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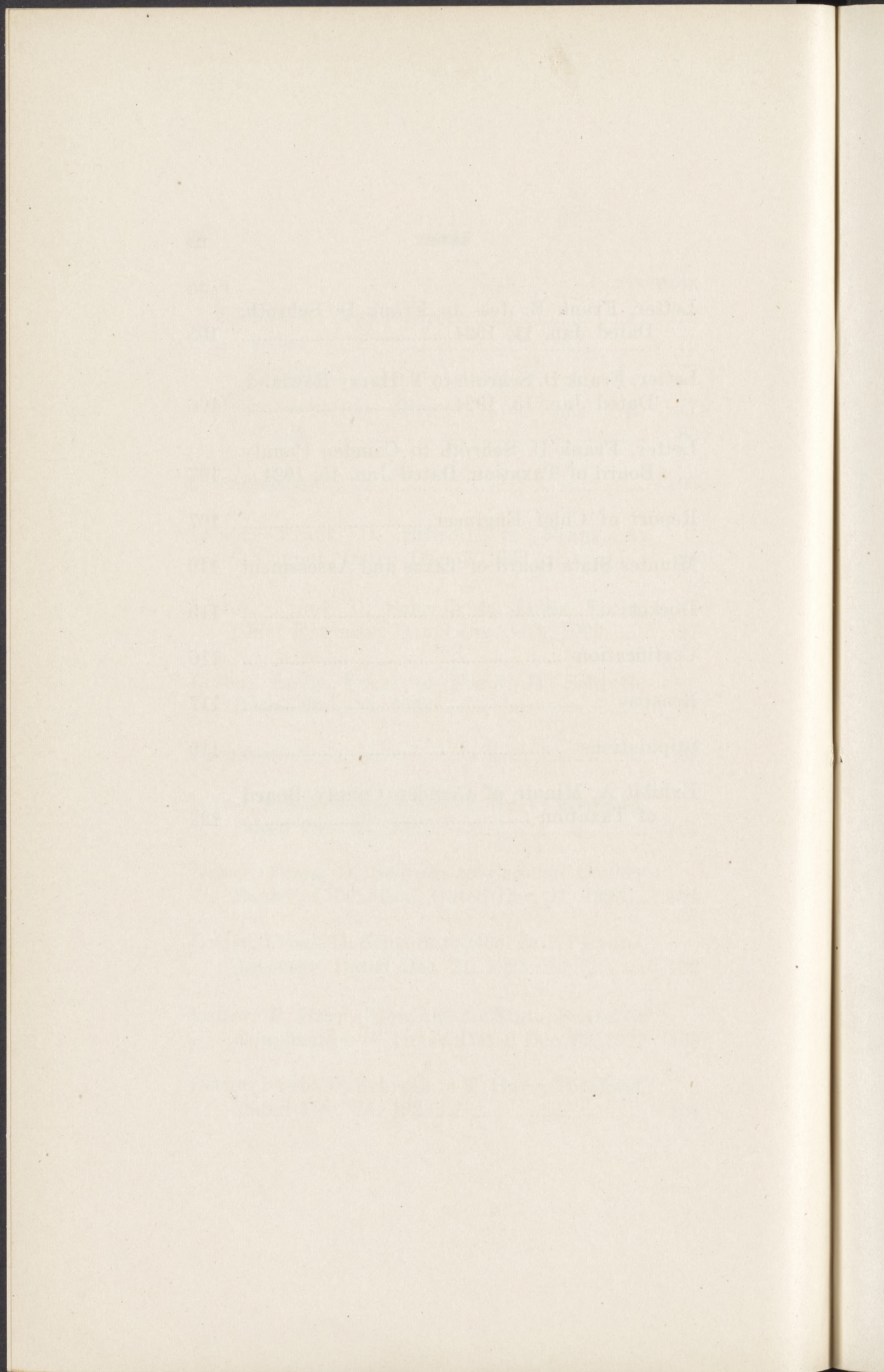
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NOTICE AND GROUNDS OF APPEAL.

(Filed Nov. 28, 1924).

NEW JERSEY SUPREME COURT.

WILLARD T. GIBBS,
Appellant,
(Prosecutor Below),

v.

STATE BOARD OF TAXES AND
ASSESSMENT, AND TOWN-
SHIP OF CLEMENTON, CAM-
DEN COUNTY, NEW JER-
SEY,

Defendants,
(Defendants Below).

Notice and Grounds
of Appeal.

10

20

To FRANCIS D. WEAVER,
Attorney of Defendants:

Take Notice, that the appellant appeals from the
whole of the judgment entered in this cause, on the
following grounds: 30

1. There is no evidence in the record below to
support the valuation adopted by the State Board.

2. The assessment value made by the County
Board, and affirmed by the State Board being \$65,-

000.00, and the evidence of fair market value before the State Board, as shown by its own witness, being \$20,000.00, the assessment affirmed was \$45,000.00 in excess of the fair market value of this property, as proved by the State Board's only witness.

3. The only other evidence as to value being that submitted on behalf of the prosecutor, which
10 fixed the highest market value of said property at \$13,200.00, said valuation adopted by the State Board was \$56,800.00 in excess of the value shown by the weight of the evidence.

4. The State Board and the Court below erred in considering income or rental value as the chief criterion of valuation for the purpose of taxation.

5. The Supreme Court failed to re-weigh the evi-
20 dence as to market value proved before the State Board.

BLEAKLY, STOCKWELL & BURLING,
Attorneys of Appellant.

[ENDORSED]

30

Service is hereby acknowledged of
a copy of the within notice of appeal
this 26th day of November, A. D. 1924.

Francis D. Weaver,
Attorney of Defendants.

RULE AFFIRMING ASSESSMENT

(Filed Nov. 13, 1924.)

NEW JERSEY SUPREME COURT.

10

WILLARD T. GIBBS,	}	On Certiorari. Rule Affirming As- sessment.
<i>Prosecutor,</i>		
v.		
STATE BOARD OF TAXES AND ASSESSMENT, et als., <i>Defendants.</i>		

20

The Court having heard the argument of counsel and inspected the record and proceedings of the State Board of Taxes and Assessment dismissing the appeal of Willard T. Gibbs against an assessment of \$65,000 levied for the year 1923, on certain property located in the Township of Clementon, County of Camden, and State of New Jersey, known as Clementon Park Tract, removed by the writ in this cause and duly considered the reasons filed, it is ordered that the action of the State Board of Taxes and Assessment be affirmed, with costs to be taxed in favor of the defendants. 30
Entered November 13, 1924.

On motion of

FRANCIS D. WEAVER,
Attorney of Defendants.

OPINION OF THE COURT BELOW.

(Filed Oct. 7, 1924.)

10

NEW JERSEY SUPREME COURT.

WILLARD T. GIBBS,
Prosecutor,
 v.
 STATE BOARD OF TAXES AND
 ASSESSMENT, et als.,
Defendants.

On Certiorari.

20

Submitted May Term 1924.

Decided October 7th, 1924.

Before Justices KALISCH, BLACK and CAMPBELL.

For prosecutor, MESSRS. ROWLAND & BLEAKLY.

For defendant, MR. FRANCIS D. WEAVER.

PER CURIAM.

- 30 The questions involved in this case are questions of fact, viz: the true value and acreage of a tract of land located in the Township of Clementon, County of Camden, known as the Clementon Park Tract. It was assessed in 1922 by the local assessor, as twenty acres at the sum of \$4,500. The Camden County Board of Taxation under P. L. 1918, p. 866, Sec. 507, Chap. 236, increased the as-

sessment to \$65,000. This assessment was affirmed on appeal to the Camden County Board of Taxation and the State Board of Taxes and Assessment. The State Board found as set out in its judgment, that the tract of land contained thirty-three acres and not twenty acres, as stated in the appeal. There is ample evidence on which the judgments of these boards are based. We can not therefore disturb the valuation so ascertained and fixed. The judgments of the County and State Boards are affirmed and the assessment of \$65,000 confirmed with costs. 10

WRIT.

(Filed April 29, 1924.)

The State of New Jersey, to the State 20
(Seal) Board of Taxes and Assessment:

GREETING:

We being willing, for certain reasons, to be certified of the judgment, order and proceedings, given or made before you, The State Board of Taxes and Assessment, in a matter wherein Willard T. Gibbs appealed to The State Board of Taxes and Assessment from an order made by the Camden County Board of Taxation, increasing an assessment for the year 1923 levied by the Township of Clementon, Camden County, New Jersey, against certain 30
property of the said Willard T. Gibbs, located in Clementon Township, Camden County, New Jersey, consisting of twenty acres of land, known as "Clementon Park Tract," in which appeal it appears that judgment was rendered December 11, 1923, affirming the increased levy made by the Cam-

den County Board of Taxation, of \$65,000.00 against said property.

We do command that you certify and send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, New Jersey, on Tuesday the twenty-ninth day of April, 1924, the judgment, order, tax duplicate, tax bill, order of said County Board of Taxation increasing said levy, before you, as well as all proceeding in the aforesaid action
10 brought before you therein, together with all exhibits and papers and things touching and concerning the same, including the testimony taken stenographically at the hearing had before you on December 11, 1923, as fully and completely as they remain before you, together with his, our writ, that we may cause to be done thereupon what of right and justice according to the laws of the State of New Jersey ought to be done.

Witness WILLIAM S. GUMMERE, ESQUIRE, Chief
20 Justice of our Supreme Court at Trenton, this 14th day of April, in the year of our Lord one thousand nineteen hundred and twenty-four.

E. J. KELLEHER,

Clerk.

E. G. C. BLEAKLY,

T. HARRY ROWLAND,

Attorneys for Prosecutor.

[ENDORSED]

This writ is allowed. Let it be sealed this 14th day of April, 1924.

Frank S. Katzenbach, Jr.,
Justice of the Supreme Court.

RETURN.

(Filed April 29, 1924.)

NEW JERSEY SUPREME COURT.

WILLARD T. GIBBS,
Prosecutor,
v.
STATE BOARD OF TAXES AND
ASSESSMENT, AND TOWN-
SHIP OF CLEMENTON,
CAMDEN COUNTY, NEW
JERSEY,
Defendants.

On Certiorari.

10

20

The State Board of Taxes and Assessments doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment and proceedings in the matter of the appeal of Willard T. Gibbs, from the assessment of property located in the Township of Clementon, County of Camden, for the year 1923, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears. 30

STATE BOARD OF TAXES
AND ASSESSMENT.

By FRANK D. SCHROTH,
Secretary.

(Seal)

PETITION.

10 In the matter of the ap-
 plication of WILLARD T.
 GIBBS, for the reduction of
 the tax assessment for the
 year 1923 on property situ-
 ate in the Township of
 Clementon, County of
 Camden and State of New
 Jersey.

Petition.

To the State Board of Taxes and Assessment:

20 Your petitioner, Willard T. Gibbs, residing at
 (P. O. address) Clementon in the County of Camden
 and State of New Jersey, respectfully shows that
 he is the owner of certain property situate in the
 taxing district of Clementon, County of Camden,
 consisting of 20 acres of land and known as* Clem-
 enton Park Tract.

30 That said property has been assessed for the pur-
 pose of taxation for the year 1923, at a valuation
 of† Land, \$65000; Improvement, \$;
 Personal, \$; Total, \$65000, at which
 assessment your petitioner is aggrieved, because the
 said assessment is in excess of its true value.

That an appeal from said assessment has been
 filed with the Camden County Board of Taxation,
 which appeal said Board disposed of as follows:

Dismissed.

Petition

9

Your petitioner has, therefore, not paid the taxes so levied for the year 1923, and prays that the said assessment of‡ Land, \$65000; Impt., \$; Pers., \$; Total, \$65000, for the year 1923, be reduced to the true value of the property, to wit:

Land, \$8000; Impt., \$; Pers., \$
Total, \$8000.

Dated 9-21-23.

(Signed) WILLARD T. GIBBS.

10

*Where city property is the subject of appeal care should be taken to describe the lot, block and street number, so that the same may correspond with the tax collector's books.

†This amount should be the original valuation of the property, as it appears on the tax bill.

‡This amount should be the valuation to which the assessment was changed by the County Board of Taxation, on appeal.

20

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

WILLARD T. GIBBS, the above named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

30

WILLARD T. GIBBS.

Sworn and subscribed before me this nineteenth day of Sept., 1923.

THOMAS P. BROWN,
Notary Public of N. J.

Commis. Expires Aug. 17, 1928.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

THOMAS P. BROWN, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Edward Arentzen (clerk) of Clementon Township (name of taxing district), personally, this 20th day of September, 10 1923.

THOMAS P. BROWN.

Sworn and subscribed before me this 20th day of Sept., 1923.

T. HARRY ROWLAND,
Atty.-at-Law, N. J.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

THOMAS P. BROWN, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Gardner Driver (Secretary) of the Camden County Board of Taxation, personally, this 20th day of September, 1923.

THOMAS P. BROWN.

Sworn and subscribed before me this 20th day of Sept., 1923.

T. HARRY ROWLAND,
Atty.-at-Law, N. J.

Petition

11

[ENDORSED]

STATE OF NEW JERSEY
State Board of Taxes and Assessment
PETITION OF APPEAL

Willard T. Gibbs

v.

Clementon Township

Camden County

Filed September 22, 1923.

10

T. Harry Rowland

Petitioner's Attorney.

522 Market St.

Camden, N. J.

20

30

TESTIMONY.

STATE BOARD OF TAXES & ASSESSMENT.

10 WILLARD T. GIBBS, }
 Petitioner, }
 v. } Testimony.
TOWNSHIP OF CLEMENTON }
 (2831), }
 Respondent. }

Camden, New Jersey, December 6, 1923.

20

PRESENT:

MR. JESS.

MR. MARGERUM.

MR. MUTCHLER.

APPEARANCES:

T. HARRY ROWLAND, Esq., for the petitioner.

30 FRANCIS D. WEAVER, Esq., for the Camden County
 Board of Taxation.

(2831), Assessment of 1923 on 20 acres of land,
known as Clementon Park Tract, assessed \$65,000;
wants reduced to \$8,000.

Appeal to Co. Bd. dismissed.

Mr. Rowland: Mr. President and gentlemen of the Board, if I may, I would like to take up with you first the question of the assessment for that particular tract known as the 20 acres of land, that is what we call the Clementon Park Tract. If you will consider that at this time I will be very glad to present our case.

Before doing so I would like very much to point out to you on the map the land in question, so that you will have a fairly good idea of what we are talking about, because some of these places are known by certain names and the witnesses might talk about them and you might not understand them. 10

The land involved is comprised practically in this section, with one or two exceptions and reservations. This portion here is known as Gibbs' Lake (indicating). This entire portion here comprises some 20 acres. The lake itself comprises, I should say, about 9 acres. Proof will definitely establish that, and in through here, where there are various amusements and concessions, of course not as elaborate as the Trenton Fair, but nevertheless humble and satisfactory, and there is some lowland of possibly five acres that is marshy land and of very little, if any, value. Over here(indicating) is high ground, ground that could be used for building purposes, and probably there are six acres at the very most, so that this section here of the 20 acres is really divided into three parts or parcels, first, the lakes, secondly, the lowland, and third, what we call good land. 20 30

Now, the Gibbs Brothers, Mr. Willard Gibbs and Mr. Edgar Gibbs, inherited this ground from their mother some years ago. They have had this ground ever since.

The very highest assessment ever placed upon this entire tract has been \$250 an acre. Now, for

some reason, some reason this assessment was increased from \$250 per acre to \$3,250 per acre, in other words, an increase in assessment from \$4,500 to \$65,000 this year.

Keep in mind, gentlemen of the Board, if you will, that this ground has been assessed, year after year, county board after county board has gone down there and viewed it and stamped it with their value, and that is regardless of the political complexion of boards.

I do not want to be personal in the matter, but I do think it is important for this Board to know, as I tried to in my humble way explain to the County Board, that for some reasons or other every bit of ground that Willard Gibbs owned in Clementon Township was increased from one to twelve to thirty times over any assessment heretofore, so much so that in some cases it seemed to me, maybe I am biased and prejudiced by my interests in the matter, but it seemed to me so ridiculous that it required very little argument to satisfy any board that a grievous mistake had been made. For instance, Mr. Gibbs has his old homestead there. They assessed his ground at \$6,000, I think that is the subject of appeal. Across the street, right across the street, directly opposite, you might say, is a larger piece of ground which was assessed at \$500. In other words, somebody in their wisdom has had said that living on this side is twelve times more valuable than living on the other. We are unable to reconcile that. We pointed that out to the County Board. The distinguished chairman who is here today, a very fine gentleman and a distinguished lawyer, said that there must be some mistake. Our appeals were dismissed. However, I don't want for a minute to get into that side of it, because you don't want to hear it, and it is not proper that I

should discuss it with you. We will go right back to the lake.

This ground heretofore has been assessed at the very highest at \$250 an acre. Today we are met with an assessment of \$3,250 an acre, and we feel there ought to be a substantial reduction. We will very gladly show you the value of the surrounding ground. We will show you what lots here and there (indicating) sold for. We will show you what rent Mr. Gibbs is getting from the park. We will try 10 to bring to your consideration every element that we know of that will establish its value.

Mr. Weaver: If the Board please, ordinarily the members of the County Board of Taxation do not appear before the State Board in the matter of these appeals. I believe that the appeal body, the lower appeal body should not appear here to sustain whatever action the County Board sets below. Consequently that has been the policy of the Cam- 20 den County Board of Taxation.

The situation here, however, is that these assessments are the assessments of the Camden County Board of Taxation, and consequently, no one coming forward to represent the township, it seems to us it is only our plain duty to come here and defend these assessments.

Now, I had not expected to advert to conditions in Clementon Township, but inasmuch as my friend on the other side has seen fit to call your attention to the fact that he could not understand why the 30 only assessments in that township had been raised in this proportion, those being the assessments of Mr. Gibbs, I think it only just to say, that the Board may understand this matter and may not get from Mr. Rowland's remarks a viewpoint that is unfair to the Board, I want to add this, the County Board

in Camden County has endeavored through a series of years, to increase the assessments in the taxing districts outside of the City of Camden. We are very much troubled with the elective assessor, and by persuasion and with some argument and with some little force, we have been enabled over a period of years to gradually get the assessments in the county districts higher than they subsequently were, although I am very free to say that these outlying
10 districts, in these outlying districts the assessments are not what they should be, compared with the assessments in the City of Camden, and with all the art and all the persuasion and all the force that the County Board can use, we are constantly troubled with the elective assessor who is working in the interests of those who put him in office or those whom he is extremely friendly with, and therefore we have not only unequal assessments in the country districts, in the districts where we have the
20 elective assessors, but we have very low assessments. We have favoritism, favoritism in the interest of the friends of the assessor, and those who either do not follow his politics or who have no vote in the district are assessed to a greater extent than those who have some interest.

I did not intend to advert to that, either, but to come to my point, we made very great efforts to get an increase in the Township of Clementon, the assessor was brought in, and he is a rather strong
30 character. He came before the Board and always was opposing the increase of assessments, but finally it came to a point in 1922, when this assessor was told positively by the County Board unless he made a substantial increase, because his was one of the districts in the county that required attention, and very drastic attention, that unless he made a considerable increase in that district the County

Board would select that one district and dispose of the situation very promptly because it was deplorable, through certain influences that perhaps may appear to your honors here today.

The assessor brought in the assessment of October 1, 1922, an increase of nearly \$900,000, but for some reason he failed to notice that the properties of Mr. Gibbs should be increased in proportion to the others in the district, so that there was considerable favoritism there, as well as some other 10 properties.

Now, the County Board then added \$150,000 or \$200,000 to that increase of \$900,000, and among those increases was this park property and the residence property of Mr. Gibbs. We increase a number of farms there that had been overlooked by the assessor, and some other properties. There was no appeals, there may have been one or two, yes, there were one or two appeals to the County Board which were dismissed, but among those appeals to 20 the County Board were these two particular appeals and some others of Mr. Gibbs.

We have before us here this park property. The County Board discovered that this park property had been assessed for \$4,500, and it may be true that the present and previous County Boards in other years had been lax in letting this matter go by, yet it was not brought to the attention of the County Board until about October 1, 1922, that this park, which has been assessed for a long time for 30 \$4,500, was actually returning \$13,000 a year rental as a return. They say, and the assessor says, that they did not think that was any evidence of the value of the property, that they wouldn't give more than \$4,500 for it, even in the face of the fact that if they could buy it for \$4,500 they could get that back probably three times over in the rental, so

the County Board felt justified in dismissing this appeal. Of course, it was the assessment of the County Board and the judgment of the County Board. Now, that judgment may be faulty, and we are not here to urge an assessment, if, in the judgment of this Board, it is not justified. If it cannot be sustained it should be lowered, because we don't want to do any injustice, but we do not feel that an assessment of \$4,500 should be permitted to stand indefinitely with a return such as this park brings.

In addition to that there is another appeal here that will come up later, and I will just finish on that point. Mr. Gibbs' residence occupies a block of land between the railroad terminal and the park. It was the most advantageous building site in Clementon, still unoccupied, excepting for the residence, that is for business, it was right between the railroad and his property where there were all stores in which they would getting very good rentals, extremely good rentals. Next came his long strip of land on which he had his dwelling house, and beyond that was the bank, and then a lot of stores called the Terminal stores and other places and then the entrance into the park. Thousands of people go to this park through the summer, and it is a very popular resort.

The County Board sustained the assessment that they made on this residence property. I think Mr. Gibbs will very frankly tell you that he sold the property on which his house was built at a price in excess of the assessment made by the County Board, with a right to take off his own dwelling house and put it on other grounds, and therefore the County Board felt in that instance there was no injustice shown, that the assessment was justified because of the sales that had been made imme-

diately after our assessment. It may be, so far as the park is concerned, that \$65,000 was more than it was worth, but considering the value of surrounding property, sales actually made right around this park, and the value of this park as an amusement center, we felt, and we feel now it is worth that money, but this Board may feel differently about it, and if it does, that is all right.

Now, Mr. Rowland has adverted to another question. He says that immediately across the way there is a piece of land that we put at \$500. Well, I want to say as to that, that I think that assessment is too low. On these assessments that the assessor went down there and made this increase of \$900,000 on, the County Board went there and having no map of that district, tried to take this business center and some of the outlying districts and make a unit there. The best side was the south side, the north side was not so good. This lot is larger, much larger than Mr. Gibbs' lot, it was a good big sized lot at only \$500. It was assessed at \$500 by the County Board, and I don't doubt it was, it was first because it is a very low piece of land, way below the grade. Mr. Gibbs' is high and in a very much better location. It is on the wrong side of the way. I think the reason because it was so low was because not having a proper map we didn't know the exact depth of the lot, and consequently we were mistaken as to the assessments. We did try to collect some of the other assessments on the other side of the way.

What we are here for today is to determine two appeals, first the value of the land which includes the park, and, secondly, the value of the land and improvements where Mr. Gibbs' residence is contained, and all questions adverting to value of other assessments I think we won't want to deal with today, because no matter how mistaken they may

be, if the value of the park is what we claim it to be, and the value of Mr. Gibbs' residence is what we claim it to be, anything bearing on that comparison of sales or rentals or anything of that kind is good evidence to determine the matter, but we will waste a lot of time if we get into whether other assessments are high or low, and, furthermore, the Board knows what the Court of Errors has said in respect to that matter.

10

Mr. Rowland: That is true, it is not my thought for a minute to try to determine the assessment of this ground by a comparison of the assessments on other sections. I am glad to hear Mr. Weaver say for the first time, they will admit they did make a mistake. We have a map, and while I am not going to discuss very much about these other properties, the big thing is the park, and if we get that straightened out we are not so much concerned about the

20 other.

To show you we are not so far wrong in our assessments I will draw for you the Gibbs homestead. That is assessed for \$6,000. Across the street, a larger piece of ground, from there to there and down to here, up to here (indicating) is assessed for \$500. I just pointed that out to the Board because I wanted to have some support in my thought that we have not been dealt with entirely fairly.

30 I am not here with any brief for the assessor, I suppose he knows his business, the people elected him there, and they apparently think he knows, but it is not fair because Mr. Weaver acted as the prosecutor, judge and jury below, and he is up here endeavoring to defend the conduct of the Board, which might or might not be proper practice. We are very glad to have him and we will have no quarrel with him in that respect, but I am

glad he has opened the subject up now because I think the Board will let me say one or two of his statements have absolutely no bearing on the thing.

Mr. Weaver picks out the date, October 1, 1922. Mr. Weaver and his associates that he has now or in other years have been on this County Board, they viewed this property, had this matter under consideration year in and year out, and why, then, the zero hour of October 1, 1922, should make a big difference, a difference of between \$250 and \$3,250. 10 I will tell you why, because in this little thriving community there was an election, and Mr. Gibbs' integrity, Mr. Gibbs' honesty, everything about Mr. Gibbs was the issue. Let us unstrip this thing, let us unmask a certain gentleman from Clementon Township who came up here to this Secretary of this Board, and as a result there was this enormous increase in assessments. If they wanted to be fair why didn't they increase that man's assessment who a few days later sold his property for some \$65,000, 20 a few days later the same thing sold for over \$100,000, and he happened to be on the political side of the Secretary of this Board. There was an assessment on that of \$15,000.

Mr. Jess: I don't think that ought to be injected into the case.

Mr. Rowland: It hasn't a thing to do with it at all, I quite agree with you, but Mr. Weaver has 30 tried to criticize the assessor of the community, said he was playing favorites with Mr. Gibbs, which is not true. If he has played favorites there he has been playing on the side against Mr. Gibbs politically, because there is a glaring illustration of assessments nowheres near the true value, but I sub-

mit it was not anything the County Board did of its own volition, it was because people brought them certain reports that we are in this terrible muss.

WILLARD T. GIBBS, sworn on his own behalf, testified as follows:

10 Direct examination.

By Mr. Rowland:

Q. Now, Mr. Gibbs, you are Willard T. Gibbs, are you not?

A. That is me.

Q. And you and your brother own this entire park, do you not?

A. The park tract, yes.

20 Q. And the acreage is, approximately, what?

A. Something less than 20 acres, very close to 20 acres.

Q. Do you know what your assessment was for this year?

A. As made by the County Board?

Q. Well, what was it originally made by the assessor?

A. I think it was \$250 an acre.

30 Q. \$250 an acre. Was it increased by the County Board?

A. It was increased to \$3,250 an acre by the County Board.

Q. In other words, an increase from the total sum of \$4,500 to \$65,000?

A. That is right.

Q. What is the highest assessment you have ever had there prior to the \$65,000 assessment?

A. I think \$250 was the highest we ever had.

Q. Is that an increase over assessments of year ago?

A. Oh, yes, that is way above.

Q. Now, Mr. Gibbs, will you describe, if you will, please, for the Board, the character of this ground that is comprised in the acreage of 20 acres?

A. Well —

Q. I will point out to you, this is what, this section here? (Indicating.) 10

A. That is the lake.

Q. And this section here? (Indicating.)

A. That is filled-in ground, low ground filled in for park purposes.

Q. What is that over here? (Indicating.)

A. That is high, that is along the Berlin Road.

Q. Now, can you tell me the acreage of the lake?

A. We always considered it between eight and nine acres, never had it surveyed.

Q. And the good land over here (indicating), 20 what you call the high ground, how many acres are there there?

A. About six acres.

Q. And the rest of the acreage is represented by this section in here, what is called the low ground?

A. Well, there is some on the other side here (indicating), low ground.

Q. Up here? (Indicating.)

A. Yes, it is not used for anything.

Q. Of these 20 acres you say there are about six 30 acres of good ground?

A. Yes, about six acres.

Q. How long have you lived in Clementon Township, Mr. Gibbs?

A. 53 years.

Q. 52 years?

A. 53 years.

Q. All your life?

A. Not quite.

Q. And your business in Clementon Township is what?

A. Real estate.

Q. You buy and sell properties in Clementon Township, do you?

A. I do.

Q. Are you connected with any institution there?

10 A. Connected with the Clementon Bank.

Q. In what capacity?

A. President.

Q. You are president of the Clementon Bank. Are you connected with any building loan there?

A. The Clementon Building and Loan.

Q. What is your official connection there?

A. President.

20 Q. And, as a result of your official connections with these various institutions and through your business, the conduct of your business, have you bought and sold many properties in the vicinity of this park?

A. Yes, on all sides.

30 Q. Are you prepared at this time to give the Board your expert opinion as to the value of this entire 20 acres, considering if you will, Mr. Gibbs, its adaptability for every purpose, what you in your expert opinion give as the fair market value, an estimate of the fair market value of this entire tract as a whole?

A. \$400 an acre would be a fair price, good price.

Q. \$400 an acre. Now, recently have you sold any of the ground adjacent to what we now call the 20 acre tract?

A. We sold to the south of it, yes.

Q. Would that be up here (indicating), what do you mean by the south?

A. Right at the head of the stream.

Q. Here? (Indicating.)

A. Yes.

Q. Up here. Adjacent to this section here? (Indicating.)

A. It is on the other side, right up in the other corner.

Q. Oh, here? (Indicating.)

A. Right there, yes.

Q. What kind of ground was that, high or low 10
ground?

A. It was both, some low and some high, about half each.

Q. You sold it for how much?

A. Sold the five acres for \$1,800.

Q. Now, of these six acres that you say are good ground, high ground, is it all cleared or are there some portions covered by woods?

A. There are three acres of it, a knoll, covered 20
by wood.

Q. That would be where, here? (Indicating.)

A. Right next to the lake, where those concession buildings are, just beyond that.

Q. Right there? (Indicating.)

A. Yes.

Q. Now, Mr. Gibbs, on the easterly side of this property, that would be, I think, Lake Avenue, this is Lake Avenue, do you know what the ground adjacent there is assessed for?

A. I think \$100 an acre. 30

Mr. Weaver: I object to that. What difference does it make what other lands are assessed for? We are going to stretch this out on that basis to an unlimited extent. The only fact is whether this property we are now dealing with is assessed for more than its true value.

Mr. Rowland: Mr. President and gentlemen, my thought in bringing that to your attention is, I didn't know Mr. Weaver objected to disclosing these assessments. My thought is that the assessor and the Board of Appeals, the County Board of Appeals are more or less experts in real estate matters, in placing values, and if they have placed a value on ground surrounding this park at so much, I think that is evidence of some sort it is worth
10 that much, certainly it is their duty to assess it for its true value. Apparently they have done that, we assume they have done that, and there has been no criticism of it. Certainly it seems to me it is some evidence as to an estimate of value.

Mr. Weaver: If the Board please, you see what you are getting into on that basis. Here is a peculiar property, it is a park, it has a lake, it has amusements of all kinds, it is worth money because
20 of that reason, it has value because of the fact it has a lake in a park. Land right adjoining it that has not a lake or is not a park cannot be rented so well because it hasn't the natural physical advantages—that is an entirely different proposition and therefore what value is it to the Board to say that the County Board or the assessor has assessed adjoining land of a different character that cannot be used for the same purpose, and compare those two assessments? You get nowhere with that, it
30 is only taking up the Board's time and it doesn't help at all.

Mr. Jess: The Board, following its usual rule in these cases, will exclude all evidence as to assessments of adjoining property.

Mr. Rowland: I wanted to call the Board's attention to the fact that some of this 20 acres is not

used at all for park purposes. This ground here (indicating) is idle, used not at all for park purposes. However, we can bring to the Board's attention a lake here (indicating) exactly similar, where they have assessed that for \$500 an acre. We have a lake over here, the same thing, exactly similar, in every respect, except with the difference that it is probably a little farther removed from the trolley line.

10

Mr. Jess: Well, Mr. Rowland, the difficulty is we are estopped, as you know, I think, by the Court from going into that in these cases. The Court says the assessment may be low on other land, and then to determine that you would have to investigate that.

Mr. Rowland: The Court said because the Board made a mistake over here, that had no bearing over here, but it ought to be evident to this Appeal Board 20 of what they think the surrounding ground is worth.

Mr. Jess: We will take evidences of sale or opinions as to value.

Q. Now, Mr. Gibbs, do you recall any other sales by you or by anybody else of ground surrounding your 20 acres there?

A. There is one right at the terminal where the cars stop.

30

Q. That would be here? (Indicating.)

A. Right at the Berlin Road and the trolley line.

Q. Do you know what that was sold for?

A. We sold it for \$1200, and they have since resold it for much more than that, divided up into lots.

Q. Building lots?

A. Building lots. I think they made four or five lots.

Q. That is the ground here bordering on the street? (Indicating.)

A. Yes.

Q. The park is back here? (Indicating.)

A. Right at the corner of two streets and where the trolley stops.

10 Q. That is not comprised within these 20 acres?

A. No.

Mr. Jess: How big is that?

The Witness: Four lots.

Mr. Jess: And that is at the corner of the Berlin Road?

20 The Witness: And the road leading to the park.

Q. Bounded by the Berlin Road, the private road and the trolley line?

Mr. Jess: And that was sold for \$1200?

The Witness: We sold it for \$1200 about three years ago.

30 Q. That is good ground, is it, available good ground?

A. Yes.

Q. And between there and the park there was some more ground that does not come in the 20 acres?

A. Yes.

Mr. Jess: As we go along—you mentioned four lots, what is the size of those lots?

The Witness: The whole piece was 180 feet frontage, I think, around 180 feet frontage.

Mr. Jess: How much depth?

The Witness: Oh, some places 100 feet and others not over 75.

10

Mr. Rowland: It is a triangular section here. (Indicating.)

Q. Then between that triangular section and the park there is another plot?

A. Between the trolley line and the entrance to the park there is five acres.

Q. It is not included in the 20 acres?

A. No.

20

Q. Under discussion?

A. No, not included.

Q. The acreage of 20 acres, which is the subject of this review, is back of that five acre section?

A. That is the old homestead, yes, five acres reserved with that.

Mr. Rowland: That is all.

Cross-examination.

30

By Mr. Weaver:

Q. Mr. Gibbs, the property you just spoke about as having sold for \$1200, I understood you to say that was about three years ago?

A. Three or four years ago, yes.

Q. Hasn't it just recently been sold within a year, for \$7,000?

A. I couldn't say. The man we sold it to is here, he can answer that himself.

Q. Didn't you so testify before the County Board when you were asked?

A. I don't think I did, I don't think I knew the price.

Q. Now, the property on which your residence
10 was situated——

Mr. Rowland: We are not taking that in at the present time, if the Board please. It is going to be rather confusing. I will take that matter up later, but I want to get this through, and then if we have time we can take up the other. This is the important matter, we are not so concerned about this other assessment. That is small in amount. I haven't gone into that at all.

20

Mr. Weaver: The gentleman does not get my point, perhaps the Board will. We are now taking up actual sales of surrounding property.

Mr. Jess: Oh, this is a sale?

Mr. Rowland: That is up here. (Indicating.)

Q. How far is your home site from the park, it
30 was right on the way to the park, wasn't it?

A. No, between the railroad station and the trolley.

Q. Yes, well the park is adjoining the trolley, isn't it?

A. Yes.

Q. So that how far would you say from the trol-

ley was your residence, half a square, half a city block?

A. No, about 900 feet, 900 to a thousand feet.

Q. What did you sell that land for?

Mr. Rowland: I object to that, gentlemen of the Board, on this ground, it is simply trying to confuse the Board. Here is the park here, here is the residence, here is the terminal, and up here near the railroad is Mr. Gibbs' home (indicating)—it has no bearing whatsoever on the park. Here is the park here (indicating). This piece of ground is on the main highway and goes from Blackwood to Berlin, a very important highway. I don't see that that is going to be of any use to this Board in determining the value here because we are talking about a lake, this property here located way up here, quite some distance away. 10

Mr. Jess: You see the only question is whether it is sufficiently comparable property to make it of value as evidence. Do you think it is? 20

Mr. Weaver: It seems to me a sale of property within 900 feet of this park certainly would have some value.

Mr. Rowland: There is no similarity here at all. Here is a property way up here located at the depot. The only business section of Clementon is located here (indicating). Here is a park back here in the swamp. If there is any comparison I fail to see it. 30

Mr. Jess: The objection is overruled.

Mr. Rowland: Will you allow me an exception?

Mr. Jess: Yes.

Q. What did you sell the land on which your home site is situated for?

A. I sold it for \$10,000 and helped do the grading.

Q. When was that?

A. About three months ago.

Q. How much land was comprised within that
10 sale, an acre?

A. I couldn't say, that was sold by the front footage, I think, well, fourteen stores are going there, 16 feet wide and it just takes up all the ground.

Q. The depth is not very great?

A. 108 feet, I think it was in depth.

Q. 108 feet by how much?

A. Whatever 16 times 14 figures.

Mr. Margerum: 224?

20

The Witness: That is it?

Q. And that was sold for \$10,000?

A. No, I won't get over \$8,200 out of it after the grading is done. That was 10 feet above the level of the ground, the street.

Q. I see. Included in that was your dwelling house, wasn't your dwelling house included in that sale?

A. It was included in that but I gave them \$600
30 for the dwelling house and moved it off.

Q. Are you taking that off the \$10,000 to get your net sum?

A. No.

Q. The dwelling house couldn't be built for \$5,000 could it?

A. I built it for \$1,400.

Q. How long ago?

A. 27 years.

Q. You improved it?

Mr. Rowland: I object to this.

A. The only improvement was a stone porch put on one side.

Mr. Rowland: With all respect to the Board, 10
you have gone pretty far in allowing him to state
how much this ground is worth. Now he is talking
about a movable house.

Mr. Jess: How is that going to help us, Mr. Wea-
ver?

Mr. Weaver: Because it is part of the considera-
tion. He sells a lot of land for \$10,000——

20

Mr. Rowland: He sells a lot and house.

Mr. Weaver: He sells a lot for \$10,000 and does
some cutting which reduces the value of that land,
but as part of the consideration he takes the dwell-
ing house off. That has some value and it is part
of the deal.

Mr. Jess: It appears the price practically was
paid for the land, I think there is no question about
that. 30

Mr. Weaver: Now, Mr. Gibbs knows in respect
to what ——

Mr. Rowland: That is not accurate, Mr. Presi-
dent, he said he had to pay \$1,800 to grade it, so that

it would be the level of the street, so take the \$1,800 off \$10,000, \$8,200 less the value of the homestead.

Mr. Mutchler: Did I understand you to say aside from that you gave \$600 for the house?

The Witness: \$600. After the other deal was completed I moved it off.

10 Q. I want to call your attention to the mill property, where is that located with respect to the park, the old mill property?

A. Right at the trolley terminal.

Q. Did you make a sale of that property?

A. I didn't own that at all.

Q. Who did own it?

A. My brother.

Q. Did you hear what he got for it?

A. He hasn't got anything yet, it hasn't been settled.
20

Q. Did you hear what he sold it for?

A. I think the mill and all was sold for \$8,000, I think that is his price.

Q. Wasn't his price \$10,000?

A. It was not, no.

Q. The size of that lot was 35 by 63, was it not?

A. I don't know that.

Q. It was.

A. There is a street on both sides, small piece
30 of ground.

Q. Just one small plot of ground?

A. And the old mill.

Q. That was of no value, was it?

A. I think your tax board thought it was when they assessed it.

Q. What was it assessed for, do you recollect?

A. No, I do not.

Q. I mean as compared with \$8,000, was the old mill in a good state of repair?

A. No, it was not.

Q. Did that include the old mill?

A. That did include the old mill.

Mr. Rowland: May I ask you if you have increased that assessment this year?

Mr. Weaver: I think so, I am not sure.

10

Mr. Rowland: Will you find that out, what you did assess it?

Q. Now, Mr. Gibbs, the park property includes about, as I understand it, 30 acres of land.

A. 20 acres.

Q. Isn't that the lake?

A. That is the lake and all.

Q. 20 acres?

20

A. 20 acres, not quite 20 acres. Our engineer tells us it is not quite 20.

Q. Including the lake?

A. Including the lake.

Q. That is a park that is very well patronized, is it not?

A. At times, yes, very well.

Q. There are a great many people who go there through the summer?

A. Yes.

Q. And there is a place for swimming in the lake?

30

A. Yes.

Q. There are boats on the lake?

A. Yes.

Q. There are a great number of concessions in the park which are well patronized?

A. I don't know how they are patronized, there is a great number there.

Q. How many people would you say attended this park on a Sunday in the summer time, what is the greatest number of people you have ever had there, do you know?

A. I think there has been days when 12,000 people were there, that may be one or two days in the summer.

10 Q. Do you yourself think an assessment of \$4,500 for this land is right?

A. I do; I think it is high.

Q. You think \$4,500 is high?

A. High, yes. Excuse me, I thought you said \$450 an acre.

Q. No.

A. \$4,500 I admit is a little low, but it is more than other property in that locality has ever been assessed.

20 Q. Is there any other park property in that locality, comparable with this in any respect, is there any other?

A. Yes.

Q. Is there?

A. Not developed, but something that could be developed.

Q. Is there any other park property developed in that locality in any respect comparable to Clementon Park?

30 A. Blackwood is way beyond there, a great deal more, and assessed very much lower.

Q. That is in another township?

A. Right at the trolley terminal, exactly the same as this.

Q. That is in another township?

A. Yes.

Q. Is there any other park or lakeside in your township that is in any way comparable with this?

A. Lakeside Park was, and they quit, they give up the park.

Q. That was a Sunday School picnic ground.

A. That had all the concessions we have.

Q. That has been done away with for years. You rent this park to what is known as the Clementon Park Association?

A. We do.

10

Q. For that you get \$4,000 a year?

Mr. Rowland: Just a minute. I want to interpose an objection and take the stand that revenue absolutely has nothing to do with it, it is not a controlling feature in placing value, it is not the criterion on which values should be placed.

Mr. Weaver: It is one element, however, which goes to make up value.

20

Mr. Jess: Yes, it is not controlling in any sense, but it is evidential.

Mr. Weaver: It helps to guide the Boards in respect to the value of land. Will you allow the question?

Mr. Jess: Yes.

30

Q. You rent this park to the Clementon Park Association, you and your brother?

A. For \$4,000 a year you said?

Q. Yes.

A. No.

Q. How much do you rent it for?

A. We rent the park and all the buildings there for \$4,000 a year.

Q. The buildings there all belong to parties who run the park, don't they, all the buildings that are there belong to the parties that run the park?

A. Not when we rented. The buildings are there, we rent out with the park.

Q. Haven't all those buildings been swept away?

A. No.

10 Q. And new ones taken their places?

A. A great many of them, but not all of them, no.

Q. Is there anything left there at the present time of the old buildings of any value?

A. Yes.

Q. What are they?

A. The penny arcade and the moving picture building, it is being used for other purposes, one was a merry-go-round building, there was a dance
20 floor, they used all new lumber and enlarged the buildings.

Q. You get about \$4,000, do you, for those buildings, what buildings you say are there, plus the land and the lake?

A. And the boats.

Q. \$4,000?

A. That is it.

Q. The Clementon Park Association is controlled by your brother and yourself and one or two others,
30 isn't that a fact?

A. No, it is not.

Q. How many are interested in the Clementon Park Association?

A. Ten.

Q. What does the Clementon Park Association in turn rent the park for?

Mr. Rowland: I object to that, that is absolutely not controlling upon the owners of this ground. I think this Board has gone as far as it may under the law, when it permits testimony of the rent that they get from it. They have rented it to somebody else, a company. If this company gets some independent income from it, that is not controlling on Mr. Gibbs. It has nothing to do with the value as to Mr. Gibbs, the owner of this ground. He couldn't make any more rental if he wanted, because he is tied up with a lease with a privilege of renewal. If these people are getting some more, how can that be laid at the door of Mr. Gibbs? I respectfully and strenuously object to that. 10

Suppose, on the other hand, take the converse proposition, suppose this, whatever company it is, didn't get anything for it, could we say that we won't pay any tax because the Clementon Park is not getting a thing for it? You have got to say yes in that case if you are going to say yes when they have rented it at an increased rental, if that is the case. I take the position that I took before the County Board, that certainly what the Clementon Park Association gets for its ground is not at all binding on Mr. Gibbs and is not evidential in the matter where Mr. Gibbs or the State of New Jersey or the County of Camden are involved, because they are a third party and we cannot be bound by their acts or conduct. 20

Mr. Weaver: The point is, if the Board please, that the present rental obtained by the Clementon Park Association, while Mr. Gibbs does not get that according to his testimony, yet it does tend to show—— 30

Mr. Rowland: I object to any statement about what the Clementon Park Association is doing with

that ground. All this Board can consider at this time is the value of this piece of ground that the firm of Gibbs and Gibbs is the owner of. What they get for it your Honors have let in as some element of value. I take the position probably that is not right, but however you have done that. Now, then, I strenuously object to what somebody else is doing with it. I don't think any statement ought to be made to this Board as to what somebody else other
10 than Mr. Gibbs is doing with it. That is not evidential.

Mr. Weaver: If the Board please, I take it this Board is an intelligent Board and that they will not attempt to use any evidence here that is not strictly in line with the precedent established in the law.

Now, then, the purpose in asking this gentleman, we have got to prove here and produce it later if we are permitted to—

20

Mr. Rowland: If it is permitted we will tell you, we have nothing to hide.

Mr. Weaver: Just wait a minute, I have got the floor.

Mr. Rowland: Pardon me.

Mr. Weaver: And the purpose of this question
30 is to enlighten this Board as to what the present rental of this property is, no matter who gets it, it doesn't make any difference whether Mr. Gibbs or the Clementon Park Association gets it, it tends to enlighten this Board as to what a man who has the ability and the money to pay for it will pay for the park site. Now, being willing to pay that sum of money, whatever is disclosed here, it must neces-

sarily have some bearing on the Board's mind as to what that property would bring at a private sale. It certainly is a very strong element as to going value. Therefore, I think the Board ought to know what they are getting for this.

Mr. Rowland: Just a word further—I don't want to weary you.

Mr. Jess: Go ahead.

10

Mr. Rowland: If that is proper, which I submit it is not, suppose if you are to carry out my thought that the Clementon Park Association did not rent it, didn't do anything with it, just let it stay there, then, under Mr. Weaver's theory, Mr. Gibbs could say that this is worthless and he wouldn't pay a cent of taxes. You are getting on most dangerous ground. Mr. Gibbs cannot get any more rent for it, he is tied up with a lease for many years to come, and certainly what somebody else is doing with the property cannot be laid at his door because his hands are tied and the law recognizes that fact. 20

Mr. Weaver: You will recall what the Board did in respect to this property right across here on the street, your Board.

Mr. Jess: The Board will take the testimony, because we have, I might say, Mr. Rowland, whether right or wrong, the precedent has been established by the Board in Jersey City cases and other cases, to take evidence as to the rental value, not that it at all definitely fixes market value, but that it is some criterion solely on the theory of what a prospective purchaser would seek to ascertain a determining what he could afford to pay for a property, 30

not for the purpose of determining what the owner of the property can afford to pay in taxes, it is on the theory that it is simply one of the evidences of the value, whoever may receive it, rental value.

Mr. Rowland: The Board will allow me an exception to that. I understand there is an exception noted. Will the Board also consider the fact Mr. Gibbs could not sell it if he wanted to?

10

Mr. Jess: Yes.

Mr. Rowland: If you are going to get back you have got to get back to the day the assessment was made in October, 1922, that day if Mr. Gibbs sold this property he had to sell this encumbered to the extent of probably a thirteen-year lease.

Mr. Jess: That is evidence that ought to be taken
20 into account, and will be if it is offered.

Mr. Rowland: A new purchaser couldn't profit by it.

Q. You are a member of the Clementon Park Association?

A. I am.

Q. You have an interest in it?

A. Yes.

30 Q. Are you familiar with its dealings in regard to the park?

A. Somewhat.

Q. Do you know, as a matter of fact, what the Clementon Park Association is receiving from the tenant of the park?

Mr. Rowland: I think we have the books of the

park association here. If you desire it we could probably give you the definite——

Q. Do you know?

A. I don't know exactly, but I know it is around \$13,000.

Re-direct examination.

By Mr. Rowland:

10

Q. Now, Mr. Gibbs, as I understand it, this is the park property. You draw it, will you please?

A. This is the park property right here. (Indicating on map.)

Mr. Rowland: If you gentlemen will just let me have your attention I will draw this park out as I understand it now. The park comes this way. (Indicating.) Now, this is the park section as I have drawn it here. This plot of ground which abuts on the Berlin Road is not included in this 20 acres. 20

Q. This is the lake property here, is it not? (Indicating.)

A. It is.

Q. And is this the low land?

A. That is the ground that is filled in for park purposes.

Q. Could that be built upon, could it be used for building stores, houses, warehouses or anything? 30

A. No.

Q. Is there any portion of this ground, of this 20 acres that can be built upon?

A. Yes.

Q. Just point that out to the Board, if you will.

A. About three acres.

Mr. Rowland: The testimony of the witness is that three acres of this 20 acres can be built upon.

Q. This is your house, is it not, that the question has been asked about? (Indicating.)

A. That is where the house was, yes.

Q. And the railroad depot is here? (Indicating.)

A. Yes.

10 Q. Is this considered the business center of Clementon?

A. That is really the most valuable ground in Clementon, between the trolley line and the railroad station, the concrete road.

Q. That is the main thoroughfare, is it not, through here? (Indicating.)

A. That is the main thoroughfare.

20 Q. And this section in through here, known as the triangle section, is that good ground for building purposes, this section here that you said was sold?

A. Yes, that is very good.

Mr. Jess: This property that was sold, is that the old homestead where your father lived?

The Witness: No.

Mr. Jess: Not that property?

30

The Witness: No, that runs between the park and the trolley terminal, five acres there.

Q. And this section here (indicating), this triangular section which you said was sold for the purpose of building stores——

A. Yes, sir.

Q. —that is adjacent to the trolley, is it?

A. Yes, sir.

Q. And also abuts on the main highway?

A. On the entrance to the park and the Berlin Road.

Q. Now, Mr. Gibbs, it has been brought out in your examination that you received \$4,000 a year for rent for this property?

A. That is right.

Q. From whom did you get this property? 10

A. That is my mother's estate.

Q. From your mother's estate?

A. Yes.

Q. And did you do anything in the way of developing for park purposes?

A. Filled in all that low land where the concessions are.

Q. You filled in all the low ground here where the concessions now are located?

A. That is it. 20

Q. And you rented it, did you not?

A. We did.

Q. How much rent did you receive when you first rented it?

A. The first year, \$3,000.

Q. Then the next year you rented it again?

A. We rented it for ten years, \$3,000 the first year and \$4,000.

Q. You rented it for ten years and the stipulation was that you were to get \$3,000 the first year and 30 \$4,000 each succeeding year?

A. That is right.

Q. When you rented this property did you turn over to your lessee some buildings?

A. We did.

Q. What buildings did you turn over?

A. There was a dance floor, a restaurant, a merry-

go-round and a shooting gallery, a boat house, moving picture house and three or four small stands.

Q. How about boats?

A. And about 100 boats.

Q. That all went in for \$4,000?

A. Yes.

Q. So the \$4,000 that you received and are now receiving does not represent rent alone for the ground?

10 A. It does not.

Q. It does not represent rent alone for the ground. About what portion of that \$4,000 would, in your judgment, be a fair portion to charge against rental for the ground?

A. Well, at that time, we considered it about fifty-fifty.

Q. About fifty-fifty, that would be \$2,000 rent for the ground?

A. That is the way my brother and I looked at
20 it, yes.

Mr. Rowland: That is all.

Mr. Jess: Did you bring out when this lease was made, the date of that?

Mr. Rowland: No, he said ten years, but I didn't.

Q. Now, Mr. Gibbs, this ten-year lease has been
30 running how long?

A. Eight years.

Q. Is there a provision in the lease for renewal?

A. There is.

Q. For what period?

A. For ten years more.

Q. The lease was in writing?

A. Yes.

Q. Do you know whether it was recorded or not?

A. It is recorded; yes.

Mr. Weaver: We would like to have that lease produced if it is going to be used before the Board.

Mr. Jess: It is recorded, you say?

The Witness: Yes.

10

Mr. Jess: We can get a copy of that, can't we?

Mr. Rowland: I think so. I think probably we might have it here, I don't know.

Mr. Weaver: I don't object to the production or at least to the admission of this lease.

Mr. Rowland: You just asked for it.

20

Mr. Weaver: I am saying to the Board I don't now object to the Board's admitting this in evidence, if the Board wants to see it I am willing from the legal standpoint, but I don't see it has any bearing, for this reason, if Mr. Gibbs sees fit to lease a valuable property and tie it up for a period of ten or twenty years and then by reason of the increase in value he comes here and says that because he made this mistake he wants the property reduced accordingly. I say that is not good law, and it has not been the practice of this Board, because we had an occasion right over here, just within a stone's throw of this building, a similar case in which this Board ruled. Mr. Jessup made an unfortunate lease for a period of ten years on property on Market Street at a very low rental, but in the meantime Market Street values jumped, and as against a for-

30

mer assessment of \$3,000 he got an assessment on \$50,000. That is just an approximation, I don't know how near my figures are, but that is the illustration, and he came before this Board and pleaded that lease and asked to reduce this assessment because had made this unfortunate lease, and your Board sustained the assessment. So here we have the same thing.

10 Mr. Rowland: We will show you at the time he made this lease it was good business to receive that much rental.

Mr. Weaver: So did Mr. Jessup think so.

Mr. Rowland: This is eight years ago. The park was run down and was an utter failure and a loss. We ought to have some evidence in here. You want
20 to give it all the high side, and you won't see the low side. That was the trouble with the County Board.

Mr. Weaver: I am willing that you should impress this Board with the fact this assessment is too high, and whatever they say in the way of reduction we will say Amen to.

Mr. Rowland: You even admitted that it was a
30 mistake made because the lease called for ground and personal property and there ought to be a difference, you admitted that yourself.

Mr. Weaver: On that point we will take it up with another witness who was not before the County Board.

Mr. Jess: All right. Are you through with Mr. Gibbs?

Mr. Rowland: No.

Q. At the time you made this lease was the park a success?

A. Well, it paid about what we leased it for.

Q. Paid about what you leased it for?

A. Just about.

10

Q. Was it necessary to bring it up to make it a good park, to spend considerable money?

A. Parks are something I know very little about it takes a park man to do that.

Q. Before you leased it had you spent money in filling up portions of the ground so that buildings could be erected thereon?

A. We did.

Q. You had spent considerable money?

A. Yes.

20

Q. Did you at the time you made the lease consider you were getting about as much rental as you could hope to get?

A. Not only at that time but I do yet.

Mr. Rowland: That is all.

Mr. Weaver: That is all.

30

GEORGE W. EVANS, sworn on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Rowland:

- 10 Q. Mr. Evans, you live where?
A. Lindenwold.
Q. Is that in Clementon Township?
A. Yes, sir.
Q. How long have you lived in Clementon Township?
A. 35 years, about 35.
Q. Do you occupy any official position in the township?
A. The assessor.
- 20 Q. You are the assessor for the township?
A. Yes.
Q. You have been the assessor how long?
A. About 30 years, somewhere in that neighborhood.
Q. Are you elected by the people, are you?
A. Yes.
Q. How long is your term?
A. Three years.
Q. How long has Clementon been a township?
A. That time.
- 30 Q. You have been the assessor ever since it was created?
A. The only assessor.
Q. Do you yourself deal in the buying and selling of real estate?
A. No, we do some building but we don't sell, we don't buy.

Q. You, of course, are familiar with the tract known as the Clementon Park Tract, Mr. Evans?

A. Yes, sir, I surely am.

Q. You have assessed that year in and year out, for many years, I take it?

A. Yes, sir, long before it was a park.

Q. And you assessed in it 1923 for how much?

A. Assessed it for \$250 an acre.

Q. Do I understand you to say you were familiar with this ground before it was a park?

10

A. Yes.

Q. In 1922 you assessed it for \$250 an acre?

A. Yes.

Q. Who increased this assessment?

A. Why, the County Board.

Q. Now, Mr. Evans, when you assessed this for \$250 an acre, did you take into consideration this tract as a whole, whatever uses it is most adapted to?

A. I considered the value, it wasn't anything like the ground on the outside of the park. The outside of the park ground is worth much more than the park. It is low ground in there, and of course, as already stated, a portion of it is water, almost fifty per cent of it, and there is only one high part on it, and that is the knoll where they have the picnic grounds.

20

Q. How much ground does that high part cover?

A. I should imagine about four or five acres, something like that.

30

Q. Of that 20 acres that is the only portion, then that could be used for building purposes?

A. I think so for private dwellings, I don't think the business places would want it. The ground is adapted for what it is being used for.

Q. What is it now being used for?

A. Park purposes.

Q. You think that is about the most it could be used for the best?

A. I don't think it would be of much value being used for anything else.

Q. You took that into consideration when you made your assessment, did you?

A. Yes.

Q. You assessed this 20 acres as a whole?

A. Yes.

10 Q. Placed a value of \$250 an acre?

A. \$4,500 was my assessment on the 20 acres.

Q. Was that in your judgment a fair value?

A. It surely was.

Q. Are you familiar with sales of ground in the vicinity of this park?

A. I am familiar with the sale, but not the cost of them, because an assessor don't get that on his abstract; when the deed is abstracted it is abstracted "consideration of \$1.00."

20 Q. Don't you get a notation of the revenue stamps?

A. No.

Mr. Rowland: That is all.

Cross-examination.

By Mr. Weaver:

30 Q. Clementon has grown very fast, hasn't it, Mr. Evans?

A. Yes, it has. When I first was assessor we had about three-quarters of a million and today we have about five million.

Q. I am speaking of Clementon Township.

A. Yes, Clementon has grown, yes.

Q. It is quite an active center there, isn't it, of business and this amusement park?

A. What, the park, are you speaking of this particular piece of ground?

Q. I am talking about the village of Clementon.

A. It is in the summer time, yes, it isn't much so at the present time.

Q. You have a park there and stores there and there is a great deal of business activity there.

A. Yes, the stores.

Q. What brought that there?

A. What brought it there?

10

Q. Yes.

A. Well, I don't think the park did, Mr. Weaver, I don't think the park brought that bank there or brought the stores. They don't do no business, the park don't do no business with the stores.

Q. What was the first thing that was started there, the park or the stores or the bank?

A. The park was started.

Q. And after the park was started——

A. Some stores were started ahead of the park. 20

Q. There was no real business activity there until the park started?

A. There wasn't as much there at that time as there is at the present time, no.

Q. Isn't it a matter of fact that the park brought the whole business there?

A. I don't see, Mr. Weaver, why it should. People come in there on the trolleys, Philadelphia and Camden, people, they don't deal with the bank or the stores. They go in the park and stay in the 30 park.

Q. But they do go to the park and go out in the surrounding country?

A. I suppose there might be some of them might walk out and walk around the streets.

Mr. Weaver: That is all.

ISAAC W. HIGGINS, sworn on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Rowland:

- 10 Q. You live where, Mr. Higgins?
A. Lindenwold.
Q. Is that in Clementon Township?
A. Yes, sir.
Q. How long have you lived there?
A. In the township?
Q. Yes.
A. 51 years.
Q. 51 years?
A. Yes.
20 Q. What is your business, Mr. Higgins?
A. Real Estate.
Q. Do you buy and sell properties?
A. Yes, sir.
Q. Have you bought and sold properties in the vicinity of this park?
A. Mostly in Lindenwold.
Q. Are you familiar with values throughout the township in general?
A. Yes, fairly.
30 Q. Are you familiar with values in the neighborhood of the park?
A. Yes.
Q. I will ask you if you will, Mr. Higgins, to take into consideration this 20-acre tract as a whole, and take into consideration purposes for which it might be used, and after you have done that I am going to ask you what in your judgment is a fair value, fair market value of this 20-acre tract?

A. I should say \$300 an acre.

Q. Does the fact that a store up here (indicating), the Gibbs homestead, sold for a certain amount of money, have any bearing whatsoever on the value of this ground in there? (Indicating.)

A. I don't think so.

Q. Now you, I presume, are familiar with the character of the ground in the park?

A. Yes, sir.

Q. It has been described as comprising three different sections, the lake section, the low section and the high section? 10

A. That is right.

Q. Now, from your knowledge of the park, how much of the ground, what is the acreage of the good ground there upon which you could build dwellings or stores, buildings?

A. About four acres.

Q. And that four acres is located where?

A. On the Clementon and Berlin Road. 20

Q. This is a hill, is it not, up here, hilly section? (Indicating.)

A. Yes.

Q. Now, the low land, could that be used for building purposes of any kind?

A. No.

Cross-examination.

By Mr. Weaver:

30

Q. Are you familiar with any sales immediately adjoining the park?

A. Not very, not immediately adjoining the park.

Q. You don't know anything about the sale of the old mill property, do you?

A. No.

Q. If I told you that sold for \$8,000 would you think that high?

A. Well, I would think it was high, yes.

Q. For a lot 35 by 63?

A. Yes.

Q. Do you think the park site has any value by reason of the fact it is visited on some Sundays by 12,000?

A. The park site?

10 Q. Yes.

A. Yes.

Q. Well, do you think the fact that the park rents for about \$13,000 a year gives it any value at all?

A. Yes.

Q. Wouldn't you think it was worth more than \$4,500?

A. No.

Q. If you could buy a property that gave you a return of three times——

20 A. You can't buy it, you couldn't buy it.

Q. I am saying if you could buy a property that would give a return of three times the cost, would you think that good business?

A. If you could buy it, yes.

Mr. Rowland: I think the fair question ought to be whether it is a definite, sure return or a speculation. It ought to fit, if it is an hypothetical question, the facts in the case.

30 Mr. Jess: Yes, that is true, I think, Mr. Weaver.

Q. Do you know anything about the sale of the terminal restaurant there?

A. Not anything.

Q. How do you fix your value of the park site at \$250 an acre?

A. I think that would be a fair price.

Q. On what basis, how?

A. Because parks are uncertain and speculative—they are uncertain, short-lived, usually.

Q. There is a ten-year lease here, doesn't that enter into your calculation at all?

A. That lease is for \$4,000 a year, isn't it?

Q. Suppose there is another lease for \$13,000 a year?

A. I think that is taken care of by other taxes, 10
not real estate.

FRANK WEAVER, sworn on behalf of the petitioner,
testified as follows:

Direct examination.

20

By Mr. Rowland:

Q. Now, Mr. Weaver, as the chairman or president of the County Board, it was your understanding, was it not, you were to place a value on this ground as of October, 1922, October first, 1922?

A. Certainly.

Q. Did you have at that time knowledge of the sale of Gibbs up here? (Indicating.)

A. No.

Q. Did you have any knowledge as to the sale of 30
the terminal?

A. No.

Q. Did you have any knowledge as to the sale of the mill?

A. No.

Q. So the \$65,000 value that you placed on it was

entirely exclusive of this information which you say you have learned since?

A. Exactly so.

Mr. Rowland: Well, I move that all this evidence be stricken out, if the Board please. It is subsequent to the time in question, it is remote and certainly not helpful.

10 Mr. Jess: The motion is denied.

Mr. Rowland: Allow me an exception?

Mr. Jess: Yes, sir.

Mr. Weaver: Is that all?

Mr. Rowland: That is all, thank you.

20 (A recess was thereupon taken until 1.30.)

(After recess.)

JAMES W. DAVIS, sworn on behalf of the petitioner,
testified as follows:

30 Direct examination.

By Mr. Rowland:

Q. You are in what business?

A. Real estate, building association, real estate.

Q. Where do you live?

A. Clementon.

Q. Where is your place of business?

A. Berlin Road, next to the bank?

Q. In Clementon?

A. Yes, sir.

Q. Your real estate operations are mostly in Clementon?

A. Mostly in Clementon.

Q. How long have you been so engaged?

A. Fourteen years.

Q. Are you familiar with the Clementon Park 10 Tract, which is a tract of some 20 acres?

A. I am.

Q. These sales that Mr. Weaver has spoken about just look this way, the terminal tract, the mill property? (Indicating.)

A. Back of the railroad, way back there, you mean the feed mill?

Q. I am trying to place——

A. Here is the mill here. (Indicating.)

Q. This sale we heard about this morning—— 20

A. The \$10,000 sale?

Q. Yes.

A. That is further back, there is the bank, it is this plot in here. (Indicating.)

Q. That is the Gibbs home?

A. That is the Gibbs home, yes.

Q. Where is this other sale, can you point to that on the map?

A. What sale do you refer to?

Q. What is that called? 21

Mr. Weaver: There are two of them, the terminal sale and the old feed mill.

A. The feed mill is this point right here. (Indicating.) The terminal sale is this property in here. (Indicating.)

Q. And this is the Gibbs? (Indicating.)

A. This is the Gibbs?

Q. All right. In your opinion, as a real estate dealer, does the value of these places here abutting on the Clementon-Berlin Road have any bearing whatsoever upon the value of the ground back here in the park?

A. None whatever, the values are so separate and different there is no comparison. The Berlin Road
10 is the real business street between the trolley and the railroad.

Q. That takes in this section here? (Indicating.)

A. Yes.

Q. You say that is the business section of Clementon?

A. That is the business section.

Q. You say you are familiar with the 20-acre tract in question?

A. I am.

20 Q. Do you know about how much of that ground is available for building purposes?

A. On the Berlin Road, the portion on the Berlin Road is all the very best of ground, and it runs, the back of it runs down to a low place and next to the lake there is another knoll of about two or two and one-half acres that is very high.

Q. You speak about the ground on the Clementon-Berlin Road, that would be in here (indicating), somewhere, would it not?

30 A. That would be from here to here (indicating), yes, from here to that point there is very high land, very good, as good as you can get. It runs low down there, it is high here back probably two or three hundred feet on this side (indicating) and then lowers down to a very low point through here, goes over to about here and then runs up on a very high knoll right on the lake (indicating). This high

point is about two to two and one-half acres and this is about two acres, two and three-quarters to three and one-half acres here.) Indicating.)

Q. And, of course, the value of these three acres is only the frontage on the Berlin Road?

A. On account of it being on the Berlin Road, but that is not as valuable as it would be were it down here.

Q. Now, the other part of this park, excluding this section here, has no frontage on any roadway, 10 highway of any kind, has it?

A. No, outside of a little street called Park Avenue that abuts up against Park Avenue, back here (indicating.). There is the only other street, right there, that point there, there is no other main thoroughfare except this, and that is way back in the swamp there.

Q. There is no outlet?

A. There is no outlet, but that is a laid-out road back there, just the same, but it is not passable. 20

Q. Now, Mr. Higgins, these sales that have been testified to, are they recent sales?

A. Yes.

Q. Have they been really completed yet?

A. I think not, some of them are not, I don't think any of them are, really. You refer to the terminal?

Q. Just what Mr. Weaver referred to, this terminal and the Gibbs proposition and this proposition here. (Indicating.)

A. What do you mean? I don't understand what 30 you are talking about.

Q. I will try to ask you again. These three sales, the one that has been just sold for \$10,000 or \$8,000, I don't remember which, and the Gibbs—

A. The Gibbs tract and the mill tract, the mill property, the Harry Shamberg restaurant and the

place that was sold for the fourteen stores, is that what you are referring to?

Q. Yes.

A. I don't think any of them are completed. The Gibbs stores may be completed.

Q. They are all subsequent to October 1, 1922?

A. Yes, recently, very recently.

Q. That is a year and a month ago?

A. They are within a few months now.

10 Q. Now, using your experience as a real estate dealer and considering this tract of 20 acres as a whole, good land, high land and low lands and considering, if you will, every purpose to which that tract might be used or adapted, what, in your opinion, is the value per acre of that ground?

A. Taking the good with the bad?

Q. As a whole tract of 20 acres.

A. Around \$300, \$350 an acre, that would make some of it back there, I wouldn't call of any value,
20 it would bring it up on the front. It would average about that.

Q. You are the secretary of the Clementon Park Association, are you not?

A. I am, sir.

Mr. Rowland: That is all.

Cross-examination.

30 By Mr. Weaver:

Q. Since you have been in Clementon you have been interested in real estate business with Mr. Gibbs?

A. I am interested in a number of businesses, yes, sir, secretary of—

Q. Are you interested in the Clementon Park Association?

A. Interested in the Clementon Park Association, yes, sir.

Q. Did you hear or did you have anything to do with the sale of the mill property for Gibbs brothers?

A. No, sir, I had nothing to do with it, it was done entirely out of our office.

Q. Don't you think this park, including the land 10
under water, the water and the highland, as you explained it, don't you think that land has a special value for park purposes, isn't the physical condition such as to give it special value?

A. Well, we judge that by Washington Park, by Lincoln Park, by all other parks that ever existed. The park business, pardon my expression, is chasing the butterfly, you may catch him and you may not. I know the park business to a certain extent, I was in this park before it was leased and since, I run 20
concessions in there, I am now secretary and director of it. A park proposition, my stock in the Clementon Park Association, to me, when I check my assets, I count it as nothing because it may be good today and a condition may arise where it may not be worth a three-cent piece tomorrow.

Q. How long has this park been going?

A. As a park?

Q. Yes.

A. The Clementon Park Association has had it 30
for eight years. Previous to that it was a park run by Theodore Gibbs.

Q. As a park it has constantly increased, hasn't it?

A. No.

Q. Isn't the attendance larger now than smaller?

A. No, sir. Our dividends last year, this year,

are less than they have been in any year yet. Last year was less than the year previous.

Q. What dividends are you speaking of?

A. The dividends of the park association. Therefore the business was less.

Q. The annual income the association has?

A. The attendance?

Q. The rental.

A. Pardon me, no, we have other income besides
10 the attendance to the park, we have other income besides the rentals, yes, sir.

Q. Of course the rental would not increase?

A. The rental is the same.

Q. What was the decrease on the other income of this year?

A. On the general business of our bath houses.

Q. How much is that decrease over the previous year?

A. I have a balance sheet there I can show you,
20 last year we paid——

Q. I just want it approximately.

A. I would have to get my books to tell you that, sir, I can tell you now what it was. I suppose our business has increased, or decreased probably \$5,000 to \$6,000, our income this year over last year.

Q. Now, you keep the books of the Clementon Park Association?

A. Yes, I manage them, I have a bookkeeper, but I am in charge, of course.

30 Q. A subpoena was served on you to come here today and bring those books?

A. Yes, sir.

Q. Testify now so that we won't have to recall you.

A. Sure.

Q. Will you tell the Board here what the amount of income by way of a lease on that property is?

A. Yes, sir. Our first lease with Mr. Michelson was eight years ago, or about that, it was \$8,400 for the land, including swings, merry-go-round or carousel, whatever you may term it, moving pictures, dance floor and a row of buildings used for different purposes, whatever they might be rented for, and the boat house. I think there was an aerial way on it at the same time, and a little restaurant building. That lease was made for \$8,400. Shortly, within two years, I think, after that, we kept the 10 boats, we retained the boats, that is, the Clementon Park Association. Shortly after that Mr. Michelson wanted the boats. We then leased him the boats, about one hundred boats, 95 to 105, we call it 100, and the boat house and the remaining strip of land by the lake, ten feet wide, I think it was, for \$5,000. That was two years after the first lease. That makes the present rental today \$13,400. Is that the answer?

Q. Yes, that is the answer. 20

Mr. Rowland: It is understood my objection that I made at the morning session as to evidence of the Clementon Park Association, the revenue it gets from the park, applies to this.

Mr. Jess: That will be noted on the record.

Mr. Rowland: I ask for an exception. 30

Q. Then, that rental of \$13,400 includes the rental of the boats?

A. Yes, sir.

Q. As well as the rental of any buildings on the land?

A. Yes, sir.

Q. Which was owned by the Gibbs or the Clementon Park Association?

A. Yes, sir.

Q. Isn't it a fact that those buildings have from the time the original lease made to Mr. Michelson—haven't they either entirely become depreciated or a great many of them have been torn down?

A. Some of them have been torn down, but in the park business it is necessary to make a change
10 every year or so. It might be necessary to tear down a good building and turn it around to make people think you have something new. The object is to change things, not so much for its value as making a change in the park.

Q. Who does the building?

A. Mr. Michelson has some new ones.

Q. The new buildings that are put up belong to him?

A. Yes, sir. They may not all belong to him,
20 they belong to the people to whom he rents out his concessions.

Q. Isn't it a fact that there are practically none of the old buildings remaining there?

A. No, there is one complete building, the old carousel is there yet as it stood the day it was leased outside of a new coat of paint. It is used for a penny arcade, and I think the old moving picture parlor is now used for some kind of comical fun house or something like that. It has been changed
30 around to meet the requirements of the new device, but it is the same building, I think.

Q. How many buildings are on the land, as far as you know?

A. At the present time?

Q. Yes.

A. My dear man, I hate to commence to answer that question.

Q. Would there be as many as fifty?

A. No, 25 or 28, and this is a guess.

Q. I understand.

A. I am guessing at this, I would have to start to count and figure up.

Q. Of that number, supposing there were 28 or 30, or whatever number you think there is, there would not be more than two or three of those belonging to Mr. Gibbs and the Clementon Park Association?

10

A. No, but the lumber out of the others is in the 28.

Q. Now, don't you think that park, because of its physical condition, the fact that you have the water there for boating purposes, the fact that you have the number of people coming there, don't you think that gives that land special value, not on the ground that the park has been a failure, but the park is a success up to the present time, of course you have caught the butterfly and you may lose him, but so far you have caught him.

20

A. We have caught him but we have a very small hold on him just now, because the park is going the other way at the present time. That is, our end of it is, and you speak of value on a Sunday that these people are down there. It is very valuable land, but after they go away on Monday it looks like a graveyard, and I wouldn't give very much for it if I could have it for that day. Knowing the people were there probably there would be more value to it, but take it as a whole, as a proposition you would stand under for the future, I don't think it would be worth any more than I stated. I wouldn't give it, absolutely, and I think I would buy anything that is cheap.

30

Q. Wouldn't you be willing to give \$4,500 for

the proposition that would bring in \$13,000 in a year?

A. Yes, but we don't know how long that is going to bring it.

Q. You get twice or three times your money if you only have it a year.

A. Mr. Michelson might fail next year, he might go into the bankruptcy court tomorrow. Our rent would not be very substantial.

10 Q. Considering past and future possibilities there, it would look cheap at \$4,500 to you?

A. Considered in the past, it looks very good, but the way it is going in the future it looks very bad because we are going the other way, as the books will show. I have them here, I have the balance sheet here. Is there anything you want to know?

Q. I principally wanted to get the amount of rent.

A. Yes.

20 Re-direct examination.

By Mr. Rowland:

Q. Now, then, is it true that the rent that the Clementon Park Association is getting there from its sub-tenant—isn't that based exclusively upon the use of the ground?

A. Positively no. You refer to the rent we are getting from Mr. Michelson?

30 Q. Yes.

A. It is based on the grounds and the buildings we rent him, and the 100 boats. The 100 boats are worth \$3,500.

Q. There goes into this rental factors other than a rental of grounds?

A. Yes.

Q. The boats and these buildings?

A. Yes.

Q. Some of these buildings—are they large or small affairs?

A. They are not very large, moderate sized buildings.

Q. Soda booths and things like that?

A. The moving picture, I suppose, is 30 by 70, maybe, something of that kind.

Q. Now, all of these concessions, these buildings are taxed separately, are they not? 10

A. All taxed separately, yes.

Q. And have so been taxed?

A. And have so been taxed.

Q. Now, are you familiar with any sales of land adjacent to this park recently?

A. Well, there was a sale made on the east of the park there, right adjoining it, I will show you the strip of land, this piece in here. (Indicating.)

Q. Yes.

A. That sold for, let's see, between two and three 20 acres of it sold for a thousand dollars within the last two or three years.

Q. This portion you are pointing to is adjacent to what we have called the good land of this 20-acre tract?

A. Yes, this part of it is. It is all good in here, here is a higher point here and it starts to go down from there. This is all good. (Indicating.)

Q. Now, you say this section, to which you have pointed, this triangular section was sold for a thousand 30 dollars?

A. Yes.

Q. My question is, that section is adjacent to the good land of the 20-acre tract?

A. Yes, the end towards the Berlin Road adjoins the good land of the park. The other end of it adjoins the lower land of the park.

Q. Now, that is on the easterly side?

A. Yes.

Q. Do you know of any sales on any other side of this park?

A. I know there was a piece sold to Mr. Banford, five acres, I think it was, not over, something like less than \$2,000.

Q. That would be where?

A. Over where you are pointing now.

10 Q. That would be the southerly end?

A. Yes.

Q. You say five acres sold for less than \$10,000?

A. Less than \$2,000.

Q. Less than \$2,000?

Mr. Rowland: That is all.

Mr. Weaver: That is all.

20

ISAAC W. HIGGINS, recalled.

Direct examination.

By Mr. Rowland:

30 Q. Mr. Higgins, you are familiar with the sale of ground on the Berlin Road between the trolley line and the railroad station, are you not?

A. Yes.

Q. Now, is the estimation of value of property along that road between those two points a fair illustration or a fair example of values back here in the park?

A. No.

Q. Why do you say that?

A. That is the business part of the town down by the station between the trolley terminal and the station.

Q. And it is good ground?

A. Good ground.

Q. And located in a business section?

A. Yes.

Mr. Rowland: That is all.

10

Cross-examination.

By Mr. Weaver:

Q. Is that park good ground for the purpose for which it is used?

A. Yes.

Q. It is suitable for the purpose to which it is put?

A. Yes.

Q. And if it hadn't the lake there and the other physical advantages it would not be a park, would it?

A. Wouldn't be a park?

Q. No.

A. No.

Q. Don't you think that gives it some special value?

30

A. Yes, special value, yes.

Q. You can't, of course, compare that with a business site?

A. No.

Q. It might be worth more, it might be worth less than a business site?

A. Yes.

Mr. Rowland: That is just my point, that is why I asked that that evidence be ruled out.

Mr. Weaver: That, of course, is for the Board to determine. My question is it might be worth more or it might be worth less. You think it is worth less and I think it is worth more. Let the Court settle that. The witness says it may be worth more, yes, it may be worth less.

10

Mr. Rowland: It is not a fair comparison if one can be used for one purpose and the other for another.

The Witness: This is a standard value, the other is very changeable.

Q. A business site, you say, is worth more than a park?

20

A. Yes.

Q. Under no circumstances would it rent for \$13,000 a year, would it?

A. I don't know whether it is always going to rent for \$13,000 a year.

Mr. Weaver: That is all.

30

WILLARD T. GIBBS, recalled.

Direct examination.

By Mr. Rowland:

Q. Mr. Gibbs, this lake of nine acres included in this 20-acre tract, is that a natural lake or is that lake made by a damming-up process?

- A. Made by building a dam.
- Q. Who did that, do you know?
- A. No, I do not, it was done before my time.
- Q. And the other part of the park that you testified to this morning, was it necessary to fill in there to make it usable for park purposes?
- A. Oh, yes.
- Q. And that was done?
- A. That was done. You couldn't walk on it at all. We have rebuilt that dam twice. 10

WILBERT H. MICK, sworn on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Rowland:

- Q. Mr. Mick, you are engaged in what business? 20
- A. Real estate.
- Q. You buy and sell real estate?
- A. Buy, sell and operate.
- Q. Do you develop?
- A. Yes.
- Q. Where do you live?
- A. Laurel Springs.
- Q. Is that near Clementon?
- A. A portion of Clementon Township.
- Q. In the conduct of your business, do you go 30
into Clementon to buy and sell and develop?
- A. About eighty per cent of the business I do is in Clementon Township.
- Q. Are you familiar with the values of ground in or about the neighborhood of this park, Clementon Park?

A. I feel I am.

Q. Are you familiar with the park tract?

A. In general.

Q. Have you been there many times?

A. Yes.

Q. Mr. Mick, are you familiar with values throughout Clementon?

A. Throughout Clementon and Clementon Township.

10 Q. Taking this tract as a whole and considering every purpose for which this tract may be used, park buildings, or otherwise, what, in your expert opinion, is this ground worth per acre?

A. Basing it upon the biggest sale or the highest priced sale that was made in Clementon Township in 1922, which was a piece of ground located on the White Horse Pike, known as the Jacob Lippincott farm, that brought the new high figure for Clementon Township of \$600 an acre, which I would say, 75
20 to 80 per cent of it is the best of building ground, and taking everything into consideration I feel that \$400 an acre is a fair high figure for this piece of ground you are referring to.

Q. Are you taking into consideration not only its adaptability for building purposes, but also its adaptability for park purposes?

A. I am taking for granted as a strictly real estate proposition which, if I had to take it and handle it and get value out of it, I feel that about fifty
30 per cent of it is water, which if you drained it you would have nothing but marshes and lowland, if you keep it as it is and keep fixing your beach up now and then, you would have about twenty per cent, twenty-five per cent of medium ground and about twenty-five per cent of high ground, what I call the medium ground you can build a club house on it, providing you put no cellar there, if I did do that

I would draw a lower class of people which I couldn't get much over, for a lot and house combined, about \$1,000 or \$1,500; therefore, it would depreciate the value of my good ground and reduce that considerably.

Q. Then, in that judgment, what do you say, \$400 an acre?

A. About \$400.

Q. About \$400 an acre would be a fair market value for that entire tract? 10

A. If I was going to buy it.

Q. Taking into consideration everything?

A. Every angle.

Mr. Rowland: All right. That is all.

Cross-examination.

By Mr. Weaver:

20

Q. You are looking at this from the angle of a building proposition, building lot proposition, aren't you?

A. I am looking at is at a piece of ground which you would put in any part, and giving it the physical conditions in which it lays, if I had to take it and handle it tomorrow.

Q. Suppose you had to take it and handle it as a park? 30

A. It would be worth about \$50.00 an acre to me.

Q. As a park?

A. Yes, to me. I don't know anything about park work.

Q. Suppose you should get a rental of \$13,000 a year out of it?

A. I don't gamble.

Q. You wouldn't let a speculation like that go by you, would you, if you could buy that for \$50.00 an acre?

A. I don't gamble.

Q. You do buy and sell real estate, don't you?

A. I do.

Q. Isn't that speculation to some extent?

A. Oh, no. There are three kinds of estates, real, personal and mixed. This is real estate you are
10 talking about now, not fly-by-night propositions.

Q. Do you call this a fly-by-night proposition, this Clementon Park?

A. What did you ask me?

Mr. Jess: Answer the question.

The Witness: This is a real estate proposition.

Q. Don't you buy and sell real estate?

20 A. I do.

Q. Do you ever buy real estate with the hope of getting an increase on it?

A. With a fair increase, yes.

Q. Well, that is speculation, isn't it?

A. No.

Q. Why do you tell us that this park with this lake and these natural physical advantages there, which sometimes bring 12,000 people there on a summer's day, is only worth \$50.00 an acre?

30 A. To me as a park proposition, I say. There is no natural proposition there to me, that lake is not natural. A dam is not natural, a storm comes along tomorrow and washes it away, you have no lake, it is not a natural lake, it is an artificial lake, isn't it?

Q. Well, certainly it is.

A. It is not natural, is it?

Q. It has some value, hasn't it?

A. Certainly it has value. I am giving you \$50.00 value to me, per acre, as a park proposition.

Q. That is because you couldn't run it as a park?

A. Absolutely not.

Re-direct examination.

By Mr. Rowland:

10

Q. Are the values of property along the Berlin Road, between the trolley line and the railroad station or the railroad crossing a fair test as to value up here in the park section?

A. Not to my mind.

Mr. Rowland: That is all. That is all we have at this time.

20

MYER MICHELSON, sworn on behalf of the respondent, testified as follows:

Direct examination.

By Mr. Weaver:

Q. Mr. Michelson, where do you live?

A. Clementon.

30

Q. Have you any interest in the park at Clementon which we have been talking about here?

A. As manager of the park, lessee.

Q. Are you the lessee?

A. Yes, sir.

Q. What do you lease there, and from whom?

A. I lease from the Clementon Park Association.

Q. The park and the water?

A. Yes, certain amount of water.

Q. And the boats?

A. That is the water for the boats.

Q. When you first took this lease, what buildings were on the land?

A. There was quite a number.

Q. We won't go into details.

10 A. Around 25 or 28 buildings, somewheres around there. I don't exactly remember.

Q. That was some eight years ago or more?

A. Why, somewheres around there, about five or six years ago.

Q. As of October 1, 1922, did any of those buildings remain on the land?

A. Yes, sir.

Q. How many of them?

20 A. Quite a number. There is what they call the carousel building, dance hall, boat house and moving picture building and another building that we use now for something else.

Q. You added a great many buildings, didn't you?

A. I did.

Q. At your own expense?

A. Yes, sir.

30 Q. Whom do those buildings go to at the termination of your lease, are they under the terms of your lease, your property, or property of Mr. Gibbs or the Clementon Park Association?

A. Well, as I understand it, they go to the park.

Q. They are assessed separately now, aren't they?

A. Yes, every one.

Q. Assessed as personal property. What do you pay to the Park Association as a yearly lease for this property?

Mr. Rowland: I object on the same ground I advanced this morning, that we are not bound by it and it is illegal and inadmissible.

Mr. Jess: All right, the objection will be overruled.

Mr. Rowland: Will you allow me an exception?

Mr. Jess: Yes.

10

Q. How much?

A. \$13,400.

Q. Is that park successful?

A. Well, I can't call it as successful, it is pure and simple a gamble with us. One year we are liable to make money and the following year we are liable to be out of business.

Q. In your judgment is \$13,400 a high or low rent for the property?

20

A. It is a high rent.

Q. Now, has the business been decreasing or increasing?

A. Decreasing.

Q. What was the decrease last summer over the previous summer?

A. Well, the strike —

Q. You had a strike there?

A. Yes, sir.

Q. Did that interfere with the business a good bit?

30

A. Absolutely.

Q. Do you think the business would have been just as good as it had been the previous year if it hadn't been for the strike?

Mr. Rowland: I object, that is purely a gamble, no man could tell what it might have been in deal-

ing with the whims of thousands of people, whether or not they would come there, whether they will come there and spend money and whether it will be operated economically.

Mr. Weaver: All right. I will withdraw the question.

10 Q. When does your lease expire, that is the present lease?

A. About two years from now.

Q. You have a right to renew under that?

A. I have not.

Q. Has anybody a right to renew under that?

A. The Association has.

Q. You are out at the end of two years, are you?

A. Well, it is a question.

20 Q. Do you understand you have a right to exercise an option to renew that lease?

A. So I understand.

Q. That would be with the Association, wouldn't it?

A. Yes, sir.

Q. Because you only deal with the Association?

A. Yes, sir.

Q. Can you say now if the lease expired in the present year would you be interested sufficiently to renew the lease?

30 A. Yes.

Q. As it stands now?

A. Yes.

Q. Of course you can't say what you would do two years off, can you?

A. No.

Q. How many people do you have there on a Sunday, what is the most you have ever had?

A. Somewhere around between ten and fifteen thousand.

Q. Is there any other park as successful as Clementon Park in this county?

A. Well, there is some other parks around.

Q. But there is no park in your vicinity that has anything like the attendance this park has, is there?

A. No, not exactly.

Q. No, nothing like it. Considering, don't answer this question if it is going to hurt or interfere with 10
you in any way —

Mr. Weaver: This witness is here under subpoena, I don't want to injure him or the other side, but I want this Board to get the truth, so that we can do what is right and fair here, and, as I said in my opening, we will not object in any way or in any respect to what this Board does, we want the right thing here, and that is all.

20

Q. Mr. Michelson, I am going to ask you, you can exercise your own judgment in replying to it, if you could buy that park today and you were asked \$65,000, would you pay that much for it?

A. I would not.

Q. You would not?

A. No, sir.

Q. Are you willing to tell us what you would pay for it?

30

A. Well, it is a question how much a park is worth. You have a park this year and you haven't got it next year.

Q. Can you compare a value of a park at all with a business site, is there any comparison between the two enterprises, aren't they two entirely different propositions?

Mr. Rowland: Let him answer one now. I would like to be enlightened on this, too.

A. Will you kindly repeat that?

Q. (Question read.)

A. As far as valuable, you know, when the people is there, we do business, it is a question if the
10 people would come there, we can't depend on this.

Q. They have been coming there for eight years, haven't they?

A. Like one day we got them and the next day you know, we ain't got them.

Q. It has been profitable for eight years?

A. It isn't exactly profitable to me, you know.

Q. Well, now, let me ask you this question, what would you consider if you were in a position to buy the park and the other parties were in a position to sell, what would you say it was worth, judging by your past experience in the business there?
20

A. Well, I can hardly say that. As a business I wouldn't give around \$25,000 or \$30,000 would be the most. That is providing I am forced to it, you know, but I wouldn't give as much money as a value. I don't consider, you know, the ground. A park business is a very peculiar business, you can't place any value on a park.

Q. I think your evidence ought to be very helpful to the Board. Certainly in the interest of the other side here and our disposition to be fair in the matter —
30

A. I am trying to give you my best opinion.

Q. It seems to me you are perfectly straightforward in what you are saying. In your judgment you wouldn't want to give over \$30,000?

A. I wouldn't want to give that unless I am forced

to. I mean I have a number of buildings, several thousand dollars already invested there. Under those conditions —

Mr. Jess: Mr. Michelson, you are paying \$13,400 a year rent?

The Witness: Yes, sir.

Mr. Jess: And you are tied up under a lease to 10 pay that for a certain period, aren't you?

The Witness: Yes, sir.

Mr. Jess: Would it be any more of a gamble to buy the place at \$25,000 or \$30,000 than to pay that much rent each year?

The Witness: Your Honor, I just as lief rent.

20

Mr. Jess: As buy it?

The Witness: Because a park has what you call —the life of a park is always short.

Mr. Jess: It is uncertain, it depends on a good many conditions?

The Witness: And, therefore, if I would buy the park I would want it for a very low figure because 30 the ground, it is impossible to build anything on the ground.

Mr. Jess: Well, as Mr. Weaver has said, I think the Board feels you are the man who is in active operation of this park.

The Witness: Yes.

Mr. Jess: You are a man who has had a good deal of experience in park propositions?

The Witness: Yes.

Mr. Jess: And I think it would be helpful to the Board to have your best judgment as to what
10 you would consider, from your point of view, and having the experience that you have had, assuming it has been successful and also considering the prospects for the future, what do you think would be the fair value of that park to a man who wanted to buy it and didn't have to buy it?

The Witness: For sale, without being forced to, why, \$20,000 would be the most.

20 Mr. Margerum: Do you mean to say you had rather pay \$13,000 a year rent than \$20,000?

The Witness: Yes, sir.

Mr. Margerum: I don't think much of your judgment as a business man.

The Witness: That is my way of figuring.

30 Mr. Margerum: That is a good way of figuring.

The Witness: Because the ground is not worth anything.

Mr. Margerum: You are bound up for \$130,000 with a ten-year lease, and if you are an honorable man you would pay it, and you say under oath that

you would not give over \$20,000 for the property. How much confidence do you expect us to have in your testimony?

Cross-examination.

By Mr. Rowland:

Q. Mr. Michelson, you are not only in the park business, but you buy and sell real estate? 10

A. I do.

Q. You have a number of developments, I take it, down there?

A. Yes, sir.

Q. And therefore you have some idea as to real estate values in Clementon Township?

A. I do.

Q. So you appear here today not only in the capacity of a park expert, but you also appear here as a real estate expert, to some extent? 20

A. Not exactly an expert, no, sir.

Q. Well, you have some idea of values in Clementon Township?

A. A gambler's chance.

Q. You have bought tracts in Clementon Township?

A. I did.

Q. Developed them?

A. Yes.

Q. Sold lots, is that true?

A. Didn't sell any lots. I only bought, didn't sell any. 30

Q. Do you have any tracts in Clementon Township in which you are selling lots?

A. I own a piece of ground on the White Horse Pike, but I haven't sold any lots.

Q. Have you got them for sale?

A. I build houses.

Q. When you sell the house you sell the lot with it?

A. Sure.

Q. You say in your judgment the rental of \$13,000 that you are paying is too high?

A. Absolutely.

Q. Now, if you will, can, carry yourself back to a period of eight years ago, consider this park as
10 it was then, when Mr. Gibbs leased it to the Park Association, would you, in your opinion, say that the rental that he charged at that time, eight years ago, \$4,000, was a fair rental?

A. Eight years ago?

Q. Yes.

Mr. Weaver: We are not dealing with conditions eight years ago. Isn't that unnecessary?

20 Mr. Rowland: We are dealing with it. You said Mr. Gibbs was a dunce because eight years ago he tied himself up with a lease.

Mr. Jess: We will allow the question.

Mr. Rowland: I want to show —

Mr. Weaver: I think you misquote me on that.

30 Mr. Rowland: I was rather frank. You questioned his business judgment. You said the law was, and it probably is true, that a normal business man ought not to have tied himself up.

Mr. Weaver: It isn't hardly worth arguing. When I talked about foolish business I said that Mr. Jessup had foolishly tied himself up for ten

years, on one of the best business streets in the city, and values increased so fast that he couldn't increase his rent when taxes went up, and he got no profit out of it.

Q. What I am endeavoring to get from you is your expert opinion as to the rent, as to the fairness of the rent charged by Mr. Gibbs to the Association eight years ago. Keep in mind the condition of the park at that time, the condition of business and tell the Board and me whether or not, in your judgment, the rent charged by Mr. Gibbs was a fair, reasonable rent of \$4,000. 10

A. Eight years ago, well, I don't know what was there eight years ago, I only know around five or six years ago, when I came there, it was more or less nothing.

Q. Probably then, you can't answer that.

Mr. Jess: All right. 20

Q. You were not around eight years ago?

A. No, sir.

Mr. Jess: Anything else, Mr. Weaver?

Mr. Weaver: That is all.

Mr. Margerum: Would it be satisfactory to you gentlemen interested in this case if the Board had its field secretary meet with you gentlemen at some convenient time on the ground? 30

Mr. Rowland: I shall be very glad, we would like to have the Board go there, too, if it found it convenient.

Mr. Margerum: If the Board cannot come it will send its substitute.

Mr. Rowland: Yes, I would like very much, if the Board is not weary, to point out some of these things, because this is very important to us.

Mr. Jess: Go ahead.

10 Mr. Rowland: As far as the testimony is concerned, we rest.

Mr. Weaver: What are you going to do with the other appeal?

Mr. Rowland: We will abandon those others, they are small.

20 It is very important for a just decision in this case to realize with what we are dealing. We might have, by our testimony, perfectly demonstrated the situation, but here is the land coming around here, this lake, marshes over here, up here, through here and back. (Indicating.) That is the location of the ground upon which this assessment has been increased \$3,000 per acre, and the Board, as a matter of law, as I understand the law to be, considers this as a tract, as a whole. This is one tract of close on to 20 acres, and the Board, for the purpose of a decision in this case, must consider it as a whole, the good with the bad, the improved with the
30 unimproved.

We have shown you on the map that in this 20 acres about nine acres is lake, a made lake, about five acres is the ground in here, made ground by filling in, the piling of dirt here, low land, unfit for any purpose other than as a fringe around this lake, where the people come and go in the summer.

Over here is the only land of any value, if you will exclude for the moment any thought about park value. (Indicating.) This section in here comprises about three acres, has some value, fairly good land, must be graded and all that sort of thing, but this is the only ground available in the entire 20 acres that could be used for any other purpose than park purposes. There are two or three acres of high hill here, woodland that could be used if somebody wanted a bungalow in the woods. It is not accessible to any street. This small portion (indicating) is the only part of this 20 acres that has any commercial value, outside of the park. 10

The Board has permitted to go into the testimony in this case values of ground that have been sold here, values that were not ascertained on October 1, 1922, this County Board of Taxation acting here today didn't know anything about these sales October 1, 1922, because they were not made, and they are not completed yet, and yet, Mr. Weaver very ingenuously, tried to bring that into the testimony in this case, clearly illegal because we are endeavoring to ascertain the fair market value, as the president has said, what a willing seller not obliged to sell and what a willing buyer would pay for it not obliged to buy. These sales down here were recent, a month or so ago, a year and a month after this assessment, but assuming they were right at the time and would be helpful we respectfully submit that is unfair to say that the value here has some bearing on the value back here because there is absolutely no connection. Here you have to take into consideration a business street, the only main business street in this very progressive community, this section between the trolley line and the railroad line. There is considerable value there (indicating), at least the County Board thought so, on 30

this side of the street. That is the side they said was twelve times more valuable than this side. They assessed Mr. Gibbs four here and this fellow five thousand dollars. I don't think any one but the County Board can really appreciate that, but, however, that is what they did. I will concede there is considerable value there, but I do respectfully contend that it is not a fair test to say because this ground is worth so much that back here the ground
10 is worth so much. There cannot be any comparison, and that applies to all this section.

The park has absolutely no frontage on any street. The only value for any purpose is this section in here, which does have a frontage, and back here, it would be of no purpose unless somebody were to develop it and lay it out in blocks and streets. What have we before this Board? I respectfully submit if we bring testimony, unbiased, unprejudiced, disinterested testimony here and it is
20 going to be ignored, like in the County Board, this business of having an appeal does not mean anything. We went before the County Board in the best of faith and brought evidence. The County Board did not produce any evidence. I got the impression down there that they realized the merit of our case. They might not have gone the whole way, but they dismissed our appeal. We brought people here, experts, people who live here and who have lived here all their lives, not interested in
30 whether or not this is a high valuation, and they tell you, in their judgment, the value of the ground. That is the only kind of testimony we can bring here, the value of this ground as of October 1, 1922, and they all have said the highest, outside of Mr. Michelson, was someone who said \$400 an acre taking it as a whole. Are you going to say all these men are wrong? I don't think the Board can do

that, particularly when you have before you the unsatisfactory assessments throughout this community.

The assessor I rely on a lot. Here is a man who has been assessor for thirty years. It might be right of some men to say they are personal and that they are favoring a few people, but there is a man elected by the people of that community for ten terms, and when people of a community elect an assessor for ten consecutive times I am willing to say those people down there are not so far wrong, they are not going to elect any man assessor who does not know his business. He has been assessor ever since there was a Clementon Township, and I think his testimony ought to have some weight with this Board. He knows this thing like he knows his Bible, maybe a little better, if I know him correctly. He says it is worth \$250 an acre. We have brought the other gentlemen who know this property and they tell you that. What are you going to do? 10 20

My friend says there is a special value there, there is a special value there, it is a park value, and because of that special feature, it has a greater value than otherwise. Well, I will admit for the time being that it does have a special value, but also I am going to ask the Board how under the sun are you going to figure in dollars and cents that special value? Has the County Board told you how it did it? No. You cannot do it, there is no way by mathematics to do it unless you are going to guess, and the Courts have said that guesswork in tax matters does not count. 20 21

Assuming it has a special value, has there been one bit of testimony produced before this Board outside of the testimony of the only man who seems to know, Mr. Michelson, as to the special value, and I ask the president and members of this Board that

question. I also ask my friends on the County Board how under the sun they have arrived at \$65,000. Where do they get this arbitrary sum from? Whom did they summon before them to advise them? You can certainly reason from that that they didn't have anybody, because they would have had them in this court room today. It was guesswork, pure and simple, and it would be guesswork, I say it with all deference to the members of this
10 commission, if you were endeavoring to estimate that with any idea of special value.

I respectfully submit to this Board that we ought to be taxed on a fair assessment. If our assessment is low, and I don't admit it is, because I am going to come along with the tax assessor, who knows more about it than I do, or apparently knows more about it than anybody in this room, who has assessed it for one thing, and I want to stand by it, but I certainly am going to jump up and howl
20 when the County Board of this county says that they have assessed that at \$65,000. In other words, they are going to increase the assessment about fifteen times, from 250 to 3,250, and they haven't in the matter of the spirit of fair play—it is all right for these people to talk about being fair; if they are fair, why don't they come in here and tell you and me and the people of this community how they arrived at \$65,000. Have you heard a word here from these distinguished gentlemen about how they esti-
30 mate this park to be worth \$65,000, when the man who gets his living from it, the man who hates the Clementon Park Association as much as he hates arsenic poisoning, says to him it is not worth more than \$20,000, and if he were crowded to save his investment he would only give \$30,000—the best evidence for the other side they could hope to get and that is the showing they make. Are we very

far wrong when we say a tract of 20 acres, taking the good with the bad, given the benefit of this adaptability for any purpose, a park or for building, or for any purpose a man can conceive of, it is worth \$400 an acre, some say \$250, some \$450, and I ask this Board in all fairness, keeping in mind that the testimony is testimony until it is impeached, how you can go along with the County Board, how you can in all common fairness and decency say we are going to sustain a \$65,000 assessment, when, as a matter of proof, there is not one scintilla of evidence before you how the \$65,000 was made up. 10

Mr. Jess: Have you anything to say?

Mr. Weaver: I don't think so, I didn't intend to say anything, but because it seems to me so apparent that the only basis which the County Board or the assessor in a case of this kind can use is what the property is bringing adjacent, the special adaptability of this piece of ground for park purposes and the fact that we were informed and it seems to be borne out today that the park was bringing a rental of \$13,400. They have attempted to meet that. I say that is one element, that it is an important element as to the value, as to a way to fix the value of this property. We show you sales adjoining the park here of business sites. The mill property is 35 by 60 and brought from eight to ten thousand dollars and here is a busy community, here is a park that entertains a great many people, and it has some value. 20 30

Now, the only way those values can be arrived at is the way in which the County Board approached this matter. As I said before, we may be high, if we are, we want it corrected by this Board, because we have confidence that this Board will do the right

thing. They have attempted, it seems to me, to mislead you as to the value of this park, and they have done it in this way. They say because this piece of land is only suitable, from their viewpoint, for building sites, that they put it on that basis, they ignore entirely the physical conditions, which make it desirable as a park and which give it a value, and which give it such a return value by way of rental as to indicate that it has a very high value because of its peculiar condition.

10 Now, the only witnesses they produced here, not one of them, they have seemed not to have given this matter any thought because not one of them would give the land any special value because it was a park. I don't see how that can be ignored. They expect you gentlemen with the wide experience you have had in hearing testimony in these matters to forget entirely this matter and ask you to believe, each witness says, one after the other, "Well, we don't think it has any value at all because it is a
20 park, but as a building site it has so much value because it might be used for building purposes." How are you going to arrive at these values? There has been no sale of park property, but it has value. Now, I don't want to criticize my own witness. Mr. Michelson came here on a subpoena from this Board. We want to get at the truth here, and while interested here in trying to sustain this assessment, we only want what is right. Mr. Michelson, it seems to me, having admitted he was paying \$13,000 a year
30 for this property, it seems to me that certainly he would pay very much more than \$20,000 or \$30,000 for this property because he is at least tied up for three years more for \$26,000, and certainly, this park having run successfully for eight years, it cannot be expected it is going to die out entirely.

This is not one of those ordinary amusement

parks that were quite common in the county a few years ago, where there was nothing but the ordinary concessions that were familiar to all of us and were used in these parks, but here is a park in the summer time that has one special value because it has been fixed up as a swimming park, and the people go there from all over for that purpose, thousands of them go there because they like to go in the water. It is only a few miles from the great city across the river, and they go there, twelve to fifteen thousand on a Sunday. If a place that will draw that number of people because of those physical conditions has not a value, I don't know where value can be found. 10

I, ALTA R. GULLIVER, the stenographer designated by the State Board of Taxes and Assessments to report stenographically the evidence given before said Board upon the hearing of the appeal of Willard T. Gibbs, from the assessment of taxes made by the Township of Clementon for the year 1923, do hereby certify that the foregoing is a true and correct transcript of the evidence given before said Board at the hearing on Thursday, December sixth, 1923. 20

In witness whereof, I have hereunto set my hand and seal, this twenty-ninth day of April, 1924.
(Seal) ALTA R. GULLIVER.

30

I, FRANK D. SCHROTH, Secretary of the State Board of Taxes and Assessment, do hereby certify and send to the Justices of the Supreme Court the foregoing transcript, as a true and correct transcript of the evidence given before the said Board upon

the hearing of the appeal of Willard T. Gibbs, from the assessment of taxes made by the Township of Clementon for the year 1923, said evidence having been submitted at the hearing on Thursday, December sixth, 1923.

In witness whereof I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-ninth day of April, 1924.

(Seal)

FRANK D. SCHROTH,

Secretary.

10

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. December 7, 1923.

20 Mr. Frank A. O'Connor,
West Orange, New Jersey.

Dear Frank:

At the meeting of the Board yesterday in Camden the enclosed cases were referred to you for inspection and report. In case No. 3, will you kindly get in touch with T. Harry Rowland and Francis D. Weaver, President of the Camden County Board of Taxation and in case No. 4 with Jacob Z. Blank and Francis D. Weaver, and notify them when you are going to inspect these properties?

30

Very truly yours,

FRANK D. SCHROTH

Secretary

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. December 11, 1923.
IN RE: Willard T. Gibbs vs. Township of
Clementon.

Mr. Louis Focht, Chief Engineer,
State Office Building.

Dear Mr. Focht:

In the matter of the above entitled appeal, the Board has requested that you send one of your 10
force to Clementon Township to make an examination of the property and the tax map, so that it may be ascertained with certainty whether the actual area is 20 acres or 30 acres. The Board has suggested that I hold up judgment in this matter until I hear from you.

Very truly yours,

FRANK D. SCHROTH

Secretary.

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STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. December 14, 1923.

Mr. Frank D. Schroth, Secretary,
State Board of Taxes & Assessment,
State House, Trenton, N. J.

My dear Mr. Schroth:

I am enclosing herewith blue print of map showing the boundaries of the "Clementon Park Tract." 30
This is the tract concerning which you wrote me under date of the 11th instant, being the subject of an appeal by Willard T. Gibbs, before this Board.

We have traced the boundaries both from existing maps and by an inspection on the ground and find the area to be slightly over thirty-three (33) acres, although we have marked it "33 acres" on the map.

According to our information, Mr. Gibbs was probably misled in placing the area at twenty (20) acres, through an error on the part of the party who prepared a sketch of the property for him. At any rate, the area of the land embraced in what is known as the "Clementon Park Tract" contains thirty-three (33) acres.

Very truly yours,

LOUIS FOCHT

Chief Engineer.

10

LF :G

Encl.

ENDORSED:

2831.

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Report of Chief Engineer submitted
to Board on Dec. 18, 1923.

30

JUDGMENT.

STATE OF NEW JERSEY.
STATE BOARD OF TAXES AND
ASSESSMENT.

10

In the matter of appeal
of Willard T. Gibbs from
the Assessment of Prop-
erty in Township of Clem-
enton, County of Camden,
for the year 1923.

Judgment.

An appeal in writing having been filed with the
State Board of Taxes and Assessment, duly verified
according to the rules of practice prescribed by said
Board, by Willard T. Gibbs, in which it is alleged
that an injustice has been done the said complainant
by the assessment of his property for taxation for
the year 1923, located at Township of Clementon in
the County of Camden consisting of 20 acres of
land, known as Clementon Park Tract, and that
said property is assessed higher than the true value
thereof;

30

After hearing evidence produced on the part of
said complainant, and the said respondent, and the
argument of T. Harry Rowland for the complain-
ant, and Francis D. Weaver, President, for the
Camden County Board of Taxation, and after con-
sidering the same, it is on this eleventh day of De-
cember, nineteen hundred and twenty-three, at a

session of the State Board of Taxes and Assessment, Ordered, Adjudged and Decreed, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of \$65,000, levied for the year 1923 on above described property, be affirmed and the appeal therefrom dismissed, it having been shown by an examination of this property by the engineering force of the Board that it contained 33
 10 acres and not 20 acres as stated in the appeal.

James Baker President.

Frank B. Jess

Harry W. Mutchler

M. R. Margerum

Isaac Barber

State Board of Taxes and Assessment.

Attest:

Frank D. Schroth,

Secretary.

20

(Endorsed)

STATE OF NEW JERSEY

State Board of Taxes and Assessment

In re Appeal of

Willard T. Gibbs

vs.

Township of Clementon

County of Camden

for the year 1923.

30

JUDGMENT.

Decided and Filed

December 11, 1923.

Frank D. Schroth

Secretary,

State Board of Taxes and Assessment.

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT

Trenton, N. J. December 21, 1923.

T. Harry Rowland, Esq.,
522 Market Street,
Camden, New Jersey.

Dear Sir:

In the matter of the appeal of Willard T. Gibbs
from the assessment of property in the Township 10
of Clementon, I beg to advise you that this Board
has ordered that the assessment of \$65,000 be af-
firmed and the appeal therefrom dismissed.

It has been shown by an examination of this prop-
erty by the Engineering force of this Board that it
contains 33 acres and not 20 acres as stated in the
appeal.

Very truly yours,

FRANK D. SCHROTH

Secretary. 20

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT

Trenton, N. J. December 21, 1923.

Camden County Board of Taxation,
Court House,
Camden, New Jersey.

Gentlemen:

In the matter of the appeal of Willard T. Gibbs
from the assessment of property in the Township of
Clementon, I beg to advise you that this Board has
ordered that the assessment of \$65,000 levied for
the year 1923 on 20 acres of land known as Clem-
enton Park Tract, be affirmed and the appeal there-
from dismissed.

30

For your information we are enclosing a blue print showing the boundaries of the "Clementon Park Tract." We have traced these both from existing maps and by an inspection on the ground and find the area to be slightly over 33 acres, although it has been marked 33 acres on the map.

Very truly yours,

FRANK D. SCHROTH

Secretary.

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STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT

Trenton, N. J. December 21, 1923.

Mr. George W. Evans, Assessor,
Lindenwold, New Jersey.

20 Dear Sir:

In the matter of the appeal of Willard T. Gibbs from the assessment of property in the Township of Clementon, I beg to advise you that this Board has ordered that the assessment of \$65,000, levied for the year 1923 on 20 acres of land known as Clementon Park Tract, be affirmed and the appeal therefrom dismissed.

30 It has been shown by an examination of this property by the Engineering force of this Board that it contains 33 acres and not 20 acres as stated in the appeal.

Very truly yours,

FRANK D. SCHROTH

Secretary.

LAW OFFICES
T. HARRY ROWLAND
522 Market Street
Camden, N. J.

Dec. 22, 1923.

State Board of Equalization of Taxes,
State House,
Trenton, N. J.

10

Gentlemen:

In the matter of the appeal of Willard T. and Edgar B. Gibbs.

I understand from the public press your Board has attested this matter, in effect sustaining the assessment placed by the County Board. I also am informed that your Board found that the Gibbs brothers were the owners of thirteen additional acres which ought to go in and make a part of this assessment. We deny any ownership of the thir- 20
teen acres and respectfully contend that our acreage is about 20 acres. Neither of the owners have had the opportunity of going over the ground with your engineers. I understood that was part of the arrangement. In Court, I produced maps showing the acreage and I understood it was all agreed that twenty acres was a fair estimate of this acreage. Certainly before the County Board this was not raised nor was there any evidence denying our claim at the hearing before your Board. I feel that if 30
Mr. Gibbs had been requested to go over the ground with your engineer, this matter would not have arisen.

I respectfully ask that a rehearing be given to the petitioners with the idea of establishing this acreage and for the purpose of putting any additional testimony as to value. The acreage is very

important for my clients do not own it nor do they know who do.

Such a re-hearing can be had at the convenience of your Board. We shall be glad to come to Trenton or any other place that the Board may desire to hold it. I respectfully hope that the Board can see its way clear to grant us a re-hearing.

I would like very much to have a copy of the testimony taken before the Board.

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Yours truly,

T. HARRY ROWLAND

THR/EG

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. December 24, 1923.

20

IN RE: Willard T. Gibbs vs. Township of
Clementon

T. Harry Rowland, Esq.,
522 Market Street,
Camden, New Jersey

Dear Sir:

30

This will acknowledge receipt of your letter of December twenty-second in regard to the above entitled appeal. For the Board to grant a rehearing in this matter it will be necessary for you to proceed by giving the other side four days' notice in writing of your intention to apply to the Board for the opening of the judgment. The next meeting of the Board will be on Wednesday, January second, at 11 A. M., at Trenton, and if you desire to make such an application I suggest that you serve the taxing district and County Board of Taxation in accordance with the provisions of rule 11 of the

Board's rules, a copy of which you will find enclosed.

You will understand, of course, that the Board will only consider on this date the application for the reopening, and if the matter is reopened a later date will be fixed for hearing on the facts. You may procure a copy of testimony from Sarco Co., 19 East State St., Trenton, N. J.

Very truly yours,

FRANK D. SCHROTH

Secretary.

10

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT

Trenton, N. J. January 11, 1924.

Mr. Frank D. Schroth, Secretary,
State Board of Taxes and Assessment,
State House,
Trenton, N. J.

20

My dear Mr. Schroth:

T. Harry Rowland, Esq., attorney for Gibbs in the matter of the Clementon Township assessment recently decided by the Board, has seen me, and says that Mr. Gibbs is very insistent that a serious mistake has been made in the finding that there was more than twenty acres of land in the parcel assessed.

In view of the allegation that neither Mr. Gibbs nor his representative was present when the engineer computed the area, I suggest that a re-examination of the land be made by one of Mr. Focht's staff, in company with Mr. O'Connor, and that notice be given to Mr. Rowland of the time fixed for the survey. I do not know who the engineer was who made the original examination, but it occurs

30

to me that Mr. Fryer would be a proper one to do this work. I personally feel that this matter should not be finally disposed of so long as there is any possible doubt that an error has been made in the computation of acreage.

Very truly yours,

FRANK B. JESS.

FBJ/k

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STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. January 15, 1924.
IN RE: Willard T. Gibbs vs. Township of
Clementon.

T. Harry Rowland, Esq.,
522 Market Street,
20 Camden, New Jersey.

Dear Sir:

The Board will comply with your request that there be a re-survey of the land in the above entitled appeal. Chief Engineer Focht of this Department and Clerk and Field Secretary O'Connor will be at the office of the Camden County Board of Taxation at 11 A. M. on Wednesday January twenty-third prior to making a re-survey of the land. The Board will be very glad if you will meet
30 them there and accompany them while this is being done.

Very truly yours,

FRANK D. SCHROTH

Secretary.

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. January 15, 1924.
IN RE: Willard T. Gibbs vs. Township of
Clementon.

Camden County Board of Taxation,
Court House,
Camden, N. J.
Gentlemen:

At the request of T. Harry Rowland the Board 10
has directed that a re-survey be made of the land
involved in the above entitled appeal. Chief En-
gineer Focht and Field Secretary O'Connor will be
at your office on Wednesday, January twenty-third
at 11 A. M. prior to making this examination. T.
Harry Rowland, attorney for the appellant has been
notified and the Board will be glad if your Board
will also have some one accompany the representa-
tives of this Board while this examination is being
made. 20

Very truly yours,
FRANK D. SCHROTH
Secretary.

STATE OF NEW JERSEY
STATE BOARD OF TAXES AND ASSESSMENT
Trenton, N. J. January 28th, 1924. 30
State Board of Taxes & Assessment,
State House, Trenton, N. J.
Gentlemen:

On Wednesday, the 23rd instant, I met Mr. Row-
land and Mr. Gibbs' Engineer at the office of the
County Board, Camden. Mr. O'Connor also met
us there. Mr. Weaver and the other members of

the County Board, together with the Secretary, Mr. Driver, were also present.

We went over the map indicating the boundaries of the Gibbs Tract, under appeal, previously prepared by Mr. Fryer. I had been told that Mr. Gibbs had a survey made and a map prepared, but his Engineer stated that such was not the case.

10 The main question seemed to hinge on whether or not the easterly boundary was a straight line, or a broken line. Mr. Gibbs' Engineer stated that this was a straight line, being an old established monumented boundary between ancient holdings, as shown by our map.

Mr. Gibbs' Engineer, during the discussion in the offices of the County Board, asserted that the area was about twenty acres, but did not fully enlighten us as to the method whereby he arrived at this conclusion.

20 After discussing the matter at the office of the County Board, Mr. Fryer, Mr. Gibbs' Engineer, Mr. O'Connor and myself went to Clementon Park. Mr. Rowland did not go along, feeling he would be of no use, having no personal knowledge of the property.

Before leaving, I arranged with Mr. Rowland that after we had traced the lines on the ground and checked the map, I would send him copies of the map for inspection and criticism, with any changes noted that we might discover from our survey.

30 The principal boundaries of the tract were run out on the ground and the measurements thus determined practically agreed with the scaled distances taken from the map. Therefore, the revision of the map has consisted in merely adding the actual distances, as ascertained in the field. Two copies of this map were sent to Mr. Rowland and two copies to the County Board, with the request

that if any discrepancies are discovered they communicate the fact to us. The area, you will note, remains the same, namely, thirty-three (33) acres, more or less. This is the same area reached by Mr. Albertson, in his tax maps of the Township, recently approved by you.

A blue print of the revised map is herewith attached. The boundaries are shown by a red crayon line.

Mr. Gibbs' Engineer accompanied Mr. Fryer in 10 running over the lines and, at the conclusion of the work, expressed himself as being satisfied that the map is substantially correct and indicates, within reasonable accuracy, the boundaries of the land under appeal. He did not state this to me personally, but to Mr. Fryer, who reported his remarks to me.

One of the questions concerning which I had some doubt, was whether or not the boundaries, as indicated on the map, represented the outlines of the tract under appeal. So far as I could ascertain 20 from my preliminary discussion with Mr. Gibbs' Engineer, the boundaries as shown on the map represent the tract, therefore, the only question to be determined was its accuracy. This was substantiated by the field measurements.

With regard to the area of twenty acres, I believe Mr. Gibbs' Engineer was working somewhat in the dark, for the reason that he had based his computations on a distance along the Berlin Road of 400 feet from the easterly boundary of the tract, as you 30 will note from the map, this distance actually measures 600 feet. This difference alone is sufficient to throw his calculations out about eight and one-quarter ($8\frac{1}{4}$) acres. There are probably other differences, not noted.

We cannot claim exactness for the map, as it was not made from precise surveys. For instance, the

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Assessment*

line along the southerly boundary of the Lake, was taken from a map of the Philadelphia and Reading Railway. At the same time, I feel that it is sufficiently accurate to warrant claiming the area to be practically thirty-three (33) acres. An exact survey would have required three or four days and this I did not feel we were warranted in attempting.

10

Very truly yours,

LOUIS FOCHT
Chief Engineer.

LF:G
Encl.

ENDORSED:

2831.

Report of Chief Engineer submitted
to Board Jan. 29, 1924.

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MINUTES

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, OCTOBER 9, 1923.

The Board met at 10.30 A. M. on the above date.

Present, President Baker, Mr. Mutchler, Mr. Margerum and Dr. Barber.

* * * * * * *

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The Board fixed the following dates for hearing appeals from local assessments:

* * * * * * *

Thursday, December 6: Court House, Camden: 4
Camden, 1 Gloucester and 1 Cumberland County
case.

* * * * * * *

MINUTES
COURT HOUSE, CAMDEN, NEW JERSEY,
THURSDAY, DECEMBER 6, 1923.

The Board met at 10 A. M. for the purpose of hearing appeals.

Present, Mr. Jess, Mr. Margerum and Mr. Mutchler.

In the absence of President Baker, Mr. Jess acted 10
as President pro tempore.

The following calendar of appeals was called:

* * * * *
2-3. Willard T. Gibbs vs. Township of Clementon.
Cases called, Mr. T. Harry Rowland appearing for
the petitioner and Mr. Francis D. Weaver, Presi-
dent, appearing in behalf of the Camden County
Board of Taxation. Mr. Rowland stated that the
appeal on property described as a house and lot,
known as W. T. Gibbs residence, would be with- 20
drawn. The Board heard the testimony of Willard
T. Gibbs, George W. Evans, Isaac W. Higgins,
Francis D. Weaver, James W. Davis and Wilbert H.
Mick on behalf of the petitioner, and of Myer Mich-
elson on behalf of the respondent. Decision was
reserved. It was ordered, in pursuance of the un-
derstanding with counsel for the petitioner that the
Field Secretary of the Board make an inspection
of the property in question, and report his findings
to the Board. 30

* * * * *
STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, DECEMBER 11, 1923.

The Board met at 10.30 A. M. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

* * * * *

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Assessment*

The Board took up for consideration cases heard and awaiting decision, and ordered judgments entered as follows:

* * * * * * *

Willard T. Gibbs vs. Township of Clementon.

In this case the Field Secretary rendered an oral report on his inspection of the property involved in the appeal, in which he stated that from his examination of the land in question there clearly appeared to be 33 acres instead of 20 acres, as shown in the assessment. The Board ordered that the assessment of \$65,000, levied for the year 1923 on 20 acres of land, known as Clementon Park Tract, be affirmed and the appeal therefrom dismissed. On motion, it was ordered that the judgment in the appeal of Willard T. Gibbs vs. Township of Clementon be withheld pending a further investigation by the Engineering force of the acreage in the tract of land involved.

* * * * * * *

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, DECEMBER 18, 1923.

The Board met at 10.30 A. M. on the above date.
Present, President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

* * * * * * *

The report of the Chief Engineer in the matter of the appeal of Willard T. Gibbs vs. Township of Clementon was laid before the Board, together with a blue print showing the boundaries of the "Clementon Park" tract. The map showed that there were slightly over 33 acres in the tract. The Secretary was instructed to submit the blue print to the Camden County Board of Taxation for its information. It was ordered that the judgment in the case of Willard T. Gibbs vs. Township of Clementon be en-

tered recited that the property as shown by an examination of the Engineering force contained 33 acres and not 20 acres, as stated in the appeal.

* * * * *

STATE HOUSE, TRENTON, NEW JERSEY,
WEDNESDAY, JANUARY 2, 1924.

The Board met at 10.30 A. M. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

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* * * * *

The Secretary laid before the Board a letter from Mr. T. Harry Rowland, attorney for the petitioner in the appeal of Willard T. Gibbs vs. Township of Clementon. The communication stated that it was the intention of Mr. Rowland to apply for the opening of the judgment in this matter. The contents of the letter were noted, and it was ordered filed.

* * * * *

STATE HOUSE, TRENTON, NEW JERSEY, 20
TUESDAY, JANUARY 15, 1924.

The Board met at 10.30 A. M. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

* * * * *

The Secretary laid before the Board a letter from Mr. Jess in which he said that Mr. T. Harry Rowland, attorney for the petitioner in the appeal of Willard T. Gibbs vs. Township of Clementon, insisted that a mistake had been made in computing the area of the Clementon Park land at 33 acres, and in which letter Mr. Jess suggested that a re-examination of the land be made by the Engineering force, on notice to Mr. Rowland. The Board ordered that a re-survey be made of the land in question, under the direction of the Chief Engineer.

* * * * *

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Assessment*

STATE HOUSE, TRENTON, NEW JERSEY,
TUESDAY, JANUARY 29, 1924.

The Board met at 10.30 A. M. on the above date.

Present, President Baker, Mr. Jess, Mr. Mutchler,
Mr. Margerum and Dr. Barber.

* * * * * * *

10 The report of the Chief Engineer in the matter of
the resurvey of the land involved in the appeal of
Willard T. Gibbs vs. Clementon Township was laid
before the Board. In substance the report stated
that the resurvey again showed a total area of ap-
proximately 33 acres. It further stated that the
Chief Engineer had submitted to T. Harry Row-
land, attorney for the petitioner, a copy of the map
for his inspection and criticism. The Board ordered
that the report be received and filed.

* * * * * * *

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DOCKET

2831 Willard T. Gibbs Petitioner, vs. Clementon Township, County of Camden, Respondent.	}	Petr's Atty. T. Harry Rowland. Respdt's Atty. Assessment of 1923. Property: 20 acres of land, known as Clementon Park Tract. Amount, \$65,000. Judgment, \$	10
---	---	--	----

1923

- Sept. 22. Petition filed.
- Oct. 9. Hearing fixed for December 6 at Camden & notice sent. 20
- Dec. 6. Case heard. Decision reserved, pending an inspection of the property by the Field Secretary.
- Dec. 11. Oral report made to Board by Field Secretary. Appeal dismissed and assessment affirmed. Judgment withheld pending an investigation by the Engineering force of the Board.
- Dec. 18. Report of Chief Engineer, together with blue print of property, submitted to Board. Secretary directed to submit blue print to the Camden County Board of Taxation. 30

1924.

- Jan. 2. Letter from counsel for petitioner presented to Board by Secretary, stating it was the intention of Mr. Rowland to apply for the

reopening of the judgment. Letter ordered filed.

Jan. 15. Resurvey ordered by Board, under direction of Chief Engineer.

Jan. 29. Report of Chief Engineer or resurvey of property submitted to Board. Received and filed.

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STATE OF NEW JERSEY
STATE BOARD OF TAXES AND
ASSESSMENT.

I, FRANK D. SCHROTH, Secretary of the State Board of Taxes and Assessment, do hereby certify, that the foregoing are true copies of the petition, judgment and proceedings in the matter of the appeal of Willard T. Gibbs, from the assessment of property in the Township of Clementon, County of Camden for the year 1923, as the same are taken from and compared with the originals, filed in the office of the State Board of Taxes and Assessment, on the twenty-second day of September and other dates A. D. 1923 and 1924, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-fifth day of April, A. D. 1924.

Frank D. Schroth,
Secretary.

30 (Seal)

(Endorsed.)

CERTIFIED COPIES OF
THE PROCEEDINGS IN RE WIL-
LARD T. GIBBS,
vs.
TOWNSHIP OF CLEMENTON,
COUNTY OF CAMDEN.

REASONS.

(Filed May 1, 1924.)

NEW JERSEY SUPREME COURT.

10

WILLARD T. GIBBS,
Prosecutor,
 vs.
 STATE BOARD OF TAXES AND
 ASSESSMENT, and TOWN-
 SHIP OF CLEMENTON,
 CAMDEN COUNTY, NEW
 JERSEY,
Defendants.

On Certiorari.
 Reasons.

20

The prosecutor relies upon the following reasons:

1. The State Board erred in considering the evidence, to wit: the testimony in relation to the alleged increased acreage of the property of the prosecutor, for the reason that said testimony was not taken on notice to or in the presence of the Prosecutor or his counsel, and without the Prosecutor being permitted to cross-examine the witness or witnesses giving such testimony, and without the Prosecutor having the privilege of contradicting or rebutting the same. 30

2. The State Board erred in considering certain testimony and evidence relating to the alleged increased acreage, for the reason that the same was taken outside the record in this case, and after the hearing therein had been concluded.

3. The State Board erred in considering income as the chief criterion for making and sustaining the valuation of the property of the Prosecutor.

10 4. The State Board erred in considering as income derived from the property of the Prosecutor, a large sum of money, which was not income from such property, but which large sum of money was income or rental derived and arising from property other than that of the property of the Prosecutor, the assessment of which is now under review.

5. The State Board erred in not properly considering and giving due weight to the testimony of the
20 sole and only witnesses, produced on its behalf, as to the true, fair and market value of the Prosecutor's property.

6. The State Board erred in failing to properly consider the uncontradicted testimony of the Prosecutor and his witnesses, in reference to the fair, true and market value of the Prosecutor's property.

7. The State Board erred in confirming said assessment contrary to the weight of the evidence,
30 which weight was overwhelmingly in favor of a reduction from \$65,000.00 down to less than the sum of \$20,000.00.

8. The judgment of the State Board was in divers other respects contrary to the evidence and illegal.

T. HARRY ROWLAND,
E. G. C. BLEAKLY,
Attys. for Prosecutor.

STIPULATIONS.

(Filed May 1, 1924.)

NEW JERSEY SUPREME COURT.

10

WILLARD T. GIBBS,
Prosecutor,

vs.

STATE BOARD OF TAXES AND
ASSESSMENT, and TOWN-
SHIP OF CLEMENTON,
CAMDEN COUNTY, NEW
JERSEY,

Defendants.

On Certiorari.
Stipulations.

20

It is hereby stipulated and agreed between T. Harry Rowland and Edwin G. C. Bleakly, counsel for the Prosecutor, and Francis D. Weaver, counsel for the defendants:

1. That the assessor of the Township of Clementon assessed the property of the prosecutor, W. T. Gibbs, to wit: twenty acres of land, which is the subject of the appeal in this case, at a valuation, as of October 1st, 1922, for taxing purposes, for the year 1923, at the sum of \$4,500. 30

2. That the County Board of Taxation of the

County of Camden raised said assessment from \$4,500 to a valuation of \$65,000.00.

3. That Exhibit A, annexed hereto, is a true copy of the proceedings of the Camden County Board of Taxation, in relation to the action taken by said Board in raising said assessment, together with other assessments in said Township.

- 10 4. That the Secretary of the State Board of Taxes and Assessment annexed to and made a part of the return to the writ in this case, certain correspondence, to wit: A letter from Frank D. Schroth, Secretary of the State Board of Taxes and Assessment, to Mr. Frank A. O'Connor, of West Orange, New Jersey, dated Trenton, N. J., December 7, 1923; a letter from Frank D. Schroth, Secretary of the State Board of Taxes and Assessment, to Mr. Louis Focht, Chief Engineer, dated Trenton, N. J., December 11, 1923; a letter from Louis Focht, Chief Engineer, to Mr. Frank D. Schroth, Secretary of the State Board of Taxes and Assessment, dated Trenton, N. J., December 14, 1923; a letter from Frank D. Schroth, Secretary of the State Board of Taxes and Assessment, to T. Harry Rowland, Esq., of Camden, N. J., dated Trenton, N. J., December 21, 1923; a letter from Frank D. Schroth, Secretary of the State Board of Taxes and Assessment, to Camden County Board of Taxation, dated Trenton, N. J., December 21, 1923; a letter from Frank D. Schroth, Secretary of State Board of Taxes and Assessment, to Mr. George W. Evans, Assessor, of Lindenwold, N. J., dated Trenton, N. J., December 21, 1923; a letter from T. Harry Rowland, of Camden, N. J., to the State Board of Equalization of Taxes, dated Camden, N. J., December 22, 1923; a letter from Frank D. Schroth, Secretary of the
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State Board of Taxes and Assessment to T. Harry Rowland, dated Trenton, N. J., December 24, 1923; a letter from Frank B. Jess to Mr. Frank D. Schroth Secretary of State Board of Taxes and Assessment, dated Trenton, N. J., January 11, 1924; a letter from Frank D. Schroth, Secretary of State Board of Taxes and Assessment, to T. Harry Rowland, dated Trenton, N. J., January 15, 1924; a letter from Frank D. Schroth, Secretary, to Camden County Board of Taxation, dated Trenton, N. J., 10 January 15, 1924; and a letter from Louis Focht, Chief Engineer, to the State Board of Taxes and Assessment, dated Trenton, N. J., January 28th, 1924.

That prior to the making of said return, counsel for the Prosecutor objected to this correspondence being made a part of the return on the grounds that it does not form a part of the record or the return; that it is not called for by the writ, and is no part of the proceedings, since it all took place subsequently to the hearing of December 6th; and that the letters were not put in evidence, and could, therefore, form no part of the record. 20

In view of the above objection, and instead of making a motion on the first day of the term to strike said correspondence from the return, counsel for the prosecutor is to have the right to make a motion on the argument of the case, in the briefs, to strike from and have eliminated as a part of the return on the grounds above stated, the correspondence above enumerated. 30

T. HARRY ROWLAND,

E. G. C. BLEAKLY,

Counsel for Prosecutor.

FRANCIS D. WEAVER,

Counsel for Defendants.

EXHIBIT A.

A regular meeting of the Camden County Board of Taxation was held this Tuesday, March 13th, 1923, at 10.00 A. M.

President Weaver presiding. Present member
10 Maloney and Sec'y Driver.

Board fixed Monday, May 14th and Tuesday May 15th, 1923, 10.00 A. M. to 3.00 P. M. as Appeal days for Camden City.

The Board revised and corrected the Tax List and Duplicate of Clementon Township as shown by the following Resolution:

On motion duly made, RESOLVED, WHEREAS the Tax List of the Township of Clementon, as filed by the Assessor, the year 1923 does not meet the
20 approval of the Camden County Board of Taxation, and WHEREAS said Board has decided, after investigation pursuant to P. L. 1918, Chap. 236, Sec. 507, to revise, correct and equalize the same, and after inspecting said properties in said district and duly considering same, has revised, corrected and equalized the same. Be it further RESOLVED that the changes, revisions and corrections of the Tax List of that Township, as the same appears in red ink in the Tax List thereof, be the amounts fixed
30 by the Camden County Board of Taxation, as and for the respective valuation for the properties as therein indicated, and that where no changes are indicated that the valuation as fixed by the Assessor shall be and remain the valuation of said properties, to the end that the TOTAL VALUATION of properties in the Township of Clementon shall be the sum of \$3,544,579, for the year 1923.

Approved:—Mar. 20, '23. ATTEST

Gardner S. Driver,

Sec'y.

April 3rd, 1923.

Mr. George W. Evans, Assessor of the Township of Clementon.

Take notice, that pursuant to P. L. 1918, Chap. 236, Sec. 507, the Camden County Board of Taxation after investigation has revised, corrected and equalized the assessed value of the property in the Township of Clementon as shown by the changes and additions on the Tax List and Duplicate of the Township of Clementon. 10

Where additions are made, the same are indicated by red ink in the Tax List and Duplicate to the end that the total assessed value of the property in the Township of Clementon for the purpose of Taxation for the year 1923 shall be the sum of \$3,544,579.

You are therefore, hereby notified that the additions in the Tax List and Duplicate are the net corrected value to each person in said district for both real and personal property, and where no changes are made by the County Board of Taxation, the amount of assessment as fixed by the Assessor shall stand and remain. And you are further required to enter the additions on each column where changes are made at the foot thereof on every page. 20

You are further required to extend on the Duplicate the amount of Tax computed on each assessment according to law, and in accordance with the rate fixed by the Camden County Board of Taxation, hereto annexed and made a part hereof. 30

By Order of The Camden County Board of Taxation.

Gardner S. Driver,

Secretary.

This is to certify that the above is a true copy of the minutes of the Camden County Board of Taxation as the same appears on the minute book of the Board, together with a true copy of a notice sent to the Assessor of the Township of Clementon.

Gardner S. Driver,
Secretary of Camden County Board
of Taxation.

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

WILLARD T. GIBBS,
Appellant,
(Prosecutor Below),

v.

STATE BOARD OF TAXES AND ASSESSMENT, AND
TOWNSHIP OF CLEMENTON, CAMDEN
COUNTY, NEW JERSEY,
Defendants,
(Defendants Below).

ON CERTIORARI.

BRIEF FOR APPELLANT.

POINTS.

1. The Court below committed legal error in failing to reweigh the evidence as to market value proved before the State Board.
2. There is no evidence in the record below to support the valuation affirmed by the State Board and the Court below.
3. The State Board and the Court below both were legally in error in considering income or ren-

tal value as the chief criterion of valuation for the purpose of taxation.

4. The Court below, as well as the State Board, erroneously assumed that \$13,400.00 was the annual income from this land in question, when the only proof on the record was to an income of \$2,000.00 a year.

5. The assessment fixed by the County Board, and affirmed by the State Board being \$65,000.00, and the evidence of fair market value before the State Board, as shown by its own witness, being \$20,000.00 (not for this land alone but the whole park project), the assessment affirmed was at least \$45,000 in excess of the fair market value of the whole park property, as proved by the State Board's only witness.

The only other evidence as to value was that submitted on behalf of the prosecutor, which fixed the highest market value of this land at \$13,200.00. The valuation affirmed by the State Board was \$56,800.00 in excess of true value as shown by the great weight of the evidence.

THE FACTS.

The property which is the subject of this appeal is part of a summer park, known as "Clementon Park Tract." It is the *land* and not the *buildings* included in this park, which was assessed by the local assessor as twenty acres of land, October 1st, 1922, for the year 1923, at the sum of \$4,500 (see Stipulation 1, page 119).

The County Board raised the assessment on this land to \$65,000. An appeal was taken to the State Board, which appeal was heard December 6, 1923.

The judgment of the State Board was rendered December 11, 1923 (see page 99), and the assessment of \$65,000 was affirmed.

The Supreme Court heard the case on certiorari, and affirmed the assessment November 13, 1924 (see page 3).

The State Board claimed that instead of being twenty acres of land, as originally assessed by the local assessor, there were, in fact, thirty-three acres, and its judgment indicates that this was one of the reasons for affirming the assessment.

The record also discloses, however, that the chief reason moving the County Board, as well as the State Board, to sustain this assessment, was the alleged high rental value, erroneously claimed to be \$13,400 a year. As will appear by the evidence, the only rental value of the land shown by the record is \$2,000 (see page 46, line 17). The State Board assumed that it was \$13,400 a year (see page 83 and also page 84). This fact appears in the cross-examination of the State Board's own witness, the only witness who testified to actual market value in the whole record, and his testimony (page 84) as to the fair value of the park, was \$20,000.00.

TESTIMONY AS TO INCOME.

It must be borne in mind that admittedly the only assessment under review is that on the land. There was no assessment to the present prosecutor for any buildings or other improvements. They were assessed to other parties.

This park was originally rented by the prosecutor to the Clementon Park Association, for \$4,000.00 a year. This rent included buildings which are not included in the present assessment (see pages 37

and 38). These buildings were afterwards replaced or reconstructed.

The original lease for \$4,000.00 included a dance floor, a restaurant, merry-go-round, shooting gallery, boat house, moving picture house, three or four small stands, and one hundred boats, besides the land in question (see bottom of page 45 and top of page 46).

The Clementon Park Association sublet, later on, namely, about 1916, the property to Mr. Michelson, for \$8,400.00, including lands, swings, merry-go-round, moving picture, dance floor, boat house, &c. (see page 65).

Then, about two years ago, the boats, which had been operated by the Clementon Park Association under its original lease, were leased to Mr. Michelson, with the boat house, and a small strip of land, for \$5,000 a year, which added to the \$8,400.00, made a total of \$13,400.00 (see page 65).

The rent for the boats was \$5,000.00, and, of course, should be excluded. The \$8,400.00 rent included not only the land in question, but many other buildings, moving pictures, swings, and other apparatus.

It was clear that the buildings, &c., were separately assessed (see bottom of page 79). The State Board erroneously assumed, however, that the \$13,400 rent applied to the land in question only (see page 83).

The only evidence in the case below, in reference to the rental value of the land in question, separate and apart from buildings, apparatus, &c., was the evidence of the prosecutor, that is, the appellant (see page 46). He testified that the fair rental value of this land would be \$2,000.00 (see page 46, line 18).

The County Board raised the assessment from

\$4,500.00 to \$65,000.00, solely on the basis of the supposed rental value of \$13,400 a year, erroneously assumed to be paid for the land, the assessment of which is now under review; the true fact being, however, that said rental covered a large amount of personal property and buildings, besides one hundred boats (see page 17, line 30), where Mr. Weaver, the then president of the County Board, made the statement that this park, which had been assessed for a long time for \$4,500.00 was actually returning \$13,000 a year, as a return; and further, on page 18, lines 8, 9 and 10, Mr. Weaver said, in explaining the assessment before the State Board, that is, the raise from \$4500.00 to \$65,000.00:

“We do not feel that an assessment of \$4500 should be permitted to stand indefinitely, with a return such as this park brings.”

The tenant, Michelson, a witness produced by the State Board, and not called by the prosecutor at all (page 79, line 20), said that this was a high rent, and that the business had been decreasing. Of course, he meant the rent of \$13,400 covering not only the land, but buildings, boats, &c.

TESTIMONY AS TO VALUE.

Outside of the testimony given by Mr. Michelson, the one witness produced by the State Board, who testified to a fair market value of \$20,000, for the whole park (page 84, lines 14-16), the only other evidence in the case as to value, is the evidence submitted on behalf of the prosecutor, that is, the appellant. The prosecutor himself (page 24, line 31) testified that \$400.00 an acre would be a fair price for the property, that is, the fair market value.

The local assessor, Evans (page 52, line 10), valued the land at \$250.00 an acre.

Higgins, another witness for the prosecutor (page 55, line 1) placed the value at \$300.00 an acre.

Davis, another witness for the prosecutor (page 62, line 18) placed the value from \$300 to \$350.00 an acre.

Mick, another witness for the prosecutor, put the fair market value of the entire tract at \$400 an acre (page 75, line 6).

ARGUMENT.

POINTS.

1. THE SUPREME COURT FAILED TO REWEIGH THE EVIDENCE AS TO MARKET VALUE BEFORE THE STATE BOARD.

In the *Long Dock Co.* case, 92 Atlantic Reporter, page 439, on page 441, this Court said:

“We have held that it is the duty of the Supreme Court to reweigh the evidence, when satisfied that the valuation of the taxable property for which the tax payer is assessed, is erroneous,”

citing the *Millville Gas Company* case, 84 New Jersey Law, 409.

In the *Long Dock* case, this Court further said:

“It is well recognized, and on the plainest principles of justice, that the judgment even of a court is legally erroneous if there is no evidence to support it, since without evidence the judgment is no better than an arbitrary edict.”

The Court held, in the *Long Dock* case, 92 Atlantic Reporter, page 441, that where there was conflict-

ing evidence, the Court may refuse to interfere with the decision of the State Board, and then went on to say that the present case, namely, the Long Dock case, is very different:

“There is no evidence here to sustain the valuation adopted by the Board. All the evidence is for a valuation many hundred thousand dollars lower. In this situation there is presented the very case of ‘palpable error’ in the valuation to which Chief Justice Beasley referred.”

That is exactly what we contend for in this present case.

A. If the Supreme Court had reweighed the evidence before the State Board, they would have found, as to market value, simply the evidence of the one witness produced by the State Board, who fixed a valuation of \$20,000.00, and the assessment could certainly not have exceeded that amount.

B. If the assessment, however, was to be considered on an acreage valuation, then the only testimony submitted was that on behalf of the prosecutor, that is, the appellant, and the very highest valuation of any witness was \$400.00 an acre.

Now, there was some contention below about the acreage, and the State Board found that there were thirty-three acres instead of twenty acres. We do not think there was any legal evidence to support this finding, but let us assume that there were thirty-three acres. Then the highest valuation at \$400 an acre would have been \$13,200.00.

The State Board, in its judgment (page 100, lines 8, 9 and 10) specifically referred to the increased acreage basing its affirmance, at least in part, on this finding.

This was certainly erroneous because it must have

escaped the attention of the State Board that even if the acreage were thirty-three acres, it could not have raised the assessment, under the only acreage evidence in the case, beyond \$13,200.00.

It is not enough to say that the clear weight of the evidence was in favor of the appellant. We can go further.

2. NO EVIDENCE BELOW TO SUPPORT ASSESSMENT.

There was no evidence on the other side. Not a single line as to valuation, and there was no evidence of value at all, except that produced by the prosecutor as to acreage, beyond that found in the testimony of Michelson, the witness subpoenaed and produced by the State Board itself, or by the County Board before the State Board, who testified to a fair market value of \$20,000 for the whole park project. So that under any view of the case, as to valuation, the highest possible assessment that could have been legally affirmed, on the record of this case, was \$20,000, and not \$65,000.

We conclude, therefore, that the Supreme Court failed in its duty to reweigh the only evidence in the case as to value. If the Supreme Court had taken this evidence and reweighed it, it necessarily must have found that there was no evidence in the case below to warrant the affirmance of the assessment made by the County Board.

AFFIRMANCE BELOW AN ARBITRARY EDICT.

Therefore, the judgment of the Supreme Court, as well as the judgment of the State Board, was a mere arbitrary edict, without any support as far

as the record in this case is concerned. There was no conflict of any kind. There is no evidence on the other side, but if there had been a conflict, and it was a question of weighing, in the scales of justice, which side had the weight of the argument, then it would have been the duty of the Supreme Court to have found, for the appellant.

3. INCOME NOT PROPER BASIS OF VALUE.

The Court below, as well as the State Board, committed legal error in considering income or rental value as the chief criterion of valuation for the purpose of taxation. It may be claimed, on behalf of the defendant, that the rental value as proved in the case below, is sufficient support for the valuation made by the County Board, and affirmed in this case, for the land in question.

Manifestly, as we have shown, that was the view of the County Board, and also the view of the State Board. The president of the County Board clearly indicated in discussing the case before the State Board, that the sole and only moving cause in inducing the County Board to raise the assessment from \$4500 to \$65,000 was the fact that it had been brought to the attention of the County Board that this property was renting for \$13,000 a year (see page 17, line 30; also page 18, lines 9 and 10).

The State Board was much impressed with this contention, and they evidently, honestly but very erroneously, assumed that the alleged high rent of \$13,400 for this property was a justification for increasing the assessment from \$4500 to \$65,000 (see pages 83 and 84).

4. ERROR OF LAW AND FACT AS TO INCOME.

The State Board was not only in error, as a matter of *law*, in affirming this assessment but they were also in error, as a matter of *fact*, as shown by the clear weight of the evidence.

Because, in reference to this question of land, there was absolutely no evidence in the case below, to warrant the assumption that the property in question produced a rent of \$13,400, or had an annual rental value of that sum. The undisputed and uncontradicted evidence is that this \$13,400 rental covered not only the land in question, but boats, buildings, apparatus, dance halls, &c

The uncontradicted, sole, and only evidence, with reference to the rental value of this particular land, the assessment of which is under review, is found on page 46, lines 17, 18 and 19, namely, \$2,000 a year. There is not a line of evidence in the case to contradict this testimony. In fact, every bit of the testimony clearly shows that the rental of \$13,400 a year, did not apply to the property in question at all.

The Supreme Court could not possibly have weighed or reweighed this evidence. The State Board was absolutely in error about this particular fact.

But the Supreme Court, as well as the State Board, was also in error in considering income or rental value as the chief criterion of valuation. That it must have so considered this highly exaggerated and erroneous rental value is plain from the mere reading of the case.

5. ASSESSMENT GROSSLY EXCESSIVE.

It was this \$13,400 value that was mentioned, not only by the County Board, but by the State Board, and it must have been considered by the Supreme Court, because there is absolutely no other evidence in the case in any way related to valuation, which would support any valuation in excess of \$20,000.00, and on the clear weight of the evidence, there is no testimony to support a valuation in excess of \$13,200.

LAW.

In *Hurd v. Cook*, 60 New Jersey Law, 70, at page 71, our Court said, referring to income

“These adventitious circumstances are simply adjuncts for ascertaining the true value by which the taxes are to be laid. But income of itself is no criterion for an assessor in making a valuation for the purpose of taxation,”

citing *State v. Jersey City*, 24 N. J. Law, 108, 118, where it was held:

“Income is not the criterion of valuation for the purpose of taxation,”

citing also *State v. Randolph*, 25 New Jersey Law, 427, 429, 430 and 431.

In 22 *Corpus Juris*, page 181, note 77; *De Freitas v. Suisun City*, 149 Pacific, 553, the Court said:

“Gross income does not determine value. It might all be used up in expenses, in which case, upon the theory proposed, the land would be worthless, although its actual market value

might be considerable. * * * The amount of actual net revenue does not determine the value of land in every case. The revenue would vary according to the industry, skill, and wisdom of the person cultivating the land. * * * The actual market value is the thing to be determined, and while net revenue should be considered, it does not in general furnish a conclusive test of such market value."

RENTAL VALUE AS AN ELEMENT.

In *Keeler v. Tindall*, 36 New Jersey Law, 1872, page 97, at page 100, it appears that the objection to the assessments was made on the ground that they were excessive and illegal, and based upon the amount of the yearly rental of the properties assessed, and not upon the full and actual value thereof, as required by law.

This case was afterwards cited in 60 New Jersey Law, page 71, as holding:

"That the yearly rental may be taken into consideration as an element in the ascertainment of true value, where the property is so situated that the yearly rental reflects upon the true value."

"Income is not the criterion of valuation for the purpose of taxation."

State v. Randolph, 25 New Jersey Law, 427, 429, 430, 431.

There the Court said:

"The income is not the criterion,"

and also

"No one of the witnesses testified that, in his

opinion, these lands are not worth the sum at which the assessor valued them, nor has any one fixed any precise value, &c."

In the case of *Hurd v. Cook*, 60 N. J. Law, above cited, page 70, at page 72, the Court noted that several expert witnesses testified with respect to the value of the lands, and that against this testimony, no other with respect to value was produced on the part of the public authorities.

The Court held that the assessment should be amended to conform to the sworn valuation, as testified to by the experts. The assessor had testified that he based his valuation on income. The assessor's valuation was \$62,500.00, and the experts' valuation was \$25,000.00, which latter value was accepted by the Court.

In 37 *Cyc.*, under Taxation, page 1011, the authorities seem to hold:

"That the land must be assessed at its fair market value, which would be the price it would bring at a fair private sale, between parties dealing on fair terms. In fixing this value, the assessor should take into consideration all the different elements and value, location, &c., the uses to which the land may be put, but not merely conjectural or speculative elements."

The text writer further says:

"In case of business property, its income or earning capacity as an investment, is a fair test of value,"

citing some New York cases, amongst others, 156 New York, 678, taking up 25 New York Appellate Division, 432; 49 New York Supplement, 546; but

this is not the law of the State of New Jersey, as shown by the *Hurd v. Cook* case and others.

But, in any event, the text writer merely says that income is one of the tests. Perhaps the clearest idea is given in 22 *Corpus Juris*, page 181, note 77, at the bottom of the page, *De Freitas v. Suisun City*, 170 Cal. 263, 265, 266; 149 Pacific, 553, where the Court said:

“Gross income does not determine value. It might all be used up in expenses, in which case, upon the theory proposed, the land would be worthless, although its actual market value might be considerable. * * * The amount of actual net revenue does not determine the value of land in every case. The revenue would vary according to the industry, skill and wisdom of the person cultivating the land. * * * The actual market value is the thing to be determined, and while net revenue should be considered, it does not in general furnish a conclusive test of such market value.”

BUILT FOR A PECULIAR PURPOSE.

Again, in *Lawyers' Reports Annotated*, 1916 C., page 534, note 17, citing another case, the Court said:

“The rule of valuation for taxation, based upon a relation to the rental value of the property, is just enough when applied to ordinary commercial property, built and adapted for common and ordinary commercial purposes, and with a view to occupation or rental for such purposes. But so far as this property is concerned, it was not constructed for such (commercial) purposes. *It was built for the peculiar*

purpose of a cotton exchange, a unique institution, in its nature, exclusive of the existence of any similar one."

That is the case with this park project.

In this Lawyers' Reports Annotated case, 1916 C., the case under the discussion was *Wells Fargo & Company v. Johnson, Treasurer of the State of Dakota*, 1916 C., page 522.

It seems that there was a state statute, requiring the State Board of Assessors to take into consideration the gross earnings of express companies, in fixing values. This provision was declared to be void by the United States Circuit Court of Appeals, April 24, 1914; the Court holding that:

"Notwithstanding this State requirement, the assessments were made in violation of law in that the Board based them upon a certain percentage of the respective amounts paid to the railroad companies for transportation services, instead of founding the assessments on the values."

As the Court said:

"A valuation measured by the selling value in money, the question was whether there was uniform taxation where one taxpayer was assessed on a valuation by its selling value in money, and another on a valuation measured according to earnings, as well as selling value."

The Court held that such assessments could not produce equal and uniform taxation, according to the value in money.

The Court conceded that people of any state, by an express constitutional provision, may authorize

the Legislature to measure the assessable value of taxable property by its gross earnings. But in that state, as in the State of New Jersey, taxes were to be assessed uniformly, according to true value. This decision was affirmed by the Federal Supreme Court, 239 United States, 234, which latter Court held that the administration of the statute by which *gross earnings were made* the principal factor in fixing value for taxation, was in conflict with the provisions of the state constitution.

In that case, it appears the sole guide practically adopted by the State Board, to determine the value, was the gross earnings, while an entirely different method was applied in valuing other *real and personal* property, and this administration of the law clearly violated the State Constitution, whether the statute *properly* administered would have done so or not. This is not in conflict with the general rule that in the assessment of property at *true* value, and in the determination of that value, *net earning capacity is a factor*.

The writer, in 1916, C, Lawyers' Reports Annotated, page 530, says:

"The rule that earnings may be considered in fixing value should not be so extended as in effect to tax the *earning power of the individuals* owning the property, through their personal initiative, skill or judgment; and so it appears that earnings should be connected closely with *selling value* in fixing the value of the property for taxation. It is not simply the fact that the property is or is not at present paying large returns that is to be considered in determining the value for taxation, but the fact that under ordinary efficient management, it would yield a certain net return, or have a certain net earning capacity."

The writer goes on to show that there are certain properties which, because of personal energy and skill of those engaged in its management, yield large returns, and yet the earnings would not be an important consideration in fixing value for taxation, because the *market value* would control the tax valuation. But if there is no *established market valuation*, then the net earning capacity may be an *important consideration* because that element would enter into its selling value; and, in any event, the principle should be recognized that earnings or income is *only one of many elements that may be properly considered in determining its value for taxation*.

This writer also, page 533, calls attention to the fact that it is the earning capacity as designated from *actual* earnings that is the proper element for consideration in fixing values for taxation, citing the case of *State v. Illinois Railroad Company*, 27 Illinois, 64.

Most of the cases hold that earning power should be considered in cases which are ordinary commercial propositions.

On the question of intrinsic value, see 16 *Cyc.*, 1133, at page 1134, where it was held in general, any elements of value not merely speculative, may be shown; and any facts showing restrictions on the use of the premises, would tend to lower the value.

In Black on Taxation, page 294, note 54, citing a number of cases, the text writer says:

“It is quite evident that in determining the market value of a given piece of real property, many elements enter into calculation, such as cost, earning capacity or income, the original cost of acquisition and construction, less wear and tear, *or the cost of reproduction, but no*

one of these can be taken as an absolute standard of value applied universally."

"These adventitious circumstances are simply adjuncts for ascertaining the true value by which taxes are to be laid,"
citing *Hurd v. Cook*, 60 N. J. Law, 70.

In this particular case, it was proved that the rental value was very uncertain, and that it largely depended upon the individual effort of the lessee. In other words, it was a personal proposition rather than a land value proposition (see page 63, lines 17 to 20).

By the stipulation in the case (page 119, line 30), the property, whose assessment is under review, is twenty acres of land. This was later increased by the State Board and found to be thirty-three acres of land. The point is that it was *land* that was assessed and not any buildings or other personal property.

It clearly appears from the whole evidence in the case that the lease in question covered many other things.

CONCLUSION.

A large portion of this land was water and part of it swamp. The only good portion, that is, which could be built upon or used for building purposes, was just about three acres (see bottom of page 43).

The buildings that were originally on the land were sold separately and reconstructed by the tenant (see page 78, line 23). These buildings are all assessed separately, as personal property (see bottom of page 78).

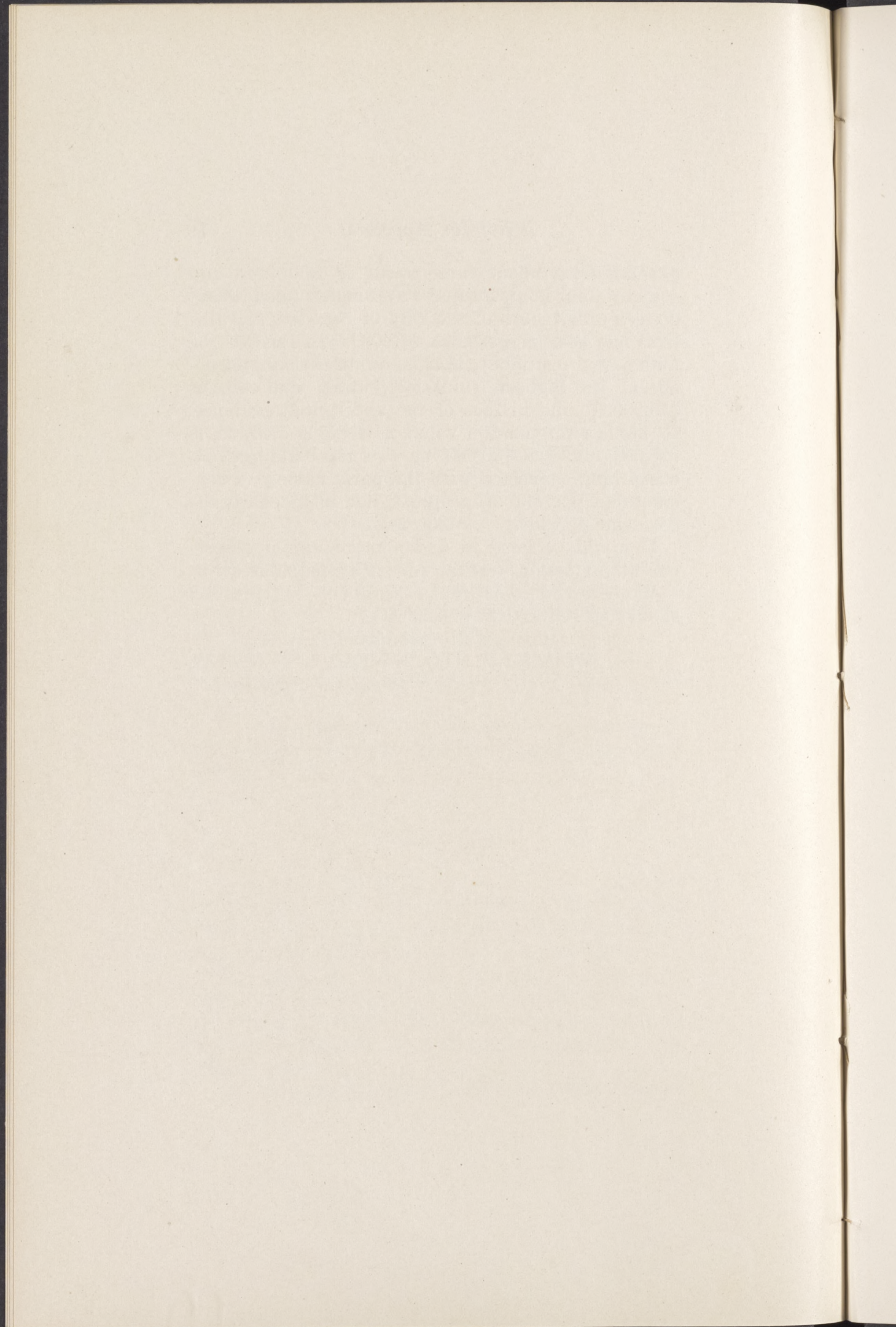
The assessment under review, therefore, covers

a small lake, about three acres of fast land and some swamp land, located in a small suburb about sixteen miles south of the City of Camden, and this land has been assessed at \$65,000. In face of the undisputed testimony, that is, on an acreage proposition, its highest valuation, water and all, is \$13,200.00, and in face of the undisputed evidence, its highest fair market value, as a going concern, is \$20,000, and that \$20,000 includes the buildings and everything connected with the park, namely, a considerable portion of property not included in the assessment, which is under review.

It would be hard to find a more unjust assessment than this or one that was such a palpable error.

We contend that the assessment in question should be reduced to \$13,200.00.

Respectfully submitted,
BLEAKLY, STOCKWELL & BURLING,
Counsel for Appellant.



NEW JERSEY COURT OF ERRORS
AND APPEALS.

WILLARD T. GIBBS,
Appellant,
(*Prosecutor Below*),

v.

STATE BOARD OF TAXES AND ASSESSMENT, and
TOWNSHIP OF CLEMENTON, CAMDEN
COUNTY, NEW JERSEY,
Defendants,
(*Defendants Below*).

APPEAL FROM SUPREME COURT.

BRIEF FOR DEFENDANTS.

The Clementon Park tract of land which is situate in the Township of Clementon, County of Camden, was assessed, as of October 1, 1922, by the local assessor, at the sum of forty-five hundred dollars. Upon the return of the tax list by the local assessor, the Camden County Board of Taxation, pursuant to P. L. 1918, Chap. 236, Sec. 507, after inspecting this property, increased the assessment to sixty-five thousand dollars (p. 119, 122). A formal appeal was filed with the Camden County Board of Taxation against this assessment, which was dismissed

and thereupon an appeal was taken to the State Board of Taxes and Assessment. This Board affirmed the judgment of the Camden County Board of Taxation and found that the tract of land contained thirty-three acres and not twenty acres as claimed by the appellant (p. 98). This park property is one of the most valuable pieces of land in the taxing district of Clementon and the owners of the property have been favored with ridiculously low assessments for years. The Camden County Board of Taxation, before increasing this assessment, gave the question of the value of this property the most careful and diligent scrutiny and arrived at the conclusion, after comparing the property with other properties adjacent thereto, based on sales, and because of the lake, physical conditions and location, that the property was well worth sixty-five thousand dollars.

The property was represented to the assessor and the County Board as containing only twenty acres of land. So far as the assessment is concerned the property is worth sixty-five thousand dollars whether it contains twenty acres or thirty-three acres. The engineers of the State Board demonstrated that the property contained at least thirty-three acres of land. It is perfectly clear that the owners' report of twenty acres was made to deceive and thus keep the assessment as low as possible.

The present rental value of the property is thirteen thousand four hundred dollars per annum (p. 65, 79). We have the judgment of both the County Board and the State Board as to the value of the property and we have the uncontradicted fact that the property rents for thirteen thousand four hundred dollars per annum. While income is not conclusive as to value, it nevertheless is an element which reflects the true value of the property.

A piece of land very close to the part two hundred and twenty-four feet in front by one hundred and eight feet in depth, or about three-fourths of an acre of land, brought eighty-two hundred dollars (32). Another piece of property immediately adjacent to the park, being an old mill property, brought eight thousand dollars. The mill was old and had little or no value. The real value was the land upon which the mill was erected and which was said to be a lot thirty-five by sixty-three feet (p. 34). Thus it will be seen that land close to the park is selling for at least ten thousand dollars an acre. The park contains thirty-three acres. This there can be no question about (p. 98). Therefore, the park is assessed for only two thousand dollars an acre.

The burden of convincing this Court that this assessment is illegal falls on the appellant. Does he sustain this burden? I think not. He tries to escape the effect the rental of thirteen thousand four hundred dollars bears on the value by arguing that the owners only receive four thousand dollars in rental, that being the amount which the owners receive from the Clementon Park Association. The owners cannot escape increased assessments from year to year, if the property increases in value, because they have made a foolish lease for a long period for a low rental. The witnesses produced by the prosecutor before the State Board placed the value of the property at from two hundred and fifty to four hundred dollars per acre (24, 52, 55, 62, 75). None of these witnesses took into consideration the sales of adjacent land, nor would they give the land contained in the park any special value by reason of the fact that it was used as a park and that the physical conditions rendered the land extremely valuable because of the purpose for which it was

adapted. Michaelson stated that he would not want to give more than thirty thousand dollars for the property (82), but this does not help at all because naturally, in the presence of the owners of the property and holding the lease and having buildings on the ground, he would not be inclined to state what, even in his judgment, was the fair value of the property, for if he attempted to purchase he would be met with his own sworn statement as to value.

There is one significant point which indicates that the park has grown in value. The rental has increased from four thousand dollars to thirteen thousand four hundred dollars per annum.

The appellant has not produced any testimony which will convince this Court that the Clementon Park tract is assessed in excess of its true value. He has not met the burden which he assumed, hence the appeal should be dismissed.

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Counsel for Defendants.