23	39,720.42
Engineering, 7%	5,868.12	2,780.43
	89,698.35	42,500.85
Organization Expenses	5,807.85	2,735.98
	95,506.20	45,236.83

	Interest during construction, two years; average, one year at 6%	5,730.37	2,714.21
		101,236.57	47,951.04
	Discount on Bonds sold at 85 1/3%	14,937.95	7,038.58
		116,174.52	54,989.62
10	Depreciation	4,470.78	6,253.94
		$111,703.74	$48,735.68
			$160,439.42
	Cost of Developing Business, to December 31, 1913, as per Tabulated Statement thereof furnished by the Collingswood Sewerage Company		92,832.75
20			$253,272.17

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EXHIBIT P2.

COLLINGSWOOD SEWERAGE COMPANY

INVESTMENT INCLUDING COST OF DEVELOPING BUSINESS DEC. 31ST, 1913.

	End of Year			Interest		Depreciation		Oper. Exp. Inc. Taxes & Ins.	Total Expense	Gross Income	Deficits
1902	61,028.07	6%	3,661.68		1%	610.26					
Added in 1902	1,950.00	3%	58.50	3,720.18	½%	9.75	620.03	719.00	5,059.21	499.20	4,560.01
1903	67,538.08	6%	4,052.28		1%	629.78					
Added in 1903	5,666.27	3%	169.99	4,222.27	½%	28.33	658.11	826.48	5,706.86	996.87	4,709.99
1904	77,914.34	6%	4,674.86		1%	686.44					
Added in 1904	———	3%	———	4,674.86	½%	———	686.44	1,541.32	6,902.62	1,145.71	5,756.91
1905	83,671.25	6%	5,020.28		1%	686.44					
Added in 1905	———	3%	———	5,020.28	½%	———	686.44	2,390.51	8,097.23	1,731.49	6,365.74
1906	90,036.99	6%	5,402.22		1%	686.44					
Added in 1906	20,229.73	3%	606.89	6,009.11	½%	101.15	787.59	2,643.54	9,440.24	3,051.75	6,388.49
1907	116,655.21	6%	6,999.31		1%	888.74					
Added in 1907	3,392.82	3%	101.78	7,101.09	½%	16.96	905.70	4,096.01	12,102.80	3,778.95	8,323.85
1908	128,371.88	6%	7,702.31		1%	922.67					
Added in 1908	14,444.28	3%	433.33	8,135.64	½%	72.22	994.89	4,791.42	13,921.95	4,966.20	8,955.75
1909	151,771.91	6%	9,106.31		1%	1,067.11					
Added in 1909	18,736.86	3%	562.11	9,668.42	½%	93.68	1,160.79	5,188.80	16,018.01	7,069.06	8,948.95
1910	179,437.72	6%	10,767.46		1%	1,254.48					
Added in 1910	7,626.03	3%	228.78	10,996.24	½%	38.13	1,292.61	5,381.60	17,670.45	9,365.78	8,304.67
1911	195,388.42	6%	11,723.31		1%	1,330.74					
Added in 1911	10,064.73	3%	301.94	12,025.25	½%	50.32	1,381.06	5,795.67	19,201.98	11,097.77	8,104.21
1912	213,557.36	6%	12,813.44		1%	1,431.39					
Added in 1912	6,252.07	3%	187.56	13,001.00	½%	31.26	1,462.65	8,505.00	22,968.65	10,846.05	12,122.60
1913	231,932.03	6%	13,915.92		1%	1,493.91					
Added in 1913	2,531.10	3%	75.93	13,991.85	½%	12.66	1,506.57	7,226.52	22,724.94	12,433.36	10,291.58
	244,754.71			98,566.19			12,142.88	49,105.87	159,814.94	66,982.19	92,832.75

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EXHIBIT P3.

Collingswood Sewerage Company

Schedule of Rates

Effective September 1st, 1914.

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For Dwelling Houses

Fixtures	Annual Rate	
Kitchen Sink		$6.00
Each Additional Sink		1.00
Water Closets	Each	3.00
Urinals	"	3.00
Bath Tubs	"	3.00
Shower Baths	"	3.00
Wash Stands	"	1.00
20 Laundry Tubs	"	1.00

For Stores and Offices

Fixtures	Annual Rate	
Sinks or Wash Stands	Each	$5.00
Water Closets	"	5.00
Urinals	"	5.00

For Halls, Public Buildings and Moving Picture Halls

30 Fixtures	Annual Rate
First Sink or Wash Stand	$10.00
Each Additional Sink or Wash Stand	5.00
First Water Closet	15.00
Each Additional Water Closet	5.00
First Urinal	15.00
Each Additional Urinal	5.00

For Factories
For Each Employee—per year 1.00

For Schools
For Each Room—per year 10.00

Minimum Charge
An annual minimum charge of $12.00 will be made for each sewer connection in event the annual rate for the fixtures in use do not amount to that sum.

Charge for Original Connection to Sewer Main
A charge of $10.00 will be made by the company for the original connection with the sewer main and for the service pipe to the curb (not including trap or vent box), which charge must be paid at the time application is made for the connection.

Charge for Re-connection to Sewer Main
In case the sewer connection is cut off from any property either on the written order of the owner or for any other cause, the Company shall make the connection again only on the written order of the owner and on the payment of $10.00 for making said connection; the permit (if any be required) to open the street to be secured or paid for by the owner.

Rules and Regulations

Effective September 1, 1914

Section 1. All sewer rates are payable half-yearly in advance at the office of the Sewerage Company on the first day of March and September in each year, and if not paid within thirty days from

date of bill, the Sewerage Company shall have the right to cut off the connection with the sewer without further notice, but no such cutting off shall deprive the Sewerage Company of the right, before the connection is again made, to demand and require payment of all sewer rents or other charges herein agreed to be paid to the expiration of the contract.

Section 2. No roof or surface water shall be allowed to drain into the sewer pipes of the Sewerage Company.

Section 3. The Sewerage Company shall have the right, by its employees, to have access at all reasonable times to all parts of any premises connected with the said sewerage system for the purpose of examining and inspecting the sewer connections and fixtures draining into sewer.

Section 4. The sewer connection will be cut off from any premises without charge on the written order of the owner of said premises; but the cutting off of the sewer connection for any cause shall not impair the validity of the contract then existing between the owner and the Sewerage Company for the payment of rates for the current year.

Section 5. Property owners shall keep all drain pipes leading to the sewerage mains in good order and condition, and if not so kept, the Company shall have the right to cut off the service, and shall not be required to connect again until said drain pipes are put in order.

EXHIBIT 01.

Geo. L. Robinson M. Am. Soc. C. E. E. L. Wagner, C. E.
Robinson & Wagner
Consulting Sanitary Engineers
37-39 E. 28th Street
Telephone 3844 Madison Square
Sewage Disposal
Sewers
Water Supply

New York September 24, 1914.

Mr. Louis T. Klauder,
Chairman of Citizens Committee,
Collingswood, New Jersey.

Dear Sir:

Following the instructions of your letters of August 27 and September 4, we beg to hand you herewith our report on the Sewerage System and Sewage Disposal Plant in the Borough of Collingswood, New Jersey. It expresses our opinion of the sewerage situation and we trust that it covers all the points you need for a satisfactory understanding of the matter.

Very truly yours,
Robinson & Wagner

Report on Sewerage System and Sewage Disposal Plant
in the
Borough of Collingswood, New Jersey.

We find that the Borough of Collingswood, New Jersey, including West Collingswood, is a suburban residence district in Camden County, four miles from Camden. Nearly all of the area of the borough

New Jersey State Library

lies in a watershed which drains into Newtown Creek, emptying into the Delaware River at Gloucester.

In 1908 the population was 3850 and in 1914 it was said to be about 6500.

In 1901 the Collingswood Sewerage Company, acting under their franchise, built a separate, or domestic, system of sewers and a disposal plant. The outfall of these sewers and the plant is located in West Collingswood near Newton Avenue.

The plant, as first built, consisted of a circular brick masonry septic tank surrounding a circular pump well, four primary contact beds, or stone filters, and four secondary "wave" beds of coke and stone.

On a platform over the inside circular well were located the pumps and engines for lifting the septic tank effluent to the contact beds beyond.

Since this first installation a number of changes have been made from time to time, both as to design and enlargement, so at the time of writing the plant is quite different from that originally constructed.

The first sewers built covered about twelve (12) miles of streets and ranged from 6″ to 12″ in diameter. They were of the usual vitrified pipe with cement joints. Manholes were built at changes of grade and direction throughout the line.

We have made as careful an investigation as our instructions would permit of the physical value of the sewers and disposal works, based on the prices of labor and material at this time.

The statement of quantities and values herein given represents the probable cost of replacing the plant to-day in exactly the same layout that we now find it, assuming the sewers to be laid at the same cuts and gradients and reproducing the sewage disposal plant.

As to the condition of the sewers, it is impossible to determine the amount of infiltration without a series of tests extending over a period which would cover both the maximum and minimum of ground saturation.

From the reports given by the Sewerage Company to the State Board of Health it would seem that the difference between dry and wet weather flow was much greater than it should be, and it is fair to assume that a considerable portion of the pipe line is in a leaky condition. As to the amount of imperfect sewer we are unable to report without tests extending over a period mentioned above.

If the pipe lines were fairly tight it would seem that the sizes and grades were sufficient for the domestic sewage production of the town at present, and could carry a considerable increase in domestic sewage flow.

As districts yet to be developed will require auxiliary pumping plants, their discharge can be concentrated at points from which the gravity flow to the plant can be pumped so as to reach the disposal plant to advantage.

The disposal plant at present seems to be working fairly well for a plant of this type. It is of a design which has been considered good practice in sewage treatment. The changes made under the suggestions of the State Board of Health have brought it up to date in such a way that with very careful operation it should give fair results with a flow of domestic sewage of approximately 500,000 gallons a day. At present the old septic tank has been changed into a sludge digestion chamber which receives the precipitated organic matter from the larger, remodeled, settling tanks at intervals of about once a week. This arrangement, in use since

early spring, should make a marked difference in the condition of the settling tanks so far as the development of gases and unpleasant odors is concerned. It is our opinion that the question of odors could be largely eliminated by the construction of a wooden roof over the settling tanks and by a simple re-arrangement of the feed pipes leading to the contact beds.

As to the condition of the final effluent from the contact beds, we observe that it is cloudy and without doubt putricible. It must be remembered, however, that the discharge is submerged in such a volume that there is little doubt that the necessary oxygen can be supplied to complete the purification. In case this should not continue to be the condition it would not be a serious matter to add a small plant for the introduction of hypochlorite.

As the Borough grows and it becomes necessary to increase the number of contact beds and perhaps to improve the effluent, the beds should be given a greater depth. This could be done by bringing up the walls to a higher elevation and providing additional contact material.

The plant is now being operated well and with much intelligence. As long as this continues we see no particular object in introducing an automatic control. The gasoline engines would seem to offer a less expensive power than electricity.

Estimate of Quantity of Materials
In
Sewerage System and Sewage Disposal Works
At
Collingswood, New Jersey.

Sewerage System

6″ Vit. Pipe	81400 ft. @ .60	48840.00

8″ Vit. Pipe 9110 ft. @ .64	5830.40
10″ Vit. Pipe 4340 ft. @ .68	2951.20
12″ Vit. Pipe 4030 ft. @ .72	2901.60
2″ Air Line 1100 ft. @ .40	440.00
8″ W. I. Siphon Line 3030 ft. @ 1.00	3030.00
6″ C. I. Pipe 580 ft. @ .90	522.00
Manholes 160 @ 40.00	6400.00
Allow 10,000 ft. of Wet Trench @ .50	5000.00
Replacing 158,000 sq. ft. Pave @ .06	9480.00
	85395.20

Note: These quantities taken off record maps and drawings furnished by Sewerage Company.

Sewage Disposal Works

Brick 15370 cu. ft. @ .40	6148.00
Concrete (plain) 700 cu. yds. @ 6.00	4200.00
Concrete (reinforced) 5 cu. yds. @ 14.00	70.00
Material for Contact Beds:	
Fine Stone 91 cu. yds. @ 1.50	136.50
1″ Stone 1510 cu. yds. @ 1.50	2265.00
2″ Stone 535 cu. yds. @ 1.50	802.50
Cypress for Carriers 3500 ft. B. M. @ 30.00	105.00
4″ Channel Pipe 6920 ft. @ .06	415.20
8″ Channel Pipe 780 ft. @ .10	78.00
Excavation 5860 cu. yds. @ .40	2344.00
4″ Vit. Pipe 170 ft. @ .16	27.20
6″ Vit. Pipe 160 ft. @ .18	28.80
8″ Vit. Pipe 1180 ft. @ .26	306.80
10″ Vit. Pipe 230 ft. @ .30	69.00
12″ Vit. Pipe 220 ft. @ .34	74.80
Steel 8000 lbs. @ .05	400.00
Timber 21,400 ft. B. M. @ 30.00	642.00
2 Steel Gasolene Tanks 30″ diam. x 72″ (capacity 220 gals. each)	16.00

	Slate—2 slabs 4′ 0″ x 6′ 5″		6.00
	¾″ Galv. Iron Pipe 290 ft. @ .10		29.00
	1″ Galv. Iron Pipe 170 ft. @ .14		23.80
	2″ Galv. Iron Pipe 5 ft. @ .20		1.00
	Rubber Hose 10 ft.		2.00
	3″ Wrought Iron Pipe 75 ft. @ .30		22.50
	4″ Wrought Iron Pipe 110 ft. @ .60		66.00
	6″ Wrought Iron Pipe 70 ft. @ .80		56.00
	7″ Wrought Iron Pipe 3 ft. @ 1.00		3.00
10	8″ Wrought Iron Pipe 120 ft. @ 1.60		192.00
	Cast Iron Pipe and Fittings:		
	4″ Cast Iron Pipe 5 ft. @ .70		3.50
	7″ Cast Iron Pipe 20 ft. @ 1.00		20.00
	8″ Cast Iron Pipe 135 ft. @ 1.20		162.00
	3—4″—45° C. I. Bends)		
	1—4″—90° C. I. Bends)		
	2—4″ x 3″ C. I. Reducer)		
	1—4″ x 2-½″ Reducer Coupling)		
	2—4″ C. I. Tees)		
20	2—6″ C. I. 45° Bends)	Lump	
	1—6″ x 6″ x 4″ C. I. Tee)	sum in	
	1—6″ x 4″ Red. 1′ 3″ long)	place	165.00
	1—7″—22-½° Bend)		
	1—7″ x 7″ C. I. Tee)		
	2—8″—90° C. I. Bends)		
	1—8″—45° C. I. Bend)		
	1—8″ x 7″ C. I. Reducer)		
	1—C. I. Slide Gate 2′ 0″ x 2′ 6″)		
	1—8″ x 5″ C. I. Screw Reducer)		
30	4—4″ C. I. Gate Valves @ 16.00		64.00
	1—6″ Pressure Gauge		16.00
	1—7″ Check		24.00
	2—8″ Gate Valves @ 25.00		50.00
	1—15/16″ Shaft 28′ 3″ long with pulleys, hangers, couplings, belting, etc.		65.00
	1—12″ x 36″ Sluice Gate		35.00

14—C. I. Slide Gates @ 5.00	70.00
6 Electrical Alarm Posts	18.00
1—15-H. P. Otto Gas Engine set	570.00
1—10-H. P. Otto Gas Engine	410.00
1— 3-H. P. Otto Gas Engine	300.00
Include also fly wheels, pulleys, belting and shafting.	
1 Circulating Pump	45.00
2—3″ Morris Centrifugal Pumps @ 125.00	250.00
1—5″ Advance Centrifugal Pump	135.00
2—4-¾ x 4-¾ Clayton Vacuum Pump	100.00
Miscellaneous Buildings	400.00
	21432.60

Summary

Sewerage System	85395.20
Sewage Disposal Plant	21432.60
Land	3900.00
	110727.80
Engineering and Lawyers' Fees, Printing, Advertising, etc. 10%	11072.00
	121799.80

The foregoing does not take into account the going value of the existing plant which has been in use now for twelve years.

From the statement which the Collingswood Sewerage Company have given us you will see that, starting in 1902 with an expenditure of $61,028.00 with the additions in each year through 1913 they show a total physical investment in plant of $151,-918.00. It is fair to allow 10% on this, or $15,192.00, as a going, or real, value.

Our estimate for reproduction is $121,799.00, giving a net difference of $30,119.00. This sum might represent the cost from the company's standpoint of the work they have been required to do by the State Department of Health. We have, of course, no means of checking this statement.

You will notice that in their statement they add each year their deficit to the investment item of the year following. This confuses the item of investment from year to year as opposed to the net physical value of the plant, and is not consistent with accepted standards of financiering.

The following is a copy of the Company's statement in which we are unable to check the manner in which they arrive at items of depreciation.

Statement

As to the *Working Charges of a New System,* we find as follows:

Interest on $120,700. @ 6%	7242.00
Operating Expenses @ 3%	3621.00
Repairs and Depreciation @ 1%	1207.00
	$12070.00

Accepting the Sewerage Company's Statement as given us by them, we find, *not allowing the yearly deficit charge,* as follows:

Interest on $151,918. @ 6%	9115.08
Operating, Taxes and Insurance	7226.00
Depreciation and Repairs @ 1%	1519.18
	$17860.26

Income:

We find that there are now 1360 connections which bring in (1913) $12,433.00 approximately. This

would show a deficit of $5790.00. We believe that, not counting the accumulated deficit charges, this would represent a fair accounting of their net loss.

Respectfully Submitted—
Robinson & Wagner

EXHIBIT O2.

Ordinance.

An Ordinance Authorizing the Incorporation of the Collingswood Sewerage Company, and Granting to Said Company and to the Incorporators Thereof the Right to Lay Pipes In, Under and Beneath the Public Roads and Streets of the Borough of Collingswood.

Whereas, Richard T. Collings, Henry R. Tatem, Edward S. Sheldon, Daniel W. Stewart, John O. Wilson, George Reynolds and Peter V. Voorhees are desirous of forming a corporation or body politic for the purpose of supplying the said borough of Collingswood and the inhabitants thereof with an adequate means of disposing of sewerage to be known as the Collingswood Sewerage Company;

And Whereas, The persons above named have filed with the Clerk of this Borough a map and specifications of the proposed sewerage system and of the district in the said Borough which it is proposed to sewer, which said map and specifications, filed as aforesaid, have been approved by the municipal authorities of this Borough;

And Whereas, The map and specifications filed as aforesaid have been submitted to the State

Board of Health, and, as appears by a letter or communication of the said State Board of Health, now on file with the Clerk of this Borough, the said map and specifications have been approved by the said Board of Health;

And Whereas, There has been presented to the Mayor and Council of this Borough a petition requesting that the consent and permission of the Mayor and Council of the Borough of Collingswood be granted to the above named persons to form themselves into a company or corporation for the purpose of constructing, maintaining and operating a system of sewerage in this Borough and furnishing said Borough and the inhabitants thereof with an adequate means of disposing of sewerage under an act of Legislature of the State of New Jersey, entitled: "An Act for the construction maintenance and operating of systems of sewerage in any municipality of this State," Approved June 13th, 1898, and the several acts amendatory thereof and supplementary thereto, which petition has been signed by the owners of real estate to the extent of at least one half the number of persons who in the last preceding municipal assessment of taxes in said Borough, have been assessed as the owners of real estate in all that portion of the said Borough designated as within the limits of said proposed sewerage system on the said map and specifications therefor, filed as aforesaid, as appears by the affidavit of the assessor for taxes of the said Borough annexed to the said petition.

Now, Therefore, Be it ordained and Enacted by the Mayor and Council of the Borough of Collingswood:

Section 1. That the consent and permission of the Borough of Collingswood, the Mayor and Council

thereof, be and the same is hereby granted to the said Richard T. Collings, Henry R. Tatem, Daniel W. Stewart, John O. Wilson, Edward S. Sheldon, Peter V. Voorhees and George Reynolds, to organize themselves into and as a body politic and corporate under the name of the Collingswood Sewerage Company for the purpose of constructing, maintaining and operating a system of sewerage in all that portion of the said Borough designated as within the limits thereof on a map and specifications of the same filed as aforesaid, and furnishing to said Borough and to the inhabitants thereof an adequate means of disposing of sewerage in accordance with an act of the Legislature of the State of New Jersey, entitled: "An act for the construction maintenance and operation of systems of sewerage in any municipality in this State," approved June 13th, 1898, and the several acts amendatory thereof and supplementary thereto, and to that end to lay pipes beneath such public roads, streets, avenues and alleys of the said Borough of Collingswood as may be necessary for the purposes aforesaid, in a manner meeting the approval of the Highway Committee of the said Council.

Section 2. And be it Ordained that the semi-annual price or rent charged property owners and patrons for the use of the said sewerage system shall not exceed the sum of four dollars and fifty cents ($4.50) and shall not be less than the sum of Two Dollars and fifty cents ($2.50) for a property containing nine (9) rooms or less, and twenty-five (25¢) cents additional for each and every room exceeding said nine rooms. In case any business properties shall make unusual demands for the service of the said sewerage system, the semi-annual price or rent to be charged shall be agreed upon,

the same to be based upon a comparison with the service rendered in the case above mentioned and not to exceed a corresponding maximum.

Section 3. And be it Ordained that the Collingswood Sewerage Company be required to pay the cost of publishing this Ordinance.

Section 4. And be it Ordained that this Ordinance shall take effect immediately.

Passed by Collingswood Borough Council March 2nd, 1900, over veto of Alfred K. Roberts, Mayor, by vote of 4 to 2.

Attest: F. M. North,
Borough Clerk.

EXHIBIT O3.

Application of Company to Council, and Reply.

Philadelphia Office:
112 North Broad Street

Collingswood, N. J., May 22nd, 1912.

To The Honorable Mayor and Common Council, of the Borough of Collingswood:

Gentlemen:—

The plant of the Collingswood Sewerage Company has been in operation for a period of over ten years under an ordinance approved March 2nd, 1900, authorizing the incorporation of the said Company, and granting to it the right to lay sewer pipes in, under and beneath the public roads, streets and alleys of the Borough of Collingswood.

Acting under authority of said Ordinance the Collingswood Sewerage Company was duly incorporated; plans were filed with the State Board of

Health, providing for an open outlet to the system into Newton Creek. The plans were also approved by the officials of the Borough of Collingswood.

When the plant was not quite completed changes were made in the State Board of Health whereby said Board assumed jurisdiction over Sewerage Companies and required this company to erect a disposal plant for the treatment of the sewage, regardless of the fact that permission had already been granted to the Sewerage Company to deposit the sewage in Newton Creek without treatment, and that the rates to be charged were based on this method of disposal. This put the Company to a very large expense, not only for the construction of the sewage disposal plant, but also for the maintenance and operation of the same.

Our Company has struggled along all these years under the above mentioned unfavorable conditions in the hope that sufficient consumers would be connected to the mains in order to pay at least the interest on the cost of the plant. These hopes have not been realized.

We, therefore, respectfully request your Honorable Body to amend the Ordinance of March 2, 1900 by eliminating the rates, leaving to this Company the matter of arranging a schedule of rates that will be fair to the property owners of Collingswood as well as to this company, and which would be subject to the approval of the Board of Public Utility Commissioners of New Jersey.

Respectfully submitted,
Collingswood Sewerage Company,
(Signed) Richard T. Collings
President.

O.
E.

(Copy)

Council Chamber
Borough of Collingswood
New Jersey

June 10th, 1912.

Collingswood Sewerage Co.,
Collingswood, N. J.

Gentlemen:—

Yours of the 22nd of May was read to Borough Council of the Borough of Collingswood, and the proposition declined.

Yours truly,
(Signed) Wm. Hambrecht, Jr.
Borough Clerk.

AKH-W.H.
E.

EXHIBIT O4.

Valuation Summary
of the
Collingswood Sewage Company.

By Remington and Vosbury, C. E's.
Sept. 30, 1914

Sheet No. 1.

	Cost to Reproduce	Present Value
#1. Land	7,156.74	7,156.74
#2. Right of Ways	874.16	874.16
#3. Collecting System	93,736.78	83,799.78
#4. Siphon Line	6,114.61	5,289.14
#5. Disposal Plant		
(5-A) Pumping cistern	8,217.93	5,752.55
(5-B) Mechanical equipment	3,612.15	2,889.72
(5-C) Buildings	130.00	97.50
(5-D) Settling tanks, con-		

tact beds, piping system, and all other equipment not otherwise classified.	21,554.57	17,243.66
(5-E) Sludge beds	2,995.42	519.08
#6. Company's Tools	100.00	100.00
	$144,492.32	$123,722.33

Company—Collingswood Sewage Co.

Sheet No. 6.

Subject—Collecting System.

Account No. 3.

Balance Carried Forward		$62,597.52
Repaving:		
(y) 166,000 sq. ft. of macadam resurfacing @ 03¢ per sq. ft.	4,980.00	
(y) 29,500 sq. ft. of Amesite resurfacing @ 20¢ per sq. ft.	5,900.00	
(y) 1,038 sq. ft. of Belgian block resurfacing @ 04¢ per sq. ft.	41.52	10,921.52
Net Cost		$73,519.04

Summary Account #3.

Subject.	Net Cost	Overhead	Cost to Reproduce
Collecting System.	73,519.04	27.5	93,736.78

% Depreciation (z)	Deprec. Amount.	Present Value
10.6	9,937.00	83,799.78

*Notes:

(x) Pipe laid under railroad.

(y) In estimating the number of square feet of repaving the following allowance has been made for overcut on each side of trench.

Macadam	3″
Belgian Block	4″
Amesite	3″

The price given includes cutting through pavement.

(z) Depreciation per cent based upon—Age 8 years—Life 75 years.

Valuation Summary
of the
Collingswood Sewage Company.

Sheet No. 1.

	Cost to Reproduce	Present Value
#1. Land	7,156.74	7,156.74
#2. Right of Ways	874.16	874.16
#3. Collecting System	98,977.64	88,486.01
#4. Siphon Line	6,114.61	5,289.14
#5. Disposal Plant		
(5-A) Pumping cistern	8,217.93	5,752.55
(5-B) Mechanical Equipment	3,612.15	2,889.72
(5-C) Buildings	130.00	97.50
(5-D) Settling tanks, contact beds, piping system, and all other equipment not otherwise classified	21,554.57	17,243.66
(5-E) Sludge Beds	2,995.42	519.08
#6. Company's Tools	100.00	100.00
	$149,733.22	$128,408.56

Company—Collingswood Sewage Co.

Sheet No. 2.

Subject—Land.

Account No. 1.

Site of Disposal Works, based upon existing realty value, 4 acres @ 1,000. per acre	$4,000.00

Overhead charges 14%	560.00	$4,560.00
Lot at N. E. corner of Comly and Harrison Avenues containing 20,000 sq. ft.		
Actual cost of land including expenses of condemnation	$2,382.33	
Overhead charges interest 6% for one year, plus taxes at 3%	214.41	2,596.74
Present value		$7,156.74

Company—Collingswood Sewage Co.,
Sheet No. 3.
Subject—Rights of Way.
Account No. 2.

As per statement on Company's books two rights of way were purchased, one from Reed, and one from Kercher.		
Use Company's figures as to cost	$824.68	
Interest for one year at 6%	49.48	
Present value		$874.16

Company—Collingswood, Sewage Co.,
Sheet No. 4.
Subject—Collecting System.
Account No. 3.

18,776′ 6″ T. C. pipe 0′-4′ deep @ .313	5,876.89	
44,808′ 6″ T. C. pipe 4′-6′ deep @ .379	16,982.23	
9,611′ 6″ T. C. pipe 6′-8′ deep @ .558	5,362.94	
7,512′ 6″ T. C. pipe 8′-10′ deep @ .705	5,295.96	
2,400′ 6″ T. C. pipe 10′-12′ deep @ .888	2,131.20	

429′ 8″ T. C. pipe 0′-4′ deep @ .371	159.17	
4,147′ 8″ T. C. pipe 4′-6′ deep @ .436	1,808.09	
2,054′ 8″ T. C. pipe 6′-8′ deep @ .615	1,263.21	
1,400′ 8″ T. C. pipe 8′-10″ deep @ .762	1,066.80	
160′ 8″ T. C. pipe 10′-12′ deep @ .945	151.20	
180′ 8″ T. C. pipe 12′-14′ deep @ 1.028	185.04	
440′ 8″ T. C. pipe 14-16′ deep @ 1.50	660.00	
2,922′ 10″ T. C. pipe 4′-6′ deep @ .58	1,694.76	
270′ 10″ T. C. pipe 8′-10′ deep @ .86	232.20	
50′ 10″ T. C. pipe 10′-12′ deep @ 1.08	54.00	
200′ 10″ T. C. pipe 12′-14′ deep @ 1.30	260.00	
900′ 10″ T. C. pipe 14′-16′ deep @ 2.00	1,800.00	
3,050′ 12″ T. C. pipe 6′-8′ deep @ .783	2,388.15	
930′ 12″ T. C. pipe 12′-14′ deep @ 1.70	1,581.10	
	$48,852.94	
Allow 10% for quicksand encountered	4,885.29	
		$53,738.23

		Size	Depth	Length	Cost per Foot.	Amount	
(x)	Cast iron	6″	5′	60	1.70	102.00	
(x)	" "	6″	7′	70	1.80	126.00	
(x)	" "	6″	8′	92	1.90	174.80	
(x)	" "	8″	4′	60	1.85	111.00	
(x)	" "	8″	7′	180	1.00	180.00	
(x)	" "	8″	8′	90	2.05	184.50	
(x)	" "	8″	10′	125	2.30	287.50	
							1,165.80

250′ of 12″ Cast Iron pipe under lake, exclusive of pile foundation 750.00
52 piles in place with caps, etc. @ 8.00 416.00
800 lbs. of cast iron specials in place @ 03¢ per lb. 24.00
1,190.00

Company—Collingswood Sewage Co.,
Sheet No. 5
Subject—Collecting System.
Account No. 3

Balance Carried Forward $56,094.03

Terra Cotta Y's.

No.	Size	Extra cost each to install.	Table No.	Cost
66	10″ x 6″	.527	#3	34.78
8	8″ x 8″	.371	#3	2.97
102	8″ x 6″	.371	#3	37.84
25	8″ x 5″	.371	#3	9.28
1580	6″ x 6″	.288	#3	455.04
302	6″ x 5″	.288	#3	86.98

Total extra cost of all Terra Cotta Y's 626.89
6″ and 8″ T. C. specials in place 40.00
4—4″ bronze mounted valves @ 6.00 in place 24.00
690.89

Manholes.

1	2	3		4	5	6	7
No.	Type	Cover 24″ at 11.50	Pan 30″ at 15.00	Depth	Avg. Cost per Foot of Depth	Cost of Each Manhole 3 x 4 x 5	Cost of all Manholes 1 x 6
17.	Interm.	11.50		3′	3.60	22.30	379.10
3	"		15.00	3′	3.60	25.80	77.40
11	"	11.50		4′	3.60	25.90	284.90
7	"		15.00	4′	3.60	29.40	205.80
12	"	11.50		5′	3.60	29.50	254.00
17	"		15.00	5′	3.60	33.00	561.00
16	"	11.50		6′	3.60	33.10	529.60
26	"		15.00	6′	3.60	36.60	951.60
12	"	11.50		7′	3.60	36.70	440.40
7	"		15.00	7′	3.60	40.20	281.40
3	"	11.50		8′	3.60	40.30	120.90
8	"		15.00	8′	3.60	43.80	350.40
2	"	11.50		9′	3.60	43.90	87.80
4	"		15.00	9′	3.60	47.40	189.60
2	"	11.50		10′	3.60	47.50	95.00
5	"		15.00	10′	3.60	51.00	255.00
2	"	11.50		11′	3.60	51.10	102.20
1	"		15.00	11′	3.60	54.10	54.10
4	drop		15.00	13′	5.00	80.00	320.00
2	Interm.		15.00	14′	3.60	65.40	130.80
1	"		15.00	15′	3.60	69.00	69.00
1	"		15.00	16′	3.60	72.60	72.60
	Total cost of all manholes						$5,812.60

Company—Collingswood Sewage Co.,

Sheet No. 6.

Subject—Collecting System.

Account No. 3.

Balance Carried Forward		$62,597.52
Repaving:		
(y) 166,000 sq. ft. of macadam resurfacing @ 03¢ per sq. ft.	4,980.00	
(y) 29,500 sq. ft. of Amiesite resurfacing @ 20¢ per sq. ft.	5,900.00	
(y) 1,038 sq. ft. of Belgian block resurfacing @ 04¢ per sq. ft.	415.20	$11,295.20
Net Cost		$73,892.72

Summary Account #3.

Subject	Net Cost	Overhead	Cost to Reproduce
Collecting System.	73,892.72	27.5	94,213.22

% Depreciation (z)	Deprec. Amount	Present Value
10.6	9,986.01	84,227.21

*Notes:

(x) Pipe laid under railroad.

(y) In estimating the number of square feet of repaving the following allowance has been made for overcut on each side of trench.

Macadam	3″
Belgian Block	4″
Amesite	3″

The price given includes cutting through pavement.

(z) Depreciation per cent based upon—Age 8 years Life 75 years.

Company—Collingswood Sewage Co.,

Sheet No. 7.

Subject—Siphon & Air Line.

Account No. 4.

3,062 lin. ft. W. I. pipe @ 85¢	2,602.70
12—8″ Ell's, 1—8″—¼ bend, 2—6″ Y branches 14—8″ pipe nipples, 2—8″ line sockets, 1—8″ clamps, 4—8″ flanged Tees, 58—8″ flanges, 30—8″ x 13½″ x ⅛″ gaskets, also 1—2″ x 13½″ black flanges and 1—13½″ black flange	196.11
1163 ft. of 2″ galvanized pipe (air line) @ 16¢	186.08
4—2″ Malleable Tees, 4—8″ gate valves, 1—2″ brass gate valve	61.80
444 ft. 6″ C. I. pipe @ 34¢	150.96
336 ft. B. M. hemlock @ 22.00	7.39
2997 ft. B. M. Yellow Pine @ 24.00	72.00
Trenching and laying 3,062 ft. of 8″ W. I. pipe @ 27¢	826.74
Trenching, sheeting, pumping, laying, etc. 444 ft. 6″ cast iron pipe (submerged pipe) @ 70¢	310.80
Trenching and laying 1,163 ft. 2″ air line @ 13¢	151.19
2 screen chambers (1—$45.00)—(1—$50.00)	95.00
Collecting tank	90.00
Valve chamber	45.00
Net Cost	$4,795.77

Summary Account No. 4.

Subject	Net Cost	Overhead	Cost to Reproduce
Siphon line	4,795.77	27.5%	6,114.61
% Depreciation	Deprec. Amount.		Present Value.
*13½%	825.47		5,289.14

*Rate of depreciation is based upon an age of four years with life of 30 years.

Company—Collingswood Sewage Co., 10

Sheet No. 8.

Subject—Pumping Cistern.

Account No. 5-A

6,000 shingles No. 1 cypress 6″ x 24″ in place @ 14.00	84.00
1 door frame, 3′ x 6′	5.20
1 crown plate on circle 48′ x 10′	30.00
1 white pine door	18.00
294 ft. B. M. sap box @ 27.00	7.94
1027 ft. B. M. Y. P. @ 27.00	27.73 20
48,047 ft. B. M. Hemlock @ 27.00	1297.27
4 bolts, each 1½″ x 34″ nut and washer (20 lbs each) @ .45¢	1.80
27 bolts, ⅞″ x 33″ (6.1 lbs. each) @ .15¢	4.05
2 tie rods ¾ x 24″, 2 nuts and washers (40 lbs each) @ 1.60	3.20
2 tie rods ¾″ x 6′ 8″, nut and washer (10 lbs. each) @ .40¢	.80
130 ⅜ (buttonheads) bolts, 3½″ long with nut and washer (16 lbs. to 100) (Total 21 lbs @ .02½¢	30 .53
4 turn buckles @ 2.50	10.00
20 ladder steps (each 14.18 lbs.) Total 283.6 lbs. @ .02½¢	7.09
250 ft. 14½″ wire rope per foot @ .03	7.50
3 strap rings @ 2.00	6.00

Nails	4.88
90 lin. ft. 2 rail pipe @ .90¢	81.00
4 wire cylinders ¼″ mesh, 4″ diameter, closed at one end, 8″ long. 4 supports and two flat circular screens ½″ mesh on ¼″ iron ring galvanized	19.00
1—30″ Star ventilator with glass sky light	50.00
(Outer well 40′ diameter by 22′ deep.	
(43′ allowed for excavation @ 2.00	
(Inner well 16′ diameter by 18′ deep	2366.00
106900 brick (laid @ 13.50	1443.15

Company—Collingswood Sewage Co.,

Sheet No. 9

Subject—Pumping System.

Account No. 5-A
(Continued)

409 bbls of cement @ 1.25	511.25
93 cu. yds of broken stone @ 2.20	204.60
110 cu. yds of sand @ 1.00	110.00
133 ft. 7″ #15 per ft. beam 1995. lbs. @ .02	39.90
4 plates 12″ x 16″ x 1″ 200 lbs. @ 02½¢	5.00
Net Cost	$6,345.89

Net Cost	Overhead	Cost to Reproduce	% Depreciation	Depreciated Amt.	Present Value.
6,345.89	1,872.04	8,217.93	*30%	2,465.38	5,752.55

*Rate of depreciation is based upon an age of 12 years with life of 40 years.

Company—Collingswood Sewage Co.,

Sheet No. 10

Subject—Mechanical Equipment and Pumping Station

Account No. 5-B

1—15 H. P. Otto Gas Engine with shafting and belting	735.00

1—10 H. P. Otto Gas Engine with shafting and belting	560.00
1—5 H. P. Otto Gas Engine with shafting and belting	400.00
1—5″ Centrifugal pump	45.00
3—3″ Centrifugal pumps @ 75.00	225.00
3—3″ Gould ditch pumps @ 25.00	75.00
2—4¾ x 4¾ air pumps @ 100.00	200.00
2—200 gal. oil tanks with piping @ 50.00	100.00
2 Magnetos for gas engines @ 50.00	100.00
Electrical wiring @ 45.00	45.00
Small piping and fitting	75.00
Labor for installing mechanical equipment	200.00
Incidentals not listed	25.00
Net Cost	$2785.00

Summary Account No. 5-B

Subject	Net Cost	Overhead	Cost to Reproduce
Mechanical Equipment	2,785.00	29.7%	3,612.15
Scrap Value	% Deprec.	Deprec. Amount	Present Value
500.	*20%	722.43	2,889.72

*Rate of depreciation is based on an average age of six year with life of 20 years.

Company—Collingswood Sewage Company, Sheet No. 11

Subject—Office Buildings.

Account No. 5-C

1—12′ x 10′ x 8′ Frame office and shop building complete. (cost to reproduce)	$130.00

	Depreciation (age 10 years) life 40 years) @ 25%	32.50
	Present Value	$97.50
	Company—Collingswood Sewage Co., Sheet No. 12.	
	Subject—Settling Tanks, Contact Beds, etc., Account No. 5-D	
	15 cu. yds of excavation @ 40¢	6.00
10	8.8 cu. yds concrete including forms @ 8.00	70.40
	Weir plate	12.00
	(95′ x 30′ x 7′) 792 cu. yds excavation @ .50	396.00
	220 cu. yds. concrete (mass) @ 6.50	1,430.00
	180 ft. 8″ C. I. pipe laid complete @ .85¢	153.00
	1 weir gate and guide	12.50
	82 ft. 4″ T. C. pipe 5 ft. deep laid complete @ .33¢	27.06
	185 ft. of 8″ T. C. pipe 2 ft. deep @ .32¢	59.20
	113. ft 8″ T. C. pipe 9 ft. deep @ .71¢	80.23
20	107 ft. of 8″ T. C. pipe 4 ft. deep @ .37¢	39.59
	35 ft. 8″ T. C. pipe 6 ft. deep @ .44¢	15.40
	62 ft. 6″ T. C. pipe 4 ft. deep @ .31¢	19.22
	527 ft. 8″ T. C. pipe 4 ft. deep @ .37¢	194.99
	61 ft. of 6″ T. C. pipe under contact bed @ .23¢	14.03
	240 cu. yds of excavation @ .40¢	96.00
	99 cu. yds of concrete @ 8.00	792.00
	130 ft. 12″ T. C. pipe @ .65¢	84.50
	54 ft. 12″ T. C. pipe 13 ft. deep @ 1.22	54.90
30	6 contact beds, 40′ x 60′ x 5′	
	14″ brick and concrete wall with concrete bottom 527 cu. yds.	
	Excavation, 3,162 cu. yds. @ .50	1581.00
	356 cu. yds. 4 ft. deep in each bed on broken stone 2136 cu. yds (in place) @ 2.40	5126.40
	6 runways 40′ long (not in use)	15.00

Company—Collingswood Sewage Company,
Sheet No. 13
Subject—Settling Tanks, Contact Beds, Etc.,
Account No. 5-D.

Amount Carried F'wd.	$10,279.42
Slabs, 160 cu. yds. @ 5.00	800.00
Walls, etc., 160 cu. yds. @ 8.00	1,568.00
Plaster and miscellaneous	100.00
12″ sewer inlet with bend	24.13
8″ septic outlet with flange bend	17.71
8″ overflow straight 12′ long	7.73
4″ bolt valve	5.00
Elbows, 4″ x 4″ x 2½″	2.46
1 short nipple, 1 4″ coupling, 1 4″ plug	1.64
48 ft. 2½ inch gal. pipe with couplings @ .20¢	9.60
2½″ house connection	1.00
4—4″ gal. ⅛″ bends @ .10¢	.40
8—1″ gal. ¼″ bends @ 12¢	.96
4—1″ brass nipples 2″ long, threaded @ .20¢	.80
175 ft. 4″ gal. pipe, including fittings @ .32¢	55.68
4—4″ gal. ⅛″ bends, 82 lbs. @ .03¢	9.60
4—4″ gal. Tees, 128 lbs. @ .03¢	13.36
4 pieces of 4″ gal. pipe each 4″ long. 16 lbs. @ .30¢	1.20
4—4″ gal. couplings @ .15¢	.60
4—4″ brass plugs, iron pipe thread, perforated by one inch cock @ 2.50	10.00
978 ft. B. M. Y. P. @ 29.50	28.85
2,502 ft. B. M. Hemlock @ 27.50	61.48
12 size 8 circular sluice gates @ 20.00	240.00
100 ft. 8″ T. C. pipe @ .44¢	44.00
1,512 ft. 6″ T. C. pipe @ .38¢	574.56
1,953 ft. 4″ T. C. pipe @ .33¢	644.49
200 ft. 8″ channel pipe @ .10¢	20.00

Company—Collingswood Sewage Co.,
Sheet No. 14.
Subject—Settling Tanks, Contact Beds, Etc.
Account No. 5-D.

Amount Carried Forward	$14,522.67
800 ft. 4″ Channel pipe @ .05¢	40.00
4 screens, 4′ 6″ x 4′ 18 sq. ft. each @ 1.70	6.12
4—8″ hub valves	
Accessories	50.00
7,800 cu. yds. of grading @ .25¢	2,000.00
Total	$16,618.79

Net Cost	Cost to Reproduce	Overhead	% Depreciation	Depreciated Amount.	Present Value.
16,618.79	4,935.78	21,554.57	*20%	4,310.91	17,243.66

*Depreciation per cent based on age of four years with life at twenty years

Company—Collingswood Sewage Co.,
Sheet No. 15.
Subject—Sludge Beds.
Account No. 5-E

549 cu. yds. of excavation @ .50	$274.50
556 cu. yds of coke, in place (236.3 tons) @ 2.40	1334.46
20 cu. yds of concrete (siphon chamber) @ 8.00	160.60
4 siphons in place @ 135.00	540.00
Net Cost	$2309.50

Summary Account No. 5-E.

66

Subject	Net Cost	Overhead	Cost to Reproduce
Sludge beds.	2309.50	29.7	2,995.42

Scrap Value	**% deprec. due to obsolescence	Deprec. Amount	Present Value.
400.00	80%	2076.34	519.08

* * This item covers the cost of constructing a portion of the old system which is no longer used for its original purpose, but is now utilized as a sludge bed. As the siphon, siphon chambers and coke are no longer required the above percentage for depreciation due to obsolescence has been charged off and the amount allowed for present value is made equal to the cost of a new sludge bed of equivalent capacity.

OPINION.

(Filed Feb. 7, 1918)

NEW JERSEY SUPREME COURT.

COLLINGSWOOD SEWERAGE COMPANY,
vs.
BOROUGH OF COLLINGSWOOD.

Argued November 8, 1917.
Decided February , 1918.

1. Upon a petition by a public utility company to the Board of Public Utility Commissioners for permission to increase rates, the petitioner is entitled to a formal determination of the claim advanced by it that existing rates are unjust and unreasonable, and this right is not met by an adjudication that the rates are not so low as to be confiscatory.

2. By a consent given by a municipality to a sewerage company under the Act of 1898 (P. L. 434; C. S. 3584), maximum and minimum rates were fixed;—subsequently the sewerage company petitioned the Board of Public Utility Commissioners for permission to increase rates: Held, that the board had power to increase rates.

3. An ordinance granting consent of a municipality to the incorporation of a sewerage company under the Act of 1898 and fixing maximum and minimum rates is a grant upon condition rather than a contract; the legislature may clothe a public commission with power to fix higher rates upon petition by the sewerage company.

4. Rates charged by a public service company may be unjust and unreasonable because too low as well as because too high.

5. The Board of Public Utility Commissioners upon a petition by a sewerage company refused permission to raise rates, but found that the existing rates were not enough to enable the company to raise money to make necessary extensions and suggested municipal action which would make it possible for the company to obtain new capital; Held, that the board should have ordered the necessary modification of rates and not have shifted the responsibility to the municipality.

Certiorari to Board of Public Utility Commissioners.

Before Justices Swayze, Trenchard and Minturn.

Gilbert Collins and J. Fithian Tatem for prosecutor.

The Attorney General and Francis D. Weaver for Collingswood.

L. Edward Herrmann and Frank H. Sommer for Board of Public Utility Commissioners.

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

The prosecutor was incorporated in 1900 pursuant to the Act of 1898 (P. L. 484; C. S. 3584).

In accordance with Section 12 there was annexed to the ordinance granting the consent of the borough required by the act, the maximum prices or rents that might be charged property owners for the use of the sewerage system. There was also stated a minimum price which, though not required, was justified by the statutory authority to state other terms and conditions. Except for the maximum and minimum, no price was fixed. In 1914 the sewerage company petitioned the Board of Public Utility Commissioners for its authority to charge higher rates. The board found that the present value of the plant after a proper allowance for depreciation, was about $139,000; the gross income $12,433.36; operating expenses, taxes, and insurance $7,226.52; and the net balance $5,200, which it found furnished a revenue of more than three per cent. upon the company's property investment. Whether these figures make any allowance for depreciation, does not appear. There is no finding as to whether the present rates are just and reasonable, sufficient or insufficient. The board contented itself with finding that it did not appear that the rates were so low as to be confiscatory. It found and stated in the beginning of its "Report" that "it did not appear that the refusal to allow the increase of rates requested will result in the rendition of unsafe, inadequate or improper service to those *to whom the company is under obligation to serve with its present facilities.*" The importance of the limitation on the finding, indicated by the italicized words, is shown by a subsequent part of the report, where it is set forth that numerous applications were made to the board for orders requiring the sewerage company to make extensions of its service.

As to these, the report finds that there is no doubt of the desirability of these extensions, but the board is unable to find that it is reasonable and practicable for the company in its present financial condition to make them. It therefore declines to order the extension but suggests that the matter be given "serious consideration" by the borough; "it may be that relief can be had only by municipal action which will make it possible for the utility to obtain new capital."

That certiorari is a proper method to review such failure of the board to act as the Act of 1911 contemplates, is now settled. The sewerage company was entitled to a formal determination of the claim advanced by it that existing rates are unjust and unreasonable. (City of Passaic vs. Board of Public Utility Commissioners, 87 N. J. Law, 705), if the utility board had jurisdiction at all under the Public Utility Act; this right was not met by an adjudication that the rates were not so low as to be confiscatory. The question of confiscation is important when the claim is made under the 14th Amendment that property has been taken without due process of law. The question under the Public Utility Act is stated by the act itself. Section 16c (P. L. 1911, 377). The board is thereby required to fix "just and reasonable individual rates." The question is not whether existing rates are confiscatory but whether they are just and reasonable.

The first doubt to be resolved is whether the board had jurisdiction to settle this question. Its jurisdiction is challenged because it is said that to alter the rates would impair the obligation of the contract between the borough and the company. We think this question is settled so far as this court is concerned, in favor of the jurisdiction of the

board by what was said in at least three prior decisions.

Public Service Railway Company vs. Public Utility Board, 85 N. J. Law, 123;
North Wildwood vs. Public Utility Commissioners, 88 N. J. Law, 81;
Atlantic Coast E. R. Company vs. Public Utility Board, 89 N. J. Law, 407.

We might rest on these cases but in view of the importance of the question, striking as it does at the root of a statute founding for good or ill a new public policy, we venture to add some additional considerations. In one sense, an ordinance embodying a municipal consent upon certain terms to the creation of a franchise, whether the general franchise to be a corporation or the special franchise to use the public streets, may be called a contract, accurately enough for practical purposes since it constitutes an enforceable agreement. It is, however, ordinarily an agreement of a peculiar kind. The municipality as such, although a party, indeed often as in this case the only party on one side, has little or no direct beneficial interest. It contracts, or rather imposes conditions, for the benefit of individuals, as in this case the borough, for the benefit of its citizens who might thereafter contract for connections with the sewerage system, provided for a maximum. But no citizen was bound to connect with the company's sewers, nor was there any express language requiring the company to supply the connection. There could not be any such requirement until the price was determined; the ordinance and consent did not fix a price but only the maximum and minimum between which the price must fall.

So far as the ordinance or consent goes, there might be within those limits a different price for each connection depending on its distance from a central point or a discharge point, on the size of the building, the number of toilets or water taps, or perhaps other considerations. In case of disagreement between land owner and sewerage company, the price would have to be fixed by some tribunal. It would not naturally be the other party to the agreement; it would properly be some outside tribunal, which might at least be supposed to be impartial. This might be a court, a commission, or since 1911 the Public Utility Commission. We know of no other way in which the individual rate could be fixed and a contract made for sewerage service. The legislature has in terms given that power to the Public Utility Commission, and while the borough had power to impose fixed individual rates and a detailed schedule as a condition precedent to its consent, it chose not to exercise that power but to impose more elastic and less certain conditions.

Even if the ordinance had fixed the rate for each connection, there would have been no effective way for enforcing it as a contract by action, since the other contracting party is not injured and could only recover nominal damages.

Summit vs. Morris Traction Company, 85 N. J. Law, 193.

Regarding the ordinance solely as a contract, the individual citizens of Collingswood would have no right of action thereon because they are not parties to the agreement. Hall vs. Passaic Water Company, 83 N. J. Law, 771, at page 776; Baum vs. Somerville Water Company, 84 N. J. Law, 611. The truth is an ordinance of this kind is a grant upon condi-

tion rather than a contract. It creates public duties which can be enforced by mandamus. Rutherford vs. Hudson River Traction Company, 73 N. J. Law, 227, 243. Whether upon a mandamus to compel a connection with a house sewer or drain, the Court could fix the price somewhere between the maximum and minimum, is a question not now before us. The question now raised is whether the state through its legislative arm could provide a tribunal which might fix rates in the face of such an ordinance. Since some tribunal must fix rates where the Public Utility Corporation and the individual citizen cannot agree, and the rate is not fixed by ordinance as it is not in the present case, we see no reason why the legislature may not clothe a public commission with that power, reserving, as the legislature has reserved in this case, the right of the Supreme Court to review by certiorari.

These considerations seem conclusive in favor of the general jurisdiction of the Public Utility Commission provided the language of the statute is apt for the purpose. It is obvious from a mere reading of the act that the legislature meant to invest the commission with full power, and that intent and the use of language apt for the purpose is not questioned. The point made is that it is beyond the power of the legislature to impair the obligation of the contract between the municipality and the sewerage company by fixing a rate higher than the maximum fixed by the ordinance. This contention requires careful consideration. We have shown that the ordinance and consent of 1900 did not create a contract for actual service by the sewerage company to any customer, and that as to the municipality its effect was rather to create a public duty to be enforced by mandamus, than a contractual relation

to be enforced by action. Fixing limits between which the actual price of the service might be established by agreement or otherwise, is rather in the nature of a legislative act to prevent extortion, than of a contract. The ordinance was the legislative act of the municipality. As a legislative act, it was subject to the control of the legislature itself, and that body could make changes as long as it did not infringe the rights of the sewerage company, arising under the ordinance. It makes little difference whether we say that the ordinance created by way of legislative grant a property right called a franchise, protected by the 14th Amendment, or a contract protected by the contract clause of the Federal Constitution and our own State Constitution. In either case, the question is whether a municipal corporation, an agency of the state, is protected by either the 14th Amendment or the contract clause. It is well settled that such protection does not extend to the rights of the municipal corporation against its own creator. Rader vs. Southeasterly Road District, etc., 36 N. J. Law, 273. The rule was there stated by Justice Depue:

> "The power of the legislature over corporations created for purposes of local government is supreme. From a grant of this character, no contract arises with the corporators which exempts it from legislative control. The legislature may alter, modify or repeal the charter at any time in its discretion. The only limitation on the operation of such repeal is as to creditors, that it shall not operate to impair the obligation of existing contracts, or deprive them of any remedy for enforcing such contracts which existed when they were made."

This statement of the law has been frequently followed, has never been questioned in our state, and is supported by abundant authority in the United States Supreme Court. It is enough to cite Worcester vs. Street Railway Company, 196 U. S. 539.

The rule has been recently applied in Massachusetts to the case of increase of street railway fares. Board of Survey vs. Bay State Railway Co., 113 N. E. 273. It applies with all the more force to changes of the terms of municipal ordinances granting rights to public utility companies, so far as concerns the rights of the municipalities themselves, because of the fact that in fixing the terms, the municipal authorities do not act for the local interests of the municipality, but "as public officers exercising a quasi-judicial authority. Hewett vs. Inhabitants of Canton, 65 N. E. 42 (Mass.)" As to contracts for service that may have been made with individuals, we are not informed. There were such contracts, it appears, but we are not advised of their terms. They may all be terminable at the will of the sewerage company, and it is probable that they were merely contracts for service without any definite term being fixed. Whether for no definite term, for a definite term, or nominally in perpetuity, all were made subject to the power of the state to regulate rates. This is a governmental function and cannot be contracted away, even by a municipality, unless specifically authorized by the legislature; and the authority must be clear. Home Telephone Company vs. Los Angeles, 211 U. S. 265. Much less can this governmental power be hampered without clear legislative authority, by a contract between a private corporation and private citizens. We do not know that it has even been suggested that such a contract was not subject to legislative control. To

hold that such a contract could tie the hands of the legislature would be to establish diversity in rates. Consumers, by favor, or by skill in bargaining might obtain advantageous rates, and would thwart the establishment of uniform rates to which so much of our legislation has been directed. The government has never granted this governmental power to private citizens, and in the absence of such a grant, no contract can diminish the government's right of control.

We think, therefore, that the power of the legislature is untrammelled by any possible impairment of the obligations of contracts within the meaning of the Federal or State Constitutions.

It is equally untrammelled, so far as the rights of the municipality are concerned, by the 14th Amendment. If the ordinance and consent of 1900 can be said with any propriety of language, to have created a property right in the municipality, that right was subject to legislative control. Hunter vs. Pittsburgh, 207 U. S. 161, 178.

The next question is whether the Public Utilities Act of 1911 authorized the commission to raise rates as well as to lower them. Of this there can be no doubt. The power is given by Section 16c which authorizes the commission after hearing upon notice by order in writing, to fix just and reasonable individual rates, wherever an existing rate is unjust, unreasonable, insufficient or unjustly discriminatory or preferential.

It is too plain to require statement that a rate may be unjust and unreasonable because too low as well as because too high; the statute aims to secure justice to both sides. If the words "just and reasonable" were not enough, the inclusion of the case where the existing rate is *insufficient* would remove

all doubt. Injustice and unreasonableness due to an insufficient rate can only be corrected by raising it, and injustice due to discrimination or preference may require that one rate be raised or that the other rate be lowered in order to produce a rate that shall be just and reasonable. Only by adhering to the express language of Section 16c can the result be reached that is set forth in Section 15, that the board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and over their property, property rights, equipments, facilities, and franchises, so far as necessary to carry out the provisions of the act.

These general considerations bring us to the order made in this particular case. The board failed to decide in express terms the question which the statute required them to decide—whether the rates were just and reasonable. Instead of deciding that question, they decided only that the rates were not confiscatory. In view of the decisions of the United States Supreme Court, we cannot understand how this result can be vindicated as a general proposition, but it is enough to say that the board was not authorized to pass on that question. Its duty was to determine what rates were just and reasonable; a rate might well be unjust and unreasonable although not confiscatory. We have said that the board failed to decide this question in express terms. It did, however, decide it by implication adversely to the municipality. It found that extensions of the system for which numerous applications had been made, were desirable, but that it was not reasonable and practicable for the company in its present financial condition to make them. It therefore declined to order them and suggested municipal action which would make it possible for the company to obtain

new capital. This amounted to turning over to the borough a duty which the statute imposes on the board. One of the objects meant to be secured was adequate and proper service for the public (not merely for those entitled to service with "present facilities") by order of the board, including reasonable extensions where they will permit sufficient business to justify construction and maintenance and when the financial condition of the public utility reasonably warrants the original expenditure required. The board in effect and by inference finds that the present service is not adequate, that extensions are reasonable and practicable and that the financial condition of the company could be made to justify the expenditures and that new capital could be obtained for the purpose of the municipality would consent to a modification of rates. If this view is correct, the board should have ordered the necessary modification of rates and not have shifted the responsibility to the municipality. *What its findings may be when it considers the questions the statute calls upon it to solve, we cannot know.* Its present order is not in accordance with the statute. It must therefore be set aside and the case remitted in order that there may be proper findings. No costs will be allowed.

RULE.

NEW JERSEY SUPREME COURT.

COLLINGSWOOD SEWERAGE COMPANY,
Prosecutor,
vs.
THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE BOROUGH OF COLLINGSWOOD,
Respondents.

ON CERTIORARI.
RULE.

This cause having regularly come on to be heard at the November Term of this court, upon return of the writ of certiorari allowed herein, in the presence of Gilbert Collins and J. Fithian Tatem, for the prosecutor, L. Edward Herrman, for the Board of Public Utility Commissioners of the State of New Jersey, and Wescott and Weaver, for the Borough of Collingswood, respondent, and the Court having inspected and examined the proceedings of the Board of Public Utility Commissioners returned with the writ of certiorari in this cause; the reasons filed by the prosecutor; the arguments of counsel, and having duly considered the same:

It is ordered and adjudged that the action of the Board of Public Utility Commissioners, pursuant to reports dated March 22nd, 1916, and March 21st,

1917, wherein the application of the Collingswood Sewerage Company for permission to increase rates was refused, be and the same are hereby set aside and the cause remitted, in order that there may be proper findings, without costs to either party.

Rule entered April 9, 1918.

On motion of

J. Fithian Tatem,
Attorney for Prosecutor.

A true copy,
Enoch L. Johnson,
Clerk.

NOTICE OF APPEAL.

(Filed April 17, 1918)

NEW JERSEY SUPREME COURT.

COLLINGSWOOD SEWERAGE COMPANY, *Prosecutor*, vs. THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE BOROUGH OF COLLINGSWOOD, *Respondents*.	NOTICE AND GROUNDS OF APPEAL.

To J. Fithian Tatem, Esq., Attorney of Respondents:

Take Notice that the Borough of Collingswood appeals to the New Jersey Court of Errors and Appeals to be relieved from the whole of the judgment entered in this cause on the following grounds:

1. The Supreme Court set aside the orders and proceedings of the Board of Public Utility Commissioners of the State of New Jersey, dated March 22nd, 1916, March 21st, 1917, and April 4th, 1917, refusing the application of the Collingswood Sewerage Company for permission to establish a new

schedule of rates, whereas by the law of the land, the proceedings of the Board of Public Utility Commissioners refusing such application should have been affirmed.

(a) Because the Board of Public Utility Commissioners is without lawful jurisdiction either to increase rates or to grant permission to file a new schedule of rates, beyond the maximum provided in the ordinance.

(b) Because the Board of Public Utility Commissioners has no power to fix rates without regard to the ordinances and contracts of the municipality.

(c) Because the legislature of the State of New Jersey prior to the adoption of Chapter 195 of the Laws of 1911 granted to the Borough of Collingswood the power to fix the rates to be exacted by the Collingswood Sewerage Company by inviolable contract.

(d) Because permission to use the streets and public places of the Borough of Collingswood was granted by ordinance in accordance with Chapter 210 of the Laws of 1898.

(e) Because the Borough of Collingswood was expressly authorized by statute to fix the maximum rates to be charged for service to be rendered by the Collingswood Sewerage Company and the acceptance of the franchises concluded a contract between the company and the municipality, which the Board of Public Utility Commissioners has no power to set aside or disregard.

(f) Because the rates fixed by ordinance are just, reasonable and sufficient.

(g) Because the rates provided in the ordinance enable the company to furnish safe, adequate and proper service, and to keep and maintain its property and equipment in proper condition.

2. The aforesaid judgment of the Supreme Court is in divers other respects irregular, illegal, oppressive and unjust.

WESCOTT & WEAVER,
Attorneys of Appellants.

[ENDORSED]

Due and legal service admitted.
Gilbert Collins,
J. Fithian Tatem,
Attorneys of Respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS

COLLINGSWOOD SEWERAGE COMPANY
Respondent
vs.
THE BOROUGH OF COLLINGSWOOD
Appellant
} ON APPEAL

BURLINGTON SEWERAGE COMPANY
Respondent
vs.
THE CITY OF BURLINGTON
Appellant
} ON APPEAL

BRIEF FOR RESPONDENTS

I

STATEMENT OF QUESTION INVOLVED

Has the Board of Public Utility Commissioners of New Jersey authority to approve rates to be charged by public utility corporations in excess of the maximum rates prescribed in franchise grants or ordinances?

The particular question in this case being: Has the Utility Commission authority to approve rates to be charged by a sewer company in excess of the maximum rates contained in the municipal consent to the incorporation of such company under the provisions of Chapter 210 of the Laws of 1898?

II

HISTORY OF THE CASE

Collingswood Sewerage Company, the respondent in the first mentioned of these cases, was incorporated in 1900 under the provisions of Chapter 210 of the Laws of 1898, commonly known as the "Sewerage Act." In accordance with the provisions of that act there was attached to the municipal consent to the organization of the company, a schedule of maximum rates to be charged for sewer service. Respondent's sewer plant was built in 1901 and has been in operation since that time, the rates charged being in accordance with said maximum. The revenue proving insufficient under the old schedule, respondent made application to the Board of Public Utility Commissioners, in 1914, for approval of a schedule of rates in excess of said maximum, which application was denied. Upon certiorari the Supreme Court set aside the order of the Board, holding that under the Public Utility Law the Board has absolute authority to establish just and reasonable rates for public utilities, irrespective of franchise limitations and directed the Board of Public Utility Commissioners to determine what rates were just and reasonable and to put the same into effect. From this decision an appeal was taken to this Court.

(The Burlington Sewerage Company, the other respondent, was incorporated in 1901 under the Sewerage Act, and the conditions and points raised in the two cases are similar.)

III

ARGUMENT

Has the Board of Public Utility Commissioners authority to approve rates for sewer companies in excess of the schedule of maximum rates contained in the municipal consent to the incorporation of such companies under Chapter 210 of the laws of 1898? (P. L. 1898, p. 484.)

The act authorizing the incorporation of sewer companies provides that there shall be filed with the certificate of incorporation the consent in writing of and the terms and condition or conditions upon which the consent has been granted by the corporate authorities, if any, of the municipality in which such sewer system is to be constructed. Section 12 of said act provides as follows: "and said corporate authorities shall annex to such consent the maximum prices or rents that may be charged property owners or others for the use of such sewerage system, and any further or other terms and condition or conditions upon which said consent is granted; if the certificate referred to in section two hereof be filed, there shall be annexed thereto and filed therewith a copy of the terms and condition or conditions upon which such consent is granted and such filing shall be conclusive evidence that said corporation has assented to said terms and condition or conditions and the same shall be deemed and taken to be binding and operative upon said corporation, its successors and assigns." Section 14 of said act provides as follows: "Said company may contract with property owners and others for the use of said system of sewerage for such price or prices, or quarterly or annual rents and such restrictions as said company may think proper; provided, that the same shall in no case exceed the maximum rates which may be named

in the terms and condition or conditions on which the consent of the corporate authorities shall have been obtained."

In this case the corporate authorities in compliance with the statutory direction above set forth provided in such consent for certain maximum prices to be charged property owners for the use of the sewerage system. It is admitted that the rates heretofore charged have been such maximum rates, and that the application of the respondent to the Board of Public Utility Commissioners was for the approval of a schedule of rates in excess of such maximum.

By the terms of the Public Utility Commission Law, Chapter 195, Section 16, paragraph c (P. L. 1911, p. 374 at p. 377), it is provided that the Board shall have power "After hearing, upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility as herein defined, whenever the Board shall determine any existing individual rate, joint rate, toll, charge or schedule thereof or commutation, mileage, or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential." The 43d Section of said act is a general repealer of all acts or parts of acts inconsistent therewith.

This Court has construed the above act as giving the most liberal powers to the Board of Public Utility Commissioners.

In the opinion of this Court in the Atlantic Coast Electric Railway case (June Term, 1918) Mr. Justice SWAYZE says: *"The scope of that act is very broad. It is evidently meant to give full control of all public utilities to the Board thereby created, so far as it could be done by legislation."*

The contention of the respondent is that in attaching to its consent the schedule of maximum rates required by the statute as above set forth, the municipality simply acted as an agency of the State, and that therefore the Legislature can directly abrogate, modify or alter the terms imposed by the municipality, certainly so far as the municipality is concerned. The creation of the Board of Public Utility Commissioners who are charged with the duty of fixing just and reasonable rates is in effect an abrogation of the terms of the municipal consent by the soverign police power of the State in those cases which come before said Board for its determination. This has been clearly held by our Supreme Court in a number of cases, including *Public Service Railway Co. vs. Board of Public Utility Commissioners,* 85 N. J. Law, 123, and the State, *Inhabitants of Phillipsburg, et al. vs. Board of Public Utility Commissioners,* 85 N. J. Law, 141. In the head note to the last mentioned case it is stated that, "The fact that the town in the exercise of the power to regulate passed an ordinance which the railroad company accepted as a condition upon which it might exercise its franchise, does not constitute a contract which the town can interpose as a barrier to the exercise of its general police power in the supervision of street railways."

Under the system which obtained at the time of the passage of the sewer act the State authorized its agent, the municipality, not to *fix rates* but to *establish certain maximum* charges for the protection of the public, who were at that time unprotected in that regard. The establishment of a Board of Public Utility Commissioners with general power and authority over rates and service substituted a complete and comprehensive system of protection and rate regulation for the fragmentary system theretofore in force. The public utility law has been a development. It arose out of urgent

necessity and its scope has been broadened and widened from time to time. The advantages of a general, comprehensive and uniform system of regulation have become so apparent that the commissions and courts in most of our States have held without reserve that the control exercised by a commission under these conditions is a police regulation for the general or public good and is not in contravention of any constitutional prohibition even when it supersedes or contravenes definite franchise limitations. For the above reason it is submitted that the privilege or right given by the State to the municipality to attach to its consent a schedule of maximum rates did not create between the municipality and the company such a contract within the protection of either the State or the Federal Constitution as would prevent the subsequent exercise by the State of its reserved power to regulate rates irrespective of such maximum.

The restriction contained in the schedule of maximum rates could not constitute an inviolable contract between the municipality and the company because it lacks the necessary and essential elements of a valid contract. In the first place, it is indefinite in regard to time. The franchise granted is perpetual, and if it constituted a contract which must be considered inviolable in all of its provisions, the restrictive clause limiting the rates to be charged must extend throughout the entire period of the franchise. Contracts for an indefinite or extremely long period, or in perpetuity, are not favored in the law. This point is squarely ruled in three comparatively recent cases before the Supreme Court of Pennsylvania, as follows:

McCullough-Dalzell Crucible Co. vs. Philadelphia Co., 223 Pa. 336.

Turtle Creek Borough vs. Penna. Water Co., 243 Pa. 415.

Bellevue Borough vs. Ohio Valley Water Co., 245 Pa. 114.

In the cases now before the Court there was no limitation as to the duration of the franchise grant. It must therefore be held to continue throughout the life of the grantee, which in the case of the Collingswood Company was ninety-nine years, and in the case of the Burlington Company was perpetual.

In the second place the consent and ordinance did not constitute an inviolable contract because under it the company was under no obligation to continue to furnish service. Rather than a contract it was a restriction which virtually said to the company, that so long as you continue to furnish service you must not charge higher rates than those fixed in these maximum rates unless you are authorized to do so by the municipality, or by some agency or department of the State under its superior power of supervision, regulation and control.

The following cases hold that the powers of a board or commission similar to the Board of Public Utility Commissioners of New Jersey are not hampered or restricted by franchise limitations such as the one now under consideration.

There can be no doubt in view of the authorities that the rights of the municipality may be waived or modified by its creator, the State, and that against such action the municipality cannot be heard to object. In fact the waiver or consent by the State binds the municipality as fully and completely as though made by voluntary action of the latter on its own behalf.

Atlantic Coast Electric Rwy. Co. vs. Board of Public Utility Commissioners, et als., N. J. Court of Errors and Appeals, June Term, 1918.

Borough of North Wildwood vs. Board of Public Utility Commissioners, et als., 88 N. J. L. 81.

City of Manitowoc vs. Manitowoc and Northern Trac. Co., 145 Wis. 13, 129 N. W. Rep. 925.

Kenosha vs. Kenosha Home Tel. Co., 135 N. W. Rep. 848.

Milwaukee Elect. Railway & Light Co. vs. R. R. Coms. of Wis., 153 Wis. 592; 142 N. W. Rep. 491.

Minneapolis & St. Paul Rwy. Co. vs. Menasha Wooden Ware Co., 150 N. W. Rep. 411.

In re Rhinelander Power Co. P. U. R. 1915 A., 652.

Duluth St. Railway Co. vs. R. R. Coms. of Wis., 152 N. W. Rep. 887.

Business Men's Asso. of Ticonderoga vs. D. & H. Co., 2 P. S. Com. Rep. N. Y., 2d Dist. 78.

City of Benwood, et al. vs. Public Service Coms. of West Virginia, 83 S. E .Rep. 295.

City of Dawson vs. Dawson Telephone Co., 72 E. Rep. 508.

State ex rel. Webster vs. Superior Ct., 67 Wash. 37; 120 Pac. Rep. 61.

The Middlesex & Boston Rate Case, Mass. P. S. C. Rep. 1914, Vol. 1, p. 99.

Detroit United Railways vs. Michigan, 242 U. S. 238 (U. S. Supreme Court, 1917).

Puget Sound Traction Light & Power Co. vs. Reynolds, et al., 244 U. S. 574 (United States Supreme Court, 1917).

People ex rel. N. Y. & N. S. Traction Co., et als., 162 N. Y. 405 (N. Y. Supreme Court, App. Div., Dec., 1916).

Mount Union Borough vs. Mount Union Water Co., 256 Pa. St. 516 (Pa. Supreme Court, 1917).

Re City Water Co., P. U. R., 1917 B, 624 (Missouri Pub. Serv. Com., 1916).

Ratner, et al. vs. Denver Gas & Electric Light Co., P. U. R. 1917 E, 988 (Colorado Pub. Util. Com., 1917).

Frankfort vs. Utica Gas & Electric Co., P. U. R., 1917 E, 900 (N. Y. Pub. Serv. Com., 2d Dist., 1917).

Re Indianapolis Water Co., P. U. R., 1917 E, 556 (Indiana Pub. Serv. Com., 1917).

Re United Fuel Gas Co., P. U. R., 1917 A, 923 (West Va. Pub. Serv. Com. Dec., 1916).

City of Woodburn vs. Public Service Commission, et al., P. U. R. 1917 B, 967 (Oregon Supreme Court, Dec., 1916).

Re Bay State Street Railway Co., P. U. R., 1917 C, 554 (Mass. Pub. Serv. Com., 1917).

Re Freeport Railroad Co., P. U. R., 1917 C, 155 (N. Y. Pub. Serv. Com. 2d Dist., 1917).

Ben Avon Borough, et al. vs. Ohio Valley Water Co., P. U. R., 1917 C, 390 (Penna. Pub. Serv. Com., 1917).

It is vigorously contended on behalf of the municipality that by virtue of the franchise granted by

it to the respondent company it obtained certain property rights which are entitled to be safeguarded under the provisions of the Federal Constitution. It is further insisted that the franchise granted by it to the respondent constituted a contract of such a kind and character as is protected under the contract clauses of the State and Federal constitutions.

The true nature of the agreement between the municipality and the respondent, as evidenced by the consent and franchise granted by the municipality, is clearly stated by Justice SWAYZE in the opinion of the Supreme Court, in this case.

> "Regarding the ordinance solely as a contract, the individual citizens of Collingswood would have no right thereon because they are not parties to the agreement. *Hall vs. Passaic Water Company,* 83 N. J. L., 771, at p. 776; *Baum vs. Somerville Water Company,* 84 N. J. L., 611. The truth is, an ordinance of this kind is a *grant upon condition rather than a contract.* It creates public duties which can be enforced by mandamus. *Rutherford vs. Hudson River Traction Company,* 73 N. J. Law, 227, 243. Whether upon a mandamus to compel a connection with a house sewer or drain, the Court could fix the price somewhere between the maximum and minimum, is a question not now before us. The question now raised is whether the state through its legislative arm could provide a tribunal which might fix rates in the face of such an ordinance. Since some tribunal must fix rates where the Public Utility Corporation and the individual citizen cannot agree, and the rate is not fixed by ordinance as it is not in the present case, we see no reason why the legislature may not clothe a public commission with that power, reserving, as the legislature has reserved in this

case, the right of the Supreme Court to review by certiorari.

"These considerations seem conclusive in favor of the general jurisdiction of the Public Utility Commission provided the language of the statute is apt for the purpose. It is obvious from a mere reading of the act that the legislature meant to invest the commission with full power, and that intent and the use of language apt for the purpose is not questioned. The point made is that it is beyond the power of the legislature to impair the obligation of the contract between the municipality and the sewerage company by fixing a rate higher than the maximum fixed by the ordinance. This contention requires careful consideration. We have shown that the ordinance and consent of 1900 did not create a contract for actual service by the sewerage company to any customer, and that as to the municipality its effect was rather to create a public duty to be enforced by mandamus, than a contractual relation to be enforced by action. Fixing limits between which the actual price of the service might be established by agreement or otherwise, is rather in the nature of a legislative act to prevent extortion, than of a contract. The ordinance was the legislative act of the municipality. As a legislative act, it was subject to the control of the legislature itself, and that body could make changes as long as it did not infringe the rights of the sewerage company, arising under the ordinance. It makes little difference whether we say that the ordinance created by way of legislative grant a property right called a franchise, protected by the 14th Amendment, or a contract protected by the contract clause of the Federal Constitution and our own State Constitution. In either case, the question is whether a municipal

corporation, an agency of the state, is protected by either the 14th Amendment or the contract clause. It is well settled that such protection does not extend to the rights of the municipal corporation against its own creator. *Rader vs. Southeasterly Road District, etc.,* 36 N. J. Law, 273. The rule was there stated by Justice DEPEW:

" 'The power of the legislature over corporations created for purposes of local government is supreme. From a grant of this character, no contract arises with the corporators which exempts it from legislative control. The legislature may alter, modify or repeal the charter at any time in its discretion. The only limitation on the operation of such repeal is as to creditors, that it shall not operate to impair the obligation of existing contracts, or deprive them of any remedy for enforcing such contracts which existed when they were made.'

"This statement of the law has been frequently followed, has never been questioned in our state, and is supported by abundant authority in the United States Supreme Court. It is enough to cite *Worcester vs. Street Railway Company,* 196 U. S. 539.

"The rule has been recently applied in Massachusetts to the case of increase of street railway fares. *Board of Survey vs. Bay State Railway Co.,* 113 N. E. 273. It applies with all the more force to changes of the terms of municipal ordinances granting rights to public utility companies, so far as concerns the rights of the municipalities themselves, because of the fact that in fixing the terms, the municipal authorities do not act for the local interests of the municipality, but 'as public officers exercising a quasi-judicial authority. *Hewett vs. Inhabitants of Canton,* 65 N. E. 42

(Mass.)' As to contracts for service that may have been made with individuals, we are not informed. There were such contracts, it appears, but we are not advised of their terms. They may all be terminable at the will of the sewerage company, and it is probable that they were merely contracts for service without any definite term being fixed. Whether for no definite term, for a definite term, or nominally in perpetuity, all were made subject to the power of the state to regulate rates. This is a governmental function and cannot be contracted away, even by a municipality, unless specifically authorized by the legislature; and the authority must be clear. *Home Telephone Company vs. Los Angeles,* 211 U. S. 265. Much less can this governmental power be hampered without clear legislative authority, by a contract between a private corporation and private citizens. We do not know that it has even been suggested that such a contract was not subject to legislative control. To hold that such a contract could tie the hands of the legislature would be to establish diversity in rates. Consumers, by favor, or by skill in bargaining might obtain advantageous rates, and would thwart the establishment of uniform rates to which so much of our legislation has been directed. The government has never granted this governmental power to private citizens, and in the absence of such a grant, no contract can diminish the government's right of control.

"We think, therefore, that the power of the legislature is untrammelled by any possible impairment of the obligations of contracts within the meaning of the Federal or State Constitutions.

"It is equally untrammelled, so far as the rights of the municipality are concerned, by the 14th Amendment. If the ordinance and consent

of 1900 can be said with any propriety of language, to have created a property right in the municipality, that right was subject to legislative control. *Hunter vs. Pittsburgh,* 207 U. S. 161, 178."

IV

DISCUSSION OF GENERAL PRINCIPLE INVOLVED

The question involved in these cases is one of primary importance. Upon its determination will depend the success or failure of the principle embodied in the regulation of our public utilities through the Board of Public Utility Commissioners. As heretofore stated, the Public Utility Law has been a development. We have passed from the stage of *unrestricted competition* to that of *regulated monopoly.* It should be noted that this transition has not been brought about because of its contemplated effect upon the utility corporations but solely because of public considerations. In other words, it is today the concensus of opinion among those who have given the utility question most careful consideration, that a system of unrestricted competition is wasteful, uneconomic, and tends to result in inadequate and insufficient service at excessive cost. This dual result of poor service and extravagant costs, was at the foundation of the present system of regulated monopoly. The purpose of the adoption of the system of regulation, of which the Utility Commission is the corner stone, was not so much for the purpose of curbing monopoly as is insisted in the brief of the learned Attorney General, but rather to secure to the public, proper and satisfactory service without duplication or extravagance, and to relieve the public from the disastrous results of unlimited competition between utility corporations. These considerations led

to the adoption of the principle of regulated monopoly, as applied to utilities. Under this system the *service to be rendered* as well as the *rates to be charged* are placed under the control of the State. The decision of these cases will go far toward determining whether in New Jersey this control is to be partial or absolute, and whether the system which we have adopted is to stand or fall. The principle of Commission regulation is half way between unrestricted competition on the one hand and government ownership on the other.

At first blush there may seem to be a substantial conflict between the decisions of the various courts and commissions which have considered this question. A careful examination of the more recent cases will show, however, that there is a well defined line of demarcation which has been adhered to in most jurisdictions. Let us consider at some length the recent decisions which deal directly with the following question:

Has a Public Utility Commission authority to approve rates to be charged by public utility corporations in excess of the rates stipulated or the maximum rates fixed by municipal ordinance passed prior to the organization of the Commission?

Quimby vs. Public Service Commission, N. Y. Court of Appeals (decided April 5, 1918), P. U. R. 1918 D, p. 30; 119 N. E. R., 433. In this case the New York State Railways presented a petition to the Public Service Commission of the Second District for leave to raise the fare on its street railways in Rochester and other cities from five cents to six cents. The City of Rochester objected to the jurisdiction of the Commission to entertain such application on the ground that the amended charter of the City of Rochester which was contained in an act passed by the New York Legislature in 1915 fixed a five cent fare over the road of any corporation operating a street railroad in such city, and also that similar terms and conditions were

contained in the franchise of the street railroad company as a condition of the consent of the local authorities thereto. There were several cases which presented the same question, and in one of these the Public Service Commission held that it had the power to permit fares to be increased beyond five cents, which was the rate fixed in a franchise granted by a municipality to a street railway company, and the matter came before the Court of Appeals. The New York Constitution, Art. 3, Sec. 18, provided that the consent of the municipality was necessary before a street railway should be constructed or operated. In view of this constitutional provision the Court held that it did not appear that there was a clear intent on the part of the legislature to clothe the Utility Commission with power to modify the terms of the consent contemplated by the constitution. The Court expressly refused to pass on the question as to whether the legislature *could* clothe the Commission with this power, but merely held that it *had not* done so. The exact point decided and the distinction between the authority of the New York Commission over statutory as contrasted with constitutional rights is contained in the syllabus of the above case in 119 N. E. R., 433 as follows:

> "Under Public Service Commission Laws (Consol. Laws c. 48) §§ 2, 3, 5, and 49 the Commission of the Second District has general jurisdiction to regulate equitably fares to be charged by street railways for transportation within the city of Rochester, even where the Legislature had fixed the maximum rate, as under Railroad Law (Consol. Laws, c. 49) § 181, reserving power to change the same."
>
> "The charter Amendment Laws 1915 c. 359, § 7, fixing a maximum five cent fare in the city of Rochester does not exclude the jurisdiction of a

public service commission to adjust fares, raising the maximum rate if equitably required."

"Under Const. Art. 3, § 18, providing for consent of property owners and local authorities to the construction and operation of street railroads, where such consent was based upon a stipulated maximum fare, the public service commission is without jurisdiction over the subject matter of changing such rate, and the law does not attempt to give it such authority."

The best discussion of this entire matter from the New York point of view is contained in the opinion of Commissioner Whitney on behalf of the Commission of the First New York District, in the case of New York and North Shore Traction Company, decided January 10, 1918, and reported in P. U. R. 1918 A, 893 (beginning at p. 934). This opinion, as is the case in many opinions by members of Utility Commissions, is evidently the work of a sound lawyer and one well versed in utility matters. As stated above the provision in New York which requires the municipal consent to the location of a street railway is a *constitutional* provision, as distinguished from a *statutory* requirement. There is also in the New York Railroad Law a provision *by statute* limiting the rate of fare to five cents. The municipal consent of the City of New York expressly provided for a maximum fare of five cents. Commissioner Whitney draws the clear and valid distinction between municipal rights which have their origin in the *Constitution,* and those which owe their validity to *statutory action by the legislature.* He holds that as to the latter the legislature is supreme. "Powers possessed by the legislature may be delegated by it to a municipality, a commission, or any other creature of the State, for their exercise in the public interest; powers thus delegated may in the same man-

ner be withdrawn or modified; and if the legislature's agent has in pursuance of those powers entered into agreements with corporations or individuals affected by the exercise of those powers, the undoubted weight of authority under decisions to which I shall presently refer, is that the legislature as the repository of power, may, either directly or through a Commission or other agency, modify the terms of any such agreement, at least upon the application or with the consent of the corporation or individuals with whom the agreement was made. This rule governs all situations as to which the constitution has vested the legislative power exclusively in the legislature."

"An essentially different situation arises, however, where, as in New York, the ligislature's power with respect to the use of public streets by a street railroad is restricted by a *Constitutional* requirement, and the legislative power possessed by the municipality to grant, withhold or fix terms for its consent to such use, is derived, not from the legislature, but from the Constitution."

Commissioner Whitney considers this matter at great length, and draws the clear distinction between those cases where the municipality derives its authority in the premises from *legislative* action as distinguished from those cases in which its authority is granted to it directly by the *Constitution.* In the latter class of cases, the Constitution not only grants authority to the municipality, but in so doing expressly limits and restricts the authority of the legislature. To quote Commissioner Whitney again in this connection, "If, as we have seen, the constitutional provision clothes the city with sovereign legislative powers in the exercise of which the city has independent policy-determining powers beyond the control of the legislature or the courts; and if the constitutional provision is to be regarded as making secure against

legislative interference the right of the city to see to it that no more than an indicated maximum fare is charged upon lines for which it grants consent to the use of its streets, may the company which has obtained the city's consent through agreement to abide by such a limitation be relieved therefrom by legislative action, over the city's objection? I think not." * * * *
"In this connection, of course, cases which arise in the absence of a constitutional provision are not applicable in so far as they may sustain a legislative or Commission modification of a rate fixed by a local franchise. A distinction as to the legislature's subsequent powers is clearly to be drawn between a case where the city fixes a fare maximum in the exercise of legislative powers *delegated* to it *by the legislature,* and a case where the city fixes the fare in the exercise of powers granted to it *by the Constitution in limitation on the powers of the legislature.*"

After dealing with the constitutional question Commissioner Whitney further deals with the power of the Commission to increase a rate above a maximum indicated by statute. It must be remembered that the Railroad Law of New York expressly imposes a five-cent maximum fare upon street railways, and that in the North Shore case the Commission was asked to approve a seven-cent fare. Commissioner Whitney concludes that it was the evident intention to place in the Commission such regulatory power over rates of fare as was possessed by the Legislature, and that therefore the provisions of the Railroad Law limiting fares to five cents would not be binding on the Commission. His conclusion on this point is as follows (p. 969): "At least in the absence of a further clarification of the subject through judicial decision I am constrained to hold that aside from the limitation contained in the franchise granted by the city under the *constitutional* provision, there is no barrier to the Commission's

power to sanction the placing in effect of a seven-cent rate."

The distinction which is so clearly set forth by Commissioner Whitney in the North Shore case, quoted above, lies at the foundation of the opinion of Mr. Justice MITCHELL, speaking for the Supreme Court of Pennsylvania, in the case of *Allegheny vs. Millvale, &c. Street Railway Company,* 159 Pa. 411, 28 Atl. Rep. 202. The Constitution of Pennsylvania provides that "no street passenger railway shall be constructed within the limits of any city, borough or township without the consent of the local authorities." The consent of the municipality in question provided that "the rate of fare for carrying a single passenger from the City Line to Pittsburgh between the hours of 5 a. m. and midnight shall not exceed five cents." Justice MITCHELL held that the provisions of the Constitution were peremptory and without limitation; that this power was a gift directly from the Constitution to the local body and needed no help and permitted no interference from the Legislature. The more recent Pennsylvania cases are to the same effect:

Plymouth Twp. vs. Chestnut Hill &c., 168 Pa. 181; 32 Atl. 19.

Minersville vs. Schuylkill Elect. Ry. Co., 205, 401; 54 Atl. 1050.

McKeesport vs. Pittsburgh &c. Ry. Co., 213 Pa. 544; 62 Atl. 1075.

It is to be noted that all of the above Pennsylvania cases involved the right of street railways to occupy streets under a municipal consent, which is the only form of utility to which the provision of the Pennsylvania Constitution applies. These cases all arose before the creation of the Pennsylvania Commission.

In *Ben Avon Borough vs. Ohio Valley Water Co.,* P. U. R. 1917 C, 390, which was a case decided by the

Pennsylvania Commission in February, 1917, it was held that a contract between a municipality and a water company which fixed the rates for service for a definite period (which in this case was twenty years), did not prevent the Pennsylvania Commission from approving a schedule which would increase the rates to be charged the municipality, although the contract had been executed prior to the enactment of the statute creating the Commission.

In this case the finding of the Commission was subsequently reversed by the Superior Court on a question of valuation, but on appeal to the Supreme Court of Pennsylvania the order of the Superior Court was reversed and the order of the Public Service Commission was affirmed and reinstated. (260 Pa. 289; Advance Reports of May 10, 1918.)

In a very recent case before the Pennsylvania Commission, that of City of Oil City vs. Petroleum Telephone Company, decided by the Pennsylvania Public Service Commission on May 13, 1918, and not yet published, Commissioner AINEY, the chairman of the Comission, considers this matter most carefully. The telephone company filed with the Pennsylvania Commission a tariff of rates to which the City of Oil City objected on the ground that said rates were violative of an ordinance of Oil City, authorizing the predecessor of this company to erect its lines and occupy the city streets on the express condition that certain rates should be charged, which were lower than those set forth in the tariff as filed. The City also objected to the rates as being unjust and unreasonable. The Commission found that the increased rates asked for were just and reasonable. To quote from Chairman AINEY: "Concededly, the controlling question is whether a telephone company may collect, under filed tariffs, a just and reasonable rate necessary for the maintenance and operation of its system, and the yield-

ing of a fair return, in the face of municipally imposed rates carried in an ordinance to which it had given its assent, and under which it was authorized to enter upon the streets." * * * "Does the ordinance of 1899 accepted by respondent's predecessor under any administrative, legislative or contractual rule of law, prevent the respondent from increasing its rate to meet the financial situation which confronts it, or prevent the equalization of the burdens of a necessary increase of income?" * * * "While rates carried in municipal ordinances may be enforced so long as they remain reasonable and do not offend against other rate provisions of the Public Service Company Law, whenever under changed conditions they become unreasonable, inadequate or unduly discriminatory, they place a burden upon the public from which the public has a right to be relieved, and the machinery for proper adjustment having been created whereby the exercise of the police power may be put in motion, all ordinances carrying unjust or inadequate rate provision must give way."

"We are of the opinion that such exercise of the police power of the State does not invade the authority of municipalities nor violate the sanctity of ordinance contracts."

The foregoing Pennsylvania cases are instructive because they clearly distinguish between those which have their origin in a *constitutional* provision and those which do not. As the Constitution of Pennsylvania gives to municipalities the right to consent to the use of the local streets by street railways, it is held that this power cannot be modified nor abridged by the Legislature. As the Constitution is silent regarding franchises to be granted to water and telephone companies, it is held that the Legislature and its agent, the Commission, have absolute authority to control the rates to be charged by such companies.

It is to be noted, however, that the distinction between rights of *constitutional* and *statutory* origin so far as they can be affected or modified by subsequent statute, which distinction is adopted in New York and Pennsylvania, has not been followed or approved in other jurisdictions. Very carefully considered opinions in Illinois, Oregon and Missouri are to the effect that a constitutional provision similar to that which exists in New York cannot operate to hamper or restrict the power of the Legislature, or its agent, the Commission, to regulate and control rates of fare and charges for service, provided there be a clear legislative intent to carry out such regulation. The following cases are clearly in point:

Public Utility Commission vs. Chicago & W. T. R. Co. (Illinois Supreme Court), 275 Ill. 555; 114 N. W. 325; P. U. R. 1917 B, 1046. In this case the Supreme Court of Illinois expressly ruled that the provisions of the Constitution of the State of Illinois, which provides in substance that the Legislature might not grant the right to construct and operate a street railway within a municipality without requiring the consent of the local authorities having control of the streets or highways proposed to be occupied, did not by implication or otherwise attempt to divest the State of its paramount authority of control of streets and highways, and did not deprive the Legislature of its power to fix rates for such companies. This case undoubtedly brings the Supreme Court of Illinois in direct opposition to the Court of Appeals of New York, as the constitutional provisions in Illinois and New York are substantially the same.

In re Chicago N. S. & M. R. Co. (Ill. Public Utility Commission, Sept., 1917), P. U. R. 1918 A, 388, the Illinois Commission held that notwithstanding the fact that the municipal franchises held by the company limited the fare to be charged to five cents, the Commis-

sion had authority under the Constitution and statutes of Illinois to approve a higher rate of fare. The Commission squarely decided that the power granted to it by the act under which it was organized to determine the just, reasonable or sufficient rates or other charges and to fix the same by order, was absolute. In arriving at this decision reliance was placed upon numerous decisions of the Supreme Court of Illinois, including *Chicago vs. O'Connell,* 278 Ill. 591; 116 N. E., 210, and *Utility Commission vs. Chicago & W. T. R. Co.,* 275 Ill. 555; 114 N. E. 325, cited above.

In the very recent case of *Kewanee Home Telephone Co.,* P. U. R. 1918 B, 172, the Illinois Commission held that it had absolute authority to approve telephone rates in excess of those named in the franchise under which the company operated.

In *Louisiana vs. Louisiana Water Co.,* P. U. R. 1918 B, 1774, the Missouri Public Service Commission held that the Commission had power to approve and establish rates to be charged by a utility notwithstanding said rates were higher than those set out in a franchise granted to the utility by a municipality acting under legislative authority.

In re United Railways Co., which was decided by the Missouri Public Service Commission in May, 1918, and which will appear within a few weeks in the Public Utility Reports, there is contained a very comprehensive discussion of the authority of the Missouri Commission to authorize a street railway company to charge a rate of fare in excess of that stipulated by the franchise. It is to be noted that the provision of the Missouri Constitution, which is as follows, "No law shall be passed by the general assembly granting the right to construct and operate a street railway within any town, village or other public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed

to be occupied by such street railroad," is very similar to the provision of the New York Constitution heretofore referred to. The Misosuri Commission held, however, that as the Constitution further provided that "the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State"; and also that the charter of the City of St. Louis must be in harmony with and subject to the Constitution and the laws of Missouri, that to hold that the section of the Constitution of Missouri first quoted above empowered the city by its ordinance to irrevocably fix the rates to be charged by a street railway operating therein would be in direct conflict with the other provisions of the Constitution mentioned above. The Commission further held that the only harmonius construction of such provision is that they do not delegate the power of the State to fix rates to the city or if such power is delegated the city is empowered to fix or agree upon such rates only until such time as the State may elect to change them. The opinion of the Commission in this case is a very strong presentation of the position that even a Constitutional provision requiring street railways to obtain municipal consent is entirely inoperative as a grant to the municipality of the right to fix street railway fares, at least after the State under its general police power has placed the regulation of such fares throughout the State in the hands of its agent and representative, which is the Utility Commission.

In *City of Woodburn vs. Public Service Commission,* 161 Pac., 391; P. U. R. 1917 B, 367, the Supreme Court of Oregon held that although the Constitution of that State granted to municipalities the power to enact and amend their charters, in pursu-

ance whereof the City of Woodburn claimed the right by ordinance to establish the fares to be charged for telephone service, no authority had been conferred upon the city to regulate the rates to be charged by public utilities, since the latter is a matter of general concern and does not pertain solely to local municipal affairs. The Court held that in spite of the Constitutional provisions above mentioned, the State had never divested itself of the right to regulate the rates to be charged by public utilities, since any contract between the municipality and the utility or any conditions contained in the municipal franchise will be deemed to have been made in all cases subject to the power of the State to change the rates. As is well stated by Justice HARRIS in delivering the opinion of the Court (P. U. R. 1917 B, p. 977): "the right of the State to regulate rates by compulsion is a police power, and must not be confused with the right of a city to exercise its contractual power to agree with a public service company upon the terms of a franchise. The exercise of a power to fix rates by agreement does not include or embrace any portion of the power to fix rates by compulsion. When Woodburn granted the franchise to the telephone company the city exercised its municipal right to contract, and it may be assumed that the franchise was valid and binding upon both parties until such time as the State chose to speak; but the city entered into the contract subject to the reserved right of the State to employ its police power and compel a change of rates, and when the State did speak the municipal power gave way to the sovereign power of the State." * * * "The city has limited the inquiry to the question of whether the Commission possessed the necessary powers to change rates, and hence we are not now concerned with the amount or reasonableness of the rate. Our conclusion is that the Public Service Commission, as the representative of

the State, had lawful authority to change the telephone rate."

In jurisdiction where the origin of the grant of power to the municipality is *statutory* only, as is the case in New Jersey, it is uniformly held that the rights of the municipality under the franchise are absolutely subject to the control of the legislature, which control may be exercised in such manner as the legislature may determine. The following cases are clearly in point:

City of Fall River vs. Public Service Commission (Mass. Supreme Court, Dec. 1917), 117 N. E., 915; P. U. R. 1918 B, 141. This case arose upon the petition by the City of Fall River to annul the order of the Public Service Commission, allowing a new schedule of rates in excess of those fixed by the grant of location by the City of Fall River to the Bay State Street Railway Company. The company demurred to the petition and on appeal to the Supreme Court of Suffolk County the demurrer was sustained, whereupon appeal was taken to the Supreme Court of Massachusetts. The grant of location contained the express condition that the railway company should sell six tickets for twenty-five cents. The company refused to comply with this condition, and the Public Service Commission had sustained such refusal. The Supreme Court held that under the statute creating the Public Service Commission, the latter had absolute power to regulate and establish the fares to be charged on street railways independent of any condition that might have been imposed in antecedent grants of location by municipal authorities. The Court also cites with approval the case of *Board of Survey vs. Bay State Rwy.*, 224 Mass., 463; 113; N. E., 273 as clearly establishing the absolute authority of the Massachusetts Commission.

In re Utah Light & Traction Co., P. U. R. 1918 B, 497, the Utah Public Utilities Commission held that it had authority to increase street railway rates above the limitations set forth in municipal franchises. The finding of the Commission is well expressed in the following language, which would be equally applicable to the New Jersey cases now under consideration:

> "We are of the opinion that, notwithstanding the provisions of franchise agreements referred to in this case, in which fares are fixed, the same were binding upon the company until the legislature saw fit to intervene for the purpose of regulating and controlling the petitioner and others, and fixing their rates, fares and charges; that the legislature has now intervened by creating the Public Utilities Commission and investing said Commission with power to revise, if necessary, rates, fares and charges, fix by franchise, as well as all other rates, fares and charges of any and all public utilities."

In *Winfield vs. Public Service Commission,* 118 N. E. 531; P. U. R. 1918 B, 747 (January, 1918), the Supreme Court of Indiana expressly ruled that the Legislature of that State was not deprived of the right to regulate the rates of a public utility, because of a franchise rate contract granted under a statute which gave the municipality the exclusive power over its streets and which authorized the grant of a right to use the same to public corporations. The statute authorized the municipality to prescribe the terms and conditions of such use, and to fix the rates to be charged by the utility, and also authorized cities to contract for public service for the convenience and welfare of the people. The Court further held that all statutes relating to the power of municipalities to make franchise rate contracts should be strictly construed against the power of the city and that the order of the Commission

increasing the rates beyond the rates specified in the franchise was valid and effectual.

Re United Fuel Gas Co., P. U. R. 1917 A, 923 (West Virginia Public Service Commission). This was an application on behalf of the United Fuel Gas Company for leave to increase its rates for natural gas. The town of Ceredo protested against said increase and questioned the authority and jurisdiction of the Commission to raise the rates because of a provision of the franchise limiting said rates. The Commission squarely held that it had authority to increase the rates for gas notwithstanding the franchise provision above mentioned. The decision of the Commission was based largely upon the case of *Benwood vs. Public Service Commission,* 75 W. Va. 127; 83 S. E. 295, and *re Glenville Natural Gas Co.,* P. U. R. 1915 F, 848.

In re West Virginia Central Gas Co., P. U. R. 1918 C, 453 (decided in January, 1918, by the West Virginia Commission), the position adopted in the West Virginia cases mentioned above was reaffirmed and the power of the Commission to fix rates for natural gas, irrespective of the provisions of a franchise granted by a municipality acting under legislative authority, was upheld.

What is therefore the result of a careful analysis of the foregoing decisions? Simply this. Grants of power to municipalities in such cases may be of either *Constitutional* or *Statutory* origin.

If they have their origin in the *Constitution* there is a conflict of authority as to the power of the Legislature to affect them. New York and Pennsylvania hold that the legislature has no such power. Illinois, Oregon and Missouri hold that the legislature, under the police power, can still control and regulate rates.

Where the grant of power to the municipality is *statutory* only, all authorities agree that the legisla-

ture is supreme and all rights of the municipality are subject to modification, waiver and regulation by the legislature.

Therefore, in every jurisdiction, including New York and Pennsylvania, the power of the Commission to regulate and absolutely control rates irrespective of franchise provisions founded on statutory authority would be sustained.

V

CONCLUSION

It is therefore respectfully submitted that the foregoing extended examination shows beyond reasonable doubt that on both principle and authority the Board of Public Utility Commissioners has jurisdiction in the cases now presented to the Court, for the following reasons:

1. The rights of the municipality under such a situation are not contracts. As decided by the Supreme Court in this case, they are merely grants upon condition. As such they are not subject to the protection of the contract or property clauses of the State or Federal constitutions.

2. The rights of the municipality, being derived wholly from the legislature, are subject to amendment, modification or waiver by the power that created them. The creature cannot be endowed with rights paramount to the authority which called it into being.

3. It is possible that municipal grants of *constitutional* origin may stand on a different footing from those of *legislative* origin. This is the purport of the New York and Pennsylvania cases. The Illinois, Oregon and Missouri cases, however, hold that even a grant of constitutional origin cannot hamper or restrict the police power of the State.

4. It has nowhere been held that municipal rights *granted by legislative authority only* cannot be modified by the States, against the protest of its creature, the municipality. This modification may be through subsequent direct legislation by the State, or by the exercise of the State's regulatory or police power through the Commission as its agent.

It is therefore submitted that the judgment of the Supreme Court in these cases, which have been considered at such great length above, is sound in law, irresistible in logic, and beneficient in effect, and should therefore be affirmed.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

COLLINGSWOOD SEWERAGE COMPANY,
Respondent,
vs.
THE BOROUGH OF COLLINGSWOOD,
Appellant.

ON APPEAL FROM THE SUPREME COURT.

BRIEF FOR APPELLANT.

I.

This case is evidential of an evolution in modern life that the keenest intellect cannot adequately analize. Nor can the most farseeing vision measure and determine its results. The controversy apparently arose in this way. Society, for ages, had found the corporate principle a business and commercial convenience. A corporation was the creature of sovereignty. An instructive book could be written on the development of the corporate principle. It passed through three well defined stages. Originally, corporations were limited by their sovereign creator to the pursuit of a single business. Men saw that this limitation upon the exercise of the corporate

functions could be enormously multiplied in its power by legislative permission for corporations to pursue any number of vocations. Consequently, legislatures, generally, enlarged the powers of corporations in this regard. This constituted the second stage in the development of the corporate principle. Then it was seen that the same principle could be made well nigh omnipotent by magnifying corporate functions to the extent of allowing corporations to amalgamate, one to absorb the other. This was the third stage in the development of the corporate principle, and resulted in what we call monopolies. Corporations were thus enabled to absorb vast utilities, and thus control both production and consumption.

It was soon perceived that this principle needed to be checked in the general social interest. Hence, the origin of the device known as utility commissions. They were created to curb monopolies. Therefore, thoughtful men everywhere are asking, "Whither are we drifting?" Is the world legislating itself into socialism? Is the world legislating itself into monopoly? Or, have we a mixture of socialism, monopoly and the ancient law? The masses of men are sufficiently intelligent to perceive that the world is big and productive enough to support the human family in comfort. At the same time, men perceive that this is not so. Therefore, volumes have poured from the presses of the world and commanding theories have been debated. We are in the midst of an evolution, we repeat, that even the most gifted and cautious Judge must contemplate with concern. Neither a precedent nor technicality can stop the course of events and the pressure of human need, when driven by the spirit of modern inquiry, nor can artificial reasoning, no matter how brilliant, obscure the manifest equities of human conditions.

The principle of utility commissions is socialistic in that it controls production and consumption by regulation of rates. It limits monopolistic power by its intervention. On the other hand, our constitution and laws of contract are in conflict with both socialism and monopoly. The present controversy is to settle the conflict. It is an important undertaking.

II.

The concrete situation is this. On the 2nd day of March, 1900, the Borough of Collingswood, a creature of the Sovereign State of New Jersey, and the Collingswood Sewerage Company, another creature of the same sovereignty, by their respectively authorized agents, under clear, explicit and detailed legislative authority met, interchanged propositions, and, for mutually interchanged considerations, entered into a solemn compact. The Sewer Company wished authority from the Borough of Collingswood to inaugurate a sewer system. The borough authorities acceded thereto on the express understanding that the sewer rates to be charged by the company against the inhabitants of the borough should in no case exceed the sum of $4.50 each six months for service. Let it be repeated that each of these corporate creatures had express legislative authority to do what they did do.

The enterprise, thus undertaken, was continued to the mutual satisfaction of the parties, until 1912, when the Sewerage Company applied to the Borough Council for an amendment of the ordinance for the purpose of raising rates. This was declined. Then the Sewerage Company, in 1914, applied to the Board

of Utility Commissioners for the same purpose. Between 1900 and 1914 the Borough of Collingswood had undergone an unparalleled growth and development. Up to 1912 the Sewerage Company had been content with its contract. Its stock and bonds, as the evidence now shows, were for the most part privately held. They had no sale upon the market. The bonds were $150,000 and the stock the same amount. The physical valuation of the plant of the Sewerage Company was probably about $150,000. Therefore, the bonds and stock of the Sewerage Company were not worth more than fifty per cent., and probably would not have brought, on sale, anything like that price.

If the parties to this compact, exercising business judgment, were willing to be bound thereby, the average sense of men would say that they ought to be held to their agreement. But the proposition now is, so far as the Borough of Collingswood is concerned, to disrupt that compact and force the people of Collingswood, not only to pay higher rates, but to give face value to the bonds and stock of the Sewerage Company at the expense of the inhabitants of the borough, whose agents had lawfully made for them the contract in question. This amounts to imposing upon the inhabitants of the borough not only increased rates, but an obligation to pay the face value of the bonds and stock of the Sewerage Company. Consequently, if this application is successful, besides paying increased rates, the borough has the burden of forever securing the face value of bonds and stock of the company, a result directly contrary to the purpose of the Utility Commission scheme. If this result follows, the Utility Commission will have imposed upon the Borough of Collingswood, not only a perpetual monopoly, but the in-

equitable burden of securing the success and prosperity of that monopoly, whether the inhabitants of the borough wish it or not. Such a result the common quality of human fairness at once condemns. The question is whether this monstrous inequity should be visited upon a free community against its will.

III.

The Act of 1898, Chap. 210, is an act for the construction, maintenance and operation of systems of sewerage in any municipality in this state. It should be observed, at this stage of the discussion, that this is the only legislative means by which sewerage companies can come into existence in New Jersey. If this act is repealed by the Utility Commission Act of 1911, then no other sewerage companies can exist, unless some other act is passed authorizing their existence.

The Act of 1898 provides in detail how municipalities and sewerage companies may contract. After these details have been complied with, the 14th Sec. of the act says: "Said company may contract with property owners and others for the use of said system of sewerage for such price or prices, or quarterly or annual rents, and such restrictions as said company may think proper; *provided, that the same shall in no case exceed the maximum rates which may be named in the terms and condition or conditions on which the consent of the corporate authorities had been obtained.*"

The act provides machinery by which disputes and deferences between the Sewerage Company and any inhabitant may be adjusted. Hence the Legislature,

regardless of the Act of 1911, has furnished a means in the Act of 1898 of regulating rates. But the point to be emphasized is that in no case, according to the terms of the compact between the Sewerage Company and the municipality, can rates exceed the maximum agreed upon by the parties to the contract. This is the essential point, since the present application is an effort not only to exceed the maximum rates, but to give face value to the bonds and stock of the Sewerage Company and impose upon the Borough of Collingswood the burden of maintaining them at face value. The Act of 1911, creating the Utility Commission, likewise provides a method of regulating utility rates. It must be conceded that the Legislature has the power, as a function of government, to create more than one method of regulating utility rates. The Legislature has actually done this thing in the case before us. In 1898 it provided a method of regulating the rate of a sewerage utility. In the Act of 1911 it provided another method of regulating all utility rates.

Consequently, we are brought to face with the bald question whether or no the Act of 1911 repealed the Act of 1898. If it did not, then the two methods of regulating sewerage rates still exist. There is no language in the Act of 1911 expressly repealing the Act of 1898. The Act of 1911 declares that all acts and parts of acts inconsistent with the Act of 1911 are repealed. Is the Act of 1898 repealed by the doctrine of inconsistency? The maxim is that all legislative declarations must be harmonized and sustained, unless repugnancy and inconsistency manifestly work a repealer. It has already been pointed out that, if the Act of 1911 repeals the Act of 1898, no other sewerage company can come into existence. It is almost too plain for argument that the Legis-

lature had no such intention. It has also been pointed out that the Borough of Collingswood bases its phenomenal development largely upon the Act of 1898. Properties were built and investments made by its people on the terms of that act. Streets were graded and properties located to suit the terms of that act. It can scarcely be believed that the Legislature, by the Act of 1911, meant to disrupt, not only the compact between the Sewer Company and the borough, but to impede the development of the borough and impair the values of properties and investments made and arranged under that compact.

Again, the Legislature having created the two methods of regulating sewerage rates, it is plain that the Legislature intended that they should exist contemporaneously. The method provided by the Act of 1898, so far as the rates between municipalities and sewer companies, formed under the Act of 1898, are concerned, is exclusive of the method provided in the Act of 1911. All sewerage companies coming into existence hereafter under the Act of 1898 will have their rates regulated according to the terms of the Act of 1898. If, for example, an individual, or partnership should embark in the sewerage business, the rates would be regulated by the Act of 1911. Manifestly there is nothing incongruous or repugnant, so far as sewerage rates go, between the two acts. In the one case, the parties most intimately concerned, to wit, the Sewer Company and the borough have agreed, by legislative permission, to fix such rates; while, on the other hand, a body of strangers, to wit, the Utility Commission, fixed the rates. In the former case, the parties knew what they wanted and what each was willing to do, because they were dealing with a locality and its conditions and were both sensatively concerned in the

undertaking. They had direct knowledge. In the other case, by indirect knowledge, strangers undertake to arrange rates. The Legislature, by the Act of 1911, could not have intended to repeal this arrangement. Nor can it be said with reason that the Act of 1911 simply repeals the rate making feature of the Act of 1898, for the plain reason that the whole of the Act of 1898, from its beginning to its end, deals with the rate making question. It is conceivable that the Legislature has the power to classify types of business, and types of municipalities and grant them the power, under contracts, to regulate the rates between such typical utilities and typical municipalities. But this is precisely what the Legislature did in the case before us. The Legislature, as in the case of New York State, has the power to create different Utility Commissions to operate and determine rates in different sections of the state. The Legislature has the power to create commissions to deal with different subject-matters in relation to rate making, as in Massachusetts. This is exactly what the Legislature has done in the case before us. From all of which, it follows, that there is no inconsistency beween the Acts of 1898 and 1911. Nor will the notion of uniformity help the argument of repealer, since localities and conditions vary. There can be no uniformity of rates. They must be determined according to circumstances. Consequently the very method, provided by the two acts in question, is best calculated to promote fair dealing, the prosperity and the best interest of divergent conditions and communities.

IV.

What follows tends powerfully to support this view.

Even, if it be conceded, for the purpose of argument, that there may be doubt in the proposition just discussed, the more important question remains, namely, whether the arrangement between the Sewerage Company and the borough is not an irrepealable contract. The reasoning in the dissenting opinion by the president of the commission, it seems to us, is unanswerable. Such authorities as:

Menasha vs. Minneapolis, 150 N. W. 411;
Monitowoc vs. Monitowoc, 129 N. W. 925;
LaCrosse vs. LaCrosse, 130 N. W. 530;
Kenosha vs. Kenosha, 135 N. W. 848;
Home Telephone Co. vs. Los Angeles, 211 U. S. 265;
Detroit vs. Railroad Company, 184 U. S. 368;
Vickburg vs. Vickburg, 206 U. S. 496;
Bentwood vs. Public Service, 83 S. E. 295,

hold that where the Legislature has given explicit and unquestionable authority to any of its creatures to make contracts, such contracts are protected by the constitution. There cannot be the least question concerning the imposition of that power by the Legislature upon the Sewer Company and the Borough of Collingswood. All precedent conditions were literally complied with by both parties. Their minds, after mature deliberation, for mutual valuable considerations, met; an agreement was entered into and performed, without objection by either party for a period of twelve years. The opinion of the Supreme

Court holds that that contract is binding and enforceable so far as the Sewer Company is concerned, but means nothing so far as the borough, the other party of the contract, is concerned.

Municipalities and all corporations are creatures of sovereignty. The sole distinction between the Sewer Company and the borough lies in the circumstance that the Sewer Company is engaged in the sewer business exclusively, while the borough is engaged in carrying on the business of the borough, consisting of political functions and all those contractual relationships growing out of the necessities of its existence. The borough authorities can unquestionably make contracts that are at once enforceable and protected by the constitution, provided such contracts are essential to its existence. These may be called contracts growing out of the implied powers of the borough. The borough would not have the binding power, perhaps, to make such an arrangement as it did make with the Sewer Company; but the controlling fact is that the Legislature gave the borough explicit power to make a binding contract, not only enforceable, but protected by the constitution. Why not? The authorities quoted say so. Municipal governments could not well be carried on unless this were so.

This proposition is the very substance of the controversy. The case can not be correctly solved without this proposition being disposed of. If it is accepted, it ends the case and the judgment of the Supreme Court must be overruled.

V.

It is in order, now, to consider in some detail the opinion of the Supreme Court.

(a) "The first doubt to be resolved is whether the Board had jurisdiction to settle this question. Its jurisdiction is challenged because it is said that to alter the rates would impair the obligation of the contract between the borough and the company. We think this question is settled, so far as this court is concerned, in favor of the jurisdiction of the board by what was said in at least three prior decisions." This is merely begging the question. In neither of the quoted cases did it appear that the municipality had explicit and undoubted legislative authority to make such an arrangement as was made in the present case. Nor was this question involved in either of the cases referred to. It may well be granted that, if the Legislature had not imposed explicitly on the Borough of Collingswood the power to make a contract regulating rates with the Sewer Company, the judgment of the Supreme Court, in this particular, may be unassailable, but we again urge that the power to make the contract was explicitly conferred and that, therefore, the contract is inviolable.

(b) The Supreme Court further says: "In one sense, an ordinance embodying a municipal consent upon certain terms to the creation of a franchise, etc., may be called a contract, etc. It is, however, ordinarily an agreement of a peculiar kind. It contracts or rather imposes conditions, etc. The ordinance and consent did not fix a price, but, only the maximum and minimum between which the price must fall."

But this, again, begs the question. The contract between the borough and the company fixed a maximum and minimum, and the act authorizing this arrangement declares that the maximum can in no case be exceeded. But the prayer of the company is a prayer to exceed the maximum. Maximum and minimum rates are of the essence of the contract. Unless the Act of 1898 is repealed, the prayer of the company runs solidly against a legislative prohibition and cannot, therefore, be allowed. The minimum and maximum rates, having been legislatively authorized, they become an irrepealable contract. In either view the reasoning of the Supreme Court is answered. Then the Supreme Court justifies its position on the ground that the Utility Commission is the only instrumentality that can settle individual disputes concerning rates. This position, we respectfully submit, is artificial. In the first place, the Act of 1898 supplies machinery for settling such disputes, if they arise, an extremely improbable situation. In the next place how can the Utility Commission settle *such disputes* by its machinery, any better than they could be settled by the machinery supplied by the Act of 1898? Finally, could determinations by the Utility Commission be enforced any more effectively than the determination reached by the methods supplied in the Act of 1898? In any event, some legal instrumentality, mandamus or what not, may be resorted to to compel obedience to the conclusions reached either by the Utility Commission or by the methods provided in the Act of 1898.

(c) "Regarding the ordinance solely as a contract, the individual citizens of Collingswood would have no right of action thereon because they are not parties to the agreement." This, likewise, is imma-

terial for the reason that the Act of 1898 is designed to meet such a situation. The Legislature has provided two methods of fixing rates, one by the Act of 1898, the other by the Act of 1911. The method provided by the Act of 1898 is sufficiently efficacious.

(d) "The ordinance was the legislative act of the municipality. As a legislative act, it was subject to the control of the Legislature itself." This position also avoids the question. If the borough had explicit legislative authority, as it unquestionably had, to make the arrangement, the reasoning of the Supreme Court fails. Indeed, the Supreme Court says, "This is a governmental function and cannot be contracted away even by a municipality unless specifically authorized by the Legislature; and the authority must be clear." But this is the very thing that was done by the Legislature in this case. The governmental function was given to the borough by clear and unmistakable authority.

VI.

There is a substantial distinction between the power to regulate rates and the power to regulate or disrupt a contract. By the Act of 1911 the Legislature gave the Utility Commission power to regulate rates, but did not give the Utility Commission power to change the contract between the Sewer Company and the borough. Nor can it be argued that the Legislature intended to give the Utility Commission the power to alter contracts. Even conceding that the Legislature has the power, in this case, to alter the contract in question, it clearly did not bestow, nor

intend to bestow, that power on the Utility Commission. Yet, in this case, it is proposed, by indirection, to alter the contract. This, we submit, cannot be done. *Quinby, et al., vs. Public Service Commission of State of New York for Second Dist., et al.,* Northeast Rep., Vol. 119, No. 6, page 433.

VII.

Some of the results that would follow the approval of the Supreme Court's opinion seem to us to be important.

The Sewer Company and the borough are both creatures of sovereignty. They are both subject to legislative control. They can do only what they are authorized by sovereignty to do. They did, in this case, what they were authorized to do. After deliberation, they entered into an arrangement free of all doubt and ambiguity. Under these circumstances, the Supreme Court holds:

(a) That the Sewer Company's rights, arising under that arrangement are sacred, enforceable and protected by the constitution, while the rights of the municipality are nothing. The inequity and incongruity are too obvious for statement. There must have been a contract at one time between these parties. If the Legislature can destroy one-half the contract, or the rights of one party to it, it is difficult to see, first, how any contract remains; secondly, why the rights of the Sewer Company should alone be protected.

(b) If this be natural justice, one of the consequences is that the Borough of Collingswood is

obliged, not only to pay increased rates, but thereby to give full value to stocks and bonds, which heretofore had little or no market value. Such a consequence is so plainly unjust that men's minds recoil therefrom.

(c) The Sewer Company is necessarily made a monopoly at the expense of the people of Collingswood. It can have no competition. Its prosperity is guaranteed by the State of New Jersey. Such is one of the results following the view of the Supreme Court. Competition, in this case, is destroyed. If it is lawful and just to accomplish this situation by means of the Utility Commission, then every utility may be likewise protected and you have, on the one hand, absolute monopoly, and, on the other hand, an elimination of competition. This result seems to us inevitable. It lands public policy fairly and completely in the hands of socialism.

(d) If, on the contrary, the established law is applied to the situation, we are at least one step further removed from socialism. Socialism gives the state control of production and consumption. It excludes the doctrine of competition. How can the conclusion of the Supreme Court be anything else than socialistic?

Respectfully submitted,

WESCOTT & WEAVER,
Attorneys of Appellant.

60 JUN.T. 1918

Filed after the Oral Argu[illegible]
by leave of Court.

New Jersey Court of Errors and Appeals.

Collingswood Sewerage Co vs Respondent

~~ATLANTIC COAST ELECTRIC RAILWAY COMPANY~~,

~~*Prosecutor*~~,

vs.

Borough of Collingswood appellant

~~BOARD OF PUBLIC UTILITY COMMISSIONERS and BOROUGH OF BRADLEY BEACH~~,

~~*Respondents.*~~

BRIEF FILED BY CONSENT OF COURT.

There is now pending before the Board of Public Utility Commissioners an application by the Public Service Railway Company for an increase of rate in excess of 5 cents and for paid transfers There are a great number of ordinances passed by many municipalities and accepted by the Company and its predecessor companies, which expressly provide that the rate shall not be in excess of 5 cents and that transfers shall be free. The Board of Public Utility Commissioners has heard evidence and argument, but has not yet come to its determination. We think we are entitled to say that it may be that the Board desires the opinion and decision of this Court, if such can be shortly obtained, before coming to its determination. There are several decisions in the Supreme Court holding that the Board has jurisdiction to increase rates, notwithstanding ordinance-contracts of the character mentioned.

In the case pending before the Board, there are ordinances passed by municipalities and accepted by the Companies prior to the Traction Acts of 1893 and 1896 referred to in the opinion of this Court in the case of Atlantic Coast Railway Co. v. Board of Public Utility Commissioners and Bradley Beach.

We believe that on a proper construction of the Act of 1911, the Public Utility Act, the Board has no jurisdiction to make an order which involves any abrogation of the ordinance-contracts.

We contend:—

The Board has jurisdiction to enforce (but no jurisdiction to abrogate) the ordinance-contracts.

The Legislature clearly intended to give the Board such jurisdiction and used express words to accomplish this purpose. (See Section 17 of the Act.)

In the face of the legislative intent, the Board cannot exercise a contrary jurisdiction.

The ordinance-contracts are exempted from abrogation by the Board by the intent and very words of the Act. (See Sections 17 and 37.)

To successfully contend, we think we do not need to dispute *any legal principle* contained in any decision of the Supreme Court. We think we may accept and assume the general correctness of all the principles expressed or followed in the several decisions of the Supreme Court on this head, and still successfully contend as we do.

Indeed, we may say that the opinions in the Supreme Court and in the Court of Errors and Appeals in the *Plainfield* case (the only one of the Supreme Court cases touching the questions involved in this matter that has gone to a decision in the Court of Errors and Appeals up to this time) seem to support a part of our contention.

We place our contentions entirely on the meaning of the Act.

The Board is asked, in the pending proceeding, to abrogate, in a wholesale way, a great number of contracts solemnly entered into by a great number of municipalities with the Company, and with the companies to whose rights and obligations it succeeded. These contracts affect, and now pro-

tect, two thirds of the people of this State who are now strenuously protesting against their abrogation. Undoubtedly, at the time these contracts were made, the Company and its predecessor companies, intended to perform them. To make any statement to the contrary would be to impute dishonorable conduct to the Company and its predecessor companies. The Company is now enjoying the fruits of these contracts in its occupation of the highways and public places of the different municipalities, and its legal right to actually operate its hundreds of miles of street railway rests alone on these contracts.

Section 15 of the Act reads as follows:

"The Board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises *so far as may be necessary for the purpose of carrying out the provisions of this Act* (Italics ours). The term 'public utility' is hereby defined to include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage or control within the State of New Jersey any steam railroad, street railway, traction railway, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, telegraph system plant or equipment for public use, under privileges granted or hereafter to be granted by the State of New Jersey or by any political subdivision thereof."

It is to be noted that no jurisdiction is given by this section beyond such as "may be necessary for the purpose of carrying out the provisions of this act." Recourse, therefore, must be had to other sections of the act to ascertain what jurisdiction is conferred. This section contains merely defining

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matter, so far as the words "privileges granted or hereafter to be granted by the State of New Jersey, or by any political subdivision thereof" are concerned. While the *definition* of a public utility in ed. While the *definition* of a public utility in this section includes public utilities that "now or hereafter may own, operate, manage or control within the State of New Jersey any * * * street railway * * * for public use, under privileges granted or hereafter to be granted by the State of New Jersey, or by any political subdivisions thereof", there is nothing in this section which directly or indirectly grants to the Board any jurisdiction to change such privileges.

Section 17 of the Act reads, in part, as follows:

"The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined.

(a) To comply with the laws of the State and any municipal ordinance relating thereto, and to conform to the duties imposed upon it thereby, or by provisions of its own charter, whether obtained under any general or special law of this state * * * ".

This provision of this section at least indicates or all will agree, that the legislature *intended* that the Board should have jurisdiction to order a public utility to comply with municipal ordinances. And the "contracts" involved in this proceeding are made up, in most instances, of ordinances accepted by the Company, or its predecessor companies.

The ordinances relate to laws of this state. The ordinances passed since the Traction Act of 1893 relate to that Act.

Whether the legislature had the power to give the Board jurisdiction to compel a public utility to compel the performance of a contract, if that contract were an ordinance, having in mind that

the Court of Chancery has a constitutional jurisdiction to compel the performance of a contract, we are not discussing on this page. We are only at this place discussing what the words of the quoted provision of Section 17 mean, what the legislature *intended* them to mean, in connection with the power of the Board to fix rates conferred on the Board by other sections of the Act.

Many acts of the legislature have expressly conferred jurisdiction, so far as legislative words could do it, on tribunals or designated commissioners, in cases where such jurisdiction was an invasion of the constitutional jurisdiction of the Supreme Court, and therefore violative of the constitution; but, at the least, we may say that the *intention* of the legislature was certainly expressly manifested by such acts. And, so here, in this proceeding, with respect to the quoted provision of this section 17, we may say, at the very least, that the legislature *intended* to confer upon the Board a jurisdiction to compel a public utility to comply with a municipal ordinance relating to such utility.

Now, so much for the intention of the legislature. And, if we have correctly stated the intention of the legislature, why are not the words of this provision of section 17 effective to accomplish that intention? Granting, for present purposes that the legislature has the right to abrogate these ordinance-contracts, does it not plainly appear that the Board has the right to enforce them, so far as the very words of this quoted provision of Section 17 go? Does it not plainly appear upon a mere reading of this quoted provision of Section 17 that the Board has "power" * * * "to require" * * this Company "to comply with" * * * the ordinances under consideration?

This seems to be undoubtedly so, on a mere

reading of this provision of Section 17; and it should remain so, unless other sections of the act, on a construction of the whole act, bring a different conclusion, or, unless this provision is itself legally objectionable.

Is this provision of Section 17 legally objectionable?

In the *Plainfield* case, which went to the Court of Errors and Appeals from the Supreme Court (*Public Service Electric Company, Prosecutor, v. Board of Public Utility Commissioners and the City of Plainfield;* Supreme Court, 87 N. J. Law, 128; Court of Errors, 96 Atl., 213), there was a contract in writing between the Company and the City providing for the lighting by electricity, free of charge, of certain municipal buildings, offices, etc. in Plainfield under consideration. Mr. Justice Kalisch, in the Supreme Court, held that such a contract was the giving of an undue or unreasonable preference or advantage under the discrimination section of the Act (subdivision d of section 18) and that the order of the Board enforcing such contract should be set aside. He held that "the commissioners have power to enforce certain legal obligations", but that the language is not broad enough to confer on the board the power to enforce specific performance of contracts. This very significant language appears: (at p. 131 of the opinion) "The Board of Public Utilities Commissioners, by the statute creating the commission, has power to enforce certain legal obligations or procedure, but the language is not broad enough to confer on the board the power to enforce specific performance of contracts. This order made directs specific performance of the contract between the parties. What would be the legal effect of the statute if it were broad enough to confer such a power on the board need not now be considered. Nor is it necessary to consider

whether the board would have the power to en force contractual relations if it had existed in the ordinance."

It is entirely apparent that Mr. Justice Kalisch had in mind the provision of Section 17 relating to ordinances which we are discussing, although he made no express reference to it.

The reference by Mr. Justice Kalisch to the question of the power of the commission "to enforce contractual relations if it had existed in the ordinance" shows that he did not consider that question, and a decision of that question was not necessary to a decision of the Plainfield case.

This Plainfield case went to the Court of Errors and Appeals, where the Chancellor, for that court, definitely held that as the contract for the supply of electricity free of charge was valid when made, it was enforceable, notwithstanding the provisions of the Act of 1911. He also held that the Act did not confer on the Commission the power to order the specific performance of a contract; that if the act, in express terms, had bestowed that power on the board, it would have been an unlawful invasion of the Court of Chancery's exclusive prerogative, and therefore unconstitutional. The Chancellor expressly said, "There is, therefore no question in the case as to the State's power to impair, or abrogate a contract to which a municipality or the public are parties." And this feature was not dealt with, nor at all decided.

The Chancellor said further: "The power of the board of public utility commissioners to order the performance by the Public Service Electric Company of the undertakings in the contract mentioned is said to reside in section 17 of the public utilities act, supra, which provides that the board shall have power, after hearing and upon notice, by order in writing to require every public utility

'to comply with the laws of this state and any municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter'. It is plain that the obligations in the contract under consideration do not reside in any law of this state (assuming this to mean any statutory enactment), are not imposed by any municipal ordinance relating to the company, and are not duties imposed upon it thereby, or by the provisions of its charter. Therefore, when the board of public utility commissioners assumed by order to direct the company to perform the duties imposed upon it by the agreement, and to furnish free of charge to the city of Plainfield such service as the agreement provided for, the board went beyond the powers conferred upon it by the act creating it and prescribing its powers, and in effect ordered the specific performance of a contract, an equitable power exclusively inhering in the Court of Chancery (Pom. Eq. Jur. (3d Ed.) §138), and which is part of the jurisdiction confirmed and guaranteed to it by the Constitution of 1844. There is nowhere discoverable in the act any legislative intent to clothe the board of public utility commissioners with this constitutional jurisdiction of the Court of Chancery; but, even if the act expressly and in terms had bestowed that power upon the board, we would have no hesitation in pronouncing it an unlawful invasion of the court's exclusive prerogative, and therefor unconstitutional. And if by the phrase 'laws of this state' is meant the unwritten as well as the statutory law, the result would be the same so far as any attempt to bestow the power of specific performance on the board is concerned. The Legislature cannot impair the jurisdiction of a constitutional court, either by preventing its exercise or creating a coordinate authority. *Flanigan v. Guggenheim,*

Smelting Co., 63 N. J. Law, 647, 650, 44 Atl. 762; *Smith v. Livesey,* 67 N. J. Law, 269, 51 Atl. 453; *Ex parte Thompson,* 96 Atl. 102, 106."

Thus we see that the Chancellor in this decision did not expressly pass upon the jurisdiction of the Board to compel a public utility to comply with an ordinance-contract.

There is nothing in any Supreme Court decision which denies jurisdiction to the Board to compel this Company to comply with its ordinance-contracts. The decision of Mr. Justice Kalisch alone makes reference (and only indirectly) to ordinances, and his language "the Board has the power to enforce certain legal obligations of the prosecutor" is certainly not against us.

It is to be noticed that the Chancellor used this language: "There is nowhere discoverable in the Act any legislative intent to clothe the Board of Public Utility Commissioners with this constitutional jurisdiction of the Court of Chancery". May not this mean that the Chancellor saw some distinction between an enforcement of contracts (contracts of a nature which the Court of Chancery alone can enforce) and a compelling compliance with "the duties imposed" by ordinances?

And is not the language of Mr. Justice Kalisch significant, "The Board of Public Utility Commissioners, by the statute creating the commission, has power to enforce certain legal obligations or procedure, but the language is not broad enough to confer on the Board the power to enforce specific performance of contracts"?

There is no decision by any of our courts (a) *that the Board may not compel a public utility company to comply with the duties imposed upon it by ordinances, or* (b) *that in the face of the legislative intent that the Board should have power to compel compliance with ordinances, which intent is manifested by the very words of the Act, the Board has a contrary jurisdiction.*

Although the quoted provision of Section 17 *may* be unconstitutional, so far as it attempts to confer upon the Board the power to enforce contracts, and the ordinance-contracts may not be classified in such a way that the Board may constitutionally be given jurisdiction to enforce them (which is not at all clear) and Section 42 of the act provides that "if * * * any provision of this act shall be held to be unconstitutional or invalid, no other section or provision of this act shall be affected thereby",—still the legislative intention manifested by the enactment of the quoted provision of Section 17 aids in the construction of affected thereby,"—still, the legislative intention Section 37, even though the quoted provision cannot affect Section 37 (to which we refer on a subsequent page) to the extent of qualifying or adding to that section.

In short, in ascertaining the intention of the legislature, the whole act must be read together, and even though one provision of one section is held to be unconstitutional, because of technical considerations, that provision may be used in aid of an ascertainment of the legislative intention.

The great fundamental rule in construing acts is to ascertain and give effect to the intention of the legislature. Here, we have that intention clearly expressed in the Act itself. The words "any municipal ordinances" are all-inclusive, so far as ordinances are concerned. On what construction could it be said that the ordinance-contracts in this proceeding are not included in this description?

Surely, these ordinance-contracts are, at the least, within the intention of the Act.

A consideration of the primary policy and purpose of an act is useful in construing an act, because an act must be construed with reference to the object intended to be accomplished by it.

We say that the primary purpose of the Act of 1911 was to vest in the Board such a degree of jurisdiction that public utilities would be controlled by the Board, that the public would be protected against extortion and discrimination, that the excessive capitalization of public utilities would be checked, that proper service would be rendered, that the service would be supervised by the Board—in short, that the public would be protected by the Board against a host of impositions and abuses.

If we should be wrong in our argument, that the Board has the right to enforce the duties imposed by the ordinances as against the Company (because the ordinances are contracts, or involve contractual relations, of a nature which the Court of Chancery alone can enforce) and that the Board should assume that the provision of Section 17 is valid and confers jurisdiction on the Board which it should presumptively exercise, then we fall back upon our undoubted position that the legislature clearly *intended,* as we have shown, that the Board should have the power to compel public utilities to comply with the duties imposed by ordinances; that that intention must govern; that such intention, if it cannot operate to save the obligations of the Company to the municipalities, to compel a performance these duties, because of technical considerations with respect to the jurisdiction of the Court of Chancery, *certainly operates, with respect to the whole act, and with effect to prevent the Board from making an order which would permit the Company to disregard these duties.*

Certainly, if the intent or will of the legislature that the Board should have jurisdiction to compel the Company to comply with the duties imposed upon it by the ordinances is *not* effective, only because of the technical consideration that

the Court of Chancery has the sole jurisdiction to compel the performance of contracts, then it follows that such intention, if not effective as intended, is, at the least, *effective to deny a contrary jurisdiction* in the Board, that is, a jurisdiction to abrogate the contracts; and this leaves the ordinances in their present status of enforceability by the municipalities in an appropriate tribunal.

It is clear to us that the will of the legislature to give the Board jurisdiction to compel a public utility to comply with ordinances is plain; and if this will is to be defeated, it is to be defeated only because of the technical consideration stated.

We now consider another very important section of the Act. Section 37 reads as follows:

"This act shall not have the effect to release or waive any right of action by the board or by any person for any right, penalty or forfeiture which may have arisen or which may arise, under any of the laws of this State, and any penalty or forfeiture enforceable under this act shall not be a bar to or affect a recovery for a right, or affect or bar any indictment against any public utility as herein defined, or person or persons operating such public utility, its officers, directors, agents or employees."

In the face of this section, the Board is asked to abrogate the ordinances under consideration in the case pending before it.

Section 43 of the Act reads as follows:

"All acts or parts of acts inconsistent herewith are hereby repealed, and this act shall take effect on the first day of May, Anno Domini, One thousand nine hundred and eleven."

An examination of the several Supreme Court decisions will show, we think, that the Supreme Court, in all of the cases, *proceeded on an assumption as to the meaning of the Act.* Such examination certainly shows that in none of these decis-

ions did the court expressly refer to, or mention, or specifically construe, this important section 37. Nor has the Supreme Court, as we have stated, expressly referred to, mentioned, or specifically construed the provision of Section 17 that we have discussed, except in the Plainfield case, and in that case only in the limited way we have stated. Such examination shows, we think, that the court did not, in any of these cases, consider the *whole* of the act. The Collingswood case contains a statement on this head, but it seems to us that the statement in that case rests on a foundation of assumption. Certainly it does not rest, so far as the express words of the decision are concerned, on a specific examination of section 37 or the provision of section 17.

We find nothing in these decisions to show that the court, in any of the cases, had these two important sections definitely in mind, except to the extent of the reference to the provision of section 17 in the Plainfield case.

We contend, that this Section 37, considered with the other sections of the Act, *constitutes an exception which saves the ordinance-contracts to the municipalities, and prevents both the granting of an increase of rates and the abolition of free transfers, by means of an order of the Board.*

We think that a meaning of the Act necessary to these decisions that the Board was given jurisdiction by the Act to abrogate ordinance-contracts between municipalities and street railway companies and other public utilities, was assumed rather than considered and definitely found. The prime question before the Supreme Court, in the several cases referred to, should have been, *Does* the Act confer jurisdiction on the Board to abrogate such contracts? Or, expressed differently *Are* the words of the Act, is the intention of the legislature manifested by the words of the Act,

sufficient to confer jurisdiction on the Board to abrogate such contracts? Instead of this, the other question, the one decided by the Supreme Court in these several cases, got to the fore, namely, *Can* the legislature abrogate the contracts? And the result was, we respectfully state, that much was assumed with respect to exactly what jurisdiction was given by the Act to the Board.

The case of *Public Service Ry. Co. v. Board of Public Utility Commissioners and City of Perth Amboy* (85 Law, 141; S. C. on appeal 86 L. 696—affirmed on opinion below) involved the right of municipal officers to free transportation on the lines of the Public Service Railway. The ordinance in this case granting permission to the railway company to lay its rails on the street was subject to a condition that "all policemen and paid firemen, while on duty, shall be permitted to ride on the cars of said company, its lessees or assignees free of charge." Mr. Justice Bergen, who wrote the opinion, referred to section 18 of the Act, which relates to discrimination, gratuity and free service. The contention of Perth Amboy was that the Act of 1911 and the Act of 1912 (P. L. 235) could not affect the city's contractual relation with the prosecuting company. Mr. Justice Bergen said: "With this contention I do not agree. For, as I have stated, the state has the right to waive any contract which its agent has made, as contrary to public policy, and having that right, I think it has been thoroughly and completely exercised by this legislation." It is to be noted that this decision is based entirely, so far as express mention is concerned, in the opinion, on section 18 of the act; and, further, that only a question of discrimination was involved. The statement of the Justice: "I think it has been thoroughly and completely exercised by this legislation" does not show, we submit, that the decision rests on (nor was it necessary to the decision that it should

rest on) a complete examination of the legislation. Certainly, there is no reference in this case to the provisions of the Act that we are discussing.

The case of *The State, the Inhabitants of the Town of Phillipsburg v. Board of Public Utility Commissioners and Phillipsburg Horse Car Railroad Company* (85 Law, 141) brought up an order made by the Commissioners granting the company permission to change the gauge of its tracks. Mr. Justice Minturn said: "The order is attacked in the first place upon the ground that the Commissioners were without jurisdiction to make it. We consider that the Public Utility Act of 1911 (at p. 379) confers general and specific authority upon the commissioners to deal with the question. By its terms the board is given general supervision, jurisdiction and control 'over all public utilities, and also over their property rights, equipments, utilities, and also over their property rights, equipments, facilities and franchises,' and power is conferred upon it 'to permit any street railway to change its existing gauge to standard steam railway gauge, upon such terms and conditions as said board shall prescribe.' Having exercised the power thus amply conferred to deal with the subject-matter of this controversy, the objection is urged that there was an absence of evidence upon which the board could reasonably base its finding." The decision does not refer to any examination of the Act. Certainly the opinion in this case makes no reference to the provisions that we are discussing.

We have already referred rather fully to the opinions in the Supreme Court, and in the Court of Errors and Appeals, in the Plainfield case. In this case Section 37 is not referred to, and the provision of Section 17 receives only limited consideration. And, as we have shown, such con-

sideration was sufficient for the purposes of the decision.

Mr. Justice Parker held in the case of the *Borough of North Wildwood, et al, Prosecutors, v. Board of Public Utility Commissioners and Wildwood Water Works Company* (88 L. 81), that "the constitutional limitations which prevent the legislature from impairing the obligation of a contract do not debar it from annulling obligations due to the public." He referred to the two cases above herein mentioned (reported in 85 Law, 123; also 86 Law, 696; 85 Law, 141, 87 Law, 128). Certainly the opinion in this case does not refer to or involve any examination of the Act.

The case of *Atlantic Coast Electric Railway Company v. Board of Public Utility Commissioners* (89 Law, 407, which case is now pending in this court) involved an ordinance passed by the municipality respecting rate of fare. Mr. Justice Trenchard held that the rate could not be reduced without the consent of the company. He did hold that the ordinance should have the force and effect of a contract; that it was inviolable; that the regulations as to the rate of fare are properly classed among restrictions which a municipality may impose (and he referred to some of the New Jersey decisions on this head). The opinion in this case is not founded on any examination of the whole of the Act; and certainly no reference is made, or involved, with respect to the provisions of the Act we are discussing.

The opinion of this Court in this case does not refer to the provisions of the Act that we are discussing.

There is only a short *per curiam* in the case of *Northampton E. & W. Traction Company v. Board of Public Utility Commissioners* (102 Atl. 930). The opinion is founded on, and refers to, the decision in the Collingswood Sewerage Company case.

Mr. Justice Swayze, in the case of *Collingswood Sewerage Company v. Borough of Collings-*

wood (102 Atl. 901) said: "These considerations seem conclusive in favor of the general jurisdiction of the Public Utility Commission, provided the language of the statute is appropriate for the purpose. It is obvious from a mere reading of the Act that the legislature meant to invest the Commission with full power, and that the intent and the use of language appropriate for the purpose is not questioned."

Mr. Justice Swayze properly said: *"provided the language of the statute is appropriate for the purpose."* We contend that the language is *not* appropriate for the purpose.

It is important to bear in mind, in considering this Collingswood Sewerage Company decision, and its value as a precedent, that in that case rates had not been fixed by the ordinance under examination in that case. The ordinance provided only for minimum and maximum rates. It was, therefore, necessary for some tribunal to fix rates. Mr. Justice Swayze holds that the Act authorizes the Commission to raise rates as well as to lower them and he refers to section 16-c. This decision contains no reference to, and no construction at all, of the provisions of the Act we are discussing. Mr. Justice Swayze's reference to the Act is general. There is no reference to any detailed examination; no reference to any particular sections of the Act; and, we respectfully submit, no reference showing any consideration of the meaning or effect of section 37 , or of the meaning or effect of the provision of section 17.

It is important to notice that Mr. Justice Swayze states that the meaning of the Act *"is not questioned."*

But we *do* question the meaning of the Act; and if we are questioning it for the first time, as seems to be the case, we ask that full consideration should now be given to our contentions.

Invoking familiar rules of statutory construction, we contend that if two or more constructions may be made of the provision of Section 17, or of Section 37, or of the two sections, taken together, one of which constructions operates to save to the municipalities these solemn contracts of far-reaching importance, that construction should be adopted.

Surely, in the absence of clear and definite language conferring, without ambiguity, upon the Board, jurisdiction to increase the rates fixed by the ordinances, it should not be held that the legislature intended to delegate such jurisdiction. Especially should this be so, when we find that the legislature had a clear intention, and made a hearty attempt, so far as express words could do it, to confer jurisdiction upon the Board to *enforce* these ordinances, *which intent is contradictory of any other jurisdiction.*

The courts should not read out of the Act provisions placed therein by the legislature; and, as the provisions we are discussing are not in irreconcilable conflict with the other provisions of the Act, they may be harmonized. These provisions may be brought into harmony with the rest of the Act, and the result is a piece of legislation declarative of the plain intent of the legislature.

While the importance of the questions at issue in a given case should not entirely, of itself, affect methods of statutory construction, to the extent of making such a construction elastic, on the one hand, or contracting it, on the other, neither to make it broader nor narrower than it would ordinarily be; and we should examine matters without reference to whether the rights or matters involved be inconsiderable or of tremendous importance, still may we not say that as the contracts in this matter are of tremendous importance, as they are great in number, and have daily financial effect

upon a majority of the people of the state, and they were matters of public notoriety, when the Act was enacted, there is some presumption, arising alone from this one consideration, that the legislature had these things in mind, when the Act was enacted, that there is some presumption, to give protection to the public and the municipalities by means of Section 37 and the provision of Section 17?

A narrower effect on the whole Act than the effect we give, is not to be given to Section 37, because, for one reason, if that was the only effect intended by the legislature, the section could have been entirely omitted, and still, by virtue of Section 3 of our General Act on Statutes (Comp. Stat. 4971) the things that would be included under a narrow construction of the section would be saved from the operation of the act. The section of our General Act on Statutes referred to reads as follows:

"3. Effect of repeal on rights accrued, pending actions, etc.——

"The repeal of any statutory provisions by this act, or by any act of the legislature heretofore or hereafter passed, shall not affect or impair any act done or right or limitation vested or accrued, or any proceeding, suit or prosecution had or commenced in any civil cause before such repeal shall take effect; but every such act done, or right or limitation vested or accrued, or prosecution had or commenced, shall remain in full force and effect to all intents and purposes as if such statutory provision so repealed had remained in force, except that where the course of practice or procedure for the enforcement of a right, or the prosecution of a suit shall be changed, actions now pending or hereafter commenced, shall be conducted as near as may be in accordance with such altered practice or procedure".

And without any such statutory provision as this Section 3, the law previously judicially pronounced protected the things that would come under, and be protected by, a narrow construction of section 37 (*Williamson v. R. R.*, 29 Eq., 334).

But the legislature did not choose to rely upon Section 3 of the General Act relating to statutes. It protected the ordinances by almost express mention. Certainly it protected them by appropriate language.

In view of this Section 3 of the General Act Relating to Statutes, we think that the very fact that Section 37 of the Act of 1911 was enacted proves that the construction we place upon Section 37 is sensible and reasonable, and that the ordinances are saved to the municipalities by Section 37.

Consider the words of Section 37 which are clear and explicit to save the ordinance-contracts from the operation of the Act to the extent that we have stated:

"*This act* shall not have the effect to release or waive any right of action by * * * any person for any right * * * which may have arisen or which may arise, under any of the laws of the state" * * *

The Traction Act of 1893, under which many of the ordinances were passed and accepted, is a "law of this state". Moreover, if the Company accepted the ordinances on the idea that they rested on "laws of this state", as the Company is now enjoying the fruits of the ordinances, it would not be heard to say that the ordinances were not enacted under "the laws of this state".

Surely, the ordinance-contracts are "rights" under any definition of the word. The preservation of a "right" without the preservation of a "right of action" to enforce the right, and without

such "right of action" being enforceable, irrespectively of a jurisdiction in the Board, would be a vain thing, and the quoted provision of Section 17 is effective to confer the right of enforcement on the Board. The preservation of the right, with only the Board to enforce it, would result in no enforcement at all, and the right would be lost in the very attempt to preserve it, if the quoted provision of Section 17 is not effective to confer the right to enforce on the Board, because of the technical considerations with respect t othe exclusive jurisdiction of the Court of Chancery to enforce.

To give Section 37 the construction we give it, is not to deny to the Board a wide and general jurisdiction, with respect to public utilities, for the Act confers upon the Board full jurisdiction over public utilities where there are no ordinance-connical considerations with respect to the exclusive tracts and over their relations not covered by ordinance contracts; and this covers many utilities and a wide field.

The Act is a rate-fixing act, and Section 37 must be held to have relation to rate-fixing contracts.

Section 37 is not repugnant to the other provisions of the Act; and on our construction, there is no conflict between Section 37 and other sections of the Act. If Section 37 is to stand, we believe it must be given the meaning we give to it.

Why are not the ordinances saved by Section 37?

Section 37 applies to the *whole* act, to all of the preceding sections, and is to be read and construed in connection with the whole act. The words of the section are: *"This act* shall not have the effect to release or waive" &c.

The specific use of Section 37 is to exempt the ordinance-contracts from any jurisdiction conferred upon the Board to increase and decrease rates;

and this is made more manifest when we find that the legislature, in Section 17, attempted to confer jurisdiction to enforce ordinance-contracts—which, of course, involves no increase of rates nor paid transfers.

Of course, if possible, every word and every provision of a legislative enactment should be given force and effect.

We think Section 37 of the Act may be treated either as a proviso or as a saving clause. "What phraseology constitutes a saving clause and what a proviso does not appear to be free from doubt" (*Clark Thread Co. v. Kearney Township*, 55 Law, 53). "A saving in a statute is only an exception of a special thing out of the general things mentioned in the statute" (Ibid, and Sedgw. Stat. Constr. 47; Dwar. Stat. 117). "A proviso is something engrafted upon a preceding enactment and is legitimately used for the purpose of taking special cases out of the general enactments and providing specially for them" (Ibid; Dwar. Stat. 118).

In Potter's Dwarris (117) the distinction between a saving clause and a proviso is recognized, and in *Townsend v. Brown* (4 Zab. 80, 86) Chief Justice Green declared "that the rule had long been established that if a proviso in a statute be directly contrary to the purview of the statute the proviso is good, and not the purview, because it speaks the later intention of the legislature".

Let us refer to some well known canons of statutory construction.

A saving clause in a statute, where it is directly repugnant to the purview or body of the act and cannot stand without rendering the act inconsistent and destructive of itself, is to be rejected. A different rule applies to provisoes. Mr. Sedgwick, in his work on Statutory Construction, (page 49) says: "A curious rule of a very arbitrary nature

prevails with regard to provisoes. It is that when the proviso of an act of parliament is directly repugnant to the main body of it, the proviso shall stand and be held a repeal of the purview, as it speaks the last intention of the makers".

We view Section 37 as a proviso. If it be viewed as "a saving clause", we say that it is not inconsistent with the main body of the act. "The courts will always endeavor, if it be possible, to put such a construction upon a saving clause as will remove any apparent inconsistency with the main body of the act". (Black on Inter. p. 442).

If the saving is not totally repugnant to the body of the Act, it is to be upheld. (Ibid. p. 439).

"Repugnancy will be evaded by construction, if possible". (Black on Inter. p. 442).

Section 37 is not totally repugnant to the earlier sections. It is auxiliary to those sections, and defeats them, by implication, *pro tanto,* to the extent of such repugnancy within the limits to which it applies.

If there is no direct repugnancy, the general words in the preceding sections of the Act are restrained by the particular words in the subsequent clause of the statute. (Sedgwick Stat. Constr. p. 48).

It is a well-settled rule of construction that where there is an irreconcilable conflict between different parts of the same act, the last in the order of arrangement will control. (*Clark Thread Co., v. Kearney,* 55 Law, p. 50).

If Section 37 is contradictory of previous sections, there must be a reconciliation, if possible, so as to give a reasonable effect to each. (*Clark Thread Co. v. Inhabitants of Kearney Tnp.* 55 Law 50).

If there is a conflict between the several provisions of a legislative act, the general provisions

must give way to the special and particular provisions. Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict. (*Rogers v. U. S.*, 195 U. S. 83).

"The rule of statutory interpretation, applicable to this case is, that the act shall be so expounded, if practicable, as to give effect to every part of it, and it is the duty of courts, if they can, so to reconcile the different provisions, as to make the whole act consistent and harmonious.

"In the construction of a statute, every part of it must be viewed in connection with the whole, so as to make all its parts harmonize, if practicable, and give a sensible and intelligent effect to each. It is not to be presumed that the legislature intended any part of a statute to be without meaning". (*State, Bartlett, pros., v. Inhabitants of City of Trenton,* 38 N. J. L., pp. 66-67).

"The true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause and proviso, taken and construed together, is to prevail. If the principle object of the act can be accomplished and stand under the restriction of the saving clause or proviso, the same is not to be held void for repugnancy". (Chan. Kent, 1 Comm. 463 Note b.)

The purview of an act may be qualified or restrained by a saving clause in the statute, (Sedgwick on Constr. p. 47).

A saving in the statute is only an exemption of a special thing out of the general things mentioned in the law. (Ibid.)

A saving clause in a statute is an exemption of a special thing out of the general things mentioned in the enactment. More particularly, it exempts existing rights or causes of action or pending proceedings from the operation of a statute which otherwise would change or destroy them. (Black on Inter. p. 427).

The special intent in the saving clause prevails over the general intent in the repeal. (Sec. 354 Lewis' Sutherland Statutory Construction).

A very important decision was recently delivered by the New York Court of Appeals, to which we refer on a subsequent page. This decision is on the meaning of the New York Act; and this decision directly supports our contention.

Sections 49 and 127 of the Public Service Commission Law of the State of New York read as follows:

"49. RATES AND SERVICE TO BE FIXED BY THE COMMISSION.—I. Whenever either commission shall be of opinion, after a hearing had upon its own motion or upon a complaint, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier, railroad corporation or street railroad corporation subject to its jurisdiction for the transportation of persons or property within the state, or that the regulations or practices of such common carrier, railroad corporation or street railroad corporation affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of any provision of law, or that the maximum rates, fares or charges, chargeable by any such common carrier, railroad or street railroad corporation are insufficient to yield reasonable compensation for the service rendered, and are

unjust and unreasonable, the commission shall with due regard among other things to a reasonable average return upon capital actually expended and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges, to be thereafter observed and in force as the maximum to be charged for the service to be performed, notwithstanding that a higher rate, fare or charge has been heretofore authorized by statute, and shall fix the same by order to be served upon all common carriers, railroad corporations or street railroad corporations by whom such rates, fares and charges are thereafter to be observed".

"§127. REPEAL. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. All other acts and parts of acts otherwise in conflict with this act are hereby repealed".

It will be observed that this New York Act confers a wide jurisdiction on the Commissions of that State, and that, in addition to certain specified acts, all other acts and parts of acts in conflict with the act are repealed.

The saving clause in this New York Act which has the character of what we may call "the usual saving clause", reads as follows:

"§125. PENDING ACTIONS AND PROCEEDINGS.— This Chapter shall not affect pending actions or proceedings, civil or criminal, brought by or against the board of railroad commissioners or the commission of gas and electricity, or the board of rapid transit railroad commissioners, but the same may be prosecuted or defended in the name of the public service commission, provided the subject-matter thereof is within the statutory jurisdiction of such commission. Any investigation, examination or proceeding undertaken, commenced or instituted by the said boards or commission or

either of them prior to July first, nineteen hundred and seven, may be conducted and continued to a final determination by the proper public service commission in the same manner, under the same terms and conditions, and with the same effect as though such boards or commission had not been abolished".

It will be observed that this saving clause has nothing like the strength and latitude of Section 37 of our New Jersey Act.

Still, without any substantial effective saving clause, and considering the wide language in Section 49 with respect to the fixing of rates by the Commission, the New York Court of Appeals handed down a decision, only a month or so ago, (*Rochester v. Public Service Commission of New York*) holding that the Public Service Commission has no jurisdiction to abrogate ordinance-contracts fixing rates of fare. One side of the argument was to the effect that the Commission had jurisdiction, by virtue of this Public Service Commission Law, to order an increase of rate of fare in cases mentioned. The Court very properly stated the real question for decision is about as we have stated it on a preceding page hereof: "The consent of the local authorities being obtained, what jurisdiction *has* (italics ours) the legislature conferred upon the Public Service Commission to regulate rates by increasing the rate agreed upon?"

It is true that there is a provision in the New York constitution, which was referred to in the argument in that case, but such provision plays no part in the decision of the New York Court of Appeals.

We think that the concluding sentences of the opinion in this Rochester case might well be used in an opinion by this Court on the question of legislative intent. The concluding paragraphs of the opinion are as follows:

"It is, however, unnecessary and, therefore, improper to decide at this time what the limits of legislative power are in this connection. The delegation of legislative power to commissions and other administrative officers and boards need not be assumed if the general words from which such delegation may be inferred are not reasonably so construed.

"In the absence of clear and definite language conferring without ambiguity jurisdiction upon the public service commission to increase rates of fare agreed upon by the street railroad and the local authorities we should not unnecessarily hold that the legislature has intended to delegate any of its powers in the matter, whatever its powers may be. The Public Service Commission Law (§26. §49, 1) and the Railroad Law (§181) deal with maximum rates of fare established by statute but make no reference in terms to rates established by agreement with local authorities.

"In regulating rates three courses were open to the legislature: 1. To prescribe rates itself. 2. To delegate the power to the commission. 3. To leave the matter to agreement between the street railroad company and the local authorities. It has constitutionally conferred on the public service commission certain functions (*Matter of Trustees of Village of Saratoga Springs v. Saratoga Gas, etc. Co.,* 191 N. Y. 123), which plainly include the power to regulate rates fixed by statute, and while it may be said that it has undertaken to delegate to the public service commission 'the same power' that it has to regulate rates of fare (Railroad Law, §181) *it is impossible to find a word in the statutes which discloses the legislative intent to deal with the matter of rates fixed by agreement with local authorities* (italics ours). As it has often been held in connections other than that of legislative power over them, that such

agreements are valid, it may well be inferred that the legislature excluded them from consideration, by failure to mention them, and that it has made no attempt to turn them over to the public service commission for revision. 'Statutes should be read according to the natural and most obvious import of the language, without resorting to artificial or forced constructions, for the purpose of either limiting or extending their operation.' (*Matter of N. Y. & Brooklyn Bridge,* 72 N. Y. 527, 539; *Heerwagen v. Crosstown St. Ry. Co.,* 170 N. Y. 99.) 'A thing which is within the letter of the statute is not within the statute unless it is within the intention of the makers. (*Riggs v. Palmer,* 115 N. Y. 506, 509.)

The authority of the Commission to regulate rates in such cases and thus to extinguish an undoubted power of the local authorities should fairly appear before it is assumed to exist."

Moreover, in this same connection, let us repeat that the New York act has only the "usual" saving clause, while our act has the substantial section 37, which fact alone, we argue, is sufficient to show that the Board has no jurisdiction over the ordinance-contracts involved in this proceeding to the extent of abrogating them.

Courts are constrained to give effect to jurisdictional statutes where the intent of the legislature can reasonably be inferred from the language thereof to vest authority to judicially ascertain the merits of the controversy. It is the duty of a court to interpret doubtful provisions so as to maintain the jurisdiction of the tribunal. Doubts are to be resolved in favor of jurisdiction, unless some established law is violated. (See 105 U. S., 305, *Supervisors v. Stanley;* Endlich on Statutory Construction, sec. 430; *Butler & Vale v. U. S.,* 43 Ct. Clms., 497; *Mille Lac Chippewas v. U. S.,* 46 Ct. Clms., 424; *Reese v. Hawks,* 63 Md., 130; *Abbott v. Gatch,* 13 Md., 314.)

To destroy the obligations of these important ordinances by a strained construction of the Act is fundamentally opposed to all principles of law and equity. This would be killing the spirit, not by the word, for the words are in our favor, but by a strained construction of the Act.

A construction of the Act against the clear intent and very words of the Act is at utter variance with the practice and ideals of the American people with respect to solemn contracts, which have come with the course of centuries. "Without the sanctity of plighted faith, there is neither law nor civilization."

Jurisdiction to abrogate the ordinances is not specifically granted by the Act to the Board; and it cannot be necessarily implied. Therefore, the Board has no such jurisdiction. Such jurisdiction cannot be implied at all—indeed, such implication is forbidden—because of Sections 17 and 37 of the Act, the first of which sections grants (or at least attempts to grant) to the Board a jurisdiction to compel compliance with ordinances, and the second of which sections exempts the ordinances from abrogation through the exercise of any jurisdiction by this Board.

The act of 1911 is to be regarded as prima facie valid in all its parts. (See *Mathison v. Minneapolis St. Ry. Co.*, 1916 D. L. R. A., 417.)

In case of doubt as to the existence of conflict between a statute and the constitution, the statute will prevail. (See *People of the State of New York v. Crane*, 214 N. Y., 154; L. R. A., 1916 D. 550; *Barrett v. Indiana*, 229 U. S., 26.)

Moreover, all general powers granted to the Board by the Act must yield to, and be governed by, the specific limitations expressed in Section 37.

We respectfully submit that both the letter and the spirit of the Act support our contentions.

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