STATE LIBRARY
OF
NEW JERSEY

PROPERTY OF
RECEIVED
JUL 1 1929
NEW JERSEY STATE LIBRARY
TRENTON

(5) 1077

INDEX

PAGE

PLEADINGS.

Notice and grounds of Appeal 1

Judgment Record 31

Petition 31

Order Appointing Commissioners 38

Commissioners' Award 46

Commissioners' Award (Supplementary) .. 49

Stipulation 53

Notice of Appeal (Condemnor) 55

Notice of Appeal (Owner) 57

Order Framing Issue 64

Judgment 66

Court's Charge to Jury 855

Condemnor's Exceptions to Charge 868

Appellant's Exceptions to Charge..... 869

Stipulation..... 935

TESTIMONY.

James P. Anderson:

Direct examination 188

Cross-examination 193

New Jersey State Library

PAGE

Further direct examination 196
Further cross-examination 201
Further direct examination 202
Further cross-examination 339
Further direct examination 343
Further cross-examination 358
Further direct examination 364
Further cross-examination 366
Further direct examination 369
Further cross-examination 372
Further direct examination 376
Further cross-examination 451
Further re-direct examination 486
Further re-cross examination 489
Further cross-examination 490
Further re-direct examination 495
Further direct examination 513
Further cross-examination 519

Robert E. Crockett:
Direct examination 524
Cross-examination 532
Re-direct examination 537

Discussion Concerning Closing 804

PAGE

Robert B. Gage:
Direct examination 636
Cross-examination 644
Re-direct examination 646
Re-cross examination 646

Frank F. Gallagher:
Direct examination 765
Cross-examination 772
Further direct examination 776

Henry G. Hershfield:
Direct examination 71
Cross-examination 78
Further direct examination 96

Garrett C. Houman:
Direct examination 674
Cross-examination 689

Henry B. Kummel:
Direct examination 104

Clifford F. McAvoy:
Direct examination 808
Cross-examination 838
Re-direct examination 853

PAGE

Stewart M. Neff:
Direct examination 651
Cross-examination 657
Further direct examination..... 658
Further cross-examination 660

Opening Address on Behalf of Water Supply Commission 71

Felix G. Pittet:
Direct examination 602
Cross-examination 622
Re-direct examination 622
Re-cross examination 632
Further re-direct examination 633
Further re-cross examination 633

Proceedings at Chambers 69

James G. Shaw:
Direct examination 789

Cornelius C. Vermeule:
Direct examination 697
Cross-examination 705
Re-direct examination 716

Jay M. Whitham:
Direct examination 667

PAGE

EXHIBITS.

Appendix 1, Deed, Ryerson to Morris Canal & Banking Co. 871

Appendix 2, Deed, Ryerson to Morris Canal & Banking Co. 878

Appendix 3, Extracts from "North Jersey District Water Supply Commission's Report, 1925" 884

Appendix 4, Permits to Build Dams on Ringwood Property 909

Exhibit O-86, Letters and Reports of Analysis 925

NOTICE AND GROUNDS OF APPEAL.

CIRCUIT COURT OF PASSAIC COUNTY
NEW JERSEY

In the Matter of the Application of North Jersey District Water Supply Commission for the Appointment of Three Commissioners to Fix the Compensation to be Paid for Certain Lands of Ringwood Company, a Corporation of the State of New Jersey, Situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, to be Taken and Condemned for Public Use.

RINGWOOD COMPANY, *Appellant,* v. NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION, *Respondent.*	On Appeal to Court of Errors and Appeals. Notice and grounds of Appeal.

To the North Jersey District Water Supply Commission and to Spaulding Frazer, Esq., its attorney:

Please take notice that the Ringwood Company appeals to the Court of Errors and Appeals in the Last Resort in All Causes from the whole of the judgment entered in the Circuit Court of Passaic County

in the above entitled action, on the following grounds:

Argued under Point XI in Supplement to Brief

1. The Court erroneously denied appellant's motion, made at the beginning of the trial, for leave to open and close in the presentation of evidence and argument to the jury, and, over appellant's objection, permitted respondent to open and close. Appellant duly excepted to this ruling.

2. The Court erroneously overruled appellant's renewed request (made at a time near the close of the case when the Court was planning the closing procedure) to be permitted to make the closing argument to the jury, and appellant duly excepted.

Abandoned

3. Erroneously, and over objection of appellant, the Court permitted one of the respondent's witnesses, Henry G. Hershfield, on direct examination, to testify as to the prices paid by respondent for lands which it had authority to acquire by condemnation proceedings, but which, in fact, it acquired by private purchase; to which ruling of the Court appellant prayed an exception, concerning which, upon its allowance, the Court stated that it would "permit it to be a continuous exception to the admission of such testimony in the progress of the Commission's case" from respondent's said witness, Henry G. Hershfield. The following are specific questions put to said Hershfield (and answers thereto) by said respondent which are involved under this ground of appeal:

"Q. (By Mr. Matthews) When was that sale made?

A. About 4 years ago; maybe 5.

Q. Made to whom?

A. To the Water Supply Commission.

Q. And made by the owner?

A. Made by the owner.

Q. What was the character of that territory?

Mr. Hunt: I will admit for this purpose the character of the territory is substantially the same, but I object to a sale made to the Water Supply Commission on the ground they cannot, at their option, put in a purchase by themselves as evidence against us. We can, on cross-examination. They cannot.

Abandoned

* * * * * * * *

Q. Any other sale?

A. The next one was a piece of property I bought for the Commission from one Josiah Ricker at Midvale.

(By Mr. Hunt): That is objected to on the ground previously stated. That it is within the shed and they have power of eminent domain."

(Many other sales of like character were testified to by this witness, subject to the "continuous exception" allowed by the trial Judge as above set forth.)

Not Pressed

4. The Court erroneously overruled appellant's offer, made during the direct examination of its witness Robert E. Crockett, to put in evidence certain extracts from the official report of the North Jersey District Water Supply Commission, issued in 1925, and appellant duly excepted, said offer and the grounds therefor being stated as follows:

"Mr. Hunt: Now, if the Court please, I beg leave to read from page 287 of the North Jersey District Water Supply Commission's report, dated 1925, table No. 27, or that item set forth in table No. 27 which states the amount of money paid out to June 30th, 1925, for property for the Wanaque Reservoir and aqueduct, including land surveys and other expenses of acquisition—

Not pressed

(Interruption)

Mr. Hunt: And also to read from page 24 of the same volume, table 5, that item which sets forth the estimate as finally adopted and now under construction in the Wanaque project of real estate and land damages for the entire project. The purpose of making this request being that these figures, as I assert, lay a foundation for an argument, and permit the jury, if in its wisdom that should be the proper course, to draw the inference that the Commission has a motive in endeavoring to obtain lands for less than their value, because the expenditures already made in the acquisition of 1734 acres out of 5846 acres, overrun by a certain amount the estimated cost of acquiring the entire 5846."

Argued under Point XII in Supplement to Brief

5. The Court erroneously overruled appellant's demand, made in the course of the direct examination of its witness Henry B. Kummel, for the admission in evidence of certain official papers and documents previously filed with the Department of Conservation and Development of the State of New Jersey and then present in the court room in the custody of said Henry B. Kummel as director of said department and then and there offered in evidence, relating to a permit granted by the State Board of Conservation and Development (predecessor of said department) to appellant to build a dam at Ryerson Furnace on the Wanaque River, and appellant duly excepted. The papers and documents thus excluded, as described in successive demands for their admission, were the following:

First:

"The application of the Ringwood Company for permission to build this dam, dated March 31, 1923.

The certified abstract from the minutes of the Board of Conservation and Development, dated September 13, 1923, approving the plans submitted by the Ringwood Co.

Also the plans thus approved.

Also the specifications accompanying the plans thus approved.

Also a letter by Dr. Kummel—an official letter by Dr. Kummel to the Ringwood Co.—dated May 11, 1923, advising of the approval by the department.

Also a copy of an official letter written by Dr. Kummel to the Ringwood Co., Sept. 14, 1923, advising the approval of the revised plans.

I offer those documents in evidence."

Under Point XII

XII

Second: After objection that to admit only the foregoing constituted "garbling of the record," appellant signified a willingness to put in the entire file brought by Dr. Kummel, and this being objected to by respondent, the foregoing offer was renewed.

Third: Rulings upon the foregoing demands having been made in the absence of the jury, the demands were renewed upon the jury's return to the court room, in the following words:

"Mr. Hunt: Before the jury was excluded I had made a specific demand for the admission in evidence of certain specific papers produced and referred to by Dr. Kummel in connection with the Ryerson Dam, namely, the application of the Ringwood Company, dated March 31, 1923, the specifications accompanying the application, the plans accompanying the application, a certified copy of an abstract from the minutes of the Board of Conservation and Development, dated September 13, 1923, granting approval of the plans, a letter of Dr. Kummel to the Ringwood Company, dated May 11, 1923, advising of the

approval of the plans, another letter from Dr. Kummel to the Ringwood Company, dated September 14, 1923, advising of the approval of revised plans. Objection was made, and as I understand it, my demand for the production of these documents in evidence is overruled. I now beg leave to renew my application to have the documents just mentioned admitted in evidence.

The Court: Motion denied.

Mr. Hunt: And I pray an exception.

The Court: An exception is allowed."

6. The Court erroneously overruled appellant's offer to prove by its witness Henry B. Kummel, the facts embraced within the following offer with respect to four other dams for the building of which the State Board of Conservation and Development had granted permission to appellant prior to the commencement of this condemnation proceeding, and appellant duly excepted. The proof thus offered and excluded was as follows:

"Mr. Hunt: Now, if the Court please, I offer to prove by this witness with respect to each of the four dams he has just mentioned, namely, the Lower Cupsaw Dam on the Cupsaw Brook, the Cupsaw Dam on the Cupsaw Brook above the lower one, the Carleton Dam on Cupsaw Brook, and the Wheeler Dam on the Wanaque River, first, their respective locations on the ground, second, the elevation above sea level of the water in the stream at the location of the respective dams, third, the elevation above sea level of the spillway of each of the dams respectively, fourth, the area flowed by each of the dams respectively.

I assert this evidence to have a material bearing upon the question whether any parts of the

Argued under Point XII in Supplement to Brief

land under condemnation a
to the building of dams, w
has a bearing upon the va
condemnation, and I claim
the owner to show these f

7. The following question p
witness Dr. Henry B. Kumme
tion, was erroneously overrule
excepted, namely:

"Q. What is the date
tion made by the Ringwoo
was granted by the State?

8. The following question p
witness James P. Anderson (
ously shown to be a qualified e
ination, was erroneously ove
duly excepted, namely:

"Q. Mr. Anderson, wo
Ryerson right by the Rin
any substantial amount
the Wanaque River in its
24 hours?"

9. The Court erroneously
offer, made during direct exa
James P. Anderson, to put
copy of a deed from Jacob M
the Morris Canal and Ban
March 27, 1847, and transcri
Deeds, page 322; and appella

10. The Court erroneously
offer, made during the dir
witness, James P. Anderson,
official report of the North

Argued under Point I, Brief p. 26 and in another aspect under Point III Brief p. 38.

Argued under Point I, Brief p. 26, and in another aspect under Point III Brief p. 38

approval of the plans, another letter from Dr. Kummel to the Ringwood Company, dated September 14, 1923, advising of the approval of revised plans. Objection was made, and as I understand it, my demand for the production of these documents in evidence is overruled. I now beg leave to renew my application to have the documents just mentioned admitted in evidence.

The Court: Motion denied.

Mr. Hunt: And I pray an exception.

The Court: An exception is allowed."

6. The Court erroneously overruled appellant's offer to prove by its witness Henry B. Kummel, the facts embraced within the following offer with respect to four other dams for the building of which the State Board of Conservation and Development had granted permission to appellant prior to the commencement of this condemnation proceeding, and appellant duly excepted. The proof thus offered and excluded was as follows:

Argued under Point XII in Supplement to Brief

"Mr. Hunt: Now, if the Court please, I offer to prove by this witness with respect to each of the four dams he has just mentioned, namely, the Lower Cupsaw Dam on the Cupsaw Brook, the Cupsaw Dam on the Cupsaw Brook above the lower one, the Carleton Dam on Cupsaw Brook, and the Wheeler Dam on the Wanaque River, first, their respective locations on the ground, second, the elevation above sea level of the water in the stream at the location of the respective dams, third, the elevation above sea level of the spillway of each of the dams respectively, fourth, the area flowed by each of the dams respectively.

I assert this evidence to have a material bearing upon the question whether any parts of the land under condemnation are naturally adapted to the building of dams, which in turn I assert has a bearing upon the value of the land under condemnation, and I claim it to be the right of the owner to show these facts."

7. The following question put by appellant to its witness Dr. Henry B. Kummel, on direct examination, was erroneously overruled and appellant duly excepted, namely:

Argued under Point XII in Supplement to Brief

"Q. What is the date of the second application made by the Ringwood Company and which was granted by the State?"

8. The following question put by appellant to its witness James P. Anderson (he having been previously shown to be a qualified expert) on direct examination, was erroneously overruled and appellant duly excepted, namely:

Argued under Point I, Brief p. 26, and in another aspect under Point III, Brief p. 38.

"Q. Mr. Anderson, would the exercise of the Ryerson right by the Ringwood Company cause any substantial amount of water to flow down the Wanaque River in its natural channel every 24 hours?"

9. The Court erroneously overruled appellant's offer, made during direct examination of its witness James P. Anderson, to put in evidence a certified copy of a deed from Jacob M. Ryerson and wife to the Morris Canal and Banking Company, dated March 27, 1847, and transcribed from Liber V-3 of Deeds, page 322; and appellant duly excepted.

Argued under Point I, Brief p. 26 and in another aspect under Point III, Brief p. 38.

10. The Court erroneously overruled appellant's offer, made during the direct examination of its witness, James P. Anderson, to put in evidence the official report of the North Jersey District Water

Same question is argued under Point VIII, Brief p. 69

Supply Commission, issued in 1925, which was marked Exhibit O-75 for identification, and appellant duly excepted.

11. The following question put by appellant to its witness, James P. Anderson (he previously having been shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Now suppose that there could be brought down the Wanaque River over and above the water that now comes down it and in such regulated flow throughout the 24 hours as the Ringwood Company might desire, a quantity of water sufficient, together with the natural flow of the intermediate streams between Greenwood Lake and the site of the old Ryerson Forge, that you pointed out on Exhibit O-14 a few days ago, for all the necessary purposes of a forge with two fires and a sawmill with one saw, at the site of Ryerson's Long Pond forge, as it existed in 1837, and as was pointed out by you the other day on O-14; would or would not that fact add to the amount of water power that could be produced in the Ringwood property at the site of the Ryerson Furnace where that concrete dam mentioned in your previous question now stands?"

12. Immediately after the overruling of the question stated in the ground of appeal (No. 11) just preceding this, the Court erroneously overruled a renewed offer by appellant to put in evidence the certified copy of the deed from Jacob M. Ryerson and wife to the Morris Canal and Banking Company, dated March 27, 1837, and a further offer to put in evidence another deed from Jacob M. Ryerson, et al.

Argued under Point XII in Supplement to Brief

to the Morris Canal Compar
date, which offers were made
the reasons following, and to t
appellant duly excepted, nam

"Mr. Hunt: Will your
make my offer in a little
there should have been a
tion? I renew my offer o
the deed from Jacob M.
the Morris Canal & Ban
the 27th day of March, 18
Jacob M. Ryerson and
Canal & Banking Compar
of March, 1837, they both
I will add to the descripti
it is transcribed from Lib
322, and the second one,
from Liber V-3 of Deeds,
offer of these deeds upo
have a right to show the
deeds and which today b
the benefit of the Ringw
of the fact that by the e
the Ringwood Company c
of the concrete dam—

(Interruption)

Mr. Hunt: ——at the si
standing on the lands of t
within the taking, a few
the Hook Road, an amou
substantially greater tha
be produced without the
as to materially and su
value of the land taken."

13. The Court erroneously
matters of fact embraced wit

Argued under Point I, Brief p. 26 and in another aspect under Point III, Brief p. 38

Supply Commission, issued in 1925, which was marked Exhibit O-75 for identification, and appellant duly excepted.

11. The following question put by appellant to its witness, James P. Anderson (he previously having been shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Now suppose that there could be brought down the Wanaque River over and above the water that now comes down it and in such regulated flow throughout the 24 hours as the Ringwood Company might desire, a quantity of water sufficient, together with the natural flow of the intermediate streams between Greenwood Lake and the site of the old Ryerson Forge, that you pointed out on Exhibit O-14 a few days ago, for all the necessary purposes of a forge with two fires and a sawmill with one saw, at the site of Ryerson's Long Pond forge, as it existed in 1837, and as was pointed out by you the other day on O-14; would or would not that fact add to the amount of water power that could be produced in the Ringwood property at the site of the Ryerson Furnace where that concrete dam mentioned in your previous question now stands?"

12. Immediately after the overruling of the question stated in the ground of appeal (No. 11) just preceding this, the Court erroneously overruled a renewed offer by appellant to put in evidence the certified copy of the deed from Jacob M. Ryerson and wife to the Morris Canal and Banking Company, dated March 27, 1837, and a further offer to put in evidence another deed from Jacob M. Ryerson, et al.

Argued under Point XII in Supplement to Brief

to the Morris Canal Company, bearing the same date, which offers were made in the words and for the reasons following, and to the overruling of which appellant duly excepted, namely:

"Mr. Hunt: Will your Honor permit me to make my offer in a little different form, in case there should have been any defect in my question? I renew my offer of the certified copy of the deed from Jacob M. Ryerson and wife to the Morris Canal & Banking Company, dated the 27th day of March, 1837, and the deed from Jacob M. Ryerson and others to the Morris Canal & Banking Company, dated the 27th day of March, 1837, they both bearing the same date, I will add to the description of the first one that it is transcribed from Liber V-3 of Deeds, page 322, and the second one, that it is transcribed from Liber V-3 of Deeds, page 317. I renew the offer of these deeds upon the ground that we have a right to show the rights created by those deeds and which today belong to and inure to the benefit of the Ringwood Company, because of the fact that by the exercise of those rights the Ringwood Company could develop at the site of the concrete dam—

(Interruption)

Mr. Hunt: ——at the site of the concrete dam standing on the lands of the Ringwood Company within the taking, a few hundred feet north of the Hook Road, an amount of water power so substantially greater than the amount that can be produced without the exercise of this right as to materially and substantially affect the value of the land taken."

13. The Court erroneously excluded from evidence matters of fact embraced within the following offer

Argued under Point III Brief p. 38

of proof made by appellant during the direct examination of its witness, Jay M. Whitham (he previously having been shown to be a qualified expert, competent to testify concerning the said matter), and appellant duly excepted, viz:

"Mr. Hunt: This is another effort, your Honor, in another manner and by means of another witness, to get into the evidence in this case the so-called Ryerson reservation. I thought that I might have failed in stating the matter clearly enough to enable the Court to see that that is a right which the land owner is properly entitled to get before the jury. The point of the matter is this——

(Interruption)

Mr. Hunt: The point of the matter is this: This property is being taken for water supply purposes, (and) one of the uses in respect of which we may undertake to prove this (its) value is that particular use. Its value for that use depends in part, among other things, on the quantity of water passing through the premises, and on the question whether any additional quantity drawn from storage off the premises can be made to pass through the premises. I assert, that in those respects there are facts which tend to greatly increase the value of our property for water supply purposes, and I beg leave to offer them by this witness."

14. The Court erroneously excluded from evidence matters of fact embraced within the following offer of proof made by appellant during the direct examination of its witness, Jay M. Whitham (he previously having been shown to be a qualified expert, competent to testify concerning the said matter), and appellant duly excepted, viz:

"Mr. Hunt: By this witness who I offer to prove possesses the requisite expert qualifications, I offer and request the privilege of showing the amount of power necessary to operate the machinery mentioned in the Ryerson reservation set forth in the deed marked Exhibit O-41 for identification, and the quantity of water which would be required under the head existing at the date of said deed, 1837, and still existing to operate said machinery expressed in terms of cubic feet per second, and gallons per 24 hours. By this witness I offer further to prove the quantity of power which by the exercise of the right created or reserved by the said deed, O-41 for identification, could be produced on the lands being condemned, and on other lands of the Ringwood Company upon which, by reason of this taking, it becomes impossible to produce as much power, or to produce it as economically. I also offer this witness to prove the facts before recited for the purpose of laying—and this is a most important phase of my offer—for the purpose of laying a necessary and proper foundation for testimony hereafter to be given by other duly qualified experts hereafter to be called to the effect that the value for water supply purposes of the lands being taken is substantially enhanced by reason of the Ringwood Company possessing, as a legal appurtenance to the lands being taken or to certain parts thereof, the right created by said reservation in the deed above mentioned; and to prove that this taking prevents the Ringwood Company from ever realizing on or in connection with any part of its lands either within or without the taking such enhanced value for water supply purposes given to its lands by the said

right or reservation contained in said deed, for which reasons I respectfully submit the Ringwood Company is entitled to prove and recover in this proceeding the enhanced value which said right gives to the lands being taken, and the damages which this taking does to its remaining lands by rendering the exercise of the said right in or on said land less productive, less useful, and less beneficial than if the taking had not occurred. That states the purpose of my offer."

The foregoing offer having been objected to upon grounds stated as follows:

"for the reason that the so-called Ryerson right relates to its exercise to a portion of the lands of the Ringwood Company not contemplated within the taking lines and is therefore in no respect interfered with by the present proceedings."

The offer was renewed and the reasons for it stated in the following words:

"Mr. Hunt: It was for that reason, your Honor, if I may say, that I produced the additional witness and made the additional tender. I thought I had not made it plain before that this taking does interfere with the use upon the lands being taken of the water secured to us by this reservation which, if employed at the old site mentioned in the reservation must, in the course of nature and by the requirement of law flow on down the river through the entire extent of the lands being taken."

Argued under Point IV, Brief p. 45.

15. The following question put by appellant to its witness, Cornelius C. Vermeule, on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Mr. Vermeule, do you know for how much of the daily supply to be produced at the Wanaque Reservoir the City of Newark has contracted?"

16. The question embraced in ground of appeal No. 15 having been objected to as immaterial, and the Court having asked appellant's counsel concerning the same "What is the materiality," appellant stated the materiality thereof and offered to prove certain other facts having relation to the facts embraced in said question, and the Court overruled said offers and appellant duly excepted, the offers overruled being in the following words:

Argued under Point IV Brief p. 45.

"Mr. Hunt: The materiality is this, your Honor, by this question and the question which I withdrew and would put again after this one, if allowed, I offer to prove by this witness that Newark has contracted to take a certain very large portion of the whole daily flow of the Wanaque Reservoir that is being built throughout the whole time that that reservoir remains in existence and in operation.

I offer further to prove that Newark is now selling water at the rate of ——

Mr. Frazer: I object.

Mr. Hunt: —— many millions of gallons to other municipalities in this State.

I offer to show that the difference between the price at which Newark will get water from the Wanaque and the price at which it sells it to these other municipalities, is a sum sufficient to yield a very high return on Newark's investment in Wanaque water, to give Newark a profit which it is wholly unjust to allow anybody to have at the expense of this owner through tak-

ing his land at the low price which has been offered here. I think that when ——"

(Opposing counsel interrupts with an objection, argument ensues, Court sustains objection and grants exception.)

Argued under Point IV, Brief p. 45

17. The following question put by appellant to its witness, Cornelius C. Vermeule, in direct examination was erroneously overruled and appellant duly excepted:

"Q. Mr. Vermeule, have you any knowledge concerning any contracts already entered into by the City of Newark to sell and deliver to any other municipality water which Newark is to get from this Wanaque Reservoir beginning with the time of the delivery of the water from the Wanaque Reservoir?"

Argued under Point V, Brief p. 50.

18. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert) on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. What in your opinion was the value of the property being taken, on the 19th of March, 1925, in the state and condition in which it then was?"

Argued under Point V, Brief p. 50.

19. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert) on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. What in your opinion was the market value of the property being taken, on the 19th of March, 1925, in the state and condition in which it then was?"

Argued under Point V Brief p. 50.

20. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert) on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Mr. Vermeule, having regard to the availability of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes, what was its value in the market on March 19, 1925, in the condition in which it then was?"

Argued under Point VI Brief p. 57

21. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert) on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Assuming that there were no North Jersey District Water Supply Commission in existence, and no condemnation proceeding under way, would there or would there not be a demand for these lands for water supply purposes from corporations or municipalities having a right to develop water supplies?"

(This question having been put in the absence of the jury, was put a second time when the jury was recalled.)

Argued under Point VI Brief p. 57

22. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert) on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Does or does not the value of the 2354 acres under condemnation for water supply purposes arise from or depend upon the fact that the North Jersey District Water Supply Com-

mission had undertaken the construction of the Wanaque Reservoir?"

Argued under Point VI, Brief p. 57

23. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Where does that demand exist?"

Argued under Point VI, Brief p. 57.

24. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. State what, if any, chartered water companies already possessing the right to divert water and the right to furnish public water supplies have plants so situated with regard to the property under condemnation (and) have such a demand upon them for the furnishing of additional supplies of water as to make them probable purchasers of the property under condemnation for water supply purposes?"

Argued under Point VI, Brief p. 57

25. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. State what, if any, chartered water companies already possessing the right to divert water and the right to furnish public water supplies have plants so situated with regard to the property under condemnation (and) have such a demand upon them for the furnishing of additional supplies of water as to make them pur-

chasers of the property und
water supply purposes?"

26. The following question pu
witness, Cornelius C. Vermeule
viously shown to be a qualifie
examination, was erroneously
lant duly excepted, namely:

"Q. Mr. Vermeule, at
places in the State of New J
equal in distance to the site
could there be produced
water approximately equ
quality to that which will
Wanaque Reservoir?"

Argued under Point V Brief p. 50, along with grounds 18, 19 & 20.

Bf. p. 93

Bf. p. 93

27. The following question
its witness, Cornelius C. Verm
previously shown to be a qualif
examination, was erroneously
lant duly excepted, namely:

"Q. After the developm
project, where else withi
same distance of Newark
being served by the North J
Supply Commission in the
there be produced a wate
mately the same quantity
afforded by the Wanaque

Bf. p. 94

28. The following question
its witness, Cornelius C. Verm
previously shown to be a qualif
examination, was erroneously
lant duly excepted, namely:

"Q. After the developm
supply and the developmer

Bf. p. 94

mission had undertaken the construction of the Wanaque Reservoir?"

Argued under Point VI, Brief p. 57

23. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Where does that demand exist?"

Argued under Point VI, Brief p. 57.

24. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. State what, if any, chartered water companies already possessing the right to divert water and the right to furnish public water supplies have plants so situated with regard to the property under condemnation (and) have such a demand upon them for the furnishing of additional supplies of water as to make them probable purchasers of the property under condemnation for water supply purposes?"

Argued under Point VI, Brief p. 57

25. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. State what, if any, chartered water companies already possessing the right to divert water and the right to furnish public water supplies have plants so situated with regard to the property under condemnation (and) have such a demand upon them for the furnishing of additional supplies of water as to make them purchasers of the property under condemnation for water supply purposes?"

Argued together under Point VII. Brief p. 66.

26. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. Mr. Vermeule, at what other place or places in the State of New Jersey approximately equal in distance to the site of the Wanaque Dam could there be produced a supply of potable water approximately equal in quantity and quality to that which will be produced in the Wanaque Reservoir?"

27. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. After the development of the Wanaque project, where else within approximately the same distance of Newark and the other cities being served by the North Jersey District Water Supply Commission in the Wanaque project, can there be produced a water supply of approximately the same quantity and quality as that afforded by the Wanaque project?"

28. The following question put by appellant to its witness, Cornelius C. Vermeule (he having been previously shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, namely:

"Q. After the development of the Wanaque supply and the development, if that ever should

occur, of a water supply project in the Ramapo Valley, where next would Newark and the other cities served by the North Jersey District Water Supply Commission have to turn for a further supply of water?''

29. Testimony to be given by Robert E. Horton and Clyde L. Potts, duly qualified experts, embraced in the following offers of proof, tendered by appellant, was erroneously excluded and appellant duly excepted, namely:

''Mr. Hunt: I can, perhaps, save time by making an offer. I offer Mr. Robert E. Horton, of Albany, New York, and Mr. Clyde L. Potts, of Morristown, New Jersey, and to qualify them as expert hydraulic and water supply engineers, duly qualified to testify concerning the value of property for water supply purposes, and I offer to prove by them the value of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes in the condition in which it was on March 19, 1925.''

Argued under Point V Brief p. 50, along with grounds 18, 19 & 20.

30. Testimony to be given by Robert E. Horton, duly qualified expert, embraced in the following offer of proof, tendered by appellant, was erroneously excluded and appellant duly excepted, namely:

''I would propose also to prove by Mr. Horton the actual sale of a number of properties for water supply purposes with a view to qualifying him to testify concerning the value of this property under condemnation on March 19th, 1925, in the condition in which it then was, but having regard to the adaptability that it possesses for being used for water supply proposes.''

31. The Court errone
offer, made during the d
ness, Robert E. Crockett
tire official report of the
Supply Commission, iss
duly excepted.

Argued under Point VIII Brief p. 69.

32. The Court errone
offer made during appel
said Robert E. Crockett,
report of said North J
ply Commission, issued i
as are pertinent to the
and appellant duly exce
purposes thereof being
words:

''I offer the book
of it which are per
the purpose of sho
the New Jersey Di
mission is with resp
trict or the commu
taking of steps imm
future for the prov
plies than the suppl
the Wanaque Reser

Grounds Nos. 35 to 55 inclusive as argued under Point IX, Brief p. 25 -

Precise page where each separate question is discussed is indicated in margin - thus - e.g. 'Bf p. 90'

33. The Court errone
ing offer of a certain p
North Jersey District
made during direct exa
Crockett, and appellant

''Mr. Hunt: I
report for 1925 of
Water Supply Comm
quality and the puri

Bf p. 93

Bf p. 93

Bf p. 94

Bf p. 94

occur, of a water supply project in the Ramapo Valley, where next would Newark and the other cities served by the North Jersey District Water Supply Commission have to turn for a further supply of water?''

29. Testimony to be given by Robert E. Horton and Clyde L. Potts, duly qualified experts, embraced in the following offers of proof, tendered by appellant, was erroneously excluded and appellant duly excepted, namely:

''Mr. Hunt: I can, perhaps, save time by making an offer. I offer Mr. Robert E. Horton, of Albany, New York, and Mr. Clyde L. Potts, of Morristown, New Jersey, and to qualify them as expert hydraulic and water supply engineers, duly qualified to testify concerning the value of property for water supply purposes, and I offer to prove by them the value of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes in the condition in which it was on March 19, 1925.''

30. Testimony to be given by Robert E. Horton, duly qualified expert, embraced in the following offer of proof, tendered by appellant, was erroneously excluded and appellant duly excepted, namely:

''I would propose also to prove by Mr. Horton the actual sale of a number of properties for water supply purposes with a view to qualifying him to testify concerning the value of this property under condemnation on March 19th, 1925, in the condition in which it then was, but having regard to the adaptability that it possesses for being used for water supply proposes.''

Argued under Point V Brief p. 50, along with grounds 18, 19 & 20.

31. The Court erroneously overruled appellant's offer, made during the direct examination of its witness, Robert E. Crockett, to put in evidence the entire official report of the North Jersey District Water Supply Commission, issued in 1925, and appellant duly excepted.

32. The Court erroneously overruled a further offer made during appellant's direct examination of said Robert E. Crockett, to put in evidence the said report of said North Jersey District Water Supply Commission, issued in 1925, or such parts thereof as are pertinent to the purposes stated in the offer, and appellant duly excepted, the said offer and the purposes thereof being stated in the following words:

''I offer the book once more for those parts of it which are pertinent for that purpose, for the purpose of showing what the estimate of the New Jersey District Water Supply Commission is with respect to the needs of the district or the communities served by it for the taking of steps immediately or in the immediate future for the provision of further water supplies than the supply which will be provided by the Wanaque Reservoir.''

33. The Court erroneously overruled the following offer of a certain portion of said report of said North Jersey District Water Supply Commission made during direct examination of said Robert E. Crockett, and appellant duly excepted, namely:

''Mr. Hunt: I also offer that portion of the report for 1925 of the North Jersey District Water Supply Commission which deals with the quality and the purity of the waters of the Wan-

Argued together (and with No. 34 also) under Point VIII Brief p. 69.

aque shed, including the lands under condemnation."

Argued under Point VIII Brief p. 69.

34. The Court erroneously excluded the following question put by appellant to its witness, Robert E. Crockett, concerning said official report of said North Jersey District Water Supply Commission, issued in the year 1925, and appellant duly excepted, namely:

"Captain Crockett, are you able to point me to any place in this report where the Water Supply Commission speaks of the immediate needs there——

(Mr. Frazer: I object to any more)

——for the futher development of water supplies for the district served by the Commission?"

Grounds Nos. 35 to 58 inclusive as argued under Point IX, Brief p. 75

35. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert), on direct examination, was erroneously overruled and appellant duly excepted, viz:

"Q. Now, I ask you whether or not from your inspection at that time the character of the ground was such as to enable you to work it and produce gravel under the most economical circumstances ——"

Bf. p. 90

Precise page where each separate question is discussed is indicated in margin - thus - e.g. "Bf p. 90"

36. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert), on direct examination was erroneously overruled and appellant duly excepted, viz:

"Q. Mr. Neff, can you tell us from your experience and inspection of the Ringwood lands whether those lands are so located as to be useful in the establishment and carrying on of a gravel and sand business?"

Bf. p. 92

37. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert), on direct examination was erroneously overruled and appellant duly excepted, viz:

"Q. Are you familiar with the royalties usually payable for the privilege of digging sand and gravel from a deposit of this kind?"

Bf. p 93

38. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert) on direct examination was erroneously overruled and appellant duly excepted, viz.:

"Can you tell us from your experience in the sand and gravel business and your inspection of various sand and gravel plants, what that sand in the Ringwood gravel lands is worth per cubic yard as it stands on the property?"

Bf. p. 93

39. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert), on direct examination was erroneously overruled and appellant duly excepted, viz.:

"Q. Assuming that the jury would find that there are approximately 22,000,000 cubic yards of sand and gravel upon this property, what would you say that the property was worth?"

Bf. p. 94

40. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert), on direct examina-

Bf. p. 94

tion was erroneously overruled and appellant duly excepted, viz.:

"Q. I would ask you, paying no regard whatever to any other part of the property than the 450 acres of land on which the gravel deposits are, and if it should be found as a fact by the jury that there are 22,000,000 cubic yards of sand and gravel upon the property, what would you say that the property was worth?"

41. The following question put by appellant to its witness, Stewart M. Neff (he previously having been shown to be a qualified expert), on direct examination was erroneously overruled and appellant duly excepted, viz.:

Bf. p. 95

"Q. I will ask you this further question: Assuming that the 450 acres of land upon which the sand and gravel is shown to be, is of no value whatever, aside from the sand and gravel upon it, what do you say is the value of the property?"

42. The following offer of proof, made by appellant in the direct examination of its witness, Frank F. Gallagher, was erroneously overruled and the evidence offered excluded, and appellant duly excepted, namely:

Bf p. 99

"Mr. Lewis: We will offer to prove the sand and gravel is delivered from Long Island in Newark, at prices which the sand and gravel at Ringwood can undercut in price in the same market."

43. The following offer of proof, made by appellant in the direct examination of its witness, Frank F. Gallagher, was erroneously overruled and the

Bf p. 99

evidence offered excluded, and appellant duly excepted, namely:

"Mr. Lewis: And that there is a volume of a million tons per year from Long Island into Newark."

44. The Court erroneously and over objection of appellant, which duly excepted, ruled that appellant's witness, Frank F. Gallagher, was not qualified to testify as an expert to the value of appellant's sand and gravel-bearing lands taken in this proceeding.

Bf. pp. 97-102

97-102

45. The Court erroneously overruled the following question put by appellant to its witness, Frank F. Gallagher, on direct examination, and appellant duly excepted, namely:

Bf. p. 101

"Q. What in your opinion is the value per acre of the sand and gravel lands, on the 450 acres ——

The Court: Do not answer it.

Q. ——at Ringwood, which you examined?"

46. The Court erroneously overruled the following question put by appellant to its witness, Frank F. Gallagher, on direct examination, and appellant duly excepted, namely:

"Q. I would like, for the sake of the record, and I know your Honor's disposition of it, but I would like to have it: What, in your opinion, is the value of the sand and gravel on the lands at Ringwood?"

47. The Court erroneously overruled the following question put by appellant to its witness, Frank F. Gallagher, on direct examination, and appellant duly excepted, namely:

46 and 47 Not Pressed

"Q. What price can be obtained in the market at Newark for a cubic yard of the sand and gravel on the lands at Ringwood?"

48. The Court erroneously overruled the following question put by appellant to its witness, Frank F. Gallagher, on direct examination, and appellant duly excepted, namely:

"Q. How does the percentage of gravel in the lands at Ringwood compare with the percentage of gravel in the lands at Long Island that you have testified to?"

49. The Court erroneously overruled the following question put by appellant to its witness, James G. Shaw (who by previous questions and answers had been shown to be a Long Island gravel producer who shipped 360,000 tons per year of sand and gravel to points on Newark Bay in New Jersey and to be familiar with appellant's sand and gravel lands embraced in this proceeding) in relation to the gravel lands on appellant's property:

"Q. State what the existing conditions on the ground on that property are that have any bearing on the question of whether the production of gravel on those beds can or cannot be accomplished at costs no greater than the production of gravel on Long Island?"

50. The Court erroneously denied appellant's right to put in evidence the matters of fact embraced within the following offer to submit proofs made during the direct examination of appellant's witness, James G. Shaw:

"Mr. Hunt: (After denial that he intended to undertake to show the cost of production of sand and gravel)—But I do submit I have a

right to show, without mentioning any figures at all, whether the conditions on our property are such as to enable the production of sand and gravel there as cheaply as it can be produced on Long Island."

51. The Court erroneously denied appellant's right to put in evidence the matters of fact embraced within the following offer to submit proofs made during the direct examination of appellant's witness, James G. Shaw:

"I submit I further have the right to show whether or not the cost of transporting our gravel to this northern New Jersey market, Newark and the surrounding cities, is or is not greater than the cost of transporting it to the same market from Long Island"——

52. The Court erroneously denied appellant's right to put in evidence the matters of fact embraced within the following offer to submit proofs made during the direct examination of appellant's witness, James G. Shaw:

"(After comment by the Court, including the remark 'And I do not see how we can escape considering railroad rates and other contingencies that as I understand the decisions we are not permitted to go into')— Mr. Hunt: Well, may I put it in this way: There is an existing railroad rate. I am willing to prove it and ready to prove it if you will permit me."

53. The Court erroneously denied appellant's right to put in evidence the matters of fact embraced within the following offer to submit proofs made during the direct examination of appellant's witness, James G. Shaw:

"I do submit I should be permitted to ask what the comparative situation is. Can this gravel be excavated and worked as cheaply as Long Island gravel? Can it be transported to this market as cheaply as Long Island gravel? If he says Yes, then there is a basis for the comparison of value, for the statement of value based upon Long Island prices. If he says No then my gravel case collapses."

54. The Court erroneously overruled the following question put by appellant to its witness, James G. Shaw, on direct examination, and appellant duly excepted, namely:

Bf-p. 108

"Q. State whether or not gravel from the deposits on the property under consideration could be put into Newark Bay market at costs that would enable it to compete with gravel from Long Island coming into that market?"

55. The Court erroneously overruled the following question put by appellant to its witness James G. Shaw, on direct examination (he having previously been shown to be a qualified expert), and appellant duly excepted, namely:

Bf-p. 109

"Q. What in your opinion is the value of the gravel bearing lands as shown on the map exhibit within the lines of this taking?"

Argued under Point X in Supplement to Brief

56. The Court erroneously permitted respondent's witness, Clifford F. McAvoy, on direct examination to testify regarding purchases by himself and others of shares of stock of a corporation owning a property called "Rotten Pond," over an objection made by appellant, which the Court consented might stand as "a general objection to this line of testimony," and appellant duly excepted.

57. Erroneously, and over objection of appellant, which duly excepted to the ruling admitting each question, the Court permitted respondent's witness, Clifford F. McAvoy, on direct examination to make answer to the following questions, each covered by the "general objection" permitted by the Court:

Argued under Point X in Supplement to Brief

(a) "Q. And yourself and your associates own the majority stock of that corporation. What is the corporation called?"

(b) "Q. And what did it consist of?" (The question referring to a property described in the preceding question as the territory known as Rotten Pond.)

(c) "Q. Did you purchase the assets of that corporation? Answer yes or no."

(d) "Q. Did you make an investigation as to what the assets of that corporation were? Answer yes or no."

(e) "Q. Did or did not the assets of that corporation consist of anything else besides lands and buildings thereon?"

(f) "Q. In the year 1924 did or did you not purchase the stock or any part thereof of the Ramapo Park, Inc.?"

(g) "Q. At that time that you purchased the 700 of the thousand shares, did you or did you not cause a search to be made of the title of the property that was the assets of this company?"

(h) "Q. Your counsel had a conference with them, and as a result of that, was there a title search made?"

(i) "Q. Did I understand you to say that you bought 70 per cent of the stock?"

(j) "Q. And since that time have you held the property?"

Point X
Supplement
to
Brief

(k) "Q. Have you, since 1924, acquired any of the other stock of the company?"

(l) "Q. In addition to yourself, Mr. McAvoy, who are the owners of the balance of the stock of that Ramapo Park, Inc.?"

(m) "Q. At the time that you bought the property, Mr. McAvoy, were there any liabilities of any kind against the property?"

(n) "Q. Mr. McAvoy, what did you pay in 1924 for the 70 shares of stock that you bought —70 per cent of the stock?"

(o) "Q. What did you pay for the shares you brought last year in addition?"

(p) "Q. Who were the other stockholders?"

(q) "Q. Then I understand that you have 725 shares out of how many?"

(r) "Q. And that you bought 700 in 1924, and 25 in ——"

(s) "Q. What was the total amount you have paid for the 725 out of a thousand shares?"

58. The Court erroneously overruled the following question put by appellant to respondent's witness, Clifford F. McAvoy, on cross-examination, and appellant duly excepted, namely:

> "Q. Are the conditions of the title of that property of such a character that I can go up there and buy a half an acre and build a bungalow on it?"

59. The Court erroneously overruled the following offer made by appellant during its cross-examination of respondent's witness, Clifford F. McAvoy, to prove by the public records of Passaic County certain material facts respecting the title of said Rotten Pond property, and appellant duly excepted, the offer being as follows:

> "Mr. Hunt: Moreover, your Honor, upon the theory that this Rotten Pond property was offered as a comparable property to that under condemnation as of the date of March 19th, 1925, I now offer the deed contained in Book Q-31, Passaic County, showing the existence of restrictions with regard to the Rotten Pond property of such a character that the jury would be permitted to draw the inference that the restrictions served to depreciate the value of the property."

Point X
Supplement
to
Brief

60. The Court erroneously refused to charge the jury as prayed by appellant in its fifteenth request to charge, and appellant duly excepted, said request being as follows:

> "The jury in determining the fair market value of the property taken in these proceedings should not take into consideration any evidence given on behalf of the condemnors as to what sum of money was paid by Mr. McAvoy, or any one else, for shares of stock in the Ramapo Park Land Company, the company owning the property known as Rotten Pond."

61. The Court erred in charging the jury as follows, and appellant duly excepted, namely:

> "Evidence was given as to Mr. McAvoy's purchase of corporate stock in the company which was the owner of the so-called Rotten Pond tract. Mr. McAvoy testified as to what the assets of the company were, its liabilities, and all the conditions at the time when he purchased the stock. He also testified the price that he paid for the stock, and the number of shares he received, as well as the proportion of the

entire stock issued by the company which he had thus acquired.

This testimony was given for the purpose of showing in effect the market value of that property at that time.

I allowed it as being evidential on that point. You, however, are to give it such weight as you may consider it to have in view of all the testimony given by Mr. McAvoy or anyone else as to the details of that transaction."

Respectfully,

EDGAR W. HUNT,
Attorney for Appellant.

Service of the within Notice and Grounds of Appeal is hereby acknowledged this 30th day of July, 1927.

SPAULDING FRAZER,
Attorney for Respondent.

JUDGMENT RECORD.

IN THE
PASSAIC COUNTY CIRCUIT COURT.

In the matter of the application of North Jersey District Water Supply Commission for the appointment of three commissioners to fix the compensation to be paid for certain lands of Ringwood Company, a corporation of the State of New Jersey, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, to be taken and condemned for public use. } Judgment Record.

The North Jersey District Water Supply Commission presented to the Honorable Charles C. Black, one of the Justices of the Supreme Court of the State of New Jersey the following petition:

To the Honorable Charles C. Black, Justice of the Supreme Court of the State of New Jersey:

The petition of North Jersey District Water Supply Commission respectfully represents:

1. Your petitioner, having power to take land for public use, has determined to acquire certain lands in the Boroughs of Ringwood and Wanaque, in the County of Passaic, pursuant to authority conferred upon your petitioner by an Act of the Legislature entitled, "An Act authorizing the appointment of dis-

trict boards of water supply commissioners in the water supply districts created by an act entitled 'An act to create two water supply districts in the State of New Jersey, to be known respectively as the North Jersey Water Supply District and the South Jersey Water Supply District,' and defining the powers, duties, terms of office and compensation of such commissioners; and providing for the obtaining, maintenance and operation of water supplies or new or additional water supplies by said commissioners as agents of and by contract with municipal and other corporations in their respective water districts, and further providing for the raising, collecting and expenditure of the moneys necessary therefor," approved March 16, 1916, and the acts amendatory thereof and supplementary thereto, which lands are hereinafter more fully described.

2. Petitioner cannot acquire such lands by agreement with the owner thereof for the reason that your petitioner is unable to agree with it as to the fair value of the lands which petitioner has determined to acquire, as aforesaid.

3. At a meeting of North Jersey District Water Supply Commission, held October 29, 1924, it was resolved that the lands and properties hereinafter more specifically described were necessary for the acquisition and construction of the water supply now being acquired and constructed under contract with the City of Newark.

4. Under resolution of North Jersey District Water Supply Commission adopted January 8, 1925, the legal department of the Commission was authorized to proceed with the condemnation of said lands in the event that a tender of the sum of Six

hundred thousand dollars ($600,000) therefor should be refused by the owner thereof.

5. On or about the 27th day of February, 1925, said tender was made on behalf of the North Jersey District Water Supply Commission to said Ringwood Company and a conveyance of said lands requested.

6. Said Ringwood Company refused to accept said tender.

7. Petitioner shows that the said lands are essential to it for the purpose of constructing the Wanaque Reservoir and appurtenances thereto, including the lands to be flooded thereby, the lands necessary for changes in the routes of highways, railroads and pipe lines necessitated by the construction of said reservoir and marginal lands required for access to and proper sanitary control and policing of said reservoir and the lands necessary for the construction of and access to dams and other works appurtenant to said dams and reservoir, in accordance with the provisions of a contract between the City of Newark and said Commission.

8. Said lands and premises are more particularly described as follows:

[Description of land.]

9. Petitioner further shows that Ringwood Company, a Corporation of the State of New Jersey, is, as the records of the County of Passaic show, the true and lawful owner of the lands in question.

10. Your petitioner further shows that the residence of said owner is, as far as the same can be ascertained, as follows:

Borough of Ringwood
Passaic County
New Jersey

Your petitioner therefore prays that your Honor will appoint three disinterested freeholders, residents of the County of Passaic, commissioners to examine and appraise the said lands, and to assess the damages on at least six days' notice to be given to the persons interested in the *in* said property, in the manner as your Honor may direct, and in such order of appointment fix the date on or before which such commissioners shall file their report, and to that end your Honor shall assign by order the time and place for the hearing of this petition before your Honor or before any justice of the Supreme Court, and directing proper notice thereof to be given said owner and persons interested.

NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION
SPAULDING FRAZER,
Attorney.

Dated: March 19, 1925.

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

BERKELEY W. MOORE, being duly sworn according to law, on his oath says:

1. I am the chairman of the North Jersey District Water Supply Commission, the petitioner in the foregoing petition mentioned.

2. I have executed the petition pursuant to the resolution directing the institution of these proceedings, as in said petition set forth.

3. The statements made therein are true according to the best of my knowledge, information and belief.

B. W. MOORE, JR.

Sworn to and subscribed before me this 19th day of March, 1925.

M. E. NOLAN,
(L. S.) *Notary Public, New Jersey.*
Term expires March 10, 1930.

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

ARTHUR H. PRATT, being duly sworn according to law on his oath says:

1. I am chief engineer of North Jersey District Water Supply Commission.

2. The acquisition in fee of the lands in the foregoing petition described is essential to said North Jersey District Water Supply Commission for the purpose of constructing the Wanaque reservoir and appurtenances thereto, including the lands to be flooded thereby, the lands necessary for changes in the routes of highways, railroads and pipe lines necessitated by the construction of said reservoir, and marginal lands required for access to and proper sanitary control and policing of said reservoir and the lands necessary for the construction of and access to dams and other works appurtenant to said dams and reservoir, in accordance with the provisions of a contract between the City of Newark and said commission.

3. The statements made in the foregoing petition are true according to the best of my knowledge, information and belief.

ARTHUR H. PRATT.

Sworn to and subscribed before me this 19th day of March, 1925.

M. E. NOLAN,
(L. S.) *Notary Public, New Jersey.*
Term expires March 10, 1930.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } *ss.*

HENRY G. HERSHFIELD, being duly sworn according to law on his oath says:

1. I am agent for the acquisition of lands mentioned in the foregoing petition for North Jersey District Water Supply Commission.

2. In accordance with resolution of said commission, I did, on the 27th day of February, 1925, tender to the Ringwood Company, the owner mentioned in the foregoing petition, the sum of six hundred thousand dollars ($600,000) for the acquisition of said lands.

3. Said offer was refused by Ringwood Company.

HENRY G. HERSHFIELD.

Sworn to and described before me this 19th day of March 1925.

M. E. NOLAN,
(L. S.) *Notary Public, New Jersey.*
Term expires March 10, 1930.

Which petition was filed on the twenty-fourth day of March, nineteen hundred and twenty-five.

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

Before his Honor, Charles C. Black, Justice of the Supreme Court of the State of New Jersey:

A petition of the North Jersey District Water Supply Commission for the appointment of three commissioners to fix the compensation to be paid for certain lands and property of Ringwood Company, a corporation of the State of New Jersey, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, to be taken and condemned in fee for public use, for the purpose of constructing the Wanaque reservoir and appurtenances thereto, in accordance with the terms of a contract now existing between North Jersey District Water Supply Commission and the City of Newark, having been presented to me, and I having duly considered the same,

It is, on this 21st day of March, 1925, ordered that Saturday, the 4th of April, 1925, at 10:00 o'clock in the forenoon of that day, be assigned and fixed as the time, and the Court House in the City of Paterson, Passaic County, as the place, for the hearing of said petition before me, and that notice thereof be given to the owner and persons interested in the said lands and properties as set forth in the petition, which notice shall be served upon such of the parties interested as reside in this State, either personally or by leaving the same at their residence or principal office in this State, on or before the 24th day of March, instant.

It is further ordered that said petition and this

order be filed in the office of the clerk of the County of Passaic.

CHAS. C. BLACK,
Justice of the Supreme Court.

Which order was filed on the twenty-fourth day of March, nineteen hundred and twenty-five.

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

North Jersey District Water Supply Commission having made application to me by petition in writing to appoint three disinterested freeholders, residents of the County of Passaic, to examine and appraise the lands and property of Ringwood Company mentioned in said petition, and to assess the damages on at least six days' notice to be given to the parties interested in said property in such manner as I may direct, and in such order of appointment to fix the date on or before which such commissioners must file their report; and

I having ordered that Saturday, April 4, 1925, at 10:00 o'clock in the forenoon, should be the time, and the Court House in the City of Paterson and County of Passaic the place for the hearing of said petition before me, and that notice of such hearing be served in accordance with the provisions of said order; and

The hearing now having been had on the date and at the hour and place named in said order and evidence satisfactory to me having been presented that notice has been served as required by said order, and I having heard what was to be said in the matter by the attorney for the petitioner and no objections of the said owner having been heard to the granting of said petition:

It is now, on this 4th day of April, 1925, ordered that the following be appointed, and I do hereby appoint Wayne Dumont, Esq., Albert Comstock, Esq., Garret Van Cleve, Esq., three disinterested freeholders of the County of Passaic, commissioners to examine and appraise the lands and property described in said petition, and to assess the damages to be sustained in the taking and condemning of the said lands and property in fee for the public use of North Jersey District Water Supply Commission for the purposes set forth in said petition and to proceed therein in all respects as is directed in the Act entitled "An Act to Regulate the Ascertainment and Payment of Compensation for Property Condemned or Taken for Public Use (Revision of 1900)" approved March 20, 1900, and acts supplementary thereto and amendatory thereof.

And, it is further ordered that said commissioners give six days notice to each of the persons interested in the lands or property described in said petition of the time and place when and where they will meet and proceed to execute their duties under this appointment.

It is further ordered that said commissioners shall file their report on or before the fifteenth day of July, 1925.

CHAS. C. BLACK,
Justice of the Supreme Court.

Which order was filed on the first day of December, nineteen hundred and twenty-five.

An order having heretofore been entered in the above entitled matter, appointing Wayne Dumont, Garrett Van Cleve and Albert Comstock as commis-

sioners in condemnation, to appraise the value of the lands taken and injuries to the remaining lands, more specifically set forth in the petition for the appointment of said commissioners; and

Said order of appointment having fixed the 10th day of July, 1925, as the day, on or before which the said commissioners should make their report; and it appearing that by reason of the illness of one of said commissioners, proceedings before said commissioners have not been had and that said report cannot be made within the time limited in said order.

It is, on this first day of July, 1925,

Ordered that the time within which said commissioners may file said report be and the same is hereby extended to the first day of August, 1925.

CHAS. C. BLACK,
J. S. C.

I consent to the entry of the within order.
E. W. HUNT,
Attorney for the Owners.
SPAULDING FRAZER,
Attorney for North Jersey District Water Supply Commission.

Which order was filed on the third day of July, nineteen hundred and twenty-five.

An order having heretofore been entered in the above entitled matter, appointing Wayne Dumont, Garrett Van Cleve and Albert Comstock as commissioners in condemnation, to appraise the value of the lands taken and injuries to the remaining lands, more specifically set forth in the petition for the appointment of said commissioners; and

Said order of appointment having fixed the 10th day of July, 1925, as the day on or before which said commissioners should make their report, and the time for the filing of said report having been by order extended to the 1st day of August, 1925, and it now appearing to the Court that said last mentioned date will afford insufficient time for the making and filing of said report,

It is, on this 18th day of July, 1925,

Ordered that the time within which said commissioners may file said report be and the same is hereby extended to the first day of November, 1925.

CHAS. C. BLACK,
J. S. C.

I consent to the entry of the within order.
E. W. HUNT,
Attorney for the Owners.
SPAULDING FRAZER,
Attorney for North Jersey District Water Supply Commission.

Which order was filed on the twenty-first day of July, nineteen hundred and twenty-five.

An order having heretofore been made appointing Wayne Dumont, Garrett Van Cleve and Albert Comstock commissioners to examine and appraise the lands of the said Ringwood Company and to assess damages for the taking thereof by North Jersey District Water Supply Commission, and the time for the making of the report by said commissioners having been extended to November 1, 1925; and it now appearing that owing to the illness of the said Wayne Dumont, one of the commissioners, said commissioners have been unable to take the testimony which the parties hereto desire to submit to said commissioners and that sufficient time does

not remain for the taking of said testimony and the making of said report before the 1st day of November, 1925:

It is, on this twenty-fourth day of Ortober, 1925, on motion of Spaulding Frazer, attorney for North Jersey District Water Supply Commission, ordered that the time within which said commissioners are required to make and file their said report be and the same is hereby extended to the first day of January, 1926.

CHAS. C. BLACK,
J. S. C.

I consent to the entry of the above order.

E. W. HUNT,
Attorney for Ringwood Company.

Which order was filed on the twenty-eighth day of of October, nineteen hundred and twenty-five.

An order having heretofore been made appointing Wayne Dumont, Garrett Van Cleve and Albert Comstock commissioners to examine and appraise the lands of the said Ringwood Company and to assess damages for the taking thereof by North Jersey District Water Supply Commission, and the time for the making of the report by said commissioners having been extended to December 31st, 1925; and the taking of testimony having been commenced but not completed, and it appearing that such testimony cannot be completed within the time so limited for the filing of the report of said commissioners:

It is, on this ninteenth day of December, 1925, on motion of Spaulding Frazer, attorney for North Jersey District Water Supply Commission, ordered

that the time within which said commissioners are required to make and file their said report be and the same is hereby extended to the 1st day of February, 1926.

CHAS. C. BLACK,
J. S. C.

I consent to the entry of the above order.

E. W. HUNT,
Attorney for Ringwood Company.

Which order was filed on the twenty-first day of December, nineteen hundred and twenty-five.

An order having heretofore been made appointing Wayne Dumont, Garrett Van Cleve and Albert Comstock commissioners to examine and appraise the lands of the said Ringwood Company and to assess damages for the taking thereof by North Jersey District Water Supply Commission, and the time for the making of the report by said commissioners having been extended to—; and the taking of testimony having been commenced but not completed, and it appearing that owing to the illness of the said Wayne Dumont, one of the commissioners, such testimony cannot be completed within the time so limited for the filing of the report of said commissioners:

It is, on this twenty-seventh day of January, 1926, on motion of Spaulding Frazer, attorney for North Jersey District Water Supply Commission, ordered that the time within which said commissioners are required to make and file their said report be and the same is hereby extended to the first day of March, 1926.

CHAS. C. BLACK,
Justice of Supreme Court.

I consent to the entry of the above order.
E. W. HUNT,
Attorney for Heitaro Fijaro.

Which order was filed the third day of February, nineteen hundred and twenty-six.

An order having heretofore been entered in the above entitled matter, appointing Wayne Dumont, Garrett Van Cleve and Albert Comstock as commissioners in condemnation, to appraise the value of the lands taken and injuries to the remaining lands, more specifically set forth in the petition for the appointment of said commissioners; and

Said order of appointment having fixed the 10th day of July, 1925, as the day on or before which said commissioners should make their report, and the time for the filing of said report having been by various orders extended to the 1st day of April, 1926, and it now appearing to the Court that said last mentioned date will afford insufficient time for the making and filing of said report.

It is, on this twentieth day of March, 1926,

Ordered, that the time within which said commissioners may file said report be and the same is hereby extended to the 1st day of May, 1926.

I consent to the entry of the within order.
E. W. HUNT,
Attorney for the Owners.
SPAULDING FRAZER,
Attorney for North Jersey District Water Supply Commission.
CHAS. C. BLACK,
J. S. C.

Which order was filed on the thirtieth day of March, nineteen hundred and twenty-six.

An order having heretofore been made appointing Wayne Dumont, Garret Van Cleve and Albert Comstock commissioners to examine and appraise the lands of the said Ringwood Company and to assess damages for the taking thereof by North Jersey District Water Supply Commission, and the time for the making of the report by said commissioners having been extended to May 1, 1926; and the said commissioners having been unable to discharge the duties imposed upon them by said order of appointment within the time therein fixed or within the time fixed by various orders heretofore entered in this proceeding; and it now appearing to the Court that it is necessary that said commissioners should have still further time for the discharge of the duties imposed upon them by said order of appointment:

It is, on this twenty-ninth day of April, 1926, on motion of Spaulding Frazer, attorney for North Jersey District Water Supply Commission, ordered that the time within which said commissioners are required to make and file their said report be and the same is hereby extended to the first day of June, 1926.

CHAS. C. BLACK,
Justice of the Supreme Court.

I consent to the entry of the above order.
E. W. HUNT,
Attorney for Ringwood Company.

Which order was filed on the first day of May, nineteen hundred and twenty-six.

An order having heretofore been made appointing Wayne Dumont, Garret Van Cleve and Albert Comstock commissioners to examine and appraise the lands of the said Ringwood Company and to assess damages for the taking thereof by North Jersey District Water Supply Commission, and the time for the making of the report by said commissioners having been extended to June 1, 1926; and the said commissioners having been unable to discharge the duties imposed upon them by said order of appointment within the time therein fixed or within the time fixed by various orders heretofore entered in this proceeding; and it now appearing to the Court that it is necessary that said commissioners should have still further time for the discharge of the duties imposed upon them by said order of appointment:

It is, on this twenty-ninth day of May, 1926, on motion of Spaulding Frazer, attorney for North Jersey District Water Supply Commission, ordered that the time within which said commissioners are required to make and file their said report be and the same is hereby extended to the first day of July, 1926.

CHAS. C. BLACK,
Justice of the Supreme Court.

I consent to the entry of the above order.

E. W. HUNT,
Attorney for Ringwood Company.

Which order was filed on the second day of June, nineteen hundred and twenty-six.

We, Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners appointed by order

of his Honor, Charles C. Black, a Justice of the Supreme Court of the State of New Jersey, on the application of the North Jersey District Water Supply Commission made in writing by petition to the said Justice, to examine and appraise the lands and real estate and assess the damages which the owner of said lands and real estate (which said owner is hereinafter described) has sustained or will sustain by reason of the taking of said lands and real estate and occupancy thereof by said petitioner for the purpose of constructing a new and additional water supply, in accordance with the provisions of a contract between the cities of Newark, Paterson, Passaic and Clifton, the towns of Montclair, Bloomfield and Kearny and the borough of Glen Ridge and said North Jersey District Water Supply Commission, and whatever we, as said commissioners are by law authorized and required to do under said order, having first taken an oath before a Master in Chancery faithfully and impartially to examine the matter in question and to make a true report according to the best of our skill and understanding;

And it having been proved to our satisfaction that Ringwood Company, the owner of said lands, has been duly notified by at least six days' notice in writing in the manner directed by the order of the said Justice bearing date the 21st day of March, 1925, that said commissioners had fixed the 30th day of November, 1925, at ten o'clock in the forenoon, at the office of the North Jersey District Water Supply Commission, 20 Clinton Street, Newark, New Jersey, to appraise the said lands and real estate, and to make an impartial estimate and assessment of the damages to be sustained by the taking and

occupancy by the said North Jersey District Water Supply Commission for the purposes aforesaid:

And the said North Jersey District Water Supply Commission, the petitioner, and the owner of said lands having been represented before us at the time and place aforesaid and at subsequent hearings at the above mentioned place and at the office of the said North Jersey District Water Supply Commission, 24 Commerce Street, Newark, New Jersey, we did meet and examine said lands, a description of which is contained in said petition; and having heard the said owner of said lands as well as the petitioner, and having fully examined and appraised said lands and fully considered all that was offered before us by the respective parties;

Now, after a full hearing in all said matters pertaining thereto, we have made a just and equitable appraisement of the said tracts of land and real estate and an estimate and assessment of the damages the owner thereof will sustain by the taking of said lands and real estate and we do appraise the said lands, and assess the damages to which said owner is entitled, and which it sustained by reason of the taking and occupancy of the same by the said North Jersey District Water Supply Commission, and we do report as follows:

We do award that the said North Jersey District Water Supply Commission pay to the said Ringwood Company for the lands taken and which are described in the petition filed in this proceeding on the 24th day of March, 1925, as amended, the sum of one million six hundred and eighty-seven thousand three hundred sixty-five 94/100 dollars ($1,687,365.94), as the value of the said lands and damages thereto as aforesaid, everything having been taken into consideration as the statute provides in

arriving at such sum, and which sum includes interest to date.

WAYNE DUMONT,
ALBERT COMSTOCK,
GARRET VAN CLEVE,
Commissioners.

Dated: June 30th, 1926.

Which report and award was filed on the thirtieth day of June, nineteen hundred and twenty-six.

We, Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners appointed by order of his Honor, Charles C. Black, a Justice of the Supreme Court of the State of New Jersey, on the application of the North Jersey District Water Supply Commission made in writing by petition to the said Justice, to examine and appraise the lands and real estate and assess the damages which the owner of said lands and real estate (which said owner is hereinafter described) has sustained or will sustain by reason of the taking of said lands and real estate and occupancy thereof by said petitioner for the purpose of constructing a new and additional water supply, in accordance with the provisions of a contract between the cities of Newark, Paterson, Passaic and Clifton, the towns of Montclair, Bloomfield and Kearny and the borough of Glen Ridge and said North Jersey District Water Supply Commission, and whatever we, as said commissioners, are by law authorized and required to do under said order, having first taken an oath before a Master in Chancery faithfully and impartially to examine the matter in question and to make a true report

according to the best of our skill and understanding;

And it having been proved to our satisfaction that Ringwood Company, the owner of said lands, has been duly notified by at least six days' notice in writing in the manner directed by the order of the said Justice bearing date the 21st day of March, 1925, that said commissioners had fixed the 30th day of November, 1925, at ten o'clock in the forenoon, at the office of the North Jersey District Water Supply Commission, 20 Clinton Street, Newark, New Jersey, to appraise the said lands and real estate, and to make an impartial estimate and assessment of the damages to be sustained by the taking and occupancy by the said North Jersey District Water Supply Commission for the purposes aforesaid;

And the said North Jersey District Water Supply Commission, the petitioner, and the owner of said lands having been represented before us at the time and place aforesaid and at subsequent hearings at the above mentioned place and at the office of the said North Jersey District Water Supply Commission, 24 Commerce Street, Newark, New Jersey, we did meet and examine said lands, a description of which is contained in said petition; and having heard the said owner of said lands as well as the petitioner and having fully examined and appraised said lands and fully considered all that was offered before us by the respective parties;

Now, after a full hearing in all said matters pertaining thereto, we have made a just and equitable appraisement of the said tracts of land and real estate and an estimate and assessment of the damages the owner thereof will sustain by the taking of said lands and real estate; and we do appraise the

said lands, and assess the damages to which said owner is entitled, and which it sustained by reason of the taking and occupancy of the same by the said North Jersey District Water Supply Commission, and we do report as follows:

We do award that the said North Jersey District Water Suppy Commission pay to the said Ringwood Company for the lands taken and which are described in the petition filed in this proceeding on the 24th day of March, 1925, as amended, the sum of one million, eight hundred and nine thousand, four hundred and eighteen and 67/100 dollars, as the value of the said lands and damages thereto as aforesaid, everything having been taken into consideration as the statute provides in arriving at such sum and which sum includes interest to date.

This report is filed as a supplement to a report filed by us in this matter June 30th, 1926, and in which report it was stated that the sum of one million, six hundred and eighty-seven thousand, three hundred and sixty-five and 94/100 dollars, included interest to date, in which respect the former report was incorrect, as that amount represented the amount of the award without interest; the interest from April 17th, 1925, to June 30th, 1926, amounts to the sum of one hundred and twenty-two thousand, fifty-two and 73/100 dollars, which represents the difference, and makes the total amount of the award as above set forth.

WAYNE DUMONT,
ALBERT COMSTOCK,
GARRET VAN CLEVE,
Commissioners.

Dated: June 30th, 1926.

Which report and award was filed on the first day of July, nineteen hundred and twenty-six.

It appearing that the descriptions of the proper-

ties known as the sixth and seventh tracts in the petition as herein filed are inaccurate and that at the hearing before the commissioners in condemnation amended descriptions as herein below in the body of this order set forth were used for said sixth and seventh tracts; and the attorney for the landowner having consented to the making of this order;

It is, on this thirtieth day of June, 1926, ordered that the said petition be amended by substituting in lieu of the descriptions of the sixth and seventh tracts therein set forth the following descriptions for said tracts respectively:

[Description of land.]

EXCEPTIONS.

There is excepted out of the above described tract the following parcels of land as shown on the aforesaid map:

Parcel No.	Present Owners	Acres
2	North Jersey District Water Supply Commission	0.37
3	Board of Education of Pompton Township	0.64
4	North Jersey District Water Supply Commission	0.06
5	North Jersey District Water Supply Commission	5.97
6	North Jersey District Water Supply Commission	0.19
66	Robert J. Whetham (Widower)	0.53
67	Emma E. Wheeler and Edwin, her husband	1.28
	Area of Exceptions	9.04 Acres

After deducting the area of the exceptions there remains a net acreage for Parcel No. 85B of nine hundred seventy-one and twenty-five hundredths (971.25) acres.

CHARLES C. BLACK,
Justice of the Supreme Court.

We consent to the entry of the above order.

E. W. HUNT,
Attorney for Ringwood Company.
SPAULDING FRAZER,
Attorney for North Jersey District Water Supply Commission.

Which order amending petition was filed on the first day of July, nineteen hundred and twenty-six.

Whereas, on the 30th day of June, 1926, Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners duly appointed in the above entitled proceeding to examine and appraise the lands and real estate taken in condemnation in the said proceeding and assess the damages sustained by the owner of the same by reason of the taking thereof, filed in the office of the Clerk of the County of Passaic their report fixing the value of said lands and the damages sustained by said owner as aforesaid; and,

Whereas, said commissioners on the 1st day of Juy, 1926, informed the counsel for the respective parties in said proceeding that they had erroneously set forth in said report as the sum awarded a sum of money other than the sum which they had agreed should be awarded to said owner and had intended in and by said report to award to said owner as the value of said lands and the damages sustained by said owner by reason of the taking of

the same; which true sum intended to be awarded by said commissioners was the sum of one million eight hundred and nine thousand four hundred and eighteen dollars and sixty-seven cents ($1,809,-418.67); and,

Whereas, the time within which said commissioners are permitted, pursuant to the order in that regard, to bring in their report, extends to and includes the first day of July, 1926:

Now, it is hereby stipulated and agreed by and between the counsel for the respective parties in the above entitled proceeding that said commissioners may file in the office of the Clerk of Passaic County an amended or substituted award, in the place and stead of the erroneous award previously filed by them as aforesaid, and setting forth the true amount awarded by them to said owner as the value of the lands taken in said proceeding and the damages sustained by said owner by reason of said taking, the same being the above mentioned sum of one million eight hundred and nine thousand four hundred and eighteen dollars and sixty-seven cents ($1,809,-418.67).

This stipulation shall not be construed to affect or limit the right of appeal of either party to said proceeding from said award, and notice of appeal in the usual form shall be deemed to be an appeal from whichever of the two reports thus filed shall constitute in law the proper report of said commissioners.

July 1, 1926.

SPAULDING FRAZER,
Counsel for North Jersey
District Water Supply Commission,
Condemnor.
EDGAR W. HUNT,
Counsel for Ringwood Company,
Owner.

Which stipulation was filed on the first day of July, nineteen hundred and twenty-six.

Take notice that North Jersey District Water Supply Commission has taken an appeal from the award of Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners in condemnation appointed in the above entitled matter by order of the Honorable Charles C. Black, Justice of the Supreme Court of the State of New Jersey, which order bore date of the 4th day of April, 1925, and that North Jersey District Water Supply Commission will apply to the Honorable Clifford L. Newman, Judge of the Passaic County Circuit Court, at the Court House in the City of Paterson, on Saturday, the 11th day of September, 1926, at ten o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as counsel can be heard, to frame the issue and to fix a day for striking a jury and a day for the trial of the appeal.

SPAULDING FRAZER,
Attorney for North Jersey
District Water Supply Commission,
Appellant.

Dated July 1st, 1926.

To: EDGAR W. HUNT, ESQ.,
Attorney for Ringwood Company.

Which notice of appeal was filed on the third day of July, nineteen hundred and twenty-six.

It appearing to me that Wayne Dumont, Garret Van Cleve and Albert Comstock, the commissioners

heretofore appointed in the above entitled matter, have completed their duties in relation thereto and have filed their report with the Clerk of Passaic County within the time fixed by my order, and application being now made on behalf of the petitioner, North Jersey District Water Supply Commission, for the fixing of the compensation for services rendered by said commissioners,

It is, on this third day of July, 1926, ordered that North Jersey District Water Supply Commission do pay to Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners as aforesaid, as compensation for their services rendered in said matter, the sum of eleven thousand dollars ($11,000.00) each.

CHARLES C. BLACK,
Justice of the Supreme Court.

Which order was filed on the sixth day of July, nineteen hundred and twenty-six.

Take notice that North Jersey District Water Supply Commission appeals from the report and award of Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners in condemnation appointed in the above entitled matter, fixing the compensation to be paid by it for lands taken from Ringwood Company and damages sustained by said Ringwood Company in the above entitled matter, which report and award is of record in the office of the Clerk of Passaic County.

Take notice further that said North Jersey District Water Supply Commission will apply to the Passaic County Circuit Court, or such Judge thereof as may be sitting, at the Court House in the City of Paterson, on Saturday, the 11th day of September, 1926, at ten o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as counsel can be heard, to frame the issue and to fix a day for striking a jury and a day for the trial of the appeal hereby taken, and of which notice is hereby given.

SPAULDING FRAZER,
Attorney for North Jersey District Water Supply Commission.

Dated July 7, 1926.

To: RINGWOOD COMPANY and
EDGAR W. HUNT, ESQ.,
Attorney for Ringwood Company.

Which notice &c. was filed on the seventh day of July, nineteen hundred and twenty-six.

To North Jersey District Water Supply Commission and to Spaulding Frazer, Esq., Attorney for said Commission:

Please take notice that Ringwood Company, owner, appeals from the report and award of Wayne Dumont, Garret Van Cleve and Albert Comstock, commissioners in condemnation heretofore appointed in the above entitled matter, fixing the compensation to be paid said owner for lands taken from it and damages sustained by it in the above entitled matter, which report and award is of record in the office of the Clerk of Passaic County.

Please take notice further that said Ringwood Company, owner, will apply to the Passaic County Circuit Court, or such Judge thereof as may be sitting, at the Court House in the City of Paterson, on Saturday, the 11th day of September, 1926, at ten o'clock in the forenoon (Daylight Saving Time), or

as soon thereafter as counsel can be heard, to frame the issue in said appeal and to fix a day for striking a jury and a day for the trial of the appeal hereby taken, and of which notice is hereby given.

E. W. Hunt,
Attorney for Ringwood Company, Owner.

Dated July 6, 1926.

Which notice &c. was filed on the ninth day of July, nineteen hundred and twenty-six.

Due and legal service of a true copy of appeal and notice of appeal filed by North Jersey District Water Supply Commission in the above entitled matter on July 7, 1926, is hereby acknowledged this 8th day of July, 1926.

E. W. Hunt,
Attorney for Ringwood Company.

Which acknowledgment of service was filed on the ninth day of July, nineteen hundred and twenty-six.

Due and legal service of notice of an appeal taken by the landowner in the above entitled proceeding from the report and award of the condemnation commissioners to the Circuit Court of Passaic County is hereby acknowledged this 12th day of July, A. D. 1926.

Spaulding Frazer,
Attorney for North Jersey District Water Supply Commission.

Which acknowledgment of service &c. was filed on the fifteenth day of July, nineteen hundred and twenty-six.

North Jersey District Water Supply Commission, appellant in the above entitled proceeding, having given notice of an application to be made to the Circuit Court on this date for an order fixing a date for the trial of its appeal, and framing the issue for the trial of said appeal, and directing the striking of a jury and fixing the time therefor, and directing that a view of the premises and property be had,

And the Honorable Clifford L. Newman, Judge of the Circuit Court, not being present, and the Honorable Charles C. Black, a Justice of the Supreme Court, sitting in the Circuit Court in his absence.

It is on this eleventh day of September, 1926, on motion of Spaulding Frazer, attorney of said appellant, ordered that the application pursuant to the aforesaid notice be and the same is hereby continued until Tuesday, the 28th day of September, instant, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson.

And it is further ordered that the said appellant shall serve a copy of this order upon Ringwood Company, or its attorney, within five days of the date hereof.

Charles C. Black,
J. S. C.
Judge of the Circuit Court.

Which order was filed on the sixteenth day of September, nineteen hundred and twenty-six.

Ringwood Company, appellant in the above entitled proceeding, having given notice of an application to be made to the Circuit Court on this date for an order fixing a date for the trial of its appeal, and

framing the issue for the trial of said appeal, and directing the striking of a jury and fixing the time therefor, and directing that a view of the premises and property be had,

And the Honorable Clifford L. Newman, Judge of the Circuit Court, not being present, and the Honorable Charles C. Black, a Justice of the Supreme Court, sitting in the Circuit Court in his absence,

It is on this eleventh day of September, 1926, on motion of Edgar W. Hunt, attorney of said appellant, ordered that the application pursuant to the aforesaid notice be and the same is hereby continued until Tuesday, the 28th day of September, instant, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson.

And it is further ordered that the said appellant shall serve a copy of this order upon the North Jersey District Water Supply Commission, or its attorney, within five days of the date hereof.

CHARLES C. BLACK,
J. S. C.
Judge of the Circuit Court.

Entered on motion of E. W. Hunt, attorney.

Which order was filed on the seventeenth day of September, nineteen hundred and twenty-six.

Ringwood Company, appellant in the above entitled proceeding, having given notice of an application to be made to the Circuit Court on September 11th, A. D. 1926, for an order fixing a date for the trial of its appeal, and framing the issue for the trial of said appeal, and directing the striking of a jury and fixing the time therefor, and directing that a view of the premises and property be had,

And the Honorable Clifford L. Newman, Judge of the Circuit Court, not being present, and the Honorable Charles C. Black, a Justice of the Supreme Court, sitting in the Circuit Court in his absence, having continued said matter until this day,

It is on this twenty-eighth day of September, 1926, on motion of Edgar W. Hunt, attorney of said appellant, ordered that the application pursuant to the aforesaid notice be and the same is hereby continued until the sixth day of November, 1926, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson.

And it is further ordered that the said appellant shall serve a copy of this order upon the North Jersey District Water Supply Commission, or its attorney, within five days of the date hereof.

CHARLES C. BLACK,
J. S. C.
Judge of the Circuit Court.

Which order was filed on the twenty-eighth day of September, nineteen hundred and twenty-six.

North Jersey District Water Supply Commission, appellant in the above entitled proceeding, having given notice of an application to be made to the Circuit Court on September 11th, A. D. 1926, for an order fixing a date for the trial of its appeal, and framing the issue for the trial of said appeal, and directing the striking of a jury and fixing the time therefor, and directing that a view of the premises and property be had,

And the Honorable Clifford L. Newman, Judge of the Circuit Court, not being present, and the Honorable Charles C. Black, a Justice of the Supreme

Court, sitting in the Circuit Court in his absence, having continued said matter to this day,

It is on this twenty-eighth day of September, 1926, on motion of Spaulding Frazer, attorney of said appellant, ordered that the application pursuant to the aforesaid notice be and the same is hereby continued until the sixth day of November, 1926, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson.

And it is further ordered that the said appellant shall serve a copy of this order upon Ringwood Company, or its attorney, within five days of the date hereof.

CHARLES C. BLACK,
J. S. C.
Judge of the Circuit Court.

Which order was filed on the twenty-eighth day of September, nineteen hundred and twenty-six.

Ringwood Company, appellant in the above entitled proceeding, having given notice of an application to be made to the Circuit Court on September 11th, A. D. 1926, for an order fixing a date for the trial of its appeal, and framing the issue for the trial of said appeal, and directing the striking of a jury and fixing the time therefor, and directing that a view of the premises and property be had,

And the Honorable Clifford L. Newman, Judge of the Circuit Court, not being present, and the Honorable Charles C. Black, a Justice of the Supreme Court, sitting in the Circuit Court in his absence, having by certain orders continued said matter until this day,

It is on this sixth day of November, 1926, on motion of Edgar W. Hunt, attorney of said appellant, ordered that the application pursuant to the aforesaid notice be and the same is hereby continued until November 15th instant at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson.

And it is further ordered that the said appellant shall serve a copy of this order upon the North Jersey District Water Supply Commission, or its attorney, within five days of the date hereof.

NEWTON H. PORTER,
Judge of the Circuit Court.

Which order was filed on the sixth day of November, nineteen hundred and twenty-six.

North Jersey District Water Supply Commission, appellant in the above entitled proceeding, having given notice of an application to be made to the Circuit Court on September 11th, A. D. 1926, for an order fixing a date for the trial of said appeal, and framing the issue for the trial of said appeal, and directing the striking of a jury and fixing the time therefor, and directing that a view of the premises and property be had,

And the Honorable Clifford L. Newman, Judge of the Circuit Court, not being present, and the Honorable Charles C. Black, a Justice of the Supreme Court, sitting in the Circuit Court in his absence, having by certain orders continued said matter until this day,

It is on this sixth day of November, 1926, on motion of Spaulding Frazer, attorney of said appellant, ordered that the application pursuant to the

aforesaid notice be and the same is hereby continued until 15th day of November, 1926, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson.

And it is further ordered that the said appellant shall serve a copy of this order upon Ringwood Company, or its attorney, within five days of the date hereof.

NEWTON H. PORTER,
Judge of the Circuit Court.

Which order was filed on the sixth day of November, nineteen hundred and twenty-six.

The North Jersey District Water Supply Commission having filed a notice of appeal in this court and the Ringwood Company having also filed a notice of appeal in this court whereby it appears that both parties consider themselves aggrieved by the proceedings and report and award of Wayne Dumont, Albert Comstock and Garret Van Cleve, three commissioners appointed by the Honorable Charles C. Black, Justice of the Supreme Court of the State of New Jersey, to examine and appraise the lands of the said Ringwood Company and to assess the damage sustained by reason of the taking of the same by the said North Jersey District Water Supply Commission, for the purpose of constructing a new and additional water supply at Wanaque, in the County of Passaic, State of New Jersey, which lands are more particularly described as follows:

(Here in this judgment record follows the same description of the land and premises taken as here set forth in the Petition for Condemnation in this

judgment record before set forth and in the same words.)

And the said Commissioners having duly filed their report dated June 30, 1926, in the office of the County Clerk of the County of Passaic on June 30, 1926, within the time fixed by the order of the Court, and having appraised the value of the said lands and damages sustained by the taking thereof; and the said appeals having been taken within ten days after the date limited by the said order of the said Court as the day on or before which the report of the commissioners should have been filed, and notices of the appeals having been served upon the attorney of the said respondent-appellant and upon the attorney of the said appellant-respondent within ten days after the filing thereof, and due notice having been given of this application for an order to frame the issue and to fix a day for the striking of a jury and for the trial of said appeals; and said application having been continued to this day:

It is, on this 4th day of December, 1926, ordered that a jury be struck and a view of the premises and property had and that the eighteenth day of December, 1926, at ten o'clock in the forenoon, be fixed as the day, and the court house in the City of Paterson as the place, for the striking of the jury and that a jury trial be held on the third day of January, 1927, at ten o'clock in the forenoon at the court house in the City of Paterson to re-assess the damages sustained by the said respondent-appellant on an issue hereby framed as follows:

The said jury shall assess the value of the lands of the said respondent-appellant, the Ringwood Company, taken and appropriated as aforesaid by said appellant-respondent for the purpose of constructing a new and additional water supply at Wan-

aque, in the County of Passaic, State of New Jersey (which said lands are hereinbefore particularly described) and the damages sustained by reason of such taking.

NEWTON H. PORTER,
Judge.

On Motion of:

SPAULDING FRAZER,
Attorney for Appellant-Respondent.
(Commission.)

EDGAR W. HUNT,
Attorney for Appellant-Respondent.
(Ringwood Co.)

Which order was filed on the sixth day of December, nineteen hundred and twenty-six.

The parties to the above entitled proceeding having appealed to this Court from the award of the commissioners filed with the Clerk of the County of Passaic on the first day of July, 1926, and also having applied to the court, pursuant to the statute in such cases provided, to frame the issues for said appeal and for a struck jury to try said cause, and the Court having framed the issues for the trial of said appeal and directed that a struck jury be returned to try said appeal, and said struck jury having been duly summoned to hear said appeal, on first being duly sworn, proceeded to hear the evidence of the witnesses of the respective parties to said appeal and being charged by the Court in the premises, retired to consider their verdict, and coming again into court did announce their verdict that they found in favor of Ringwood Company, for the value of the land taken and the damages incident to the said taking in the sum of seven hundred and eleven thousand two hundred and sixty-seven dollars and forty-five cents ($711,267.45), against the

North Jersey District Water Supply Commission. Said sum so found by the said jury being less than the amount awarded by the said commissioners from whose award said appeal was taken to this court.

Whereupon, it is adjudged that the Ringwood Company, recover of the North Jersey District Water Supply Commission, the sum of seven hundred and eleven thousand two hundred and sixty-seven dollars and forty-five cents ($711,267.45).

Judgment entered and signed July 20th, A. D. 1927, at 3.59 P. M. Action No. 9728, Docket J, pages 301, &c.

JOHN MCCUTCHEON,
Clerk.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } *ss.*

I, John McCutcheon, Clerk of said County and Clerk of the County Courts thereof, do hereby certify, that the foregoing is a transcript of the Judgment Record, In the matter of the Application of North Jersey District Water Supply Commission for the appointment of three commissioners to fix the compensation to be paid for certain lands of Ringwood Company, a corporation of the State of New Jersey, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, to be taken and condemned for public use, as the same is taken from and compared with the original entry thereof in Book "A-2" of Circuit Court Judgments, for said County and now remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this twelfth day of August, A. D. nineteen hundred and twenty-seven.

JOHN MCCUTCHEON,
Clerk.

(L. S.)

By LLOYD B. MARSH,
Deputy Clerk.

TESTIMONY.

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 3, 1927.

Before HON. NEWTON H. PORTER, Judge,
and a struck jury.

APPEARANCES:

For the Owner: EDGAR W. HUNT, ESQ., and WILLIAM I. LEWIS, ESQ.

For the Condemnor: SPAULDING FRAZER, ESQ., and JOHN A. MATTHEWS, ESQ.; BERNARD L. STAFFORD, ESQ., of Counsel.

The Court: What is the situation, gentlemen, about the water case?

Mr. Frazer: We are ready, sir.

Appellant having moved for the postponement of the trial on the ground that weather conditions obtaining in winter did not permit an adequate view of the premises by the jury, and the Court, after hearing witnesses and considering the matter, having denied this motion——

Appellant moved the Court to grant it the right to open and close (both appellant and respondent having appealed from the award of the condemnation commissioners. It was made known to the Court that in the trial of the case before the Condemnation Commissioners, the North Jersey District Water Supply Commission against its objection, had been forced on the insistment of the Ringwood Company, to open and close, but notwithstanding this the Ringwood Company insisted that it was entitled to open and close in the trial of the appeal at the Circuit.

The Court, after hearing argument, announced the following ruling:

The Court: Application was made by the owners for permission to open and close on the authority of the Bonnell case, in 34 Law; and it appearing that the procedure before the Commission was that the North Jersey District Water Supply Commission opened and closed, and it being a matter of discretion with the Court, the ruling is that the State will open and close in these proceedings, to which objection is made and exception allowed.

Mr. Frazer: May it please the Court, lady and gentlemen of the jury: It so happens ——

Mr. Hunt: One moment, if the Court please, I think what transpired at Chambers is part of the record, but to make sure, it is understood we note an objection and an exception to the Water Supply Commission being permitted to open and close the case here, asserting that it is our right to open and close.

The Court: All right. All ready, Mr. Frazer.

Henry G. Hershfield, sworn.

(Mr. Hershfield was produced by the respondent *as an expert witness on real estate values,* and was admitted by the appellant to be qualified as such, and the testimony given by him, necessary to an understanding of the grounds of appeal which relate to or involve such testimony, was as follows:)

Q. Have you any other sales of similar property?

A. No, sir, not within your ruling and the Judge's.

Q. Upon what did you say?

A. Not within your rulings.

Q. I humbly submit to the Court there is no ruling of mine with your Honor on the bench. Mr. Hershfield, have you any other sales of property, regardless of any other rulings which you think I made?

A. Yes, sir; I have numerous sales, if I am permitted to testify.

Q. What are the sales that you are hesitant about testifying to?

A. One is the sale of a 100-acre farm known as the Decker farm in Midvale.

Q. When was that sale made?

A. About four years ago; maybe five.

Q. Made to whom?

A. To the Water Supply Commission.

Q. And made by the owner?

A. Made by the owner.

Q. What was the character of that territory?

Mr. Hunt: I will admit for this purpose, the character of the territory is substantially the same, but I object to a sale made to the Water Supply Commission on the ground they cannot, at their option, put in a purchase by themselves as evidence against us. We can, on cross-examination. They cannot.

If the property is similar in character and has been sold, you cannot preclude a public body that has got the property in that vicinity, unless it be shown on cross-examination at the time that the sale was forced or not a full and free open market sale. That is the rule as I understand it, and there is no evidence to the contrary.

Mr. Hunt: Such sales are presumed to be forced because of the power of eminent domain possessed by the Commission.

The Court: Have you any authority on that?

Mr. Hunt: Only the dictum in the Lang case I laid

before your Honor, but it is the rule of reason and logic. When this Water Supply Commission comes to a land owner and makes him an offer, the average land owner knows that he has got to accept or reject it. He cannot afford to go through what we are compelled to go through to get his rights. His property would be eaten up, a property of 100 or 40 acres, whatever this Sager pond is, it would be eaten up, in the amount it would cost setting himself against this power of eminent domain.

The law recognizes it is not a free agent. Therefore, they cannot take advantage of the sales made under those circumstances.

The Court: But you say you can.

Mr. Hunt: Yes, sir. If they have made a purchase of a piece of property ——

The Court: Why should not the rule then work both ways?

Mr. Hunt: Every man, your Honor, is bound, where he is a party to a litigation, by those acts which his adversary in that litigation conceives amounts to admissions against the interest of the actor and in favor of the adversary, but no man in the litigation can aid his cause by self-serving declarations and self-serving acts.

The Court: If you can find by cross-examination that the prices were excessive, and you would not, or that they were inadequate because of the conditions that you have recited, that will go to the weight of such testimony, but in the absence of any knowledge that we may now have with respect to condi-

tions that prevailed when this property was acquired, I have no right, it seems to me, to assume that the Water Commission drove an unconscionable bargain, or that the mere fact that it had power to take did not make for a proper bargaining on each side.

I think that the price that might have been paid under proper conditions has evidential value, and on that theory I will allow it and you, if you can, of course, on cross-examination, destroy the value of the testimony because of the conditions which you may be able to show prevailed.

I do not understand from a reading of the Lang case that I am violating the philosophy of that case. I may be wrong. If I am, of course, you have your remedy.

Mr. Hunt: But, your Honor understands that my objection goes to the fundamental ground that such transactions are not admissible in evidence on the part of the Water Supply Commission.

The Court: I understand the objection is tantamount to self-serving declarations, among other things.

Mr. Hunt: I prefer to put it on the broad ground that I can support by whatever reasoning can support it, that the condemning party has not the right to put in evidence prices paid by itself in the private purchase of other lands in the taking. May we have a exception now to your Honor's ruling?

The Court: You may have an exception, yes.

Mr. Hunt: And perhaps it may be understood

that this exception will apply to all the proof that is offered.

The Court: I will permit it to be a continuous exception to the admission of any such testimony in the progress of the Commission's case.

Mr. Matthews: From this witness, if your Honor please, because I take it we would suffer in the record, if your Honor please, if we were to be met with the objection as to any other witness.

The Court: Very well, we will limit it to this witness.

(After the witness had testified to the purchase by the Commission of another property, over which the Commission did not have power of condemnation, the direct examination was continued as follows:)

Q. What was the next one, Mr. Hershfield?

A. The next one was a sale of approximately 13 acres of ground contiguous to the pipe line south of the dam sold by Austin Monks to the Commission and resale at $100 an acre.

The Court: What improvements?

The Witness: Unimproved; just a piece of timberland.

Q. Any other sale?

A. The next one was a piece of property I bought for the Commission from one Josiah Ricker at Midvale.

Mr. Hunt: That is objected to on the ground pre-

viously stated, that it is within the shed and they have power of eminent domain; on the further ground that Josiah Ricker is an employee of the Commission and is an assistant of this gentleman in his work for the Commission.

The Court: I will allow it.

Mr. Hunt: May we have an exception?

The Court: You may have it.

A. This is a piece of property which is on the westerly side of the main road and west of the Hercules Silk Mills in Wanaque. There was a road running through it. Of the 44 acres that we bought, we bought it for $100 an acre.

The Court: Unimproved property?

The Witness: Unimproved property, yes.

Q. When?
A. Within a year and a half.
Q. 44 acres at $100 an acre?
A. Yes.
Q. Any other one?
A. I have dozens of other sales that we have made to the Commission, but I have not the details with me.
Q. Mr. Hershfield, you can only give me what you have.
A. Yes, sir; I can get them here.

(It is stipulated by counsel that thereafter, the witness, under further direct examination and with the aid of notes and memoranda made by himself

at the time of the various transactions, and subject to the "continuous exceptions" previously allowed, testified to the purchase by respondent of a number of other tracts over which it possessed the right of eminent domain, giving in each instance, the price paid. During the giving of this evidence the following took place:)

By Mr. Matthews:

Q. What was the price paid for that?

Mr. Hunt: If the Court please, I think it is understood that the objection we entered a while ago to the offer of evidence on the part of the Commission respecting any prices paid by them for any purchase applies?

The Court: The record will show so, I think, Mr. Hunt.

Mr. Hunt: Yes.

Mr. Lewis: As to this witness.

The Court: Yes.

(Still later, it was developed by cross-examination and further direct examination, that on most of these tracts there were buildings, and that the price paid for the land, as testified to by the witness, was arrived at by him by deducting from the total consideration in each transaction such sum as in his judgment represented the fair value of the buildings and other improvements, fruit trees and vines, and, in some instances, further sums representing other elements, for example, inconvenience caused to the seller by having to remove from the property at or after the sale).

Cross-examination.

Q. You spoke of a transaction involving the conveyance of what you said had once been called Rotten Pond and was now called Legrande Lake?

A. Yes.

Q. Who was the grantor in that conveyance?

A. Some land company, Ramapo Park Land Company. I do not recall the name of the grantor.

Q. Haven't you got any memorandum there that will give me the name of the grantor?

A. No, sir.

Q. Have you anything at home or in your office that would give me the name of the grantor?

A. Except I represented him in some tax appeals in Bergen County. The man who employed me and paid me was a man by the name of VanSlyke, a New York lawyer, since dead.

Q. Was he the man that signed this deed of conveyance?

A. He had died and it was his estate then formed into a realty company that did the business.

Q. What was the name of the realty company?

A. Without being sure, I think it was Ramapo Park Company, or Ramapo Park Land Company.

Q. In what county is its principal office?

A. It is in the principal portion of the property, it is in Bergen County.

Q. You did not understand me. In what county is the principal office of the corporation?

A. I do not know where it is. I only did business with VanSlyke in New York.

Q. What was the name of the grantee?

A. Also another company, as far as I know.

Q. That does not tell me much. I want its name?

A. You can ascertain that by calling up Mr. Clifford F. McAvoy in Newark who is the principal owner of the property.

Q. Will you give me the name of the corporation which you say was the grantee in this deed?

A. I do not know it, if I ever heard it.

Q. In what county does the land lie?

A. Partly in Bergen, and partly in Passaic.

Q. Mostly in which?

A. Well, I am not sure of the county line there. I think most of it is in Bergen County.

Q. What kind of deed was given in that transaction, a general warranty deed?

A. To the best of my knowledge and belief, yes.

Q. Have you any knowledge concerning it?

A. Only statements made by interested third parties, if they got proper title.

Q. When you say interested third parties, you mean parties other than the grantor or grantee?

A. No, the grantee himself, or the president of the company.

Q. Then, the president of the company to which the land was conveyed told you, you mean to say, that the land was conveyed to this company by deed of general warranty?

A. He told me he had a good title to it.

Mr. Hunt: I ask that be stricken out.

The Court: Strike it out.

Mr. Hunt: Will you read the question, please?

(Question read.)

Q. Will you answer that? I think that could be answered yes or no?

A. He merely told me he had a good title. I put my own interpretation on the terminology of good title. That means salable title.

The Court: But it might not mean warranty deed?

The Witness: It might not mean warranty deed.

Q. Now, a moment ago you said to the best of your knowledge and belief this property was conveyed to this company upon a general warranty deed. Now, I ask you to indicate to the Court and jury what basis you have for any belief on that question?

A. The fact that when a man tells me he has a good title I believe it is a warranty deed that he holds.

Q. Then, you form your belief on the fact that the president of the purchasing company told you he had a good title?

A. I formed my belief from nearly thirty years' experience in real estate, when a man says he has a good title, he means he has a good covenant warranty deed.

Q. Have you ever seen this deed?

A. No, sir.

Q. Now, once more; can you give me the name of the company which was grantor in the deed?

A. I told you it was the Ramapo Park Company or the Ramapo Park Land Company, but that can be ascertained also.

Q. And will you give me—try once more to give me the name of the grantee?

A. I don't know as I ever heard it.

Q. Now, give me the date of the deed as nearly as you can?

A. About two years ago.

Q. That would be about January, 1925?

A. Somewheres in that neighborhood.

Q. Was it a little before that or a little after that?

A. It may have been six months one way or the other.

Q. It may have been six months one way or the other?

A. Yes.

Q. You are quite sure about that?

A. I say it may have been.

Mr. Matthews: If your Honor please, all of this examination is, to my mind, totally irrelevant, except insofar as it would furnish counsel a chance to check up these different instruments in the Register's office.

The Court: And also with respect to the credibility of the witness.

Mr. Matthews: But, if your Honor please, it does seem to me it is irrelevant. We cannot be expected to furnish this man with his case. He has the name and that ought to be sufficient. He has the grantee in most of the cases. If he has either of one he can search the title.

The Court: I will allow it.

Mr. Hunt: Mr. Matthews answers my thought. I wanted to make my title searcher's task as light as possible by getting as near as I can that the date was given.

Q. Did you say my searchers need not look any further back than six months prior to January, 1925?

Mr. Matthews: I object to what his searchers have to do.

Q. If he starts there which would be, say, July, 1924, and comes down to date, he should find this deed, because it was between those dates when the deed was given?

Mr. Matthews: I object to that as irrelevant.

The Court: It is irrelevant, because we do not know what the searcher may have to do. The objection is sustained.

Q. You are sure, Mr. Hershfield, that this deed by the Ramapo Company or Ramapo Land Company to some other corporation whose name you cannot remember was given no further back than about July, 1924, is that correct?

A. I would not be sure of that. That is my impression. You can search and find out when it was recorded.

Q. Now, I think you have already said to the best of your knowledge and belief that was a general warranty deed?

A. That was the inference I gained from the conversation with the owner, the man who bought it.

Q. Now, was the property free and clear of mortgages at the time of the conveyance?

A. The price he paid called for everything being clear. But he paid $260,000 for the property, as I understand, free of everything.

Q. Now, what do you mean by free of everything?

A. Free of everything in the shape of a mortgage. There may have been some special rights

of way over the road leading to a section of the property that had been sold, but aside from that there was no encumbrance on this property, in the sense of a mortgage.

Q. Do you mean then ——

A. (Interposing) That is the price, if there was a mortgage on it, the payment of that price meant the wiping out of the mortgage.

Q. If there was a mortgage on it the mortgage was paid out of the $260,000?

A. That is my understanding.

Q. But if there was a right of way over this property to some other property, that was to remain?

A. Yes.

Q. That would be an encumbrance ——

A. (Interposed) Not in my sense.

Mr. Matthews: I object to that as calling for a legal conclusion.

The Court: He has answered it, and I will let his answer stand. Don't answer when an objection is made.

Mr. Hunt: He answered before I had finished the question. I said an encumbrance in the sense which he and I for this particular purpose understand that word. Now, in that sense it would be an incumbrance, wouldn't it, because it has a right in this land outstanding in a third person.

Mr. Matthews: I object to that as calling for a legal conclusion. This is my impression, legally, as I sit here, that it is not an encumbrance.

The Court: It is not a legal conclusion, because

he has stated what he understands Mr. Hunt means by an encumbrance. It may be legally correct, and it may not be, but Mr. Hunt has defined to him what he means by encumbrance, and has asked Mr. Hershfield to answer the questions with this knowledge in mind.

He now asks him whether this is the kind of an encumbrance that he and Mr. Hunt have been talking about, so it takes it out of the category of calling for a conclusion, in my judgment.

Mr. Matthews: May I not object on this record that this man is going to urge afterwards, in examination, that he admitted it is an encumbrance, as we understand it, and that it is such an encumbrance that would reflect itself in the value of the premises and, therefore, you did not pay all they were worth. That is the proposition here. That is an insidious attempt to put legal evidence before this jury.

The Court: If it is, I do not think it will succeed, because I think the jury understands it as I do.

Mr. Matthews: Then I will put an exception to your Honor's ruling on the record.

The Court: You may have it.

Mr. Hunt: May the question be read? I forgot what it was.

(Question and answer read.)

Q. Such a right of way outstanding in a third person would be an encumbrance on the land in the sense in which you and I are using the word "encumbrance" in this examination, would it not, Mr. Hershfield?

Mr. Matthews: I object as calling for a legal conclusion.

The Court: I have already ruled on that very same thing, and will give you an exception.

Mr. Matthews: Exception.

A. A right of way that you and I apparently agree upon in the beginning was the right of way to the public. This was a right of way just to the person who owned that one house on the hill. I do not believe that right of way, to a single person, or family, would be construed as an encumbrance.

Q. Well, Mr. Hershfield, I ask you to understand that as between you and me and the Court and jury, and for the purpose of this examination, if I put the question to you, is a certain property free of any encumbrance, that would mean not only free of mortgages, free of judgments, free of other pecuniary liens of that kind, but also that no third person had any interest in that property, but that the grantee owned it, free and clear of all outstanding rights or interests of any kind whatsoever in any third person. Now, you understand that question ——

Mr. Matthews: I object to that as a misstatement of the fact, and he is putting in this witness's testimony an absolute predicate for all of his testimony. That is a legal conclusion.

Mr. Hunt: I thought that was what he agreed with me.

Mr. Matthews: There is no instruction from counsel to the witness.

The Court: I have no objection to Mr. Hunt trying to make clear his question, and trying to get to an understanding with the witness at the outset, but I have no way, nor would I seek to find a way to have this witness or any other layman understand your legal phraseology and the way you hoped he may understand it.

Mr. Hunt: Well, I am afraid I will have to take a longer way around, your Honor, and ask him the definite questions.

The Court: I think you better, so there will be no question about it.

Q. Now, Mr. Hershfield, what we are talking about is Rotten Pond property, Legrande Lake, as you call it, and I ask you to believe I am not trying to examine you in any insidious manner, as Mr. Matthews stated ——

Mr. Matthews: I object to this lecturing of the witness.

The Court: Objection sustained. Ask a question.

Q. I ask you this: When the title to this property was transferred from the corporation formerly owning it to the corporation whose name you cannot remember but to which it was conveyed, did that second corporation get the property absolutely free and clear of any rights or interests whatsoever outstanding in third persons, whether of a public or a private character, or did it take it subject to rights and interests outstanding in third persons?

The Court: The question has already been answered, Mr. Hunt, in my opinion. I may be wrong, that it was taken subject to the right of way from the main property to one dwelling house.

Mr. Hunt: May I clarify my question by saying, with that one exception of the driveway that you have referred to?

The Witness: With that exception of that one driveway, to the best of my knowledge and belief, it was conveyed free and clear, according to our understanding.

Q. So to the best of your knowledge and in your belief the corporation purchasing that property could deal with it as it pleased within the law, save as concerned that single right of way outstanding in the third person, is that correct?

Mr. Matthews: That calls for an absolute conclusion.

The Court: Objection sustained.

Q. Was this property limited or restricted in its manner of use in any way?
A. I believe it was.
Q. Oh.

Mr. Matthews: Is that a question?

The Court: No, no.

Q. How was it limited or restricted?
A. I am not familiar with it, but I believe it was restricted to a limited use, assuming that such a

limitation of use would enhance the value of the property by restricting the classes of houses that would go on it, the number of people who would go there. In other words, not to make it a cheap colony.

The Court: You are still talking about the deed from the man that you represented to the company who bought it? Are you talking about the major deed?

The Witness: Yes.

The Court: There were restrictions?

The Witness: Yes, of a beneficial nature which I would not consider in any way as militating against the property.

Q. You have testified to one corporation selling it to another corporation, and you mean in that very deed in which that conveyance was effected, these restrictions appear?

A. The properties were sold free and clear with the certain conditions of its use agreed upon between both sides.

Q. And those conditions were used, you say ——

A. For its betterment, in my opinion.

Q. Did they appear in the deed from the one corporation to the other?

A. I never saw the deed.

Q. Mr. Hershfield, as a matter of fact, is there such a deed?

A. I don't know; if I have never seen it, how could I tell you?

Q. Was there ever such a conveyance?

A. Was there ever such a conveyance?

Q. Yes, was that ever such a conveyance?

A. As far as I know, yes.

Mr. Matthews: I object ——

Q. Answer yes or no. You testified this morning, was there such a conveyance?

The Court: He says yes, now.

Mr. Hunt: He says as far as I know.

The Witness: There is no use, Hunt, pounding the table. I can hear you from here. There is no use trying to scare me.

The Court: Strike all that out of the record. It is not responsive to any question.

Mr. Matthews: May I just respectfully ask the Court to ask Mr. Hunt not to browbeat the witness for literally it has been done by the pounding of the witness chair.

The Court: I think the witness will be able to take care of himself.

The Witness: I want to try and demonstrate for myself.

The Court: But I would suggest that Mr. Hunt should not attempt to intimidate him.

Mr. Hunt: Your Honor can assist me greatly.

The Court: I will be very glad to.

Mr. Hunt: If you will admonish the witness to give a fair answer to a fair question.

The Witness: Yes, when I get a fair question.

The Court: I will not characterize the answers as unfair, but I will admonish the witness to answer responsively, and not to answer otherwise, because it wastes time; and if the witness does not know the answer we will save considerable time if he will say he does not know. In other words, when the question is with respect to something that has to do with something that you do not know of your own knowledge you will not answer it on knowledge that you have obtained in a hearsay way, as you sometimes do. That is the great difficulty I find with your answers, and I think it is the reason for our getting into these difficulties. Now, Mr. Hunt, you will proceed, please.

Q. Mr. Hershfield, is it true that this Rotten Pond property was conveyed by William Porter to the Ramapo Park Club by a deed recorded in Volume Y-19, page 69 to 77 of the Deed Records of this county?

A. I know that a man by the name of Porter, afterwards killed in an automobile accident, was the third owner of that property. That I knew. Whom he conveyed to, I don't know.

Q. Do you know whether or not he conveyed it to the Ramapo Park and Club?

A. That may be the outfit I referred to, whose name I was not sure of.

Q. Is the Ramapo Park and Club the corporation which you say conveyed the property to another corporation sometime since July, 1924?

A. I do not recall the name. It was Ramapo something.

Q. How many acres are contained in this tract, did you say?

A. According to my knowledge, 1960 acres, roughly 2000.

Q. Well, now, has that large acreage, whether it be just one amount or just another, that large acreage, something over 1800 we will say to be on the safe side, to your knowledge been conveyed to any person or corporation to any other person or corporation since July, 1924?

A. If it has been it has been the conveyance I referred to to Mr. McAvoy, Clifford McAvoy Company.

Q. This morning you testified that it had been sold for $260,000?

A. So he told me.

Q. Didn't you say that you had negotiated the sale?

A. I did not. I simply ——

Q. Your only knowledge is what somebody told you?

A. No. I was consulted on it but not paid. I simply advised on it.

Q. Consulted about what?

A. As to the desirability and what could be taken out of it if possible, and whether any of it could be possibly broken up.

Q. Then, of your own knowledge, you do not know whether it was sold or not?

A. Only by Mr. McAvoy's statement, and the fact that there have been three or four, $10,000, or $20,000 houses built there, the insurance on some of which are in my office. I presume those people owned those houses, and it is part of this tract.

Q. And you do not know whether if there was sale that the price was $260,000 or something else?

A. Only by what the purchaser told me.

Q. In other words, all that is hearsay as far as you are concerned?

A. Yes. I was not there when the money was turned over.

Q. And you were not there when the deed was delivered?

A. No, sir.

Q. And you do not know that any deed was delivered?

A. I have never seen it on record. I only presume the deed was delivered, because there have been resales out of this property to people who have spent $20,000 or $30,000 on houses.

Q. Now, then, give me the names of the grantors in one of those resales.

Mr. Matthews: I object to that, if your Honor please, as not material to this issue. The grantee of a sale of a piece of property that has been testified to is not cross-examination or material to this issue.

The Court: What is the materiality of that, Mr. Hunt?

Mr. Hunt: Why, if I have the grantor, in what he says is a resale, then I have a clue to the grantee in the corporate transaction that he has referred to.

The Court: Very well; on that theory I will allow it.

The Witness: The only one I can recall now is Gifford of Newark.

Q. Gifford was the grantor?

A. Was the man who bought it.

Q. I want the man who sold it?

A. I don't recall. He bought it from McAvoy's outfit.

Q. Is that the name of the corporation, McAvoy's outfit?

A. I don't recall if I ever heard it.

Q. Then, Mr. Gifford was the grantee?

A. Yes, sir.

Q. What was Mr. Gifford's first name?

A. I don't recall; I believe it was a woman.

Q. Now, give me the name of another grantee?

A. I cannot. I would have to consult my office records.

Q. Now, you referred to the Irving Stone property?

A. Yes, sir.

Q. Has that been conveyed to the Water Supply Commission?

A. I believe it has. Mr. Stone said it had.

Q. At what time?

A. Within a few months.

Q. Now, go back into the Rotten Pond property for a minute, Mr. Hershfield. It is true, is it not, that the deeds entering in the chain of title of the Rotten Pond property contains such provisions as that the owner could not sell to me, for example, a plot of land 100 feet square or 200 feet square to build a house on?

Mr. Matthews: I object to that as immaterial, if your Honor please. This was an acreage sale, and calling for deeds in the chain of title as affecting a lot to be sold out of the tract, I submit, is incom-

petent and immaterial for two reasons. First of all, it calls for the chain of title to the property itself; and in the second place, it calls for the sale of a piece cut out of that tract, whereas in this sale is given here and offered at an acreage sale and at acreage prices.

Mr. Hunt: I am going to show it is not an acreage sale at all. That is the very point of the thing.

The Court: If that is the point, I will allow it.

Mr. Matthews: That question is not competent to show that, if your Honor please.

The Court: I did not hear it.

Mr. Matthews: May I ask your Honor to pardon us, and then have it read.

The Court: Read it please, Mr. Stenographer.

(Question read.)

Mr. Matthews: That calls for a conclusion. Necessarily that involves houses and lots, and if he says the purpose of his question was not to show an acreage sale but a plot sale, that is not competent to show it, that is incompetent to show it.

The Court: I suppose the question is directed to the proposition that the major deed, if I may again so term it, contains such a clause.

Mr. Hunt: That is it.

The Court: And if that is the purpose it would

have a bearing on the question of whether or not there was acreage property sold in the first instance and on that theory I think it is competent, and I will allow it.

Mr. Matthews: Your Honor, please, will allow me an exception?

The Court: Certainly.

Mr. Hunt: Now, read the question to the witness, please.

(Question read.)

The Witness: I cannot answer that; I never saw the deeds.

Q. Don't you know it is true that that property is so restricted that it can only be sold in lots of five acres or ten acres with one dwelling to be erected on each lot?

A. I believe there are beneficial restrictions of that nature on the property.

Q. Then why did you tell us and persist in it so long?

A. I cannot hear you, Mr. Hunt.

Q. Why did you tell us and persist in so saying, that this property was free and clear of every encumbrance, and third persons had no outstanding rights in that?

The Court: He made that statement in answer to that very question at the outset, that the restrictions were beneficial restrictions and enhanced the value.

Mr. Hunt: Yes, your Honor.

The Court: And now your question is directed to why he did not say that before and he did say that before.

Mr. Hunt: Excuse me. He said that after a time. This has taken a long time. At first he said no encumbrances within our understanding of the term, then he said there was a right of way, then he spoke of beneficial restrictions not saying what they were, at least, and I get him to this.

(The following extract from Mr. Hershfield's direct examination is also printed, for the bearing that it has upon points involved in grounds of appeal based upon rulings made during the examination of witnesses other than Mr. Hershfield:)

Q. Mr. Hershfield, do you know now today that on the land of the Ringwood Company within this taking there are some evidences of sand and gravel deposits?

A. I have always known that.

Q. Prior to the commencement of the proceeding before the Condemnation Commission did you know how many acres there were?

A. I never had it measured. I know there was gravel all through that valley for miles.

Q. Prior to the commencement of those proceedings did you know how deep those deposits were?

A. No, sir.

Q. In estimating the value of the property or forming the opinion of the value of the property to

which you testified before the Commissioners, did you take into account the presence of those gravel deposits?

Mr. Matthews: I object to it as immaterial.

The Court: Objection sustained.

Mr. Hunt: I pray an exception.

The Court: You may have it.

Mr. Hunt: Will your Honor permit a little argument?

The Court: I will allow you to ask him whether the figures that he has testified to here took that into consideration.

Mr. Hunt: Yes.

Mr. Matthews: I have no objection to that.

Q. Do the figures you have testified to here—value figures on this property—take into consideration the fact that the sand and gravel deposits are there?

A. When I made those figures I knew there was sand and gravel all through that country, but inasmuch as, according to my reckoning, there is no market for it except a local one, I attached no value to its presence.

Q. Then the value to which you have testified in this proceeding before this jury is no greater by reason of the presence of the sand and gravel than it would have been if the sand and gravel were not there?

A. There is nothing I have learned since the opening of the prior case ——

Mr. Hunt: I ask that this be stricken out as not responsive.

The Court: Strike it out.

(Question repeated by stenographer.)

A. No, sir.

Q. Now, Mr. Hershfield, before the commencement of the proceeding before the Condemnation Commissioners, did you have any knowledge respecting the amount of water that might be impounded in reservoirs produced within the 2350 acres under condemnation, with flowage extending over the adjoining land of Edward Hewitt and Sarah Hewitt, in which the Ringwood Company has flowage rights?

Mr. Matthews: I object to that, if your Honor please, as immaterial to this issue and as incompetent, and moreover, most strenuously object to them building any dams or making any reservoirs, because forsooth it is not a measure of damage. They cannot create and capitalize something at the public interest. At this point, therefore, I put the ground of my objection to be that it is incompetent to this issue, and immaterial whether before the condemnation hearing he had in mind the possibilities of creating these dams.

Mr. Hunt: If your Honor please, I have not tried yet to build any dams. That comes later. I have put the question in this form, did you know it before

the proceedings before the Condemnation Commissioners, because in the course of those proceedings he learned it, don't you see, he heard our evidence given.

Mr. Matthews: I object to that statement.

Mr. Hunt: The point is, did he take that into account in fixing the value of this property, and as a preliminary to that point, I inquired did you know about it. Of course, if he didn't know about it he could not have taken it into account. I think that is perfectly competent.

The Court: I think that the question might be competent with respect to what this man's figures are based on. It has nothing to do with whether or not you can get it into your case.

Mr. Hunt: No, it has nothing to do with that.

The Court: Very well, I will allow it.

Mr. Matthews: Your Honor allow an exception on the ground it is incompetent?

The Court: Yes.

(Question repeated by stenographer.)

A. I am not a water engineer, and I know nothing about any alleged storage that may be there.

Q. Now before the commencement of the proceedings before the Condemnation Commissioners, did you have any knowledge concerning the existence in the 2350 acres being taken, of sites available and

adaptable for the production of water power, hydro-electric power?

Mr. Matthews: Just a minute. I don't know whether he is through yet.

Mr. Hunt: Which is the same thing, your Honor.

Mr. Matthews: If your Honor please, all of this is immaterial and incompetent, whether he had this knowledge before the condemnation hearing or the hearing before the Condemnation Commissioners. That is not the issue in this case.

The Court: No, but the issue in this case is, on what did Mr. Hershfield base his estimate of values.

Mr. Matthews: Ask the question, did you not in making your estimate of values, take into consideration the possibility of hydro-electric power, which I would object to on the ground that is not a measure of market value? Your Honor then might overrule me. I think I would be overruled with respect within right, but the fact that he considered it before the condemnation hearing has absolutely no relevancy to this issue.

The Court: Except as it has a bearing on whether he estimated it in his figures. If he says that he did not, that is answering the question as though it was put in the way you have just indicated it. I will allow it and you may have an exception.

Mr. Matthews: On the ground of its incompetency and irrelevancy and immateriality?

The Court: Certainly.

Mr. Hunt: Irrelevancy also?

Mr. Matthews: No, thank you.

(Question repeated by stenographer.)

A. I had no information given me by anybody that there was going to be any of those things there. There was some small lakes sketched out, but nothing that would indicate any horse power.

Q. Then is the valuation of the property which you have testified in this proceeding, this present proceeding, any larger by reason of any possibilities for storage of water it possesses, or by reason of any possibilities for the production of hydro-electric power that it possesses, than it would have been had it possessed no such possibilities?

Mr. Matthews: I object to the question, because the witness is asked to answer a question that would furnish an incompetent measure of market value. The possibilities of hydro-electric power or the possibilities of anything else are not the measure of value. Otherwise the possibilities of that being the place where the last judgment was going to be held ——

Mr. Hunt: I will say the possible availability, if Mr. Matthews prefers that.

Mr. Matthews: The possible availability is not the thing. The commercial availability.

Mr. Hunt: I will say available, without any adjective, if Mr. Matthews prefers that.

Mr. Matthews: I object to that as calling for an incompetent measure of damages, not the market value, but present availability in commerce, for the purpose alleged in the immediate future adaptable in commerce, not a capitalization of the public necessity.

The Court: For that reason you say it is incompetent?

Mr. Matthews: Yes.

The Court: If it is for the purpose of showing the competency of those things with respect to the value of this property I would be prepared to rule on that, but just because he is asking him whether he took those things into consideration, I do not think that that goes to the question of whether or not the hydro-electric power potentialities may be capitalized in the verdict of this jury, and for that reason I will allow him to answer the question, which is simply whether he took those things into consideration in fixing his value, and I will grant you an exception, Mr. Matthews.

Mr. Matthews: Yes.

A. I valued that ground as ——

The Court: Yes or no.

A. I did not. I found nothing to value.

Mr. Matthews: All right. You have answered it.

Q. Does the valuation which you have testified to in this proceeding contain any item or sum of

money which represents the damage done to the remaining lands of the Ringwood Company not taken in this proceeding?

A. That element was considered and dismissed. I can find no severance damage, because existing roads or other roads will be provided by the Commission ——

Mr. Hunt: I ask that this be stricken out and the witness instructed to give a responsive answer.

The Court: I think it is responsive. He is giving the reason why he found no consequential damages.

Mr. Hunt: I have not asked him about it. I asked him whether he did find any consequential damages or not.

The Court: You are right. I will strike it out as not responsive.

Q. Yes or no.

A. No.

Q. Does your valuation contain any item of consequential damages?

A. No, sir.

The Court: His answer is no.

DR. HENRY B. KUMMEL, sworn.

Direct examination.

By Mr. Hunt:

Q. Where do you live, please, Dr. Kummel?
A. Trenton, New Jersey.
Q. Do you hold any official position under the government of the State of New Jersey?
A. I do.
Q. And what is that, please?
A. I am State Geologist, and also Director of the Department of Conservation and Development.
Q. What has the Department of Conservation and Development to do with the production of lakes or ponds on the streams of New Jersey under the law of the State?
A. The Department has to approve the plans for any dams proposed to be constructed which has a height greater than five feet, as I recall it.
Q. Now, prior to the 19th day of March, 1925, had the Ringwood Company submitted to the Department any applications for permission to construct dams on any of its property in Passaic County, New Jersey?
A. It had, yes.
Q. Had any such applications been granted prior to March 19th, 1925?
A. The plans had been approved, yes.
Q. How many such applications were made prior to March 19th, 1925?
A. Six, as I recall them.
Q. And in how many of those applications had the plans been approved and the State's consent given?

A. In all of them.
Q. Will you produce the applications, please?
A. (Produces.)
Q. Now, Doctor, will you turn to the application that is earliest in date and state what its date is?

Mr. Frazer: Application or the permit?

Mr. Hunt: The application in response to which a permit was granted which is earliest in date.

Mr. Frazer: He did not say anything about permit. I do not know whether that is the practice. I understood him to say the plan was approved.

The Court: And then later he said they were all granted. I assume from that that he meant the permit had been granted, but I may be wrong.

Mr. Frazer: At the same time, can't we have all the dates, application, approval and what not, in each instance?

Mr. Hunt: That is just the way we are going to do it.

The Court: All right.

The Witness: On April 2nd, 1923, an application was filed for approval of the plans of a dam at Ryerson's Furnace on the Wanaque River.

Q. Now, what do the rules and practices of your Department require such an application to contain or set forth?

Mr. Frazer: How is that material?

The Court: I do not know. Is it?

Mr. Hunt: It is very material, your Honor, yes. Here is an application which is or is not made in accordance with law, with the rules and requirements of the Department which has jurisdiction in that regard. If this one is not so made then it is not good. If it is so made then the approval is a valid act by the State.

The Court: All right.

The Witness: The rules require that plans showing the details of the construction with the specification be filed. The plans must be of sufficient detail to permit the engineers to analyze them and determine whether they provide for the safe construction. They must be of sufficient detail that the engineers can analyze strains and stresses which may be set up in the structure, and determine whether the construction, if carried out in accordance with those plans and specifications, will give a structure which will be safe and prevent any possible damage to life or property by failure of the dam.

Q. Was this application drawn in conformity to the requirements you have just mentioned?

A. It was.

Q. And was or was not this application approved?

A. It was approved on May 10, 1923.

Q. And have you before you the application with the accompanying data which you said it was required to carry with it?

A. I have.

Q. And does the application bear upon it anything indicating that it had been approved?

A. In the folder I have a copy of a letter signed by myself addressed to the Ringwood Company under date of September 14th, 1923, stating that the ——

Mr. Frazer: Now, just a moment.

Q. Well, does it or does it not state that the plans are approved?

A. It states that the Board of Conservation and Development ——

The Court: Do not read it, please, Doctor.

A. (Continued) ——had approved the plans.

The Court: That was September 14th?

The Witness: That was September 14th.

Q. 1923?

A. Yes. I think I should make, if I may be permitted, make an addition to my testimony at this point.

Mr. Frazer: I do not know what the testimony is going to be. Whether it is objectionable or not.

Mr. Hunt: Neither do I, your Honor.

The Court: I assume this is going to be an explanation of why he testified the plans were approved on May 10th, and he has just said the notification was September 14th. Is that right, Doctor?

The Witness: Yes, sir.

The Court: All right.

The Witness: I find a notation on the cover that the revised plans were approved September 13th, 1923.

Q. Now, does the document that you have before you contain the Ringwood Company's application and plans, and revised plans?

A. It does.

Q. And does it also contain a copy of a letter advising the Ringwood Company of the approval by the State Board of Conservation and Development?

A. It does, the one of September 14th.

Q. Does it contain anything else, Dr. Kummel?

A. It contains other correspondence which passed between the Department, the Ringwood Company and others relating to this matter.

Q. All relating to this application, and the plans accompanying the application?

A. Yes.

Mr. Hunt: I move, if the Court please, this be offered in evidence.

Mr. Frazer: May I look at it?

The Court: It may be examined first, by counsel.

Mr. Hunt: I have not seen it yet myself, so I will join in the application.

The Court: Suppose you look at it.

Mr. Frazer: I think we would rather look at it separately. It will only take a moment. Mr. Matthews and I may want to confer on certain relations of it.

The Court: You may do it separately.

(Mr. Frazer and Mr. Matthews then examine papers.)

Mr. Frazer: I object to the admission of the offer on the ground that it contains much matter which is not relevant to this issue, and on the ground that the only relevant point which could possibly be demonstrated by the offer has been testified to by Dr. Kummel already, that is, the making of the application and the granting of the right to construct the dam. The exhibit here upon which the consent is predicated contains a great deal of matter which is irrelevant and improper.

The Court: Suppose Mr. Hunt looks at it now.

Mr. Hunt: Thank you.

Mr. Frazer: In fact, I think Mr. Hunt when he reads some of it, will be inclined to agree with me.

The Court: I might add that Dr. Kummel objects very seriously and strenuously to having them go in evidence, because they are official State documents, and he prefers to take them back with him. He told me that.

Mr. Frazer: I can see no useful purpose that can be served by them.

Mr. Hunt: Of course, Dr. Kummel realizes, after having served their purpose as exhibits, they would go back to him.

The Court: He has called my attention to the fact that after papers have been introduced in evidence, sometimes they do not find their way back to the archives of the State.

(Mr. Hunt examines papers.)

Mr. Hunt: If your Honor please, I quite agree with counsel for the other side that among ——

The Court: Just a moment until they come back.

Mr. Hunt: I quite agree with counsel for the other side that among the papers comprised in this bundle are some that are not of an admissible character, for example, there are newspaper clippings and so on.

Therefore I will withdraw my former request, and instead will move that there be admitted in evidence as exhibits in this cause the following from among these papers:

The application of the Ringwood Company for permission to build this dam, dated March 31, 1923.

The certified abstract from the minutes of the Board of Conservation and Development, dated September 13th, 1923, approving the plans submitted by the Ringwood Company.

Also the plans thus approved.

Also the specifications accompanying the plans thus approved.

Also a letter by Dr. Kummel—an official letter by Dr. Kummel to the Ringwood Company, dated

May 11th, 1923, advising of the approval by the Department.

The Court: Well, that is a copy, isn't it?

Mr. Hunt: It is a copy, but the writer is here, and it is a copy, I think.

The Court: All right.

Mr. Hunt: Also a copy of an official letter written by Dr. Kummel to the Ringwood Company September 14th, 1923, advising the approval of the revised plans.

I offer those documents in evidence.

Mr. Frazer: I object to the garbling of the record to satisfy Mr. Hunt's idea of what he would like to have the jury see.

Mr. Hunt: If Mr. Frazer would prefer the whole thing to go in, I am perfectly willing. There is not anything I am not willing to have go in. I said I agreed with him that some things could not legally go in against his objection. If he wants it all in I am perfectly willing.

Mr. Frazer: The only thing that Mr. Hunt is here entitled to show is that there was an application made for certain permits, and that there be action of the Board.

Dr. Kummel has shown me a certified copy of the action of the Board in one of the instances, and I understand he has such a certified copy of the action of the Board in every instance. It seems to me they can save a great deal of time if those certified copies were handed in as showing the fact

of grants, the right to put dams at certain places on the Ringwood property in the year 1923. I assume they are all in that year. I may be wrong in that.

The Court: What do you say to that?

Mr. Hunt: That is all right as far as it goes. I am entitled also to have those plans go in, because, by this particular set of plans, for example, which refer, as the witness stated, to the Ryerson Furnace, it will be possible for us——

The Court: I think you are entitled to have the plans go in that accompanied the application, and the application. I just asked whether you did not think it was a wise suggestion of Mr. Frazer to save time and also to permit Dr. Kummel to take back the official records with him, because he desires to do so, and I would like to accommodate him, if the Court can. I appreciate that he does not wish these files disturbed nor taken apart either, perhaps. That of course is not controlling, but I thought perhaps we could satisfy Dr. Kummel in that regard, and also get in just what you want.

Mr. Hunt: Well, I do think that we should have the plans in.

Now, if counsel on the other side will permit a copy of these plans, which we can furnish, to be substituted for the original plans, that is all right; and we will submit our copy to their engineer along with the originals while they are here, so he may check up and see that it is a true copy.

Mr. Frazer: I do not think that these self-serving declarations of the Ringwood Company should be

permitted to be introduced unless the whole record is in. What I understood Mr. Hunt wanted to show was that the application had been made for certain dam sites and what the action of the State Board is. If he confines himself to that, I am perfectly satisfied to have these minutes go, or the certified copy of the minutes which Dr. Kummel has here, to go in, otherwise I want the whole record to go.

The Court: Very well.

Mr. Frazer: The whole record.

Mr. Hunt: As Mr. Frazer pleases, I say I am willing to have it all go in.

The Court: Do you raise any objection to the record going in?

Mr. Frazer: I do not think—I think there is much in the record that is immaterial and improper, and I would object to that. I certainly insist that if the record is going in in part, it should go in as a whole.

Mr. Hunt: Now, if the Court please, in view of this speech just made, I won't offer it all, but I do offer the parts of it which I have just read. I am not going to offer something and have it go in under a protest, when it contains something like these newspaper clippings, that could not properly go in, not unless he consents to it. If he will consent to it, so as to waive all possibility of legal error, then I am willing for everything in this folder to go in. But in the face of the disposition he has shown now, I certainly won't ask to have these

newspaper clippings or anything else that is not proper evidence to go in here, only to give him a chance to reverse the judgment because the newspaper clippings went in. He has to fish or cut bait, as far as I am concerned. I limit my offer now to the specific papers I last mentioned.

The Court: I understand, Mr. Frazer ——

Mr. Frazer: I think we ought to argue this matter without the jury.

The Court: Very well.

Mr. Hunt: I have no objection to the jury being here when it is argued.

The Court: Mr. Frazer has.

(Jury retires to their jury room.)

The Court: Now as I understand it, Mr. Frazer's point is that the only thing that is evidential is the mere application—the fact of the application and the decision, and not the application itself or the blue print that accompanies it. Is that your point, Mr. Frazer?

Mr. Frazer: Yes, sir.

Mr. Matthews: May I at this time say now, as we are both arguing in the absence of the jury—offer this suggestion to the Court in my argument. Mr. Hunt's only right to show this application is to show the application, that is all—that in 1923 an application was made to build a dam. We are not interested in what the character of the dam

was, nor are we interested in anything else except that an application was made for a dam, and that can only be pertinent because at one point in their case there was a dam partially built. Now they cannot show specifications and flowage areas and all this thing could be on this land, things that are not. That is not permissible. It is totally irrelevant. Yet the record that they have here contains specifications and plans showing the construction contemplated. It is just the same as the Manda case. Just because that might be filed, a plan to build the roads, that you may build the roads. If that were the case, every condemnation party that comes along, as soon as the condemnation would be noised, somebody could immediately stake out and file some plans, and therefore say that the contour of the land was changed. That is not the law.

This is an application, not for a reservoir, moreover, but for a dam. Dr. Kummel can tell you that all they had jurisdiction over was the building of the dam, not the building of a reservoir. All they gave their permission for was the building of a dam above five feet in height, not the building of a reservoir. I am sure that is his testimony, and that is what he gave in this approval or permit, the approval of the application. Now to put in plans and specifications and data concerning that is to create a whole lot of prejudicial matter before the jury that is not only irrelevant but not competent.

These plans, if your Honor please, contemplated terrain that is entirely changed on paper, and was not changed as of March 19th or 25th, 1925. I say that it is incompetent. I submit that it is a concession on the part of the State to recommend the application and minutes and consent of the Board to get in. I think the testimony of Dr. Kummel is

sufficient, but inasmuch as the application and consent in the folder and plans and specifications as directed by him, which would create a difference in the terrain, it renders it incompetent and puts it within the purview of the Manda case.

Mr. Frazer: Might I add to what Mr. Matthews has just said that inasmuch as the jurisdiction of the Board of Conservation and Development, as distinctly shown in the opinion of the Attorney-General which is in this file, is confined to the question of whether a proposed dam is safe under the conditions and will protect the lower riparian or adjoining owners and does not in any sense pass upon the question of titles involved and the lands flooded and other questions of that sort, unless and until it be shown, even assuming for the moment that we can ignore the Manda case, that all of the lands to be flowed by this proposed dam are subject to flowage by, in that instance, the Ringwood Company—even the application would have no relevancy in this proceeding. Nothing here to show that that is the case at the present time. In addition I want to emphasize what Mr. Matthews has said, that we are here on the mere application, a mere self-serving statement departing from the whole theory of the law that the value of the property is the value as it stood at the time of the condemnation.

The Court: As it stood then or as it might—the value of the land as of that time or in the reasonable future.

Mr. Frazer: No, I beg your pardon. The value of the land in its then condition—for use at the present time—or in the reasonably anticipated future.

The Court: Don't you think the law goes one step further than that and permits it to be shown, what might occur in the immediate present with respect to a higher use of the property?

Mr. Frazer: Without change. I think, for instance, this—let us assume that the piece of property as it was in the case in which I was interested, was on the edge of Montclair, it was being used as a farm. I think it would be perfectly proper, as was done in that case, to show by expert witnesses that on account of the location of the land it had an imminent probability of being devoted to houses, to residence purposes, as contrasted with a farm use; and that the value of the whole tract, considering it as a tract for that purpose, might be shown. I think that is perfectly proper. But to say that they could go on that ground, and because there was a possibility that the land—because the land was suited at the present time for development, that they could go on and propose streets through it, as they are now proposing dams, even though the street or the dam was the use which might be made in the reasonably anticipated future, is not proper. As soon as we get to physical alteration of the land, I take it we are coming within the inhibition of the Manda case.

The Court: What do you say, Mr. Hunt?

Mr. Hunt: The rule which has been last under discussion between counsel and the Court is laid down in the Currie case in the following words:

"The owner shall be given by way of compensation for his land, its fair price for any use for which it has a commercial value of its own in the

immediate present or in reasonable anticipation in the near future."

As your Honor said.

"It is for the owner's deprivation of any existing value that he has to be compensated."

Now, I pass by the point that the arguments made by these gentlemen seem to raise the assumption that I am required to put on the stand all my witnesses simultaneously, and prove simultaneously every material fact in my case. Your Honor knows that is not possible. I must go step by step. I thought, in producing Dr. Kummel as the first witness, I was taking a proper and logical first step. I am sure that your Honor will agree with me, and that I need not argue the point, that on the 2nd day of April, 1923, and the other dates mentioned by Dr. Kummel's testimony, the last of which was, I believe, the 14th of September, 1923, the Ringwood Company had a right within the law to deal with its property as it saw fit without let or hindrance on the part of the North Jersey District Water Supply Commission. I think your Honor will agree with me that the North Jersey District Water Supply Commission acquired no right which served to restrict, shorten, take away any of my client's constitutional rights, which are the ordinary constitutional rights of the ordinary land owner, until it instituted this proceeding which was admitted, or agreed between counsel yesterday to have been on the 19th of March, 1925. Until then we had a right, within the law, to do what we pleased with what was our own. Surely, your Honor agrees with me on that, and I need not argue it further.

The Court: That is correct.

Mr. Hunt: Now, one of the things we did was to

apply to the State Board for the permit to build a dam which Dr. Kummel has described as the dam at the Ryerson Furnace.

The Court: Yes.

Mr. Hunt: As Dr. Kummel has testified, the procedure incident to the obtaining of such a permit requires that the applicant shall submit with his application plans and specifications so detailed as to enable the Department to check up—I think Dr. Kummel used a stronger word than that, but perhaps that will serve if I emphasize it a little—to check up everything on these plans. They must be sufficiently detailed so they can all be checked up to see that the stresses, the strength is sufficient to stand the stresses and strains, and that there is no danger to parties down the stream. Those plans are a part of the application. Now, those plans, your Honor, being of such a character, must necessarily show, among other things, the height of the proposed dam. May I turn to the Doctor and ask whether it is true that the plans must show the height of the proposed dam?

The Court: Off the record.

Mr. Hunt: Yes.

The Court: Very well.

(Colloquy.)

Mr. Hunt: And still of the record, the height at which the water held back at the dam is retained, is that true?

(Colloquy.)

Mr. Hunt: And the height of the spillway which is the height of the water in the dam?

(Colloquy.)

The Court: When it comes above that figure it will run over the spillway.

(Colloquy.)

Mr. Hunt: Your Honor understands that physical situation of course. Now, that makes it perfectly apparent to your Honor that we, by an application made and granted in 1923, two years before this condemnation proceeding was commenced, we had formulated a plan. We had got the necessary permission of the State to carry it out, to build a dam at this point of such a height, with a spillway at such a level which means that the flow line of that dam will be as the Doctor has said at normal times, the level of the spillway, and which enables another engineer—Dr. Kummel, of course, could do it, but I would not think of troubling him and keeping him here to do it, unless your Honor or the other side would wish me to do it—which would enable another engineer taking the contour map of the North Jersey District Water Supply Commission, since they object to the State of New Jersey's map, taking the Water Supply Commission's contour map, to trace that contour and show just what the line of flowage of the pond at Ryerson Furnace is. So I state my intention of proving, if your Honor holds with me it is proper, that this outline marked here with a color I can hardly describe—somebody described it as a dull pink—is the flowage of water

when filled, is a body of water that will be held back by the dam, for which the witness testified we have the State's permit to build at the height which those plans require to accompany the application show it, to get it. Now, surely, with the facts thus stated, your Honor sees my absolute right to have this thing in order to show the jury that before the condemnation was commenced we had planned a dam there. We had applied to the only State body which has jurisdiction in the matter for its consent, and we had got this consent. Therefore it is competent for the jury to say when they consider this thing, well, here is at least prima facie evidence of the fact that the physical characteristics of the Ringwood Company's property at this point are such as to enable the building of such a dam. Now, when we show this flow line, if it does appear that it floods somebody else whom we have no right to flood, then, surely the astute counsel on the other side will point it out to the jury, and the Court will then instruct the jury to disregard this dam as a possibility, or will instruct them that our right is qualified in whatever manner may seem proper. Now, I am just meeting a difficulty that they state might arise. Naturally, in the great mass of facts I have to prove, I have not got to the logical point yet of proving that, but I will state now my intention, readiness and ability to prove that that dam produced at that point, in accordance with these plans and specifications which have met the State's approval, will not flood one foot of land or one inch of land which we have not the right to flow.

The Court: Was the dam ever constructed?

Mr. Hunt: This one was actually built—well, your Honor has seen its condition.

Mr. Frazer: They have put a core wall on each side.

Mr. Hunt: That is not a core wall. That is a concrete dam. That is not intended to be anything but a concrete dam, and there again, the specifications will prove that.

The Court: Was the work ever prosecuted?

Mr. Hunt: It was, sir.

The Court: And the dam that is there now is the one built under that permit?

Mr. Hunt: This file contains progress reports. Are they monthly or weekly periods—progress reports?

The Witness: I could not say, without looking at them.

The Court: Let us go to some others. This witness has brought several other applications, has he not?

Mr. Hunt: But, can't we have a ruling on this one first, your Honor?

The Court: Let us find out where we are heading to. The jury is not here.

Mr. Hunt: Well, they are separate matters.

The Court: I understand they are separate, but I would like to know at this time whether there are

any other dams that you propose to show had been applied for, and the applications granted.

Mr. Hunt: There are five others that I propose to so show.

The Court: Is it not true that the Ryerson Dam is the only one where the work has been prosecuted?

Mr. Frazer: Yes, that is true. That is the fact.

Mr. Hunt: I will speak for my client, if the Court will permit me, instead of having my adversary speak for my client.

Mr. Frazer: You do not answer the Court's question, Mr. Hunt, and I think the Court is entitled to the courtesy of a reply.

Mr. Hunt: If one of the six which Dr. Kummel has brought is the application and permit for the Forge Pond Dam, that was a rebuilding of a previously existing dam that had washed out, and that was done, completed. Your Honor must have seen the dam up there the other day at Forge Pond. As to the other sites, I am informed by Mr. Anderson, the Ringwood Company's active man in its own organization in these matters, that the work of putting down bore holes, and test holes for the foundations of the dam was done, but that no actual construction work on the dams was done. However, in order that my point of view may be clear, may I be permitted to say that to my mind the Ringwood Company is entitled to show that, prior to the commencement of this proceeding, it had made the applications, and had got the approvals and consents, whether it went on with the building or not, be-

cause the making of the application accompanied by the plans required to accompany it, and the grant of consent shows the feasibility of producing a dam at the point in question as shown on the plans; and my argument is, and that is our whole claim in this case, not that our land is to be paid for, your Honor, on the theory that a dam has been completed there and is worth so much, minus the cost of building the dam, not that at all, sir; but simply that the property in the state and condition in which it was on the 19th of March, 1925, is worth more or less according to its availability for various useful purposes, according to its capability for various uses, as the Supreme Court said in the Rum River Boom Company case: "The inquiry in such cases must be what is the property worth in the market viewed not merely with reference to the uses to which it is at the time applied" —— That is at the time the proceeding is commenced—"but with reference to the uses to which it is plainly adapted."

"That is to say, what is its worth from its availability for valuable uses?"

"Property is not to be deemed worthless" —— Now, this statement is of the greatest importance in this case—"Property is not to be deemed worthless because the owner allows it to go to waste" ——

And the following statement is of even greater importance—"or to be regarded as valueless because he is unable to put it to any use. It is not to be regarded as valueless because the owner is unable to put it to any use. Others may be able to use it and make it subserve the necessities or conveniences of life. Its capability of being thus made available gives it a market value which can be readily estimated."

Now, I say, that the approval of these applications by the State on the basis of detailed plans which have to meet the requirements which the witness has said they have to meet, is evidence from which the jury may infer that one of the capabilities possessed by this land is the capability of producing this pond here (indicating), and this one here (indicating), and this one here (indicating), and this one here (indicating), and this one here (indicating), and this one here (indicating). It is for the jury to say whether the land, because it possesses those capabilities, is worth more or less than if it had not possessed them and, therefore, we are entitled to have the jury know that the possession of those capabilities by that land is established to whatever extent the jury may regard it as established by the fact that these applications, and these required detailed plans were submitted to the State's officer or official body having jurisdiction in this regard, and they are approved.

The Court: Well, now, what is the difference between that situation and your going up along the Greenwood Lake Road, and coming here with a plan of a city?

Mr. Hunt: All the difference in the world, your Honor. That I do not propose, for my part, to put in a word of evidence, of what it would cost to build the dams—to put in a word of evidence of what any of the lands in the taking were worth if the dams were there. I do not propose to undertake to do anything that even remotely resembles or approaches what was done and held to be wrong in the Manda case, not one thing. I could be driven to it only in one way: If my adversary, as would be their right, should, following the admission of this evidence, and

in rebuttal of my case, come along and claim, for example, that the cost of building this dam at the Ryerson Furnace would be a million dollars or some other impossible sum and, therefore, it is an economic impossibility, and that capability therefore adds no value to the land. Then, I would have to rebut that and show it was not a million but $40,000, or whatever it was; but only in those circumstances, driven to it by my adversary, would I propose to offer a word of evidence regarding the cost of constructing anything. But I do insist that I have a right, by virtue of what my client did two years before this condemnation proceeding was started, and when it held its property as free from any claim by this Water Supply Commission, as I hold my farm, that one of the established capabilities of the property, more or less established—it is for the jury to say how much it is established—in that sense established capabilities of the property, is capability of producing these ponds, and dams for which the State has given its consent.

The Court: I am in accord with you on that. I think the cases show ——

Mr. Hunt: Yes, the Boom case is clear there.

The Court: That you can show, and I have already indicated by my rulings that you can show by competent testimony the highest use to which this land could be put. Now, it is perfectly apparent that this land could be used for a reservoir site. You do not need any evidence, except the view, to show that here is a dam that is already constructed at one end of the property that is going to flood a large area, and you do not need to put in any

testimony, it seems to me, to show that, or propose to show that by a series of small dams along the streams that run through there, that you could make a series of small ponds or lakes, but I do not see how that is going to help you if you stop short of what you said you were going to stop, if you are not going to follow that up by saying what, if those dams were created, the value of the land would be along the shores of these lakes.

Mr. Hunt: That is for the jury to determine, your Honor. They may say it is worth less. They may say that the loss of the land which would be covered with water would make the whole thing less than if you did not produce lakes.

The Court: If you produce testimony if and when this dam is created, the property adjacent would be so much ——

Mr. Hunt: Then, I would be violating the Manda case. I should be glad to do that if I could, but I cannot.

The Court: That is my theory of the Manda case. It seems to me there is no objection to your showing the capabilities of this land, but there is this to be said about that, too: If the jury feel, and they have a right to inquire, perhaps, that this is the fact, but the mere fact that you never did build these dams, and that you got permission just prior to the time this land was taken, was not done for any purpose except to enhance the value of this taking—they have a right, of course, to go into that.

Mr. Hunt: Certainly; that is the risk I must take.

Mr. Matthews: May we answer Mr. Hunt, if the Court please? Your Honor has just said in the last few remarks a thing that, to my mind, puts Mr. Hunt's argument in contradiction. Your Honor said to him a moment ago that he could show capability of this land for reservoir purposes. You have allowed him to show, and I think rightly, that there was a dam constructed down there at the Ryerson Furnace. Then, your Honor said, I think, you could show that you could put in a series of small dams in order to create this reservoir. Well, if he could put in a series of small dams, why couldn't he put in a series of small streets and create a village? He cannot do it. He cannot change the terrain of that land at all. He can no more put in another dam there than he could put a street in there and stick building lots around it. The Rum River Boom case ——

The Court: Except this, that he could, without violating the Manda case, show that this property is admirably laid out for a city and streets could be put in there, avenues and boulevards, and some day it would blossom like the rose, and it would be a metropolis there.

Mr. Matthews: He could say that.

The Court: He could say that, and put in testimony to that effect.

Mr. Matthews: Testimony of what kind? Pardon me for asking the question.

The Court: Some testimony of some very imaginative real estate man. It would not go very far.

It would not establish any values at the present, because it is too far in the future, of course, and therefore would violate the Currie case and the others, because of the fact that it is not in the immediate future that such a thing can be done. Now, then, he is not doing anything of that kind in this case. He is simply putting in testimony to show that the land is entitled ——

Mr. Matthews: May I stay with your Honor a minute?

The Court: ——that the land is capable of being dammed and having a series of dams.

Mr. Matthews: Do I understand your Honor's understanding of the Manda case to be that he could get some real estate expert to go on the stand and say he could put streets here and there on the property?

The Court: I think the Manda case does not prohibit a witness from saying, probably, that this land is capable of such and such a use.

Mr. Matthews: Of course, we agree to that. That is fundamental.

The Court: And capable of having a city there.

Mr. Matthews: That is fundamental.

The Court: But when he comes to say that the market value at this time, or immediate future, would be based on city values, it would not be admissible, because then it would be entirely speculative and be going far afield. Now, Mr. Hunt is

not saying he is going to bring in any testimony to show that the building of these dams is going to enhance the value of this land.

Mr. Matthews: May I please interrupt the Court? I do not care what Mr. Hunt is going to say or show. He candidly said, "Unless I am forced by my opponents, I won't show the cost." In other words, I will build a lot of dams. Here is a reservoir—I took down his words—"We will get another engineer after Kummel gets through, and we will show you our flowage lines and so forth, and the outline would show the reservoir that is their's would be ours." You do absolute violence to both the Manda and Currie case. Let us come back to your point on the Manda case. A man can go on the stand and say it is adaptable for a village. All right, but he could not put a street through here or there (indicating).

The Court: That is correct.

Mr. Matthews: Neither can he put a dam there (indicating) or here (indicating). That is not there. He could not put a single dam. That is not there any more than he could put a street there. All this man can say is this is adaptable for reservoir purposes. Indeed, it must be. The State is building one there.

The Court: Isn't that all he is trying to do?

Mr. Matthews: Oh, no. This witness is put on the stand—now, let us get it, please, if your Honor please—this witness is put on the stand to show six alleged permits, one of which was a permit for

the Ryerson Dam. Now, this man, this Dr. Kummel here, his authority is as follows: He has a right to approve the design of the dam. They could build all the dams from here to the end of the earth without Kummel, except that their designs are amenable to his Commission. There is nothing to prevent them from building dams, but the State says, for safety and otherwise, we must say as to the construction of that dam. So that these specifications have nothing to do with the creation of the reservoir. They only have to do with the construction of that dam, but this is covertly and surreptitiously offered, and all of this winding argument about the Rum River case is sought to be brought in order that this testimony may be a predicate for the building of their dams and reservoir. Kummel has nothing to do with their right to build a dam. All he had to do is with their design of the dam. That is all. Now, when they went down there with a design of a dam, he approved the first one, apparently, as the evidence goes. He approved the design of the dam. But the specifications that they filed, in order to show the kind of dam, are specifications which refer to the flowage area, specifications to the height of water and spillway and so forth, which have absolutely nothing to do with the case at all, because they are creating conditions on that land that do not exist. They do not exist now even though the dam was partially built. In other words, Kummel's testimony is sought to be used for the predicate for hydro-electric power by the creation of dams as well as the creation of the reservoir on the property. Now, let us go to the law itself on the proposition. You might just as well open the door and let them build cities, as well as let them build dams in this valley. They claim, and your Honor partly

says, the law is in the Currie case: "Any use which it has in the present. The owner's compensation shall be for existing value." Do you mean to tell me that the adaptability is the same value as the actual existence of the reservoir? And yet, if you dam it, you make it existent. It is not an existent value. It is an existent adaptability. Therefore, all they can put before this jury is the adaptability, availability for use—don't interrupt me, Mr. Hunt, please—adaptability for use is not existing use. I want that point, if your Honor please, at this time —any more than the adaptability of the Manda swamp land up in South Orange where I disported as a boy. It was not used as a village. It is adaptable, just the same as the land Mr. Frazer speaks about up at Montclair, is adaptable for residential sites, but if your Honor please, it is not existing residential site. It is not a residential site. It is a plottage or area out of which may be cut streets and lots or residential estates with curtilages around it. So that this man, in saying to you that he wants to use this testimony and then follow it up with the engineer who will show you, by building this dam here and that dam there, we will take all these ponds in and we will have a reservoir that you built. Now, he is equivalently saying I am going to show you as existing value the same value that the reservoir has to the State of New Jersey.

Mr. Matthews: The disgust of my opponent—anything that gets under a man's skin always calls for a remark. My point is this, if your Honor please, this gentleman, Dr. Kummel, on the stand, of the Conservation Department, is only put on first and in this hurry, concern for his official duties, to get him away, to make us unwary of his testimony,

he is put on the stand to make a predicate for another engineer who is to come along and give you an existing reservoir. When we argued with your Honor the first day as to the Ryerson Dam he would not very frankly admit that one at that time, because it was not actually constructed at that point. Now that dam would certainly never make a reservoir. He saw that point, and he went over to Anderson and he says, "There are borings and test holes for the other dams that have been made." Well, let all the borings and test holes stand. They are not dams, and you cannot keep water back with borings and test holes. The terrain, therefore, is what? It is land, first, with the dam at Ryerson Furnace and wherever they can show by the borings and test holes, and you cannot hold water in that. If you allow them to prove this kind of testimony and let these specifications for all these permits to go in, those are specifications for dams at every one of these points that do not exist. You will give him under the Currie case existing value. You will give to him not anticipated value or future, and by reason of what the land is you are giving him anticipated value in the future of land that is not, and by artificial structures. You cannot do it. No matter what you say to some State agency—you are absolutely unprotected against these birds. If they want to go out and do these things you are bound by it. It is confiscation. It was hold-up, as was stated in one of the cases. Let me go a bit further. My first point is this, in argument. This testimony is offered to show plans and specifications of six dams at present. First of all, the only one dam, because I think your Honor will rule as to the other five. I admit they have a right to show on their property there has been partially or totally

constructed at Ryerson Furnace a dam, and they have a right to show that that dam was constructed before this taking, and they have a right to show that they constructed that dam for such a purpose, but that dam contemplated something in the plans and specifications, if your Honor please, that is not existent and never was existent and wasn't existent at the time of the taking; that, therefore, you cannot show those plans and specifications, because it creates a situation that is not existent. It flows areas and it involves building of other dams. Let us go beyond the first application. They then offered him five other applications for dams with plans and specifications. Those plans and specifications create a situation in the terrain that was not and is not existent. Therefore, when they get their six dams together, they have two things they want to prove in this case—hydro-electric power system and a reservoir. And yet, if your Honor please, while they may say it is adaptable for them, they cannot construct on that ground one thing to show that adaptability; they cannot bring into this terrain any change to show that adaptability. They can only say it is adaptable, because of the lay of the land, because of this, that or the other thing; they cannot get their plans and specifications—why, it is just the same as the plans and specifications for lots under the Manda case. That is what they have been struggling about. Why are they abandoning their real estate proposition? Because your Honor is absolutely convinced of the Manda case. This, then, is a back door attempt to create another artificial value, and as your Honor said—I took it down particularly—you said this: "I suppose that you could build a few other dams here and there through the place? Will you not build a

few other streets through the place then and make lots?" It is just the same proposition. Let us go a step further. The first proposition being, under the Currie case—their own case—they can show existing value of the lands as is. It is adaptable for a thing. It is adaptable and its actual existence is different. Let us go a step further. Again I say Mr. Kummel's testimony is that his Board gave approval of the character of a dam, not a permission to dam waters, not a permission with that of the other five to impound the waters. That is not what his Board gave. It gave an approval of a design of a dam. Now the specifications that they have filed with that, of necessity have to show flowage areas and so forth, in order to show the force with which the water will go against the dam; but what Kummel gave them was no control of water. He had absolutely nothing to do with it as far as this application was concerned. He gave them an approval of a design of a dam, so many feet thick, so many feet this way, so many over the spillway, and so forth —I speak unscientifically, and not engineeringly; because I have none of it. Let us go a bit further. They have, as Mr. Hunt said, the permission of the State to carry out their plans. Now you see the viciousness of this thing. They had no permission there of the State to carry out these plans. They had permission of the State to build a dam like those plans showed that dam to be, not plans to impound the waters all over that area. They do not have anything of the kind, and Mr. Kummel's testimony must needs be that—his permission to them—not a permission. What is there—an approval of a dam, a physical construction. They have had no permission from the State at all to carry out their plans that may be—their

plans of this dam as a dam—as a construction, not plans to impound waters. Let us go a bit further. There was where Mr. Hunt in the argument said to you, "Of course I would not think of keeping Mr. Kummel here. I am going to let him go back to his official duties. We will keep him if you want to, but I am going to get another engineer," and he walked over to the map to show you this flowage area here—"This outline here, these ponds here, that make up all of their reservoir would be ours." Why, if your Honor please, that is in contravention of not only the Manda case and every other case, but it is capitalizing the public necessity. In other words, they come in 1923, when this property is under discussion—and I can say that in this argument, because the evidence shows Mr. Hewitt said he met Mr. Hershfield first when he started to discuss this property and he had known him for years. Here is the point proven, that when the State has under discussion the purchase of this property for a specific purpose, these altruistic philanthropists go to Trenton and file plans for six dams on that property, one of which they partially construct. There is where they slipped a cog. If they had stuck construction up at the other parts of the dam—and I think that I speak rightly when I say we enjoined them from some of it.

Mr. Hunt: You never enjoined any of it. There is a good deal of imagination in what is being stated now. No evidence to support it.

Mr. Matthews: Just a minute.

Mr. Frazer: Filing of a lis pendens.

Mr. Hunt: When did you file the lis pendens?

Mr. Frazer: March 23rd, 1925.

Mr. Hunt: Yes, March 23rd, 1925, they filed lis pendens.

Mr. Matthews: And this first application was put in evidence of September 13th, 1924, and in the interim they were in discussion for sale. But to come back to my point, we maintain that if this kind of testimony is allowed you can virtually create the situation whereby these people in spite of our condemnation can show by a construction not existent, not existent at all, contemplated only in their hold-up minds—that they could create the same thing that the State is offering to the public now; and he said, "Oh, I am not going to show any costs unless my adversaries drive me to it." No; we can be set here dumbly and made to listen to this testimony creating a non-existent value, and if we do cross-examine, because, forsooth, it may be folly, we open the door to them and recognize their testimony and make the Manda case not operative in our favor, or the Currie case, or the Dredging Company case, or what not. If your Honor please, it is the grossest injustice to predicate a verdict upon that kind of evidence. That is what happened below. Now one more point, if your Honor please. He said before condemnation we had planned a dam. We may show that the physical characteristics enabled us to build a dam. If we show these dams—I say to your Honor they may show by testimony, by an engineer, by a geologist—he is a geologist—is that valley where our property is capable of the construction of a reservoir. And, of course, the Court will say, yes, it is, apparently. The North Jersey District Water Supply Commission has built a res-

ervoir there. That is as far as they can go. He can then put a man on the stand—you as a Water Supply man, Mr. Vermeule—I know him—you can put him on—"What do you value these lands at, Mr. Vermeule, in addition, in appreciation to their real estate value because of their adaptability and availability for water supply purposes?" That is what they can do. But they cannot build a dam here and a dam there. If I am fool enough, and I know my senior associate is not fool enough, to cross-examine him on that proposition, we would open the door then to these things, and I would make all their case for them. The point is this. All they can show is market value existent on the land as is. The only reason that the dam at Ryerson Furnace—and in that respect I disagree with your Honor as far as you have gone with that—the only reason you would permit that question is because it is existent. They cannot after damming up the rest of the place and building a reservoir say, "It is ours." Finally, let us keep in mind, if your Honor please, this, that Kummel has approved the design of a dam. He cited the Rum River Boom case in this fashion. He says, "You cannot take into consideration that the property was not used by the owner or that the owner allowed it to go to waste or that the owner was unable to use it. Others may be able to use it. It is capable, therefore, because it has a value to us." That is true. He can do that. We do not claim that because they did not use it that it had no value. We may claim or they would say it has a capability of being a reservoir. They can say that. A capability. A terrain as is has an added value because it is capable of a reservoir site. But they cannot put a single jot or tittle on any part of that land and build a reservoir, any more than

they could put streets on the Hershfield lots, or any of those other lots, under the Manda case, and build a development. The testimony is very vital to the State's side of this case. If you are going to open this door with Kummel, you will then have the witness that will build the dams at the other points, impound the waters, and when you create a reservoir, then you have the consequent damage of that or the consequent enhancement, as the case may be, to the land abutting and surrounding, and I submit that argument is entirely fallacious. You would have no more right to put other dams or other constructions on that place than you would under the Manda case, to put other streets in it. And always bear in mind that Kummel has given no permission of the State, no permission to build a reservoir. The State has approved the physical design and construction and requirements of a dam, and what they seek to introduce in evidence in this case with reference to that dam is not the physical construction and specifications of the dam—we would have no objection to that; the plan of the dam, its kind, its thickness and its characteristics, its consistency, we have no objection to the depth of its core or what not, but what we have objection to is the whole lot of plans and specifications that visualize an area to be flooded with waters that will be impounded by this dam and five others that are not only not existent, but the only construction of which, according to their testimony, we doubt it very much, are bore holes or test holes which cannot hold water.

Mr. Frazer: May I add just a word to what Mr. Matthews has said on the law? I think we get away sometimes in our general discussion of the Manda case from the beautiful summary, which is a fine

light to steer by. Just after the general discussion of the building of city improvements and so on and the citation from the Seydler case, where Judge Lippincott wrote a dissenting opinion, the Court sums up this way: "The rule limits the proof to the present condition of the land and uses to which it is naturally adaptable." That excludes all dams not already there. "But excludes speculative and possible uses——" those are two classes, one, speculative uses, and possible uses are excluded ——"if improvement and changes are made." There is the statement of the rule which is exactly what we are contending for. Now take one other matter.

The Court: And a reference is made to Lewis, page 709.

Mr. Frazer: I have it from my notes.

The Court: Lewis on Eminent Domain, the Court cites at the end of it, the third edition, page 709, where the cases are collected.

Mr. Frazer: Now, Mr. Hunt says, "Of course, we have got a right to show this, and we have a right because we are not going to show anything about costs, unless I am unfortunately driven to the necessity of showing costs by the engineer or some other kind of talk of his partners, who are going to drive him to this horrible necessity." Cost has not anything to do with the rule. If we leave the Manda case for a moment and go over to the Morris & Cummings Dredging case, you find these significant words: "While in the present case the cost of the proposed port development was not given, the effect of the testimony which was given regarding

the development and the drawings and plans offered and received in evidence would tend to lead the jury to find the value of the property as if the improvements had been made." Now there is the distinction—"as if the improvements had been made," irrespective of whether the costs were testified to or not. We are not called upon on cross-examination to drag in the question of costs, because the very question upon which that examination would be based is inadmissible on the direct examination. Those two cases—if you take that one citation which seems to be the whole thing from the Manda case, which shows that it is only the physical condition as it exists today; and you take the other one from the Morris & Cummings Dredging case which shows that irrespective of whether costs are shown or not the picturing of such things is prejudicial, because there is a tendency on the part of the jury to regard these possibilities as actualities—you have a safe guide by which to steer all through this complex matter as to where to stop the additional testimony in matters of this kind.

The Court: Do you wish to be heard further, Mr. Hunt?

Mr. Hunt: Well, your Honor, I have already answered one extended argument on this point by one counsel, only to hear a second more extended argument by another and a brief one by the first to speak. Does the Court wish me to speak further?

The Court: Yes, because I am inclined very strongly to take the view that has been given me with respect to the philosophy and the holding of both the Manda and the Cummings case. I have

never been in doubt in my own mind that you could show under the Currie case and those that followed the highest use to which this land could be put, and I have never been in doubt that I ought not and could not under the decisions allow you to construct improvements, that is to say, lay out things that were not there in the way of streets and so forth that were specifically spoken of in the Manda case. Now I have no doubt in my mind that it is perfectly proper in the first application that you have referred to, and that is why I asked you the question I did with respect to what was the physical condition of these other dams that you referred to in the five succeeding applications. It seems to me in the Ryerson case—the Ryerson dam case that you may go into that, because this dam was built, and therefore it takes it out to that extent of the decision in the Manda case, where the improvements were not built, and also distinguishes it from the Morris & Cummings Dredging case; and it seems to me that under the theory of the cases there is a point beyond which you cannot go, and I think that the rule has been stated very properly by counsel just now in pointing out that the rule is as to whether there is an existent or whether there is not of these improvements. Now there is an existent dam at the Ryerson place. There are no existing dams, as I understand it, perhaps with the exception of the Forge Pond. Now, of course, you can show that this land is capable of those improvements. You could show that it is capable of harnessing of the water up for hydro-electric purposes, perhaps; but when you begin to construct plants there, even though they may be dams, my doubt is that you are violating the rule that governs me and must of necessity govern me that has been laid

down by the Court of Errors and Appeals in the cases that have been cited. That is why I am explaining to you what my view is, and I think I have been consistent up to this point in my rulings along those lines. Perhaps if I have erred at all it has been in favor of allowing you to show conditions that perhaps are not existent. Now I will hear you. I will be very glad to hear you, if you care to.

Mr. Hunt: Yes. Well, with a view to my saving my physical strength and voice so far as I may, may there be some understanding as to how many counsel are to answer me and how long they are to speak?

Mr. Frazer: I will take the burden. I did not expect to answer Mr. Hunt.

The Court: I do not know that there is any necessity for any answer, Mr. Hunt. I think they have made their positions very clear as he answered. I am only now permitting you to answer them. I do not think there will be any necessity.

Mr. Hunt: Yes. Now I have not the Manda case before me, but if I recall correctly what was read from it——

The Court: You may use my copy.

Mr. Hunt: If your Honor will be good enough to check up to see whether I correctly state one sentence.

The Court: I have an extract. I took out things that seemed pertinent to me.

Mr. Hunt: Mr. Frazer has handed it to me. That is it. "The rule limits proof to the present condition of the land." Now I think your Honor clearly understands, in spite of all the rather wild imagination indulged in by Mr. Matthews, that I am not proposing at the present time to put in any proofs that have any relation to anything except the present condition of the land. That is understood, isn't it, your Honor?

The Court: That is true with respect to the Ryerson Dam.

Mr. Hunt: And we take these things one thing at a time, don't we?

The Court: Certainly.

Mr. Hunt: May I ask whether I am now to address myself to the Ryerson Dam?

The Court: I have made myself quite clear as to what I will allow under the Ryerson Dam, but as long as you are discussing this general proposition at this time and it has been gone into with respect to the entire proposition, I think we can make a ruling now that will perhaps obviate any further argument along these lines, having in mind these other ponds, these other dams, and perhaps the possibility of hydro-electric power.

Mr. Hunt: Yes. May it be understood, your Honor, that if a ruling should be forthcoming to which I shall feel myself compelled to take some exception, I may then put some specific questions so as to get the ruling clearly instead of in this way.

The Court: Certainly. I do not wish to stop you from making further points as the case progresses, irrespective of what my ruling may be.

Mr. Hunt: With the permission you have just given me I am able to address myself generally to the whole proposition, as my adversaries have done. The Manda case is that the rule limits the proof to the present condition of the land, and I understand the Court to agree with me that no question now pending refers to the land in anything but its present condition or its condition as it was on the 19th of March, 1925?

The Court: I think that is correct.

Mr. Hunt: So I shall not have to discuss that phase of it. Then the Manda case says further, "And uses——" that is, the rule limits the proof to "uses to which it, the land, is naturally adapted." Your Honor agrees with me there?

The Court: Yes.

Mr. Hunt: The rule limits the proof to uses to which the land is naturally adapted. If I may be permitted to say so, I think that your Honor has experienced a certain difficulty from failing to observe a clear distinction between existing improvements—which was a phrase you used in addressing me after the other counsel had finished addressing you—failing to observe a clear distinction between existing improvements and existing capabilities. I do not propose at this stage of the case, because I suppose we will take things step by step and one at a time—I do not propose at this stage of the case to refer in any manner whatsoever to any improve-

ments that were not existing on the 19th day of March, 1925. I do propose to refer to capabilities of this land that existed on that date—capabilities that existed on that date that enabled the land as it was on that date to be used either then or at some future time in some manner in which, except for those capabilities, it never could be used. Now to make a specific application or seek for an example or a parallel, if Patterson's Islands had been in the Atlantic Ocean instead of the Mississippi River, they would not have possessed the capabilities of being used for a boom which gave them a value of $5,600 instead of the value of $300 which the jury found they would have except for that capability and which the Supreme Court—which higher value the Supreme Court held was lawfully justified because they possessed that capability. Now, I say that if those islands had been in the Atlantic Ocean instead of the Mississippi River, they would not have possessed that capability and therefore could not have been given that value for that purpose.

If Mr. Currie's strip of land in Hudson County had not been there, but had been out in the Rocky Mountains, it would not have presented the capabilities of being used as a right of way for a railroad coming to tidewater at Jersey City, and so it could not have been valued in view of that capability.

If our lands here at the Ryerson Furnace or any of these other sites indicated on this map for the dams, whose plans the State has approved, had not lain on a stream and at an elevation practically equal to that of the stream, at the stream's margin, rising on either side so as to make a cup; but instead of that had been lands lying on the top of Board Mountain at an elevation of 1000 feet and without a drop of running water there, then they would not present

any capability for the production of a lake, and therefore the jury could not find that because of such a capability the value of the land was greater than it would have been without the capability. Now that is the fact—the picture of the matter. Now to apply the law to that.

The Court: You have read—I may interrupt you for a second. You have read the language of the Court in the Manda case down to the point that you have just illustrated, "The rule limits the proof to the present condition of the land and uses to which it is naturally adapted."

Mr. Hunt: You want me to go on with that?

The Court: No. The next sentence in that ——

Mr. Hunt: "But excluded speculative and possible uses if improvements and changes are made." Now when we applied to the State and obtained permission to build a dam, after the State has approved the very careful and detailed plans which the witness has testified have to accompany the application, that puts the question of the physical possibility of building that dam entirely outside the realm of speculation. That establishes it as a fact. Your Honor, I am sure, remembers Dr. Kummel's testimony, that the reason for the State requiring the plans to be submitted was so-and-so, and the plans had to be of such a character as to enable that reason to be fully served? That is clear in your mind? Now I say when such plans, subjected to such scrutiny as Dr. Kummel says they are subjected to, meet with approval, that takes it entirely outside the realm of speculation, whether the land

where the dam is to be built presents the physical capability of the production of the dam. That is all I want to prove, that they do. I am not going to build it or undertake to build it. I simply want to show as I have a right to show that one of the capabilities of these lands is the building of these dams. Now, "and possible uses if improvements and changes are made." I do not propose, your Honor, to put in a word by Dr. Kummel, and I will not by any witness—at any rate not now, and we will only cross our bridges as we come to them—at present I do not propose—not a word as to what possible use could be made of these lands if the dams which the State has approved were there. For all that I will put into the case at this time, the dams will neither be built nor used. All I want to show is that in the physical sense the land is capable to permit the building of those dams, and that in the legal sense, of course, the State's body, given jurisdiction in that regard, has approved the building of dams. That is all. Now the law of the matter. In the Boom case the Federal Supreme Court said: "Their adaptability—that is the adaptability of the lands for boom purposes—was a circumstance therefore which the owner had a right to insist upon as an element in estimating the value of his land." Now I say the adaptability—I am reading the opinion—only reading dams for booms—"the adaptability of these lands for dam purposes was a circumstance therefore which the owner has a right to insist upon as an element in estimating the value of this land." Now I read also from Mitchell v. The United States, 267 U. S. 345. That is the case only decided in March of last year. "The special value of land due to its adaptability for use in a particular business, is an element which the owner of land is

entitled under the Fifth Amendment to have considered in determining the amount to be paid as the just compensation upon a taking by eminent domain." I argued to your Honor the last week or the week before that a decision which states sound Federal law under the Fifth Amendment also states sound State law under the 14th Amendment. That I think I need not go into. Now I refer to the Currie case for its bearing upon this question. The Court says: "There is nothing in this principle which I have stated as favorable to the public agent as the law admits——" that is, the principle which is referred to is the principle that the public necessity cannot be taken advantage of, that the public cannot be mulcted —— "There is nothing in this principle," says the Court, "which will enable a condemning party to take without payment land values not created by it nor based upon its advantage or necessity but which on the contrary antedated its advent and owe their existence to natural situation." I won't read the rest; it goes on, "growth of trade." There is nothing in this to violate the principle that the public must not be mulcted, and I declare here once more my adherence to that principle. I do not want to mulct the public of a dollar. I want them to have this land for its value. I do not want to mulct the Commission of a dollar, but I am determined to prevent the Commission from mulcting my client of a dollar if I can avoid it. "There is nothing in this principle that they are not to be mulcted that enables the Water Commission to take without payment land values not created by it nor based upon its advantage or necessity, but which on the contrary antedated its advent and owe their existence to natural situation." The contour of these lands antedated

the advent of the Water Supply Commission. The capability of these lands for the production of these ponds is due to natural situation, not to the necessities of the Commission, not to anything done by the Commission, not to anything done by the hand of man, but purely to natural situation. That these lands lie in a valley along a stream. If there were no stream in the valley you could not have any pond there; if it were not a valley but a hilltop you could not have any pond there. But here is a combination, valley with wide flat bottom, surrounded by sloping sides, here and there a narrow gorge to make a short dam, and the stream running through it. That is natural situation. We are entitled to prove what the natural situation of this land is and what advantages flow from its natural situation. Now I go a little further in the Currie case. "The rule that the special advantage of the land to the acquiring corporation——" this is a rule I have not sought to take advantage of yet, by the way. Here it is to my advantage. "The rule that the special advantage of the land to the acquiring corporation shall not add to the compensation to be paid the land owner applied to cases where the taking which is advantageous to the purchaser is not pecuniarily disadvantageous to the seller. If, however, the advantageous feature is of such a nature that it is of commercial value in the hands of either, then one cannot take it from the other without paying for it." Now I propose to show before we are through with this case, if I am allowed to show anything, that this taking is highly disadvantageous to us; disadvantageous to us to the extent of millions of dollars. I propose to show that the advantageous feature of this land, that is, the whole lie of the land, valley and hillside and running water

there, is of such a nature that it is of commercial value in our hands as well as their hands. Under this Currie case I have a right to prove that, and having proven it to the satisfaction of the jury, because it is of course purely matter of fact, then the law is that they cannot take it from us without paying for it. The Court of Errors so declares. Now I go once more to the high Federal Court for further support of this rule of law. The National City Bank vs. United States, 275 Federal 885. This is the District Court, and then affirmed in the Circuit Court of Appeals—not the high court, the Supreme Court, as I had first stated—District Judge Mayer says this: "It is well settled that a person whose property is taken is entitled to have market value for the most valuable use, although as a matter of fact he did not devote it to that use and for some reason or other could not do so. In such case, however, he would be free to sell it to a person who could so use it." It is for this jury, as the judges of the facts, to determine this fact, what the most valuable use of this property is; and since the jury has that duty and function to fulfil, we have the right of putting evidence before them as to what is the most valuable use, and we claim that this question of the capability of the land in its present state for the production of these dams has a bearing on the question, "What is the most valuable use to which this land can be applied?" Now I go again to the Supreme Court in March of last year—I read that: "Special value due to its adaptability for any particular business is an element which the owner is entitled to take into account," and I come to our present Chancellor then speaking as Vice-Chancellor, in Philadelphia Trust Company vs. Merchantville, etc., 74 New Jersey Equity, 334, wherein a

land owner had sought an injunction to prevent Condemnation Commissioners from proceeding with the valuation of his land.

The Chancellor says: "The fear of the complainant is that the Commissioners—the Condemnation Commissioners—will not award their damages which shall include the value of the water which is upon the land, but this apprehension is groundless. In Currie v. Waverly Railroad, etc., it was held that the law gives as compensation to the owner of lands taken for a public use its fair price for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the near future. Therefore, whatever value the complainant's land has by reason of the presence of Cherry Run upon them, that value will be given to them in the way of compensation for their lands to be taken under the condemnation proceeding." Now whatever value my client's lands have by reason of the presence of the Wanaque River upon them, that valuation will be given to them by the way of compensation for their lands to be taken under the condemnation proceedings, and assessed by this jury. How can I put the jury in the possession of facts necessary to enable them to determine what value these rivers and streams add to our land unless I should make it appear whether or not the character of the lands, the flow of the stream is such that dams can be produced on the streams? I might own land on a mesa alongside the Colorado River as it comes down through Arizona, on both sides of it, flat table land, with the river in its deep bed 3000 feet or 5000 feet below me. Now I own the land where the river is down there, because my title runs through from the zenith to the centre of the earth, but I could not very well

claim that the presence of the Colorado River 5000 feet below the level of my land added much value to it. But suppose that the Colorado River flowed 50 feet or 20 feet below my level lands, so that it was practicable to put a dam in there and raise the river and have this water there by gravity or pumping to irrigate my adjoining lands? That would add value, wouldn't it? Now the same situation, not in such a striking form, of course, applies here. If the lay of the land and the flow of the rivers in their natural state as they were before the Water Commission ever commenced its proceeding, was such as to permit the rivers being dammed and ponds formed, then the value might be one thing; and if it was not such as to permit it to be done, then the value might be another thing. So the jury is entitled to know whether it can be done, and if so, to what height the water will be flowed, in order that they may then see from the Water Commission's contour maps what area will be covered by the impounded waters. That is all. Your Honor understands this is not a potable water supply development, that is all, but simply the ornamental ponds that were talked about the other day—small ornamental ponds.

The Court: As a practical matter, if you cannot show any more than the adaptability of the lands to this, aren't we going far afield to allow you to show the structure of the dam? Because then they are something that is not on the land. Distinguishing the later one—the Ryerson one, I have in mind.

Mr. Hunt: If a compromise in this situation were possible, your Honor, I see no objection. I would want to consult my engineer for a moment, but in

my own mind I see no objection to a ruling that permitted the witness to say the location of this dam, application for which has been approved, is so-and-so; identified and so forth, so it can be identified on the map; and the height of the spillway is so-and-so. Now I think that is all I would have to ask for. All I want to show is just simply, first, where the dam would be, where ——

The Court: I will allow you to show that. I will allow you to show the capabilities it presents, the condition of the land by showing what would happen if dams were built at certain points.

Mr. Hunt: All right. May I have a couple of minutes recess to speak with my engineers and see whether that is sufficient? I think it should be.

The Court: Yes.

Mr. Matthews: Your Honor's holding is that the dams are not existent and you will allow him to show ——

The Court: I am going to let him show what would happen if the dams were there to show the capability of the land, and only that, the present capability of the land. That I think is proper under the rulings.

Mr. Matthews: Then he can show the street?

The Court: No.

Mr. Hunt: I do not want to, your Honor.

Mr. Matthews: It is not what he wants. If he does that, the door is clean open.

The Court: No; I do not think that opens the door.

Mr. Matthews: There is no statement made either ——

The Court: I think you better not argue it until he returns.

(A short recess was taken.)

The Court: I indicated that you might confer with your engineer, that I would be inclined, if you did not put in the record about the structures that would be built, to permit you to show the adaptability of the land for lakes. I have been reading some of my notes that I have taken since that time with respect to just what the decisions are, and I apprehend if I do that it is going to cause a great deal of difficulty in the future in the conduct of this case, because it does not, perhaps, settle what I would like you to settle, and upon reflection I get a little different meaning from the language of the Manda case than I anticipated before. I am stressing the meaning of the words "naturally adapted." I think what the Court meant there was without any structures there at all, and if I allow you to put dams that are not existent, I think I am violating the rule. That point did not strike me forcibly before, because what I think that is, is land without any structures at all, and I think I am bound, therefore, in my ruling, under the Manda case, which is the last word of the highest court of this State, to

rule out the visualization of any structures that are not now, or rather on the date of the taking, on the land. I think that excludes from that ruling the Ryerson Dam, because that was there; but I think that that must exclude the evidence with respect to these other lakes, and I think that we might better meet that situation now than to encroach on it to the slightest extent, and then have to take a back track a little later on in the progress of this trial; so I shall now rule accordingly, and if that does not make your record straight, you may make a statement and I will rule on that.

Mr. Hunt: Well, will your Honor permit first to do this: To ask what meaning your Honor gives to the word "adapted," as used in the Manda case in the phrase "naturally adapted"?

The Court: I think it means what I have just indicated.

Mr. Hunt: But "adapted" your Honor, as I understand it, means fitted for something, appropriate to some use.

The Court: Yes, as it is naturally.

Mr. Hunt: Yes, sir, naturally adapted. So, the question is are these lands at any point naturally adapted. That is, adapted by nature to the building of a dam in the river? Adapted by nature to the building of the dam? Now, that is all I seek to find out. I gave my Colorado River illustration with the river 5,000 feet below the mesa. That is not, I say, naturally adapted to build a dam. You could hardly hope to build a dam 5,000 feet high.

I might point to the broad expanse of flat lands and sandy plains in the southern counties of this state with no streams flowing through them. I might say that in Atlantic County, your Honor has doubtless seen tracts of 2354 acres of flat land without any stream flowing through it. I should say that is not naturally adapted to the building of a dam. There is no use to build a dam where you haven't any water to impound. And the high point to this mountain or hill I see out of the window here, I say, that I could not conceive the top of that to be naturally adapted to the building of a dam, because the water runs off of it in all directions—an elephant-back or hog-back, whichever you wish to call it; but here I point to my client's land in the Wanaque Valley which is wider at some places and narrower in some places, and I insist that if in that valley there is a point where the hills draw close together, and where upstream from that point the valley broadens, the hills bear out away from the river, and then rise with sloping sides, that a jury might find it naturally adapted, adapted by nature to the building of a dam. There is a basin formed by nature which has been there since creation. There are hills surrounding that basin on either side, formed by nature. There are hills narrowing at the lower and downstream, by drawing close together, permitting the stoppage of the water by a short dam. Now, I say that is naturally adapted for the building of a dam, and that I am entitled to show under every one of these cases that has been read here. If that should be excluded from this case, then all our toil and labor here is in vain.

The Court: In the Morris Dredging Company case it was all of that. Here was a piece of land

that was most advantageously situated, being in the Port of New York Authority, adjacent and near to the terminals of all transcontinental railways, and it was attempted to do there, in principle, somewhat what you are attempting to do here, and the Manda case, it seems to me, laid down a rule which could not change the natural character of the land, and must exclude ——

Mr. Hunt: Your Honor, I am not going to change the natural character of the land.

The Court: No, but you are going to do something to change the physical conditions that have existed there from time immemorial.

Mr. Hunt: No, sir; I am not going to do that. I am so sorry that I cannot make myself understood. I am not going to do that at all. I am simply going to show what those physical conditions are in order that this jury, having learned from witnesses what the physical conditions are, may determine whether in view of those physical conditions, untouched by hand of man, purely natural, physical conditions, this land is "naturally adapted," to use the words in the Manda case, to the building of a dam. That is all. I am not going to build a thing, your Honor. I am not to pour a yard of concrete, move a single stone or pebble from its bed, shift a shovelful of earth, cut down a tree, plow a furrow—I am going to do absolutely nothing. I am going to show what that land is in its natural condition. What it was, rather I should say, in its natural condition at the time this proceeding commenced, and before that time, in order that the jury may determine whether in that natural condition it

was naturally adapted to the building of a dam. Now, may I refer to a point I had to make in a matter that I argued in Washington just before I came here to try this case? There, I thought I perceived, on the part of my adversaries, an effort to give to a very recent decision of the Supreme Court —the Chemical Foundation decision—a broader meaning or application than it called for. I recalled, that at the last term of the Supreme Court, last year in 1925, the Court had twice re-declared an old rule. I think that has especial application to this Morris & Cummings Dredging Company case which now causes trouble to your Honor. In this ruling, twice at the October Term, 1925, the Federal Supreme Court took occasion to re-affirm the rule first laid down in Cohen against Virginia in 6 Wheaton. That is a very old case, now almost one hundred years old, page 264, that their opinion is to be read, having regard to the facts of the case and the question actually decided. Now, that was stated at the 1925 Term in Weaver v. Palmer Brothers, 70 Lawyers Edition, Advance Opinion No. 10, page 366 at 369; and the same principle was stated in these slightly different words: "It is a rule of universal application that general expressions used in a Court's opinion are to be taken in connection with the case under consideration"—that is, in connection only with the case under consideration. That was declared in Bramwell against United States Fidelity & Guaranty Company, Lawyers Edition, Advance Reports, Volume 70, No. 7, page 190 at page 192. Now, consider the Morris & Cummings Dredging Company case and the manner in which the Federal Supreme Court states that it is to be considered—and I know that your Honor will regard the Supreme Court's statement as a sound

statement of law in every jurisdiction—what was being done in the Morris & Cummings Dredging Company case? The Sewage Commission was condemning a right of way, the easement for the building of an outlet trunk sewer 65 feet, if my recollection is correct ——

The Court: That is correct.

Mr. Hunt: (Continuing). Under the surface of the Morris & Cummings Dredging Company's land, and the Dredging Company came along with a witness who produced a picture—I think the word used by Mr. Frazer applies there—a picture of a tremendous improvement not existing, not authorized but conceived in the minds of certain persons as a thing to be brought into existence sometime in the future on the Jersey shore of New York Bay, somewhere below the Greenville yards of the Pennsylvania Railroad, a mile or two from the Morris & Cummings Company property. This improvement consisted of long piers built out into the Hudson River in the Upper Bay on the shoreward end of which were enormous storage warehouses. I said, by the way, it was a mile or two from the Dredging Company's property. It included the Dredging Company's property. These warehouses were to be equipped with plunger elevators. Now, the Morris & Cummings Dredging Company claimed consequential damages to its property by reason of the taking of this easement, upon the theory that the plunger elevators, in order to be operated, had to be able to go as deep into the ground as the warehouse rose above the ground, that inasmuch as the warehouses were to be 12 stories high, the sewer, at a depth of 65 feet, would interfere with the operation of the plunger elevators. Now, there weren't any warehouses. There weren't any elevators. There wasn't any evidence that if there ever should be a warehouse it must necessarily be equipped with that kind of an elevator. There wasn't any evidence that if there ever was a warehouse, and it did have that kind of an elevator, its elevators would be constructed at a point where the plungers would stand perpendicular to the sewer: There was evidence that to produce this improvement, painted with a brush on a piece of paper—it was not a photograph—it was not a drawing, because there was nothing there to be photographed and drawn. It was an artist's conception. There was evidence that this improvement, painted on a piece of paper, required for its production on the ground, first, an Act of Congress to authorize certain of its parts which were within the jurisdiction of the Federal Government, as harbor improvements. Second, an appropriation of money by Congress, because the imagination of the man who conceived this improvement, pictured Congress furnishing a large part of the money, the Court described it, if I recall it correctly, as a large appropriation. Third, the railroads coming to tidewater at Jersey City, connecting up their tracks with the land on which the improvement was painted as being produced, because it was not land that was already connected up with the tracks of any existing railway line and there the Court said "It required the railroads to raise huge sums of money," if I remember the language correctly for that purpose. Fourth, probably some legislation by the State of New Jersey. All those things were required before this fanciful interference of, a non-existing plunger elevator with the sewer became a present-day, existing fact. None of

those things, so far, had been authorized; not one step had been authorized; Congress had not passed the enabling act; Congress had not made any appropriation; the warehouses had not been built; the piers had not been built; the railroads had not connected up the property with their tracks; not one first step had been taken, so the Court said this is speculative. Now, your Honor, it is with an eye directed to that state of facts that one must read what the Court said in the Morris & Cummings Dredging Company case, because every opinion is to be read having regard to the facts of the case, and the question actually decided. How different from this. All that I seek to prove here, the natural lay of the land, the valley with a flat and level floor, flanked by rising hills which form the brim of the cup all around, except at the lower end where the hills draw together, permitting the cup to be closed by the building of a short dam. That, I want to prove in order that the jury may determine whether this land is naturally adapted to the production of these dams. I have got a right to do it, and, as I said, it is a prospect that fills me with despair to think that if we are not permitted to do that, all our toil and labor here is for naught, because our judgment will not rest upon any foundation that can stand. My client would have been robbed, deprived of its constitutional rights. Its voice will have been silenced when it had a right to be heard, Currie, Schumaker, Rum River.

The Court: Rum River.

Mr. Hunt: Rum River is the Magna Charta for this.

The Court: Yes, but no improvements over the Rum River was valued exactly as it was created.

Mr. Hunt: Exactly, and that is the way I want this valued, just as it was created.

The Court: No, you want to put dams in which are not natural to the condition.

Mr. Hunt: No, I do not want to put any dam in. I want to show that the land is naturally adapted to the building of a dam. That is all. I do not want to build it. I said I did not expect to break the surface of the ground, dig a shovelful of earth, or move a stone.

The Court: I understand that, but you have tried to show by the witness that is now on the stand that there were plans drawn and approved by the proper governmental agency for the building of dams at various points in order to show, you say, the adaptability of this land for being dammed.

Mr. Hunt: Yes.

The Court: Now, as I read the cases, I think that is the very thing you cannot do. You can show, perhaps, by the contour of the land, the high natural land itself—to those things in its natural condition, but what I am now saying is that I think when you go a step beyond that and show where dams could be built, the height of dams, and all the details of it, then we are running afoul of the Manda case, and underlying principle of the Cummings case. I can appreciate the difference between the facts in the Cummings case and this, but in the Cummings case you must remember that the testi-

mony of not only the engineer that you spoke of, representing the Navy Department, or whoever he was, there was testimony of others that this was a perfectly feasible plan for the immediate present, or the near future. That was all before the Court, and so that it was not quite the impossible picture that it might be said to have been. It was not altogether imaginative. Of course, there were governmental things that had to be done in the way of legislation, and so on, which, perhaps, are not present in this case. That, to my mind, is the difference between them, but it does strike me, Mr. Hunt, we might just as well state it now rather than later in the trial, and make a ruling now that we will stand by and see where we are at, because otherwise we are going to have to come to it, perhaps, a little later, and I shall not stop you from proving the capability of the land in its natural condition, nor will I stop you from showing what might happen in the vicinity of the places where dams are in existence; but when you get into the realm of dams that are not in existence, then I think they become covered by the Manda case and the others.

Mr. Matthews: Will your Honor hear one word from me?

The Court: Well, is it necessary?

Mr. Matthews: Did your Honor have the following sentence of the Manda case in mind:

"But excludes speculative and possible use if improvements and changes were made," so it negatives everything artificial?

The Court: Oh, yes, that is the point.

Mr. Hunt: Your Honor permitted me to withdraw for the purpose of consulting with my engineers to see whether I could make certain concessions from the request I have made?

The Court: Yes.

Mr. Hunt: Now, shall I state what I could be content with?

The Court: I do not mind saying that this is a matter that I consider of the greatest importance, and I am perfectly willing to give you gentlemen all the time that you may need to elaborate on your argument, and so on. I can appreciate fully the importance of the decision that I am making, and I do not wish to have you think that I am arriving at that decision without most careful consideration, or that I am arriving at it without any difficulty, because it is fraught with considerable difficulties. There are shades and differences between these various cases that make it very difficult for the Court to say just where the line shall be drawn, how far you should go, and beyond which you should not go. Nothing is further from the mind of the Court than to restrict you to a proper presentation of your case, and to get before the jury everything that is legally proper for you to get. I do not wish to try this case a second time, certainly, and I do not wish any other Court to try it a second time. I wish to be as near right in my rulings so that it may not be tried a second time, as it may be, but I must make my rulings that I find proper irrespective of its destroying plans that you may have had in the trying of the case, and that is one reason I like to meet these questions and decide them all,

rather than to wait for them to be met piecemeal. Now, if you wish a recess at this time, I think we may take it.

Mr. Hunt: No, my recess was sufficient. I am prepared to go on. The point was this, your Honor: You gave me leave to withdraw for a few minutes to consult with my engineers to see whether something less than the admission in evidence that we had called for would serve our purposes, but I came back and I was ready to make my statement, but I found your Honor had modified your ruling, and out of that this further argument has grown. Now, I would be content if I could have from the witness, who, of course, would have to testify by referring to the plans filed with him, and the consent given by the State Board, the following data: With respect to each dam, its location on the stream. The elevation above sea-level of the stream at that location. The height of the spillway of the dam. And if the application with its supporting papers states this fact, the area of land which would be flowed by the erection of a dam for which approval was given. And before I be considered as finished, may I turn to Mr. Anderson? I could be content, your Honor, with those things, and having those things in, withdraw the prior demand that I made for the admission in evidence of these documents as an exhibit.

Mr. Frazer: That is practically building dams, sir.

The Court: It seems so to me, Mr. Hunt. I think it brings us exactly back to where we were. The only difference is we are not putting in the applications themselves, and the blueprints and details

of the dams. We are constructing something artificial on these lands, in effect. I will allow it with respect to the Ryerson Dam and any others that were in existence at the time.

Mr. Hunt: You will allow it with respect to the Ryerson Dam? Then, if the jury may be recalled, I will examine with respect to the Ryerson Dam first and not the others.

Mr. Frazer: Will Mr. Hunt make an offer in a general line, and then we can have a ruling on it, and he can take an exception if your Honor rules against it?

The Court: Haven't I sufficiently ruled?

Mr. Frazer: I do not know. Mr. Hunt made some suggestion about bringing it up, and I thought we might as well save time.

The Court: If there is any question ——

Mr. Hunt: I think I would prefer to proceed with the case, according to my own formed ideas.

Mr. Matthews: The only thing is we want to put an objection on the record with reference to the testimony about the Ryerson Dam, because it creates a condition that does not exist about the area to be flowed by the dam, the height of the dam. That is not natural adaptability.

The Court: What I meant by my ruling with respect to the Ryerson Dam was, within my conception, what would be proper when I hear the question. My point is that the Ryerson Dam is in a

different territory from all the rest, because I understand that is built, or is there.

Mr. Matthews: Just a core wall.

The Court: Well, whatever it is. I shall allow the testimony with respect to the present conditions that were there at the time of the date of this condemnation.

Mr. Matthews: We have no objection to that, but on account of his having said in compromise——

The Court: He was talking about the general situation, and with respect to all dams that were proposed at that time. I do not know that he specifically referred to the Ryerson Dam. At any rate, my ruling will be with respect to the conditions that existed at the Ryerson Dam at the time of the taking in this case.

Mr. Matthews: Therefore the application and specification on plans that Dr. Kummel seeks to offer to portray conditions visualized conditions that are not existent.

The Court: If that is so, we will rule on that when it develops. I am not sure that is true. You may bring the jury back.

(The jury returned to the court room.)

Mr. Hunt: Before the jury was excluded I had made a specific demand for the admission in evidence of certain specific papers produced and referred to by Dr. Kummel in connection with the Ryerson Dam, namely, the application of the Ringwood Company, dated March 31, 1923, the specifications accompanying the application, the plans accompanying the application, a certified copy of an abstract from the minutes of the Board of Conservation and Development, dated September 13, 1923, granting approval of the plans, a letter of Dr. Kummel to the Ringwood Company, dated May 11, 1923, advising of the approval of the plans, another letter from Dr. Kummel to the Ringwood Company, dated September 14, 1923, advising of the approval of revised plans. Objection was made, and as I understand it, my demand for the production of these documents in evidence is overruled. I now beg leave to renew my application to have the documents just mentioned admitted in evidence.

The Court: Motion denied.

Mr. Hunt: And I pray an exception.

The Court: An exception is allowed.

By Mr. Hunt:

Q. Now, Dr. Kummel, referring to the application made by the Ringwood Company for the approval of the dam at the Ryerson Furnace and the plans accompanying the same, please state by reference to the data contained in the plans or specifications the exact location of that dam?

Mr. Frazer: I assume that is the dam, part of which is on the ground?

The Court: I understood ——

Mr. Hunt: That is the better ——

The Court: I understood that was true, and that the dam had been built according to plans.

Mr. Frazer: If Mr. Hunt now states that the location he is trying to elicit from Dr. Kummel is the actual location, I have no objection to the question.

The Court: Very well.

Mr. Frazer: Is that the fact, Mr. Hunt?

Mr. Hunt: The question speaks for itself.

Mr. Frazer: I am asking a question of counsel.

The Court: And he answered and said that is the fact.

Mr. Frazer: I did not understand him to say that.

The Court: That is the question?

Mr. Hunt: Yes, your Honor, that is the question.

The Witness: According to the map which was filed with the application, the Ryerson Furnace Dam is located a few hundred feet north of a road which leads north—northwest from the Village of Midvale, crosses the Wanaque River and continues northwestward towards Stone Town.

Mr. Hunt: For the purpose of clarification, may I ask whether counsel for the other side will admit that the road which is described is the Hook Road as marked on the Commission's map in evidence here?

The Court: Well, there are lower and upper.

Mr. Frazer: Lower Hook Road.

The Court: I think there are two, Mr. Hunt.

Mr. Hunt: All right.

Q. How many hundred feet north of that road, Doctor?

A. Approximately three to four hundred feet.

Q. And what is the elevation above sea level of the water in the Wanaque River as it flows at that point?

A. Two hundred and eighteen or nineteen feet, if I read the maps correctly.

Q. And what is the elevation above sea level at the top of the spillway of the dam for whose construction approval was given?

Mr. Frazer: Now, just a moment. Is the spillway built, may I ask Mr. Hunt? We are taking Dr. Kummel somewhat in an irregular order. I presume these matters would have been proven if we had gone in the regular order.

Mr. Hunt: I am informed that the spillway is partly built, and is built to such a state of completion as to indicate this is the top, which is the point to which I have directed the question.

Mr. Frazer: I would consent to his answering the question, subject to my right to have it stricken out in the event that Mr. Hunt does not subsequently tie up the condition of the dam as it actually exists with the answer that Dr. Kummel now makes.

The Court: Very well. What was the answer that you gave, Dr. Kummel, to the first question? The first question was the elevation of the dam.

Mr. Hunt: Yes.

The Witness: What is the question, please?

Mr. Hunt: Read the question to him, Mr. Kestenbaum, please.

(Question read.)

The Witness: 233½ feet.

Q. What is the area to be flowed by the dam as indicated by the application and its supporting documents?

Mr. Frazer: I object. That is something which is not a part of the ground, the flow of the water.

Mr. Hunt: The ground is there, your Honor, and the water is there.

The Court: I will allow it.

Mr. Frazer: Exception, please.

The Court: You may have it.

The Witness: The maps filed do not show the area proposed to be flooded.

Q. May I ask you to look at the application and see whether that states it, Doctor?

Mr. Frazer: I object to that. That is a conclusion and a self-serving instrument, what Dr. Kummel is not testifying, from his knowledge what the Ringwood Company may have said in the application is not material.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may have it.

Q. Dr. Kummel, don't answer this until we see whether there is a necessity for a ruling by the Court. Does the application made by the Ringwood Company for permission to build this dam, state the area which is to be flowed by the dam?

The Court: Yes or no, Doctor.

A. It does not.

Q. Does any application or statement supporting the application made by the Ringwood Company's engineer state the area to be flowed?

Mr. Frazer: Yes or no.

Mr. Hunt: Yes; just yes or no. The Ringwood Company's consulting engineer is Mr. Boardman, and he is the man to whom I referred.

Mr. Frazer: I submit, if it does, Mr. Boardman would be the best one to prove it, not by Dr. Kummel trying to read his letter. We are simply wasting time.

The Witness: It does not.

Q. It does not?

A. Yes.

Q. All right. Now, Dr. Kummel, what is the date of the second application made by the Ringwood Company and which was granted by the State?

Mr. Frazer: I object; it hasn't anything to do with the other applications.

Mr. Matthews: May we add to that objection that the proof is not before the Court that there is any other existing structure, and we take it for granted there is not, and therefore it is incompetent.

The Court: If the application refers to a dam that has not been built, Mr. Hunt, and it does not appear yet from anything in the evidence that is so, I will sustain the objection.

Mr. Hunt: Well, your Honor, I can only put one question at a time, and only advance one step at a time. Dr. Kummel has testified that six applications were made, and six were granted. I should like to take them up one by one, and my adversaries will have the opportunity, in connection with each one to ask whether any work has been done. I have already made a statement, of course, I am not a sworn witness, when he was asked about that, and I informed the Court what work has been done.

Mr. Hunt: May the pending question be read?

(The question was read by the stenographer as follows: "What is the date of the second application made by the Ringwood Company and which was granted by the State?")

Mr. Frazer: My objection goes to the order of the question. It seems to me Mr. Hunt should first identify the applications as relating to the existent or non-existent structures. If they are non-existent I would naturally object to any further evidence.

Mr. Hunt: I am seeking to identify them, but I presume Dr. Kummel does not know whether these authorized dams had been built or not. I do not think he knows anything about it, so my best way to get at it is to ask what is the date of the next one? On what date was that granted?

Mr. Frazer: Well, here as a matter of fact ——

Mr. Hunt: Then, put my question regarding the elevation of the water in the river at the site of that dam, the elevation of the spillway, the area flowed, and those questions could be objected to.

Mr. Frazer: As a matter of fact, Mr. Hunt and I very well know which ones are which, and I am perfectly willing to concede which ones have structures on them, and which have not.

The Court: Mr. Hunt may prefer to make the record.

Mr. Frazer: I think his order is wrong. I think Dr. Kummel should not be here now.

The Court: It is hard for me to rule on that. My ruling would be, of course, that it would not be evidential if the dam was not in existence, and I cannot tell at this stage of the game whether they are or not.

Mr. Frazer: I think counsel has admitted those places where there are dams or structures.

The Court: Yes, the difficulty is that this witness cannot place them. Counsel says there are two dams, one here at the Ryerson place and the other at some pond.

Mr. Frazer: Forge Pond.

The Court: Forge Pond and all of the others I shall not admit.

Mr. Hunt: Of course, your Honor, my point is I am entitled to have this evidence with respect to the others. My point is that the fact of value and the fact which I am entitled to bring out is whether the land is naturally adapted to the production of a dam, and that this evidence has a bearing upon that fact and, therefore, I am entitled to have it in. Now, I understand that your Honor has ruled that "naturally adapted" means in practical application, actually applied. Upon that I have the misfortune to differ with the Court, and for the purpose of testing whether I be right or wrong, I must get an exception on the record, and the only way I know of to get it is to proceed by question, objection and ruling.

The Court: Well, let me ask a question, then, and I will be ready to rule.

Mr. Hunt: All right.

The Court: Do you know, Doctor, whether there is a structure on this place that is referred to in this application?

The Witness: The record does not show any structure.

The Court: You do not know otherwise.

The Witness: I do not know otherwise, except what the record shows.

Q. It is not the Forge Pond site, is it?

The Witness: It is not; no.

The Court: Then I will sustain the objection.

Mr. Frazer: Then, may I make the suggestion —— I think there are five besides the one we have been discussing. As to four, counsel had already admitted, in the course of argument, that there are no structures. As to the fifth, Forge Pond, it is admitted that the structure is complete as to that structure—as to that one, if it be complete, these applications are not evidential either, the plans would be merged in the actual structure, if I can use the legal term, the best evidence would be the structure on the ground.

The Court: It may be of evidential value, however, on the plans.

Mr. Frazer: All five of them, it seems to me, are inadmissible.

The Court: Very well, you may have an exception to my ruling, Mr. Hunt.

Mr. Hunt: Well, I don't see, your Honor, that the exception is one that avails me anything. I

must ask some further questions in order to have an exception that avails.

The Court: I do not care whether you have an exception. I am just trying to help you.

Mr. Hunt: Certainly, I know, yes.

The Court: You may ask him further, if you wish.

Mr. Hunt: May I first make an answer to a statement of fact which counsel on the other side attributed to me a moment ago, namely, that with the exception of the Ryerson Dam and the Forge Pond Dam no other structures have been built. Now, what I said was that no dams had been built, but that certain preliminary work towards the building of dams had been done. I said there had been borings made, test holes put down, the other preliminary work essential to the construction of the dam done. Now, with the Court's permission I will ask the witness if he can identify the application that has reference to the Forge Pond Dam.

Q. Can you do that, Doctor Kummel?

A. I can.

Q. Will you turn to that place and tell me the date?

A. Forge Pond Dam, application filed August 4, 1924.

The Court: What date?

The Witness: August 4, 1924.

Q. And approved on what date?

A. Approved August 14, 1924.

Q. And what does the application and the plans

and specifications accompanying it show to be the elevation above sea level of the water in the river at the point where this dam was authorized to be built?

Mr. Frazer: I object, because what the plans may show is immaterial in view of the fact that this dam was completed—I do not know that it was completed, according to the plans and specifications. Testimony as to the physical condition of the dam on the ground is admissible.

The Court: What do you say to that, Mr. Hunt?

Mr. Hunt: I say again, your Honor, that it is a case in which I can only go step by step, and if I am permitted to go far enough it will appear that the permission granted to build this dam contained certain conditions, one of which was that progress reports must be made by the chief engineer in charge from time to time of the progress of the building, and those progress reports are there, and we will show whether it is finished or not finished.

The Court: The point is this is not good evidence, because the best evidence is the condition that exists, that this dam may not have been built according to these plans and specifications.

Mr. Hunt: All right, that would be matters for my adversary to bring out, if that were true. I submit that neither the Court, jury and counsel by looking at the same can determine the elevation above sea level of the water of the river at that point, or the elevation of the water of the spillway at the dam.

The Court: I will allow it subject to being stricken out if it does not develop that the plans have not been followed in the construction of the dam.

Mr. Frazer: I ask for an exception.

The Court: You may have it.

Mr. Hunt: May the question be read, then, please?

(Question read.)

The Witness: 266 feet.

Q. And what do they show as to the elevation of the spillway of the dam?

A. 275½ feet.

Q. And what do they show, if anything, as to the area to be flowed by the dam?

Mr. Frazer: I object to what the plans show.

The Court: I will allow it on the same theory that I allowed the elevation to be given. If the condition does not square with that, the actual condition ——

Mr. Frazer: We have now to do with the actual existing pond, I understand?

The Court: Yes.

Mr. Frazer: And that is the pond which is under consideration, not a theoretic pond which may be created theoretically by the creation of a certain height of a spillway?

The Court: That is correct. I will allow it subject to being stricken out if not connected up.

Mr. Frazer: An exception, please.

The Court: You may have it.

The Witness: The blueprints show nothing as to area.

Mr. Frazer: Is this from the application of the Ringwood Company that you get your information?

The Court: I guess so.

Mr. Frazer: Then I respectfully submit that this is again a mere self-serving declaration. I know nothing about it, made by these people of interest in the case, and no possibility of cross-examination as to the accuracy of the statements.

The Court: Well, it is true that it is their statement, and if it cannot be checked up or verified, the only question is this, to show that this dam was built in accordance with the plans and specifications. Now, if that is not true, of course, all of this evidence is subject to being stricken out. Here is a witness that has certain facts before him, alleged facts at any rate, and while it is true there are statements that were made by the owners in this case, still I should strike it out if it develops, if the situation is not as a matter of fact what the statements and figures contain show them to be. On that theory I will allow it and grant you an exception.

Mr. Hunt: May I add, your Honor, that I will produce at the request of counsel for the Water

Supply Commission any officer, any employee, any former employee now living who can be reached, any man who has ever been consulted, and any man who has ever done any work for the Ringwood Company on any of these dams or the plans therefor, to be examined by opposing counsel and I will not insist that the witness be employed as his own witness, but will give him opportunity to cross-examine him as though he were an adversary's witness, and will make no objection, nor take any exception to any question that he wishes to put to him.

Mr. Frazer: I have no desire to cross-examine these witnesses.

The Court: Very well.

The Witness: The papers filed in connection with the case do not disclose anything regarding the area that would be flooded by the construction of the proposed dam.

The Court: I assumed that was so, because that was true in the first instance.

Mr. Frazer: I had forgotten. I had a good lunch, and I had forgotten.

Mr. Hunt: Now, if the Court please, I would like to ask questions concerning the Upper, Lower and Middle Cupsaw Dams which the Ringwood Company has been authorized by the State to build, and I offer to make the evidence admissible by later proving by another witness that the borings, test holes and other preliminary work, work preliminary to the actual construction of the dam, has actually been done.

The Court: That raises a question when is a dam not a dam.

Mr. Hunt: Well, as I said before, your Honor, I am not at all concerned with the question whether there is a dam there or not. It is the right to have the dam that concerns me; and may I remind the Court that in the first or second week in these proceedings—I think it was perhaps on the first day when I was opening my case to the jury and there was much objection by opposing counsel—it was then stated, if not then, at some later date, that we could not build these dams because consent from the State Board of Conservation and Development was required. Now, I am here, by this witness, the head of that Board, to prove that we have got those consents, and I insist, on that account, we are entitled to prove every one of these consents.

Mr. Frazer: Counsel for the Water Board never made any such statement. Counsel said they may not divert the waters.

Mr. Hunt: That was another claim made by counsel of the Water Board, but none of this damming involves the diverting of these waters.

Mr. Frazer: The impression which Mr. Hunt here seeks to give is altogether a ruinous one, that the permission of the State is required to build a dam, in any sense that the right does not exist in the owner to build a dam on the land which he owns. I presume one hundred dams can be built along the Wanaque River where the man owns land on both sides. The only condition in the law is that the dam should be of such strength as to be sufficient to sup-

port the strain, and the judge of the propriety of the construction is the Board of Conservation and Development. There is no question about a right from the State that is being injected by Mr. Hunt, and I think it should be protested at this time, because it is ——

The Court: Dr. Kummel explained at the outset of his testimony the rules and law, as I recall them, and he said what happened when a dam was built higher than five feet.

Mr. Frazer: Yes, sir, the color which counsel seeks to inject in his argument on matters of this kind is that the State has conferred some special right on the Ringwood Company in this matter which we are now taking away from them. That is not the fact in any sense whatsoever.

The Court: I do not think that is quite so. Mr. Hunt says he brings this in for the purpose of showing that this land has an adaptability for this use. He goes further and says that in two instances the adaptability was not only possible, but was actual because the dam was built in both instances. Now, with respect to those two places I have no doubt, with respect to the rulings of the Court, but with respect to the other three I do not see that the ruling of the Court should be changed just because, forsooth, there had been survey made, just because there had been a plan drawn, just because there had been some preliminary work done with respect to the drawing of the plans as to where the dams should be, and by borings and soundings that you have spoken of, because they were not actually built, they were not projected, they were planned, but that was all, and some preliminary work was

done with respect to carrying out those plans. I think the situation is quite different with respect to those three items than is present in the case of the Ryerson Dam and the Forge Pond Dam. Therefore the ruling of the Court is that the question that is now sought to be asked, or is asked, is immaterial and irrelevant under the Manda case, and I overrule it and give you an exception to that ruling.

Q. I believe you testified this morning that a total of six applications had been made by the Ringwood Company, and all had been granted prior to March 19, 1925?

A. I did.

Q. Two of those applications and plans related to the Ryerson Dam and the Forge Pond Dam that you have already testified concerning, did they not?

A. They did.

Q. Now, can you tell us what the other four related to, Doctor? I simply want to locate them for the purpose of getting my question put and the objection registered in the proper way.

The Court: Very well.

Mr. Frazer: Well, I think that is another way of bringing in the same matter showing dams and so on.

Mr. Hunt: I understand the Court is not going to permit me to show the dams, but I want the record to show what the Court does not permit me to do, and I am trying to do it in the shortest possible way.

The Court: I think that is all right. I will allow it.

Mr. Frazer: I ask for an exception.

The Court: You may have.

The Witness: The dam known as the Lower Cupsaw Dam on the Cupsaw Brook?

Q. Yes, sir.
A. The Cupsaw Brook Dam on Cupsaw Brook.
Q. Is that above or below the Lower Cupsaw?
A. That is above.
Q. All right.
A. The Carleton on Cupsaw Brook.
Q. Yes.
A. The Wheeler Dam on Wanaque River.
Q. And did you say that for all those four dams application was made and approval was granted by the State Board of Conservation and Development prior to March 19, 1925?
A. Plans of all of them were approved prior to that date.
Q. May I direct your attention to West Brook and ask whether there was any application made and permit granted for the building of a dam on West Brook before March 19, 1925?
A. There was an application made for that—for a dam on West Brook. I am not prepared to testify positively as to the date.
Q. All right, then I won't press that.

Mr. Hunt: Now, if the Court please, I offer to prove by this witness with respect to each of the four dams he has just mentioned, namely, the Lower Cupsaw Dam on the Cupsaw Brook, the Cupsaw Dam on the Cupsaw Brook above the lower one, the Carleton Dam on Cupsaw Brook, and the

Wheeler Dam on the Wanaque River, first, their respective locations on the ground, second, the elevation above sea level of the water in the stream at the location of the respective dams, third, the elevation above sea level of the spillway of each of the dams respectively, fourth, the area flowed by each of the dams respectively.

Mr. Frazer: I object to the offer.

Mr. Hunt: I have not finished it.

Mr. Frazer: I beg your pardon; it is difficult to know when you have finished.

Mr. Hunt: Might I ask Mr. Kelley to read me what I have said, your Honor?

(Statement repeated by the stenographer.)

Mr. Hunt: I assert this evidence to have a material bearing upon the question whether any parts of the land under condemnation are naturally adapted to the building of dams, which in turn I assert has a bearing upon the value of the land under condemnation, and I claim it to be the right of the owner to show these facts.

Mr. Frazer: I object on the same grounds that were allowed before.

The Court: Objection sustained.

Mr. Hunt: Your Honor grants an exception?

The Court: Exception allowed.

Mr. Hunt: Cross-examine.

Mr. Frazer: No questions.

The Court: That is all, Doctor.

JAMES P. ANDERSON, sworn.

Direct examination.

By Mr. Hunt:

Q. Where do you live, Mr. Anderson, please?
A. In Paterson, New Jersey.
Q. How long have you lived there?
A. In Paterson, about 18 years.
Q. Are you connected with the Ringwood Company?
A. I am.
Q. What official position do you hold with that company?
A. Manager of mining property.
Q. General manager of the mining property?
A. Yes.
Q. Now, have you had any other duties to perform for the company aside from the general management of the mines?
A. Yes.
Q. What has been, in a broad and general way, the nature of those duties?
A. General development of the property.
Q. And especially with reference to the 2354 acres being taken in this condemnation suit, have you had to deal with it in any way?
A. Yes, especially in reference to that.

The Court: Just a moment. Before you put that map up will you fasten that corner, otherwise you would not be able to read it.

Q. Mr. Anderson, are you familiar with the land holdings of the Ringwood Company as they existed on March 19, 1925?
A. I am.

Mr. Hunt: Mr. Frazer, may I ask whether March 19, 1925, is the date of the commencement of this proceeding?

Mr. Frazer: That is what I understood. You have asserted it, and I assume that you have stated it correctly.

Mr. Hunt: I think that is correct.

Q. Are those holdings as they existed on that date in any manner indicated on the map which has just been stood up?
A. They are indicated by those portions tinted pink.
Q. Tinted pink?
A. Yes.
Q. Now, are you familiar with the rights possessed by the Ringwood Company by virtue of deeds in the lands of other persons in the same neighborhood on March 19, 1925?
A. I did not quite get that.

Mr. Hunt: Read it.

(Question read.)

The Witness: I believe I am.

Q. Are any of such rights in any manner indicated on the map? I call your attention especially to the area on the map colored in salmon?

A. Yes.

Q. Who owns the lands colored in salmon on the map?

A. The salmon portion was a part of the E. R. Hewitt property.

Q. Which has recently been acquired by the Water Supply Commission?

A. Which have recently been acquired by the North Jersey District Water Supply Commission.

Q. And may I call your attention to lands of Miss Sarah Hewitt and ask whether any lands of hers in which the Ringwood Company possesses any rights are shown on this map?

Mr. Hunt: I propose to show the rights, I may say, by introducing copies of the deeds.

Mr. Frazer: Then I think the question should be limited whether Miss Sarah Hewitt's lands are shown. The question of the deeds and the rights ——

Mr. Hunt: Very well, I will withdraw the question.

Q. Are any lands belonging to Miss Sarah Hewitt in any manner indicated on this map, Mr. Anderson?

A. Yes, the property of Miss Sarah Hewitt is tinted in orange.

Mr. Frazer: Just which is the color indicated in orange.

Q. Up here where I am pointing, kind of an orange buff?

A. Yes.

Q. Now, what is the area of irregular outline of considerable size which is indicated on the map in blue?

A. That is the proposed storage reservoir of the North Jersey District Water Supply Commission.

Mr. Frazer: I object. We have a map showing the proposed development of this Commission. In the first place, it is a pure conclusion on the part of the witness or whoever made the map; and in the second place, it has no relevancy to the issue here as to what is the value of the lands which we are seeking to acquire.

Mr. Hunt: I think your Honor, such a graphic picture as this might be of great value.

The Court: It might be if accurate, and it might be anything if it is not accurate.

Mr. Hunt: I will withdraw the question.

Q. What had you to do with the preparation of this map, Mr. Anderson?

A. It was done under my direction.

Q. And under your supervision?

A. Yes.

Q. What are the curved black lines with figures on them that appear everywhere throughout the map?

A. They are contour lines.

Q. Now, who made the surveys which afforded the data for these contour lines, that is, what authority made those surveys?

A. It was made by, I think, the then called Geological Department of the State of New Jersey.

Q. The Geological Survey of the State of New Jersey?

A. Yes.

Q. And in what manner were those black lines with the figures produced on the sheet of paper on which this map appears?

A. By a photostatic process.

Q. And what was the thing that was used to photograph in producing this photograph?

A. One of the geological sheets as issued by the now Department of Conservation and Development.

Q. Of the State of New Jersey?

A. Of the State of New Jersey.

Q. So far as concerns the contours and elevations stated on the map, what appears here is simply a photographic enlargement of the map made under the authority of the State of New Jersey?

A. That is correct.

Q. Now, I point to the lines which cross the map from right to left and go up and down from top and bottom and ask how they come to be there and what they are?

A. Those, I think, were on the original drawing; I am not sure.

Q. You mean on the original State map of which this is a photographic enlargement?

A. They may have been put on for our own convenience in drawing the thing, putting on the property of the Ringwood Company.

Mr. Frazer: May I submit that the proper way to offer this map, if it is to be offered is to examine Mr. Anderson as to his knowledge of its preparation, and to reserve the detailed description until

such time as the map may have been admitted in evidence, if it is admitted.

The Court: Well, Mr. Anderson has already testified it was done under his supervision, and I haven't any objection to that. Perhaps, that might save time.

Mr. Frazer: I have had no opportunity to cross-examine him as to what he means by supervision.

Mr. Hunt: I have no objection if Mr. Frazer wishes to do that now.

Mr. Frazer: All right.

Preliminary cross-examination.

By Mr. Frazer:

Q. What did you have to do with the making of the original geological survey?

A. I had nothing to do with the making of the original survey.

Q. When you say this map was made under your supervision, you mean the process of enlargement of the geological survey maps was done under your supervision, and also the coloring which was placed upon it?

A. Yes.

Q. You know nothing about the accuracy of the contour lines or anything of that sort, as having had any actual experience in the making of any of the surveys?

A. I know in general the contours on these maps are approximately correct. They are not absolutely correct, but they are approximately correct.

Q. You know, in many instances, the Water Supply Commission itself in the making of more accurate surveys found that the approximation of geological surveys was not accurate?

A. Absolutely not accurate, but approximately so.

Q. And within approximation?

A. Well, I do not understand what you mean.

The Court: How much did it vary?

The Witness: How many feet?

Q. Yes.

A. Oh, I could not tell you that. I know in a general way they are approximately correct.

Mr. Frazer: If it please the Court, I do not know what Mr. Hunt may intend to do with this map, but if he should succeed and should over our objection succeed in an attempt to introduce evidence of the making of lakes and the extent of frontage, the difference of only a few feet may make a very grave difference as to the possibility of creating some of these improvements which he has suggested throughout his cross-examination that he had in mind endeavoring to put before the jury in this case, so that the accuracy of the contour lines, even within a very few feet is a matter of grave importance.

Mr. Hunt: When we get, in the course of our case, to any such matter as Mr. Frazer has suggested, I shall not use this map at all, but shall use maps especially prepared for the particular purpose, their contour, on which is the contour of the North Jersey District Water Supply Commission in

so far as they have surveyed the area. In other words, we have taken their surveys where they have a survey. Except for this general map which I do not offer for the purpose of particular or minute measurements, but only for the purpose of giving the jury a general view of the whole situation, and the only contour line upon which we place any importance, if any, is so far as my thought now goes, the elevation at which the Wanaque Reservoir will stand when filled, and that, well ——

The Court: Very well. Are you finished now? Are you offering the map?

Mr. Hunt: I am offering the map, although I wish to ask some further questions, but I will now offer the map.

The Court: You will now offer the map?

Mr. Hunt: Yes, sir.

Mr. Frazer: And I object because it is offered with contour lines which are not accurate.

The Court: And it is stated by Mr. Hunt that it is not offered for the purpose of accuracy of its contour lines, and that it will not be used for that purpose, and with that understanding I will allow it as a map, that is, a general map of the location of the various lands.

Mr. Frazer: I have one other reason I was going to urge, the actual application of the contour lines is made in the development of the so-called Wanaque Lake.

The Court: Well, I will admit it subject to being corrected, or with reservation, with the understanding that the contours not being correct, or whether they are correct or are not, the blue area that is supposed to represent the reservoir may or may not represent the reservoir. It is the conception of the man who made the map of where the reservoir lines are.

Mr. Frazer: I respectfully submit, in addition to that, there is a so-called Tice's Pond now called Lake Erskine which also depends on the accuracy of contours for its size and flowage.

The Court: I will admit it with the understanding that it is not to be considered accurate with respect to the contours, and in any respect in which they may change the outlines of any sources of lakes, it is understood that they will be changed accordingly.

Mr. Hunt: Yes, that qualified admission is ample to serve any purpose I now have in mind.

(Map received in evidence and marked Exhibit O-14.)

Direct examination resumed.

By Mr. Hunt:

Q. Now, I call your attention once more to the perpendicular lines and the transverse lines on O-14 and ask you what they represent?

A. Those lines are put on there for constructive purposes in transferring the outlines of the Ringwood property from our other maps.

Q. And on any perpendicular line what is the distance between any two of the transverse lines?

A. Well, the scale ——

Q. Would you want to come down to it?

A. Yes, I want to see what that scale is.

Q. State what is the scale of the map.

A. 586 feet, approximately, per inch.

Q. Now, measuring on a perpendicular line, what is the difference between the two horizontals, what is the distance?

A. Ten inches.

Q. Which would be 5260 feet?

A. 5860 feet.

Q. That is roughly a mile and an eighth?

A. Yes, about.

Q. Now, measuring on a transverse line, what is the distance between two perpendiculars?

A. 7⅝ inches.

Q. And can you tell us about what that is, approximately, in terms of miles?

A. Well, multiply it out.

Mr. Frazer: About four-fifths of a mile, I guess.

The Witness: About eight-tenths of a mile.

Q. Now, while you are down here at the map, just tell the jury the approximate distance from the Ringwood land farthest to the north to the Ringwood land farthest to the south as shown on this map, will you, Mr. Anderson?

A. About between ten and eleven miles.

Q. And the distance east and west across the Ringwood lands here at the widest point which I now indicate, approximately?

A. About six miles.

Q. And in this portion, the Ringwood Company is or is not the owner of any of the lands shown on the map which because they are represented as covered with the waters of Wanaque Reservoir are tinted in blue?

A. Yes, the Ringwood Company owns a portion of that tinted in blue.

Q. Please describe for the jury on the map and use a pointer to make it plain to them the exterior line of the whole taking of the Water Supply Company?

A. The taking line is marked on this plan in yellow, and follows around as I move the pointer. (Indicating.)

Q. I notice you have not closed it at the south end or the bottom of the map?

A. No, the map is not supposed to show the bottom part, the Ringwood Company has no land there involved.

Q. Now, if I correctly understood the situation shown on the map as you have traced that taking line, it is a fact, and if it is not correct you please state what the fact is, that this taking line has the effect of cutting in two, if I might put it that way.

Mr. Frazer: I object.

Q. (Continued) Pieces of property ——

The Court: Just a moment.

Mr. Frazer: I object. I think Mr. Anderson better state under direct examination, rather than have Mr. Hunt color his testimony.

Mr. Hunt: All right.

Q. Does the taking by the Water Supply Commission take the whole of certain pieces of land belonging to the Ringwood Company, or does it run a new line through those pieces so that what before belonged to the Ringwood Company alone will hereafter belong one side of the line to the Water Supply Commission, and the other side to the Ringwood Company?

A. Yes, that is true. Noticeably in this place here (indicating) where this all Ringwood Company property, now, this taking line runs through by this piece of property from the purchases of the part condemned by the North Jersey District Water Supply Commission.

Q. Now, has that severance of ownership put the Ringwood Company ——

Mr. Frazer: Somewhat leading if the Court please.

Mr. Hunt: Please strike that out.

Q. Please state whether or not that severance of ownership ——

Mr. Frazer: Also leading. Merely saying "Please state" does not state the nature of the question. I think the proper way to state this question is what has been the effect and let Mr. Anderson state what the effect is, and not state it in his question.

Mr. Hunt: Well, if I said what has been the effect, that would be a very, very broad question. I am afraid the witness would be here day after tomorrow answering it. May I not direct his attention to the particular thing upon which it has an effect?

The Court: Suppose we take a recess now until tomorrow morning.

JAMES P. ANDERSON, resumed.

Mr. Hunt: With the Court's permission, I should be very glad if I could have permission for Mr. Anderson to stand aside for the moment, in order that Dr. Kummel, the State Geologist and head of the State Board of Conservation and Development, may be examined and get away. Mrs. Kummel has met with an accident, so she is confined to her bed, and it was rather difficult for him to leave her.

Mr. Frazer: May I ask Mr. Hunt whether he expects to examine Dr. Kummel with reference to the large map?

Mr. Hunt: At the beginning, at least, I do not expect to, although I may in the course of his examination wish him to identify certain things on the large map, which would be things not yet appearing in evidence, but to be brought into evidence by himself.

Mr. Frazer: Making such observations on the map, when I came to examine it after the close of the day yesterday, I should like the opportunity of asking a few more questions of Mr. Anderson as to certain features which I think affect the admissibility of the map.

The Court: Why hadn't that better be done at this time then, Mr. Hunt?

Mr. Hunt: Let Mr. Frazer proceed with Mr. Anderson then, and I may stand him aside until Dr. Kummel has testified.

Mr. Frazer: I would be very willing to accommodate Dr. Kummel, your Honor, but the questions I want to ask Mr. Anderson are very few.

Further cross-examination.

By Mr. Frazer:

Q. Mr. Anderson, I understood you to say on your direct examination that map O-14 showed the condition of the Ringwood and Commission's properties as of March, 1925?

A. In general, yes.

Q. Well, now, in particular, in some ways it does not; that is true, isn't it?

A. Yes, that is true.

Q. And there is indicated in what appears to be the body of the proposed Wanaque Reservoir a tract in a pinkish color ——

Mr. Hunt: If the Court please, Mr. Frazer is now pointing to one of the points which will come in on Dr. Kummel's testimony and which I think will lay a foundation for what is on the map.

The Court: What?

Mr. Hunt: Dr. Kummel's testimony on that will lay a foundation for what is now pointed out by Mr. Frazer on the map. Your Honor will remember I said yesterday ——

Mr. Frazer: Is this an objection?

Mr. Hunt: —— I had not my first witness here.

Mr. Frazer: Is this an objection?

Mr. Hunt: It is intended to suggest that perhaps your pursuit on that question is unnecessary until you hear Dr. Kummel testify.

Q. Is there any lake as indicated by the pinkish color now existing upon the land?

A. There is not.

Q. Turning to Tice's Pond, marked in parenthesis "Lake Erskine" on the map; does that show the existing line of Tice's Pond, or does that show some enlarged Tice's Pond?

A. Shows the existing Tice's Pond as it is today.

Q. As it is today, but not as it was in 1925, March?

A. Yes—it does not.

Q. Are there any other respects in which this map does not faithfully portray the conditions as of March, 1925?

A. The location of the upper, lower and middle Cupsaw Ponds as shown on that drawing.

Q. They do not exist?

A. They do not exist.

Q. That is all.

Re-direct examination.

By Mr. Hunt.

Q. The Water Commission's reservoir of course does not exist today, does it?

A. It does not exist.

Mr. Frazer: That was pointed out yesterday. I understand Mr. Anderson to mean in addition to that. That is what I understand, anyway.

Mr. Hunt: If the Court would like me to pin a piece of white paper over any part of this map ——

The Court: Mr. Frazer's point is that this is not competent to be put in evidence, I take it?

Mr. Frazer: Yes, sir.

The Court: And we admitted it yesterday with the understanding that it was not intended to be an absolutely correct map; that is to say, the contours were not authentic except in a general way, and that the reservoir was not as laid down on that map.

Mr. Hunt: And I am ready to admit now ——

The Court: And now he points out some other things that are not present that the map indicates.

Mr. Hunt: Yes; and I am ready now to admit and stipulate any of the things he has just pointed to—none of the things he has just pointed to shall be considered as evidential unless their right to be there is proven by a subsequent witness. Your Honor will remember I announced yesterday afternoon when their closing came, I had subpoenaed my first witness only for today. Now Dr. Kummel is that first witness that is referred to. I believe after he has been on the stand the occasion for some of these matters will appear, and appear to be sound. As to the Tice's Pond showing the present area flowed instead of the 1925 area, that is quite cor-

rect, and if you would like it obliterated in any way by a piece of paper—that in 1925 Tice's Pond, instead of covering this area, covered the area testified to the other day by Mr. Hershfield, if my recollection is correct. He said it was between 15 and 20 acres. I won't assert that is the fact, but that is my recollection of it. That is quite agreeable.

The Court: It seems to me there is no harm in letting it go in if we understand that it is not intended to show the lands as they were at the time of the taking.

Mr. Frazer: I respectfully protest against the making of pictures. That is what this is, a picture. It is not a map in any true sense of the word. It is an enlargement of certain maps made for certain purposes, upon which there have been plotted holdings by some system not yet clear, and upon which there have been put improvements which are non-existent. It is not a map. It is a picture. Now I object to having pictures made of things which do not exist. Mr. Hunt's suggestion that he will mark a number of the lakes out with lead pencil or what-not is ridiculous; because that merely emphasizes it —it is like underlining a word—"Here it is; they won't let us prove it." Now we are bound, under the cases, to insist that anything in the nature of proof in relation to non-existent lakes and so on must be kept out of this case, and this map shows them all, and it is a first covert attempt to get before the jury evidence which is wholly inadmissible in this case, and I feel that I have no right to waive my objection, sir. I renew my motion that the map be not admitted, or, since it has been tentatively admitted I move that the admission be reversed and the map stricken out of evidence.

The Court: What do you say as to the admissibility of the map under these circumstances?

Mr. Hunt: I think the map is admissible, your Honor, for purposes for which I stated yesterday we offered it, which was that far—merely for the purpose of showing the total holdings of the Ringwood Company, the position which the Wanaque Reservoir when filled will occupy with relation to those holdings, the land over which the Ringwood Company possesses flowage rights that are shown in a different color, and the contour lines as general contours, with an admission that where that contour reads 1000 feet, the correct contour may be 999 or 1001. I mean all contour maps, including the Water Supply Commission's maps, as we have demonstrated by some tests, are only approximately accurate, in the very nature of things, being the product of the human brain, the human hand cannot be absolutely accurate, but for all substantial purposes the map is all right for the purposes for which it has thus far been offered. Now after I have had the opportunity of examining Dr. Kummel I hope that your Honor will agree with me that certain other data shown on that map are properly shown there. If not, it will then be a case for your Honor either to admit the map for the limited purposes for which it is proven to be proper, which I submit would be the sensible rule in the matter, or to exclude it.

The Court: There is no doubt in my mind that Mr. Frazer is quite sound in his law. There is no doubt in my mind that you do not need this map in order to show the lay of the land or the boundaries, because that is already in evidence in the other map.

Mr. Hunt: No; I beg your Honor's pardon.

The Court: As far as it goes.

Mr. Hunt: As far as it goes; yes.

The Court: Now in addition to that map, you have here a map that covers a larger area, it goes way up into New York State, for instance, showing the New York side of Greenwood Lake; and the only objection that Mr. Frazer makes that seems to me to be at all serious and well founded, because the contour lines can be corrected perhaps as we go along, or with the understanding that they are not correct—is the fact that you are doing something that the Manda case said you could not do, and some of the other decisions. It is tantamount, it seems to me, to putting in plotting.

Mr. Hunt: No; I do not think so.

The Court: And laying out building lots, which have not been laid out; and when you put a lake there that is not in fact existing, and when you put other things there that are not in fact existing, I think that it is improper as evidence. Now I do not wish to rule it out so that you cannot take advantage of that part of it which might be evidential, even though, as Mr. Frazer says, it is impossible to blot out those things that you might be willing to cover over—the jury see them. They are, if not technically in evidence, they are actually before the jury. I shall abide by the ruling that I have already made, but may later on strike it out. I will allow it now tentatively for the purposes indicated, that is, that it is not to be evidential of anything except

what is properly on the ground at this time—what is on the ground at this time.

Mr. Hunt: Yes.

The Court: I will grant you an exception.

Mr. Frazer: Exception.

Mr. Hunt: Then, if Mr. Anderson may be stood aside for the moment.

The Court: You are through with Mr. Anderson?

Mr. Frazer: For that purpose, yes.

The Court: Very well.

JAMES P. ANDERSON, resumed.

Further direct examination.

By Mr. Hunt:

Q. Mr. Anderson, I forgot to ask you yesterday about your professional education. What is your profession?

A. Civil engineer, civil and mining engineer.

Q. You are a graduate of what institution?

A. Worcester Polytechnic Institute.

Q. With what degree?

A. Degree of Bachelor of Science and Civil Engineering.

Q. How long have you been employed by the Ringwood Company?

A. Let's see. Since 1906, I believe.
Q. Now can you locate on Exhibit O-14 the dam which Dr. Kummel testified to as the Ryerson Furnace Dam?
A. I can.
Q. Will you step down to the exhibit and do so, please?

Mr. Frazer: May I ask that Exhibit C-1 be produced here too?

The Court: Will you get it, please?

Mr. Hunt: May I ask for what purpose? I am examining the witness on direct.

The Court: I assume in cross-examining.

Mr. Frazer: And also I wish from time to time to refer to it myself, because I can read that map much more readily than I can this picture.

The Court: All right, Mr. Hunt.

Q. Point it out there, Mr. Anderson.
A. This is the location of the Ryerson Dam.
Q. Does your finger mark the location of the dam itself?
A. Yes.
Q. What does the colored area on the map northwest of your finger indicate?

Mr. Frazer: I object.

The Court: What is the purpose of your objection?

Mr. Frazer: The objection is to the effect of the cross-examination this morning. The colored area is—was shown to be a condition which did not exist on the land under Mr. Anderson's cross-examination this morning, and it was with the exception of those features that I understood that the map was permitted in evidence.

The Court: That is correct.

Mr. Hunt: I had supposed that what your Honor admitted of Dr. Kummel cured all that.

The Court: Oh, no. No, I didn't mean it to.

Mr. Hunt: All right, sir. Then I will put another question to Mr. Anderson.

Q. Mr. Anderson, do you know what area of land would be flowed by the dam at Ryerson Furnace to which Mr. Kummel testified?

Mr. Frazer: I object. Oh, if he knows.

Q. Do you know?
A. I know approximately.
Q. Yes. Is that area in any manner indicated on Exhibit O-14?

Mr. Frazer: I object to that. We are coming now by roundabout processes to the same thing.

The Court: Yes, but this is a dam which has been built.

Mr. Frazer: I beg your pardon, sir.

The Court: Perhaps not been in use and perhaps the waters were never dammed up behind it, but it has been built.

Mr. Frazer: The statement ——

The Court: Or substantially built.

Mr. Frazer: The statement of counsel this morning, was I remember it, was to the effect that a portion of the spillway had been completed sufficient to show in general the height to which the spillway would eventually have been continued.

Mr. Hunt: I did not say that is all that had been completed.

Mr. Frazer: No, I admit that. It is also quite true—it is also quite true that there is no closure of the dam, as could be seen and as your Honor and the jury have both seen, across the river. It is therefore not an existing dam. It is the beginning of the construction of a dam.

The Court: The dam is pretty well constructed, as I recall it, substantially built. There are some things to be finished, perhaps, and it may be and probably is true that it had never been finished and has never been used, but inasmuch as it has substantially been constructed I shall allow the testimony sought now to show what the area of the pond would be if it were finished in accordance with the plan that has been referred to and permission granted.

Mr. Frazer: I pray an exception.

The Court: You may have it.

Q. How was that area indicated on Exhibit O-14, Mr. Anderson?
A. Indicated by a purple color.
Q. To which you are now pointing?
A. To which I am now pointing.
Q. What is that area approximately in terms of acres?

Mr. Frazer: I object to that.

The Court: I will allow it.

Mr. Frazer: Exception.

The Court: You may have it.

A. From memory approximately 90 acres.

The Court: 90?

Mr. Hunt: He says from memory approximately 90 acres.

The Court: I understand, Mr. Anderson, that the purple color that shows the area of 90 acres approximately on that map is where it would be if in your opinion as an engineer the dam were completed?

A. It would be by actual survey.

The Court: It is not there now?

The Witness: It is not there now.

The Court: It never has been there?

The Witness: It has.

The Court: Well ——

The Witness: Many years ago.

Mr. Hunt: It is a replacement of an old dam that was washed out, your Honor.

The Court: Yes.

Q. Now, Mr. Anderson, there is shown on O-14 the site of what Dr. Kummel testified to as the Forge Pond Dam?
A. That is shown on the map.
Q. Yes. Will you point that out?
A. I am pointing at the dam.
Q. On what stream is that?
A. On Ringwood Creek.
Q. Above its junction with the Wanaque River; shortly above its junction with the Wanaque River?
A. Above its junction.
Q. Is that an old or a new dam?
A. That is a new dam.
Q. On an old or a new dam site?
A. On an old dam site.
Q. Does that replace one that was washed out a few years ago?
A. It does.
Q. What is the approximate area of the surface of that dam in acres?
A. From memory approximately ——

Mr. Frazer: The lake.

Q. Yes, the lake, the water backed up there.

Mr. Frazer: The pond.

A. From memory approximately 20 acres.

The Court: The dam is the same size as the old dam that was washed out—no higher?

The Witness: Why, it is about a foot higher than the old dam.

The Court: How much larger is the pond resulting from the foot higher?

The Witness: Oh, practically nothing.

The Court: Nothing; all right.

The Witness: Practically, no.

The Court: All right.

Q. Now you may go back to the stand, please, Mr. Anderson.

The Court: And Forge Pond on that map, Mr. Anderson, is shown there as it really exists?

The Witness: Practically, yes.

Mr. Matthews: Practically, did the witness say?

The Court: Practically, he said.

Q. Mr. Anderson, you testified yesterday that the lands shown in red on Exhibit O-14 was the land

of the Ringwood Company. I wish you to produce, please, the deed by means of which title to that land was brought into the Ringwood Company. I hand you a certified copy of a deed by James Lyell to Martin I. Ryerson, dated March 18, 1807, and recorded in the clerk's office of this county, in Book Z, page 243, etc., and ask you in what manner that enters into the title of any part of the Ringwood lands?

Mr. Frazer: I object. That is a conclusion of law, sir. The deed speaks for itself. I do not know what Mr. Anderson can add to the legal significance of this by commenting on it.

The Court: Unless he has checked up the description.

Mr. Hunt: He has done that, your Honor.

The Court: I assume that is what he wanted to show.

Mr. Hunt: Yes.

Q. I will ask you what that deed conveys? Just amend the question that way. What does that deed convey? How many acres of land, Mr. Anderson?

A. Approximately 8000 acres of land.

Q. Is that part of the land shown in red on Exhibit O-14 as belonging to the Ringwood Company?

A. It is.

Mr. Hunt: Now I offer that deed in evidence, if the Court please.

The Court: Any objection to it?

Mr. Frazer: I think not, but I have to ask the indulgence of the Court a moment. My associate annoyed me so much that I did not hear the answer.

The Court: He says there is approximately 8000 acres of land, all of which is now owned by the Ringwood Company.

The Witness: No, I don't think that was the question.

(Question and answer repeated by stenographer.)

Mr. Frazer: Now I think that should go on the record. There is a bare implication from the answer that all of this land was the Ringwood Company land. The question was, "Is this part of the Ringwood Company land?" He says, "Yes." That meant all of the land in the deed is now Ringwood Company land. Now I understand by colloquy between counsel and the witness, which apparently was not put on the record, that part of this land is not Ringwood Company land at all.

By Mr. Hunt:

Q. Is that true, Mr. Anderson?

A. There have been some small pieces sold out of this.

Q. Are the pieces which have been sold colored in red on this map?

A. I don't think so. No, it was not.

(Deed marked Exhibit O-15.)

Mr. Hunt: I now offer in evidence a certified copy of the last Will and Testament of Martin I. Ryerson, certified by the Surrogate of Passaic County. The purpose of the offer being, if your Honor please, and if your Honor will permit me to state it, to show that by this Will Martin I. Ryerson left this property to certain persons, sons, I think they were, who conveyed to the predecessor of the Ringwood Company, and so I come on down.

The Court: Let it be received.

(Will marked Exhibit O-16.)

Mr. Hunt: Although it might be objected to, I am sure it would expedite matters if the witness might be permitted to state the effect of this Will on the lands described in the deed previously admitted in evidence.

Mr. Frazer: I do not wish to seem to be technical, but there are some of these instruments which I happen to be familiar with which have some very nice problems of law as to their construction, and I prefer very much to have the Court interpret the instrument rather than to have the opinion of Ringwood witnesses.

The Court: Very well.

Mr. Hunt: With much sympathy for the Court I will proceed to read the Will: "In the name of God, I Martin I. Ryerson of the *t*ownship of Pompton in the County of Bergen and State of New Jersey being of sound and disposing mind and memory but finding myself in the decline of life and considering it my duty to settle the Estate and dispose

of the same amongst my descendants which it hath pleased God to Bless me with. Do make and publish this as and for my last will and testament.

"FIRST: I reccommend my soul to the *l*ord of life trusting that through the merits and satisfaction of *h*is son I shall obtain pardon for my many transgressions and that having finished this life of mortality I shall inherit everlasting life and quiet. My body, I leave to be interred under the direction of my Executors and as to my worldly Estate I dispose of the same as follows: I give devise and bequeath to my three surviving daughters namely Mary Zabriskie the wife of Andrew C. Zabriskie Catharine Green the widow of the late Ephraim Green, June, of Newton in the County of Sussex and Eliza Thompson the wife of Aaron R. Thompson and to their heirs and assigns all those my five lots of ground and the buildings thereon situate in third ward of the City of New York on the northwest corner of the intersection of Washington and Vesey Streets and known and distingu*sh*ed as lots No. Eighty-six, No. Eighty-eight, No. Ninety, No. Ninety-two and No. Ninety-four also all those tracts or parcels of land belonging to me situate lying and being in the *t*own of Louisville in the County of Saint Lawrence in the State of New York adjoining the River Saint Lawrence formerly the property of James M. Vicker and known and distinguished as lots No. Thirty-nine, No. Forty and No. Forty-one also all that my lot of land situate lying and being in the *t*own of Solon in the County of Cortland and State of New York and known and distinguished as lot No. Fifty also all my land situate lying and being in the County of Oneida in the State of New York also my two lots of ground situate at Paterson Landing in the Township of Ac-

quackanonk in the County of Essex and State of New Jersey, together with all and singular the buildings and improvements thereon to have and to hold all and singular the above mentioned and described premises with the hereditaments and appurtenances to the same belonging to them my said three surviving daughters above named and to their heirs and assigns to their own proper use benefit and behoof forever as tenants in common and not as joint tenants. I do also, give and bequeath to my said three surviving daughters and to their Executors administrators and assigns all my household furniture to be equally divided amongst them. I do also give, devise and bequeath to the children of my late daughter Ann Wheeler deceased formerly the wife of James Wheeler Esquire of Warwick in the County of Orange and State of New York, namely Sophronia Oakley the wife of Timothy Oakley Esquire, Sarah Catharine Wheeler and Ann Ryerson Wheeler and to their Executors, administrators and assigns all those my five leasehold lots of ground situate lying and being in the third ward of the City of New York in Washington Street and known and distinguished as Lots No. one hundred and ninety-Eight, No. two hundred No. two hundred and two, No. two hundred and four and No. two hundred and Six as held by me under lease from the late Philip Rhylander deceased together with all and singular the buildings and improvements thereon, also all my right and interest in the said lease and the covenants therein contained and the residue of the term mentioned in the same to have and to hold the same to them my said Grandchildren the children of my daughter Ann Wheeler decd. to have and to hold the same as tenants in common and not as joint tenants and I

intend this to be in full of all right and interest in my Estate.

"I also give devise and bequeath to my son Jacob M. Ryerson, and to his heirs and assigns forever all the following tracts pieces or parcels of land situate lying and being in the township of Pompton in the County of Bergen and State of New Jersey to wit: all that tract or parcel of Land known and distinguished by the name of the Ringwood Forge tract together with the small lots around and adjoining the same and belonging to me also the Bell lot so called and my lands at the Shepherds *p*ond together with all and singular the buildings and improvements thereon also all that tract or parcel of land commonly called the Long *p*ond *g*reat Furnace tract supposed to contain four thousand five hundred acres more or less with all the buildings and improvements thereon Also all that tract commonly called the Ringwood *g*reat Furnace tract supposed to contain about Five thousand five hundred acres but be the same more or less together with all and singular the buildings and improvements thereon. Also all that tract of Land commonly called the *l*ong *p*ond Forge tract with the buildings and improvements also all that tract belonging to me commonly called the Boudinot lot or swamp meadow supposed to contain one hundred and one acres but be the same more or less also all my other lands lying north of the *l*ong *p*ond *r*iver and extending from its intersection with the Ringwood River northwest up the stream thereof until it strikes the lower or south end of the land now or late belonging to the Widow Ward late the wife of Henry Ward deceased thence due west until it strikes the first line of the *l*ong *p*ond *g*reat Furnace tract including the whole of the survey made of the

said Long *p*ond River by Josiah Ogden & Company on the twenty fourth day of April, Seventeen hundred and Forty. *a*lso all the full right and privile*d*ge of keeping up the Dam at the outlet of the Long *p*ond with the full and free right of entering at all times on any of my adjoining lands with his teams, horses and Carts for the purpose of taking gravel and soil therefrom to repair the said dam together with all and singular the privile*d*ges hereditaments and appurtenances to the said premises above devised to my said son Jacob M. Ryerson belonging or in anywise appertaining excepting and reserving out of the same the Greenwood *m*ountain lot containing about two thousand acres also the two lots I bought of Joseph Tichenor commonly called the outlet meadow and my several Cedar Swamp lots also excepting and reserving out of the same and subject to the right and privile*d*ge of entering on and taking and carrying away *our* (out, I suppose that means; it is underlined to indicate a supposed error) from the Ringwood tract which I have hereinafter devised to my son Peter M. Ryerson and my Grandson Martin John Ryerson and their heirs and assigns to have and to hold all and singular the above mentioned premises above devised to my son Jacob M. Ryerson except as above excepted to him my said son Jacob his heirs and assigns forever to his and their own proper use benefit and behoof and I wish it to be understood that I intend the above devise to my son Jacob shall include all the lands which I purchased from James Lyle of Philadelphia excepting what I hereinafter give to my son Peter. I give devise and bequeath to my son Peter M. Ryerson and to his heirs and assigns all the following tracts pieces or parcels of land and real Estate situate lying and

being part in the township of Pompton and part in the township of Saddle River in the County of Bergen to wit; all that my homes*ted* farm on which I now reside and all the buildings and improvements thereon also the house and lot adjoining the same at present occupied by the widow of my late son John M. Ryerson Dec'd. and commonly called the Yellow house. Also all that Farm or tract of land which I purchased of John G. Post Executor of Garret Post deceased, commonly called the Post Farm situate part in the township of Pompton and part in the township of Saddle River and adjoining my homes*ted* Farm above mentioned also all that my lot commonly called the Pompton Furnace lot and the farm or lands connected therewith and purchased with the same together with the privile*d*ges and the appurtenances to the same belonging which said Furnace lot and lands connected therewith are situate part in the township of Pompton and part in the township of Saddle River and adjoining the Post farm also all that my farm situate in the township of Saddle River adjoining the three last above mentioned lots and at present occupied by Abraham Turse also all my other lots adjoining the same and connected therewith all of which the aforesaid lots are within and adjoining the Pompton Patent also all my tracts pieces or parcels of land and premises situate lying and being in the Ramapo or Rotten *p*ond *m*ountain including the Rotten *p*ond meadow lot which I purchased of James Lyle also my *w*hynockie Forge lot situate in the township of Pompton with the Forge and other buildings and improvements thereon together with the hereditaments privile*d*ges and appurtenances to the same belonging and appertaining also all my lots pieces and parcels of land and premises situate lying and being

within the following bounds commencing at the intersection of the *l*ong *p*ond River with the Ringwood River.'' ——

Will counsel on the other side permit me to state what the stream called Long Pond River in this time is now called? Would you object to my stating what the river which was called, Long Pond River, in 1812, is now called?

Mr. Frazer: If it is the Wanaque River I have no objection.

Mr. Hunt: Yes, that is the Wanaque River.

Mr. Frazer: I do not object to anything that is in accord with the facts.

Mr. Hunt: The Long Pond mentioned in this Will and the documents at that time is Greenwood Lake, your Honor.

Mr. Frazer: That is right.

Mr. Hunt: And Wanaque is the Long Pond River of that time.

(Continues reading.)

''Commencing at the intersection of the Long *p*ond River with the Ringwood River thence along the south side of the survey of said *l*ong *p*ond river made by Josiah Ogden & Company April the twenty fourth Seventeen Hundred and Forty adjoining the lands hereinbefore devised to my son Jacob M. Ryerson until it strikes the south end of the land now or late belonging to the *w*idow *w*ard thence due west until it strikes the first line of the

*l*ong *p*ond Great tract (that is the Greenwood Lake great tract) thence Southwesterly along the said line of the said Long *p*ond tract to the second corner of the said. tract thence northwesterly along the second line of the said *l*ong *p*ond tract to the third corner thereof thence returning to the intersection of the *l*ong *p*ond and Ringwood Rivers and running from thence due East to the main Road leading from Ringwood to Pompton thence down the said road southerly to the road near the house of Abraham Van Wagoner a little to the north of the house of William M. Berry thence westerly by a st*rait* line to the Beginning of the Charlottenburg tract or Great tract so called thence Northerly along the said Charlottenburg great tract to the third corner thereof thence by a straight line to the third corner of the *l*ong *p*ond Great tract together with all and singular the privileges hereditaments rights members and appurtenances and advantages of every kind to the same belonging or in anywise appertaining and also all my right and interest in the same to have and to hold all and singular the mentioned lands and real estate with the hereditaments and appurtenances to the same belonging unto him my said son Peter M. Ryerson his heirs and assigns to his and their own proper use and behoof forever.''

Could I pause here and ask the witness:

Q. Do you know if I have read everything that devises any lands now owned by the Ringwood Company?

A. As far as I know.

Q. Yes.

Mr. Frazer: There may be some more, but I do not believe the jury is interested in it.

Mr. Hunt: There are following devises of other lands, but while not being positive in the matter I do not know that they have any application.

Mr. Frazer: If you don't know it is not very illuminating to the jury, I suggest to the Court.

Q. Now may I ask the witness whether I have read the devise to the person who in turn conveyed to Peter Cooper?

A. I believe that you have.

Q. Yes. Who was the person who conveyed to Peter Cooper?

A. John M. Ryerson—or Jacob M. Ryerson.

Mr. Hunt: Now, for the purpose of saving time, perhaps I may be permitted to make a statement explaining the next papers that I am to introduce, which comprehend amongst other things a Sheriff's deed.

The Court: I haven't any objection. Have you, Mr. Frazer?

Mr. Frazer: I have no objection to Mr. Hunt offering the title deeds, but I do not see the necessity for all this comment. I assume what he wants to show is that there are certain lands of the Ringwood Company which are in addition to our holdings. I think he has a perfect right to show it, and I presume he is doing it in the proper way by offering the deeds in evidence. I see no necessity for all of this reading. It comes through the deeds.

Mr. Hunt: I thought we would all do a great injustice if we compelled the jury to read all these

documents all through and decide for themselves what they conveyed. I therefore offer in evidence a certified copy of a deed from William S. Hogencamp, Sheriff, to Peter Cooper, dated September 1st, 1853; and I state, subject to counsel's examination, that this deed shows on its face that the lands devised by the Ryerson Will, which I have just read, to the Ryerson son Martin, were sold out under Sheriff's sale and bought by Peter Cooper.

Mr. Frazer: May I not suggest that these deeds be offered for what they are worth without comment at the present time, and that this matter be a matter of argument in summation to the jury? I believe that would be the proper way to do this.

Mr. Hunt: And I am, if the Court please, to offer these deeds to the jury without the jury knowing what they are?

Mr. Frazer: I do not think there is any substantial dispute that the Ringwood Company owns more land, and probably substantially as shown on that map. I don't know. What I assume he wants to prove is an additional title.

The Court: I have no objection, if Mr. Hunt prefers to do it this way.

Mr. Frazer: It seems to take so long. I think he has a right to put on the record things to sustain his title. I do not object to that.

(Paper marked Exhibit O17.)

Mr. Hunt: Now I offer a certified copy of a deed

by Jacob M. Ryerson and wife to Peter Cooper, dated the 31st of August, 1853.

(Paper marked Exhibit O18.)

Mr. Hunt: And a certified copy of a deed by Martin J. Ryerson to Peter Cooper, dated the 1st of August, 1853.

(Paper marked Exhibit O19.)

Mr. Matthews: Was that the 1st of August?

Mr. Hunt: The first was the 31st day of August, and the second one was the 1st of August. And a certified copy of a deed by Martin J. Ryerson and wife to Peter Cooper, dated the 31st of August, 1853; the purpose of this offer being to establish by these deeds that the persons who had taken or might have taken any interest under the Will of Martin Ryerson in the lands afterwards conveyed by Hogencamp as Sheriff, conveyed their interest to Peter Cooper in confirmation of the Sheriff's deed.

(Paper marked Exhibit O20.)

Q. Now may I be permitted to ask the witness at this point whether the deeds that I have so far offered in evidence and the Will conveyed or related to a definite part of the Ringwood property which is known by a definite name? I am trying to shorten it. One person comes down on one chain of title and another part on another chain.

The Court: Very well.

Q. Is that true, Mr. Anderson?

A. That is true.

Q. And this part would be called what, in the old days?

A. It was called the Great Ringwood Tract, the Long Pond Tract, and the Ramapo Mountain Tract.

Q. Do you recall that in reading the Will I mentioned a Bell lot?

A. I do.

Mr. Hunt: I wonder, to save time, if my adversaries would be content to have me offer the deeds which bring the chain of title of the other tracts down to the point where I brought this one in Peter Cooper, and then the deeds which carry the chain of title of all the tracts on down to the Ringwood Company, with such a statement of the essential facts as I have just made, perhaps, elaborated a little, and subject to their cross-examination after they have had opportunity to look through all this great number of deeds. Would you like that, Mr. Frazer?

Mr. Frazer: I would suggest that Mr. Hunt offer his deeds, and then turn them over to us for examination, and then we can object to the specific deeds if we think they are worth objecting to before they are actually marked in evidence.

The Court: Exclusive of those that have already been marked.

Mr. Frazer: Exclusive of those that have already been marked. There are a few instruments that may be—questioned, of course.

Mr. Hunt: Then, I offer a certified copy of a

deed by Peter Cooper and wife to the Trenton Iron Company.

Mr. Frazer: We will assume that all starting with O21 will be for identification.

The Court: Very well.

(Deeds marked O21 for identification.)

Mr. Hunt: Next, a certified copy of a release of part of mortgaged premises by the Trenton Iron Company to Edmund H. Miller and others.

(Marked Exhibit O22 for identification.)

Mr. Hunt: Next is a certified copy of a deed by the Trenton Iron Company to Edward Cooper and others.

(Marked Exhibit O23 for identification.)

Q. Can you tell us who Edward Cooper was, Mr. Anderson?

A. He was the son of Peter Cooper.

Q. And can you tell us what the relationship between Peter Cooper and the Trenton Iron Company was?

Mr. Frazer: First cousins, I think.

Q. Did he control that company?

A. I think he did, at one time, yes.

Mr. Hunt: A certified copy of a release of part of mortgaged premises Trenton Iron Company and

others to Edmund H. Miller and others. I am told the mortgage has been cancelled, but there was a trustee under the mortgage.

(Marked Exhibit O24 for identification.)

Mr. Frazer: I am wondering if there is a nigger in the woodpile, that is all I am wondering about.

Mr. Hunt: I do not know where it is, or what it is, if there is. You have been all through it before. I think you should know if there was one now.

Mr. Frazer: I never examined these.

Mr. Hunt: I think I put in 37 of these in the other proceeding.

The Court: Very well.

Mr. Hunt: I next offer a certified copy of a deed by Edmund H. Miller and wife to Edward Cooper and wife.

(Marked Exhibit O25 for identification.)

Mr. Hunt: Now, I offer, in relation to the chain of title and another tract of land that I have got to bring in on the chain, a certified copy of deed by John R. Weeks, Master in Chancery, to Edmund H. Miller and others, dated May 5, 1863.

(Marked Exhibit O26 for identification.)

Q. And I ask the witness what land this deed refers to?

A. That deed refers to the so-called Morrell tract.

Q. And is that a different tract from the tract affected by the Ryerson will that we put in earlier?

A. I think it is, yes.

Q. Do you remember, or does your recollection state the acreage of the Morrell tract?

A. Approximately 4349 acres.

Mr. Hunt: Now, I offer a certified copy of deed by Robert Morrell to Edward Cooper and others.

(Marked Exhibit O27 for identification.)

Q. And I ask the witness whether, from his knowledge of the title and examination of it, he can state whether or not this is a deed by the defendant whose estate was sold out by the Master in Chancery or by the son and heir of that defendant confirming the title passed by the Master's deed?

A. That was his purpose, yes.

Mr. Hunt: Now, I offer a deed, certified copy of deed by David Ryerson to Edmund H. Miller and others dated 30th day of December, 1863.

(Marked Exhibit O28 for identification.)

Q. And I ask the witness whether or not this deed conveys a tract different from that conveyed in either of the other chains of title that we have so far offered?

A. Yes.

Q. What is the current name for this tract, Mr. Anderson?

A. This tract was currently known as the Ryerson and Woodruff tract.

Q. And contained how many acres?

A. Approximately 3287 acres.

Mr. Hunt: Now, it has been suggested to me by counsel for the other side that we do not carry the title to this tract back far enough, and I submit I am content with the title beginning in 1863, and if they wish to go back beyond that, I think that burden should be on them. That deed conveys a half interest only, and I should have stated that. Now, I offer a certified copy of a deed by Samuel Pope and wife to Edward Cooper and others dated October 1st, 1872.

(Marked Exhibit O29 for identification.)

Q. And I ask the witness to what property this deed relates?

A. It relates to the Ryerson and Woodruff tract.

Q. And what interest in that tract does it convey?

A. An undivided half.

Q. After the other half was conveyed by the last previous deeds?

A. That is correct.

Mr. Hunt: Then, I offer a certified copy of deed by Elizabeth West Perkins and others, executors and so forth, to Abram S. Hewitt, dated January 4th, 1899.

(Marked Exhibit O30 for identification.)

Q. And I ask the witness whether that does not bring in another in the tract?

A. That brings in a new tract.

Q. What is the name of that tract, Mr. Anderson?
A. That tract is commonly known as the Perkins and Sheldon tract.
Q. And this deed conveys what interest in it?
A. One-third undivided interest.

Mr. Hunt: I offer a certified copy of deed by Charles L. Perkins and others to Edward Cooper and others, dated April 3rd, 1872.

(Marked Exhibit O31 for identification.)

Q. And ask whether that has relation to the tract last mentioned, the Perkins and Sheldon tract?
A. That conveys a one-third undivided interest in the Perkins and Sheldon tract.

Mr. Hunt: Now, I offer a deed by George Rumsey Sheldon and others, executors, to Abram S. Hewitt, dated 4th of January, 1899.

(Marked Exhibit O32 for Identification.)

Q. And ask you what that relates to and what it conveys?
A. It conveys a one-third undivided interest in the Perkins and Sheldon tract.
Q. So that by the three deeds last mentioned, three separate undivided one-third interests in that tract have been conveyed, is that true?
A. That is true.

Mr. Hunt: Now, I offer a certified copy of deed by Martin John Ryerson and wife to Edmund H. Miller, dated 23rd of January, 1864.

(Marked Exhibit O33 for identification.)

Q. And I ask whether that relates to one of the tracts already mentioned, or to some other tract?
A. That relates to another tract.
Q. And what is that called?
A. Commonly called as the Rough Mountain tract.
Q. But this tract, together with all the others that have gone before, are shown in red on Exhibit O14, are they?
A. That is correct.
Q. That is, in so far as they still remain in the ownership of the Ringwood Company?
A. Yes.

Mr. Hunt: I offer certified copy of deed by William C. Monks and wife to Edward Cooper and others dated March 20, 1890.

(Marked Exhibit O34 for identification.)

Q. And ask to what tract that refers?
A. So-called Monks tract.
Q. And is that still another new one?
A. Yes.

Mr. Hunt: Now, I offer a certified copy of deed by Susan E. Wilcox and others to Sarah A. Hewitt, dated 20th of December, 1905.

(Marked Exhibit O35 for identification.)

Q. And I ask whether that relates to one of the tracts formerly mentioned, or to some other tract?
A. That relates to another tract, the so-called Wheeler tract.
Q. And this tract is shown on Exhibit O14?
A. Yes.

Mr. Hunt: Now, I offer a certified copy of deed dated March 14, 1891, made by George M. Miller and Edward S. Rappello as surviving executors of Edmund H. Miller to Edward Cooper and Abram S. Hewitt.

(Marked Exhibit O36 for identification.)

Q. And what that conveys?

A. I don't know, Mr. Hunt, unless you read more than that. (Witness examines deed.) This seems to be a release of mining rights of Edward Miller.

Q. Yes; that relates to Edward Miller's mining rights to Edward Cooper and Abram S. Hewitt, does it not?

A. Yes.

Q. In which of the tracts, Mr. Anderson?

A. In all lands heretofore owned by the Trenton Iron Company in the County of Passaic of the State of New Jersey, or elsewhere in the said State of New Jersey.

Q. In all lands formerly owned by the Trenton Iron Company?

A. Yes.

Q. By the way, Mr. Anderson, were the Edward Cooper and Abram S. Hewitt mentioned in that deed the persons who formed the partnership known as Cooper & Hewitt?

A. They were.

Q. Who were engaged in the manufacture of iron?

A. Yes.

Mr. Hunt: Now, I offer a certified copy of deed by Edward Cooper and wife to Abram S. Hewitt dated January 1st, 1894.

(Marked Exhibit O37 for identification.)

Q. And I ask you to which of the tracts—there are several tracts that you have identified in referring to these deeds—that deed applies, and in what manner it applies to it?

A. Mr. Hunt, do you wish me to read all the individual properties, or the general release of the one-half interest?

Q. If you could state in general what it is, I think it would be sufficient.

A. A release of one-half interest in all Ringwood properties by Edward Cooper and wife.

Q. By that deed Edward Cooper and wife convey his one-half interest in all the various tracts that have been mentioned as we have run down this chain of title to Abram S. Hewitt, do they not?

A. Yes.

Q. So the effect of that deed is to make Abram S. Hewitt the individual owner of all property that he and Edward Cooper had owned in the partnership?

A. That is correct.

The Court: Edward Cooper was the son of Peter Cooper?

The Witness: Edward Cooper was the son of Peter Cooper, yes.

The Court: And Abram Hewitt was the brother-in-law of Edward Cooper?

The Witness: That is correct.

Mr. Hunt: Now, I offer certified copy of last will and testament of Abram S. Hewitt, probated in

the Surrogate's office of this county on the date 14th of December, 1925—it is not recorded in the Surrogate's Office of this county, but it is in Book Z of Wills.

The Court: It was registered in this county?

Mr. Frazer: It is probably an exemplified copy.

Mr. Hunt: It is certified by Mr. Beggs as the Surrogate of this county.

The Court: Very well.

(Marked Exhibit O38 for identification.)

Mr. Hunt: With the Court's permission, I will read two brief paragraphs of this will which seem to have a bearing on this property.

Mr. Frazer: These are not in evidence yet. I thought we would go over all of them, and make one grand hash then.

Mr. Hunt: I should like to state, so that the matter will be intelligible to the jury as we go along, that by this will Abram S. Hewitt devised all this property to his widow Sarah A. Hewitt.

Mr. Frazer: I do not think there will be any dispute about that.

Mr. Hunt: Now, I offer a certified copy of deed of Sarah A. Hewitt to the Ringwood Company dated the 30th of April, one thousand nine hundred and six.

(Marked Exhibit O39 for identification.)

Q. And I ask Mr. Anderson to state briefly and generally what effect that deed has in regard to the lands shown on this map in red as belonging to the Ringwood Company?

Mr. Frazer: No, not effect it has, at all. I do not care for those conclusions, Mr. Hunt. If he wants to identify the deed, ask what property is covered by the deed. That will identify it.

Mr. Hunt: All right.

Q. What property is covered by that deed, Mr. Anderson?

A. Practically all the property that is colored in pink on the map.

Q. What you are calling pink is what I have been calling red?

A. Well, red, then.

Q. Mr. Erskine Hewitt was called yesterday by the Water Supply Commission and asked in regard to three certain properties, if my recollection is correct, purchased by the Ringwood Company at various times. Does this deed cover those three properties?

A. It does not.

Q. It does not?

A. No.

Mr. Hunt: Did you introduce those three deeds in evidence yesterday?

Mr. Frazer: I introduced one, and I promised the other two.

Mr. Hunt: Now, I offer certified copy of deed by the Trenton Iron Company to the Ringwood Company, dated 10th of February, 1915.

(Marked Exhibit O40 for identification.)

Q. And I ask Mr. Anderson to state what this deed conveys?

Mr. Frazer: Can't you say that just as well as Mr. Anderson?

Mr. Hunt: Well, I am told by Mr. Wright, that this deed Mr. Anderson is now examining contains mineral rights in about 100 acres of land marked on the map as belonging to the Ringwood Company, but lying outside of the taking. Is that what you told me?

Mr. Wright: No, you told me it contains mineral rights in the 100 acres of land and I said that I was under the impression that it lay outside of the taking.

Mr. Hunt: All right. We do not seem to be able to agree.

Mr. Frazer: It is unimportant, anyway.

Mr. Hunt: I cannot tell what you can make important, Mr. Frazer. It does not concern me a great deal.

The Witness: It seems to convey the mineral rights of a piece of property known as the Babcock farm.

The Court: Is the Babcock farm owned by the Ringwood Company, Mr. Anderson?

The Witness: I think that is. The difficulty is they often use the same name for two or three different places.

Mr. Hunt: Now, I offer a certified copy of deed by Jacob M. Ryerson and Harriet, his wife, to the Morris Canal and Banking Company, dated the 27th day of March, 1837, and recorded in Liber V-3 of this county, page 322.

(Marked Exhibit O41 for identification.)

Mr. Hunt: Being a transcription from the Bergen County records. I also offer a certified copy of a deed by Jacob M. Ryerson and Harriet, his wife, Peter M. Ryerson and Mary A., his wife, and Martin John Ryerson to the Morris Canal and Banking Company, dated the 27th day of March, 1837, transcribed from Liber V-3 of Deeds, page 317, Bergen County.

(Marked Exhibit O42 for identification.)

The Court: Bergen County, Mr. Hunt?

Mr. Hunt: Bergen County, I suppose the lands must have lain in Bergen County at that time. Passaic County was a part of Bergen in 1837. I should like to refer to this deed, as long as it may be converted from an identification deed to an exhibit deed, I offer all these documents, the certified copies, in evidence.

Mr. Frazer: I understand now my suggestion was

they all be offered, and we beg given an opportunity to examine them. That is a very large number.

The Court: You cannot do that now.

Mr. Frazer: In some instances I would like to go over them with my searcher.

Mr. Hunt: If Mr. Frazer wants until evening I can go on with some other line.

Mr. Frazer: Since we are in the habit of offering things, we have just received two deeds which we promised yesterday, and on which we reserved the right to introduce later.

Mr. Hunt: No objection to their going in at this time.

Mr. Frazer: So that we will offer those in evidence at this time.

The Court: They will be received.

(Deed of Scott L. Smith to Ringwood Company received and marked Exhibit C10 in evidence.)

(Deed of Frank Patterson to Ringwood Company received in evidence and marked Exhibit C11.)

Q. Now, Mr. Anderson, do these deeds which have been marked constitute the deeds by which the Ringwood Company claims title to all of the land marked in red in Exhibit O14?

A. Yes.

Q. Have you got it with you, Mr. Anderson ——

A. One moment. That is not quite correct. There are some few properties that have been acquired in recent years that are not in the deeds as put in.

Q. Would that constitute very much of the acreage?

A. Small; comparatively small acreage.

Q. Have you with you a certified copy of the deed by which this property shown on Exhibit C1 was conveyed by the Ringwood Company to Edward R. Hewitt?

A. I think I have in the other room.

Q. Will you get that out, please?

Mr. Hunt: May Mr. Anderson be permitted to get it, and also Miss Sarah Hewitt's deed?

Mr. Frazer: May I assist you? Here is a copy of that deed.

Mr. Hunt: Have you Miss Sarah Hewitt's deed?

Mr. Frazer: No, I have not.

Mr. Hunt: I would like to cover both.

Q. Have you that also?

A. I hardly think so. I will look and see.

Mr. Hunt: What I want is the instrument by which the Ringwood Company acquires such rights as it possesses in Miss Sarah Hewitt's property.

Q. Is that from the Ringwood Company to her, or from her to the Ringwood Company?

A. No, that is a family agreement.

Q. Have you a copy of that?

Mr. Frazer: It is attached to Mr. Hewitt's deed.

Mr. Hunt: Then, I offer a certified copy of a deed by the Ringwood Company to Edward R. Hewitt, dated 1st day of November, 1919, which has appended to it and recited to form a part of it, an agreement dated the 7th of October, 1912, between Amy H. Green, Sarah C. Hewitt, Eleanor G. Hewitt, Peter Cooper Hewitt, Edward R. Hewitt and Erskine Hewitt, hereinafter called the children, Peter Cooper Hewitt, Erskine Hewitt and James O. Green, as executors of the will of Sarah A. Hewitt, deceased, hereinafter called the executors, and Peter Cooper Hewitt, Erskine Hewitt and James O. Green, as trustees of the trustees of the trust created by the said will for the benefit of Edward R. Hewitt and his children, hereinafter called the trustees, and the Ringwood Company.

(Marked Exhibit O43 for identification.)

Q. And I ask Mr. Anderson who Amy H. Green was?
A. The daughter of Abram S. Hewitt.
Q. And who was James O. Green?
A. The husband of Amy H. Green.
Q. Are either Mr. or Mrs. Green still living?
A. They are both dead.
Q. Who was Eleanor G. Hewitt?
A. She was the daughter of Abram S. Hewitt.
Q. Is she living?
A. She is dead.
Q. Who was Peter Cooper Hewitt?
A. The son of Abram S. Hewitt.
Q. Is he living?
A. He is dead.

Q. Who is Edward R. Hewitt?
A. The son of Abram S. Hewitt.
Q. Is he living?
A. He is living, as far as I know.
Q. Who is Erskine Hewitt?
A. The son of Abram S. Hewitt.
Q. Is he the man who testified on the stand here yesterday?
A. He is.

The Court: Are they given there in the order of their ages, Mr. Anderson, do you know?

The Witness: Well, I didn't notice. (Examining paper.) No, they are not.

Mr. Frazer: Ladies first, and then gentlemen, isn't that it?

The Witness: Yes, sir.

Q. Isn't Miss Sarah Hewitt a child of Abram S. Hewitt?
A. Sarah A. Hewitt?
Q. Yes.
A. Yes, is a child of Abram S. Hewitt.
Q. And so is Sarah C. Hewitt, I missed her name?
A. Yes.
Q. Is she living?
A. Yes.
Q. Who was Peter Cooper Hewitt?
A. Son of Abram S. Hewitt.
Q. Is he living?
A. He is dead

Mr. Hunt: Mr. Frazer, do you wish this marked

for identification only, or are you willing to have it admitted?

Mr. Frazer: I suppose we might as well make the rule the same there, I think.

The Court: Had you not better mark that with your name so that it comes back to you?

Mr. Frazer: I have really studied that one. I have no objection to it.

The Court: All right.

Mr. Frazer: You can offer it in evidence, if you want it.

The Court: I did not mean that. This is a paper that you produced.

Mr. Frazer: In order that I may preserve the title to it?

The Court: Yes.

Mr. Hunt: I will agree that he owns it, and I will give it back to him.

Mr. Frazer: Mr. Kestenbaum will put my name on it, but it is Mr. Hunt's exhibit, but my paper.

The Court: That is the point.

Mr. Hunt: Now, with the Court's permission, I will read somewhat from this deed by the Ringwood Company to Edward R. Hewitt. First, I characterize it by saying it conveys certain tracts of land whose descriptions I will not read unless my opponents wish it.

Mr. Frazer: Not especially.

Mr. Hunt: The first containing 384.44 acres, and the second containing 193.32 acres, both together making 577.76 acres.

Q. And I ask Mr. Anderson whether they are the two tracts shown in blue on Exhibit C1?
A. They are.

The Court: Is that a fact, both of the Green?

Mr. Hunt: That is what it is stated here.

The Court: I had in mind one of those three belonged to Sarah Hewitt.

Mr. Hunt: No, the dove color is Sarah Hewitt's property. I read further the recital from this deed, that these two tracts as shown in green on C1 and conveyed by the Ringwood Company to Mr. Hewitt are a part of the premises conveyed to the Ringwood Company by Sarah Amelia Hewitt by deed bearing date April 30th, 1906, being the deed hereafter offered.

Q. Sarah Amelia Hewitt, by the way, was the widow of Abram S. Hewitt?
A. She was.
Q. And the mother of Sarah Cooper Hewitt, who is referred to in this agreement?
A. That is correct.

Mr. Hunt: I read further from the deed of the Ringwood Company to Edward R. Hewitt, as follows:

"The company does hereby also bargain, sell, convey and confirm unto the said party of the second part and to his children, the right to cut ice for domestic purposes on Forge Pond and also to fish, boat and skate thereon and to take water therefrom for domestic use in connection with the use and occupation by said party of the second part and his children of the premises herein conveyed; it being hereby expressly provided that the foregoing rights in, on or to the waters of Forge Pond shall not enure to the heirs or assigns of said party of the second part generally but are limited to said party of the second part and his children.

"And the said party of the first part hereby expressly reserves for its use and the use of its successors and assigns, all mines and minerals under the premises hereby conveyed, or any part thereof, with power to it and its successors and assigns to take all usual, necessary or convenient means for finding, working, getting, laying up, dressing, making merchantable and carrying away the said mines and minerals, but in such manner, however, as not to disturb or disfigure or injure the surface of the soil, or any trees or plants growing thereon or any buildings or other structures erected thereon.

"And the said party of the second part covenants, promises and agrees for himself and his heirs, executors, administrators and for such of his assigns who shall be descendants of said Sarah Amelia Hewitt, or shall be married to any such descendant that the said premises shall not nor shall any part thereof, nor any right, title or interest therein while owned by any descendant of said Sarah Amelia

Hewitt or any person married to any such descendant, by devise, gift, grant, mortgage or otherwise (excepting by a lease for a term not to exceed three years) pass to any person not a descendant of said Sarah Amelia Hewitt or married to such descendant or to any corporation other than the party of the first part, until a reasonable opportunity shall have been offered to the party of the first part to purchase the same at its then fair market value, or at its option, in case of a proposed mortgage, to accept the proposed mortgage and make the proposed loan thereon, upon the same terms as can be elsewhere secured, and the party of the first part shall, after such offer, have declined to accept such offer and pay the fair market value of such premises determined as above provided; and in case of a proposed mortgage, to accept the said mortgage and to make the proposed loan thereon as aforesaid. This covenant shall attach to and run with the land so long as the premises hereby conveyed or any part thereof or any right, title or interest therein shall be owned by any descendant of said Sarah Amelia Hewitt, or owned by any person married to such descendant.

"It is understood and agreed that the above described premises are conveyed subject to the provisions of a certain agreement bearing date October 7th, 1912 to which reference has above been made, and a copy of which is hereto annexed and made a part hereof, and the rights, privileges, restrictions and limitations intended to be created by said instrument are by this deed established. The language of said instrument is to be construed in the same manner as it would be construed if contained solely in said instrument."

Now, I read from the family agreement which is made part of the deed, the following:

"The Ringwood Company ——"

This, your Honor, will understand, is the agreement between the persons I read awhile ago comprising all the children of Mrs. Hewitt and the trustees and so.

The Court: I remember it.

Mr. Hunt (reading):

"The Ringwood Company shall have the right-over upon and under any land at Ringwood or its vicinity owned by the said Sarah A. Hewitt at the time of her death, and any land to be conveyed by it hereafter to any of the sons as hereinbefore provided, not including in any case the enclosure surrounding any private residence, to build, make, erect, maintain and use, at the user's risk, in suitable places and in a suitable manner, so as not to injure the view or impair the privacy of any such residence or its grounds, any roads, sewer pipes, pipe lines and power lines, telephone and telegraph lines necessary or convenient for its operations, and the right, which it may exercise either directly or through the Midvale Water Company ——" I will read that again, if I may; this is important —— "and the right which it may exercise either directly or through the Midvale Water Company by building dams or other structures to impound the waters of any streams flowing across its land, to flood and overflow of the land devised by the said Will or hereafter to be conveyed by the Ringwood Company to either of the parties hereto so much as may be situated below the level of the contour line 300 feet above the level of the sea, as shown upon the

Geodetic map of the State of New Jersey, upon making reasonable compensation to the then owners of such land for the difference in value thereof before and after such flooding and all consequential damages thereto; such difference in value and damages to be ascertained, in case of disagreement, by arbitration.

"Each of the parties hereto will at all times hereafter accord to the others and to the members of their families full liberty, with or without horses and vehicles, to use, at the user's risk, any and all private roads, not including those portions within the enclosure of any private residence, at the time in use as such upon the lands of the Ringwood Company so long as owned by it or by any of the children to whom it may be conveyed ashereinbefore provided, and upon any of the land at Ringwood or its vicinity owned by the said Sarah A. Hewitt at the time of her death so long as any of the parties hereto shall own it.

"None of the parties will permit the additional pollution of any pond or stream through which otherwise potable waters shall pass from land owned by such party at Ringwood or its vicinity to the land of another of the parties.

"So far as the deed dated April 30th, 1906 from the said Sarah A. Hewitt to the Ringwood Company requires the maintenance or confers the right of private road upon land which may hereafter be sold by it to others than the parties hereto, any of the parties hereto will, upon its demand, execute the proper release to it of any such obligation.

"None of the parties hereto will, by grant, gift, sale, bequest or otherwise, dispose of or in any manner encumber any of the stock of the Ringwood Company to any one not a descendant of the said Sarah A. Hewitt, until such stock shall first have

been offered for sale or as collateral as its then fair value, to be determined, in case of disagreement, by arbitration, successively to the Ringwood Company and jointly to the then surviving children, or such of them as may desire jointly to purchase it, and then to each of the surviving children, individually, in the order of their ages, and each of such offers shall have been declined with reasonable celerity.

"The directors of the Ringwood Company shall be increased in number from three to six. So long as a one-sixth interest shall continue to be held by or for each of the children, each of them shall have the right to nominate one such director, and all the parties hereto owning stock in the company will thereupon vote their stock for his election. Until the Board shall have been thus re-constituted, stock owned by it in the (certain other companies) shall be retained by it. Other stocks owned by it may at any time be sold by it or divided by way of dividends or otherwise among the stockholders, in the discretion of its board." The next clause gives all these children the right to inspect the papers of their father at any time, and so on.

Mr. Matthews: The price?

Mr. Hunt: My voice is getting bad, but if you want me to read it ——

Mr. Matthews: The price?

Mr. Hunt: The price of what?

Mr. Matthews: The price of the land.

The Court: The consideration of the agreement.

Mr. Hunt: Oh, the price of this land is fixed by the mother's Will.

Mr. Matthews: It is in there.

Mr. Hunt: All right. I did not suppose that you wanted it, that it had any bearing, but let me see. "The expense of the maintenance of the Home Farm and Mansion at Ringwood Manor and of No. 9 Lexington Avenue, up to October 1st, 1912, shall be paid out of the income of the estate." If I am to read this I think I will read all that precedes it.

The Court: How long will it take?

Mr. Hunt: It would take five or ten minutes.

The Court: I think we will leave it until tomorrow morning. It is five minutes past four.

Mr. Hunt: May I characterize it by saying what this paragraph recites, that it is an agreement amongst the children of Mrs. Hewitt to settle and resolve differences arising between them concerning the terms and provisions of that Will—a family settlement agreement.

The Court: I understood it. We will take a recess until ten o'clock in the morning.

JAMES P. ANDERSON, resumed.

Mr. Hunt: If the Court please, before resuming with the witness, may I state that at page 1690 of yesterday's testimony the stenographer has me noted as putting to Dr. Kummel this question: "Q. And did you say that for all those four dams application was made and approval was granted by the State Board of Conservation and Development prior to March 19th, 1926." Mr. Kelley has underlined the "6" as an indication of his belief that if I said it I did not mean it, and of course the Court realizes that 1926, March ——

Mr. Frazer: I concede that is what Mr. Hunt meant to say, and I have no objection to the change of the question.

The Court: Let the record be therefore changed to read 1925 instead of 1926.

Mr. Hunt: Thank you. Now at the conclusion yesterday the counsel for the Water Supply Commission had asked me to read some further extracts from the Hewitt family agreement, which I believe ——

The Court: It was the consideration part, particularly that reference was made to, I think.

Mr. Hunt: Yes. Which I believe was left in their hands, and if you have it—oh, excuse me, I have it. To make intelligible what they wish brought out I shall have to refer to the beginning of the agreement. It is headed: "Agreement, made the 7th of October, 1912, between the various persons whose

names and identities were shown yesterday, being all of the six children of Mrs. Abram S. Hewitt," and then recites:

"The Will of Sarah Amelia Hewitt, dated May 17, 1905, and the seven Codicils thereto, dated respectively so-and-so, shall be forthwith admitted to probate in New Jersey and elsewhere as the executors may determine. The informal Codicil dated the blank day of blank 1912, shall likewise be admitted to probate, if duly executed so as to entitle it thereto; if not, its provisions shall be carried out by the executors as if duly probated; the children hereby jointly agreeing in that case to indemnify the executors against any loss or damage for so doing. The said executors may qualify as such. The said Erskine Hewitt, James O. Green and Amy H. Green will either, within one year from date, and as soon as the said trust shall have been duly constituted and running, resign, or will decline to act as trustees of the trusts created by the said Will for the benefit of Edward R. Hewitt and his children; and thereupon the said Edward R. Hewitt shall be appointed trustee of the said trust in their place, to act as such with the said Peter Cooper Hewitt.

"The expense of the maintenance of the Home, Farm and Mansion at Ringwood Manor and of No. 9 Lexington Avenue up to October 1st, 1912, shall be paid out of the income of the estate.

"All the stock of the Midvale Water Company now belongs to the estate of the said Sarah A. Hewitt and the debts owing by the Pequest Company to the said estate, and also the stock and debt of the Pequest Company owned by the children, shall be sold or assigned and transferred to the Ringwood Company ——"

Further direct examination.

By Mr. Hunt:

Q. Here may I ask what is or was the Pequest Company, Mr. Anderson?

A. It was a mining company, or rather a blast furnace company.

Q. A blast furnace company out in Warren County, New Jersey, on the Pequest River?

A. In Warren County, on the Pequest River.

Q. That was another of the old Cooper & Hewitt mining, iron mining ventures?

A. Yes, sir.

Mr. Hunt: "In consideration of which transfer the Ringwood Company covenants upon demand to execute and deliver, without other consideration, to each of the sons of the said Sarah A. Hewitt, a deed sufficient in law to convey to him all his rights, title and interest in any tract of land, comprising about 500 but not more than 600 acres then owned by it of the property heretofore conveyed to it by the said Sarah A. Hewitt as may be selected by him (such selection, in case of conflict, to be made in order of age), for a summer residence pursuant to the provisions of Article 6 of the said Will and Codicils relating thereto. Any of the said sons may, instead of receiving such conveyance, elect to receive from the estate the sum of $25,000 as provided by the said Will, and upon such election shall be paid the said sum as a legacy, but may at any time within two years thereafter during his life repay the said sum of $25,000 to the estate and thereupon demand and receive from the Ringwood Company the conveyance of such a suitable tract

of land for a summer residence from the property then owned by it as hereinbefore provided." Now I believe I have read the rest of this agreement, yesterday.

Q. Have you a certified copy of the Will of Sarah A. Hewitt with you, Mr. Anderson?

A. I have not.

The Court: May I ask the date of that Will, Mr. Hunt, please?

Mr. Hunt: The Will is dated May 17th, 1905.

The Court: I don't mean the Will; I mean the agreement, from which you have been reading.

Mr. Hunt: The family agreement is dated the 7th of October, 1912. Now I beg leave, your Honor, at a later date, to produce a certified copy of the Will of Sarah A. Hewitt for the purpose of corroborating the recital in this family agreement that was in her Will, providing that each of her children might have this tract of 500 to 600 acres as a summer home at a nominal price of $25,000.

Mr. Matthews: Doesn't say nominal.

Mr. Hunt: Well, I say nominal, yes. At a price of $25,000. That was the mother's direction with regard to their property. If she had wished to say at a price of 25 cents, that was her right.

The Court: You say you have no copy of the Will here now?

Mr. Hunt: Haven't any with me.

Mr. Anderson: We have a printed copy.

The Court: Mr. Anderson says he has a printed copy. Is there any reason why a printed copy should not be introduced?

Mr. Frazer: Not if it is accurate, sir.

The Court: Well, I assume of course it is.

Q. You have a printed copy with you?
A. Yes, I think I have one.
Q. Will you get it please, then?

The Court: Then we will let the printed copy go in subject to being stricken out if you gentlemen should discover it is inaccurate.

Mr. Hunt: It is a document of 29 pages enclosed within covers, and the last page which has printing only on the side "No. 29" at the top is loose.

The Court: Well, if it is —— Let them see it. Apparently, if it is a page of the will I do not think there should be any objection because that page is loose.

Mr. Hunt: I think it is the informal codicil that I just read, which had not been regularly executed, but all the parties agreed that it should be understood that it was executed.

Mr. Frazer: It is not suitable, I imagine, for probate in that form. It is absolutely immaterial to this issue, anyhow, so I do not think there is any need for it. It simply provides for some little bequests.

Mr. Hunt: I think it provides for some little bequests for people who worked for her.

Mr. Frazer: I do not see that it has any materiality to this. She wants one man to have $250, and another man a hundred dollars.

The Court: You do not object to its going in?

Mr. Frazer: No.

The Court: Why not pin it fast some way?

Mr. Hunt: Will the Court permit me, in order to save time, to have Mr. Anderson assist me in finding the material portions of the will and the seven codicils that we must now search for?

The Court: Certainly.

Mr. Hunt: May this be marked, your Honor? I shall offer it as an exhibit. Is there any objection to its being presently marked as an exhibit?

Mr. Frazer: No, not at all.

(Copy of last will and testament and seven codicils thereto of Sarah Amelia Hewitt received in evidence and marked Exhibit O44.)

Mr. Hunt: From Exhibit O44, being a printed copy of the last will and testament and seven codicils of Sarah Amelia Hewitt, I read from the eighth paragraph of the will printed on page 5 of the pamphlet, the following—I should have said the sixth paragraph printed on page 4, the following—do you wish to follow as I read?

Mr. Frazer: I assume that you will read accurately.

Mr. Hunt: (Reading.)

"Sixth: It is my wish to give to each of my sons who may wish it for the purpose of establishing and maintaining thereon a summer residence, such suitable tract of land, to comprise about five hundred (500) acres, as he may select from my Ringwood property other than that portion thereof hereinafter specifically devised to my daughters Sarah Cooper Hewitt and Eleanor G. Hewitt and other than portion thereof hereinafter specifically devised to my daughter Amy, the wife of J. O. Green, and other than that portioin thereof known as the Titabock place (the latter being so especially valuable as to make it unfair that it should be given to either of my children to the exclusion of the others.) To this end, I hereby authorize each of my said sons at his pleasure and at any time during his life to select for such purpose such a tract of land, to comprise not more than six hundred (600) acres from any of my present Ringwood property, with the exceptions aforesaid, which may then be owned by my devisees or by any corporation of which my descendants or any of them may then own a majority of the stock." That is to say, by the Ringwood Company. (Reading) "and thereupon to notify in writing his then surviving brothers and sisters and then my then executors and trustees of the fact of such selection and of his desire to receive a conveyance thereof. Unless within sixty days after the giving of such notice, there shall be duly executed and delivered to him a deed sufficient in law to convey to him such right, title and interest in the tract so selected as I now have at the date of the execution

of this will, then in lieu thereof I hereby give and bequeath to such son, and direct my then executors and trustees, at the expiration of such sixty days, to pay to him, the sum of twenty-five thousand dollars ($25,000)." Then, I read from the third codicil, the fourth paragraph thereof, printed on page 19 of the pamphlet, and reading as follows: (Reading) "Fourth: The sixth article of my will, whereby I have authorized each of my sons to select from the property at Ringwood, now owned by the Ringwood Company, a site for a summer residence, I hereby modify as follows:

"1. I revoke the reservation of the Titabock Place, from the land from which such selection may be made and direct instead that if either of my sons shall select a site upon that place, the number of acres to be taken for such site shall be less in proportion to the greater value of that site above the rest of the Ringwood property.

"2. The deed to each of my sons of the site selected by him shall contain a covenant by him in all respects the same as that which is provided by subdivision 2 of the third article of this codicil each of my daughters shall be held to make by accepting the devise to her therein mentioned; and shall contain also a reservation of mines and minerals under the premises thereby granted, in all respects the same as that made by subdivision 3 of Article 3rd of this codicil, from the devise to my daughters therein mentioned." Now, Subdivision 3 of Article 3rd of this third codicil thus referred to reads as follows:

"I hereby reserve from the said devise to my said daughter Amy, and from the said devise to my daughters Sarah and Eleanor, and I hereby give and devise instead to the Ringwood Company all

mines and minerals under the said premises, or either of them, or any part thereof, with power to the said Ringwood Company and its assigns to take all usual, necessary or convenient means for finding, working, getting, laying up, dressing, making merchantable and taking away the said mines and minerals; but in such manner as not to disturb or injure or disfigure the surface of the soil, or any trees or plants growing thereon or any buildings or other structures erected thereon." Now, if the Court please, nobody knows this extensive will and set of codicils as Mr. Erskine Hewitt, and with the Court's permission I will step back and ask him if it has any relation ——

The Court: He is not here now.

Mr. Matthews: There is one point, Mr. Hunt made the statement for the record before he read the will, she might have left 600 acres for the sum of 25 cents as well as $25,000, but the will as now reads says they must take $25,000.

The Court: That is just Mr. Hunt's comment. That is an interpretation of what was meant.

Mr. Hunt: I will modify it, your Honor. I made it before I read it and I will modify it to say that she might just as well—it was equally her right to make the sum 25 cents or a million dollars or anything else she pleased, because she was dealing in her own will with her own property and her own children.

Mr. Matthews: Except one child took, and the other did not. The others took the money apparently.

Mr. Hunt: That is not in proof.

Mr. Matthews: That is both the truth and the fact, I accept the insult and the assault, too.

Mr. Hunt: Now, one of the documents marked for identification yesterday—two of them rather—were two deeds by various members of the Ryerson family to the Morris Canal and Banking Company which were reserved to be examined by the other side.

Mr. Frazer: They were all reserved.

Mr. Hunt: All right.

Mr. Frazer: I understand Mr. Hunt is making these offers for the purpose of showing title to the lands. Is that the purpose of the offer?

Mr. Hunt: For the purpose of showing title to the land, and also for the purpose of showing that the Ringwood Company is today the possessor of a certain reservation made by Ryerson in his deed to the Morris Canal and Banking Company for the benefit of himself, his heirs and assigns, forever, that reservation setting up a right which is an appurtenant to the property, not then sold by Ryerson to the Canal Company, but retained by Ryerson and which, afterwards, passed by this series of deeds offered yesterday to the individual ownership of the Ringwood Company.

Mr. Frazer: I think this is going to be a legal argument which again goes to the root of the matter, and I request that the jury be excused for the moment.

The Court: Very well.

Mr. Hunt: May I make an objection for the moment before the jury goes? In my opening to the jury I stated my intention of proving certain facts. I think I have the right to have the jury see whether that was a bluff or was not a bluff. This is my effort to prove one of those facts, and I beg the jury be permitted to remain to see whether in my opening I made a statement in good faith and now attempt in good faith to carry it out.

Mr. Frazier: May it please the Court——

The Court: If the argument will develop something that the jury ought not to hear I think it would be improper for them to hear it, even though it might raise a question in their minds as to whether you had said something in your opening that you had fallen down on, and if there is anything that you have said in your opening which it develops cannot go into the evidence, I shall have no objection in your summation to your stating to the jury that you did say in your opening that you wished to prove a certain thing, but that it was not a bluff, it was said in good faith, but that you were unable to prove it because the Court has ruled that such testimony would be inadmissible and improper, and I think that will correct the impression that you seek to correct.

Mr. Frazier: I would be very glad to correct it now. I would be perfectly willing to admit for the benefit of the jury that anything Mr. Hunt stated in his opening that it was his purpose to prove, he sincerely intended to prove, and his failure to do so was on account of our objection and the ruling of the Court.

The Court: That being the only reason that you feel the jury should remain, I think the jury should retire.

Mr. Hunt: May I have an exception?

The Court: You may.

(The jury then retired.)

Mr. Frazer: The reason that I asked the various offers yesterday should be marked for identification was because I anticipated that there would be an effort to prove, in this case proof, as I feel, prejudicially and improperly the existence by means of these various advances of a so-called Ryerson right to the flowage of the waters of the Wanaque River at a given point. I anticipated that for the reason that great stress was made in regard to it before the Commission below, and it was admitted. The so-called—if I may give a picture—I might add this, the reason I felt the jury should have been excluded is, because in order to comprehend fully the situation it is necessary to go into matters which are not yet fully proven as facts, but if I be in error in making my statement I am quite sure Mr. Hunt can correct me. Prior to 1837 what we now know as Greenwood Lake was a body of water much smaller in extent and was known as Long Pond. There was a dam which lay considerably to the north of the present dam, that there was a tract, I believe, of meadow land belonging to one Ryerson. After the construction of the Canal, for

the purpose of increasing the storage in Long Pond to meet the anticipated growing needs of the Canal itself, application was made to Ryerson for the purchase of some of these lands lying to the south of the old dam, in order that that dam—that a larger dam might be built below. As a result of those negotiations in 1837 Ryerson conveyed to the Morris Canal and Banking Company a substantial tract of land lying to the south of the old dam, having ten tracts in it all together, and reserving to him certain special rights in relation to the land and the waterways, raceways, and so on, of the Canal. The one which is of peculiar interest to us here is what in the case below I referred to as the Ryerson right—the Ryerson right.

Mr. Hunt: The Ryerson reservation, we called it.

Mr. Frazer: The Ryerson reservation, Mr. Hunt says he called it. I always referred to it as the Ryerson right. Either term will serve the purpose here. It is in these words.

"Excepting also and the said Jacob M. Ryerson hereby expressly reserves to and for himself, his heirs and assigns forever, the right of drawing and having at all times from said reservoir through the gates of said new dam so much water as will with the natural flow of the intermediate streams be sufficient for all the necessary purposes of a forge with two fires and a sawmill with one saw at the site of his present Long Pond forge and sawmill. He or they being bound to keep the said forge and sawmill dam in good repair and to draw no more water than shall be really necessary for such forges and sawmill or other works not requiring a greater

quantity of water, with the right also of using the water to be drawn as aforesaid upon any intermediate works which he or they shall erect between the dam of said reservoir and the said Long Pond forge." Now, your Honor will note that that gives them a right to a sufficient quantity—such quantity as shall be really necessary for such forge and sawmill, and gives them a right to use the waters thus drawn for that purpose at any point between that and the dam; that is, any point to the north of the location of the forge and sawmill.

The Court: Does Greenwood Lake run north and south approximately?

Mr. Frazer: Yes. You see it on the large picture here running up that way. (Indicating.) Now exactly where the river comes out ——

The Court: Up to the right.

Mr. Frazier: Comes out here. (Indicating.) And the Ryerson forge was somewheres in about there (indicating), I take it. Is that right?

Mr. Anderson: Down below there.

Mr. Frazer: Further down?

Mr. Anderson: No; this way.

Mr. Hunt: Mr. Anderson can point it out. Will you point it out, Mr. Anderson?

Mr. Anderson: Be glad to.

Mr. Frazer: About here?

The Court: Is that about right, Mr. Anderson?

Mr. Anderson: Right here. Right in there. (Indicating.)

Mr. Frazer: Some of my directions may have been wrong. I perhaps ought to have said east where I said south. What I meant when I said south is below the dam. Now if we refer to the rest of this map showing the lines of our taking, we find that we do not take any land at all here. (Indicating). I say that this portion up here is wholly unaffected by our taking, and any right which was reserved to Mr. Ryerson, beyond the mere right to use it at this point (indicating), was between that point and the dam—any additional right. So that when we took lands below here we did not in any way affect this Ryerson reservation or right. Now the reason I asked Mr. Hunt to limit the purposes of his offer was simply this: That below there was a hypothetical situation created which I can briefly summarize thus: That since the grant provided that they might draw no more water than shall be really necessary for such forge and sawmill, that they had a right in theory to operate a non-existent forge and sawmill 24 hours a day as in one case, and 12 hours a day in the other instance, and to demand from the Morris Canal and Banking Company sufficient waters to pass that point on the river to operate these non-existent instrumentalities as though they were actually existent; and that if, under this so-called reservation, they could thus demand that amount of water, necessarily that amount, having gotten into the river, would pass down the river, swelling the amount of the natural flow of the stream, or at least regulating it and

giving it a steady quantity, through which they would be able to develop sources of hydro-electric power of the so-called primary nature, that is, dependent upon a uniform stream control as contrasted with what is ordinarily called dump power, which depended upon the fluctuations of the stream and could only take advantage of the high flows and so on and had to be disposed of at once for any price that could be gotten, the primary power being regular, capable of being sold by contract at so much per kilowatt hour and the guaranteed quantity resulting. This old Ryerson right or reservation, therefore, as far as it has been stressed below, and I am quite sure that the same intent is in Mr. Hunt's mind here, is emphasized merely for the purpose of trying to prove that, as lower riparian owners, they can get, as the result of the exercise of this right, if it still exists, a more uniform and a greater flow of water below for certain purposes which do not presently exist on the land. I respectfully submit that the offer should be confined to the title deeds for the purpose of proving title, and not for the purpose of arguing as to what might be in the event that waters should be capable of being drawn under this old and unused reservation.

The Court: As a matter of fact you contend that the mill is non-existent?

Mr. Frazer: Yes. I understand that the mill was in existence at the time of this grant, at somewheres around in the 60's or around the Civil War time, the forges were operating at rather large capacity, due to war conditions, and that in the middle or late 60's plans were drawn for the instal-

lation of a very much larger development there for the mines and wheels; one wheel actually installed and another one a pit dug for, which I believe was never actually installed. Then came the drop due to the cessation of hostilities and the demand for iron, and I believe those works were never actually operated, or if operated at all, one of them only for a short period, so that for the past, roughly, sixty years, I think there has been no effort made to develop those powers or to exercise this reservation in any way.

The Court: You do not deny, however, that the right given by Mr. Ryerson or reserved to himself when he conveyed to the United Morris Canal & Banking Company or whatever it is—Morris & Essex?

Mr. Frazer: Morris Canal & Banking Company.

The Court: Yes. That that is now owned by the Ringwood Company? That whatever rights he reserved came to them as the successor of the Ryerson title?

Mr. Frazer: They originally joined, but it has been lost by non-user.

The Court: If it has not—my point is, that the Ringwood Company is successor to that right which Ryerson reserved to himself, if it is not lost by abandonment?

Mr. Frazer: I do not concede that, sir. I believe that the deeds will very likely show it, but I am not sufficiently familiar with the title to know whether it actually came into them. I presume it

did, and I think that is the purpose of the whole offer. I understand that there is no grant of that right, no specific grant. It would come, if it came at all, as a right appurtenant to the lands which were conveyed.

The Court: That is my point.

Mr. Frazer: Whether these deeds cover those lands or not I am not certain.

The Court: I see. Well, there is nothing there that—if there is nothing in the grant but the reservation of the right that limits it to a period of time or to a condition of fact as to whether or not the forge is to be kept in operation—the language is, it is evident, distinct and unequivocal; he reserves to himself and heirs forever sufficient waters to run the sawmill and the forge, irrespective of whether the forge and the sawmill was continued or not. Isn't that a fact?

Mr. Frazer: Yes, that is the language. There was undoubtedly a reservation equivalent to a grant in these original deeds. However, what I wish to bring before the Court's mind is that in this whole situation there will be two efforts made: First, to show that by virtue of this right, which has not been exercised, there will be enhanced values for the specific purposes for which works must be created on the lands below; and in the second place, there will be efforts made to go into the whole question of what the volume is—what volume is permitted to be drawn from the reservoir under this Ryerson reservation or right, because there is nothing there on the ground at the present time to show just what these forges were, what their size was, and nobody

seems to know. They are all guessing; and if I can anticipate in this case what we have in the other, we are going to have Mr. Whitam or same other expert of that kind come up and go into the history of forges all over the country, and calculate what he thinks is the cubic foot per second flow of the stream sufficient to operate this, and what this forge would demand in water were it operated 24 hours, and what the sawmill would demand were it operated for 12 hours a day. Hypothetical matters altogether from his study of similar conditions somewheres else. We have made a similar study and we come to some different figures. The whole thing lies in hypothesis and expert testimony, and beyond that is wholly irrelevant to this issue because it is definitely held in our decisions that a grant of a power —use of water at a certain place—does not in any way increase the rights laying below; does not give the owner of land below, who happens to be the same owner, any increased rights. So our objection to it is on the ground of irrelevancy to this issue. If it is merely introduced for the purpose of showing the general lands and the interests therein which the Ringwood Company has, that is one thing. If it is introduced here for the purpose of showing and building up a theory of water power development and potable water storage and things of that sort, we object to it.

Mr. Hunt: Before I answer, your Honor, may I, in order to narrow and lighten my task as much as possible, ask whether it is or is not admitted that this Ryerson reservation is today an appurtenance to the Ringwood land, unless it has been lost by non-user or abandonment?

Mr. Frazer: We do not admit anything as to it.

We admit there is a deed which has that reservation in it.

Mr. Hunt: All right. Then I assert, first, that by virtue of the deed marked yesterday for identification, this Ryerson reservation is today an appurtenance to the Ringwood lands. I assert to that part of the Ringwood lands comprised in one of the several chains of title which this witness, Mr. Anderson, identified yesterday—if my recollection is correct, the first one of those tracts—may I ask Mr. Anderson if that is true? Wasn't it the first chain of title we identified, Mr. Anderson?

Mr. Anderson: Yes.

Mr. Hunt: Of about 8000 acres?

Mr. Anderson: Yes, including the Long Pond tract.

Mr. Hunt: Including the Long Pond tract, that is, the tract abutting on Greenwood Lake?

Mr. Anderson: Yes, it is.

Mr. Hunt: And the lands coming on down from Greenwood Lake to the site of the old Ryerson works as you pointed it out?

Mr. Anderson: No, near the site, not to the site.

Mr. Hunt: To near the site?

Mr. Anderson: Yes.

Mr. Hunt: Now may I rest for the moment while

the Court examines the deeds in order to pass upon the questions thus raised?

(Interruption.)

(Further colloquy off the record.)

The Court: Mr. Frazer, and Mr. Hunt, it would take me a month to look through the deeds, and I do not know whether I would be any wiser than now, so I have talked with these two gentlemen, whom I have been told by you are the most conversant with this title, and they say, at least I get this from them, that the point in the matter is that there may have been a defeasance, if that is the right word, because there was left out of the Sheriff's deed any reference specifically to the rights that are the subject of this inquiry. In other words, that Mr. Martin Ryerson conveyed by his will everything that he had in the way of property and appurtenant rights to the Forge piece to his son Jacob; and Jacob got in difficulties sometime later on which necessitated a foreclosure and sale. Now, the deed from the Sheriff does not specifically mention the water right for the use of the Forge, and that apparently is the point that the Commission relied on to say that there was nothing that passed under that Sheriff's deed that gave the purchasers under that Sheriff's deed any rights in the water at that point. Now, if that is the only point, and that can be argued as to whether or not the Sheriff's deed did convey, if it did not convey and the rights stopped them, that is one thing. Now, if there is omnibus language in the Sheriff's deed that conveyed all of this right, title and interest other than the specific description of the land, that would convey this right to the use of so much of the water,

why, that is another story. My own notion is that it did, that the Sheriff sold everything he had, and properly, in the Sheriff's deed, and there is some language that will bear that out.

Mr. Hunt: And then, as I understand it, the deeds offered following the Sheriff's deed ——

The Court: Reasserts it.

Mr. Hunt: Yes. By those deeds the defendants in the foreclosure proceedings conveyed the property of the ——

The Court: I think if the Sheriff conveyed those rights to Peter Cooper, the general language in the Cooper deed would bring it into the Ringwood Company.

Mr. Frazer: My objection lies on the somewhat broader ground.

The Court: I understand it does, but haven't we got to decide this first? We have got to decide, before we can go on, whether there was any paper rights to this property, and whether they stop, properly, with this Sheriff's sale. If that is so, that ends it.

Mr. Frazer: If the Sheriff's deed was the action of the mortgage, or what not, or the judgment of which execution was issued, it was the subject of the Sheriff's sale, or something that arose subsequent to the grant of this reservation. I have personally felt little question in my mind that the reservation was of the type that was appurtenant to the land, and that the sale of the land would carry title. Now,

I do not know what the date of that deed is, but that would be my impression, sir. If this were a foreclosure of the mortgage, let us say, which was put on the land prior to the reservation, so that land did not at that time have the appurtenant right, or if the mortgage could foreclose at the time, the mortgage, as an appurtenant right would not pass until it came afterwards. If on the other hand, the appurtenant right was in existence at the time of the making of the mortgage, then I have no doubt that it would pass.

The Court: It seems to me that is true.

Mr. Frazer: I do not think there is any need of our arguing. I am not putting it on that basis.

The Court: I know you are not, but the point I make is that you are not agreeing that the title did give, down to the Ringwood Company, the appurtenant right to the use of the waters, a paper right, at any rate; and without discussing the question whether there had been an abandonment of that we ought first to find out what the paper right covers. It seems to me, the only question as to the continuity of that title is the question of whether or not it did pass under that Sheriff's deed. Let us decide that first, and I will pass on that, and then go on to the other. My own notion being that if Mr. Ryerson had the right at the time the Sheriff sold, it passed, in the general language of the Sheriff's deed.

Mr. Frazer: If the mortgage was on prior to that.

The Court: Oh, yes.

Mr. Hunt: I do not think, Mr. Wright, that is the fact.

(Colloquy between the Court, Mr. Hunt and Mr. Wright.)

The Court: Very well, I will decide the paper title in whatever rights Mr. Ryerson had in the waters that flowed past his forge and sawmill, whatever they were, came down in an unbroken chain to the Ringwood Company. That is the paper rights, and that is aside from the question, of course, of whether or not those rights are now existing.

Mr. Frazer: Now, we have the two.

The Court: That answers your question, Mr. Hunt?

Mr. Hunt: That, I think, clears the preliminary question and opens the way to a decision of the question of whether this right has been lost by non-user.

The Court: Or there may be something else.

Mr. Frazer: There are two phases, I take it, to my objection. The first assumes the distance of the right, but alleges notwithstanding the distance of the right, they are immaterial to this issue.

The Court: Yes, I understand that.

Mr. Frazer: Since the rights belonged at a point above the taking.

The Court: Above the taking; yes, I have that.

Mr. Frazer: And, therefore, the evident use of this deed for any purpose showing what waters would come down is wholly immaterial.

The Court: That is your first point.

Mr. Frazer: That is my first point, and the second point is there has been a prescriptive abandonment of the right which is illustrated in two ways. First, by the abandonment of the Ringwood Company of a different type of forge, of a concededly greater capacity than the old one, and non-user of it. They abandoned the old one, and dug another pit, and never operated, or operated for so short a period that they never could have claimed prescriptive rights for larger quantities; but the substitution of this other type of work indicated the intent to abandon the old one, and obtain prescriptive rights for the larger one. In the second place, that the Morris Canal and Banking Company, throughout this period, has been the one that did not let down waters which would be of sufficient quantity to operate these forges in the usual way that would hold water back for indefinite periods, and then when the demand of the canal was such that they needed it in their feeder they would let out large quantities of water, quite inconsistent with the right here suggested. It was not merely a non-user, but an actual assertion on the part of the Morris Canal and Banking Company of the right to control the flow of the Greenwood Lake in any way that they thought fit to do so, and that is, adversely, this whole claim.

The Court: That would prevent their getting a prescriptive right?

Mr. Frazer: That would prevent their getting a prescriptive right, and it would also operate as a prescription in favor of the Morris Canal and Banking Company in adverse possession which would throw out the whole reservation.

Mr. Hunt: Of course, there is no evidence before the Court of any such user by the Morris Canal and Banking Company. Your Honor realizes that?

The Court: I understand that.

Mr. Frazer: I am trying to give a full picture of what our contention will be.

Mr. Hunt: I insist the fact last alleged of non-user by the Ringwood Company and adverse user by the Morris Canal and Banking Company does not appear in the evidence, and therefore cannot be assumed as any basis for any argument.

Mr. Frazer: The only thing I can say in reply to that is that it does not appear in the evidence.

Mr. Hunt: That is for him to impeach when he comes to prove that it is not a good paper title.

Mr. Frazer: That is true, and I am trying to give the Court a good picture. I might say, in the case which I tried with associate counsel, Mr. Lewis, there was considerable evidence given by Mr. Cook to the effect that they had arbitrarily, according to the deeds ——

Mr. Hunt: I object to what is being stated here what was said by Mr. Cook in another case.

The Court: Suppose you answer the first proposition, the proposition of the fact that it is immaterial, because whatever rights there are, are unaffected by this taking, because they are above the taking.

Mr. Hunt: The first ground of the objection by Mr. Frazer is that the right exists, but is immaterial because it is above the taking. Do I state it correctly?

The Court: That is as I understand it. That is correct, Mr. Frazer?

Mr. Frazer: Assuming the right to exist.

The Court: What is that?

Mr. Frazer: I say, assuming, not an assertion on my part.

The Court: Yes, that is all on that assumption.

Mr. Hunt: Assuming the right to exist, it is immaterial because it is above the taking, that may be answered in two ways, at least, perhaps, three ways. First, that our purpose in proving the Ringwood Company to be the owner of this Ryerson reservation or Ryerson right, is not only to show later and in regular order what value that gives to the property because of that appurtenance of the property permitting the production of hydro-electric power, but is for the other purpose. I may say, according to the testimony in the former trial of this case, the vastly more important valuable purpose, of using the regulated draft on Greenwood

Lake which the right gives as a feeder for the water supply system which we proved in the former trial, and will offer to prove here, can be produced by the use of what was called, in the former trial, the three Vermeule ponds which it was testified to could be produced wholly within the lines of this taking, because the lines of certain land colored in orange, and some on the map concerning which it was proven by the family agreement in the deed that the Ringwood Company possessed the rights. It was proven and testified by Mr. Whitam and I believe not contested by the other side in the former trial, that this quantity of water described as it is described in the Ryerson reservation, interpreted in terms of second feet, and again translated from second feet into gallons, which is merely a mathematical process which all engineers are capable of performing, amounts to, if my recollection is correct, to 22,400,000 gallons of water per 24 hours. Is that the correct sum, Mr. Anderson, 22,400,000?

Mr. Anderson: I think that is correct.

Mr. Hunt: (Continuing.) Now, our claim is that the property being condemned has an intrinsic—I mean the 2354 acres alone—has an intrinsic value of its own for water supply purposes, separate and distinct from any need for using a single acre of anybody else's ground, for the reason that within the lines of these 2354 acres condemned there may be produced a water storage in the ponds which we call the three Vermeule ponds of somewhere from thirteen to fifteen billions of gallons of water—I forget the exact amount, so I state it thirteen to fifteen—and that from the storage thus produced, plus the draft on Greenwood Lake afforded by this

Ryerson reservation, there may be had a daily yield of potable water of 62,000,000 gallons per day, net, after allowing 10,000,000 gallons per day to go down the stream for sanitary purposes and for the use of the lower owners, just as the Water Supply Commission is required to allow to go down from this Wanaque Reservoir. Now, as your Honor sees, of that 62,000,000 gallons daily yield thus obtainable from the lands under condemnation, 22,000,000 —to use only the round figure—is derived from the use by the Ringwood Company of the right which the Ryerson reservation gives it. That is a vastly more important and valuable manner of exercising the Ryerson right than the mere use of the water covered by that right for the production of power. Incidentally, however, as we brought that water down from Greenwood Lake through the lands under condemnation primarily for the purpose of adding to the daily yield of potable water of this Vermeule pond system, we would employ it for the production of hydro-electric power, we having given evidence of various uses to which the power could be applied among others, for example, using it at the Ringwood mines, the production of power being in a rough approximate way about that which is used by the Ringwood Company at its mines annually, and we would propose to show that except for the taking that water coming down from Greenwood Lake and the other waters entering the Wanaque River down stream below Greenwood Lake, would be used for power six times at six different places as it passed through the entire property of the Ringwood Company shown on this Exhibit O14. Two of those places being outside the taking, and four of the places being inside the taking, or vice versa. I confess just which—may I ask Mr. Anderson—Mr. Anderson, are two of the powers inside of the taking or are four of the powers outside of the taking?

Mr. Anderson: There are only two powers inside of the taking.

Mr. Hunt: (Continuing.) Two powers are inside of the taking; so that by the taking we are prevented from developing six powers, and permitted to develop only four powers. We undertook to prove below, and we would undertake to prove here, that the cost of production is increased, the economy of operation of the powers is decreased by reason of their number being decreased from six to four, and by reason of the labor incident to the operation, all costs incident to the operation therefore having to be spread only over a smaller output of energy rather than over a larger output of energy which we claimed below constituted a consequential damage.

The Court: Suppose that is all true, what has that to do with the right to this flowage, because you do not claim, do you, that there is any right on the part of anybody to stop the entire flow of the Wanaque River passing through your property?

Mr. Hunt: No, sir, I never claimed that.

The Court: It is coming, anyway.

Mr. Hunt: Yes.

The Court: And the question is whether you have enough quantity, enough to run.

Mr. Hunt: No, that is not the question at all,

your Honor. There it is, perhaps, difficult for your Honor to grasp the situation without having heard some of the testimony. The point is this: Through six months of the year, let us say to speak in approximate terms, the flow of the Wanaque River from one day to another, the regular flow, might be sufficient to produce a certain amount of power. Through the other six months, when the rainfall is less, the evaporation is greater, and the natural flow of the river is therefore greatly reduced. That quantity of power can be had only by means of a regular controlled draft on a storage reservoir, and this Ryerson reservation makes Greenwood Lake our storage reservior. Under that reservation we have a right to draw, under the reservation as the Court of Errors and Appeals interprets similar reservations, we have a right to draw this 37 second feet, that is 37 cubic feet per second for 24 hours in the day continually.

The Court: On the theory that that is the amount that it would have taken to comply with the ——

Mr. Hunt: On the proof that is the amount that would take to run this machinery.

The Court: One forge and one sawmill or whatever it was.

Mr. Hunt: Yes, that is proven, the four different ways, and it is also proven that the new machinery installed for the forge and the sawmill took the same amount of water, no more. Now I had not finished. I had not come to the most important part of this statement. Under that reservation we had the right to take that 37 cubic feet of water per second continuously for 24 hours a day, or we had a right to take twice 37 cubic feet per second during any 12 hours that we pleased out of the 24, or we have a right to take four times that rate per second during any six hours that we pleased out of the 24, and so on and so on. In other words, according to the interpretation of such rights by the Court of Errors and Appeals, you can take your second feet at a continuous 24-hour draft, that will give you in 24 hours all the water you are entitled to, or you can take it in larger volume of flow for any period that you please less than 24 hours. Now our testimony was, and that will be our testimony here, that the beneficial way to use that right, to get its value as far as power purposes are concerned, would be to use it for the production of peak load, hydro-electric energy. Peak load meaning power produced at those times when electric companies—those times of day when electric companies need their peak power capabilities. For example, four hours in the evening—four hours at some other time of the day—when the demands on the electric service companies are the greatest and the heaviest. There might be two such six-hour periods. There might be four three-hour periods. We could accommodate ourselves to whatever the need of the electric companies was, and in that way ——

The Court: And transmit it when made?

Mr. Hunt: Transmit it when made. Of course, you have to transmit it when made; you cannot can it. And in that way we make it command a higher price than if it were a continuous 24-hour production which for 12 hours of the day, when there was not much draft on electric lines, was really surplus that they did not need.

The Court: Why can't you do that anyway? What difference does it make?

Mr. Hunt: I say we can do it after this taking—we can do it in four places instead of six places.

The Court: But my point is, this point from which you claim this right being above the taking, how is it material to this issue in any way?

Mr. Hunt: Well, your Honor, we use it not only at that point, but below that point it runs on through our land and we use it over and over again. We use it twice within the lines of the taking. You don't have to use it at that point. Perhaps I should have made the law a little plainer at the outset. In Asbury Fountain v. Perth Amboy, a case decided in the Supreme Court in 1897, this was said (60 New Jersey Law):

"It has been considered as settled law ever since the decision in the Luttrell case, Coke's Reports, Volume 2, page 86"—Coke in England; Reign of Elizabeth—where the question first came up for solution, our Supreme Court says—"That when the easement is of a certain quantity of water" (here is our easement of a certain quantity, the quantity sufficient to run such and such machinery, which, as I say, all competent engineers are now able to translate into terms of second feet without any difficulty) "when the easement is of a certain quantity of water the grantee is not restricted to use it in a particular manner, though the purpose for which it is used be specified in the grant. He may use the water in a different manner or at a different place, if he sees fit, provided the quantity used is not increased and the change does not prejudice the rights of others."

Now, we won't increase the quantity used. 37 second feet for 60 times 60 times 24 seconds is so many second feet in 24 hours; and whether you use it by continuous run during the 24 hours or by two runs at double volume during two periods of six hours each or one period of twelve hours, does not increase the quantity at all. It could not prejudice the rights of others, because no others have any rights to a regulated draft of water on Greenwood Lake. That is our right, as the deed which has provoked this argument plainly shows by its terms. I don't know whether your Honor read it, but it plainly shows by its terms that the Greenwood Lake Dam as it exists today, it never having been changed since, had been built before this deed containing this reservation was made. When it was built it belonged to Ryerson; Ryerson then conveyed it to the Canal Company, reserving this paramount right to himself. I say paramount right—of course, when he sells something to the Canal Company and reserves another something for himself, that thing that he reserves to himself is his, paramount to any claim of the survey—the tenement—that he has conveyed to the Canal Company. Now, in Izard v. May's Landing Water Power Company, 31 Equity, page 511, the principle enunciated in the Perth Amboy case was applied as follows: "There was a grant with the use of water for certain specified purposes, with a prohibition against certain other specified uses." Is that plain? There was a grant for certain specified purposes with a prohibition against certain other specified uses; and the Court construed that grant to permit the grantee to use the water for any purpose that was not prohibited. In other words, did not limit him to using it for the use which was specifically permitted, but only re-

strained him from using it for the use which was specifically prohibited.

The Court: In this case you claim there is no prohibitive use?

Mr. Hunt: No prohibited use. No prohibited use whatever, and of course under the Perth Amboy case no required place of usage. We may use it in a different manner or different place. I must modify that slightly with reference to the terms of the reservation itself. What we are entitled to is that amount of water specified in the grant necessary to use the machinery down in here where Mr. Anderson said it was located, together with the flow on intermediate streams. So if between Greenwood Lake and the point of use designated in the reservation it should appear that the intermediate streams afforded, let us say for example, one cubic foot per second, then our draft on Greenwood Lake would be reduced by that one cubic foot per second. Do I make that clear to your Honor? Yes. The evidence in the other case was that there was only one stream coming into the Wanaque River between Greenwood Lake and the designated point of use, and that was a very small and inconsequential stream, which if I recall the testimony correctly was said to completely dry up, or for all practical purposes completely dry up in the summer time. Isn't that so?

(Capt. Crockett was apologizing for kicking me, and I thought he was telling me it was not so.) Now, with the Court's permission I will refer for just a moment to the case of Johnston v. Hyde, 33 New Jersey Equity, which I believe is the leading case on this subject in this State. This case also

holds that such a right as that now in question, when derived by grant, is not lost by non-user. Now the language of the opinion is that it is not lost by non-user when it is derived by grant. I think your Honor would understand that that language is used because in this particular case the right was derived by grant, but that the principle that that ruling illustrates is that where the right is created by a written instrument, as distinguished from one that is created by a mere prescription without any right, it is not lost by non-user. I don't know whether our Ryerson right could be said strictly to be derived by grant or not. Of course, as far as our ownership is concerned it is derived by grant. It has come down to us as an appurtenant to the land conveyed by the grants or deeds of our predecessors in title. As between Mr. Ryerson and the Canal Company I suppose it would be inapt to say that Mr. Ryerson derived this right by grant, because in the transaction between him and the Canal Company he, Ryerson, was the grantor, and the right he set up in favor of himself by means of a reservation. He could not grant to himself, but in granting away part of his ownings he reserved these.

Mr. Frazer: It makes no difference. Prescription I think stops a man ——

Mr. Hunt: Instead of prescription, I will say adverse possession.

The Court: In other words, you claim that whatever right he had up to that point he got by use, by prescription?

Mr. Hunt: Ryerson, you mean? No, I don't mean that at all.

The Court: How did he get the right?

Mr. Hunt: I don't know, your Honor.

The Court: That he exercised?

Mr. Hunt: I don't know, your Honor, and, fortunately, I do not have to speak to that, because under the statutes of this State where there is a paper title to land or an interest in land that is 75 years old it is good against the world and all the inhabitants thereof.

The Court: Isn't this what happened, as a matter of fact? That Mr. Ryerson was negotiating with the Canal people?

Mr. Hunt: I don't know.

The Court: And he says, "I have a forge and sawmill here, and I insist that there shall be sufficient water forever flow past that to operate it?"

Mr. Hunt: I don't know.

The Court: "And I will permit you to build a dam or I will build a dam and I will grant you these lands?"

Mr. Hunt: I don't know. I only know this.

The Court: Wait until I finish.

Mr. Hunt: Excuse me.

The Court: "Providing this reservation is contained in my grant?" Isn't that probably what happened?

Mr. Hunt: I don't know, your Honor. I only know that the deed in evidence shows that prior to Ryerson conveying to the Canal Company with this reservation to himself and his heirs and assigns forever, he owned all this land at the lower end of Greenwood Lake that I now point to around the outlet ——

Mr. Frazer: That is not so.

Mr. Hunt: —— around the gate that controls that flow of water from the Greenwood Lake into the Wanaque River. He owned all that land under water in the lower part of Greenwood Lake which was not flooded by the older dam erected further to the north that Mr. Frazer told your Honor about, but was flooded in consequence of the building of the new dam at the present location.

Mr. Matthews: That is not true.

Mr. Hunt: Now he also owned down the channel of the Wanaque River on each of its sides to nearly the location of this forge mentioned in the reservation. Being thus the owner of that property, he conveyed, as his deed shows, certain of those lands to the Canal Company, reserving this right to himself.

The Court: He did own a substantial piece of property there besides, but I am told by the title searcher that there were a number of farms that were flowed after the dam was built, that he did not

own, six or eight or ten properties. I don't know that that makes any difference.

Mr. Frazer: I think it is wholly immaterial.

The Court: I do not see that it makes any difference.

Mr. Hunt: All right, then, I won't pause any further on that.

The Court: Nor do I make the point that it is material as to what the bargain was between them, because as you say, the deed shows what the effect of it was; but I am wondering whether what I have pictured is exactly what happened.

Mr. Hunt: Yes.

The Court: I think likely it did.

Mr. Frazer: I think that is exactly what happened.

Mr. Hunt: Now I will read a little from the Johnston-Hyde case, eventually for the purpose of demonstrating that such a right as this, derived by grant or derived by reservation in a grant, is not lost by non-user; and also for the purpose of confirming the doctrine of the Perth Amboy case I referred to a few minutes ago; and also for the purpose of showing it to have been held by the highest court of this State that there may be, at the option of the owner of the easement, any change he pleases in the use to which he applies the water as long as he does not increase the quantity or do harm to the rights of others.

The Court: Decrease would be better.

Mr. Hunt: Increase, your Honor.

The Court: You mean increase the quantity he takes?

Mr. Hunt: Yes; increase the quantity he takes, yes.

The Court: And also providing, I suppose, he does not decrease the quantity that the owner below is entitled to?

Mr. Hunt: Oh, yes, and that of course.

The Court: That goes without saying.

Mr. Hunt: Yes, that goes without saying. I said a little while ago that in producing our 62,000,000 gallons daily yield from the Vermeule ponds we proposed to let 10,000,000 gallons go down the river a day free. That is the same quantity that the North Jersey District Water Supply Commission is required by the State Board of Conservation and Development to let go down the river free from this big reservoir.

Mr. Matthews: That is not so.

Mr. Hunt: From its big reservoir. They have to allow other water from Greenwood Lake also to pass. That is a detail that is not clear in my mind at the moment. We have not come to it yet. It is immaterial at present.

Mr. Matthews: And untrue.

Mr. Hunt: Here again the Court refers to the Luttrell case:

"In Luttrell's case, 4 Coke (Vol. 2, Part 4), page 86, the plaintiff declared that he was seized in fee of two old and ruinous fulling mills, and that from time immemorial magna pars aquae cujusdam rivuli ran from a place called Head Wear to said mills, and that afterwards he pulled down the said mills and erected two mills to grind corn, and that the defendant broke the bank and diverted the water from his mills. The defendant claimed that the plaintiff, in tearing down the old fulling mills, and building the new mills, had destroyed his prescription, and could not prescribe for a water course to the grist mills."

It seems that we are going to have an answer to some suggestions made by counsel for the Water Supply Commission a few minutes ago.

"But it was resolved that mill was the substance and thing demanded, and the addition of grist or fulling was but to show the quality of the mill, and that the plaintiff might alter the mill into whatever nature of a mill he pleased, provided no prejudice should arise thereby, either by diverting or stopping the water as it was before. Ever since Luttrell's case it has been considered settled law that, when the easement is of a certain quantity of water, the owner is not bound to use it in a particular manner, though the purpose for which it is used be mentioned in the grant. He may use the water in a different manner or at a different place, or increase the capacity of the machinery which is propelled by it, without affecting his right, provided the quantity used is not increased and the change does not prejudice the rights of others."

Mr. Frazer: That is all we ever said.

Mr. Hunt: I might digress to point out that thus the Court refused to put the law as an obstacle in the way of the progress of mechanical invention; refused to forbid using, when a better water wheel and more economical wheel and a more economical draft furnace for the smelting of iron had been invented and came into use, to substitute that improved machinery, as we did in the 60's or 70's, for the older machinery, less efficient, less economical in operation in the 30's.

"It is manifest ——" this is now in relation to the Johnston-Hyde facts expressly—"It is manifest that the grant contained in the deed of 1824 is a grant of a certain quantity of water." This was a grant of water for the purpose of a sawmill. "The call for the dam at its then present height, and for the raceway as it then was, makes it apparent that such was the purpose of the parties. When the grant is of a water power, and it be left in doubt whether the kind of mill mentioned indicates the quantity of water, and measures the extent of the power intended to be conveyed, or the grant is of water to drive a particular kind of mill, the former construction will be favored, because it is most favorable to the grantee without being more onerous to the grantor. Applying it to the reservation, logic equally says, when the reservation is of a water power and it be left in doubt whether the kind of mill mentioned indicates the quantity of water and measures the extent of the power intended to be conveyed, or the reservation is of water to drive a particular kind of mill, the former construction will be favored, because it is most favorable to the reserver of the reservation without being more onerous to the grantee."

Mr. Frazer: May I interrupt Mr. Hunt for a minute? I understand your Honor to ask him to address himself to the question of materiality. He is now going into the full question of the existence——

Mr. Hunt: I passed materiality and I thought you wanted me to talk on this other. All right, I am through on materiality.

The Court: The first point that Mr. Frazer made that I asked you to address yourself on, because you made the point there was no testimony before us with respect to the later point which Mr. Frazer made, namely, the point that there was a loss of right because of adverse user by the Canal Company, was that assuming, as I understood Mr. Frazer's argument, that there was a right in Ryerson which came into the Ringwood Company, that right had been extinguished in various ways, one of which was adverse user by the Canal Company. You disputed that.

Mr. Hunt: I had gone into that unconsciously. I did not understand your Honor to tell me to limit myself.

The Court: You disputed the right of Mr. Frazer to argue that because of the absence of any testimony to bear out his argument on that point, as I understood it.

Mr. Hunt: I see.

The Court: It was for that reason I suggested we take up the other point and see whether we could not dispose of it on that point alone.

Mr. Hunt: Yes.

The Court: And as I understood, Mr. Frazer's point was that it is immaterial to this issue in any event, for the reason that the taking is above and does not concern the taking with which we are concerned.

Mr. Frazer: That is partly it. I have not fully argued that point of materiality. In addition, by Mr. Hunt's very presentation of his argument upon the rates or what user he intends to make of the water, we come right back again into our old Manda position. Before any of these rights which he is talking about can be possibly transmuted into the gold of sold water, you have got to build all these dams, you have to create all these lakes, you have to change from the present condition of the lands to something altogether different; and in addition to that, four of the powers he admits are not affected in any way at all; they are not on us. But as to the two lakes which Mr. Anderson, if I understand him correctly, says lie within our taking, under this old scheme, they do not exist today; they have to be created, and under the Manda case all of these things are immaterial. We are not interfering, we are not touching his power, his right up there if it exists, we are not laying any hands on it at all, it still is there, and he can use it to the fullest extent that the grant contemplates, at the place where they have the right to use it. That does not say he has a right to interfere with the riparian owners all along the line below, or that he can take the waters thus coming in there and assert they can be used in some other way below, because he is not even a complete owner of the stream bed, his title is broken

up by a number of different intrusions, as you can see by looking at Exhibit C1—large tracts there where the Ringwood Company has no ownership at all along the river; right along from here, all through here, another piece in here. (Indicating on map.)

Mr. Matthews: If your Honor please, may I have a word with the Court on the question of materiality? Mr. Hunt told you that there were three reasons why it was material, and he said in giving the first reason the purpose of proving that the Ringwood Company is the owner of this Ryerson grant is not only to show the value of its appurtenances for the production of hydro-electric power, but for the more valuable purpose of feeding water from a supply system, storage system, produced by three Vermeule ponds, from Greenwood Lake. Now yesterday, if your Honor please, we argued half of the day on the materiality of building scenic ponds. Why build Vermeule storage ponds? Mr. Frazer has handled the materiality from the engineering standpoint, but aren't we wasting a lot of time when he frankly says the purpose of showing this right is to show the value of its appurtenance for the production of hydro-electric power and for the more valuable purpose of feeding the water supply system produced by three Vermeule ponds which do not exist from Greenwood Lake? This quantity of water under the Ryerson grant, interpreted into second feet would be 224,000,000 gallons per 24 hours. He says there are 2254 acres that have intrinsic value of their own for water supply purposes separate from any one else's land because of the rights they have, plus the right to flowage over the lands of others, because these lines may produce

water storage in Vermeule's ponds that do not exist, and from the storage thus produced, plus a draft on the Ryerson grant, will be a yield. Why, if we let the testimony in, the Court would open the door against the ruling of yesterday. To go further, that 62,000,000 gallons of water obtainable from the lands under condemnation, 22,000,000 gallons derived by the Ringwood Company from the Ryerson right, that is vastly more important than the use of water for power, but he said incidentally, had we brought the water down by the Ryerson grant in this water storage system, we will employ it for power and propose to show you that we were to have six places to employ it for power on our taking, within our right, but now there are only two on our taking and four outside of our taking, and we are prevented from developing these powers. Why, not only is it immaterial to this issue from the standpoint of the engineering itself, argued so well by Mr. Frazer, but it is the Morris & Cummings Dredging case all over, it is the Manda case all over. They cannot do this without artificialities. What I think would be material—and we have gone outside of it in the argument, we must answer it, because that is the purpose. His purpose is not to show you he has a grant there; his purpose is to build electric lines and no reservoir. What he made out in the case is, to say this land is adaptable for water storage purposes and give a value if he wants to, but he cannot. And he may say, moreover, we have a right in the Ryerson Dam to draw down a certain amount of water from that point. He cannot build Vermeule ponds, create storage and incidentally create hydro-electric ponds on and off the taking, when there is involved, in addition to this, as there was in the Morris & Cummings Dredging case, per-

mits from the Board of Utilities involving water power, hydro-electric power, permits from the Board of Conservation and Development involving water storage and diversional rights and so forth. But I waive all those. If the ruling yesterday, arrived at after intense discussion, and arrived at after your Honor had intimately studied the decisions, if that ruling is to mean anything, all of this testimony is totally immaterial. In other words, while he may be able to prove, if he can prove by his paper title, it is really the present day, actual marketable title, and all he can do that for is a predicate for the argument that he has that right and he considers it valuable. He cannot do, as he practically said to you in the no reasons of the three he said he would give you on the materiality of this—he cannot, as he said, show that the Ringwood Company has flowed this grant, that it has a value intrinsic to the land for the production of hydro-electric power and for the more valuable purpose of feeding the water supply system produced by three Vermeule ponds. So, with all respect, I submit, if the Cnurt please, we should regard this as immaterial, both from the engineering standpoint and more particularly from the ruling of this Court as at present laid down.

Mr. Hunt: Now if the Court will permit me to answer. I submit that the evidence is material, first, because by the exercise of this right we can cause 22,400,000 gallons of water per day to flow through the property under condemnation in the regular channel of the Wanaque River, thus giving to the 2354 acres under condemnation a greater availability and capability and adaptability for the production of potable water supply, which could be,

and in the absence of such a body as the North Jersey District Water Supply Commission would have to be, acquired and developed, either by a municipality or municipalities of this State, or by chartered water companies, to supply a presently existing demand and need for increased supplies of potable water to the municipalities of this State situated in Essex, Hudson, Passaic and Union Counties, which, as we shall hereafter prove in following up this evidence, if it be admitted, now need an increased supply of 100,000,000 gallons daily, and will as, if this evidence be admitted, we shall further prove by the official report of the North Jersey District Water Supply Commission, issued in the year 1925, require an additional supply of 100,000,000 gallons daily at the end of every eight year period beginning with the year 1925. These facts we claim give to the property under condemnation a greater value than it would otherwise have, for which reason we are entitled to put before the jury the evidence now sought to be admitted. Secondly, because the water controlled by this reservation can be used by us, owing to the natural lay of the land within the Ringwood property, six times as it flows through the Ringwood property for the production of hydro-electric energy, four of the places adapted for such use of the water being outside the taking and two of the places adapted to such use of the water being inside the taking.

Mr. Anderson: Just a minute, Mr. Hunt. If you want to have me correct it ——

Mr. Hunt: Isn't that the other way about?

Mr. Anderson: No; it is three in and three out.

I misunderstood just the purport of that question before.

Mr. Hunt: May that be corrected?

The Court: Make it three in and three out of the taking.

Mr. Hunt: This taking reduces the number of places where the water may be thus used to three and thereby renders the use of the water at the remaining three places for this purpose more expensive and less economical, and therefore it is a consequential damage to the remaining lands of the Ringwood Company not embraced within this taking, in addition to the direct damage caused by the Ringwood Company being deprived of the value of the three water power sites embraced within the taking. Thirdly, the Ryerson right in the possession of the Ringwood Company is a valuable asset for the exercise of which the company could obtain the payment of money to it by private water companies downstream on the Passaic River system from the Ringwood lands on the Wanaque River, who would be willing to pay as we shall propose to show a substantial sum annually to the Ringwood Company for exercising this right and thereby adding 22,400,000 gallons of water to the daily flow of the Wanaque River and the streams into which the Wanaque enters.

The Court: In so far as it might be material to show the flowage rights that the Ringwood Company may have, I think it is admissible as the land lies naturally. In so far as you try to show its materiality for water power purposes or lake purposes

that are not physically present or built in conformity with my ruling of yesterday under the Manda case as I conceive the law to be as settled by the Manda case, I think it is immaterial and irrelevant and will not be permitted. If you can show at any time that there is materiality for any specific purpose, without building dams or power plants, at those times, if they exist to develop, if you can show the materiality, I will allow it.

Mr. Hunt: If I can put one question now I will show the materiality of it.

Q. Mr. Anderson, would the exercise of this right by the Ringwood Company cause the 22,400,000 gallons of water to flow down the Wanaque River in its natural bed?

Mr. Frazer: I object. I suppose this is a mere assertion of counsel to the effect that that would be the result. Now the jury is not here but Mr. Anderson is in no way qualified to pass upon the quantity of it or anything of the kind.

Mr. Hunt: Mr. Anderson is fully competent to testify. However, I will withdraw the question.

Mr. Matthews: Here is an artificial situation that does not exist.

Q. Are you an engineer? I believe you testified that yesterday?

A. Yes. sir.

Q. Will you please convert into gallons 37 second feet for 24 hours?

Mr. Frazer: Where is the arbitrary assumption that 37 second feet can ——

Mr. Hunt: You do not deny that?

Mr. Frazer: What, that this reservation gives you that? I certainly do.

Mr. Hunt: I will withdraw the question.

Q. Mr. Anderson, would the exercise of the Ryerson right by the Ringwood Company cause any substantial amount of water to flow down the Wanaque River in its natural channel every 24 hours?

Mr. Frazer: I object to these conclusions. The instrument speaks for itself.

The Court: Yes, but if this witness can answer that I shall allow him to, if he can.

Mr. Frazer: This is merely for the information of the Court.

Mr. Matthews: That is all going on the record.

The Court: Certainly.

Mr. Matthews: The exercise ——

Mr. Hunt: I think the jury should come back.

The Court: I think the jury should come back.

Mr. Matthews: The exercise of this right, if your Honor please, involves something that is not existent on the premises

The Court: What do you mean?

Mr. Matthews: I mean that the witness is asked to testify whether the Ryerson restriction gives enough water to furnish two fires at the forge and run a sawmill, and that would involve a situation that does not exist. In other words, they would have to let the water down, and they would have to provide in some way for its reception being let down from the lake. You haven't any proof before you that this fellow Ryerson who has, your Honor well remarked, owned ten tracts in the beginning. that they had all the right to the bed of Greenwood Lake. That drawage must be in the space which he owns. That is problematical and speculative, and to my mind it involves a situation that does not exist. This question only involves a predicate for further testimony as to the power that would be created by that 22,000,000 gallons.

The Court: This land has certain uses. They are entitled to the best value to which that land is naturally adapted.

Mr. Matthews: Yes, your Honor.

The Court: They have a right to show that the Wanaque River flows closer to it; they have a right to show that because of the flowage of the Wanaque River its greatest use is for reservoir purposes. Now, if they can show, by proper evidence, the flowage of that river, in order to show how valuable the lands may be for its greatest use, if its greatest use be reservoir purposes, I think that is competent and material; and for that purpose, and only that purpose, and that was the ruling I made. Now, I do

not know how they are going to show it, but I am not concerned with that. It may be impossible to show how much more water they would have the absolute right to flow there than they now have. I do not know.

Mr. Frazer: If I may suggest, this line of examination, to show the materiality, it has no bearing for that purpose at all. Let us assume there are 100,000,000 that come down. The question is what use can be made of the waters, and in what way does that use, considering the circumstances of this case, in what way is that use affected. Our taking does not affect it at all. The use is not affected.

The Court: Because you do not take it.

Mr. Frazer: Because we do not take it, and these other things which they are piling up are, again, the Manda proposition. Now, if we assume for the moment that instead of these 2300 acres we were taking 25,000 acres, let us say, of the Ringwood Company holdings, that would include this grant. If we took that reservation, that thing having the values fixed, could not show these three or four ponds up above any more than they can show the three or four below, so it does not make any difference in theory whether there be ten second feet or whether there be 37, or whether there be 100 second feet passing this place under this so-called reservation. The principle is exactly the same. They cannot use it except at that point, at that one spot, and at that spot they are not interfered with the use of it; and any of the other hypothetical things which might be done with the water, after it had been gotten out of Greenwood Lake into the river, and

which involves all these constructions which involve contracts with hypothetical contracts with the City of Paterson, the teeth of the New Jersey law, that has nothing to do with it.

The Court: That is all true, but suppose on the other hand you show, as a reason, why these lands are not worth very much, that they are only worth, for instance, the highest use is farm land, and the soil is gravelly and has no fertility and, therefore, as farm land it is nil because of inaccessability they are not worth much for home sites, and because of lack of view, assuming that is true, then they say the greatest and highest value it has is as reservoir, a potential reservoir, a natural reservoir site, and then you say, well, it isn't worth anything as to that, because we have the right to divert all of the water out of the Wanaque River and shoot it down some other valley so that it does not touch this valley and therefore it has no value in itself if we should exercise the right that we have or that John Jones has to shunt this water over the other side of the hill, or shunt it down the other side of the hill, then they say, Oh, no, you could not do that because we have certain rights that would prevent you from doing that. We have the Ryerson Forge rights that would, for all time, make it impossible for anyone to divert the quantity, at least, of water passing our place less than it would take to run a grist mill or a sawmill or whatever the reservation of the Ryerson grant was. Now, deson't that change the situation?

Mr. Frazer: No.

The Court: It does not change it, I suppose your

argument is, because those are facts and you do not contest them?

Mr. Frazer: Partly they are, and are not facts and in the second place we could take below Ryerson, assuming we could divert this water, we could take and put our diverting conduit in below the Ryerson Dam and shut off all riparian owners, and we would have to settle in damages if we did not take their lands. If we should take our point of diversion above the Ryerson Dam, then we would have to settle for the value more or less that this fictitious right, as your Honor has pointed out, that may be too distant for this purpose or that, and therefore has no value, it is too gravelly for farming, it is too this and that and the other thing. Let us say it is too far off from commerce to have any use made of it—for the last forty-six years it is conceded—of this particular right which now has suddenly developed in this tremendous possibility. So, can't you see the prejudice which it is sought to put before the jury by imposing these things which are essentially non-existent, and until it can be shown by a direct question that the Ryerson right has some kind of materiality, I think that any testimony as to the size of it, the amount of water which flows through it, and all those things is absolutely irrelevant and immaterial and they are prejudicial.

The Court: Well, I can appreciate all of it. What I am trying to find out is, and what I had in my mind was, that it might be of evidential value and great materiality to the owners of this property to show the quantities of water that they have a right to flow down through this valley for the highest purpose, or one of the high purposes for which it is used. Your answer to that seems to be that you are not affecting that in the slightest degree and, therefore, it is immaterial as to the amount that the Ryerson grant permits them to have, because you are not in any way interfering with that, because it is above the taking. That is your point?

Mr. Frazer: That is my point, and they could not make any use of it under the conditions anyway, and along the lines they are speaking of.

The Court: Because of the ruling of the Court?

Mr. Frazer: No, on account of the existence of statute. This very water supply system that they are talking about has been asserted by our decisions time and time again to be a public function, and the State has been vested with the full power of diversion. These private interests have nothing at the most besides riparian rights, which does not allow them to divert a single drop of this water.

The Court: But they might sell to some private water company that might have the right to buy it and might sell to municipalities that might have the right to buy it.

Mr. Frazer: No, sir. Under the present law of New Jersey they have no right to sell it to anybody.

The Court: That, I understood, that was one of the points Mr. Hunt made.

Mr. Frazer: That is one of the points, and that

is some of the imaginative points Mr. Hunt is trying to inject into this case. Not a drop of water can be diverted today from a river for potable purposes, unless they have first the consent of the Board of Conservation and Development as representing this State in the right of diversion and it be a municipal diversion, as Mr. Hunt seems to conceive it must be, and unless it be from the actual waters from which the municipality is then getting its supply, it cannot be done without the consent of our Commission as the instrumentality of this great State in the furtherance of the general scheme of water conservation.

The Court: Then, your point is that that estops him from showing the potential value that this reservoir site has?

Mr. Frazer: Exactly, because he has no authority to capitalize a public necessity where he cannot as a private individual make use of that which he is trying to capitalize now.

The Court: And if he did sell it to some other agency or governmental department or municipality, or private water company, if he had the power to sell it, assuming that they had the right to buy it, and assuming that they had the permission to use it, for potable purposes, your contention is then that he could not show that because it comes within the Morris Dredging Company case in that they are too many contingencies that must be passed before he gets to that point and therefore it is not a use in the immediate present or the immediate future.

Mr. Frazer: Yes, sir, and he talks about selling it to the East Jersey Water Company, and he cannot even do that. They have no right beyond their present diversion rights.

The Court: Mr. Hunt, what do you say as to the immateriality of it, even for the purpose I am trying to let you show?

Mr. Hunt: I have said all I could, your Honor, and I will stand upon my right and re-assert what I have said before and ask for a ruling.

The Court: All right, I will rule it is incompetent and immaterial.

Mr. Hunt: And I ask an exception.

The Court: You may have it, on the ground that

Mr. Hunt: With your Honor's permission, I will state it again, because there has been so much interruption.

The Court: No, I understand your grounds to have been stated, and stated very fully and very well, and I just wanted to add that my ground for ruling the present question out is because, inasmuch as there is no diminution of the water taken concerned in anyway by the North Jersey District Water Supply Commission, that it is immaterial and irrelevant as to the flowage rights under the Ryerson right or grant, whatever it might be.

Mr. Hunt: That is not a flowage right, your Honor.

The Court: All right, the right we are talking about, the Ryerson grant, but whatever the Ryerson

Mr. Hunt: Ryerson reservation.

The Court: Well, Ryerson reservation, whatever that reservation may be, with respect to the amount of water that is to flow under those rights, passes the Forge place, is immaterial and irrelevant because there is nothing to be changed in that particular by anything that the condemnor is doing in this proceeding.

Mr. Hunt: Now, if your Honor please, I would like to have an offer and an objection and a ruling and an exception to the statement of my reasons on the record in one page instead of an hour or an hour and a half's argument. Will you permit me to do that briefly?

The Court: Yes.

Mr. Hunt: And I think, perhaps, it should be done in the presence of the jury, so that it may be part of the record.

The Court: Very well.

Mr. Frazer: I do not know how much Mr. Hunt is going to spread himself.

Mr. Hunt: I am not going to spread myself at all.

Mr. Frazer: Because there is a lot of immaterial matter here which should be explained to the Court

and not before the jury. If Mr. Hunt is going to review what we have been saying here, he will be trying the case as he did before the Commission of which three-quarters of the evidence was statements by counsel.

The Court: I presume Mr. Hunt wants to re-state what he has already said. If that is so, I have no objection, because I do not understand there is anything prejudicial in that.

Mr. Matthews: If it is the purpose to show the creation of hydro-electric power and second feet of gallons of water, he is not entitled to ask that question. He can sum it up in a few words.

Mr. Hunt: I think I have the right to state my ground of objection. If I went to the Court of Errors and Appeals on an objection which was not stated, they will state it is no good.

(Colloquy.)

The Court: I see no harm myself in allowing Mr. Hunt to spread the objection on the record in the presence of the jury, because I have so much faith in the jury that I do not think it is going to prejudice them in the slightest degree, and I will allow him to do so. Bring in the jury.

(The jurors then returned to the court room.)

Mr. Hunt: If the Court please, I beg to offer in evidence a certified copy of a deed from Jacob M. Ryerson and Harriet, his wife, to the Morris Canal and Banking Company, dated the 27th day of

March in the year of our Lord one thousand eight hundred and thirty-seven, this copy being stated to be transcribed from Liber V-3 of Deeds, page 322.

Mr. Frazer: I object for the reasons which appear on the record fully during the course of the recent argument.

The Court: And the objection is sustained.

Mr. Hunt: And we have an exception?

The Court: You have an exception.

Mr. Hunt: And your Honor does not permit me to state briefly the reasons why I urge that this deed is material and should be admitted?

The Court: I do.

Mr. Hunt: All right. I submit that this deed is material and should be admitted because of the reservation contained in it made by Ryerson, the grantor, in favor of himself, his heirs and assigns forever, the benefit of which reservation passed by various deeds of conveyance to the Ringwood Company, and it is material first because by the exercise of the right reserved by Ryerson now possessed by Ringwood Company, it could cause 22,400,000 gallons of water per day to flow through the property under condemnation in the regular channel of the Wanaque River, and by means of the right or regulated draft on Greenwood Lake, which the reservation gives, thus giving to the 2354 acres under condemnation a greater availability, capability and adaptability for the production of potable water supplies, which availability

capability and adaptabliity could be, and in the absence of any such body as the North Jersey District Water Supply Commission, would have to be acquired and developed either by a municipality or municipalities of this State, or by chartered water companies to supply a presently existing demand and need for increased supplies of potable waters to the municipalities of this State situated in Essex, Hudson, Passaic and Union Counties which, as we shall hereafter undertake to prove now need an increased supply of 100,000,000 gallons per day and will, as we shall hereafter undertake to prove by the official report of the North Jersey District Water Supply Commission for 1925, require an additional supply of 100,000,000 gallons per day at the end of every eight-year period beginning with 1925. Secondly, because the water which under this reservation we have a right to draw from Greenwood Lake, under regulated draft, could be used by the Ringwood Company at six places as it flows through the Ringwood Company's property for the production of hydro-electric power. Three of those places being within the lands being taken, and three outside. The taking deprives us of the value of the three power sites within the taking, and it also lessens the value of the three power sites outside the taking by making their development and use less economical than if all six could be developed and used together. Thirdly, because the Ryerson reservation, in the hands of the Ringwood Company, giving as it does the right to draw 22,400,000 gallons of water per day from Greenwood Lake, is a valuable right or privilege for the exercise of which by the mere opening of the gate of Greenwood Lake and allowing this regulated draft to come down, the Ring-

wood Company could obtain substantial payments from chartered water companies drawing water from streams into which the flow of the Wanaque eventually finds its way. I submit that for these reasons, by reason of these facts that I have mentioned, the value of the land under condemnation is increased by the Ringwood Company's possession of the right reserved in this deed and that, therefore, we are entitled to have this deed go in evidence to the jury.

The Court: For the reasons that I have stated on the record I consider the testimony immaterial and irrelevant to the issues that we are trying, and for that reason I will sustain the objection.

Mr. Hunt: And we pray an exception?

The Court: You may have it.

Mr. Frazer: These various other deeds which were offered by Mr. Hunt yesterday and marked for identification, if he still desires to have them marked, I have no objection to them.

The Court: Very well.

Mr. Hunt: I offer them in evidence.

The Court: Let all of the other papers that were marked for identification yesterday, then, be marked in evidence.

(Exhibits O21 to O40 inclusive and Exhibit O43 heretofore offered for identification were received in evidence and the exhibits so marked at this time.)

Mr. Hunt: Does that include the deed from Jacob M. Ryerson and wife, Peter M. Ryerson and wife and Martin John Ryerson to the Morris Canal and Banking Company?

Mr. Frazer: No, sir, it includes only the deeds I have carried up.

Mr. Hunt: Now, let me see the deeds that you did not carry up, then, so I can see how many are excluded, and then offer them.

Mr. Frazer: Do I understand that Mr. Hunt charges me with stealing them?

Mr. Hunt: I have not said so. I said the ones that you did not carry up.

Mr. Frazer: You have it in your hand. That is the only one I know of, sir. If you wish to search me, you may search me.

Mr. Hunt: I offer in evidence a certified copy transcribed from Liber V-3 of Deeds, page 317, of a deed by Jacob M. Ryerson and Harriet, his wife, Peter M. Ryerson and Mary A., his wife, and Martin John Ryerson, to the Morris Canal and Banking Company, dated 27th of March, 1837.

The Cuort: Isn't that the deed you have just had a ruling on?

Mr. Hunt: No, sir; it is another one.

The Court: It is offered for the same purpose, isn't it, Mr. Hunt?

Mr. Hunt: It is offered for the purpose of showing that by this deed it appears that the Morris Canal and Banking Company entered into certain further engagements to the children of the Ryersons who gave the first deed.

The Court: Having to do with ——

Mr. Hunt: Having to do with the same thing, the waters of Greenwood Lake.

The Court: The Forge Place?

Mr. Frazer: I renew my objection.

Mr. Hunt: I do not attach much importance to it. I would rather have it offered than not.

The Court: Very well, it is objected to on the same grounds that the other one was, and you offer it for the same purpose that you offered the others, and I make the same ruling and grant you an exception.

Mr. Hunt: Well, it does not go as far as the other. This is subsequent in date, and I won't say I offer it for the same purpose, because the two are distinct, but I do not think it is of sufficient importance to take the Court's time to state the purpose of the offer, especially since it is excluded so it cannot be referred to.

The Court: Yes.

Q. Mr. Anderson, have you some photographs with you that show any part of the property under condemnation?

A. Yes.

Q. Will you let me see them, please?

A. They are in the other room. I will have to get them.

Q. Well, after lunch, then. I will ask you another question first. Have you there with you the deeds which establish the Ringwood Company's flowage right in the Marini property?

Mr. Frazer: I object. Now, he makes a statement. Mr. Hunt makes a statement of a conclusion from a deed. If he wants to ask him whether he has any specific deed, let him ask that, but not what the deed is supposed to do.

Mr. Hunt: If the Court please, I offer in evidence a certified copy of a deed of Martha Ann Ricker and others to Elisio Marini, dated 4th of September, 1890.

Mr. Frazer: May I see it? (Examines paper.)

The Court: Covers one of the tracts in the taking, does it not?

Mr. Hunt: That is one of the Marini tracts in this taking. The purpose of the offer of this and the deeds I will subsequently offer, is to show that we have the right to flow a certain portion of the Marini lands which would be flowed if that dam which your Honor permitted Dr. Kummel to testify about erected down here at the site of the old Ryerson Furnace ——

Mr. Frazer: I would submit that it is immaterial, as Mr. Hunt states the Marini tract is in the taking. That is not in the taking in this cause, but

it is under condemnation at the present time, and any rights which the Ringwood Company may have in that land will be compensated for in that proceeding and could not be taken into consideration in this proceeding.

The Court: That is true, but in addition to that it has to do with the flowing of the lands of the Ryerson Dam, or might be evidential for that purpose.

Mr. Frazer: Then I object.

The Court: That is the purpose I understand Mr. Hunt to offer it for.

Mr. Hunt: That is the purpose.

The Court: I am going to allow him to flood the lands back of the Ryerson Dam.

Mr. Frazer: I object on the further ground, that the Ryerson Dam not being in existence ——

The Court: In toto.

Mr. Frazer: In toto, the flowing may not be shown, as not presenting lands in their present condition.

The Court: I will allow it if it is for that purpose.

Mr. Matthews: Just a moment.

The Court: I will allow it to be used for the purpose stated. You have no other objection?

Mr. Frazer: No other objection.

(Deed marked Exhibit O45.)

Mr. Hunt: Then I offer a certified copy of a deed by Peter Beatty to Peter N. Ryerson, dated November 11th, 1828.

The Court: For the same purpose?

Mr. Hunt: Yes. These deeds all link together, to bring down to the Ringwood Company these flowage rights.

The Court: Yes, but as I understood the other, the first deed was that it gave the right of the Ringwood Company to flow the land of Marini.

Mr. Hunt: The first deed describes the Marini land over which we have the right. Now the second deed is the earliest date in the chain of title by which we acquired the right. In order to identify the land over which we have the flowage right, I have offered the first deed, which you have admitted. Now in order to show that we have the flowage right with respect to that land, I offer the deed by which the right was created, and the following deeds that bring it down to us.

The Court: Am I right in understanding that these lands had already been flowed?

Mr. Hunt: Your Honor may perhaps remember that the Court addressed a question to Mr. Anderson yesterday about the situation there at the Ryerson Furnace, and he said there was an old dam there. This was a replacement of an old ——

The Court: That is as I recall.

Mr. Hunt: These are the deeds by virtue of which the old dam flowed what is now Marini land and by virtue of which we claim the right to again flow the same land.

The Court: In the new dam?

Mr. Hunt: Yes.

Mr. Frazer: I will have to examine these, may it please the Court.

(Interruption and discussion off the record.)

Mr. Hunt: These gentlemen seem to know more about my case than I do. I don't know this land. They tell me that the last deed I offered I do not need, so I therefore withdraw it.

The Court: Very well; it has not been marked.

Mr. Hunt: Then I offer a certified copy of a deed made by John A. Ryerson to Samuel Pope, Henry Carmen and others, dated March 23rd, 1867.

(Mr. Frazer examines paper.)

Mr. Hunt: Possibly Mr. Frazer would permit me, to save time, to prove this by this Title Guaranty policy for value of $150,000, issued by the Fidelity Union Trust Company, covering this right?

Mr. Frazer: Oh, no. I think the text may be too important to have an abstract of it.

Mr. Hunt: Mr. Frazer, on page 176 of the record in the Marini case, the essential language of that deed is set forth.

Mr. Frazer: Yes. All right. That is admitted, subject to the same objections I raised to the earlier one?

The Court: Same ruling.

(Deed marked Exhibit O46.)

Mr. Hunt: Now I offer a certified copy of a deed by David J. Tice to John A. Ryerson, dated the 18th of March, 1865.

Mr. Frazer: That is for the same property, is it?

Mr. Anderson: That is for the purpose of describing the property in the John A. Ryerson deed.

Mr. Frazer: This deed, if I may interrupt, the last one which is offered by Mr. Hunt, was a description of the property over which the flowage rights in Exhibit O46 are granted; is that right?

Mr. Anderson: Yes.

Mr. Frazer: All right. Subject to the same objections.

The Court: Very well; it will be received.

(Deed marked Exhibit O47.)

Mr. Hunt: Now I offer a certified copy of a deed

by Edmund H. Miller and others to Samuel Jenkins, dated the 1st day of November, 1866.

Mr. Frazer: Subject to the same objections.

The Court: It will be received.

Mr. Hunt: Will you be good enough to state what this deed does, and if my witness differs with you I will ask you to correct him.

Mr. Frazer: As I understood, it conveys certain property, which I understand to be a part of the Marini tract, subject to certain reservations.

Mr. Anderson: One of the Marinis, which I do not think Mr. Hunt has yet put in, one there Jenkins to Marini.

Mr. Hunt: I have Ricker to Marini and Latori to Marini. Was that the one that Mr. Wright told us was not necessary?

Mr. Anderson: No, it was not. This is the same property. Contains a reservation, that is all. There should be a deed there, of I think Jenkins to Marini.

(Deed marked Exhibit O48.)

Mr. Hunt: I am sorry, your Honor, we have so many documents I am afraid we got one out of place.

The Court: All right.

Mr. Hunt: Capt. Crockett has gone to look for it.

Mr. Frazer, the intervening deed here from Jenkins to the person who conveyed to the person shown here we haven't got before us. Couldn't we admit, to save time, that that conveyance was made? It is the same property, contains the same reservation.

Mr. Frazer: I would like to see these deeds, because there are some rather nice qustions that are not clear in my own mind on some of these flowage rights. I should like to see the deeds. I have no objection to Mr. Hunt offering it at another time.

The Court: There is a break in the chain?

Mr. Hunt: I do not admit there is a break in the chain. Only, we haven't one of the links here. Unfortunately, Mr. Harmon, who looked these things up for me, had to go to New York a little while ago, and ——

The Court: You may put it in later if you find that you need it.

Mr. Hunt: All right, sir. Mr. Anderson, will you keep custody of these deeds until we get the other necessary ones?

The Court: Why not offer those that you have?

Mr. Hunt: Well, all right. I offer all these.

The Court: They have been offered, I think, and marked.

Mr. Hunt: I offer a certified copy of deed by

Andrea Lertora and wife to Antionetta Marini, dated 13th of October, 1904.

Mr. Frazer: Subject to the same objection.

The Court: It will be received and marked.

(Deed received in evidence and marked Exhibit O49.)

Mr. Hunt: Subject to my producing the missing deed may I, for the convenience of the jury, and expedition, have the witness point out on O14 where the land to which this Marini flowage right attaches is located?

The Court: Certainly.

Q. Will you do that, then, Mr. Anderson?
A. Right across in here and here. (Indicating.)

Mr. Hunt: Indicating a portion of the land shown on the map as flowed by the Wanaque Reservoir, and a portion of land covered with black in.

Q. And what is this colored which I am now pointing at; is that pink, indicating the Ringwood ownership?
A. Yes, a narrow strip of land running up through here and along in here on one side and then the other deed, Antionetta Marini, I think it is laid on this other side of the Wanaque River to the east. The lines are about like that. (Indicating.)

Mr. Frazer: It appears on C1 very much more clearly, on a very much smaller scale.

The Witness: This is on one side. This is marked "Antionetta Marini."

Q. It is Antionetta on the one side, isn't it?
A. Antionetta on both sides; and the other piece of property, being this piece of property (indicating) on the east of the Wanaque River as I pass the ruler over it.
Q. Lying just westerly of the Ringwood tract which is marked 100-A?
A. That is so.
Q. Now, Mr. Anderson, can you tell the jury whether the right of flowage thus established is co-extensive in the area to which it applies with the actual flowage of the old dam that you testified yesterday stood there?

Mr. Frazer: Now, I think that Mr. Hunt should now get into the usual habit of examining witness and not lead them to their replies.

Mr. Hunt: Well, I suppose that is leading. I will withdraw it.

Q. Please inform the jury of the height above sea level, the elevation above sea level of the contour line to which this right of flowage applies?
A. Do you mean the extreme heights to which this property could be flooded, or what do you mean?
Q. Yes, sir.

Mr. Frazer: I think that is a conclusion. I think there is a proper question, possibly, of Mr. Anderson, as to what the height of the old dam was.

The Court: No, that is not the question. The

question is to what height might the lands be flowed because of these deeds.

Mr. Frazer: Those deeds speak for themselves in that regard, and if I read them correctly, there is a provision which says they may maintain them to the height of the existing dam as it then was. Now, that raises merely a question of fact what was the height of the then dam which Mr. Anderson, if he knows, may testify.

The Court: Very well.

Mr. Hunt: Now, which deed would that be, Mr. Frazer?

Mr. Frazer: Now, that is hard for me, Mr. Hunt.

Mr. Hunt: Now, I will ask Mr. Anderson to show me ——

Mr. Frazer: Here it is, Exhibit O46.

Q. I show you O46, Mr. Anderson, and ask you if that is the language that fixes the height which the water may be flowed?

A. It is.

Q. I show you the others and ask you whether it is necessary to refer to any of them to find the height to which the water may be flowed.

A. It is not.

Mr. Hunt: And then, with the Court's permission, I will read from O46 as follows: It states that the parties of the first part, grant, bargain, sell and convey to the parties of the second part, to their heirs and assigns forever ——

The Court: What is the deed, please?

Mr. Hunt: John A. Ryerson to Samuel Pope, dated 23rd of March, 1867.

The Court: Very well.

Mr. Hunt: (Continuing) It grants the right and privilege of overflowing without molestation forever ——

The Court: Without what?

Mr. Hunt: Without molestation forever all such and so much of the tract or lot of land and premises situated in the Township of Pompton, County of Passaic and State of New Jersey, described in a deed from David J. Tice, and Juliet, his wife, and Peter Tice, Jr., and Margaret, his wife, to John A. Morrison, recorded in Book U-2, at page 298 of Deeds in the office of the Passaic County Clerk, as is or shall be at any time overflowed with water or otherwise injured by means of the dams and works of the said parties of the second part erected and built in and across the Wanaque River below said land as and at the time that the dam is now erected and constructed, and of maintaining the said dam or any other in lieu thereof at the same height and at the same place forever.

Q. Do you know, Mr. Anderson, the height at which the dam was erected and stood on the 23rd of March, 1867?

A. That is determined by the marks left by the old pond, and by the raceway which led to the water-wheel used in the old Ryerson Furnace, about 235 feet above sea level.

Mr. Hunt: Now, I also offer a guarantee of title of this flowage right issued by the Fidelity Union Trust Company of Newark, New Jersey ——

Mr. Frazer: I object to a guarantee of title. On the face of it it is inadmissible and immaterial.

The Court: What is the materiality? Just that they guarantee it?

Mr. Frazer: To show how much they valued it, because they have an insurance policy for a certain amount of money, that is the object of the offer, and it is absolutely improper.

Mr. Hunt: I am perfectly willing not to mention the sum of money, but I do submit the fact that we could get an insurance ——

Mr. Frazer: We object to this comment, if your Honor please.

Mr. Hunt: (Continuing) ——of this right, without exception or reservation ——

Mr. Frazer: I object.

Mr. Hunt: (Continuing)——corroborative evidence.

The Court: I will allow him to state what the purpose of it is. He is not stating any amount of money.

Mr. Matthews: He has already stated the amount twice.

Mr. Frazer: And I object.

The Court: He hasn't now.

Mr. Frazer: No, he hasn't now.

Mr. Hunt: (Continuing) ——is corroborative evidence of the fact that we possess the right concerning which, if I understood the counsel for the Water Commission correctly a few minutes ago, they assert there is some doubt. If there is some doubt I think I have a right to this corroboration afforded by the fact that a company of such standing as this one guaranteed and insured this right without exception or reservation.

Mr. Frazer: Well, of course, what the company may do has nothing to do with the legal situation. The title is shown by the record, and the fact that the company may have been misled as to the validity of the record and has insured it has nothing to do with the propriety of the title.

The Court: You contend that the fact that the Title Company gave its opinion and backed it up with a guarantee is not evidential of what it guarantees?

Mr. Frazer: Absolutely.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may. I think it is tantamount to an opinion of any competent lawyer, and that certainly would not be evidential.

Q. Come down here to the map, please, Mr. Anderson, and point out on it the lands of Edward R. Hewitt and Sarah C. Hewitt over which the Ringwood Company possesses flowage rights by virtue of the deed and family agreement put in evidence this morning. On Exhibit O14.

A. My pointer is following the property of Miss Hewitt over which the Ringwood Company has flowage rights. (Indicating.)

Q. And that property of hers, as you have traced it on the map, lies partly within and partly without the taking of the Water Supply Commission, does it not?

A. That is true.

Q. Now will you similarly describe the Edward R. Hewitt property over which the Ringwood Company has flowage rights?

A. This is the property of Edward R. Hewitt (Indicating.)

Q. That lies wholly within the Water Supply Commission taking line, doesn't it?

A. Yes.

Q. Now will you briefly identify the Edward R. Hewitt property on C1? Is that the two tracts colored in green?

A. E. R. Hewitt's property is the two tracts colored in green.

Q. And Miss Sarah Hewitt's property?

A. (Witness indicates.)

Q. Is that shown there?

A. It is shown.

Q. Colored in brown?

A. Brown or mauve or whatever you call it.

Q. Now what part of Miss Hewitt's property does C1 show?

Mr. Frazer: I object now. All of these flowage

rights which are now being alleged are in relation to non-existent developments, under the ruling of the Court. Moreover, so far as the Ringwood Company ——

The Court: Just a moment.

(Interruption.)

Mr. Frazer: As far as any rights which the Ringwood Company may have flowage over the lands formerly of Mr. Edward R. Hewitt and formerly or now of Miss Sarah Hewitt, those are fully taken care of in the proceedings in both of those instances, in the condemnation proceedings, so that they cannot be shown here as an element of damage in this cause. If they are being introduced for the purpose of showing developments, then under the Manda case and the Morris & Cummings case they cannot be shown at all, because they are not physically existing upon the premises today. On both of those grounds I object to any further examination along this line.

The Court: What is the materiality, Mr. Hunt?

Mr. Hunt: The materiality is this—first I must clear up an erroneous statement of fact just made. There was an award before Condemnation Commissioners in favor of Edward R. Hewitt, and it was paid to him by the Water Supply Commission.

Mr. Frazer: I object and beg to differ. May I correct Mr. Hunt? It was paid to Edward R. Hewitt and the Ringwood Company.

Mr. Hunt: That is true. I am sorry I misstated

that. Mr. Frazer also knows, I think, that the Ringwood Company immediately endorsed the check and handed it over to Mr. Hewitt.

Mr. Frazer: I do not know.

Mr. Hunt: I told you I would not accept a check so payable unless I had the previous consent of the Ringwood Company to endorse it and hand it over to Edward R. Hewitt. Isn't that true?

Mr. Frazer: I don't know. And I think it is only immaterial. Here payment was made to Edward R. Hewitt and the Ringwood Company. The Ringwood Company has been paid as far as the Water Commission is concerned.

Mr. Hunt: That check was sent to me by Mr. Frazer, and before I would accept the check from him I told him I would insist on having the Ringwood Company consent to endorse it and turn it over to Edward R. Hewitt. Miss Sarah Hewitt's property has been the subject of an award which has not yet been paid but has been appealed by both parties.

Mr. Frazer: Paid into court, sir. It has been paid.

Mr. Hunt: I said it had been appealed by both parties. They paid it into court and we have not taken it out. Physical situation, your Honor, is very clearly depicted on C1, by which it appears that the Ringwood Company possesses flowage rights over the lands of these two persons which are adjoining the lands of the Ringwood Company being condemned in this proceeding. It is competent for the jury to find it to be a fact, if they believe it to be a fact, that the value of the Ringwood lands condemned in this proceeding is greater than it would otherwise have been by reason of the fact that the Ringwood Company possesses those flowage rights, and therefore I have a right to prove, first, that it does possess the flowage rights, and, second, what the land is over which it possesses the flowage rights, what its area and its location are.

Mr. Frazer: They cannot be paid twice for those water rights.

Mr. Hunt: Certainly, we cannot be paid twice. The point of the whole matter is that Edward R. Hewitt's land and Miss Sarah Hewitt's land, being subject to this servitude, are worth less and presumably were valued at less than otherwise would be the case.

Mr. Frazer: That is not the law. The value of the land is the value of the land as natural land, irrespective of any existing servitude. That has been asserted by our courts many times. The full value of the land as though there was no servitude, is awarded, and the award as thus made is divided, if not amicably by the parties, into the Court of Chancery for determination by the Chancellor as to what fair proportion shall go to each of the parties. In the case of Edward R. Hewitt, apparently the parties agreed, and I object to this evidence being injected into this case, because we have already paid for those rights, which were the rights appurtenant to these lands over the other. We have paid for the servitude which he is now trying to come in and say is part of my consideration here in the taking of these lands.

Mr. Hunt: As Mr. Erskine Hewitt has just remarked to me of a fact, which will be shown by the records of this court to be a fact—I will go down to the clerk's office and get them if your Honor or the other side wish it—that the condemnation proceeding against the Ringwood Company was commenced prior in time to the proceeding against either Sarah Hewitt or Edward Hewitt.

Mr. Frazer: What of it?

Mr. Hunt: And that therefore when this proceeding was commenced in March, 1925, which is the date as of which values are to be found, according to the records the Water Supply Commission was taking away from the Ringwood Company its lands appurtenant to which it possessed flowage rights in other people's land, and it was not taking away those lands from those other people; which only serves to confirm the point made before that this is a fact, that the jury is entitled to take into consideration and is therefore proof that we have a right to put before the jury.

The Court: Let me understand just what the fact is as shown by the evidence that you seek to put in. That the Hewitt lands, Mr. and Miss Hewitt's lands that have been taken, have certain flowage rights; is that the situation?

Mr. Hunt: No, your Honor. The situation is this: By deeds put in evidence either late yesterday afternoon or this morning early by Mr. Anderson, now in, all marked, admitted, it appears that the Ringwood Company possesses the right to flow and cover with water any lands of Edward R. Hewitt and any lands of Miss Sarah Hewitt up to a certain elevation, which in the case of Edward R. Hewitt was 300 feet above sea level and in the case of Miss Sarah Hewitt, as I recall, no limit ——

Mr. Anderson: 300 feet also.

Mr. Hunt: 300 feet in both cases. Now the deeds proving the Ringwood Company to possess that right have already been admitted. Now I asked the witness to point out to the jury on the map where the lands upon which that right is operative lie, that is all.

The Court: On the theory that that would have an effect on the value of the Ringwood Company lands?

Mr. Hunt: It would be competent for the jury to so find, your Honor.

The Court: Now the objection is that it cannot be done because it takes into consideration an element that is not now present because of the acquisition of the other two pieces, and therefore it cannot now happen. Now in reply to that you say that this is to be valued as of March, when it was possible to have done it?

Mr. Hunt: Yes.

The Court: I think that it is competent, Mr. Frazer, because the mere fact that since that time you have destroyed the use in this respect is not the guiding element. The fact that the Hewitt properties cannot be now flowed because they have been acquired is not a matter that we are concerned with.

We are concerned with what availability did these lands have because of these flowage rights as of March, 1925, and at that time they had those rights.

Mr. Frazer: I respectfully state what I said in the first place, that Mr. Hunt is seeking in this proceeding to obtain payment twice for those flowage rights is true.

The Court: No; I don't understand that the Ringwood Company got any money at that time.

Mr. Frazer: Oh, yes. The Ringwood Company was a party to both the Edward Hewitt and the Sarah Hewitt proceedings on account of these very rights, and their full interest arising out of those has already been the matter of adjudication. Now Mr. Hunt comes along and says in this proceeding we have got a right to be paid a second time for those rights.

The Court: I did not understand it that way.

Mr. Frazer: He says we are not asking that. He says that verbally. But in his action he is acting it.

The Court: I did not understand that the Ringwood Company was paid in the other proceedings. You may have said so, but I did not grasp it.

Mr. Frazer: Yes.

The Court: I do remember that you said you made the check payable to the Ringwood Company as well as to Hewitt.

Mr. Frazer: They were necessary parties then, because it showed and was stated on the record.

The Court: If that was taken into consideration, Mr. Hunt, then it would be in effect being paid twice for the same thing, would it not?

Mr. Hunt: I do not think so, your Honor. Of course, the Water Supply Commission can make anybody a defendant in any proceeding, from Calvin Coolidge down to the doorman at the hotel.

The Court: They probably would not make a check to the doorman or to Mr. Coolidge.

Mr. Hunt: Certainly the Ringwood Company did not appear or defend in either the Sarah Hewitt or the Edward Hewitt proceedings. May I send for the papers in those proceedings and see if they were the same parties.

Mr. Frazer: They had all the same attorneys there and they had the same engineer.

Mr. Hunt: They all appeared for Edward R. Hewitt in his proceedings. May I send to the clerk's office?

The Court: Yes.

Mr. Hunt: Mr. Clerk, just bring up the proceedings in the condemnation case of Edward R. Hewitt and Miss Sarah Hewitt, will you, please. I do not say we are parties, but if it is a fact, it is immaterial. Is the witness permitted then to point to the property on the map?

The Court: Well, if it is true that the Ringwood Company has already been awarded compensation for its loss of flowage rights in the respective Hewitt properties, then it would be immaterial and irrelevant to show it again.

Mr. Hunt: I do not think that is true, your Honor. I do not know it to be true. I acted for all three parties. I don't know how in the world it could have been true.

Mr. Frazer: The check was drawn and Mr. Hunt admits the check was drawn to the two parties.

Mr. Hunt: I made my statement about the check a few minutes ago.

The Court: Suppose we reserve it until you find out.

By Mr. Hunt:

Q. Mr. Anderson, have you any photographs with you showing any part of the Ringwood property?

(A photograph produced.)

Q. When was this photograph taken, Mr. Anderson?

A. 1923 or 1924, I don't recall which.

Q. At any rate, you are quite sure it was prior to March 19th, 1925?

A. Yes.

Q. Are you familiar with the lands that purport to be shown by the photograph?

A. I am.

Q. Is the photograph a correct representation of the condition of that land as it lay prior to March 19th, 1925?

A. Yes, sir.

Mr. Hunt: I offer the photograph in evidence.

Mr. Frazer: For what purpose?

Mr. Hunt: For the purpose of showing the jury the lay of that part of the land having the witness tell what part of it it is.

Mr. Frazer: May I cross-examine on this for a moment?

The Court: You may.

Cross-examination.

By Mr. Frazer:

Q. Does this include property other than that in the taking?

A. Probably does, in the back hills.

Q. On the near, in the foreground?

A. Oh, no, in the foreground—it is practically

Q. What about the middle distance?

A. If you will let me show you I will show you.

Q. Is this a single photograph or a series glued together?

A. That is a single photograph. I think that is a single photograph.

Q. You did not take it?

A. No, I did not take it.

(Papers produced by the clerk and handed to Mr. Hunt.)

A. The foreground is the Ringwood Company property. Over the hills down towards Morristown it certainly is not.

Q. How far does the foreground go? That is ridge, is that it?

A. Yes.

Q. Where you can see the individual timber?

A. Yes, it is ridge right here.

Q. The first ridge?

A. First ridge.

Q. This is Tice's Pond or Lake Erskine?

A. It is.

Q. That is not within the taking?

A. It is not.

Mr. Hunt: It is land to which we claim consequential damages.

Mr. Frazer: I object to the offer of pictures of things we are not taking at all.

The Court: But he has a right to consequential damages in surrounding lands if he can show any consequential damage.

Mr. Frazer: Undoubtedly.

The Court: And I will allow it.

Mr. Frazer: Allow an exception?

The Court: You may have it.

(Photograph marked Exhibit 050.)

Q. What part of the Ringwood holdings is shown in the foreground of this picture, Mr. Anderson?

A. The part near Lake Erskine.

Q. That was formerly called Tice's Pond.

A. Yes, that is correct.

Q. And the pond shown there is Tice's Pond as it existed prior to the raising of the dam?

A. As it existed in recent years, formerly Tice's Pond was a larger pond.

Q. Now, is there any evidence on this photograph —strike that out, please ——

Q. Does this show Tice's Pond as it existed on March 19th, 1925?

A. It does.

Q. Is there any evidence on this photograph of Tice's Pond having been formerly a larger body of water?

A. Yes, this land over which I am passing my pencil shows about the old flow line of the former Tice's Pond.

Q. And what evidence is there on the ground that this is an old flow line of the old Tice's pond?

A. The old flow line is very evident for markings both on the easterly as well as the westerly side. It is clearly shown along on the bank.

By the Court:

Q. What kind of markings is questioned? It is clearly shown and it may be clearly shown to you, but how could we visualize it?

A. If you were there you would see that the water has washed along on the side of the bank, and that the stones are graveled up to the water line, has less soil on them than the stones above.

Q. How about the timber?

A. You see from the timber that the timber below the old water line, if any, was not as large as the timber above.

The Court: All right.

Mr. Hunt: Now, with the Court's permission I will show the photograph to the jury and will point out this line which the witness described.

The Court: Let me ask him one more question.

Mr. Hunt: All right.

Q. What is the boundary now, if you can tell on that picture, of the present Erskine Lake?

A. Well, it is difficult to tell, but it is a little beyond.

Q. A little greater in area than the old line that you have indicated?

A. It is.

Q. How much more, would you say?

A. Oh, from 20 to 25 per cent.

Q. 20 to 25 per cent?

A. Yes, I presume you refer to the number of acres flooded?

The Court: Yes.

Mr. Hunt: Now, with the Court's permission, I will show this to the jury, pointing out this as the line which the witness pointed to as indicating the old flow line of the former and larger pond. This part of the photograph that the witness points to as showing part of the flow line of the old or former pond. I just hand that back in so the light may not strike it strong enough for all of you to see it. (Exhibit handed to jury.)

By Mr. Hunt:

Q. Have you some other photographs, Mr. Anderson?

A. I think I have.

Q. You had some yesterday?

A. There they are, right there. (Indicating.)

Q. Oh, yes. I ask you when this photograph was taken? (Handing.)

A. In 1923 or 1924, at the same time the other photograph was taken.

Q. Prior to March 19th, 1925?

A. Prior to March 19th, 1925.

Q. Does that show part of the area being condemned?

A. It does.

Q. Does it show other lands adjoining the lands being condemned?

A. It does.

Q. What particular part of the area under condemnation does this show?

A. It shows the Ringwood property north and south from the Hook Road, also the course of the Wanaque River through the Ringwood property.

Mr. Hunt: I offer the photograph.

The Court: Where is the Wanaque River?

The Witness: Right here. (Indicating.)

The Court: Is there any objection?

Mr. Frazer: No objection.

The Court: Let it be received and marked.

(Picture received in evidence and marked Exhibit O51.)

Mr. Hunt: Will the Court permit me to have the witness stand, for a moment, in front of the jury box so that he can point some things out on the photograph that counsel might not wish me to point out

The Court: Certainly.

Q. Now, you will hold one end of it, Mr. Anderson.

Mr. Hunt: May I ask now whether all the jury can see it?

(Affirmative nods of heads from the jury.)

Q. Mr. Anderson, please point out the Hook Road as it appears on this photograph.

A. (Indicating) Down here.

Q. Please point out the course of the Wanaque River as it appears on this photograph.

A. The Wanaque River just beyond this line of trees. You can get a glimpse of it through here. (Indicating.)

Q. Can you see any of the water of the river?

A. Well, a little.

Q. But you know the lie of the land, do you?

A. Yes, sir.

Q. And you know that the river runs at the foot of that sloping ground?

A. Yes, sir.

Q. Pull your finger along the photograph so as to show the course of it, won't you?

A. (Indicating.)

Q. Where is the land shown on this photograph with reference to the dam at Ryerson Furnace that Dr. Kummel was permitted to testify to?

A. It shows the land just above the dam which is located just off this photograph. It shows this land which may be flowed by the dam to a point approximately up here. (Indicating.)

Q. Can you point out on the photograph about where that concrete dam is partly built there stands?

A. It is just off the photograph.

Q. Now, then, does this photograph show any evidence of the old pond that you testified this morning formerly stood at that place? I will let you look at it for that, and not the jury?

A. The only evidence as shown here is there are a very few trees on the part of it that was flowed, and such as are are of small and brushy character.

Q. Now, just point out that evidence, will you, please?

A. (Indicating).

Q. Are you pointing to flat, low lands with the irregular curving outline north of the Hook Road?

A. Yes.

Q. And does the photograph show land far enough to the south of the Hook Road to indicate that state of affairs down there too?

A. Well, hardly.

Q. It does not go that far?

A. No.

Q. Now, does the photograph show any rising ground or high ground that, when that old dam was filled, must have been high ground standing on the margin of the old dam?

A. Well, the land in the foreground is rising land, rising from the shores of the old pond. This photograph was taken from an elevation.

Q. At about from the opposite side of the old pond?

A. Land on the opposite side of the old pond, for some distance back, was fairly level, gradually rising into the hills.

Q. What is this that I now point this pencil to? When the old pond was filled what was that?

A. It is rather difficult to tell from this photograph, but I think that is that old peninsula that ran out into the bed of the former pond.

Q. And that peninsula was of what length, approximately?

A. Five or six hundred feet.

Q. And of what width, approximately?

A. 200 or 250 feet.

Q. And how far was it located from the Hook Road?

A. It started at the Hook Road.

Q. Now, is there anything else in this photograph that you think should be drawn to the jury's attention in particular?

A. I do not see any more.

Q. Are the lands that I now point to part of the lands in the taking?

A. Yes.

Q. Now, I show you another photograph, and ask you what that is?

A. This is a photograph of the taking, within the taking line, of Ringwood property principally which is taken south on the high ground, south of Cupsaw Brook.

Mr. Frazer: Showing one of the good stands of timber.

A. (Continued). Just before Cupsaw Brook crosses Pompton and Greenwood Lake Turnpike.

Q. When was this photograph taken?

A. At the same time as the other.

Q. Previous to March 19th, 1925?

A. Yes, sir.

Mr. Hunt: I offer this photograph.

The Court: Let it be received and marked.

Q. Does this correctly show the conditions existing at that time, Mr. Anderson?

A. It does.

(Picture received in evidence and marked Exhibit O52.)

Q. How large approximately, in acres, is the Ringwood land within the lines of the taking in the immediate neighborhood of that shown in this photograph and of similar characteristics as regards elevation and lie to that shown in this photograph?

Mr. Frazer: How many acres in this piece of land?

Mr. Hunt: The question will speak for itself.

Mr. Frazer: I do not think it does.

Mr. Hunt: Read the question to him, Mr. Kestenbaum, please.

(Question read.)

A. I should say from 200 to 250 acres, possibly.

Q. Then this would be illustrative of what part of the land shown on Exhibit C1?

A. (Indicating).

Q. It stands in Tract 85-B, as you indicate it now?

A. Yes.

Q. You are indicating the central portion possibly half in total area or a little more than half of the tract which is numbered 85-B on the map?

A. That is correct.

Q. I am going to ask a question privately of the witness, Mr. Frazer. Mr. Frazer, out of a lot of old photographs ——

Mr. Frazer: What is the object of all of them?

Mr. Hunt: We find a few, and selected those that we will offer, but we are not going to offer them, and I will show them to you, and if you want to offer them you can.

Mr. Frazer: Thank you very much, Mr. Hunt.

Mr. Hunt: Now, Mr. Anderson, will you take the stand again?

Q. I show you a photograph No. 36, and I ask you when that was taken, whether prior to March 19th, 1925?

A. That was taken prior to March 19th, 1925.

Q. Does it correctly depict what it purports to?

A. Yes.

Q. What is that a photograph of?

A. That is the lower Cupsaw Brook area looking to the west.

By the Court:

Q. This was not taken at the same time the others were, though, Mr. Anderson, was it?

A. I think it was taken at the same time, or within a day or two or so, within the same approximate time.

Q. I thought the others were taken in the summer time, and this looks as though it may be taken after the leaves were off?

A. I think were all taken in the spring.

The Court: All right. Do you offer it?

Mr. Hunt: I offer it; yes, sir.

The Court: Any objections.

Mr. Frazer: I have no objection. I am sure I do not know the purpose, and I would like to save time without objecting.

The Court: It will be received and marked.

(Picture received in evidence and marked Exhibit O53.)

By Mr. Hunt:

(Exhibit shown to the jury.)

This photograph shows the location of the lower Cupsaw Dam.

Q. That is one of the dams for which, as Mr. Kummel testified, we had made application and had obtained approval?

Mr. Frazer: I object to it, if that is the purpose of showing it.

The Court: I will allow it. I see no objection to that.

Mr. Hunt: The jury has a right to see whether the land is of such a character that you can make a dam there, or a mountain top.

Mr. Frazer: I object to any comment on the land as being capable of putting dams on it, in the sense of the applications made to the Board of Conservation and Development. They were all ruled out.

The Court: Yes, but I will allow it to be shown for the purpose of showing the nature and capability of the land.

Mr. Frazer: There is an exception to that?

The Court: Yes, you may have an exception.

Q. Does this photograph show where that dam would be built, Mr. Anderson?

Mr. Frazer: I object.

The Court: Sustained. I do not think we ought to go into the dam proposition, Mr. Hunt.

Mr. Hunt: I was only going to ask where its location would be as shown on the photograph. That is all. That is simply whether its location would be up on that mountain or not.

The Court: I assume the jury do not need to be told that the dam is not built on a mountain top.

Mr. Hunt: Will your Honor permit the location of the dam to be marked?

The Court: Oh, yes, if it is important.

Q. Can you put a pencil mark across there?

Mr. Frazer: I object to his marking it.

The Court: I will allow it and grant you an exception.

A. (Witness puts mark on exhibit.)

(Exhibit 053 was then shown to the jury.)

Q. Now, I show you another photograph and ask you whether that was taken prior to March 19th, 1925?

A. It was.

Q. Does it show the condition of the ground as it existed at the time the photograph was taken?

A. It does.

Q. Is that part of the land within the taking?

A. The land in the near foreground is in the taking.

Q. And the land farther away is adjacent to the taking, is it?

A. Is adjacent to the taking.

Mr. Hunt: I offer it in evidence.

The Court: Let it be received and marked.

(Picture received in evidence and marked Exhibit 054.)

Q. And what part of the property within the taking is this, Mr. Anderson?
A. That is a part of the old Belcher Farm.

The Court: Old Belcher Farm?

The Witness: Belcher Farm, yes.

Mr. Hunt: Mr. Anderson says that is part of the old Belcher Farm. (Showing exhibit to jury.)

Q. I show you another one and ask you whether it was taken prior to March 19th, 1925?
A. It was.
Q. Does it show land within the taking?
A. The land within the foreground is within the taking.

Mr. Hunt: I offer that.

The Court: It will be received and marked.

(Received in evidence and marked Exhibit O55.)

Q. And can you identify that tract by name, Mr. Anderson?
A. It is part of the Belcher Farm.

Mr. Hunt: This is another part of the Belcher Farm. (Showing Exhibit 055 to the jury.)

Q. I show you another one, and ask you whether that was taken prior to March 19th, 1925?
A. It was.
Q. Does it correctly represent the conditions at the time it was taken?
A. It does.

Mr. Hunt: I offer that in evidence.

(Picture received in evidence and marked Exhibit O56.)

Q. Does that represent part of the property within the taking?
A. It does.
Q. Located where?
A. It is located on the Cupsaw Brook in proximity of its crossing of the Pompton-Greenwood Lake Turnpike.
Q. And whereabouts with relation to any of the dams on Cupsaw Brook which Dr. Kummel testified applications for the building of had been approved?

Mr. Frazer: I object.

The Court: I will allow it on the same theory I allowed the other, and grant you an exception.

A. It shows approximately the location of the so-called Middle Cupsaw Dam—Dr. Kummel called it Center Cupsaw Dam.

Mr. Hunt: The witness says this shows approximately the Middle Cupsaw Dam. (Showing Exhibit O56.)

Mr. Hunt: Most of these others are closer views of the Wanaque River, and I do not think would be of any interest to the jury, but if Mr. Frazer wishes to use them, they are here.

Mr. Frazer: I expressed my appreciation of that offer once before, Mr. Hunt.

Mr. Hunt: If the Court please, I find that the Ringwood Company was made a party to the Sarah Hewitt and Edward R. Hewitt proceedings—Mr. Bugg says not Edward Hewitt. I think he is wrong. I thought I looked at it myself. I will take a quick glance at it. (Examines paper.)

The Court: What are you doing about the exhibits?

Mr. Hunt: We are keeping our exhibits as they are marked.

The Court: I want to caution you both to have all the exhibits here at the time the case goes to the jury so that they can be picked out as needed. I do this because of the many other things that you have. They might become mislaid.

By Mr. Hunt:

Q. What does this map that I have in my hand purport to be? We have tried to hold it away from the jury until we see whether it is admitted. Hold it around a little ways. What does that purport to be?

A. That is a map of the takings of the North Jersey District Water Supply Commission.

Q. Made up for what purpose?

A. Made up for the purpose of showing consequential damages in the Ringwood property.

Q. Yes. Now from what source was the basic outline of this map obtained?

A. This map was made—traced really from the maps furnished us by the North Jersey District Water Supply Commission.

Q. Yes. Basically this map is the same map and on the same scale as Exhibit C1, isn't it?

A. Yes, sir. That is 400 feet scale? Yes, practically the same.

Q. And I direct your attention to Exhibit C2, I think I named it correctly, which was the Water Commission's contour map.

Mr. Frazer: C3, I think it is. I think C2 was ruled out, with trees on it.

Q. I will omit any reference to the number and direct your attention to the Water Commission's contour map which was admitted in evidence, and ask you how the contours of this map in my hand, in so far as concerns the elevation to which the Water Supply Commission's contour maps show the contours, compare with those on the Commission's map?

A. These were taken—at least those below the 300 contours and some of those above were taken from the Commission's map.

Q. Well, if I recall the Commission's map correctly it showed contours up to 340, did it not?

A. In places.

Q. I mean in some certain places?

A. Yes, not continuously.

Q. Now then, in so far as concerns contours, any and all contours shown on the Commission's map, how do the same contours on this one compare with those on the Commission's map?

A. They are the same.

Q. They are the same, produced by a mechanical process from a print given you by the Commission, aren't they?

A. Yes.

Q. You do not call that a print?

A. It was a blue-print.

Q. Now do the contours on this map in my hand go up to a higher elevation?

A. They do.

Q. In so far as they go to higher elevations than the Commission's contour map, how are the contours put on it?

A. They were taken from the State Geological map. However, they are somewhat adjusted—contours on the State map in most cases are quite accurate if located near a road, that is, they can be placed; and these contours taken from the map were somewhat adjusted to the roads in which an accurate survey appears on this map.

Q. Isn't it true that in so far as this map shows any contours which are not shown on the Commission's map, those shown on this map are 100 feet apart anyway—100 feet intervals?

A. Yes.

Q. Now I notice property lines indicated on this map and plotting tract numbers, and I ask you where the property lines and tract numbers were obtained?

A. From the North Jersey District Water Supply Commission's maps.

Q. And I notice outlined on this map what appears to be a body of water. What body of water is that?

A. That is the proposed Wanaque Reservoir.

Q. Of the Water Supply Commission?

A. Of the Water Supply Commission.

Q. And with what relation to the surveys made by the Water Supply Commission is that proposed reservoir shown on that map?

A. I do not get that question, Mr. Hunt.

Q. How does the proposed reservoir as shown on this map compare with the reservoir as shown by the drawings and plans of the Water Supply Commission itself?

A. This was taken from their data.

Q. Yes. These roads I notice on this map, from whose data were the outlines of the roads obtained?

A. The greater part from the North Jersey District Water Supply Commission. We may have put in some.

Q. Where you have put in some, for what reason would that be?

A. Just to extend the range of the map.

Q. This map shows the same lands which are shown in color on C1, doesn't it?

A. Supposed to, yes.

Q. And also shows additional adjoining lands belonging to the Ringwood Company and belonging to other adjoining owners, I suppose?

A. It does.

Q. Are the adjoining lands immediately contiguous to the taking and belonging to the Ringwood Company shown here in colors?

A. In part they are.

Q. What is the purpose? Just describe it generally or show some of the adjoining lands in colors?

A. To distinguish the portion marked in green, which in general is the slopes towards the reservoir, of Ringwood property, and such as might be affected by the taking, or, rather, damaged in value by the taking.

Q. Yes. The purpose is to bring out clearly by color markings the lands not taken from the Ringwood Company, but concerning which it claims that a consequential damage is caused by the taking; is that the case?

A. That is the case.

Q. Was this map prepared under your supervision?

A. It was.

Q. Does it depict with substantial accuracy what it purports to show?

A. We have tried to have it—it does.

Mr. Hunt: I offer this map, if the Court please.

The Court: Any objection?

Mr. Frazer: Oh, yes, sir.

The Court: I will let you examine on it.

Cross-examination.

By Mr. Frazer:

Q. Now, Mr. Anderson, you referred to roads. Are those existing roads?

A. Please point out which road you mean?

Q. I am speaking generally. Are there roads on the map which are non-existing roads?

A. Not that I know of.

Q. The roads depicted then are the roads as they exist today in all cases?

Mr. Hunt: As they exist today or as they existed March 19th, 1925?

Mr. Frazer: March 19th, 1925.

A. I don't see any that can be classed as that kind.

Q. Now in addition to the portrayal of the reservoir here, in what respect does the map not indicate the conditions as they were as of March 19th, 1925?

A. Only the Wanaque Reservoir there.

Q. I say in addition to that?

A. I do not see anything on the map that does not represent the condition on March 19th, 1925.

Q. Where did you obtain your data for the green —is that green?

A. It is supposed to be green.

Q. The green colored area.

A. In part from the North Jersey District Water Supply Commission's data and the remainder from our own surveys.

Q. I understood you to say that that part which was on the map in green indicated a portion which, in the opinion of the Ringwood Company, was injured by the taking?

A. That is correct.

Q. And in determining what portion is injured by the taking you have reference to contour lines alone?

A. Contour lines and property lines and so forth.

Q. Is all of the property of the Ringwood Company shown on this map?

A. It is not—all the property? Where?

Q. All the property that is contiguous to the property shown on the map?

A. Do you mean inside or outside the taking?

Q. Both?

A. We have tried to show, and I think we have, all the property both of the Ringwood Company within the taking lines and the contiguous to the taking line.

Q. Have you shown all of the property which is shown on the big map or picture?

A. We have not.

Mr. Hunt: Could not get it on a paper of this size?

A. Oh, no, it would be pretty nearly as big as that.

Q. Why, the scale is very much smaller?

A. No—well, not very greatly. For example, that map is five hundred and sixty odd feet, I just can't recall what number of feet, and this is 400. A little smaller.

Mr. Hunt: You mean per inch instead of per foot?

The Witness: Per inch. 586 feet per inch.

Mr. Hunt: He corrects it to say 586 feet to the inch, on the other map and 400 on this one.

Q. Now I understand that all the contour lines under 300 are the contours as supplied by the North Jersey District Water Supply Commission?

A. I believe that to be correct.

Q. And from what map did you obtain them?

A. From your 400 foot map, I don't know what you call it.

Q. The same one that is marked in evidence here as C3?

A. No. Is that C3 over there?

Q. That is C1. The other one is back here. It has disappeared. That one over here.

Mr. Hunt: Go and look it over, Mr. Anderson.

A. I don't know. I cannot tell from looking at it. We will submit, if you like, the blue-prints from which we made this.

Q. I just want to ask Mr. Anderson, where did you get the outlines of these properties?

A. From the North Jersey District Water Supply Commission's map.

Q. Now referring specifically to the property marked Edward Livingston, does that agree in outline with the outline on C1?

A. I don't know whether C1 corresponds with the map that was sent to us. As a matter of fact it does not—at the time of this taking. We have made this map as per the map which you furnished us in 1925. You will notice that E. R. Hewitt on this map, not all of his property is shown as taken. We took the map that was furnished us at the time of the taking, with your descriptions.

Q. Now I see certain words under "Norman H. Green." I do not ask you to read them, but I ask you whether there is any indication of the construction which is referred to there on the map?

A. That question is not intelligent to me. What is it?

Q. I am asking you whether there is anything on the map which indicates the location of the construction referred to?

A. Yes.

Q. That does not exist or did not exist on March 19th, 1925, did it?

A. This is—no, it did not. This is a consequential damage, and it is for the proof of the consequential damages.

Q. In that respect the map does not agree with the facts as they were at that date. The same is true of the construction described on the point where I now point?

Mr. Hunt: If the Court will come down and look at these little endorsements on this map I think it will be seen there is nothing objectionable about it.

Mr. Matthews: We are going to argue that in a minute, your Honor.

Mr. Frazer: Now, if it please the Court, as it is nearly ten minutes of four, and this is rather a complex map, I would like an opportunity of going over it with my engineers before it is actually admitted. I presume that Mr. Hunt has other questions that he might address properly to Mr. Anderson, so as not to waste this time, and then I can save this examination until the conclusion of the Court.

Mr. Hunt: Yes. May I ask Mr. Frazer at the same time to have his engineers go over two or three other maps that I wish to prove by Mr. Anderson, each prepared with particular regard to a particular phase of our case? Then perhaps tomorrow we will be able to consent to the admission of all those maps, or otherwise to state his objections concisely, so that we won't lose much time.

Mr. Frazer: I shall be delighted if Mr. Hunt gives me any maps that he desires to offer in evidence, for examination beforehand.

Mr. Hunt: I am perfectly willing to do it.

The Court: In view of that, wouldn't it be wise to have Mr. Anderson or someone competent to explain to Mr. Frazer's engineers about them?

Mr. Hunt: Yes. To my knowledge Mr. Anderson

has a previous engagement that will take him out of Paterson as soon as the court adjourns this afternoon and he cannot get back. Does Capt. Crockett have to go with you?

Mr. Anderson: No.

Mr. Hunt: Now we have got the sand and gravel map; the map showing the layouts that have been made prior to March 19th, 1925, and staked out on the ground.

Mr. Anderson: The map showing the different levels of the Wanaque Dam.

Mr. Hunt: Yes; the map showing the different parts of the bottom of the Wanaque Dam that will be exposed as the water is drawn down to various levels.

Mr. Anderson: I think that is all.

Mr. Hunt: Capt. Crockett, you will look them over?

Mr. Frazer: I think we might as well adjourn and simply start in on these maps.

The Court: Very well.

Mr. Hunt: In order that your Honor in thinking the case over tonight—I suppose you do as all the rest of us do—may have clearly in mind why we have this series of maps, might I say that we think that the way in which we could make the matter plainest and most easily understood by the Court

and jury was to illustrate each major phase of it by a map, and that is why we have several maps instead of only one map.

The Court: It is a good thing, too; if the Court throws some out you won't lose them all.

Mr. Hunt: I hope the Court won't find any reason to rule any of them out.

The Court: I hope I shall not.

Mr. Hunt: If the Court rules this out, it will be in our judgment depriving us of the simplest and easiest possible way to understand the problem that is before us.

The Court: I shall not rule them out if I can avoid doing so, in justice to your side of the controversy, Mr. Hunt. I was more or less facetious in my remark. I do not suppose the jury will object to taking a recess at this time.

JAMES P. ANDERSON, resumed.

Mr. Hunt: I would like to have the map lying before Mr. Anderson marked for identification.

(Map marked O68 for identification.)

Further direct examination.

By Mr. Hunt:

Q. Now I show you Exhibit O68, Mr. Anderson,

and ask you whose property it is? Is it the property of the Ringwood Company?

A. This map shows the property ——

Q. No; I asked you who that map belongs to. Does it belong to the Ringwood Company?

Mr. Frazer: If he knows.

The Court: The map itself?

Q. The piece of paper?

A. It now belongs to the Ringwood Company.

Q. How did it become the property of the Ringwood Company?

A. It was sent to the Ringwood Company by the North Jersey District Water Supply Commission.

Q. What date does the map bear?

A. November, 1924.

Q. Can you tell how much later than that it was that the Water Supply Commission sent it to the Ringwood Company?

A. No; I am not prepared to do that.

Q. Can you tell us what year it was?

A. I think it was on the desk of the Ringwood Company in January, 1925. Well, I cannot testify as to that.

Q. What does the map depict in general?

A. Parcels to be acquired from Ringwood Company.

Q. Is that the inscription on it that you have read?

A. That is the inscription on it.

Q. Does the inscription state that it is a map of the North Jersey District Water Supply Commission prepared by it?

A. "North Jersey District Water Supply Commission, Wanaque Reservoir, Real Estate."

Mr. Frazer: May I cross-examine on that?

The Court: Yes, if Mr. Hunt is finished.

Mr. Frazer: He made the offer.

Mr. Hunt: I am now ready to make my offer. I now offer the map in evidence as a document having a bearing upon this proceeding and furnished to the Ringwood Company by the North Jersey District Water Supply Commission at the request of the Ringwood Company.

The Court: Now you may examine.

Cross-examination.

By Mr. Frazer:

Q. From whom did you receive that map, Mr. Anderson?

A. North Jersey District Water Supply Commission.

Q. How was it transmitted to you?

A. I believe this map was received in the mail. I am not sure whether it was sent to our office or received in the mail.

Q. For what purpose?

A. At our request.

Q. Your request was made for what purpose?

A. I don't understand what you mean by that.

Q. Why did you ask them for this map?

A. This map—or a copy similar to this—was furnished by the North Jersey District Water Supply Commission.

Q. No; why did you ask them, is my question. Why did you ask them for the map?

A. We wanted duplicate copies of the map which had been sent to us.

Q. A duplicate of this map?

A. Yes.

Q. You had already received one before?

A. Yes, we had.

Q. How did you come to receive that?

A. I don't know. It was either sent by mail or delivered at our office.

Q. At your request?

A. No, I believe not.

Q. The North Jersey District Water Supply Commission then gratuitously sent you a map without any reason for it?

A. To the best of my memory, the first copy of this map appeared with a copy of descriptions of the property to be taken.

Q. And how long before this map was that first copy sent which you asked to have another copy of?

A. If it is the copy I think it is, it was within two or three weeks of the time we received the first copy.

Q. That would be the latter part of 1924, probably then?

A. Or the first part of 1925.

Q. Do you know what the source of this map was?

A. North Jersey District Water Supply Commission.

Q. Well, the ——

The Court: How did it make it up, from what information?

The Witness: I don't know.

Q. Do you know as a fact whether or not the areas indicated on here are the result of surveys

or whether they are taken from other maps and information?

A. I don't know.

Q. Do you know or do you not know whether the areas of the Ringwood takings shown on this map are accurately stated on the map?

A. I know that they are approximately correct.

Q. Are they accurately stated?

A. They are not.

Q. Is this map, the map which you used as a basis for compiling Exhibit O67?

A. It is not.

Q. It is not?

A. Except possibly in parts as to the location of some of the taking lines that may not have been on the drawings we did use.

Mr. Frazer: May I ask what the purpose of the offer is?

Mr. Hunt: Well, perhaps I will have to ask a question then. Will that last answer be read, please.

(Answer repeated by stenographer as follows: "It is not. Except possibly in parts as to the location of some of the taking lines that may not have been on the drawings we did use.")

Mr. Hunt: That is the reason I offer it, because in parts—in general, he says no, except in certain parts. I offer it because certain parts of it did have to be used in the making up of that map Exhibit O67, and now I am about to offer the other maps that were used.

Mr. Frazer: Did the witness so testify?

Mr. Hunt: The witness so testified.

Mr. Frazer: That any part of this was used?

By Mr. Frazer:

Q. What part?

A. It was used either for some of the lines that were lacking, or for checking up the lines on the other land.

Q. Is this the most recent map of the North Jersey District Water Supply Commission's office that the Ringwood Company has in its possession?

A. As far as I know, it is.

Q. You used it in the preparation of the other map for certain lines despite the fact that you know the map to be inaccurate?

A. We used it—we put those lines on as near as possible to the drawing that was sent to us accompanying the descriptions of the property to be taken.

Further direct examination.

By Mr. Hunt:

Q. Mr. Anderson, please state whether the inaccuracies to which you have referred are of importance?

A. I do not think they are essential.

Mr. Hunt: I offer the map, your Honor.

The Court: Do you still object?

Mr. Frazer: We object to the whole line of this testimony. He is now putting in a map. Now he brings supporting data to support that map which in itself has no evidential value. He has admitted that it is inaccurate, and there is an attempt here to prove an admission on our part of inaccuracies, whereas we have produced for the benefit of the jury a surveyed map.

Mr. Hunt: Which I am now about to offer.

The Court: I will admit it.

Mr. Frazer: Exception.

The Court: You may have it.

(Map marked Exhibit O69.)

Q. Mr. Anderson, I hand you four blue prints and I ask you who is the owner of those four blue prints?

A. Ringwood Company is the owner of the four blue prints.

Q. How did it become owner of them?

A. They were given to the Ringwood Company by employes or officers of the North Jersey District Water Supply Commission.

Q. Do the blue prints bear any date or other inscription?

A. They do.

Q. Will you read it, please?

A. "North Jersey District Water Supply Commission, Wanaque Reservoir, Topography, May 24, 1921."

Q. Is the scale stated or anything else?

A. The scale is 400 feet to the inch.

Mr. Hunt: Now, Mr. Frazer, if there is any objection made on account of any painting or drawing or sketching that we have put on these maps, it may be treated similarly to the others, and cut out, and you can make the cut-out square if you want to. I am offering these simply for the purpose of showing what relation they have to the map which has already been admitted in evidence.

Q. What part did these four blue prints now before you bear in the making by the Ringwood Company of the map Exhibit O67?

A. The map O67 is a copy of these four drawings, that is, as far as its essential features go, corrected somewhat by the map accompanying the description of the properties to be taken.

Q. That is the map that you last put in evidence, which is marked Exhibit O69, this one?

A. Yes.

Q. So, if I understand you correctly, the Exhibit O67 is a map made up by the Ringwood Company on the basis of data supplied by O69 and the four blue prints now before you given the Ringwood Company by the Water Supply Commission?

A. That is correct, with the possible additions of some topography outside of the taking line.

Q. That would be beyond the contour line shown on the maps given to you by the Water Supply Commission?

A. That is correct.

Mr. Hunt: Now, I offer these four blue prints in evidence.

Mr. Frazer: Now, if I may cross-examine on this.

Mr. Hunt: You may.

Preliminary cross-examination.

By Mr. Frazer:

Q. Mr. Hunt has mentioned certain lines, do I understand that all colors outside of the original blue print that appear on these maps were put on at the office of the Ringwood Company?

A. I believe every color was put on by employes of the Ringwood Company?

Mr. Hunt: Mr. Frazer, just a moment, please.

Mr. Frazer: I am going to show these to the Court. I think the obvious purpose of that, the alleged purpose, to show supporting data for the other map.

Mr. Hunt: Now, your Honor, I will shorten this by making this limited offer.

Mr. Frazer: No, I do not wish any limited offers.

Mr. Hunt: I offer this merely for the purpose of being employed by the engineers of both parties, or either party, in case objection be made hereafter to any alleged inaccuracy appearing in Exhibit O67. In that event, I should like to have these maps in evidence in order that they may be referred to to see whether the alleged inaccuracy is one of the Ringwood Company's creation, or one arising from the use of the data appearing on the maps furnished the Ringwood Company by the Commission. That is my only purpose in offering these maps.

Mr. Frazer: These maps are 1921 when the preliminary studies were being made. Mr. Anderson

has already admitted that the map here and the other map from which he said he took his data for the making of that map were inaccurate. We are not making any statement about inaccuracy. Your own witness has made the statement that they are inaccurate. May I object to the bringing in, on the theory of supporting data to support an inaccurate map, inaccurate preliminary surveys which were given to the Ringwood Company for some purposes years ago and which now have depicted on them imaginary lakes and things of that kind which they have been trying in one way or another to present to this jury despite your Honor's rulings that they may not do so. That is the purpose of this map. That is the purpose of these maps. They are not offered in sincerity. They are offered for the purpose of getting by indirection something that your Honor has stated they might not directly get.

Mr. Hunt: The purpose of offering these maps is the purpose I have just stated, and to which the Court will, of course, confine me. In regard to the maps being called old maps by Mr. Frazer, I believe you read the date of these four.

The Court: 1921.

Mr. Hunt: 1921. I can only say, your Honor, we can only work with the tools that are given us. We applied to them in 1924, December, or 1925, January, for maps, and this is what they gave us. Did they mean to bamboozle us, and bring us into court with this labor done on these maps only to come and say because they have given us an inaccurate foundation we could not use what we had produced by our labors? That is the most outrageous posi-

tion taken so far in this case, and that is saying a great deal.

Mr. Frazer: I object to bamboozle.

Mr. Hunt: Well, we have been bamboozled, if it is now said these are not the right maps, then we have been bamboozled. This is what they gave us in 1925, just before they began this proceeding.

Mr. Frazer: Will you ask him, please, if he has finished?

The Court: He has finished.

Mr. Frazer: I object to the term "bamboozle." These maps, by the testimony of the witness now on the stand, were all of them given to the Ringwood Company prior to the institution of these proceedings. They have had, since the giving of these maps, three years ——

Mr. Hunt: 1925, January.

The Court: Please let him finish, Mr. Hunt.

Mr. Frazer: (Continuing) —— to get other maps. They have not said anything about having applied for other maps, and a copy of that map C1 was in evidence below. They knew that we had accurate surveys which they might have had if they had asked for them. They did not want the accurate for their own purposes. They wished to go back to earlier maps which they now admit themselves to be inaccurate, and then they not only take the inaccurate maps, but they draw things on them,

and then try to get them in with those drawings on the theory that they are supporting this inaccurate development. I object to these maps.

The Court: The objection is sustained, except and if and when they may be necessary to show the composition of the map in question, and I am not allowing them now because they do show conditions that were not on the map received by you.

Mr. Hunt: And your Honor I wish now, before I forget it perhaps in my embarrassment later to say I am compelled to withdraw the offer I made to have what you have just referred to cut out as was done on the other map, because Captain Crockett tells me that is the only set of maps we have got and the data is too valuable to permit that to be done.

Mr. Frazer: Just leave a hole where the lake was. They might as well have it with a pencil.

Mr. Hunt: I said they could cut it out.

The Court: Very well, you have an exception to the Court's ruling if you wish.

Mr. Hunt: Is Major Pratt in the courtroom?

A Voice: Yes.

Mr. Hunt: May Mr. Anderson step aside for a moment, and Major Pratt be put on the stand as my witness?

The Court: If they have no objection.

Mr. Frazer: I have no objection to that.

The Court: Let him come up. That is all, Mr. Anderson, for the present.

JAMES P. ANDERSON, resumed.

Direct examination, continued.

By Mr. Hunt:

Q. Mr. Anderson, just state as briefly as you can with clarity what Exhibit O67 is? Do you want to come down to it with the pointer?

Mr. Frazer: I think Mr. Anderson should be directed to state what this shows, not any conclusions which are to be drawn from it.

Q. All right, state what it shows, and not any conclusions which are to be drawn from it. Now, in the first place, what is this irregularly contour blue area that it shows?

A. That is the proposed reservoir of the North Jersey District Water Supply Commission showing the flow line.

Q. That is the reservoir they are now building, is it not?

A. They are building the dam.

Q. And this flow line comes up to what elevation above sea level?

A. 300 feet above sea level.

Q. So that these blue lines indicate the course of the 300-foot contour in the Wanaque Valley and the

valleys of the smaller streams coming into the Wanaque, is that correct?

A. That is true.

Q. Now, I point to the line made of dash and dot and outlined in yellow running around through the map, and I ask what that indicates?

A. That indicates the taking line of property to be acquired, to be acquired by the North Jersey District Water Supply Commission to be or now acquired.

The Court: Mr. Anderson, will you kindly keep your voice up. I think the jury are having difficulty in hearing you.

The Witness: I will try it, sir.

Q. Now, Mr. Anderson, I point to certain areas inside of that taking line which are colored in pink and ask you to state what they are?

A. They are property of the Ringwood Company.

Q. Within the taking line?

A. Within the taking line.

Q. Now, I point to certain areas outside of the taking line colored in green, and I ask you what they are?

A. They are portions of the property of the Ringwood Company.

Q. Not being taken?

A. Not being taken.

Q. Now, I see contour lines on this map—from what source were the contour lines obtained so far as they do not rise higher than 340 feet above sea level?

A. From the Geological Survey Map of the State of New Jersey.

Q. Anything else? Had the District Water Supply Commission's maps anything to do with the production of those contour lines?

A. They had not.

Q. Now, I show you contour lines rising above level 340?

A. You asked me that before.

Q. No, I said up to 340?

A. Up to 340, or up to 300, and in some places above, possibly, 340 the contours were taken from the maps furnished to us by the North Jersey District Water Supply Commission.

Mr. Hunt: Perhaps I will be permitted to lead a little. This is so obvious, to go fast.

Q. There was an Exhibit O68 put in a moment ago, what was that? That was the last map that was admitted. This is it, Mr. Anderson, what is this, O68?

A. It is a map furnished to us by the North Jersey District Water Supply Commission.

Q. About what time, to the best of your recollection?

A. In January, 1925.

Q. Does that show contours?

A. I think that only shows contour following the flow line.

Q. That shows 300-foot contour which is the flow line of the reservoir?

A. Exactly.

Q. Now, was the flow line of the reservoir as depicted on O67 made according to the contour line 300 as shown on this map that the Water Supply Commission gave you?

A. I believe so.

Q. And with respect to contours from the 300 up to elevation 340, did you have anything else from the Water Supply Commission that enabled you to put those contours on Exhibit O67?

A. I did.

Mr. Hunt: May that be read again?

The Court: Read it.

(Question read.)

The Witness: Up to 340?

Q. Yes.

A. I misunderstood you again. In some cases the contours on the maps furnished us by the North Jersey District Water Supply Commission went to 340, and where they did they are incorporated in this map.

Q. Wherever you had contours from the Water Supply Commission you used these contours, did you?

A. They were used.

Q. Now, when you got up on to higher ground than the Commission had contoured, you say you used contours from the State Geological Survey?

A. That is correct.

Q. And they are put on this map O67 at what intervals?

A. At intervals of 100 feet.

Q. So they rise from 400 to 500, 500 to 600, six to seven and seven to eight and eight to nine, for example, on top of Bear Mountain—is that correct?

A. That is correct.

Q. And to make it plain for any members of the

jury who are not familiar with maps, it is true that between the one contour line and the next one anywhere on the map where there are 100-foot contours there is a perpendicular difference in elevation of 100 feet?

A. That is correct, a vertical rise of 100 feet.

Q. A vertical rise of 100 feet, and in what manner can one determine from the lines as mentioned on the map the lateral distance in which that verticle rise occurs?

A. By measuring between the two contours to any point in which the slope is desired.

Q. The scale is one to 400, I think?

A. That is correct.

Q. Now, you might point out to the jury, then, a place where there is a sharp rise and tell them about how sharp it is?

A. In this case (indicating) about a quarter of an inch between the two contours, representing 100 horizontal feet and 100 feet vertical. It would be a rise of about 45 degrees.

The Court: A rise of what?

The Witness: 45 degrees.

The Court: All right.

Q. Now, point out a gentle slope, please, Mr. Anderson, and illustrate that?

A. Wider apart the gentler the slope, for instance, the horizontal distance between these two contours (indicating) is about 225 feet, and the vertical distance is 100 feet, quite a gentle slope.

Mr. Frazer: It is about 1200 feet?

The Witness: Yes.

Q. At this point that you just pointed to, the 100-foot rise is distributed over 1200 feet?

A. Yes, of horizontal distance.

Q. Of horizontal distance?

A. Yes, sir; it would possibly be a 10 per cent rise.

Q. And when you come down on this map to elevations above sea level less than 340, what is the contour line What is the vertical height between the two contour lines?

A. They are five feet here, ten feet.

Q. So that, for example, one can determine here on the blue area indicating the reservoir the depth of the reservoir by these contour lines within limit of error not exceeding 10 feet, isn't that true?

A. That is true.

Q. At this point, for example, the contour line being 290, there will only be 10 feet of water because the reservoir flows only to 300?

A. That is correct.

Q. But at this point here the contour line being 250 there will be 50 feet of water, is that correct?

A. That is correct.

Q. And down here towards the lower end of the dam I see a contour 240; what depth of water would that indicate?

A. It would indicate a depth of 60 feet.

Q. This map was prepared under your supervision, Mr. Anderson?

A. It was.

Q. And for what purpose?

A. For the purpose of showing consequential damage to the lands of the Ringwood Company.

Mr. Frazer: There were no comments to be made on this map.

Mr. Hunt: Mr. Anderson is not one of our witnesses to testify to the extent of the consequential damages, but I think the jury has a right ——

The Court: I will allow him to testify why he made the map.

Q. Why did you make this map?

The Court: He has already answered, to show the consequential damage to the lands of the Ringwood Company.

The Witness: Consequential damages occasioned by the taking of the Ringwood property within the taking line.

Q. The Ringwood property, where?

A. Within the taking line; consequential damages outside, of course, but I say taking the property, within the taking line.

Q. The consequential damages to the Ringwood property outside of the taking line occasioned or caused by the taking of the property inside of the taking line, is that right?

Q. Mr. Anderson, haven't you already stated in response to questions that I have put, what these different colors, red, green and blue on this map indicate?

A. Yes, I have.

Q. I thought so. Now, will you just, taking the scale rule, inform the jury of the approximate length of the Wanaque Reservoir on a straight line following its course from north to south?

Mr. Frazer: What is the materiality of that? They have offered a map that is scaled, and we are just wasting time, wasting time by saying things that the jury can see for themselves.

The Court: I will allow it. I think perhaps Mr. Anderson has already done it and knows.

Mr. Frazer: Yes, he knows.

The Court: And if he does know, he does not have to take time to measure it.

Q. Is that true, that you know, Mr. Anderson?

Mr. Frazer: Sure he knows.

A. My recollection is about six miles, correct?

Mr. Frazer: That is about right. We will give you the dimensions of the reservoir, if you want them.

Mr. Hunt: What?

Mr. Frazer: We will give you the dimensions of the reservoir, if you want them.

The Court: It is not needed now, Captain.

Mr. Hunt: Now, that is all the examination that I desire to put to Mr. Anderson with respect to this map. Will my adversaries cross-examine him with respect to this map now, or do they prefer I should produce my next map?

Mr. Frazer: We will say produce the next map

so that I may cross-examine Mr. Anderson at once, at one time.

The Court: All right.

Mr. Frazer: Why take three or four bites?

Mr. Hunt: Do you want me to produce the next map?

Mr. Frazer: Yes, with the jury out, while we discuss its admissibility.

The Court: You mean some map that is not in?

Mr. Hunt: Yes, sir.

Mr. Frazer: I suggest the jury be excused and get ten minutes' vacation for lunch.

Mr. Hunt: Well, then, am I permitted to name which map I want while the jury are here?

The Court: You certainly are.

Mr. Hunt: The gravel location map.

The Court: Have it marked for identification. You offer it?

Mr. Hunt: Yes.

The Court: And it is marked for identification, and it is objected to.

Mr. Matthews: Yes, in the absence of the jury.

The Court: And I will ask the jury to step out until we discuss the legality of the map for evidential purposes, and will excuse you until two o'clock.

(Gravel location map marked Exhibit O70 for identification.)

(The jury thereupon retired.)

Mr. Hunt: Now, if the Court please, I am proposing to prove by Mr. Anderson upon this map simply the gravel-bearing area of these lands and, therefore to offer the map in evidence so that it will be available for the use of other witnesses who have made the gravel exploration and done the work. I say that so that Mr. Frazer need not think his present task is any heavier than it actually is, and perhaps he would consent that we should stipulate in its basic outline this map is the same as the one which has been just admitted, the sharp difference being what we paint on it this time is not consequential damages, but gravel. Now, in that area shown as the gravel bearing area there are markings indicating where a test pit was dug and where a test boring was put down and so on and so on, but that work was done under Captain Crockett's supervision, and I cannot prove it yet by Mr. Anderson, but will later prove it by Captain Crockett.

The Court: Do you mean borings made for the dam or gravel?

Mr. Hunt: No, the depth of the gravel beds.

The Court: Is that all you want to say about it?

Mr. Hunt: Yes, I want to get the map now not to go into the gravel question generally, but simply to have the map in evidence so when that time comes Captain Crockett can refer to the map. Now, if there are inscriptions there to be cut out I will get my knife out.

Mr. Frazer: No, you cannot cut it out. This is nothing less than a summary made of the estimates of gravel. It is another camouflage. It is put in ostensibly to show where the gravel bearing beds are.

Mr. Hunt: Perhaps we can save time, if your Honor will come down and I will cut out what your Honor directs.

The Court: The ruling of the Court will be the same as it was on the other map, if it is possible to take from it anything that is of an evidential character and not properly on the map.

Mr. Hunt: All right.

Mr. Matthews: The totals are there and they can be added up by the jury.

The Court: I think if it is for the purpose of showing the location of the gravel deposit and things of that sort, I see no objection to it. It might be helpful to the jury in visualizing where the deposits of gravel are, and I think it is proper

Mr. Hunt: Your Honor, there are some such things, but I think some of them you wish to leave in, for example, it will be testified to at three places we dug test pits, four or five feet square.

Mr. Frazer: You needn't argue that. I do not object to any conditions which are shown on the land. That is a map properly a map showing the situation, but I do object to calculations which are made on the theory, if you figure a gravel area of so much surface and goes down to 47 feet in depth, and you have got two pits somewhere on that which are 47 that there are 3,787,492 cubic yards of gravel ——

The Court: He has no objection to cutting that out.

Mr. Frazer: I do not know how he is going to do it, your Honor.

Mr. Hunt: We have some 70 odd places located where we put down test borings. You would not want to have those cut out, because the jury ought to know where we did that. All right, now, I come with my knife.

(Conference at the map.)

The Court: Now, be careful, Mr. Hunt, because there is another map under that. That is put over the other map, you see.

Mr. Hunt: Will the Court indulge me for a moment so I can make something plain?

The Court: What is it?

Mr. Hunt: Objection is made here where we put down these test holes, these borings, we have down the words elevation so many feet, depth so many feet. Well, it is proper to show the jury the ele-

vation of the ground at that point and the depth to which we put the drill hole down.

The Court: I do not see any reason why that should be left out. It is going to be testified to, anyway.

Mr. Hunt: All right, we will cut it out.

Mr. Matthews: It makes the multiplication of the entire area.

Mr. Frazer: These contours do not indicate the depths. They have an elevation on it at 340 contour line and marked it 305 feet. I do not know what that means but their exhibit is not consistent with itself.

Mr. Hunt: That means it is not on the contour line. It is two feet off of it.

Mr. Frazer: There is another between 305 contour line.

Mr. Hunt: Please, do not make any mark.

Mr. Frazer: I am not making any mark.

(Conference at the map.)

Mr. Frazer: I understand this offer is made merely for the purpose of showing the location of sand and gravel areas on the Ringwood Company land.

Mr. Hunt: One other thing, your Honor. One detail is made also for the purpose of showing by

this little detail down in the corner the location of these lands with respect to railroad, river, public highways; also the location of a piece of property controlled by Ringwood Company at Bellewood Park in Essex County, I believe it is, where in our opinion would be the logical and most economical place for us to use as our gravel yard, if we were shipping gravel down there.

Mr. Frazer: I have not seen that little thing. It was curled up in the corner, and had I not limited it I would not have known of it.

Mr. Hunt: Shall we have it after lunch?

The Court: If it is going to take any length of time I think you better.

Mr. Frazer: Mr. Hunt, there is a lot more deletion that will have to be made on this map that I have just discovered.

Mr. Hunt: Is this it?

Mr. Frazer: Yes.

(Mr. Hunt cuts out a portion of the map.)

The Court: Is there any other? That was the matter that was referred to just at the time of adjournment, wasn't it?

Mr. Hunt: Yes.

The Court: You took that all out?

(Mr. Hunt shows the piece that was removed from the map, to the Court.)

The Court: Is there anything else now, Mr. Frazer, that you specifically object to?

Mr. Frazer: No, I think not.

The Court: All right, I will allow it.

Mr. Frazer: The offer is, as I understand, purely for the purpose of showing the areas?

The Court: That is it, and there are a couple of borings.

Mr. Hunt: Seventy odd borings.

The Court: Whatever there are.

Mr. Hunt: Three test holes, and moreover, it is offered as a document from which the witness will testify to locate borings.

The Court: Re-locate the roads and the re-location of the railroads and all those other things?

Mr. Frazer: No, no.

Mr. Hunt: I did not want to refer to that.

The Court: I understood you to say it showed the roads and the railroads.

Mr. Hunt: That is what your Honor has here.

(Indicating the piece of map that was cut out.)

Mr. Frazer: I understand you are not offering this detail?

The Court: No, he is not.

Mr. Hunt: I am only offering what remains on the frame. What I am offering is not only for the purpose of showing the location of the gravel beds, but also a document to which the proper witness that may be on the stand can refer to make clear what was done in carrying out the work of exploring the gravel area.

The Court: Very well.

Mr. Frazer: And of course that does not mean that they can mine gravel or anything of that kind, sir, and sell it to anyone down below?

The Court: No.

Mr. Hunt: I have not said anything about mining gravel. I may later, but I have not yet.

The Court: Is that all there is to that?

Mr. Hunt: I am offering the map in evidence.

The Court: Let it be marked.

(Map marked Exhibit O70.)

The Court: Have you another map?

Mr. Hunt: Yes.

Mr. Frazer: Can't we discuss it now and make his offer afterwards?

The Court: I think so.

Mr. Hunt: I will try to. Now, your Honor, I have another one. I suppose for the moment it is hardly necessary to put it on the frame. Shall I state what I will prove by examination in the interest of shortness?

The Court: Yes.

Mr. Hunt: This is a map whose basic data is the same as the two previously admitted, obtained from the same sources. It is entitled, "Map of Wanaque Water Supply Development, showing the lands of Ringwood Company, with shore lines of Wanaque Reservoir at elevation 300, and 20-foot intervals lower." The intervals are, according to the contour lines on the map furnished us by the Water Supply Commission, and if there is any doubt or any question raised about their accuracy I will call Major Pratt to establish their accuracy. The purpose of the showing, your Honor, is to indicate by this vari-colored arrangement that appears here what area of land the Wanaque Reservoir will cover with water when it is full—that is this in blue, up to the 300 elevation above sea level; what area of land will be covered by water when the reservoir is drawn down by successive 20-foot steps to the elevation of the intake of the aqueduct, which is 240 feet, if I state it correctly—is that correct?

Mr. Frazer: I believe so.

Mr. Hunt: Yes. So that by looking at the area outlined in blue the Court and jury can see what land the reservoir covers when it is full. By looking at the land outlined, shown in pink, the Court and jury can see what land would be covered consequently what land would be uncovered when the reservoir was drawn down to 280. By looking at that colored in green the Court and jury can see what land would be covered and hence what would be uncovered when it is drawn down to 260. By looking at that colored in buff you will see what is covered and what is uncovered when it is drawn down to the extreme limit to which they can draw it without artificial means, of 240. Now we claim, as I stated in my opening, consequential damages to our adjoining lands for this reason, among other reasons, that the exposure of mud flats when this reservoir is drawn down to various stages, would create an unsightly condition and evil smelling condition, a condition that breeds mosquitoes and other insect life, and that is otherwise objectionable.

The Court: Aesthetic?

Mr. Hunt: Yes. Well, in many ways. You would not ask me to detail more ways than that?

The Court: No.

Mr. Hunt: Now it has been stated here by counsel for the Water Supply Commission in argument, as I understand it, first, that the reservoir will never be drawn below 300; second, that if it is drawn below 300, no objectionable condition would be created. Both subjects are matter of fact for determination by the jury. We will put in evidence

which will enable the jury, if it be believed, to find that the reservoir will be drawn down. We will put in evidence which, if believed, will enable the jury to find that the drawing down will create conditions that will work injurious consequences—consequential damages to our lands not taken. If we fail to put in evidence from which the jury could draw those inferences, then I will have no objection to this map being stricken out. But I offer the map as an aid in the presentation of the evidence to which I have just referred.

The Court: And it is exactly ——

Mr. Hunt: It is especially necessary because, as far as the unsightly condition is concerned—the aesthetics of the thing—it is the only manner in which the jury can see to what extent 20-foot draft on the reservoir will reduce this flowed area.

The Court: It is made from the same data?

Mr. Hunt: Yes, sir.

The Court: As were the last two maps?

Mr. Hunt: Precisely. That, of course, rests so far on my statement. If it is questioned I will put Mr. Anderson on. I am only trying to save time.

The Court: What do you say?

Mr. Frazer: I say that the map is a wholly improper conclusion again; it is a picture of a conclusion as to facts which may or may not come into being. If your Honor will look at it and see the quantities, what Mr. Hunt is putting before this

jury for his examination is a situation which contemplates practically a wiping out of the reservoir.

Mr. Hunt: No.

Mr. Frazer: I am arguing. It shows that we are going to have what in the original is marked out in blue a mass of what he is pleased to call mud flats. Now that may be a situation which never in the life of this reservoir would come about, because it is a situation which will never come about. If Mr. Hunt wishes to argue from data or evidence before the Court, there are maps which he himself has put in which show all of those contour lines; there are maps which we have put in which show contour lines, and he can say probably, "Gentlemen, if this reservoir is reduced by 20 feet, instead of being covered to the contour line of 300, it will be only covered to the contour line of 280 on that map." But he has no right to put before the jury a picture of a hypothesis which, the way it is drawn, is such as to indicate that this is a probable condition and a probably continuing condition, highly prejudicial. This is not testimony. This is conclusion, and it is conclusion upon hypothesis and not upon fact.

The Court: If it be true that he could bring testimony to show that if the draft is reduced—that there is a draft of 20 feet which reduces the areas of the reservoir from a contour line of 320 to a contour line of 280, that mere statement by a witness would mean very little, and it would be of very little evidential value to so state, even if the witness then went and painfully traced on the contour map that might be in evidence just where those boundaries would be; and I think that this is not put

in evidence for the purpose of showing a conclusion, but to visualize testimony that might be given, and for that purpose I think it is proper, subject, however, to being corrected as to any inaccuracies that might be there, just as I have stated in the other exhibits.

Mr. Frazer: I respectfully submit to the court that there is no authority under the law of evidence for the visualization of evidence. That is a wholly novel proposition to me in the law of evidence.

The Court: We have frequently, and I have done it many times, permitted a witness to draw a diagram of a scene that he has just described, and if we did not permit witnesses to do that in the negligence cases, the testimony would be negligible, and we do it frequently.

Mr. Frazer: That is as to facts.

The Court: That is as to facts, and that is the purpose for which I am allowing this to go in. I see no difference in the use of this map, providing there is testimony from which it could be used as a visualization. I see no difference in principle in allowing this to be used and from allowing a witness in a negligence case to make a diagram of a street intersection where two vehicles perhaps may have come into contact, in order to elucidate and help the jury.

Mr. Matthews: Excuse us, your Honor please.

Mr. Frazer: I assume there is nothing on this map other than property lines, the contour lines,

and the indication of the different portions of the reservoir at different elevations, is that right?

Mr. Hunt: There is a great deal on there besides that. I read "51, G. Nargiliani." That is the Water Company endorsement. There is nothing on the map except what you see there, and the map is not to be offered by me for any purpose except the purpose I stated.

The Court: I will allow it. In respect to this map and all others counsel says, very frankly, what he proposes to use them for, and it is only admitted for this purpose. Now, if at any time counsel seeks to use it for other purposes we will cross those bridges when we get to them, because it is not offered nor is it received for that purpose.

Mr. Hunt: Now, they are pointing to Lake Erskine up there. All right, I will cut it out.

The Court: Cut it out.

Mr. Frazer: I do not think it is essential. Leave it alone.

Mr. Hunt: All right, leave it alone.

The Court: There is Lake Erskine on the map that has just gone in.

Mr. Frazer: These are offered for different purposes.

The Court: Yes, there won't be any reference to that. It ought not to have been there. It is a copy of the other, and that is why it is there, I assume.

Mr. Hunt: There was no intentional wrong, because that was put there.

The Court: I do not see why you should strike it out if it is not to be referred to.

Mr. Hunt: I think my engineers are entitled to great credit for having produced all these very lucid, graphic illustrations of these various things up there.

Mr. Frazer: I understand your Honor admits it?

The Court: I will admit it.

Mr. Frazer: And I ask for an exception to your ruling.

The Court: You may have it.

(Map marked Exhibit O71.)

Mr. Hunt: Now, if the Court please, to save time shall I make a statement of what this map is?

The Court: I wish you would, because we are going over this for the purpose of the record when the jury is in, the offering, the actual offering.

Mr. Hunt: Yes, now, this map is prepared on the same basic data as the others, the same Water Supply Commission sources, and is drawn for the purpose of showing those parts of the property under condemnation upon which, prior to the commencement of the condemnation proceedings, there had been roads staked out, in some instances water supply put in, lots sold from maps already made prior to the commencement of the condemnation proceeding. It is for that purpose that I show this map. Now, if there is any data there that Mr. Frazer wants cut out I will accommodate him and cut it out.

Mr. Frazer: In the informal discussion yesterday afternoon about this map, which your Honor has not perhaps seen—if I may have the distinguished honor of coming to the bench?

The Court: If you so consider it.

Mr. Frazer: Your Honor will notice a series of lots laid out, a series of roads, apparently, opened, not only here, but down this way as well, I believe. I notice there were large quantities of lots shown.

Mr. Hunt: Have a look.

Mr. Frazer: Oh, don't taunt me, Mr. Hunt; I am merely trying to show what it is. There may be thousands of them; I don't know.

The Court: Go ahead.

Mr. Frazer: But I have asked Captain Crockett, who, I believe, has been largely responsible for this, whether certain of these roads were in existence, and he admits they were not.

The Court: Well, it is stated now that they were not, isn't it, Mr. Hunt?

Mr. Hunt: No, it is stated they were staked out. Now, to what state of being or existence a road

that you stake out and thus mark on ground is a road, is for a jury to say.

The Court: Yes, all right.

Mr. Frazer: These lots appear as though they were laid out on actually constructed roads.

Mr. Hunt: Well, a good many of them are, Mr. Frazer.

Mr. Frazer: Those roads, with very few exceptions are not in existence at all nor is there anything, as I understand it, to show those lots in most cases.

The Court: There are not any artificial lakes here?

Mr. Hunt: No.

Mr. Frazer: It is another way of showing artificial lakes, by implication.

The Court: It is not put in for that purpose, Mr. Hunt?

Mr. Hunt: It is not put in for that purpose.

The Court: And the purpose of the map is to show that at a time prior to the taking there were roads staked out and lots plotted.

Mr. Hunt: And somewhat a bit further than that, that some of these roads had actually been improved in one way or another, and in some of the lots a water supply had been furnished, and

that some of the lots had actually been sold, people lived in houses erected in some of these lots, prior to the condemnation.

Mr. Frazer: Not all of them.

Mr. Hunt: Oh, no.

Mr. Frazer: In this one section out of all of these were any lots sold? (Indicating.)

The Court: You refer to this German Village?

Mr. Frazer: Your Honor has seen the German Village, and you can understand how much that appraised the conditions of the ground in the German Village.

Mr. Hunt: Did your Honor see the stakes?

The Court: Oh, I saw stakes all over the place. Most of them were contour marks.

Mr. Frazer: But your Honor will admit that the conditions at the German Village were not such as this depicts?

The Court: I shall permit the testimony of roads that were actually laid out and decide it when the testimony is offered as to what is the road. I mean, if it is just a matter of statement or lots that might be there, I think the question of admissibility as evidence with respect to those is a question of law for the Court, and inasmuch as a large number of these developments admittedly are not present on the land, I do not see how I can admit this map in part and not at all as to other parts, because I

think it already is in violation of the rule of the Court in respect to other maps offered that have just been detailed with respect to isolated places. I do not object to it because of its possible outline of a lake, because as you say it is not offered for that purpose, and no testimony, necessarily, will be given as to that; but I think that inasmuch as there may be—it may be evidential for you to show some of these developments, but I do not think you can show this map and have it introduced as it is, because it is my notion from what has been said that it does not correctly portray existing conditions within the meaning of the Manda case.

(Conference with the Court.)

The Court: I say that corroborates what I have just said. There may be parts of this that might be shown, but when you offer a whole map to visualize places that are not in that condition, then I do not see how I can let any part of it in unless it develops later on that you can connect all of these places.

(Conference with the Court.)

The Court: We can eliminate this if the testimony does not cover it, and the testimony itself will explain it, and you can show, by cross examination, just what is on the ground. In other words, it strikes me that this might not come as I thought at first clearly within the Manda case because of the facts in the Manda case. There weren't the improvements made, and in this case there are to some extent. Here, for instance, here is a water supply. Here are some buildings built. Here are some streets either constructed or partly construct-

ed, and other streets that are staked and laid out, and I think that that might make quite a difference. Now, as I say, on cross-examination perhaps it may develop that this is just after all a paper development. It may be that while there are so many lots laid out there were only, as a matter of fact, one-tenth of one per cent ever sold or staked out; but it strikes me there is enough shown in this formal way of what the developments are to permit of its going in for the purpose of having pointed out exactly what the conditions are.

Mr. Frazer: May I state that the rule, as I understand it, is, that the map may show the conditions as existing on the ground. If part of that does exist that does not open the door for them to show the part which does not exist.

The Court: That is true.

Mr. Frazer: We are depending on the burden of proving the things being shown to the jury on their map having other than things actually existing on the ground. It must be shown all those things are as represented on the map, as a precedent.

Mr. Hunt: Those cross roads were staked out on the ground, were actually passable and had been passed before the Water Supply Commission was permitted to go on the ground.

The Court: It might be equally prejudicial if I did not allow it to go in for them to be able to show exactly what the improvements might be, because you can, both of you, can show from this map then just what the actual conditions were. I will

allow it and grant you an exception. Of course, you will formally offer it at the proper time and formally object. Now, is there anything you want cut out?

Mr. Frazer: What is the purpose of the offer?

The Court: The purpose of the offer as I understood Mr. Hunt to say, was to be able to point to a certain development that had been started and were actually on the ground before the taking. For that purpose, and only that purpose, and not for the purpose of showing a lake, for instance ——

Mr. Frazer: And if it develops that those lots which are plotted to any extent do not exist on the ground, then the exhibit will be stricken from the record?

The Court: I cannot answer that until we see what the testimony is. In other words, I cannot say if they only show 19 per cent, 22 per cent or 34 per cent, or some other percentage, I might necessarily strike it out. I might, if I find it is prejudicial, if there is too small a percentage of the work this depicts as having been done actually shown later.

Mr. Frazer: It is offered regularly, and I shall have the opportunity of cross-examining the witness who attempts to prove this map?

The Court: Yes.

(Map received and marked Exhibit O72.)

Mr. Matthews: Has your Honor considered, in

the admission of this map, even for the limited purpose stated, that since there is an absence of a lake and an adaptable lake site, as they may testify, they may claim the door opened by showing these lots to the creation of lots in that section. And the question then, with this predicate would be whether we could possibly keep within our ruling of the Manda case. In other words, they may say they are in an alleged lake development, the lake is not shown, they leave it in vacant. If, however, some witness comes along and testifies, where would that lake be on XY or whatever this map may be, and points it out, then it is argument to the jury, just as we have these lots staked out, so we may have them staked out here and here. (Indicating.)

Mr. Hunt: If that happens, the adversary will have an opportunity to object and the Court will rule.

The Court: It is not put in for that purpose. It is not being admitted for that purpose, and I will rule on that if it is sought to be used for that purpose at that time.

Mr. Hunt: Now, if the Court please, I offer a copy of a map of the State Board of Conservation and Development of New Jersey, geology map, which I believe is a map made from precisely the same plates as Commission's Exhibit C4, as far as C4 goes, but this covers a larger area, for certain purposes that may hereafter be useful for me.

Mr. Frazer: What are those purposes? I think before we admit the map we should know what the purpose of the offer is, so that there will be no reas-

on for the offering of a map of the State of Utah, for instance.

Mr. Hunt: No, this is the State of New Jersey.

Mr. Frazer: So there may be no reason for having one offering the County of Essex in it. If that is the purport I want to know the reason of the offer.

Mr. Hunt: I may wish to indicate some lands at some distance greater from the taking as some of the Commission's witnesses have done.

Mr. Frazer: Is it Bellewood Park that you want to point out?

Mr. Hunt: At the moment, I say I haven't it in mind.

Mr. Frazer: We have had it once, and this is another way of getting this thing in.

Mr. Hunt: I say this is one thing, and I say I might want to indicate on this map the exact location by an engineer's determination of Mr. Fay's 187 acres, or of Mr. Fay's Model Town tract.

Mr. Frazer: That is there.

Mr. Hunt: Or the property on the Milford Turnpike to which Mr. Hershfield testified. There are a multitude of things I may desire to show.

The Court: If it is an authentic map and it apparently is, I see no objection to its being offered.

Mr. Hunt: On the contrary, I may never use it at all.

The Court: If there is any improper use made of it at any time I will rule on it at that time.

Mr. Frazer: Isn't it proper that we know the purpose of it?

The Court: He has stated some of the purposes.

Mr. Hunt: I may say that today I haven't any idea of referring to the map.

The Court: It might be wise to wait and save it until that time, or such time as you think you may use it.

Mr. Hunt: I thought if I had it, your Honor, we may as well go somewhat further.

Mr. Frazer: If it is about the Bellewood proposition, let us argue it now.

Mr. Hunt: I am not prepared to argue it at this time.

The Court: Not prepared to argue it now. I cannot require it then. I have not any objection to it being offered now with the statement that has been made.

Mr. Frazer: Exception.

(Map marked Exhibit O73.)

Mr. Frazer: I respectfully submit to the Court,

if this map is sought to be used later in reference to Bellwood Park, which, from my familiarity with the trial below, will be used for the purpose of showing the possibility of bringing by rail at a certain rate to be established by the Erie Railroad, sand and gravel, showing that the existing rate into New York to be substantially reduced by delivery to the Bellwood Park, and therefore the gravel on these premises is more available than at first blush appears, that any argument on that matter should be had in the absence of the jury—if the question is asked which involves Bellwood Park, that the jury will be excluded.

The Court: I shall admit the map to be used, if at all, if Mr. Hunt does see fit to use it, and he says he was not sure now that he would at all, for any proper purpose that it might properly be used for, and only that. Now if it is sought to be used for some purpose that is improper, I will meet that situation when it arises, and in accordance with my policy up to this time will not have any argument made in the presence of the jury that might tend to be prejudicial to either side. Now any other maps, Mr. Hunt?

Mr. Hunt: Yes, sir, one more. Now I offer a map, your Honor, which shows towards one end of the taking the pond that would be created by the dam that you permitted Dr. Kummel to testify to, at Ryerson Furnace, the concrete dam standing there that you saw yourself; towards the other end shows the pond which is called Forge Pond, and which you also saw yourself, and permitted Dr. Kummel to testify to, and which shows in between at various points on our property other dams concerning which Dr. Kummel was permitted to testify that the State had approved our application for permission to build, and also other areas capable of being flooded at still other places. The purpose of the offer is simply to show that the land at the points indicated in color on the map is by reason of its location, by reason of its contour, topography and elevation above sea level, by reason of the fact that it has running water passing through it, naturally adapted, in the words of the Manda case, to the creation of ponds of the size, and standing at the contour line shown on this map. The map shows nothing in the nature of a dam or structure to hold the water; simply shows what could be flooded.

The Court: And it is the same basic map as those already in?

Mr. Hunt: Same basic map as those already in. Now for example, here your Honor sees the Forge Pond Dam.

Mr. Frazer: That is in existence.

Mr. Hunt: Here your Honor sees the Ryerson Dam.

Mr. Frazer: Not in existence.

Mr. Hunt: Not the Ryerson Dam—my choice of words is not happy. Your Honor sees the area of land that would be flooded by the Ryerson Dam standing there as you saw it if it were now caused to hold back the water to the same height which the old dam held it back, as testified by Mr. An-

derson, 235 or about 235. In between here your Honor sees the other areas as shown by these Water Commission contours. I do not have to go outside their contour lines at all on this. Which have such a natural lie that they are naturally adapted to the holding of water upon it. I offer that in evidence for the purpose of showing the natural adaptability of the land and the creation of ponds.

Mr. Frazer: We have ponds now. We have lots facing on them.

Mr. Hunt: May I ask what relation these lots have to the lots shown on the lot map which was just admitted. Are they the same lots, Mr. Anderson?

Mr. Anderson: Yes.

Mr. Frazer: Tying the two together. Now we have the lakes which Mr. Matthews prophesied a moment ago we would have.

Mr. Hunt: No, we have not.

Mr. Frazer: What have we? In the view of the jury we have a map that has a thing called Beard Lake, 250 acres, what does that mean? Board Lake?

Mr. Hunt: No, we will cut that out.

Mr. Frazer: Middle Cupsaw Lake, an elevation of 280,71.75.

Mr. Hunt: We will cut out anything ——

Mr. Frazer: E. R. Hewitt Lake.

The Court: That is the purpose of your offer, Mr. Hunt, to show these lakes, as I understood it?

Mr. Hunt: No, not to show existing lakes, but to show that there is low land there, naturally adapted to being flooded.

The Court: Yes.

Mr. Hunt: Then the jury can see whether this land that does lie at such a level, and in such a way as to be naturally adaptable to flooding, or whether it does not. For example, if they looked here and saw a contour of 1000 or 900 on here somewhere, they would know we were faking upon this and we really could not hold water at that elevation; but when they see a contour of 235, then they see the stream running along here at its elevation, which has already been testified to by Mr. Kummel—I forget what—235—it is naturally adapted to be flooded.

The Court: The difference between this map and the map last referred to or second last referred to that just showed the development, lot development, is that the theory on which I allowed it to go in was that there was some real estate development work laid out on the ground, there were streets cut through and lots staked off and physical conditions present on the ground that that depicted, and on that theory I thought and still think that it takes it out of the ruling of the Manda case. But here, admittedly, we have a map that depicts lakes that are not existent and which I think can be shown, and that is the only purpose for this map. You

do not need this map to show these developments, because that is on the other map. The only purpose of this map is to show or to visualize to the jury what the flow would be on these potential lake sites.

Mr. Hunt: Yes.

The Court: And they are not on the ground now.

Mr. Hunt: Yes.

The Court: And I think they can visualize it without this for all sufficient purposes. I think they can trace it perhaps.

Mr. Hunt: I thought it would be much more difficult for them to trace it on the contour lines than for us to ——

The Court: I mean the witnesses might say.

Mr. Hunt: The witness, that is true. I see.

The Court: "This is available for a lake, and if it should be used for that, the lines would be so and so." I think this might be objectionable, and I will not allow it for that reason.

Mr. Hunt: May I have an exception?

The Court: You may. Let it be marked then, for identification.

(Map marked O-74 for identification.)

Mr. Hunt: There is a certain rule of evidence

I am not certain about. I fancy the safe rule would be for me to offer them all, one by one, and then have you admit these and exclude those?

The Court: Yes. Bring in the jury.

(Jury returns to the court room.)

Mr. Hunt: If your Honor please, I offer the map which has been admitted as Exhibit O68.

Mr. Frazer: That was already offered and received.

The Court: Yes, but not in the presence of the jury.

Mr. Frazer: No, that was before Major Pratt was called, when the jury was here.

The Court: Very well. That is it. Mr. Anderson identified it and it was offered and accepted over your objection.

Mr. Hunt: May I make a statement of what it is, and then that will settle it. This is a map furnished to the Ringwood Company by the North Jersey District Water Supply Commission, as nearly as the witness can remember early in January, 1925, and at the request of the Ringwood Company. That is Exhibit O68. Where is O69?

Mr. Frazer: O69 was marked for identification and ruled out. Those are the blue prints. The gravel map is the next.

Mr. Hunt: I offer O69 for identification, con-

sisting of four blue prints furnished to the Ringwood Company by the North Jersey District Water Supply Commission, at the request of the Ringwood Company on or about January, 1925.

Mr. Frazer: That was already offered before the jury retired from the court.

The Court: I will stand by that ruling. I think Mr. Frazer was right, that when the jury went out we took up the gravel map. I believe that is correct.

Mr. Hunt: I had forgotten it. Then I offer the so-called gravel map, which is marked Exhibit O70. That I understand is admitted.

The Court: Mr. Frazer makes an objection to it now.

Mr. Frazer: I understand that the offer is limited to the showing of the gravel areas and the points and depths to which various pits and borings were made upon the lands?

The Court: That is correct.

Mr. Frazer: To that extent I have no objection to the gravel map.

The Court: It will be received and marked.

Mr. Hunt: That is correct in a general way, and yet there are certain other things shown on that map that I want to call your attention to when the time comes, to refer to; for example, the proximity of the railroad to the gravel beds, for another example the proximity of the river to the gravel beds.

The Court: Well, if that map shows the presence of the railroad and the roads and that is a proper question and is not ruled out at that time, it will go in with that understanding.

Mr. Hunt: Yes.

Mr. Frazer: I don't know what kind of questions Mr. Hunt may address to it, but if it is merely the relation of the gravel lands to the roads and the railroads, I think that is proper, because I think that shows the location.

The Court: That is my point, because I had so understood the situation, and then I thought Mr. Hunt said it was not to be used for that purpose some time back.

Mr. Hunt: I should not want the jury to have to find the railroad and the river for themselves and take their time.

The Court: No, I understand. All right.

Mr. Hunt: Then, Mr. Anderson, will you just step here.

The Court: Let us get our maps all in place.

Mr. Hunt: All right. Then I offer O71. I offer the map marked O71.

The Court: This is the one showing the real estate?

Mr. Hunt: No; this is the 20-foot interval map on the Wanaque River.

Mr. Lewis: The exposure map, you might call it.

The Court: Oh, yes.

Mr. Frazer: I object to this on the ground it does not show any condition existing and is a mere picture, and for the other reasons that may have been urged before the Court.

The Court: Very well; for the reasons advanced by the Court when it was informally offered in the absence of the jury, it is accepted, and an exception will be allowed you on the Court's ruling.

Mr. Frazer: Yes. I referred to the case of Cappola v. Granda in 88 Law.

The Court: That is marked.

Mr. Hunt: I offer O72.

The Court: What is that one?

Capt. Crockett: That is lots and streets.

Mr. Frazer: I object to that as not showing the conditions upon the ground, and for the reasons which I advanced to your Honor during the informal argument in the absence of the jury.

The Court: It will be allowed for the reasons

stated by the court in the absence of the jury. Let it be marked. It has been marked informally.

Mr. Hunt: Now I offer O73.

The Court: That is the geological map?

Mr. Hunt: Yes.

The Court: Which you may not use, and are putting in now in case you do use it, and is only put in subject to be used by you if you wish and the court will rule on any proper or improper use to which it might be found to be used or sought to be used at the proper time.

Mr. Frazer: I object to that on the ground it is irrelevant, unless Mr. Hunt shows the purpose for which he is offering it.

The Court: Mr. Hunt did suggest several purposes that he might decide to use it for.

Mr. Frazer: All of which I insist are irrelevant, and I renew my objections.

The Court: I will allow it and grant you an exception.

Mr. Hunt: I offer O74. That is the one you refused.

Mr. Frazer: O74 is the lake development, and I object to it.

The Court: The objection is sustained because it shows conditions that are not now present, and

is therefore distinguishable from the one I allowed, the number of which I forget, which shows some building operations which are present in part at least.

Mr. Hunt: And I pray an exception?

The Court: You may have it.

JAMES P. ANDERSON, resumed.

Further direct examination.

By Mr. Hunt:

Q. Now, Mr. Anderson, will you come down.

The Court: Now, that is all, is it, of the maps up to this date?

Mr. Hunt: I think so.

The Court: I think it is.

Mr. Hunt: I hope to the end for us.

Q. Mr. Anderson, will you step down to O70 for a moment, please, and inform the jury what the parts colored in buff indicate?

A. The parts colored in buff indicate the area of gravel.

Q. Within the taking?

A. Within the taking and belonging to the Ringwood Company.

Q. Now by the area of gravel lands towards the south end of the map I point to this stream and ask you if that is the Wanaque River running through it?

A. You are pointing to the Wanaque River.

The Court: What is the number of that Exhibit?

Mr. Hunt: O70.

The Court: All right.

Q. Now I point somewhat to the west of that gravel area, to a black line having cross marks on it running along the map, and ask you what that is—to the east of the gravel bed rather.

A. That is the line of the New York & Greenwood Lake Railroad.

Q. Now I point to these two parallel lines westerly from the railroad, and ask you what that is?

A. That is the Greenwood Lake & Pompton Road—Turnpike.

Q. Now I draw my pointer from along a road that intersects the Greenwood Lake Turnpike and that runs along the northerly boundary of these gravel lands, and I ask you what road that is?

A. That has been known as the Hook Road—a part of it.

The Court: Upper or lower?

The Witness: I have always called it the Upper Hook Road, but there seems to be a difference of opinion regarding that.

The Court: All right.

Q. Now how many acres are there in that gravel bed at the southerly portion of the tract?

A. I will have to consult the map. 46.76 acres.

Q. On what side of the river does it lie?

A. On the west bank of the Wanaque River.

Q. And on the east bank what is the acreage?

A. 5.08 acres.

Q. Now I point at the more northerly gravel bed and again I indicate a stream shown on the map and ask you what that is?

A. That is the Wanaque River.

Q. And I indicate another stream and ask you what that is?

A. That is Cupsaw Brook.

Q. And I indicate this black longitudinal line which is marked with cross lines and ask you what that is?

A. At this point it is the Ringwood Branch connecting Ringwood with the New York & Greenwood Lake Railroad.

Q. The Ringwood Branch of the Erie Railroad?

A. Yes.

Q. Below that point what is it?

A. It is the New York & Greenwood Lake Railroad.

Q. Can you inform the jury by reference to the map how many acres there are in each of these three areas of gravel at the upper end of which are separated from each other by the red road and by a wagon road over here towards the east? Four sections—right? Section 1 is here. What is Section 1?

A. Section 1 contains 14.77 acres; Section 2 contains 167.92 acres; Section 3 ——

Mr. Frazer: I assume the jury is capable of reading. It is all on the map.

Mr. Hunt: It can be put in this way concretely.

A. Section 3 contains 28.79 acres; Section 4 contains 135.54 acres; Section 5 contains 64.1 acres.

Q. Are you able to tell us how many acres there are in all, Mr. Anderson, of gravel in both ends of the tract?

A. I can add them up.

Q. Perhaps I can show you a memorandum.

Mr. Lewis: 449.

The Witness: I don't remember.

Mr. Hunt: May I be permitted to refresh the witness' recollection and put a direct question to him?

The Court: Judge Lewis just asked him that. I heard him.

Mr. Lewis: He says he does not remember.

Q. I show you this (handing), and ask you if that refreshes your recollection?

Mr. Matthews: I cannot hear the witness.

The Court: He is just checking it up.

Mr. Hunt: May I ask whether the witness did not state the number of acres in Section 3 to be 15.76 acres. There are two acreages appearing on the map. One refers to the gravel and one refers to one of the Commission's condemnation pieces or purchased pieces, one of the tracts they got.

Mr. Frazer: That is the reason I suggested it be left to the jury.

Mr. Hunt: He read the Commission's figure, which is 28.79 acres, and I think he should have read 15.76.

Mr. Frazer: I doubt whether it is important. The jury won't remember those figures.

The Court: They won't, and I think Mr. Anderson can refresh his recollection from the legend of the map, and tell us the answer to the last question as to the total acreage. I think he will find it to be something over 449 acres.

Mr. Lewis: If your Honor please, the map shows more than the Ringwood Company's holdings. All we want now to show, as I understand it, is the Ringwood holdings.

Mr. Frazer: I think you are in error there, Judge.

Mr. Hunt: I will ask Mr. Anderson to make it, sir.

Q. Now, you know what the facts are?
A. 449.94 acres, as the total amount of gravel area.

The Court: And that is all owned by the Ringwood Company?

The Witness: That is all owned by the Ringwood Company.

The Court: And is all shown on the map?

The Witness: And is all shown on the map.

The Court: All right.

Q. And is all within the lines of the taking of the Commission?
A. And it is all within the lines of the taking.

The Court: All right.

Mr. Hunt: Now, Exhibit O71, please.

Q. Now, Mr. Anderson, to save time and not putting this map up, I hold it ——

The Court: And the number?

Mr. Hunt: O71.

Mr. Frazer: Which one is that?

Q. (Continuing) And I ask you to state what that map shows?
A. O71 shows the amount of surface below the contour 300 which would be exposed by drawing down the water from the reservoir first 20 feet, then 40 feet, then 60 feet, the amount of surface exposed, or rather the blue shows the reservoir when filled to the contour 300.
Q. You mean this blue line that runs all around the edge of it shows where the water comes to when it is filled up to elevation 300?
A. Yes.
Q. Now, where will the water come to when it is drawn down 20 feet, that is, full only to elevation

280? Will you come out to the map, please, and point it out?

A. (Witness approaches map.) When the water is drawn to contour 280, that portion shown on the map in blue of the reservoir would be exposed.

Q. And the water will cover the portion which is covered in what color?

A. Red, green and buff.

Q. Now, when it is drawn down to elevation 260, that is when 40 feet of water have been drawn out of it, what will be exposed?

A. That portion of the map colored in red and in blue.

Q. And the only part covered in green and buff will be covered with water?

A. Green and buff will be covered with water.

Q. Now, to what extent can the reservoir be drawn down by means which the Water Supply Commission is providing for that purpose, namely, the intake of their aqueduct?

A. I have been informed that intake is at elevation 240.

Q. Now, when the water is drawn down to that level, what part will be exposed?

A. That portion of the map which is colored in blue, in red and in green.

Q. And the part covered with water will be ——

A. That shown on the map in buff or brown.

Q. Mr. Anderson, do you know the number of acres of land indicated by each of these colorings?

A. No, I do not.

Q. You have never figured that out?

A. No, we never have.

Q. Mr. Anderson, will you step down to O72, please. Prior to March 19th, 1925, which is the date of the commencement of this condemnation proceeding, had any part of the lands being taken

herein in any manner plotted and staked out, dealt with on the ground differently than the other lands in the taking?

A. Yes.

Q. Now, how are such parts as were so dealt with indicated on O72? Just point that out, will you, Mr. Anderson?

A. They are the areas which are shown here which I am drawing the pointer over.

Q. Along the west side of the Wanaque River?

A. Along the east side.

Q. East side of the Wanaque River in a part of tract 80 as indicated by the Water Supply Commission's tract numbers, is that correct?

A. That is correct.

Q. Now, show me another place?

A. (Indicating) Where I am drawing the pointer along the west bank of the Wanaque River.

Q. And that is in the southerly subdivision of tract 80 as marked on the Water Supply Commission's map, is it not?

A. That is true.

Q. While the others first pointed out was what we have called the northerly subdivision of tract 80, were they not?

A. That is true.

Q. Now, the others.

A. Where I am drawing the pointer along on the westerly side of the Wanaque River, a distance of about 800 feet wide.

Q. And that is in the easterly side of the northerly subdivision of tract 80 as marked by the Water Supply Commission, is it not?

A. That is correct.

Q. Now, Mr. Anderson, turning to one of those three locations, please state and illustrate by ref-

erence to the map, if you find it convenient, what was done by the Ringwood Company prior to March 19th, 1925?

The Court: This opens up another phase of his testimony, and rather than to begin on that, it being within two minutes of the time I promised you that I would take an adjournment, I think this is as good a time as any.

Mr. Hunt: I see.

The Court: We will take a recess therefore, until ten tomorrow morning.

JAMES P. ANDERSON, resumed.

Further direct examination.

By Mr. Hunt:

Q. Now when we rested last night a question had been put but not answered, and with your Honor's permission I will read it:

"Q. Now, Mr. Anderson, turning to one of those three locations (that is the three laid out shown on O72), please state and illustrate by reference to the map, if you find it convenient, what was done by the Ringwood Company prior to March 19th, 1925?" Will you step down to the map and do that, please, Mr. Anderson. I said, "turning to one of these three locations." That is the three lot layouts that you had already pointed out. Please state and illustrate by reference to the map if you find it convenient, what was done by the Ringwood Company prior to March 19th, 1925. Any one of the three locations, I don't care which one.

A. On the section located above the West Brook Bridge over the Wanaque River, the portion indicated on this map in lots was cleared of brush and small trees, made presentable, those trees being left to contribute to the artistic lay of the land; then roads were put in from this point on the West Brook Road to a point indicated on the map where I have the pointer, and then to the main township road, the township road extending from the Greenwood Lake and Pompton Turnpike to the West Brook Bridge. This road was put in and covered with mine tailings—crushed rock. Also the road as indicated by the pointer south of the road lead-

ing to the West Brook Bridge and back to the so-called Forge Road.

Q. You mean that also was improved by mine tailings?

A. That also was improved with mine tailings. There was also a water supply put in consisting of a tank on the hill, a pump and well. This water was piped from the tank up the road and around up to the location where the pointer is now.

Q. That is about how many hundred feet, Mr. Anderson, approximately?

A. About 1600 to 1800.

Q. Water under pressure or just run along that course?

A. It was. There were also ten bungalows had been built on those places, I believe four below the road, I may be mistaken about that, but I think there were four there and six up along the road, above the road leading to the bridge over the Wanaque River. These houses were supplied by water by an out-of-door hydrant.

By the Court:

Q. Mr. Anderson, how do you designate that particular development or area, by what name do you call it?

A. That is called Wanaque Glens.

Q. That is not what has been referred to as the German Village, is it?

A. It is not.

Q. That is on the stream lower down?

A. That is on the stream lower down, where I now bring my pointer.

Q. Very well.

A. The name German Village was foisted on us

by the representatives of the Commission. It was not a name given by the Ringwood Company.

Q. I understand. I say it has been referred to as the German Village?

A. Yes, it has.

The Court: I do not say that is its name.

Mr. Frazer: I think it is unfortunate these maps are all turned around, the data in the opposite direction from the one that was originally put in. You have north running this way. The correct way would be ——

Mr. Hunt: We cannot change it.

Mr. Frazer: I was just saying that in the early part of this case the order was reversed, and now everything has got to be transposed when we speak of it. We thought when going upstream we were on the right hand side. On this map we are going downstream.

The Court: I think it is a very good thing for the jury to keep in mind, so they are not confused.

By Mr. Hunt:

Q. Do you know anything, Mr. Anderson, of the nationality of the persons who bought the lots in what Mr. Hershfield called the German Village?

A. No; but I know there are a number of German names, but I don't know anything further about it.

Q. What language do those people speak?

Mr. Frazer: Immaterial. I object to it as immaterial.

A. English as far as I have spoken with them.

Mr. Hunt: If it has any materiality, it is the materiality that is given by Mr. Hershfield and Mr. Fay constantly referring to it as the German Village, as though it were a foreign settlement.

The Court: It now develops that it is not.

Mr. Frazer: He has admitted they are American citizens.

Mr. Hunt: Not that I mean to intimate that I have any less regard for them because their names are German.

Mr. Frazer: This is again wasting time.

Mr. Hunt: Because of their derivation.

Mr. Frazer: Let's get down to business.

Q. Now, Mr. Anderson, have you described what was done there on what the Ringwood Company calls the Wanaque Glens tract?

A. Yes. I think that is in substance what was done.

Q. How about the staking out on the ground of any additional roads on which mine tailings were not yet placed in March, 1925?

A. There are no roads staked out in the upper section. That is, the section near the Stonetown Bridge over the Wanaque River. That so far as it had gone is complete.

Q. Yes, that is complete. Now then, turn to another of the lot sections shown on the map and describe what was done there?

A. There was existing at the time, before 1924, more or less of a road from the bridge over the Wanaque River near the old Furnace location, extending down to the property as I draw this pointer —this road was put in passable shape by the Ringwood Company. Roads were staked out as shown on this map. Roads, most of them, hardly needed anything more than driving over, as they were on, practically all of them, on a gravel deposit.

Q. And what is the natural contour and topography of the ground there?

A. It is fairly plain all through this section here, some slight depressions at various places, but it is practically a flat.

Q. Was some lots sold in either of these sections that you have referred to?

A. There was some lots sold in this section; there were some lots sold in this section; and two, I believe, in this section above the road. (Indicating.)

The Court: Has that section any name?

The Witness: Down here? Above? (Indicating.)

The Court: That you have just been testifying about?

The Witness: That has been called usually the Riverside Drive.

The Court: Riverside Drive?

The Witness: Riverside Drive.

The Court: All right. All that you have been now testifying to has been about Riverside Drive?

The Witness. The last.

The Court: The last, I mean.

The Witness: The last was around Riverside Drive.

The Court: There are two sections to that, apparently.

The Witness: There are two sections.

Mr. Frazer: May I ask for information whether the Riverside Drive section is the same as the so-called German Village—includes the German Village?

The Witness: It does.

Q. Mr. Anderson, I show you a printed book ——

The Court: Just a moment, Mr. Hunt. Does that comprise all three of the developments? I thought there were three distinct places, Mr. Hunt.

Mr. Hunt: He described two of them in his last answers as one, your Honor.

The Court: That is all right.

Mr. Hunt: Drawing his pointer around so as to embrace both.

The Court: That is all right.

Mr. Frazer: And has the other a name?

Mr. Hunt: Now, Mr. Frazer is referring to the development on the west side of the Wanaque River in what we have called the southerly subdivision of Tract 80 as shown on the Water Commission's map.

Mr. Frazer: Mr. Hershfield suggests we put it as "Unter der Linden" for that one.

Mr. Hunt: And Mr. Frazer asks whether that has any name.

The Witness: Not that I know of.

The Court: I understand that is part of the Riverside Drive.

The Witness: Well, we have so called it.

The Court: All right, yes.

Mr. Hunt: Now, take the stand again, please, Mr. Anderson.

(Witness resumes stand.)

Q. I show you a printed book and ask you if you know what that is?

A. That is the report for 1925 of the North Jersey District Water Supply Commission.

Mr. Hunt: I offer this in evidence, if your Honor please.

Mr. Frazer: I object.

The Court: What is the purpose of the offer, Mr. Hunt?

Mr. Hunt: It contains some matter, without confining myself wholly to this phase of the offer, it contains some matter that I wish to bring in evidence before this jury as constituting admission against interest on the part of the Water Supply Commission. It contains other matter that I wish to bring before this jury as constituting admissions by the Water Supply Commission which it is competent for the jury to find, if they do so find, have a bearing upon the property under condemnation. Other matter, which it is competent for the jury to find, has a bearing upon the question of whether or not and to what extent our remaining lands not taken will be damaged by this taking.

The Court: Suppose the Water Supply Commission, if you can suppose such a thing, wished to get an appropriation from the Legislature for some purpose or other, and did not wish to disclose what it had in mind, or what the cost of the project might be and, therefore, gave out a report which did not disclose the real situation, designedly did not disclose it, because of adverse effect it might have on the legislative body, would you say then that such a report, not complete or perhaps even susceptible of incorrect statement of fact, would be evidential?

Mr. Hunt: I would say if they put out such a designedly misleading and dishonest report of it, they are bound by it in so far as it has material bearing upon the private rights of other persons

The Court: The point is, is this evidence?

Mr. Hunt: Sir?

The Court: The point is, is this evidence?

Mr. Hunt: Yes, sir, that is evidence.

The Court: I did not suppose so. I will hear you on that, Mr. Frazer.

Mr. Hunt: Then, is it to be argued on the assumption it is dishonest and a misleading report?

The Court: No, no, because I made it perfectly clear, that it might be analogous ——

Mr. Hunt: Your Honor said suppose so and so, and you have not said, in inviting counsel now to argue, you have not said suppose on the other hand if this is an honest and correct report of the things that it purports to cover.

The Court: I have not the slighest idea that this is a dishonest report. Nothing was further from my thoughts from such a statement.

Mr. Hunt: Then I submit, your Honor, that the question ought to be argued on the assumption that it is an honest report.

The Court: I am asking counsel to argue on the legal admissiblity of this document as legal evidence, and only that.

Mr. Hunt: I, your Honor, do not ask any argument. If your Honor wishes to rule on the admis-

sion of the book I am content to take an exception and go on, and I prefer not to take so much time in argument.

The Court: I am perfectly willing to admit the book if it has evidential value under the rules of evidence.

Mr. Frazer: I am perfectly willing for you to admit it if it is of evidential value. I have nothing to reply to because he says I have a report which I wish to offer, because somewhere contained in this report there are certain matters which I wish to refer to. If Mr. Hunt will be so kind as to show the Court what part of the report he considers to be evidential I shall be delighted to answer his legal argument, but this mere play to try to give an impression that we have said something in the report which we are afraid to have come out before the jury, this desire to take a volume of some 349 or 375 pages, or something like that, and by a careful examination to find somewheres a hidden sentence, hidden in some paragraph, a single paragraph, which says this is a fine piece of land, and then to wave it up to the jury and say look what the Water Commission has said in its report, a beautiful piece of land.

Mr. Hunt: That illustrates one use I could make of this book.

Mr. Frazer: To garble the report.

Mr. Hunt: That is not the precise use I had intended to make of it, but it illustrates one use I could well make of it.

The Court: Suppose it says the flowage line would be at 365 feet, would you say that is evidential to dispute the testimony that might be put in by the other witnesses that the flowage line is now 305 feet?

Mr. Hunt: I would say it raised a situation that called for that situation to be explained, but that is not so. It says the flow line is 300 feet.

The Court: I am not saying that. I say it for illustration.

Mr. Hunt: Suppose it says that. I do not assert it says that. This is only by way of illustration, suppose it said the property of the Ringwood Company being taken in this condemnation was the best property for the purpose of production of a public water supply anywhere within a distance at which it lies from the City of Newark, wouldn't I be entitled to the benefit of such an admission by the Water Supply Commission concerning the character and natural adaptability of my property? Certainly I would.

Mr. Frazer: That is strategic value, sir, which in all of the cases outside of the antediluvian case.

Mr. Hunt: I ask for a ruling, if the Court please.

Mr. Frazer: I have a right to argue on your proposition.

The Court: I shall allow argument on the point.

Mr. Frazer: The antediluvian case of the Rum

River Boom Company which has been substantially modified in 98 U. S.——

Mr. Hunt: Which was reaffirmed by the Supreme Court a year ago.

Mr. Frazer: I am arguing. May I do so without interruption?

The Court: You may.

Mr. Frazer: Which has been, as far as the doctrine which Mr. Hunt continuously affirms, has been modified by very much later decisions down to 239 and 250 and so on, United States. Aside from that possibility, the strategic value of land has always been held by our Supreme Court, and the decisions in New York, not to be admissible, particularly where it appears that the land sought to be acquired for a particular public purpose is not the only land, and that the power of condemnation has to be invoked in order to bring about the improvement which the public improvement which it is proposed admittedly, concededly in this case we have had to invoke the power of condemnation to get this land. We have acquired other large tracts of land which have appeared on the map, so that whatever may appear—I do not know what appears in here, but the very fact that we came up to this section for the development of this great public water supply would indicate the fact that the Commission and the municipalities who are paying for the job believe that this was the place to put a water supply. I think that is perfectly logical, whatever may be said in here, but that we admitted that the Ringwood Company's lands were the most valuable

lands irrespective of others we had to acquire, does not follow from such a statement at all, even though it be in the report. I do not know whether it is or not.

The Court: I think it might be evidential—some things that might be in that book might be evidential. I do not know.

Mr. Frazer: I do not either, sir.

The Court: And if Mr. Hunt will point out specifically something that he wishes to introduce it for I will rule on that admissibility of it for that purpose. There may be and probably are things in that report that are not evidential.

Mr. Frazer: I have no doubt of that.

Mr. Hunt: May it be marked for identification, then?

The Court: Yes, sir.

(Report of the North Jersey District Water Supply Commission for 1925, marked Exhibit O75 for identification.)

Mr. Frazer: So far as the book is concerned, I am willing to have the jury see the book and to hand each one of them a copy of that book.

The Court: There may be references made to it which, in his judgment, is not evidential, and that is the only concern I have.

Mr. Matthews: May I say a word to Mr. Frazer?

Mr. Hunt: This exhibit, O75 for identification—oh, well ——

The Court: You may go on. Counsel is asking for permission to confer with one another.

Mr. Hunt: (Continuing) This report of the Water Supply Commission issued in 1925 has been marked Exhibit O75 for identification, and I offer it in evidence.

Mr. Frazer: I object.

The Court: The objection is sustained in view of the fact that you do not specifically point out the specific thing in it that you are offering it for.

Mr. Hunt: And I pray an exception.

The Court: I cannot admit it in its entirety because in my opinion there are matters in it that are not evidential, and I cannot separate the good from the bad. Under these circumstances, you may have an exception.

Mr. Hunt: And I pray an exception. And I may refer, as occasion may require, to the report which I am seeking to put in evidence certain specific portions of it.

The Court: You may do so.

Mr. Hunt: Upon which subsequent rulings may be made. May I be permitted, in view of the statement just made by counsel for the Water Supply Commission in the presence of the jury characterizing the case of Mississippi & Rum River Boom Company against Patterson, decided by the Supreme Court of the United States some years ago, quite a number of years ago, as an antediluvian case, to call for the production from the Court's library of Volume 267 of the United States Reports for the purpose of referring to the case of Mitchell against the United States therein reported at page 344; that case being decided on the 2nd day of March, 1925, a little more than a year ago, and a little less than two years ago, for the purpose of showing that that case constitutes a full, unqualified reaffirmance of the doctrine of the Rum River Boom Company case which is specifically cited by name, volume and page of its report, for the purpose of showing that its doctrine is thus reaffirmed and re-declared by the Federal Supreme Court in March, 1925.

Mr. Frazer: Will you give me that citation again, Mr. Hunt?

Mr. Hunt: Mitchell against The United States, 267 United States 345.

The Court: Will one of you gentlemen go down and get it, please?

Mr. Matthews: I think it is time, if your Honor please, that it might be stated to the jury, so long as statements are made by counsel frequently, cases are not antediluvian but ante-moesian in books as being the law, but only with respect to certain points of admissibility of evidence.

Mr. Hunt: If we have this book we can see where it is cited.

The Court: What is the number?

Mr. Hunt: 267 U. S., if my citation in the brief is correct.

Mr. Frazer: I was probably in error when I referred to it as antediluvian.

The Court: I had a reference to it. I think, before, when you referred to it you did not give us the book and page, or I did not get it down.

Q. Now, Mr. Anderson, please state what characteristics possessed by land lying in a natural state render it available or adaptable or capable for the production of water power.

Mr. Frazer: I object. This man has not been qualified as an expert on water power or anything else; he has been put on to identify certain maps.

Mr. Hunt: He testified he was an engineer, Bachelor of Science in Civil Engineering.

The Court: He has been thoroughly conversant with this property for many years. It would seem to me it would not take very much of an expert to answer this particular question. I think he is qualified and I will allow him to answer.

Mr. Frazer: Exception, please.

The Court: Yes.

A. Where the land is so situated as to form a natural basin, that is, that the slopes around the valley shall be such that they will contain water;

also that there be slopes around the valley at some point coming close enough together, and the character of the soil, foundations, and so forth, be such that a dam can be put in at an economic cost, that is, economic cost relative to the amount of basin in area which may be enclosed.

Q. Now what else is necessary besides that lie of the land?

A. It is necessary that this basin shall be on a watershed, that is, it must have sufficient watershed from which water naturally can be drawn to this basin, or, rather, naturally runs to this basin.

Q. I point on the map, Exhibit O72, to the place down near the Hook Road where the concrete dam, which the Court permitted Dr. Kummel to testify to, is located, and ask you to state whether or not these conditions that you have just described exist there?

A. They do exist.

Q. Now, Mr. Anderson, given the existence of such conditions, upon what factors does the question depend, how much water power can be developed at a given place?

Mr. Frazer: I object. Now we are going into constructions.

Mr. Hunt: Not at all.

Mr. Frazer: We are gradually going to come down to this: By building up, step by step, is it possible to put a dam there?

Mr. Hunt: I am going to ask him if it is possible.

Mr. Frazer: The economic conditions, are they

correct? What are the factors? He has already suggested that lowness of cost, the presence of water, and so on. The next problem we are going to have, "Can these other places in the Ringwood lands, where the conditions are such?" "Yes." "All of these economic factors, and so forth." "Yes."

Mr. Hunt: I am not going to ask him that.

The Court: Very well, I am going to allow it.

Mr. Frazer: I have not finished my argument, but very well. Exception?

The Court: You may have it.

(Question repeated by stenographer.)

A. The amount of water power ——

The Court: At the Ryerson?

Mr. Hunt: Anywhere in the world, your Honor. It is all the same in any case, and I am just asking what the factors are.

The Court: All right.

A. The amount of water power that can be produced at any place having the characteristics stated

in the question would depend upon head and quantity of water.

Q. What does head mean?

A. Head means the distance from the surface of the water—to illustrate, in back of a dam possibly, to the water level below the bottom of the dam.

Q. The water level in the tailrace as it runs away from the wheel?

A. Yes, sir.

Q. The water power is developed by having water run down in the wheel?

A. Yes.

Mr. Frazer: I object to that, leading question.

The Court: I will allow it. It is slightly leading, but I will allow it.

(Answer repeated by stenographer.)

Q. Now suppose that there could be brought down the Wanaque River over and above the water that now comes down it and in such regulated flow throughout the 24 hours as the Ringwood Company might desire, a quantity of water sufficient, together with the natural flow of the intermediate streams between Greenwood Lake and the site of the old Ryerson Forge, that you pointed out on Exhibit O14 a few days ago, for all the necessary purposes of a forge with two fires and a sawmill with one saw, at the site of Ryerson's Long Pond forge, as it existed in 1837, and as was pointed out by you the other day on O14; would or would not that fact

add to the amount of water power that could be produced in the Ringwood property at the site of the Ryerson Furnace where that concrete dam mentioned in your previous question now stands?

Mr. Frazer: I object.

The Court: Why?

Mr. Frazer: On the ground there is no evidence before this court of any such statement as is included in this hypothetical question. It has been ruled out.

The Court: You mean evidence of the Ryerson grant?

Mr. Frazer: Of the Ryerson grant. Moreover, assuming that the evidence were there, that statement which Mr. Hunt makes of this flow in addition to the flow of the Wanaque River is not an accurate statement.

The Court: I will hear you, Mr. Hunt.

Mr. Hunt: I do not want to argue it in extenso at all, your Honor, because I do not want to take that much time. The other day, when I offered the deed creating the Ryerson right, now the property of the Ringwood Company, it was excluded upon the ground that this taking did not affect the Ryerson right, for the reason that Ryerson's old works were up here above the line of the taking. Now

of course it is only one of the facts of nature which requires no proof that if water is run from Greenwood Lake and comes down here to the tract of Ryerson's old works, it has to go down in the Wanaque River, and it would reach this place called the Ryerson Furnace in these modern times. Of course, I intend arguing as a legal proposition that if the Ringwood Company should exercise that Ryerson right so as to cause water to flow down to the site of Ryerson's old 1837 works, it could not, therefore, prevent the water from going on down the Wanaque River in the natural channel and reaching what is now called the Ryerson Furnace dam site, because, as counsel for the Commission has so frequently asserted here and I have not denied, the Ringwood Company does not possess any right of diversion. My offer of this deed of Ryerson to the Morris Canal & Banking Company in 1837 creating this reservation or right, was excluded upon the ground, and only on the ground that the taking did not affect the Ryerson right, because it did not embrace the site of Ryerson's 1837 works, where the right was to be exercised. Now, I have put this further question for the purpose of developing that this taking does prevent us from having the beneficial use of the waters which flow to us, or the waters the flow of which flows to us under the Ryerson right, at this Ryerson Furnace site down by the Hook Road, within the lines of the taking. After an answer to this question, I am going to renew my offer of the deed from Ryerson to the Morris Canal & Banking Company.

The Court: You say, in addition to your objection, namely, that it is based on facts in a document

that was ruled out because immaterial, that it is not based upon a correct statement of facts?

Mr. Frazer: Yes.

The Court: Wherein is the incorrect statement of facts?

Mr. Frazer: In the first place, the natural flow, so-called, of the Wanaque River includes waters from Greenwood Lake. In his question he has stated that in addition to the natural flow ——

Mr. Hunt: One moment, Mr. Frazer.

Mr. Frazer: Beyond that, if I might answer a little, from Mr. Hunt's statement he is assuming that all of the lower riparian owners have no control whatsoever over the water passing their properties. There are many places on this river where the river bank is not owned by the Ringwood Company between the point where, assuming the Ryerson reservation to be valid, the right would arise at the point where now Mr. Hunt says the right is to be exercised by the water. There are many places where, if the Ringwood Company have the right to stop the water in these ponds and lakes which they are proposing to create, so have the other riparian owners, and this whole hypothesis, which is based upon the delivery of a steady volume of water down the river without interruption, is quite capable of falling flat by the mere erection upon his own land of a dam by one of the other riparian owners.

The Court: I will sustain the objection on the ground that it is too remote and too speculative to be of evidential value.

Mr. Hunt: May I have an exception?

The Court: Yes.

Mr. Hunt: Will your Honor permit me to make my offer in a little different form, in case there should have been any defect in my question? I renew my offer of the certified copy of the deed from Jacob M. Ryerson and wife to the Morris Canal & Banking Company, dated the 27th day of March, 1837, and the deed from Jacob M. Ryerson and others to the Morris Canal & Banking Company, dated the 27th day of March, 1837, they both bearing the same date, I will add to the description of the first one that it is transcribed from Liber V-3 of Deeds, page 322, and the second one, that it is transcribed from Liber V-3 of Deeds, page 317. I renew the offer of these deeds upon the ground that we have a right to show the rights created by those deeds and which today belong to and inure to the benefit of the Ringwood Company, because of the fact that by the exercise of those rights the Ringwood Company could develop at the site of the concrete dam ——

Mr. Frazer: I object to what they can develop.

Mr. Hunt:——under erection. I won't state any quantities. That is to say ——

Mr. Frazer: You are stating a principle of law. You do not have to point it out on the map. He is stating a principle of law from the map.

Mr. Hunt: —— at the site of the concrete dam standing on the lands of the Ringwood Company

within the taking, a few hundred feet north of the Hook Road, an amount of water power so substantially greater than the amount that can be produced without the exercise of this right as to materially and substantially affect the value of the land taken, May I hear it read, your Honor?

The Court: Certainly.

(Offer repeated by stenographer.)

The Court: The objection is sustained for the reasons I have already given.

Mr. Hunt: I pray an exception.

The Court: You may have an exception.

Mr. Hunt: If the Court please, owing to Mr. Anderson's duties and the extent of his responsibilities with the Ringwood Company, and owing to the wide ramifications of this case, I may want to at some future time recall him to deal with some phase of the matter not so far brought before the jury and which should be more logically dealt with at the time that that particular subject matter is being presented.

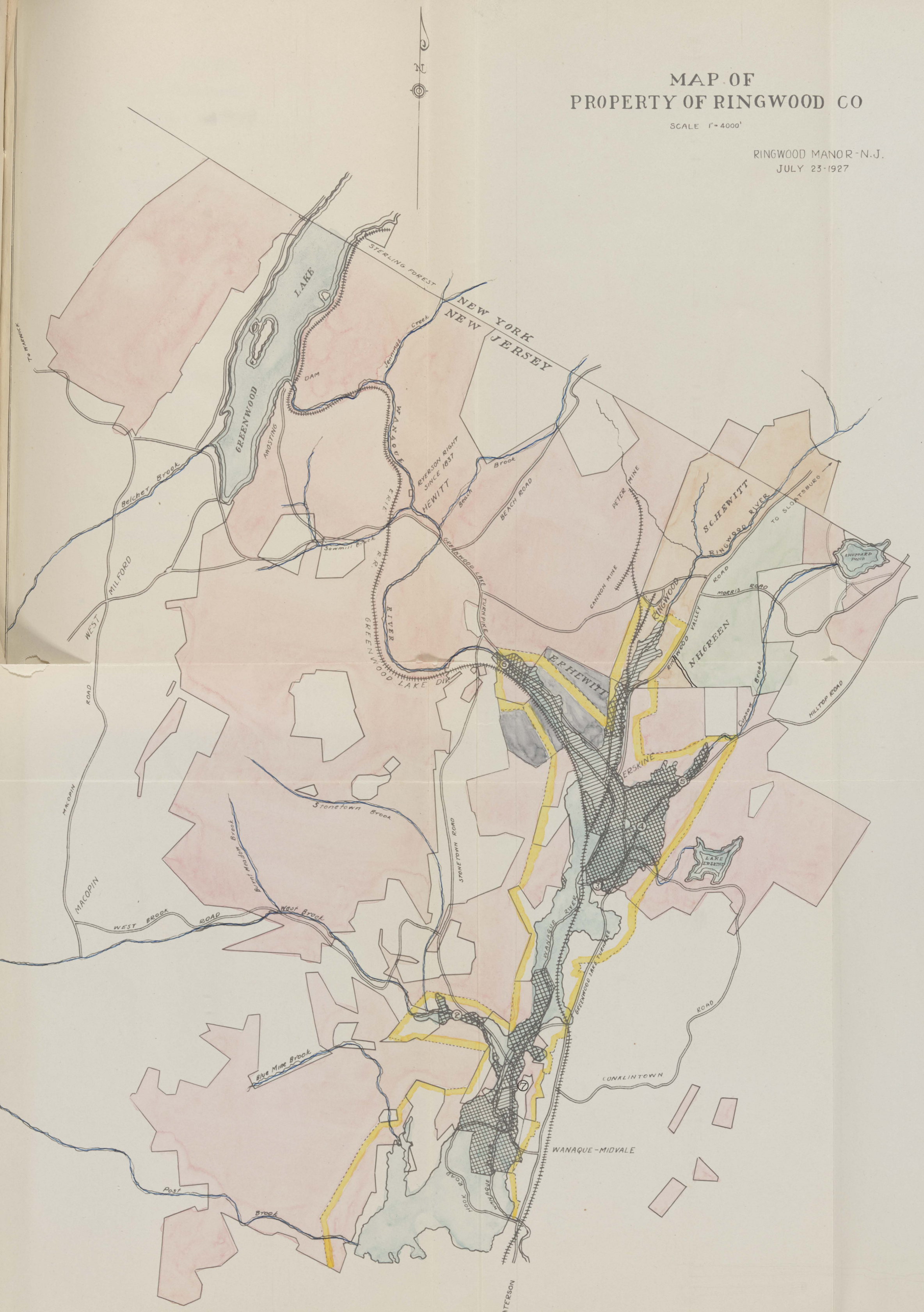
The Court: I have no objection to it.

Mr. Hunt: All right, sir. Then with that leave reserved, I offer him for cross-examination.

MAP OF
PROPERTY OF RINGWOOD CO

SCALE 1" = 4000'

RINGWOOD MANOR - N.J.
JULY 23-1927



LEGEND

- PROPERTY OF RINGWOOD Co
- PROPERTY OF N.H. GREEN
- PROPERTY OF S.C. HEWITT
- PROPERTY OF E.R. HEWITT
- N.J.D.W.S.C. TAKING LINE
- (1) RYERSON DAM
- (2) WEST BROOK DAM
- (3) LOWER CUPSAW DAM
- (4) MIDDLE CUPSAW DAM
- (5) UPPER CUPSAW DAM
- (6) WHEELER DAM
- FLOWED LAND, OWNED IN FEE
- FLOWED LAND, RINGWOOD CO'S RIGHTS
- (7) HEWITT DAM

INDEX

PAGE

PLEADINGS.

Notice and grounds of Appeal 1

Judgment Record 31

Petition 31

Order Appointing Commissioners 38

Commissioners' Award 46

Commissioners' Award (Supplementary) .. 49

Stipulation 53

Notice of Appeal (Condemnor) 55

Notice of Appeal (Owner) 57

Order Framing Issue 64

Judgment 66

Court's Charge to Jury 855

Condemnor's Exceptions to Charge 868

Appellant's Exceptions to Charge..... 869

Stipulation..... 935

TESTIMONY.

James P. Anderson:

Direct examination 188

Cross-examination 193

PAGE

Further direct examination 196
Further cross-examination 201
Further direct examination 202
Further cross-examination 339
Further direct examination 343
Further cross-examination 358
Further direct examination 364
Further cross-examination 366
Further direct examination 369
Further cross-examination 372
Further direct examination 376
Further cross-examination 451
Further re-direct examination 486
Further re-cross examination 489
Further cross-examination 490
Further re-direct examination 495
Further direct examination 513
Further cross-examination 519

Robert E. Crockett:
Direct examination 524
Cross-examination 532
Re-direct examination 537

Discussion Concerning Closing 804

PAGE

Robert B. Gage:
Direct examination 636
Cross-examination 644
Re-direct examination 646
Re-cross examination 646

Frank F. Gallagher:
Direct examination 765
Cross-examination 772
Further direct examination 776

Henry G. Hershfield:
Direct examination 71
Cross-examination 78
Further direct examination 96

Garrett C. Houman:
Direct examination 674
Cross-examination 689

Henry B. Kummel:
Direct examination 104

Clifford F. McAvoy:
Direct examination 808
Cross-examination 838
Re-direct examination 853

PAGE

Stewart M. Neff:
Direct examination 651
Cross-examination 657
Further direct examination..... 658
Further cross-examination 660

Opening Address on Behalf of Water Supply Commission 71

Felix G. Pittet:
Direct examination 602
Cross-examination 622
Re-direct examination 622
Re-cross examination 632
Further re-direct examination 633
Further re-cross examination 633

Proceedings at Chambers 69

James G. Shaw:
Direct examination 789

Cornelius C. Vermeule:
Direct examination 697
Cross-examination 705
Re-direct examination 716

Jay M. Whitham:
Direct examination 667

PAGE

EXHIBITS.

Appendix 1, Deed, Ryerson to Morris Canal & Banking Co. 871

Appendix 2, Deed, Ryerson to Morris Canal & Banking Co. 878

Appendix 3, Extracts from "North Jersey District Water Supply Commission's Report, 1925" 884

Appendix 4, Permits to Build Dams on Ringwood Property 909

Exhibit O-86, Letters and Reports of Analysis 925

Cross-examination.

By Mr. Frazer:

Q. Mr. Anderson, you produced a series of title deeds when you were first on the stand?

A. Yes.

Q. And with the exception of O41 and O42 for identification, do those title deeds constitute the full title of the Ringwood Company to the lands which are shown on the big map?

A. They are supposed to show the entire chain from the map of Ryerson to Cooper of 1853. Those deeds are not supposed to show the entire chain of all the tracts that have been bought.

Q. But are there deeds in relation to all of the tracts?

A. There are.

Q. And including all of these so-called flowage rights and other things of that kind.

A. That is true.

Q. Always with the exception which I have mentioned?

A. That is true, so far as I know.

Q. Referring to Exhibit O72, Mr. Anderson, the southerly development you call the Ringwood Glens; is that correct?

A. Wanaque Glens.

Q. Wanaque Glens. You stated there had been sales on that property, out of that property?

A. There have been sales of that property.

Q. Can you tell me to whom?

A. Oh, I don't think I can give you the names, no. Marini was one.

Q. Marini, how large a tract?
A. I can't tell you.
Q. What price was paid?
A. I can't tell you.
Q. What knowledge have you of these sales to which you have testified?
A. I have seen the deeds probably when they were made, but not being my special province I have only taken a casual notice of them.
Q. So you have just made general statements whether you knew the facts or not?
A. I know the fact that the sales were made.
Q. You don't know how many or to whom with the exception of Marini?
A. There were two above the road which crosses the Wanaque River, the Stonetown Road, as I testified.
Q. Two above the Stonetown Road?
A. Yes, sir.
Q. When was this staking done, by the way?
A. We began work on that section early in 1924. I think in January, 1924.
Q. About the time that you received the map from the District Water Supply Commission indicating what lands the District Water Supply Commission desired from the Ringwood Company?
A. No, I think not. I think I testified that the map we received from the Ringwood Company was dated November 24th, 1924.
Q. It was January, 1925, that map came in, wasn't it, and you started this in January, 1924, a year before?
A. A year before.

Mr. Hunt: May the witness be permitted to finish his answer he was making when counsel interrupted?

Mr. Frazer: I admit that I was in error on the date, and I was trying to save time.

Mr. Hunt: I would like the witness to be permitted to answer, so the jury may judge whether counsel was in error or whether he was being ——

Mr. Frazer: I have a right to withdraw the question, which I was in the attempt of doing.

Mr. Hunt: I have not heard you withdraw the question, and I ask that the witness be permitted to answer.

The Court: I will allow him to finish his reply, if he has not. I understood he had, Mr. Hunt. Had you finished your reply, Mr. Anderson?

The Witness: I think so.

Mr. Hunt: I thought you were interrupted.

The Witness: I do not think so.

Q. By the way, do you know when you first received communications from the District Water Supply Commission in relation to the acquisition of lands by that Commission for the Wanaque Reservoir?
A. Oh, I don't know when it was, I am sure.
Q. Well, roughly. It was before January 1st, 1925?
A. Probably.

Mr. Hunt: I object to that as immaterial.

Q. Marini, how large a tract?
A. I can't tell you.
Q. What price was paid?
A. I can't tell you.
Q. What knowledge have you of these sales to which you have testified?
A. I have seen the deeds probably when they were made, but not being my special province I have only taken a casual notice of them.
Q. So you have just made general statements whether you knew the facts or not?
A. I know the fact that the sales were made.
Q. You don't know how many or to whom with the exception of Marini?
A. There were two above the road which crosses the Wanaque River, the Stonetown Road, as I testified.
Q. Two above the Stonetown Road?
A. Yes, sir.
Q. When was this staking done, by the way?
A. We began work on that section early in 1924. I think in January, 1924.
Q. About the time that you received the map from the District Water Supply Commission indicating what lands the District Water Supply Commission desired from the Ringwood Company?
A. No, I think not. I think I testified that the map we received from the Ringwood Company was dated November 24th, 1924.
Q. It was January, 1925, that map came in, wasn't it, and you started this in January, 1924, a year before?
A. A year before.

Mr. Hunt: May the witness be permitted to finish his answer he was making when counsel interrupted?

Mr. Frazer: I admit that I was in error on the date, and I was trying to save time.

Mr. Hunt: I would like the witness to be permitted to answer, so the jury may judge whether counsel was in error or whether he was being ——

Mr. Frazer: I have a right to withdraw the question, which I was in the attempt of doing.

Mr. Hunt: I have not heard you withdraw the question, and I ask that the witness be permitted to answer.

The Court: I will allow him to finish his reply, if he has not. I understood he had, Mr. Hunt. Had you finished your reply, Mr. Anderson?

The Witness: I think so.

Mr. Hunt: I thought you were interrupted.

The Witness: I do not think so.

Q. By the way, do you know when you first received communications from the District Water Supply Commission in relation to the acquisition of lands by that Commission for the Wanaque Reservoir?
A. Oh, I don't know when it was, I am sure.
Q. Well, roughly. It was before January 1st, 1925?
A. Probably.

Mr. Hunt: I object to that as immaterial.

Q. Or before January 1st, 1924?

The Court: What is the materiality?

Mr. Frazer: I want to show that these developments, and I think I have a right to show that these developments were made in bad faith.

The Court: I will allow the question. I think it is material if that is the purpose.

Mr. Hunt: I object on the ground that the Water Supply Commission had no more control over the Ringwood property before the commencement of the condemnation proceeding than they have over your Honor's property today.

The Court: That is true, but if it should develop that after the owner knew what the plans of the Commission were, I think it is evidential to show what their actions were then with respect to the development of their property, for the jury to say whether they were acting in good faith or not, whether the values that they claim were thus created, were in fact thus created.

Q. Was it before January 1st, 1924, Mr. Anderson?

A. I can't tell you, but I can state this, that your Commission or some other Commission, some other body—I heard this thing discussed since at least 1909.

Q. Were you present at a conference in New York at the Ringwood offices when members of the District Water Supply Commission were present in the year 1923, when the question of an agreement in

relation to the sale of the necessary lands was discussed between the members of the District Water Supply Commission and the Ringwood Company?

A. I do not think I was. I don't remember, but I don't think I was there.

Q. Now coming down to the Riverside Drive section, how many parcels have been sold out of the easterly portion of the Riverside Drive section in addition to those which have been referred to in this proceeding as the German Village?

A. There were parcels, a number of them, I don't know how many, which were sold, or, rather, contracts were given for sale. I don't know the number.

Q. The contracts, do they refer to the easterly or westerly section of the so-called Riverside Drive development?

A. I think they were principally to the northerly and westerly side of the development.

Q. That would be where I am now indicating on the map?

A. One of the places.

Q. Now you have referred to contracts in relation to that development, Mr. Anderson. Are those contracts in court?

A. Not to my knowledge.

Mr. Frazer: I ask my opponent whether the contracts for the sale of the lands in the so-called Riverside Drive section of the development are in court?

Mr. Hunt: I don't know, Mr. Frazer.

Mr. Frazer: I request that they be produced, if they be in court.

Mr. Hunt: If you will excuse the witness to step to the room here in which we keep our stuff?

Mr. Frazer: I will do so.

Mr. Hunt: He will find out whether they are in court, and if you want them, he will give you all of them.

The Court: You may look and see.

Mr. Hunt: May I join him in making the search? No, I won't do that.

The Court. You may.

Mr. Hunt: No. I won't do it while he is under cross-examination.

Mr. Frazer: May I step outside for a moment?

The Court: Yes, we will take a recess for a moment or two.

(Recess.)

(After recess.)

Q. Mr. Anderson, were you able to find the contract I referred to?
A. I was not.

Mr. Hunt: May I say a word, your Honor?

Mr. Frazer: Why a speech at this time? I am examining a witness. There is nothing before the Court, sir.

Mr. Hunt: Well, I am trying to help him.

Mr. Frazer: I do not wish his help. I would rather conduct it myself.

Mr. Hunt: I beg leave to address the Court.

The Court: I will allow you, sir.

Mr. Hunt: Not having anticipated to put the contracts in evidence on our side of the case I have not had them brought out here. They are at the New York office of the Ringwood Company. If Mr. Frazer desires to have them here, I will telephone for a man to have them here at once.

The Court: Do you wish them, Mr. Frazer?

Mr. Frazer: I do. I gave notice if they were not here, to have them produced, and I give that notice now so as to permit me to put in secondary evidence if they are not produced.

The Court: Very well, proceed, please. Do you wish them to do it, Mr. Frazer?

Mr. Frazer: I wish them as soon as we can have them. I think I should have the privilege of introducing them, or having them marked while Mr. Anderson is under cross-examination.

Mr. Hunt: I will have them brought here as soon as possible. If they are not here before Mr. Anderson is through I will have no objection to having Mr. Anderson recalled.

The Court: Very well.

Mr. Frazer: I am informed by one of my associates that all of these contracts are recorded, and perhaps they are all recorded on the same date, and that the mere production of the record book at this point would permit me to continue in an orderly way, and then I could have the contracts themselves, when they are produced, marked for identification.

Mr. Hunt: I have no objection.

The Court: Very well, will you get the books from the Register's Office, please?

Mr. Frazer: Mr. Wright will tell him which book is which.

The Court: Very well.

Now, as I understand it ——

Mr. Hunt: Mr. Frazer, may I ask you a question before you resume? Is there anything else that you can think of that you would like to have brought from the Ringwood Company's office while Mr. Anderson is on the stand?

Mr. Frazer: You know what my requirements were below, and you know what I will need now.

Mr. Hunt: At this moment?

Mr. Frazer: I can think of nothing else. I may, during the course of the trial.

Mr. Hunt: Very well, tell me as soon as you think of them.

Mr. Frazer: Very well.

Q. Referring again to the westerly section of the so-called Riverside Drive, were there sales made other than the contracts which have been referred to?

A. Not to my knowledge on the westerly side.

Q. I see indicated on the west of the lot developments in this particular section now under consideration two parallel lines indicating, I presume, a road?

A. I presume so.

Q. What was done toward the establishment in fact of the road thus delineated on the map?

A. I think, Mr. Frazer, you are pointing to a portion of the Hook Road, if I can see from this distance.

Q. This is a portion of the Hook Road.

The Court: You may go down, Mr. Anderson. I think perhaps you better if there is any misunderstanding about what he is pointing at.

Mr. Frazer: I am pointing a little bit to the east of those two parallel lines indicating a road.

Q. Is that the Hook Road that I just indicate?

A. It is not.

Q. What was done physically towards the creation of the road thus indicated on the map?

A. The road was staked out.

Q. Nothing else?

A. Nothing else.

Q. Was that staking out done by survey or by merely going down and guessing where the lines of the road would be?

A. It was done by survey.

Mr. Frazer: You may go back to the stand.

The Court: Mr. Hunt, Mr. Stafford has handed me the Mitchell case in which you said there was a reaffirmance of the Boom case decision. I shall be very glad to read it at my leisure. I want you to know it has been handed to me by counsel.

Mr. Hunt: I thought, in view of the statement made by counsel in the presence of the jury that the case was antediluvian, and it has been since been greatly modified, your Honor would permit me to read from that to the jury to offset the statement of counsel, to read to the jury to determine whether it is a true or untrue statement.

Mr. Frazer: I was addressing the Court. I was not unconsciously addressing the jury, as such.

Mr. Hunt: Unfortunately the jury were here and I should like them to hear the report for themselves in order that they may determine whether the Boom case, or Rum River case as we call it, has been modified or not modified.

The Court: Might I say that the decisions I have read since this case has been started, I have seen references to the Boom case by Justices of the Supreme Court which, I think, answers the question, doesn't it? I mean references of approval of the doctrine laid down in the Boom Company case.

Mr. Hunt: Yes, if your Honor says that.

The Court: I do say that now. Now, does that answer the criticism that Mr. Frazer made?

Mr. Hunt: Yes, if your Honor makes it plain to the jury that in your Honor's opinion, based on the subsequent cases that you have read, the Boom case or Rum River case—we have been calling it by both names—has not been overruled or has not been seriously modified, that is quite sufficient for me.

The Court: I won't go that far. I will say I have seen favorable references to it both in the text writers, and in other decisions of the Supreme Court. I do not understand that Mr. Frazer meant that it had ever been overruled in toto. He referred to it as an ancient case. I do not understand that Mr. Frazer's comment went any further than that.

Mr. Frazer: No, sir.

The Court: Except to say that it had been modified in parts and shades perhaps.

Mr. Frazer: And very distinctly modified in the Sage case.

Mr. Hunt: Will your Honor be good enough to read from the case before you and state whether or not that case does not state essentially the doctrine laid down in the Boom case, namely, that the owner is entitled to prove and to have the value of his land for any use for which it is especially adaptable, and does not actually cite the Boom case, or

Rum River case, whichever it may be called, as authority for the proposition stated in March, 1925?

The Court: If you state that is so, I am perfectly willing to concede it.

Mr. Hunt: That is so, sir, and it is so stated in the volume of the United States Supreme Court report that you hold in your hand.

The Court: I have not the slightest doubt of the accuracy of your statement, Mr. Hunt. I will verify it by reading the decision at my leisure, and if I find that you are incorrect, which I do not expect to find, I will then call it to the attention of the jury.

Mr. Hunt: All right, sir.

Q. Referring to the easterly section of the Riverside Drive, which includes the so-called German Village, I believe, do you know of any sales other than the sales in the German Village that have already been testified to?

A. There were sales—you mean south of the Hook Road?

Q. I am referring to this place here now. I do not care whether it is south or north. You can distinguish it in your answer?

A. There were sales made both north and south of the Hook Road.

Q. And some of those sales, therefore, were in a place other than the so-called German Village?

A. They were.

Q. And how many were there?

A. I could not tell you the number.

Q. Those south of the Hook Road are in the German Village only?

A. I think they were, yes.

Q. Now, I see on that section a series of roads delineated. To what extent were those roads physically placed on the ground?

A. The roads along the river are improved to an extent to make it a very passable road.

Q. And what was the extent to which it was improved; what did you do?

A. We graded where it was necessary.

Q. Did you put any mine tailings on it?

A. I think not.

Q. Did you grade any of the other roads indicated here as having been opened?

A. We did not.

Q. So that with the exception of the grading of the road along the river front on the easterly side of the tract to the Hook Road, you made no physical layout of roads?

A. The roads were laid out, staked out.

Q. They were staked out?

A. Yes, sir.

Q. In the same way as they were on the westerly section?

A. That is correct.

By the Court:

Q. When you speak of the River Road, Mr. Anderson, do you refer to the place where we walked?

A. I do.

Q. On which the bungalows faced?

A. I do.

Q. And just on the bluff which is on the river edge?

A. Well, that road extended out to the Hook Road, turning off from the Hook Road just after

crossing the bridge. We only went over a portion of it.

Q. I recall getting out of the automobile and walking between the bungalows.

A. Yes.

Q. Which we approached from the back of bungalows?

A. Yes.

Q. And the bungalows faced the river?

A. Yes.

Q. And I recall that we walked between the bungalows to the front of the bungalows.

A. We did.

Q. And there was a clearing for a ways on which the bungalows faced?

A. Yes.

Q. Between the bungalows and the river?

A. Yes.

Q. And up on the promontory, up on the bank?

A. Yes.

Q. With a winding road, perhaps, down to the river edge, or a winding path or passageway. Is that what you call the road that fronts where we stood on which the bungalows faced?

A. We undoubtedly stood on the road when we were facing the bungalows.

Q. Well, there was no roadway there, was there?

A. I think there is in front of the bungalows.

Q. Is there?

A. Yes, and we went over a portion of this road when we went down to the far end of the property, down to the gravel banks.

Q. And is that part of the road used for vehicular traffic?

A. Yes; we turned off this road that I am referring you to going over the road that had been made, I imagine, by the Commission's contractor driving over it to make it passable. We turned off this road when we went down to the far end of the property. When we came back, as I recall, we stopped back of these houses and walked through, as your Honor says, and then we came back on this River Road again. As we approached the bridge across the Wanaque, we diverted to the left because the River Road was very close to the bank at that point and very icy, and there a passage had been made further on through which we passed.

The Court: Very well, I thought it might help the jury to locate this particular piece that you are talking about.

By Mr. Frazer:

Q. By the way, this road which you have referred to as the Hook Road, I believe ——

A. Yes.

Q. (Continued): —— is labeled on this map as Furnace Road, is that correct?

A. Well, it has been called Furnace Road, Hook Road, Upper Hook Road and Lower Hook Road.

Q. I do not want any confusion. That is the same road that you have been referring to as Hook Road, is Furnace Road on this map?

A. That is it.

Q. Going to the property on the easterly section of the Riverside Drive to the south of the Hook or Furnace Road, how many sales were made there, do you know?

A. No, I can not tell you.

Q. Do you remember what the size of the tracts sold were?

A. The unit tract was 25 by 100, as I recall, and I think most of the sales for a number of units at least, two.

Q. And what rate were those sales made, do you know?

A. I cannot testify positively, but I think at $300 a unit. That is a lot 25 by 100.

Q. 25 by 100 or 50 by 100?

A. 25 by 100, as I recall; and whether they were all made at that price, I do not know ——

Q. Now, does that statement, Mr. Anderson, refer only to the lots which were sold to the north of the Hook Road, or does it refer also to those of the south?

A. I understood your question to be those south.

Q. Did I say south?

A. Yes, you did.

Q. I had intended to say north. I had that section in mind. It was a slip of my tongue.

A. Yes.

Q. Do you remember the Sherman lot which has been testified to with a bungalow on it?

A. Yes.

Q. That was 100 feet front, wasn't it, two lots of 50 feet each?

A. Well, my recollection is, but I cannot testify.

Q. Well, you have seen it in evidence on O1. Can you refresh your memory by looking at O1 for a minute?

Mr. Hunt: May I say, I think that the Court understands I have not offered Mr. Anderson as a real estate expert, nor myself asked him any questions about real estate value or sales.

The Court: I understand that, but he did testify

with respect to the real estate developments, and I think it might be proper cross-examination therefore.

Mr. Hunt: I have no objection to any questions being put to him, but I simply want it clear I have not offered him as an expert real estate man.

The Court: He has himself said it was without his province and duty.

Mr. Hunt: Yes, he has said it was outside of his duties.

The Court: And he knew very little about it.

Mr. Hunt: I, of course, will have real estate people on the stand later on.

The Court: I assume so.

Q. Referring to your recollection, what is the size of the tract conveyed to Mr. Sherman?

A. I think Mr. Sherman first purchased, whether he made it or not ——

The Court: Mr. Anderson, we cannot hear a word.

A. (Continued): I beg your pardon. Was 50 feet, if I recall.

Q. Well, now, referring to the map, does it not show that Mr. Sherman purchased a frontage of 100 feet altogether? Can you see it?

A. According to this scale on this map, it is apparently 100 feet.

Q. And you have heard the testimony in regard to that, that there was altogether paid for the two 50-foot lots, or 100 foot altogether, $600; is that right?

A. I do not recall whether $600 or not.

Q. You do not recall?

A. No, I do not.

Q. Do you know by whom those lots were sold to Mr. Sherman?

A. I believe they were sold by Leo Bugg.

Q. And do you know what Mr. Bugg's commission on the sale of those lots was?

A. I have heard.

Q. What was it?

A. 35 per cent.

Q. Mr. Anderson, I refer you to Book I-31 of Deeds for Passaic County which is brought from the Register's Office, page 537, and call your attention to a contract there recorded between the Ringwood Company and John J. White, bearing date July 10, 1924, conveying certain premises or agreeing to convey certain premises in the Borough of Ringwood, is that right?

A. That is right.

Q. Is that one of the contracts that we have referred to and the production of which I have requested?

A. I imagine it is. I have not read it through. I think it is.

Q. Who is Mr. John J. White?

A. I do not know it.

Q. And do you know who he is?

A. No, I do not.

Q. You never heard of him?

A. Oh, I have heard of him; yes.

Q. Do you know in whose employ he is, if he be in anybody's?

A. I saw it on the book here, B. Nichol & Company.

Q. B. Nichol?

A. Yes.

Q. What do they do?

A. They were formerly brokers in metals of various kinds; pig iron.

Mr. Hunt: A little louder, please, Mr. Anderson.

The Witness: All right.

A. (Continued): Pig iron, rails, pipe, various supplies.

Mr. Frazer: And this contract I wish to have marked for identification when the original is produced. I do not think we should mark the book.

The Court: The testimony shows what you have referred to, does it not?

Mr. Frazer: I am trying to refer to them in such a way that they will be readily identifiable from the testimony.

Q. Proceeding to page 539, there is a contract between the Ringwood Company and Joseph H. Wright. Do you know who Mr. Wright is?

A. I do.

Q. Who is he?

A. He is an insurance agent in Trenton, New Jersey.

Q. What relation to the Hewitts?

A. A cousin.

Q. Page 540 of the same book, I refer to an agreement between the Ringwood Company and J. Ainsley Baer. Do you know who Mr. Baer is?

A. I do not.

Q. Have you ever heard of him?

A. I may have heard of him; I do not recall.

Q. Do you know what business he is engaged in?

A. No, I do not.

Q. Do you know a member of what clubs he may be?

A. I do not.

Q. That agreement was dated the 13th day of June, 1924?

A. Let us see it.

Q. (Showing book.)

A. Correct.

Q. And the Wright agreement referred to a moment before was dated the 3rd of July, 1924?

A. That is correct.

Q. I refer to a contract on page 542 between the Ringwood Company and Richard H. Swartwout, dated 16th of June, 1924. Do you know who Mr. Swartwout is?

A. Oh, I have heard of Mr. Swartwout. I do not know who he is or what he is.

Q. You do not know his business?

A. No, I do not.

Q. You do not know what clubs he is a member of?

A. I do not.

Q. You do not know anything by which we could identify Mr. Swartwout further than what you have heard of him?

A. That is all I know.

Q. I refer to a contract between Ringwood Company and William H. Boardman, dated 24th day of June, 1924. Do you know who Mr. Boardman is?

A. I do.

Q. Is he in court at the present time?

A. Yes, he is.

Q. He is an engineer in the employ of the Ringwood Company?

A. He is a consulting engineer that the Ringwood Company have employed from time to time.

Q. Formerly in the employment of the North Jersey District Water Supply Commission?

A. I am told that he was.

Q. I call your attention to a contract at page 545 between the Ringwood Company and Henry B. Closson, dated 18th of June, 1924, is that correct?

A. That is correct.

Q. Do you know who Mr. Closson is?

A. I do.

Q. Who is he?

A. He is an attorney in New York City.

Q. And represents whom of the parties in this proceeding?

A. He has from time to time represented the Ringwood Company and members of the Hewitt family.

Q. A member of the firm of Parsons, Closson & McIlvaine; is that correct?

A. That is correct.

Q. I call your attention to a contract between the Ringwood Company and Clarence M. Chauncey, dated June 19th, 1924. Do you know who Mr. Chauncey is?

A. I do not know.

Q. Do you know anything about his business connection?

A. I know nothing about him whatever.

Q. You know nothing about him at all?
A. Nothing at all.
Q. I call your attention to a contract between the Ringwood Company and Charles E. Sampson, dated June 24th, 1924; is that right?
A. That is correct.
Q. Who is Mr. Sampson?
A. I do not know him.
Q. You know nothing about him?
A. Not a thing.
Q. You know nothing about his business connection?
A. Not a thing.
Q. And you know nothing of his social connections?
A. Not a thing.
Q. You were present when testimony concerning these agreements was given at the trial before the Commission?
A. Yes, I was.
Q. Do you remember about Mr. Sampson ——

Mr. Hunt: When I put a question of that kind it was objected to by the Water Supply Commission, and it was overruled.

The Court: It will be overruled now.

Mr. Hunt: I make no objection. I am only calling attention to it.

The Court: If you wish to object to it, I will rule on it.

Mr. Hunt: No, I make no objection.

Mr. Frazer: The witness has answered and says he does not remember, so I suppose the answer is harmless.

Q. I show you a contract between the Ringwood Company and J. Woodward Haven, dated June 24, 1924. Do you know who Mr. Haven is?
A. I do not.
Q. You never heard of him?
A. No, except that I have heard his name.
Q. You know nothing about his business or social connections?
A. I know nothing whatever about it.
Q. I call your attention, at page 553 to an agreement between the Ringwood Company and Ruth Carleton, dated June 20, 1924. Do you know who Ruth Carleton is?
A. I do.
Q. Who is she?
A. She is a sister of Dudley Carleton.
Q. And Dudley Carleton is how related to the Hewitts?
A. He is not related so far as I know.
Q. He is not related at all?
A. No.
Q. Where does he live?
A. As far as I know, he lives in the Borough of Ringwood.
Q. And his property is shown on some of the maps already offered as exhibits?
A. I think so.
Q. Do you know what business he is engaged in?
A. I do not think he is engaged in any business, although he may be a lawyer practicing to some extent.
Q. Liber ——

Mr. Hunt: I wonder whether time could be saved by my making an admission of facts. I presume Mr. Frazer would like to bring out something——

The Court: I do not know.

Mr. Hunt: I am perfectly ready to make an admission if he wishes. I will admit that we made these sales and some other sales that I suppose are set forth in these books principally for the purpose of compelling the Water Supply Commission to proceed, if it was ever going to proceed, with the condemnation proceeding which, eight years earlier ——

Mr. Frazer: I object. I did not ask for any such thing.

Mr. Hunt: (Continuing.) Had become apparent ——

Mr. Frazer: I object to Mr. Hunt making further speeches to the Court.

The Court: Mr. Hunt stated that he wished to make a statement that would facilitate the trial of the case.

Mr. Hunt: Yes.

The Court: At any time, if any lawyer wishes to facilitate the trial of this case it will be most welcome to the Court and to the jury.

Mr. Frazer: I think I can be very brief on these.

The Court: All right.

Q. I call your attention to a contract between Ringwood Company and Lota Robinson at page 544, dated 20th of June, 1924. Who is Lota Robinson?

A. I do not know.

Q. You do not know her at all?

A. Not at all.

Q. You do not know anything about her social relations?

A. Not a thing.

Mr. Hunt: I will admit, according to my understanding, although I know none of the parties to these contracts, some of them belong to the Metropolitan Club, and I think one or two belong to the Union Club of New York, as it was brought out by Mr. Frazer. What those clubs are I do not know. I do not belong to either of them, but I have no objection to Mr. Frazer stating what their club membership are, if the Court thinks that has any bearing on the case.

Mr. Frazer: Now, to save time, this whole matter was gone into below on the testimony of Mr. Erskine Hewitt, and I submit I would be perfectly willing, to save time, to read that testimony in lieu of further examination.

Mr. Hunt: No, I won't consent to read anything. Time enough is being taken by your asking questions.

The Court: Very well.

Mr. Frazer: That is what I wish to elicit.

Mr. Hunt: I will consent, if the Court wishes, of

the testimony being taken out of the book and handed to the jury so they can read it themselves at their convenience, that testimony that he wants to read, and nothing more, to save time. They could read it after hours, and it would save time for them and all of us.

Q. I call your attention to a contract between the Ringwood Company and Henrietta Haven, at page 556, dated June 24, 1924; is that right?

A. That is correct.

Q. Who is Henrietta Haven?

A. I do not know her.

Q. You do not know her?

A. No, sir.

Q. I call your attention to a contract between the Ringwood Company and T. H. Powers Farr at page 558, dated June 24, 1924; do you know who Mr. Farr is?

A. I do.

Q. Who is he?

A. A broker in New York.

Q. Is he associated in any way in business with Mr. Erskine Hewitt?

A. I believe he is.

Q. A fellow-director with him in a company?

A. Yes.

Q. What company?

A. To the best of my knowledge and belief, the only company I recall at the present time is a company called the Andean Company; I am not quite sure of that name.

Q. Operating somewhere in the South American countries?

A. The Andean Trading Company, I think.

Q. Ringwood Company to Paul Danna, page 560, June 24, 1924. Do you know who Mr. Danna is?

A. No, I do not.

Q. Know nothing about his social or business connections?

A. Nothing about him.

Q. Ringwood Company to Sidney D. Ripley, page 561, June 27th, 1924; is that correct?

A. That is correct.

Q. Do you know Mr. Ripley?

A. I do not.

Q. Do you know anything about his business or social connections?

A. No, sir, I know nothing about it.

Q. Ringwood Company to John F. Desmond, page 563, an agreement dated July 3rd, 1924. Do you know Mr. Desmond?

A. I do.

Q. Who is he?

A. Mr Desmond was formerly employed by D. Nichol & Company.

Q. The same firm of brokers that was referred to earlier?

A. Yes.

Q. Ringwood Company to Edmund J. Stone, at page 565, agreement dated 19th of June, 1924; is that correct?

A. That is right.

Q. Do you know who Mr. Stone is?

A. I do not.

Q. Know anything about his business or social connections?

A. Nothing about him.

Q. Ringwood Company to William E. Wheeler, at page 567, agreement dated June 27th, 1924. Do you know who Mr. Wheeler is?

A. I do not.

Q. Know anything about his social or business connections?

A. I do not.
Q. Or relationship to the Hewitts?
A. I do not.

Mr. Frazer: That is all in that book, Mr. Wright. Give me the next.

Mr. Hunt: May it be consented that if the other book were read through the same answers would be given?

The Court: I have no objection, if Mr. Frazer wishes.

Mr. Frazer: My whole examination has taken about eight minutes, so far.

Q. Ringwood Company to Mr. A. Hicks Lawrence, at page 436 of Book K-31 of Deeds, dated July 16th, 1924; is that correct?
A. That is correct.
Q. Do you know who Mr. Lawrence is?
A. I do.
Q. Who is he?
A. He is a broker in New York City.
Q. What is his relation with the Ringwood Company or the Hewitts?
A. He has no relation with the Ringwood Company as far as I know.
Q. Is he associated in business with any of the Hewitts?
A. Not so far as I know.
Q. Is he a member of any of the clubs, social clubs of which he is a member?
A. I don't know what social clubs he may be a member of.

Q. Page 286 of N-31 of Deeds, agreement between Ringwood Company and Thomas J. McCarthy, dated July 3rd, 1924; is that correct?
A. That is right.
Q. Do you know Mr. McCarthy?
A. I do not.
Q. Do you know anything about his social connections or business connections?
A. Nothing about him.
Q. Page 288, agreement between Ringwood Company and Alexander S. Webb, 19th day of July, 1924; is that correct?
A. That is correct.
Q. That is the Mr. Webb ——
A. Mr. Webb is, I think, president of one of the banks in New York, I don't know which bank.
Q. Is Mr. Erskine Hewitt a director in that bank?
A. I think not.
Q. Do you know what clubs he may be a member of, if any?
A. I don't know what clubs he may be a member of.
Q. Book R-31 of Deeds, at page 550, Ringwood Company to William B. Giehler, 18th of June, 1924; that is right?
A. That is right.
Q. Do you know who Mr. Giehler is?
A. No; I don't know Mr. Giehler—that is all, I don't know him.
Q. Do you know whether title was passed in that case or not?
A. I am not sure whether it passed or not.

The Court: Are you through with the books?

Mr. Frazer: Through with the books, unless Mr. Hunt wants them for re-direct examination.

Mr. Hunt: I do not want them.

Q. Mr. Anderson, I refer to Exhibit O70, the so-called sand and gravel map?

A. Yes.

Q. Do these tracts as delineated in brown on this map show all of the sand and gravel areas of the Ringwood Company or only those sand and gravel areas within the taking?

A. They show those sand and gravel areas within the taking.

Q. Are there or are there not other sand and gravel areas within the holdings of the Ringwood Company?

A. There is some others sand and gravel.

Q. To how great an extent?

A. To a comparatively small extent as compared with these.

Q. It makes no effort to show sand and gravel areas on any properties other than the Ringwood Company?

A. It does not.

Q. There are sand and gravel deposits of substantial extent on this Sarah Hewitt property, are there not?

A. Very considerable extent.

Q. And there are other large deposits of sand and gravel throughout this whole section?

A. There is sand and gravel over a considerable section.

Q. This whole section is what is known as a glacial moraine which brought down sand and gravels in huge quantities, did it not, through the valley?

A. I am not sure that it is called a terminal moraine or not, but the sand and gravel is probably due to glacial action.

Q. It extends generally from those sections right on down through Paterson in large quantities, doesn't it?

A. Not this—not this deposit does not pass through Paterson.

Q. How far does this deposit go and where does it terminate, or in what direction does it go and where does it terminate?

A. Through the other valley, at the other side of the ridge.

Q. How far down does it go in that valley?

A. Well, probably nearly to the third range, I believe they call it, of the Watchung Mountains.

Q. Near what community?

A. Well, possibly Little Falls or Mountainview, or around in that section.

Q. Now you have delineated on the map the various points where you have made these test pits and borings?

A. That is correct.

Q. Since ——

Mr. Hunt: I have not examined Mr. Anderson as to the location of any of the test pits and borings on this map. I had intended to prove that by Capt. Crockett, through whose supervision that work was done.

Mr. Frazer: And meanwhile you asked Mr. Anderson to describe the map, and one of the descriptions that Mr. Anderson gave was a location of test pits and borings. I did not object to it, although I knew Mr. Anderson did not make them.

Mr. Hunt: Mr. Anderson said the map showed the existence of the test pits and borings. That is strictly true. The area does, but it is not Mr. Anderson, but another man, Capt. Crockett, who is responsible for the position of the test pits and borings as shown on the map, and for the actual work of putting down the test pits and borings and the results discovered thereby. That Mr. Anderson was not directly concerned in. In a general way, he may have known something about it, and I have no objection to counsel questioning him if he wants to.

Mr. Frazer: Why talk about it?

Mr. Hunt: I only say this was not Mr. Anderson's responsibility.

The Court: I understand it so.

Mr. Frazer: I am going to ask him merely about the map.

Mr. Hunt: All right, go ahead.

Q. When was this map made, Mr. Anderson?
A. This map was made during the last year.
Q. And was completed at the time of the completion of the proceedings before the Commission?
A. It is practically a reproduction of that, but on a larger scale, and with some changes.
Q. Now in the last year there have been some substantial changes due to the operation of the Commission in some of these gravel areas, has there not been?
A. That is true.
Q. Can you point out on this map where the

largest of those excavations due to the contractor's work would appear, generally?
A. Yes.
Q. Will you come to the map?
A. Yes.
Q. Will you come to the map and show it?
A. Yes. There are two sections, I believe, where a considerable excavation has been made. One section in this Cupsaw District, through here (indicating), and in the last year I believe some considerable excavations were made in this section here. (Indicating.)
Q. Now how large were the excavations that you have just indicated on the drawing by drawing the ruler across in the Cupsaw section?
A. The one excavation which I have in mind extended from this, approximately a point on this road, up across the property to a point to which I am now pointing. (Indicating.)

The Court: And the point to which you are now pointing, for the purpose of the record is what?

A. It is practically lying between the old Parsonage or Stewart place, and a point in the road leading to Skylands property of Mr. Lewis.

The Court: Skylands and Parsonage go well together.

Q. That is in the vicinity of the Hilltop Road?
A. What do you call the Hilltop Road?
Q. That is so labeled on the map. I am using the language on the map.
A. Yes.

Q. And the general shape of that excavation is what—of a big horseshoe?

A. Yes; I imagine you would call it that.

Q. Does it go down to bedrock or hardpan, or what?

A. I don't know that it goes down—I think not, from looking at it beyond the excavations.

Q. How deep is the excavation, would you say?

A. It varies very much in different places. Possibly the deepest excavation that I have observed is 20 feet. I am just guessing at it.

Q. How long is it all together, would you estimate, in feet, or miles?

A. In a direct line—or, rather, the excavation that I have in mind extending from the old Parsonage to the Hilltop Road is perhaps 3500 feet.

Q. Does that include both horns of the horseshoe?

A. No, it does not.

Q. And the other horn of the horseshoe, how large would you say that was?

A. That would be 5000 or 6000 feet.

Q. Somewheres around a mile or something over that, opened?

A. I should think so.

Q. Why was that opening not indicated on the map, Mr. Anderson?

A. I supposed that this map was to be made to represent the conditions, I told you, existing on March 19th, 1925—is it?

Q. Were the test pits on at that time?

A. The greater part of them were.

Q. And all of the borings?

A. I think with possibly one or two exceptions they were all on.

Q. The purpose of the map was to indicate the

quantity and quality of the gravel, was it not, and the sand?

A. As it existed on March 19th.

Q. Do you think it has substantially changed in the ground since March 19th, 1925, to the present time?

A. I would hardly think it would.

Q. No; and don't you think that if you had taken the big excavation you would have gotten a fairer impression of the content from the gravel standpoint both as to quantity and quality than by a few isolated test pits and borings?

A. I believe that the entire excavation has been examined since it was made, by those whose duty it was to examine it.

Q. I didn't ask you that. I asked you whether you thought a fairer estimate of the quantity and quality of the gravel could be obtained by that big opening than by a few isolated pits and borings?

A. That is true. Of course, a better idea of the quality and quantity could be taken if it was all taken out.

Q. How big was the opening on the other tract which you have shown, which the Commission's contractors have made?

A. Oh, I didn't pay any particular attention to the size of the opening. Might have been, the deepest opening I saw there, several hundred feet long and perhaps a hundred feet wide. I didn't pay any particular attention to it.

Q. By the way, Mr. Anderson, to revert a moment to the other matters that we were discussing, the plot layouts on the previous map; was there any approval obtained of those layouts from the borough authorities?

A. There was not.

Q. Or from the county authorities, in accordance with the existing law for the approval?

A. Do you mean lots or roads?

Q. Of the layout, road and plot layouts?

A. I think they are quite different.

Q. Well, for either of them?

A. I am not sure. I think in one or two cases there were approval for a change or establishment of a road by metes and bounds was made by the Ringwood Borough.

Q. But as to the lot layouts, nothing was done?

A. As to the lot layouts, no.

Q. The approval of those roads, if it was had, is indicated in no way on the map?

A. No.

Q. That is all.

Mr. Hunt: On account of the absence of some material that I have sent for from New York in connection with these contracts, I will have to ask leave to further examine Mr. Anderson on re-direct when the material arrives.

The Court: No objection to that.

Mr. Hunt: Meanwhile, with the court's permission I will ask one or two questions.

Re-direct examination.

By Mr. Hunt:

Q. Mr. Anderson, do you know anything as to the proportions of gravel in the bank as compared with all the material in the bank in these deposits on the Ringwood property shown on the map and at the

other points further south in the valley coming down as far as Little Falls, to which you said gravel deposits extended?

Mr. Frazer: I object to this as not re-direct examination. Mr. Hunt, on an objection to a question which I was directing towards the map, told you Mr. Anderson had been put on for only the purpose of showing the map.

The Court: Yes, but you did ask him whether or not the nature of the deposits and the extent ——

Mr. Frazer: He said he didn't know anything about it. He said he didn't know quantities.

The Court: No; he said he did not know the quantities, but he knew the extent and the direction and he knew where it was.

Mr. Frazer: I asked him nothing about quality, sir.

Mr. Hunt: He asked the witness, under Mr. Frazer's examination, and the witness testified gravel deposits extended from this property down to a certain point which he identified as at or near Little Falls. Now I am going to ask him if he knows anything about the quality.

Mr. Frazer: It is not re-direct, sir.

Mr. Hunt: Of that gravel deposit on this property and the extension of the deposits below this property down to Little Falls.

The Court: Mr. Frazer's objection is that it is not re-direct, because it goes into subject-matter that he did not examine on, namely, quality.

Mr. Hunt: Well, your Honor surely knows——

The Court: I will allow it if you think it is important, and grant you an exception, Mr. Frazer. Proceed.

(Question repeated by stenographer.)

A. From observation—I have visited at a number of points excavations that have been made. There is a diminishing amount of gravel as you go from the high lands to the low lands.

Q. Will you step to the map a moment, please. When you indicated the place where the Water Supply Commission contractors had excavated in the Cupsaw gravel tract, did you pass your pointer across this tract that is colored here in white?

A. Well, I tried not to. I tried to get down around there.

Q. Now as a matter of fact, did the excavations to which you referred cross the land which is shown in white in that Cupsaw tract?

A. I believe they cross those portions of the land colored in white.

Q. And the distance across that portion as you have drawn the pointer is approximately what?

A. 600 feet; between 500 and 600 feet.

Q. That land does not belong to the Ringwood Company, does it?

A. It does not.

Q. And it is not indicated on the map by the tinting that is used to show the presence of gravel?

A. It is not.

Q. So as far as this map is concerned no gravel would be claimed to exist on the Pompton Reformed Church property, or on the property to the south of it lying in the center of the tinted area?

Mr. Frazer: I object to the conclusion of the witness.

A. It would not.

The Court: It has already been answered.

Mr. Frazer: I withdraw my objection.

The Court: I understood Mr. Anderson to state that he only showed the gravel deposits of the Ringwood Company's lands.

Mr. Frazer: I don't know what might be claimed by this map, and I do not think Mr. Anderson does.

The Court: All right.

Mr. Hunt: At present I have no further questions to put.

Re-cross examination.

By Mr. Frazer:

Mr. Frazer: My associate just called my attention to the fact that I omitted to ask a question.

The Court: You may ask it now.

Mr. Frazer: If I might properly cross-examine and not re-cross examine.

The Court: All right.

Cross-examination.

By Mr. Frazer:

Q. Mr. Anderson, to your knowledge when was the Wanaque Dam first started, the construction work on it?

A. I don't think, Mr. Frazer, I can tell you the year. I should say around '21 or '22, but I am not sure.

Q. Yes. Not later than '21 or '22?

A. The actual construction of the dam?

Q. Yes.

A. Yes.

Q. And the dam is so constructed it would overflow what is called the Ryerson Lake or Pond upon the completion of the reservoir, would it not?

A. That is correct.

Q. Now on this little white piece here that Mr. Hunt directed your attention to, there is sand and gravel?

A. Oh, yes.

Q. And substantially the same character as that indicated in those?

A. That on the other side—on the easterly side of Cupsaw Brook—is perhaps a little different than the other sand; that is, such as has been exposed there.

Q. The only reason it appears in white here is because it does not belong to the Ringwood Company, and not because there is no sand and gravel?

A. No; that is not true. This portion here is the Parsonage. This property which is now owned by the Commission.

Q. Yes.

A. This section in here was left out as bottom lands of the Cupsaw Brook and possibly might contain a little more humus on the top and perhaps not quite as clean as the rest, and we did not include it in the map.

Q. It belongs to the Ringwood Company?

A. It belongs to the Ringwood Company, outside of this black line which I am passing my pointer along.

Q. All right. That is cleared up. Now can you point out on this map to the location of what has been known in this case as the Squire Brown property?

A. The Squire Brown property lies about in this section—not there. Up in this section here. (Indicating.)

Q. How many acres of gravel would you estimate to be in the Squire Brown property?

A. I have not the lines of the Squire Brown property before me and I don't know exactly where they go. I could not give it.

Q. Could not give an estimate?

A. No.

Q. But the comparison of this Squire Brown tract in this map would indicate how much of this area lies out of this Squire Brown tract?

A. I have not the deed here and I cannot tell you. If you have a map that the lines are shown on I will be glad to point it out to you.

Mr. Hunt: Have you got such a map, Mr. Frazer?

Mr. Frazer: Mr. Hunt, I will ask my own questions. If I have a map and I wish to produce it I will produce it.

Q. Might I ask you this question, Mr. Anderson? Do you know as a fact that a substantial quantity of the Squire Brown property has gravel on it?

A. I think a part of it. I don't know how substantial it is.

Q. That is all.

Mr. Hunt: I have just been handed the missing deeds in the chain of title of the Marini flowage right. With the Court's permission I will offer them.

Mr. Frazer: No objection. They are offered, of course, for the same purpose as the other deeds were offered?

Mr. Hunt: There was a gap left in the Marini flowage rights the other day, and this is to fill it up. I offered a certified copy of a deed by Martin Drew, Administrator of Samuel Jenkins, deceased, to Andrew Albagese, dated the 6th of June, 1890. I said these are deeds that I did not have the other day that enter into the chain of title by which the Ringwood Company obtains the flowage rights over the other tract. The other day I brought it down to a man named Jenkins, and now the deed I offer is a conveyance by the Administrator of Jenkins to another party.

The Court: Isn't it on all fours with the Ryerson grant?

Mr. Hunt: No. There was no such objection made in this case in regard to this matter.

Mr. Frazer: One is a negative and the other is a positive easement, if it exists, and in permitting the deed to go in I do not mean to say I have no right to argue as to their legal effect of those deeds in giving any right over the Marini property.

The Court: Certainly not, but the other deed was stricken out because it was outside of the taking and for other reasons that were stated. Now this is a part of the chain of title of the ownership of lands that are in the taking?

Mr. Hunt: Yes, your Honor. You the other day admitted such of the deeds entering into that chain of title as we then had and gave us leave of putting in the other.

The Court: For the purpose of showing the title, and if this appears that there is nothing else in the deed other than the title that might prove to be objectionable, I shall of course allow at that time the question to be argued.

Mr. Hunt: Certainly.

Mr. Frazer: I understood my admission of this evidence was subject to the same general statement that was made at the time the others were admitted. This is simply a continuance of that offer.

The Court: That is correct.

Mr. Hunt: Certainly.

(Deed marked Exhibit O76.)

Mr. Hunt: Now I offer a certified copy of a deed by Andrea Albagese and wife to Alesio Marini, dated the 1st of August, 1890.

(Deed marked Exhibit O77.)

Mr. Hunt: I offer a certified copy of a deed by Alesio Marini and wife to Andrea Lertora, dated the 27th of June, 1901.

(Deed marked Exhibit O78.)

Mr. Hunt: I offer a certified copy of a deed made by Andrea Lertora and wife, and Antoinetta Marini, dated 13th day of October, 1904.

(Deed marked Exhibit O79.)

Mr. Hunt: I offer a certified copy of a deed made by Antoinetta Marini to Joseph Albagese, dated the 18th of July, 1922.

(Deed marked Exhibit O80.)

Mr. Hunt: I offer a certified copy of a deed made by Antoinetta Marini to Joseph Albagese, dated the 27th of July, 1925.

(Deed marked Exhibit O81.)

Mr. Hunt: I offer a certified copy of a deed made by Antoinetta Marini to Joseph Albagese, dated the 17th of October, 1924.

(Deed marked Exhibit O82.)

Mr. Hunt: That is all of Mr. Anderson for the present. I will have more questions to ask when these documents arrive.

The Court: That is all.

JAMES P. ANDERSON, resumed.

Re-direct examination.

By Mr. Hunt:

Q. Now, I would like to show the witness a contract marked C83 and ask him what the consideration stated in that is?

A. The consideration stated in C-83 is $3000.

Q. And what is the consideration stated in C93?

A. The consideration stated in C93 is $400 per lot of 25 feet.

Mr. Hunt: Mr. Frazer, to save time, I have gone through these contracts; would you like to admit the consideration stated ——

Mr. Frazer: I do not admit anything. The contracts speak for themselves. What is the use of asking the witness what they have. I suppose one contract was for a larger quantity purchase. I do not think there is any sense in going through a batch of exhibits and asking what the contents are.

Q. What is the consideration stated in C97?

Mr. Frazer: I object to that. What is the use of wasting time?

The Court: You object on the theory that they speak for themselves?

Mr. Frazer: Yes, and Mr. Hunt can speak on them to his heart's content to the jury. Mr. Anderson can add nothing by his reading.

The Court: I think that is correct.

Mr. Hunt: All right. I did not want to read 27 contracts to the jury. That is all.

Mr. Frazer: You do not have to. Nobody will insist on your doing so if you do not wish to.

Q. Mr. Anderson, I show you these contracts, and ask you whether they have been recorded?

Mr. Hunt: Is it admitted that they have all been recorded?

Mr. Frazer: Why, I read them out of the record book this morning. I think that is a foolish question.

The Court: Well, you assume they have been, if all these are those that you read this morning.

Mr. Frazer: I think so. I did not recognize any I did not read from the book. I think this is wholly immaterial whether they have been or not.

The Court: Except if there are others that are

of record that are not here, Mr. Hunt may wish to bring those too. Perhaps they were not all brought, or something of that sort. I will allow it.

A. They are all recorded.
Q. Who had them recorded?
A. The Ringwood Company.
Q. Was the Ringwood Company's object in having them recorded to conceal from the Water Supply Commission the fact that they had been entered into?
A. It was not.

Mr. Frazer: I object as calling for a conclusion.

The Court: The objection is sustained, and the answer is obvious and will be stricken out.

Q. Why did the Ringwood Company enter into the contracts with these individuals, Mr. Anderson?

Mr. Frazer: I object. The motive is absolutely immaterial.

Mr. Hunt: Why, motives are most important things in life.

Mr. Frazer: This has nothing to do with it.

Mr. Hunt: And these contracts were denominated this morning as fraudulent, and my client was charged with fraud.

Mr. Frazer: The motive is immaterial at this point. A self-serving declaration on the part of the

manager as to the intent of his corporation is absolutely inadmissible, and I object to the question.

The Court: If he knows, being an employe of the principal, and his knowledge of what the transaction was, I think it is perfectly competent for him to testify. If he does not know, of course he cannot testify, in any event.

Mr. Frazer: I submit to the Court that motive of a certain action is not a matter for explanation on the part of the person who makes it, in the absence of some direct proof of some motive on the part of those who may not be parties. In other words, if a deed is given is not competent for the Ringwood Company to show why that deed was given. The deed speaks for itself. If I should assert the deed was given for an improper purpose, then they might be in a position to rebut that testimony. I have not said anything about those contracts. I simply put them in evidence, and let them speak for themselves. Now, if the Ringwood Company did come along and make self-serving declarations as to why they entered into them ——

The Court: I do not anticipate that is the situation. I understood the intention was, as elicited from some witness, or in a statement perhaps that was made, that these contracts were entered into for a fraudulent purpose. Now, if that is before the Court, I think this is a perfectly proper question. Now, I do not know where I got that notion.

Mr. Frazer: There has been no such statement.

Mr. Hunt: You got it hearing counsel of the

Water Supply Commission declare it this morning, as they declared it once before in examination of ——

Mr. Frazer: No, it was in another part of the examination regarding Mr. Anderson.

Mr. Hunt: What was it?

Mr. Frazer: I do not remember off hand. If I had the record I can show it to you.

The Court: I think it was testified to, or the question was predicated on the fact that these contracts were given for an improper purpose which brought forth a reply from Mr. Hunt that they were given for the purpose of compelling the Water Company to either fish or cut bait, or words to that effect.

Mr. Frazer: Mr. Hunt made a statement to that effect.

The Court: And it was called for by the testimony that you said ——

Mr. Frazer: I do not remember. Maybe in the heat of argument I slipped something forward. I have no particular objection ——

Mr. Hunt: You have taken ten minutes in making an objection. May the question be read?

(Question read.)

The Court: If you know, Mr. Anderson. Of course, do not tell if you do not know.

The Witness: The Ringwood Company being the owner of this property at the date these deeds were given, and being in the process of developing its property which it had been for many years, sold this property at this point as well as other places on the property when it had opportunity.

Q. Had the Water Supply Commission prior to the date of these contracts ever said anything to the Ringwood Company about condemning this property?

A. Not to my knowledge.

Q. I see. You do not know about that. For what purpose was the Ringwood Company organized, Mr. Anderson?

A. The Ringwood Company was organized for the purpose of consolidating the property so that it might be developed as one property in anticipation, perhaps, of the fact that Mrs. Hewitt, the then owner of the property, was approaching years of age, that she had six children who would presumably share equally in the property. I think probably the chief motive was the fact that the property should be developed as a whole, at the same time, also that being incorporated perhaps some things could be done that it might be difficult to do were it in private ownership.

Q. Were you in any way connected with any of the Hewitt or Cooper Hewitt industries at the time the Ringwood Company was organized?

A. Yes, sir.

Q. What were you then engaged in?

A. I done ——

Mr. Frazer: May I ask the materiality of this?

Mr. Hunt: Well, all right, I will withdraw that.

The Court: The question is withdrawn.

Q. Did you have anything to do with the Ringwood Company and its property and its affairs at about or shortly after the time of the organization of the Ringwood Company, and continuously thereafter?

A. I have.

Mr. Frazer: I object to going into all this history of the Ringwood Company. I let him go on for a little while, although I did not think it was material. I did not want to take another ten minutes that Mr. Hunt begrudges me. This seems immaterial, and I respectfully object to it.

The Court: I think it might be material if for no other reason, that it has been alleged that this company was formed because of a family row.

Mr. Hunt: I have not made any such allegation.

The Court: No, you have not.

Mr. Hunt: And I do not remember anybody else having, your Honor.

Mr. Frazer: It may be general knowledge, and it may be something that the Court takes judicial notice of.

The Court: I have no knowledge.

Mr. Hunt: I emphatically take exception to any

such outrageous statement that counsel has just made and I ask the liberty ——

The Court: Let me speak first.

Mr. Hunt: May I speak for my client?

The Court: No, because you interrupted me. I made that statement because of something that was said in court, and if I said something that I should not have said, it was because I misunderstood a remark that was made either in evidence or by counsel. I think, perhaps, now that I am corrected, that in my recollection that what I had reference to was the agreement of the family rather than the incorporation of the Ringwood Company. I think something was said, and my recollection is quite clear that something was said that there had been a disagreement between the members of the family which was one of the reasons that prompted that agreement. Now, I did not intend to make any statement about there being any row, because I never heard anything about this matter until this case started, and I have no private knowledge of any kind at all.

Mr. Frazer: I respectfully ask leave to withdraw from the record my facetious remark.

The Court: Let it be withdrawn.

Mr. Hunt: And I respectfully ask leave to put upon the record the belief that the remark was not intended to be facetious, and the remark was a lie.

The Court: The remark was what?

Mr. Hunt: Mr. Frazer's remark was not intended to be facetious, but was a lie.

Mr. Frazer: I have no objection to Mr. Hunt's opinion.

The Court: Then you withdraw your request that it be expunged from the record?

Mr. Frazer: Yes, I will allow it to stand.

The Court: I will allow it to stand in view of Mr. Hunt's remark. Proceed.

Q. Mrs. Hewitt was living at the time the Ringwood Company was organized, wasn't she, Mr. Anderson?

A. She was.

Q. And was the owner in her own individual name of all this acreage colored on that map excepting small portions that have been acquired since that time?

A. Yes, that is practically true. I think she owned it all.

Q. She caused the company to be organized, did she not?

A. In consultation with her family.

Q. And you said that you were connected with the company or had to do with its affairs from its organization, or about the time of its organization? What was the first step that the company undertook in connection with the development of this vast property?

A. The first step taken was the opening of the iron mines which had been operated for many years, for an investigation of the iron ore properties,

spending several years in making magnemetric surveys, putting down diamond drill holes, and eventually developing a plan for re-equipment and modernizing of the mine plant.

Q. Was that plan carried out?

Mr. Frazer: I object as being totally immaterial.

Mr. Hunt: Well, we have a mining property with an investment of six or seven million of dollars in it that may be injured by this taking. I do not know.

The Court: Well, if you do not know, I do not know who would.

Mr. Hunt: I submit I have a right to question the witness of what has been done there.

The Court: I know, but if you say to me it is relevant, I have no objection.

Mr. Hunt: I think it is relevant, your Honor.

The Court: But if you say you do not know and this is just fishing I would rather you fish when we are not in session.

Mr. Hunt: I am not fishing.

The Court: Then, you say it is relevant because of its consequential damage, Mr. Hunt?

Mr. Hunt: I would not rather limit it to relevancy purely because of consequential damage. I say I believe it generally to be relevant.

Mr. Frazer: That is a very hard reason to answer, generally relevant.

The Court: I will allow it.

Mr. Frazer: May I just say a word further? If this is a question to show the character of the property, that is the way to do it, show the character of the property, and not have Mr. Anderson enter into the history of what they were doing for the past twenty years at the Ringwood Company mines. What is the first step you did? I examined the mines and made mineralogical surveys. What is the second thing you did? Oh, lots of things. We will get it that way ad nauseum. Let us get down to the question: What is the value of this property under condemnation and what is the damage to the remaining lands, if any? Those are the only relevant inquiries here, and this is all—I do not know what—but it is certainly immaterial.

Mr. Hunt: I should be very happy if the Water Supply Commission would let me put on the witness stand, as I tried to do today, a witness qualified to speak to these two questions thus put so well and get the case going, but every time I attempt to bring out the slightest bit of information that has any bearing on the value of this property or the characteristics that the property possesses, anything that tends to show a value for it, I encounter an objection, and it is argued for an hour on an average, and I very much regret to say, ninety-nine times out of a hundred sustained.

The Court: There is nothing to be argued about now, Mr. Hunt because I have allowed you to ask

this question and therefore there is nothing before the Court. If you are making a general statement of disrespect for the Court or disrespect for the Court's wisdom, I have no objection at all.

Mr. Hunt: I had not intended, your Honor, to express any disrespect for the Court or its wisdom, but simply to state the facts and I think the record bears me out in the statement of fact I have made.

The Court: I have no objection to that.

Mr. Hunt: I am sorry I am constantly interrupted by these objections.

The Court: I think there is quite as much on your part, if not more, than there is on the part of the other. As long as you have seen fit to criticise the Court, even indirectly, I might be permitted to say that I never, in my life, have tried a case where I personally as trial judge have been interrupted in the middle of sentences as I have by you.

Mr. Hunt: I am very sorry, if that is true.

The Court: Proceed.

Mr. Hunt: I disclaim any intention ——

The Court: I appreciate that, but you have done it repeatedly, and I have called your attention to it several times, and you have persisted in it We will get along faster if you will not do it in the future any more than you can help.

Mr. Hunt: I will try my best. Very well, may the question be read.

(Question read.)

The Witness: That plan was carried out.

Q. And the mines were put into operation?
A. And the mines were put into operation.
Q. That was in what year?
A. I might say that they had been in operation for a period possibly beginning with 1903, but only the opening of the old stopes and so forth that had been operated many years before.

The Court: The old what?

The Witness: Stopes, s-t-o-p-e-s.

Q. What effect on the efficiency of the operation did the execution of this plan that you have spoken of have?
A. Oh, of course, it very much increased the efficiency.
Q. Did the execution of this plan involve the spending of any money on the property, Mr. Anderson?
A. A great deal of money.

Mr. Frazer: I object.

The Court: Oh, I will allow it. He has answered it. Mr. Anderson, do not answer, please, when an objection is made.

The Witness: Very well.

The Court: Until the Court has ruled.

Q. Can you state in round or approximate sums about how much was thus spent in the improvement of the mining property?

The Court: What is the materiality of that, Mr. Hunt, please?

Mr. Hunt: I think it serves to give the jury a sort of an idea of what we have up there and what it is we are being disturbed in the use of.

Mr. Frazer: We are not touching the mine property.

The Court: That is the taking of this property, that is not the property of the mine, as I understand it. What effect did it have on that?

Mr. Hunt: For example, your Honor, these mines which employ several hundred men when they are operating and produce large quantities of ore daily. We have to use an enormous amount of water in the concentration process. To describe that briefly, in order to get more of the iron ore out of the rock you crush the rock very fine, and then run it through concentrating processes by means of which the magnetic ore, magnetite is taken out by magnets, but the hematite ore has to be taken out by what is called jigging, that is, passing ore down a lot of steps one below the other that jiggle up and down like this (indicating) or specific gravity. The particles of rock and ore are separated. There is a whole lot of water used in that process, and that water becomes more or less impregnated with the mineral materials that it is washing, and we put it into the settling bed and it has eventually to get

off our property. These mines are on hills. It has to come off the hills and into the valley again. I do not know but what we are going to be accused sometime of polluting the reservoir with the mine water. I think it is a situation the jury has a right to have a look at.

The Court: The issue here is not the pollution of this reservoir, certainly, and if you can show me that the quantity of water that is now used by the mine in operation that you have spoken of is diminished by this taking, I can see where it might be relevant, but otherwise I fail to see the relevancy of it.

Mr. Hunt: We were extremely fortunate in being able to come to an arrangement with the Water Supply Commission for a continuous supply of water for the use of the mine, so our only claim is if the operations carried on may, if carried on in the future, involve us in a litigation commenced by the Commission to restrain our operation.

The Court: If that is the only purpose I think it is immaterial to this issue, and I will sustain the objection.

Q. Are you able to state from your own knowledge, Mr. Anderson, at about what time the North Jersey District Water Supply Commission, or any official body that was its official predecessor definitely came to the decision to produce this reservoir in Wanaque Valley?

Mr. Matthews: I object to that.

The Court: What is the materiality of it?

Mr. Frazer: There is no official predecessor of this Commission, and the public laws of New Jersey speak to that effect. Of those, the Court may take judicial notice.

The Court: What do you say to that, Mr. Hunt?

Mr. Hunt: Why, I had thought that the former body that functioned in the same way before this was created—what did they call that, Mr. Frazer?

Mr. Frazer: There was a State Water Supply Commission with which this body had no relation, except to the extent of certain powers theretofore vested as diversion of waters were vested afterwards by statute in this body.

Mr. Hunt: And is it not true ——

Mr. Frazer: The other is still in existence as a portion of the Board of Conservation and Development.

Mr. Hunt: Is it not true that prior to the creation of your Commission this other Commission that you have mentioned, or some other one, possessed the same powers or substantially or approximately the same powers that your Commission now possesses in relation to the production of water supply reservoirs, aqueducts and so on?

Mr. Frazer: Do I understand this is a question addressed to me, your Honor?

The Court: I do, yes.

Mr. Hunt: Yes.

Mr. Frazer: And through you, I would reply that the powers which this Commission had in relation to contracts with municipalities for the creation of a water supply are altogether different from those under the State Water Supply Act of 1909.

Mr. Hunt: But under the State Water Supply Act of 1909 the body created by that act had such powers as any official body then had to develop such a project as this Wanaque Reservoir; isn't that so?

Mr. Frazer: Am I on the witness stand, sir?

Mr. Hunt: No.

Mr. Frazer: I again reply to the Court, I know of no body other than the State Water Supply Commission, prior to the creation of the North Jersey District Water Supply Commission by the Act of 1916 which had any powers in relation to the development of a water supply other than the individual municipalities.

Mr. Hunt: But the State Water Supply Commission prior to the creation of the North Jersey District Water Supply Commission had that power, had it not?

Mr. Frazer: I would respectfully refer counsel, if it please the Court, to the Act of 1909, and suggest that he learn the law himself rather than interrogating me about it.

The Court: Let it be examined by counsel first.

(Mr. Frazer examines paper.)

Mr. Frazer: No objection.

The Court: Let it be received in evidence.

(Paper marked Exhibit O90.)

Mr. Hunt: With the Court's permission I will read this to the jury. On the letterhead of the North Jersey District Water Supply Commission, dated December 26th, 1922:

"Ringwood Mining Company, 50 Church Street, New York City; Gentlemen:

"We have been informed that in the course of the work in laying out the Wanaque Reservoir some of our surveyors and other employes have gone upon lands belonging to you and to the Misses Sallie and Nellie Hewitt, and are said to have cut down trees, injured fences, etc.

"We asked our appraiser, Mr. Henry G. Hershfield, to take this matter up for us and to give you our assurance of regret. He tells us that he has seen Mr. Erskine Hewitt, Mr. Charles R. Hewitt and Dr. Green, and at the suggestion of these gentlemen this letter is being written to explain our position.

"You will appreciate, of course, that it is necessary for the surveyors to do some cutting in order to get their sights, but our orders have been to do as little cutting as possible, and insofar as possible to first notify us of their intent to go upon the lands. This, through oversight, may not have been done in one or two instances, and perhaps in your case and that of the Misses Hewitt.

"May we say that we regret any such occurrence, and that if any damage has been done to your lands or to that of the Misses Hewitt we will make proper remuneration.

"We appreciate fully the patience of yourselves and the Misses Hewitt, in a situation involving, because of municipal financial consideration, unavoidable and protracted delay. We hope you and the Misses Hewitts will appreciate that we have no intent or desire to ignore legal rights or to cause unnecessary damage and that we will do our utmost to assure that our employes act in the same spirit.

Cordially,

Laurent J. Tonnele."

Laurent J. Tonnele's name is printed on this letterhead as chairman of the Water Supply Commission.

Q. Now, Mr. Anderson, I show you a memorandum in typewriting, including the date, which is May 24th, 1923, and the name signed J. O. Green. Is J. O. Green alive or dead?

A. J. O. Green is dead.

Q. Died how long ago, about?

A. About three years ago.

Q. What relation or connection had he with the Ringwood Company?

A. He was the husband of Mrs. Green, one of the daughters of Mrs. Sarah Hewitt.

Q. And as such did he act as director of the Ringwood Company?

A. He did at times.

Q. Where did you find that memorandum that lies before you?

A. I found this in the files of correspondence in regard to this case.

Q. That is, in the Ringwood Company office?
A. In the Ringwood Company office.
Q. That is a typewritten memorandum. Did you find any pen or pencil drafts of it in Dr. Green's handwriting?
A. I did not.
Q. Only this?
A. Only this.
Q. Does it have relation to the negotiations that were said to have been taking place between the Water Supply Commission and the Ringwood Company in 1922 and 1923 in regard to this land?
A. It does.

(Hands paper to Mr. Frazer.)

Mr. Hunt: I offer this memorandum, if the Court please, realizing that it is probably subject to objection; it is a typewritten memorandum with the name of a person typewritten to it as a signature. That man is dead. I cannot call him.

Mr. Frazer: I have your copy of the agreement which I ask—gave notice to produce, or which Mr. Matthews gave notice to produce, and it seems to me that that speaks for the whole situation.

The Court: I don't know what the memorandum is which Mr. Hunt has reference to. (Examines paper.)

Mr. Frazer: And it of course is a self-serving declaration in a sense, too; apparently the memorandum made of a conference which refers to the contract. Maybe it is of some assistance to the jury, in prying into the contract. I do not think we have any objection to it.

The Court: Very well, if there is no objection I need not read it.

(Paper marked Exhibit O91.)

The Court: The signature to that, Mr. Hunt, is of an employe of the Ringwood Company?

Mr. Hunt: Mr. Anderson testified he at times acted as a director. He was the husband of one of Mrs. Hewitt's children, Dr. Green. With the Court's permission, I will read the memorandum.

The Court: Had you read the letter, Mr. Hunt?

Mr. Hunt: Yes, sir. Memorandum, dated May 24th, 1923, and signed in typewriting only "J. O. Green."

"Mr. Tonnele, speaking for the Commission, agreed to prepare a contract binding the City of Newark to assume all taxes from and after June 1st, 1923, on lands that shall be eventually acquired either by purchase or condemnation by the North Jersey District Water Supply Commission, and that interest on any price received for such land should run from that date; namely, June 1st, 1923.

"It was agreed that a sufficient number of copies of the enlarged profile surfaces of the land to be purchased by the Commission should be sent to this office, and that the Ringwood Company should prepare such rectification of the proposed lines of condemnation submitted by the Commission on this date as in their judgment would be fair to the property owners and return same to the Commission for their approval.

"On the whole the spirit of the Commission seems

to be fair and liberal, and only one suggestion was made having any flavor of trading, and that was the remark dropped by Senator McKee that we perhaps might be persuaded not to proceed with our present developments for say a period of one week. It was met with the reply that we did not propose to hold off one minute and the matter was dropped.

"In answer to a question Senator McKee informed me that his Commission was clothed with full authority to bind the State either to the terms of a purchase or to a contract to purchase such lands as they deemed necessary at prices agreed."

Q. Now, Mr. Anderson, did you ever see in the Ringwood office, or was there ever under discussion there at any meeting at which you were in attendance, any draft of a contract submitted by the Water Supply Commission to the Ringwood Company?

A. No. I do not remember that that draft was ever sent to our office. We were informed by our attorneys that on account of legal difficulties—that is, that the power of the Commission would not enable them to make such a contract—the matter was dropped.

Q. Who was the attorney who gave you such advice?

A. Mr. Wright and in association with Mr. Whiting, I believe it is.

Q. That is Mr. Borden Whiting, of Newark?

A. Yes, sir.

Cross-examination.

By Mr. Frazer:

Q. Mr. Anderson, I show you a draft, a carbon of a draft of an agreement between the—of a proposed agreement, unexecuted, between the Ringwood Company and North Jersey District Water Supply Commission, bearing date the 1st day of June, 1923, and ask you to look it over and state whether the subject-matter of that agreement has reference to the subject-matter appearing in Exhibit O91?

Mr. Hunt: May I be permitted to read that over Mr. Anderson's shoulder, to save time. I have never seen it myself.

The Court: No objection.

Q. What is your answer?

A. My answer is that it probably does, to the best of my knowledge and belief.

Q. You do know that such a contract in relation to the subject-matter—or that a contract in relation to the subject-matter of O91, Mr. Green's memorandum of the conference, was sent to Mr. Alfred S. Wright, the attorney for the Ringwood Company?

A. No; that is not true.

Q. Was not sent to him, you mean?

A. No.

Q. Or that you don't know that was sent to him?

A. No. I mean that this matter was turned over to Mr. Wright—Mr. Whiting for an attempt to draw such a contract with the attorneys of the

North Jersey District Water Supply Commission.

Q. And Mr. Wright reported to the company that such a contract had been examined and for certain reasons the company was advised not to execute it; is that correct?

A. No. Mr. Wright reported that it was found that the Commission did not possess power to make such a contract.

Q. But the contract was under consideration by Mr. Wright and Mr. Whiting, I mean?

A. Yes.

Mr. Frazer: I ask that the contract be marked for identification.

Mr. Hunt: I have no objection to it being offered in evidence. I see no materiality in it.

Mr. Frazer: I will offer it.

(Paper marked Exhibit C104.)

Q. That is all.

Mr. Hunt: I will read certain parts of this.

The Court: Why not read it all?

Mr. Frazer: I think if the contract is to be read, it should be read fully.

Mr. Hunt: Well, possibly I can save some time by stating what certain paragraphs are.

Mr. Frazer: No, I would prefer the contract speak for itself, except for the formal introduction.

Mr. Hunt: Very well, I will read it all. (Read-

in. "This agreement, made the first day of June, 1925, between the Ringwood Company, a corporation of the State of New Jersey, having its principal office in the Borough of Ringwood, in the County of Passaic and State of New Jersey (hereinafter called the "Company") of the first part, and the North Jersey District Water Supply Commission, a body corporate, having its principal office in the City of Newark, in the County of Essex and State of New Jersey (hereinafter called the "Commission") of the second part; Witnesseth as follows:

"1. The Company agrees to sell and the Commission to buy, for the consideration and upon the terms hereinafter more fully set forth, certain lands of the Company situated in the County of Passaic, which lands are shown approximately upon a map hereto annexed and made part hereof, entitled "Wanaque Reservoir, Real Estate, Parcels to be Acquired From Ringwood Company," and the exact area and situation whereof are hereafter to be determined by detailed survey made by or on behalf of the Commission.

"2. Access to and possession of the lands shown in the annexed map shall be given by the Company to the Commission on the first day of June, 1923, the day of the date of this Agreement, the Commission assuming all liability for the payment of taxes upon the lands which shall hereinafter be conveyed to it by the Company, subsequent to the taxes which shall become delinquent on the first day of June, 1923, five-sixth (5/6) of which the Company and one-sixth (1/6) of which the Commission hereby agree to pay. If any of the lands which shall hereafter be conveyed to the Commission shall constitute a part only of any given tract as plotted for taxing purposes, the obligation of the Commission

to pay taxes shall be limited to such portion of the taxes as bears the same ratio as does the amount of land actually conveyed to the whole of such tract.

"3. The Commission undertakes and agrees to carry upon buildings standing upon said lands, until such time as said lands shall have been conveyed to and paid for by it, insurance equal in amount to that now carried by the Company on said buildings, provided that if any of said insurance shall be cancelled the Company will undertake to replace said insurance but at the expense of the Commission, the rate of said insurance not to exceed the current rate for similar properties in the vicinity. Such insurance shall be carried for the benefit of the Company and the Commission as their interests may appear.

"4. If, prior to the conveyance by the Company of the lands herein referred to, the Commission shall deem it necessary or advisable for the proper prosecution of the work of constructing a reservoir and water supply system to take additional lands belonging to the Company in the same general locality, the Company agrees to convey said additional lands on the same terms as herein provided for the lands herein more specifically referred to.

"5. The Company agrees that after the execution of this Agreement it will not seek, pending the taking of title hereunder, to enlarge its land holdings or negotiate for the purchase of further lands or sell any of the lands now held by it which may lie within the lines of the proposed takings of the Commission for the purpose of the construction of said water works."

This is what I consider the essential part of the agreement, if any part is essential. It is difficult to say how any part of a wholly unexecuted agreement is of materiality.

Mr. Frazer: Mr. Hunt has consented to the agreement being in evidence. I think he should not comment as to its materiality.

Mr. Hunt: (Continues reading):

"6. The parties hereto agree that upon the taking over of said lands by the Commission they will forthwith negotiate for the purpose of determining upon a price to be paid for said lands and if said negotiations shall fail, either in whole or in part, that as to such lands as they shall fail to agree upon as to price, application shall be made to a Justice of the Supreme Court for the appointment of Commissioners in Condemnation to fix the value of said lands as of June 1, 1923, and the Commission agrees to pay to the company, for said lands, such sum or sums of money as shall be agreed upon by negotiation or as shall be fixed by said Commissioners in Condemnation or upon any appeal or other final determination of said condemnation proceedings.

"7. Upon the payment of the amount of said agreed purchase price or/and award in condemnation proceedings by the Commission, the Commission agrees to pay, in addition, interest at the rate of Six per cent (6%) per annum from June 1, 1923, to the date of said payments upon the amount of said agreed purchase price or/and condemnation award.

"8. The Commission agrees to make the payments herein last above provided for and to take title to said lands on or before June 1, 1925.

"9. The Company agrees to convey said lands to the Commission at any time on or before June 1, 1925, that the said Commission shall make to the Company the payments aforesaid in fee simple, by deed of Bargain and Sale with covenant against acts

of the grantor, except as to taxes which shall have become delinquent subsequent to June 1, 1923.

"IN WITNESS WHEREOF, the Ringwood Company has caused these presents to be signed by its President, attested by its Secretary and its corporate seal attached hereto and the North Jersey District Water Supply Commission by its Chairman, attested by its Secretary and its corporate seal attached hereto."

Then the corporate titles of the two concerns are set out in typewriting, but there are no signatures.

Q. I understood you to say, Mr. Anderson, this contract has never been executed and entered into between the parties?

A. It has not.

Mr. Hunt: That is all. I will call Mr. Thomas.

ROBERT E. CROCKETT, sworn.

Direct examination.

By Mr. Lewis:

Q. Where do you live?
A. At Ringwood Manor, New Jersey.
Q. How old are you?
A. 32.
Q. How long have you been at Ringwood?
A. About seven years.
Q. What is your business or profession?
A. Civil and mining engineer, and land surveyor.
Q. Have you any degrees?
A. Yes.

Q. From institutes of learning?
A. Two. B. S. and C. E.
Q. From what institutes did you obtain them?
A. From Cooper Union, New York.
Q. In your training at that institution did you make any study of—or let me ask you what your studies were at Cooper Union?
A. The general scientific studies of an engineer.
Q. Well, state them in detail.
A. The course is a five-year course, during which we studied the various engineering subjects, such as mathematics, mechanics and materials, chemistry, physics, structures, water supply and various other studies of that nature, including of course, railroad work and earth embankment measurements—various studies of that kind.
Q. What was the nature of your studies in connection with materials and constructions?
A. Materials of construction?
Q. Materials and construction?
A. In the mechanics and materials subject we studied the various features and characteristics of all materials entering into construction.
Q. Did you take any other course in any other institution of learning?
A. Yes; I did some work at Columbia.
Q. What was the nature of that?
A. That was chemistry and physics, beyond that which I got at Cooper Union.
Q. To what extent have you since your graduation at those institutes applied the knowledge that you say you obtained there, the theoretical knowledge that you obtained there?
A. I was applying my knowledge as I studied at those institutions, because I was doing my studying at night, and since then I applied what I learned there—what I have studied and learned since, be-

cause I have continued studies on my own account for the last seven or eight years.

Q. What were you doing while you were a student?

A. Working on engineering work. I have had about 17 years' expedience on general engineering work.

Q. Where? Where were you so doing as a student?

A. In New York City and New York State.

Q. While you were a student?

A. In New York City.

Q. With whom?

A. Well, I had four years with a consulting engineer.

Q. No; I mean while a student. I would like to get ——

A. While I was a student?

Q. I want to get the portion of your studies and the practical application?

A. While I was a student I had four years employment with a consulting engineer in New York City, between the years 1910 and 1914. Then later—I was not studying at the time—I was employed on the New York State Barge Canal at Minetto and Oswego.

Q. That was after your graduation?

A. No; that was intermediate. There is a little lapse in between.

Q. During vacation?

A. Yes. Then to resume my studies, I came back to the city and was employed by the New York City Water Department on the Catskill Aqueduct for a short time, and then was transferred or I went to the Public Service Commission on New York City subways, with the construction in New York City, and under the same employer was transferred to the

tunnel division, where I put in a couple of years of work on the East River tunnels, on construction, inspection and survey work. The war came on and I enlisted, spent about two years in the service, and when I came out again I finished my studies.

Q. In what capacity during the war?

A. Well, I was discharged as a captain of engineers.

Q. Well, was your work as an engineer; was it in an engineering corps?

A. In combat engineers of the First Division in France.

Q. And afterwards?

A. After being discharged from the army I went back to my studies and finished them last year at Cooper Union. That was in 1919, getting my degree of B. S. at that time, and my C. E. degree in 1923, four years after. The C. E. degree is usually given after you have had satisfactory charge--experience and charge of responsible work. Cooper Union requires four years of such responsible charge after graduation with the B. S. degree before they give you the C. E. degree.

Q. Did your studies and your experience give you any knowledge or information as to the elements of concrete?

A. Yes. In school we were taught the theory of the making of concrete, the various requirements for the various ingredients and methods of putting ingredients together to make concrete, and then of course in my practical work I have had considerable experience in observing how concrete was made and placed, and I also have done inspection work in the placing of concrete and the inspecting of the materials entering into concrete and inspection of the placing of concrete in forms.

Q. Just state to the jury how concrete is made?

A. Concrete is made from a mixture of cement and sand and gravel and water. These ingredients should be properly proportioned. That is very important.

Q. Right there ——

A. They should be thoroughly mixed.

Q. Having stated the elements, do I understand you to say that the elements you named are exclusive or may there, for instance, be a substitute for gravel?

A. Yes; crushed stone might be substituted for gravel, or sometimes they use cinders in making cinder concrete, and blast furnace slag is sometimes used as an alternative. Crushed stone and gravel are the most component constituents of concrete, in that way.

Q. Now, state specifically and in detail your experience from your earliest time down to, say, the present in the making of concrete and its application in work.

A. Well, in 1914 I was employed on the Barge Canal, New York State Barge Canal, at construction of the Minetto Dam just south of Oswego. I did some inspection work. That work consisted of the inspecting of the various ingredients to see that they were alike, sand and gravel, to see that they were the proper quality, to see that the proper quantities of each were taken, and that the concrete was placed properly. From the Barge Canal I went to the Catskill Aqueduct, where the concrete work I saw was not very extensive, because the job was practically finished. I then went to the East River tunnels, to the New York City Subways, where considerable concrete was being placed. That was in the section between City Hall and Canal Street and,

of course, I observed their methods and the way it was placed then on the East River tunnels. Part of my duties were, at various times, to inspect the placing of concrete in the tunnels. This inspection was a repetition of what I said I did at Minetto, to see that the materials as received at the mixer were clean and of the proper quality and mixed to the proper proportions.

Q. What were those materials?

A. They were sand and gravel, cement and water.

Q. What was the process?

A. They used the Ransome concrete mixers of the drum type on that job. The ingredients were mixed, water added and placed in forms. That was in the tunnel lining.

Q. Have you finished with your whole experience to date in the making and application of concrete?

A. Oh, of course, since I have been with the Ringwood Company we have placed considerable concrete. I might state here within the last year or two, we built the dam at Lake Erskine which had a concrete core wall. We prospected in that vicinity for sand and gravel. We found it. To make sure that our dam would have proper materials used in it, we made tests of the sand and gravel we found in those vicinities. Those were the usual tests.

Q. I will come to that later. I want now to get your experience in using concrete.

A. Yes. We rebuilt the Forge Pond Dam. We built the bridge over the Stirling Brook.

Q. Whereabouts is that on the map?

A. Just above the taking.

Q. Suppose you come down and point out that Stirling Brook. I do not recall it myself. (Witness approaches map.)

A. Stirling Brook is sometimes called the Ring-

wood River. It adjoins the Ringwood River. It is just about up here where the bridge was built. (Indicating.)

Q. It is not on the map?

A. No. It is the entrance to Miss Hewitt's estates. (Witness resumes stand.)

Q. All right, go on.

A. Then, at the mines we constructed various buildings and structures where we also made concrete. It seems to have stood up very well.

The Court: Is that all?

The Witness: Yes.

The Court: How about the Ryerson Dam?

The Witness: The Ryerson Dam was let under contract. Mr. Boardman was the consulting engineer and the designer of that dam. He drew up plans and specifications on which bids were received, and Mr. Heller of East Orange was the successful bidder, and he was the one who constructed that dam.

The Court: You had nothing to do with that?

The Witness: Nothing to do with the actual construction. I used to go down and see how things were getting along.

Q. Anything else?
A. That is approximately all.
Q. That is approximately all?
A. Yes.
Q. Have you had any experience in the exploration of lands for the purpose of ascertaining the presence of minerals or stones or quartz or ores?

A. Oh, yes. Well, since I have been with the Ringwood Company my work has been intimately connected with the mines where I have had occasion to explore for various minerals. Incidentally, I found it was necessary to amplify my previous knowledge of geology somewhat, and I studied on my own account from La Conte, who was one of the authorities on the subject, and I studied from his book.

Q. Have your studies been such as to enable you to form an opinion as to the character and origin of the deposit in the valley of the Wanaque and the neighborhood of lands now taken?

A. Yes

Mr. Frazer: I do not think it makes any difference what Capt. Crockett's opinion is.

Mr. Lewis: I do not think so, myself.

Mr. Frazer: Whether he studied sufficiently to make his experience worth while, is the question.

The Court: It calls for a conclusion.

Mr. Lewis: Of course, I am qualifying him now. He gave a good many.

The Court: You are not through?

Mr. Lewis: Not yet.

The Court: Very well.

Q. Do you know in what proportions sand and gravel and cement enter into an acceptable concrete?
A. Yes.
Q. And what are they?

Mr. Frazer: What difference does it make? I object to it. I do not see that it has anything to do with the qualifications what proportions go into the manufacture of cement.

Mr. Lewis: All right.

The Court: The question is withdrawn?

Mr. Lewis: The question is withdrawn. You can cross-examine on the qualifications.

Mr. Frazer: I do not know what he is being qualified for. He seems to be a general engineer, and I might be able to direct some intelligible questions along that line. In the meantime I do not know what he is offered for.

Mr. Lewis: The offer, of course, as Mr. Frazer might guess, is to prove by Capt. Crockett that the sand and gravel on the Ringwood lands is the kind of sand and gravel which enters into the making of concrete, and is suitable for that purpose.

Preliminary cross-examination.

By Mr. Frazer:

Q. Have you ever made any tests of sand and gravel?
A. Yes.

Q. On the Ringwood property?
A. Yes.
Q. Personal, laboratory tests?
A. Yes.
Q. In how many instances?
A. Many.
Q. Many instances?
A. Yes.
Q. Covering what period of years?
A. During the time we were examining this deposit, I should say we were working on it over possibly two years.
Q. Those were the first ones you had ever made?
A. No.
Q. Where had you made them before?
A. At school.
Q. You had made laboratory tests under the direction of your instructor at school?
A. Yes.
Q. And then you had no further experience with it until you came to make certain tests here for the purpose of this litigation, is that correct?
A. No, I would not say that.
Q. What would you say?
A. I have made various tests for my employers, the consulting engineers in the city.
Q. Laboratory tests for sand and gravel?
A. Yes; you can call them laboratory tests for sand and gravel.
Q. I do not care what I am calling them. I want to know what they were?
A. Yes, they were screen tests.
Q. That is to say, you threw some gravel up on a screen and saw what mesh it fell through?
A. Something like that.
Q. Something like sorting oranges.

A. That is a necessary proceeding. I will tell you just what they were. The engineers, in screening and classifying sand and gravel have an accurate set of screens. They are usually made by Olsen people or Taylor people or Ludlow—Saylor. These are screens in which the wires are very accurately placed. They usually run in sizes from three-quarter inch opening, sometimes you have an inch and a half opening, but usually three-quarter inch opening, down to three-eighths, down to a quarter and an eighth, and then down to what we call fourteen mesh, and the twenty-eight mesh, and the forty-eight mesh, and the one hundred and two hundred mesh, and the three hundred mesh, if necessary. When I say I made a laboratory test, yes, I determined the screen analysis of that sand and gravel.

Q. That was the extent of your analysis?

A. Yes.

Q. You made no impression test of concrete?

A. Not outside of my school experience. That requires considerable machinery which is not usually owned by the average consulting engineer. He sends his materials out to be tested, because he does not have the machinery.

Q. I am not asking you to volunteer a lecture, Capt. Crockett. Will you answer my question? This screening simply consists of putting your sample in a series of different meshed screens and seeing what ones are held on what size mesh screens?

A. Yes, sir.

Q. And purely a mechanical process?

A. Yes.

Q. But you haven't done anything in the line of analyzing chemically the materials that go into sand and gravel?

A. Since being with the Ringwood Company, I have.

Q. What was that that you did?

A. I worked with the chemist various times in the laboratory.

Q. You worked with the chemist?

A. Yes, and made tests myself.

Q. You were an assistant to the chemist in the laboratory?

A. At that time, yes. I appointed myself that.

Q. And you never made any tests of concrete which was made up from this, did you? You never tested any of the concrete?

A. We haven't got the machinery to make an impression or tensile test.

Q. The only thing that you did was to shake some sand and gravel through a mesh and figure out the amount which remained on the different sized meshes?

A. At what time was that, Mr. Frazer?

Q. At any time?

A. No, sir; I made various laboratory tests.

Q. You made some laboratory tests when you were a student?

A. No; with the Ringwood Company I made the color test on sand and gravel to determine whether or not that contained injurious vegetable matter.

Q. Colormetric test?

A. Yes.

Q. That consists of comparing the color of it with some standard color, isn't that it?

A. It consists of using a seven per cent sodium hydro oxide solution by means of which we determine the humus content.

Q. And you get different color solutions as a result of that, or organic suspensions?

A. That is a quantitative test, yes.

Q. You look at the two and compare it with a standard color?

A. Yes.

Q. And then you guess, according to your accuracy of whether you are more or less color blind, whether one is yellower than another?

A. The normal eye would not make any error on that.

Q. The normal eye would not make any error on that. That is the extent of your experience as a sand and gravel expert, is it?

A. With the Ringwood Company we made all such necessary tests as were required to determine whether or not the sand and gravel was good.

Mr. Frazer: I ask that that be stricken out as a conclusion of the witness.

The Court: If he has finished I will strike it out, but I do not think he has quite finished, and I will allow him to finish.

A. And we checked those determinations or results by having the State do the same in a report to us, in corroboration. We found we were correct.

Mr. Frazer: All right. I submit that the witness has not had such experience as will permit him to testify as an expert on the qualities of sand and gravel?

Mr. Lewis: If your Honor please, what makes a man an expert is experience and work and the knowledge he obtains from it. A man does not have to stand with a mortar board on the top of his head and a gown over his shoulder to be an expert.

The Court: I will allow him to testify as an expert.

Mr. Frazer: Exception.

The Court: You wish an exception?

Mr. Frazer: Yes.

The Court: You may have it.

Re-direct examination.

By Mr. Lewis:

Q. Now, Capt. Crockett, since you have been at Ringwood, have you become familiar with the lands of the Ringwood Company?

A. Yes, sir.

Q. Do you know what lands are being at present taken by the North Jersey District Water Supply Commission?

A. Yes, sir.

Q. I call your attention to Exhibit O70 and ask you if the lands being taken by the Commission are correctly laid out upon that map?

A. Yes, sir.

Q. Now after you became connected with the Ringwood Company, did you set upon the making—upon the exploring of those lands for any purpose?

A. Yes.

Q. What did you explore for?

A. For sand and gravel in this case.

Q. Just state the method you adopted in making those explorations?

A. I went into the field, on to the ground, looked

the terrain over, and could see approximately that the sand and gravel deposit covered a certain area. I went along the approximate outside edge of that area, indicating a line for the survey party to pick up, this line being just inside or outside of the gravel area. I indicated various points on that boundary, set various markers for the survey party to locate. The result of their work, when completed, was a map of the outline of the sand and gravel deposits.

Q. I don't know that you quite answered the question.

A. I have not finished that answer. The next thing to do—the next thing we did was to go over the area so outlined and select various points at which we put down borings. These points were so located as to give—as to cover the whole area entirely, and to give a determination, when we had the depths, of the deposit at those various points and its extent vertically. The borings, as I say, were put down at various points. We used two-inch iron pipe—36 such borings were put down over the entire deposit. As the pipes were driven down we took samples of the material at various depths, for instance, we would get a sample at ten feet, we might get a sample at 25 feet, and as the pipe was driven down, and we would get a sample at deeper depths; some of the holes were put down as deep as 85 feet. These samples were tested so as to find out the character of material we had, as we went down. We did not know what we had. We might have had bituminous sand, we might have had molding sand, we might have had concrete sand. We took these various samples and screened them to find out the size and the grading and the character

of that sand. We incidentally with those samples made a color test, the color test being for the purpose of determining ——

Q. Before you get to this now, I wish you would stop just a moment.

A. Yes.

Q. I want you to make a little clearer to the jury the method of determining the character and quality of the sand and gravel in those areas by means of your two-inch pipe that you speak of. Describe in detail the method of making those borings and the implements that were used.

A. In making that kind of a boring it is necessary to have a two-inch pipe. The two-inch pipe is driven by a hammer, the hammer weighs ——

Q. Now two-inch pipe means a pipe two inches in diameter?

A. Inside.

Q. Inside diameter.

A. Inside diameter. The pipe is driven by a hammer. In our case we had ——

Q. What would be the length of a section of that pipe?

A. Oh, that would vary. We had them as we used them—usually about five to seven feet in length.

Q. Five to seven feet?

A. Sometimes longer, sometimes less. So that we took a section of pipe seven feet long. This hammer is suspended on the end of a rope which passed up through a sheave, the sheave in turn being supported with a tripod, a tripod possibly 15 feet high; the tripod is made up of four-inch iron pipe. This rope ran around that sheave and ran down to the hands of a half a dozen men who pulled on that, raising the weight up, and when it was raised two or three feet, they allowed it to fall, let go of the

rope and allowed it to fall, coming on top of the pipe and driving the pipe.

Q. Do you recollect what the weight of that hammer or weight was?

A. Yes, approximately 200 pounds.

Q. And the height from which it was dropped?

A. Well, it would between two and three feet, would be the length of the blow.

Q. How much?

A. Two or three feet.

Q. That was repeated as you would give hammer blows upon the pipe; is that right?

A. Exactly.

Q. And was the pipe held in a vertical position?

A. It was guided by a man standing alongside of it until it was driven securely into the ground, when it holds itself in a vertical position.

Q. When you had come to the end of the pipe, so to speak, that is to say, when but a small portion was left above the ground, what would you do then?

A. We would couple on another section, whereafter the process would be repeated, it would be driven within a short distance of the ground, the hammer coupling taken off—the one on which we hammered, of course, to protect the threads of the pipe—and another section of pipe coupled on, the hammer section, the cap put on the top of that, and that is driven.

Q. What would be the reason for your stopping the hammering and the extension of the pipe?

A. When we come up against something through which we could not drive.

Q. When you had reached that point, what would you do?

A. We could tell approximately whether or not we had hit solid rock or a boulder. When you hit

solid rock the hammer rebounds sharply. If you hit a boulder, unless it is a very big boulder, it does not rebound as sharply, it is dead in its rebound.

Q. And then having ——

A. If we hit solid rock we would consider that we had arrived at the depth of the deposit at that point. If within a few feet of the ground we came against an obstruction there through which we could not drive, we would assume that we had hit a boulder or something, which was very, very seldom the case, and we would move aside a little away and then drive, when we could usually drive down to the full depth of the holes in that vicinity.

Q. But when you determined that you had reached a solid rock, then you ceased, I suppose?

A. Yes. When we supposed that we had reached solid rock we ceased, because we were investigating the depth of the gravel.

Q. When the boring is completed in each case, did you withdraw the pipe?

A. Yes.

Q. What was then done?

A. The material from the inside of the pipe was then taken out. As a rule, if we drive from the surface to the bottom of the hole without stopping, as we sometimes did, of course the pipe—the length of the core in the pipe would not be the depth of that hole; it would be shorter than that, it would be less than that, so we would take—say there was 20 foot of sample inside the pipe and the hole was 40 feet deep, in arriving at our determination of the sample from the various depths or points in that hole, we would prorate that 20 feet to the 40 feet; in other words, if we wanted a sample say from the surface, we would go five feet from the top of that sample down, because 20 feet is half of 40 feet, take

a sample there, that would be representative of the material 10 feet from the surface of the hole, and so forth, all the rest, all the balance of the hole. In some cases, however, where the pipe was—where we had time or we so decided, we wanted to get a sample particularly from a certain pipe—we would drive the pipe 10 or 15 feet in the ground and withdraw it and take the sample from the bottom of the pipe from that point, and that would be a sample 10 to 15 feet from the surface of the ground, and then we would put the pipe in the hole and continue. We could do that because the sides of the hole stood up there well, they did not fall, they did not fill the hole; we could always re-insert the pipe after we had withdrawn it.

Q. Having withdrawn the sample from the pipe, what did you do with that?

A. We had sample boxes, one box for each hole, the box usually contained six compartments, the compartments were 6 x 6 x 6; each sample as it was taken from a pipe would be placed in that particular box and the side of that compartment marked, also a slip of paper would be inserted in the sample and covered over with part of the sample as a check.

The Court: How would you get the core out of the pipe?

The Witness: The core was usually jammed in pretty tight. We would have to suspend the pipe and hammer it out or pry it out.

The Court: With a ramrod arrangement?

The Witness: Yes, sir.

Q. Then those samples were submitted to what further test?

A. The samples were returned to the laboratory, and there a screen test made of them.

Q. And that screen test—go ahead?

A. And a certain part of that sample—usually the amount to take is four and one-half ounces—was taken from that sample and put into a 12-ounce bottle, which is graduated on the side for the purpose of making color tests, a sodium hydro oxide solution was added, the whole thoroughly shaken, thoroughly mixed up; the effect of the sodium hydro oxide being to remove the humus and the vegetable matter, just like in the process of making soap; then that bottle was allowed to stand for 24 hours. Naturally, the coarser particles would come down, that is, the gravel, and then the coarser sand, and then the medium sand, and then the finer sand, and then on top of that would be the silt, which might be ground up sand and silica or clay. The vegetable matter would be removed from the whole and would appear in solution, in the sodium hydro oxide; it would have a color; the depth of that color would be an index of the quantity of humus, injurious material in the sand. The depth of silt on top of the sand, which was a very fine layer compared to the whole sample, would be a percentage of fine material in the sand. The reason why that particular observation was made was because the State of New Jersey says that they allow a maximum of four per cent of fine material, that is, minus 200 mesh in the sand.

Mr. Frazer: I object to this statement of the specifications. We are going way beyond the inquiry.

The Court: I think the objection is well founded. That part of his testimony will be stricken out.

Mr. Lewis: If your Honor please, in a matter of this kind, the witness being an expert and having made himself familiar with all the matters that pertain to a particular kind of business, would be naturally aware, among other things, of any lawful requirements concerning the character of any composition used in a given business. For instance, I would not know, Mr. Frazer probably would not know, the rest of us, the jury would not know, what the State of New Jersey specified in respect of the construction of making concrete, but a witness who has made it his business to make concrete, to inspect concrete, to see it being put in place, would naturally have that special knowledge, and I think I have qualified him in that respect surely.

The Court: Do you think that is the best evidence of it? His mere statement of what the State requires?

Mr. Lewis: Well, I can produce a book, that would be another step, which is given by the State. It would be very much shorter for him to state it.

Mr. Frazer: It is immaterial. That is my real objection to it. I think it is wholly immaterial and we are going into a discussion of the cement business and the concrete making business, and other things of that kind, which have nothing to do with the issue in this case. I just do not want to waste time on a lot of questions which have no bearing.

Mr. Lewis: That, of course, is a different objection. Now it is very material for us to be able to show that we have gravel and sand on this land which is proper for the making of concrete and answers at a very slight expense all the requirements of the State in the making of concrete. It enables the jury to form a judgment as to the extent the value of this land is enhanced by the presence of that stone and gravel.

Mr. Frazer: I should figure that Judge Lewis had some such matter in mind. Of course, how much expense is to be put upon this gravel to make it suitable to meet the New Jersey State tests is not evidence in this cause. We again come down to the question of cost and so forth. We are dealing with gravel as it is, not as it is washed and treated and made to comply with State tests. It has absolutely no relevancy to the issue. Might I say, your Honor ——

Mr. Frazer: Judge Lewis, as he indicates, intends to put in evidence of how costly or uncostly it may be to make this gravel suitable, and there I think it is wholly objectionable.

The Court: Suppose this witness says it is not necessary to do anything, that in its virgin condition it meets with all the requirements of the State?

Mr. Frazer: Then we come down to the Ross case, which holds you cannot make any separate value, you can merely take into consideration the fact that it is a gravel deposit here. Has that any effect on the market value, on the kind of market? Not in the minds of experts, but has it such a value that the value of the property in the minds of the

market is increased? That is the thing that we are seeking for here.

The Court: Well, you are a little ahead of the story.

Mr. Frazer: We have to be ahead of the story, because there is a continuous digging under to get in this element of value, which is improper.

The Court: Up to this point the witness is testifying to the condition of the gravel in its virgin state, if that is the proper term.

Mr. Frazer: He has merely testified as to the methods that he used in making certain borings.

The Court: Well, he up to this point has only testified to what he found the gravel to be as to quality; what the gravel in the condition as he took it out of the ground was, without any process whatever. He tells you how he comes to that conclusion by the tests that he gave it, but he has not gotten to the point of marketing it yet. I think we better decide that feature of the case a little later.

Mr. Frazer: I should not have raised any question about it had it not been for Judge Lewis' remark about the cost.

The Court: I will allow him to answer the question on the theory that he is just now describing the gravel as it is.

Mr. Lewis: As it is there.

The Court: Very well.

Mr. Frazer: May I have an exception?

The Court: You may.

A. (Continued.) I should say that the State of New Jersey allows a maximum of 4 per cent of this fine material in their washed sand which they O. K. for use in their concrete after it has been treated. I believe I finished. I think I covered the tests that were made. I mentioned the color test and the percentage of clay, the screen test. We were not able to make the impression and tensile test. We sent samples to the State of New Jersey for that purpose.

Q. Did your tests show that the sand and gravel came within the requisites as laid down by the State?

Mr. Frazer: I object. Let him state what the tests show.

The Court: The objection is sustained. Let him state what the tests show. That is all.

Mr. Lewis: I will have to go into that. It is going to take a long time, but I won't do it at the present. I will defer that.

The Court: Very well.

Q. Did you have anything to do with the preparation of this map, Exhibit O70?

A. Yes.

Q. Did you determine the area of land as land containing gravel that was to be depicted on the map?

A. Yes.

Q. Did you do that after or before the borings were made?

A. After we had made the borings.

Q. After you had made the borings?

A. Yes.

Q. When did you first begin to explore any of these lands by borings? Was it after or before the lands were taken by the Commission?

A. It was before March 19th, 1925.

Q. Yes. When did you make your first exploration?

A. Why, this matter was under discussion for considerable time. Oh, I should say since 1920 we have been discussing this situation, but we actually did not get to making borings until 1923. Most of the work was done in 1924.

Q. Had you made any borings prior to 1923?

A. I doubt whether we did.

Q. Now, after you had completed your borings, did you make a survey of the lands for the purpose of delineating on the map that portion that contained gravel?

A. Well, those surveys were made before and during and after the borings were made.

Mr. Frazer: What is the materiality of the date of the making of the borings? I fail to see it has any bearing whatever.

Mr. Lewis: I would like to give all the information we have to the jury.

Mr. Frazer: You do not contend, for a moment, they were not made for the purpose of this litigation, do you, Judge? How is this material?

Mr. Lewis: The maps ——

Mr. Frazer: It is immaterial, the borings and all the rest of the studies.

Mr. Lewis: I do not suppose I have to maintain anything of that kind.

Mr. Frazer: Then what is the materiality of it? We are just wasting time.

Q. The surveys were made by you?

A. They were.

Q. How were they made?

A. Under my direction and supervision. They were made by a survey party of which I had charge.

Q. In the regular methods used by surveyors?

A. Yes. I am a licensed land surveyor myself.

Q. Did you stake out the plots of land which you thought contained gravel and sand?

A. Yes.

Q. For concrete?

A. Yes.

Q. And the survey was made accordingly?

A. Yes. After the survey was plotted up, and the map made, I took that map into the field myself, personally, and checked it over to see its correctness, to see whether the lines on the map coincided with the conditions in the field.

Q. And does this map, or the part colored in buff, truly depict the sand and gravel areas on the taking?

A. Yes.

Q. The property taken?

A. Yes.

Q. Now, I wish you would come down to the map. (Witness approaches map.) Now, point out on the map where these borings that you have spoken of were made.

A. In Section 1 we made three borings. Section 1 is this area indicated about here. Boring No. 1, Boring No. 2 and Boring No. 3. (Indicating.)

Q. How are the borings marked on the map in each case?

A. The elevation, the surface of the ground ——

Q. No, I refer to the marking, and the place of the boring?

A. I see. By a small circle.

Q. And how many such borings were made?

A. In all?

Q. Yes.

A. 36.

Q. Now, go to the first one and give us the depth of that boring?

A. The depth of that hole is 40.9 feet, boring No. 1, Section No. 1.

Q. Did you determine the elevation of the top of the boring above sea level?

A. Yes, using the same bench marks as are used by the Water Supply Commission. We determined that the ground at the point where Boring No. 1, Section No. 1 was put down at the elevation of 305 feet above sea level.

Mr. Frazer: If it please the Court, I cannot see the materiality of the elevation of these holes above sea level. It does not make any difference whether it is 100, 200 feet or 300 feet or a thousand feet above sea level for sand and gravel. It does not make any difference where the depth goes.

The Court: Unless the point is it is within the taking. There is no point about it as to whether or not it is within the taking, is there, Judge?

Mr. Lewis: I beg your pardon, sir?

The Court: This has nothing to do with the question of whether or not it is within the taking?

Mr. Lewis: Oh, not at all. It is within the taking. There isn't any question about that. The proofs now ——

The Court: Then what difference does it make what the elevation is?

Mr. Lewis: Because he cannot give us an estimate or results of calculations, ultimately, as to gravel and sand contained on those areas without determining the depth of the hole, and that requires a mathematical calculation into which enters that elevation, because you cannot tell the depth or give any basis for its determination, unless you give elevation.

Mr. Frazer: If this was a question of boiling point I could see the sense to elevation.

The Court: The point is the hole is so big. What difference does it make whether made at elevation of two or three hundred?

Mr. Lewis: The contours vary.

The Court: I will allow it, then.

A. I think, perhaps, your Honor, the reason for it is this ——

The Court: You just answer the questions. We will get along a little faster.

Q. Now, state the reason, then, Captain Crockett.
A. Having an elevation of the ground and the depth of the hole, we can tell whether or not the bottom is at such a point, whether sand and gravel at that point could be worked hydraulically, and it would be below the surface of the river.
Q. Now, then, proceed with the other exploration.
A. In Section No. 2, outlined by my pointer as follows:—

The Court: Just a moment, please, Captain Crockett.

Q. Proceed.
A. Section No. 2, which is located east ——
Q. Before you go to Section 2, have you given to us the elevation and depth of the holes or borings in Section 1? All of them?
A. No, I have not.
Q. Give us each one of them.

Mr. Frazer: If it please the Court, this exhibit was offered, and it has certain data on it. Is there any necessity for this witness to repeat what is perfectly legible on the map, the elevations, the depth of the borings, and the point where it appears on the map?

Mr. Lewis: Not at all. If counsel will admit that the borings shown on the map are correctly shown

as to location and as to depth and as to altitude of the top of the hole, then all we will have left to prove will be the figures which counsel insisted upon erasing—that was the contents of each one of these areas.

Mr. Frazer: I am perfectly willing to admit that Mr. Crockett will read, in response to Judge Lewis' questions whatever is on the map in relation to these questions directed to him. And that is in evidence already now. What more do you want?

Mr. Lewis: The map ——

Mr. Frazer: I do not admit the accuracy of those figures, but I will admit Captain Crockett will testify to those figures and read them off the map.

Mr. Lewis: I want the jury to determine by the manner in which Captain Crockett testifies as to whether what he says can be believed.

The Court: Very well, you may proceed.

A. Section 1, hole No. 1, elevation at top of 305. The depth 40.9 feet. Hole No. 2 ——
Q. By the way, can you, when you finish each one of these sections, can you state at the same time the size—I will withdraw that ——

The Court: Very well, keep your voice up, too, Judge.

Q. Go right ahead.
A. Hole No. 2, elevation of the ground 304. Depth to rock 23.8. Hole No. 3, elevation of the ground

287. Depth to rock 33.1. That finishes Section 1. Proceeding to Section 2 ——

Q. Is the section so marked as Section 1 on the exhibit?

A. Yes.

Q. Now, proceed to Section 2.

A. I might add that the area of Section 1 is 14.77 acres. Section 2 outlined by my pointer as follows, and lying in general east of the Greenwood Lake Road, north of the Twin Sisters' refreshment stand, and south of the Snyder Flat or Hilltop Road, and extending to the rising ground over near the taking line.

Q. I thought right there the map shows a black mark intersecting the bulk, and I ask you, going on the west side of Section 2, what does that black mark indicate?

A. Which do you mean, this one here? (Indicating).

Q. No, the black mark to the west of Section ——

A. This one here (indicating). That indicates the path of the Greenwood Lake Road, the Paterson, Pompton, Greenwood Lake Road.

Q. The highway?

A. Yes.

Q. Public highway?

A. Yes.

Q. Go ahead from where I broke you off?

A. In Section 2, hole No. 9, the elevation of the ground 269. The depth of the hole 53 feet. Hole No. 4, elevation of ground 287. Depth of hole 22 feet. Hole No. 6, elevation of ground 282. Depth of hole 23.5. Hole No. 5, elevation of ground 269. Depth of hole 35 feet. Hole No. 3, elevation of ground 295. Depth of hole 32.4. Hole No. 8, elevation of ground 287. Depth of hole 15 feet. Hole

No. 2, elevation 294. Depth of hole 34 feet. Hole No. 1, elevation 305. Depth of hole 4.6. That completes the data on the holes in Section 2. The area of Section 2 is 167.93 acres. Section 3, lying between the fork of the railroads at Ringwood Junction. The elevation of the ground, Hole No. 8, 286. Depth 39 feet. Hole No. 9, elevation of ground 290. Depth 41 feet. Hole No. 10, elevation of ground 290. Depth 39 feet. Hole No. 9-A, driven in the test pit at Ringwood Junction: Depth of hole—the elevation there is also, of the ground, 290, and the depth of the hole is 71 feet. I did not indicate the area, the area is 15.76 acres. Proceeding to Section 4, outlined as follows ——

Q. Indicating?

A. Lying in general west of the Greenwood Lake Road and opposite Section No. 2, extending westward to the railroad, practically: Hole No. 5, elevation of the ground 254. Depth of hole 41.5. Hole No. 6, elevation of ground 253. Depth of hole 40 feet. Hole No. 7, elevation of ground 257. Depth of hole 40.0. Hole No. 4, elevation of ground 280. Depth 38.5. Tested hole, elevation of ground 280. Depth of hole 43 feet. Hole No. 3, elevation 277. Depth of hole 35 feet. Hole No. 11, elevation ground 287. Depth of hole 37 feet. That completes the holes in Sections 6 and 7.

Q. Six and seven?

A. In Section 4. Now, outlining Section 5 indicated by my pointer as follows: Lying west of the Greenwood Lake Road and in the vicinity of the Cupsaw Brook which flows through it—I haven't got off the area for Section 4. That is 135.54 acres —Section 5, hole No. 1, elevation of ground 290. Depth of hole 22.5. Section 2, hole No. 2—not hole No. 2—the same section, elevation 280. Depth 34.8.

Hole No. 12, elevation of ground 285. Depth to rock 6.5. Hole No. 13, elevation 285. Depth 22.6. Hole No. 14, elevation 252. Depth 70.5. The area of Section 5 is 64.10 acres. I now proceed to Section 6, a small section lying south of the Hook Road and east of the Wanaque River. Hole No. 1, elevation of ground 225. Depth of hole 34.5. Hole No. 2, elevation of ground 225. Depth of hole 12.3. The area of Section No. 6 is 5.08 acres. Section No. 7, lying south of the Hook Road and west of the Wanaque River. Hole No. 5, elevation of ground 247. Depth of hole 29.07. Hole No. 4, elevation of ground 250. Depth of hole 31 feet. Hole No. 3, elevation of ground 245. Depth of hole 30 feet. Hole No. 2, elevation of ground 240. Depth of hole 31 feet. Hole No. 1, elevation of ground 245. Depth of hole 34 feet. The test pit hole, elevation of ground 245. The depth of hole 85 feet. The area of Section No. 7 is 46.76 acres, making a total acreage of the whole tract, as I recall, of 449.94 acres.

The Court: 449 what?

The Witness: .94.

The Court: That is the gravel area?

The Witness: Yes.

Q. I call your attention to Sections 6 and 7 on the map and ask you if there is not a road shown runnning through those sections?

A. There are no roads indicated on this map.

Q. What is the black line running from?

A. It runs by the section, but not through it.

Q. Not through it?

A. Yes. That is the Hook Road, a borough road.

Q. And the place that that road starts from, is that where Poole's Hotel is?

A. Yes.

Q. On the corner?

A. Yes.

Q. Is the river, the Wanaque River and Cupsaw Brook and the Ringwood Creek accurately depicted on that map?

A. It is.

Q. In relation to the gravel lands?

A. Yes.

Q. Point out the courses of the railroads that runs through or near to the gravel?

A. The main line of the Greenwood Lake Division is indicated by my pointer. That is in that direction.

The Court: Is that as it is now, Captain, or as it will be relocated?

The Witness: As it exists.

The Court: Does that map show how it will be located when rebuilt?

The Witness: No, it does not.

The Court: Very well.

A. (Continued) The Ringwood Branch leaves the Greenwood Lake Division at Ringwood Junction and follows this course to Ringwood. (Indicating.)

Q. Going southerly in what direction, to what place does the railroad go?

A. First to Midvale, subsequently to Pompton, to Montclair and Jersey City and Newark.

Mr. Frazer: If it please the Court, I think there should be no further examination along the lines of railroads, except as a matter of locating the lands on the map. The question of freightage and so on, is wholly ——

Mr. Lewis: I have not come to that yet.

Mr. Frazer: No, but the only possible reason for introducing railroads is to show ——

Mr. Lewis: No, we will take it bit by bit, if your Honor please. I have not asked any questions yet.

Mr. Frazer: We are going to object to bit by bit. I see no materiality of it to the issue.

Mr. Lewis: He may object when the time comes.

Mr. Frazer: I am objecting to further questions along the lines of railroads.

The Court: And the materiality of it is what, Judge?

Mr. Lewis: The materiality of the matter at the present is simply this: It shows the propinquity of railroads to the gravel lands, and shows the propinquity of the river to the gravel lands outside of the railroads.

The Court: Yes, but that does not answer my question.

Mr. Lewis: And I rather think it may be inferred a step further, if you desire me to go, to say that the materiality of it is that the place that the sand and gravel—let us begin at the beginning—is adapted to the making of concrete. You cannot make concrete with it on the land, but its adaptability to the making of concrete is certainly a matter that may be put in evidence, and has been put in evidence. Now any reasonable man in considering the value of that adaptability, the jury is considering the value of that adaptability, will say, why, either in some supposed case, why, these lands are out in the middle of the desert, in Dakota, and you cannot get anywhere with your sand and gravel. The fact that the sand and gravel is on the land does not enhance the value of the land a bit, but when they see a railroad running through a sand and gravel deposit which will bring that sand and gravel down to the municipalities of Northern New Jersey where there is, as we will show, the demand for concrete, they may logically infer a value in those lands which is enhanced by the gravel upon them.

The Court: I will allow it at this time and subject to being stricken out if I find it is immaterial, as you progress.

Mr. Lewis: Yes.

Mr. Frazer: May I make the suggestion before Judge Lewis goes on? Let me picture the steps. He has depicted the steps back. Let me picture them forward.

The Court: You do not need to. My imagination is vivid enough.

Mr. Frazer: Your imagination has outrun mine. Very well, sir. I renew my objection.

The Court: Proceed.

Q. Did your borings enable you to determine whether or not that the sand and gravel was so located as to have access to it by water?

Mr. Frazer: I object.

The Court: I will allow it on the same theory that I allowed the railroad proposition in.

Mr. Frazer: Exception.

A. Yes, they did.

Q. And what was the fact about that? What is the relation of those borings or the sand and gravel to the water?

Mr. Frazer: May I have a general exception to this line of testimony on the ground that it is immaterial and irrelevant?

The Court: Yes, you may.

A. The deposits, the bottom of the deposit, the rock contour lies below or sufficiently below the level of water in the various streams, so that we could use hydraulic pumping method of removing this sand and gravel.

Mr. Frazer: I move that be stricken out. It is absolutely irresponsive, and it is wholly improper. I knew that that question was going to elicit that answer, and I move it be stricken out.

Mr. Lewis: Oh, Mr. Frazer, just a minute.

The Court: Now, Judge, what did you observe?

Mr. Lewis: I was going to say, in order to satisfy Mr. Frazer, I will agree that last half dozen words of that answer be stricken out "we could use hydraulic pumps." That was not responsive. I will come to that and discuss it when the time comes. I did not want it now. I want to know now whether the water is there, that is all.

The Court: You consent to the striking out of the last part of his answer?

Mr. Frazer: So that, all after that.

Mr. Lewis: So that, I beg, be stricken out for the present.

The Court: It will be stricken out.

Q. In addition to the making of these bore holes, did you make any further exploration of the ground for the purpose of determining the presence of sand and gravel in the area?

A. Oh, yes.

Q. Please describe what other explorations you made.

A. These bore holes put down at various intervals over the property for the purpose which I have already explained—we then went further and examined the property in between the bore holes. There are numerous exposures all through the property.

The Court: Numerous what?

The Witness: Numerous exposures of gravel all throughout the property.

Q. I refer particularly to those that you made yourself for the purpose of testing in addition to the bore holes?

A. Oh, yes. In taking the general samples of the gravel which were examined by ourselves, and part of which sample was sent to the State, I personally went to the various deposits and did this: I went to the three tests pits ——

Q. You have not mentioned that. That is what I was coming to.

A. Yes, we made three test pits.

Q. Please describe them and give their location.

A. There is one test pit on Section No. 7 near the south line of the Ringwood Company property. There is another test pit in the Ringwood Junction section between the fork of the railroads. There is another test pit on Section No. 4 near the Greenwood Lake Road.

Q. What was the size of the test pits?

A. The test pits were probably four or five feet square, and on an average from 15 to 18 feet deep. One of them was 18 feet, and one was 15, and the other one was in between those two depths.

The Court: And weren't there some only three or four feet deep?

The Witness: Oh, yes; many.

The Court: You were only talking about these. You did not describe those to us.

Q. I wish you would confine yourself at the present ——

Mr. Lewis: If your Honor will permit me to suggest ——

Q. (Continued.) To the three test pits that you have spoken of. When you say there are many other test pits, were you accurate about that?

A. Not in the sense that we call them test pits. There are three large test pits.

Q. And you described them as being about four feet square at the top, and how deep?

A. 15 to 18 feet deep at the time they were made. At the present time they have caved in very much.

Q. Did you take any samples from those test pits?

A. Yes.

Q. Describe what samples you took and what you did with them.

A. We, to determine the percentage of sand and gravel ratio, of sand and gravel in the deposit, took the entire contents of each one of those holes separately, for instance, we will take this test pit in Section 7—the entire contents of the test pit were removed from the hole and placed on the ground immediately adjacent to the test pit. We then screened those contents, passing the material, passing the contents over a three-inch screen, and then a quarter-inch screen. Resulting in this separation —we separated the material that was coarser, that would not pass through a three-inch hole. That, we considered coarse rock. The material that passed through the three-inch hole, but was retained on a quarter-inch screen, but did not go through the quarter-inch screen, naturally, ran in size from three inch to a quarter inch. That we classed as gravel or coarse gravel. The finer material went through the quarter-inch screen, and that we classed

as sand. So that the two items, the plus three-inch and the plus a quarter-inch were classed as gravel. One of them had to be re-crushed if it was to be used. The material passing through the quarter-inch screen was designated as sand. Records were kept of those results for each one of the three test pits.

Q. Did you follow the same processes in regard to each test pit?

A. Yes.

Q. Do you recall now, without reference to data which you have made, if you have made it, what the proportion of sand and gravel was that was shown?

A. Approximately; yes, I can recall.

Q. Well, tell us now ——

Mr. Frazer: I object.

Q. (Continued.) In regard to each test pit?

Mr. Frazer: I object.

The Court: On the ground that it is immaterial?

Mr. Frazer: Yes, sir, and the incompetency of it. Here it is called for a conclusion on the part of this witness as to samples from given sections which are not, in any sense, determinative of the whole thing made on very slight evidence of borings and things of that sort, and altogether has no relevancy on the question which is here the issue: What is the market value of these premises?

The Court: It is not offered as indicative of anything except the percentages in the quantity of material that was taken out of those particular holes.

Mr. Lewis: That is all.

Mr. Frazer: It is an effort to segregate the sand and gravel from the land. That is the purpose of this testimony; and in the Ross case it is specifically held you cannot do that. The value of the land as suitable for quarry is a proper subject for consideration but not the value of the stone separately and apart from the land.

The Court: I appreciate that.

Mr. Frazer: Now, we have shown the gravel land here. I have no question and never intended to question there was gravel. I said it earlier in the session, that there was a large quantity of gravel up here. Now, we are going into the question of trying to find out how much gravel there is, what you are going to do with it, and imagination of it, being taken down on railroad trains, and they are showing what the freight rate would be, and Bellewood Park is going to be loaded down with this sand and gravel, and they are going to show you can get a cheaper rate by putting a new station on the land, in order to let the jury get a computation of what this is when mined, and when sold and when a market is found for it.

Mr. Lewis: We are not going to put in stations.

The Court: I do not understand the purpose of this question to be that. It may develop into that and if it does we will meet it when that comes up; but to this point I think the testimony of this witness is only to the extent of the quantity, the quality of the gravel deposits that are there. Now, if

that is the purpose of the testimony, as to the market value of the land as is with the gravel on it, I think it is proper. If it is for the purpose of capitalizing it and bringing it to market and making constructions and building a business out of it, and what not, then I think it is clearly inadmissible on the theory of the Manda case because of its speculativeness, and under the theory of the Ross. But if it is for the purpose as I have indicated, and the testimony will be predicated on it as to the value of the land as is now, then, I think it might be proper and I will allow it at this time subject to being stricken out if an improper use is to be made of it or I will, if the occasion presents itself, rule out any improper testimony that might be sought to be built up from this groundwork. With that understanding I will allow it.

Mr. Lewis: Thank you, sir. I might say that I do not enter into a discussion of those problems at the present time.

The Court: I understand that.

Mr. Lewis: Because they are intertwined with the neatest kind of legal propositions, and I would rather take it step by step.

Mr. Frazer: I would like to call the Court's attention to the fact of the temporal note which has been made by Judge Lewis to each one of your Honor's rulings. He said, we will withdraw one of the other statements for the time being. He now says at the present time. It is clearly in Judge Lewis' mind, and he might as well be very frank with us, that he is coming back to this very thing that your Honor says you will not permit.

Mr. Lewis: Frazer, you cannot rush me. Now, there is no use of trying that.

Mr. Frazer: Well, let us get along.

The Court: Proceed, please.

Mr. Lewis: Will you read the last question?

(Questions and answers read.)

Mr. Frazer: I take an exception.

The Court: I understand that you wish a general exception to all of this line of testimony?

Mr. Frazer: Yes.

The Court: And I have allowed it. I think that will protect you on the record. Proceed.

The Witness: The test pit in Section No. 7 ran 67 per cent gravel and 33 per cent sand.

The Court: Well that meant there was nothing else in it? That makes 100.

The Witness: I might say that we discarded the top soil. We threw it away, not counting that, but we measured the little bit of top soil—well, we will call it the whole thing. For that matter, the top soil is so small that it did not make any difference.

The Court: So there was nothing in that hole but sand and gravel?

The Witness: 100 per cent, yes.

The Court: No earth, no soil, no clay, no vegetables, no pollywogs, nothing but sand and gravel?

The Witness: Yes. Sand and gravel, 100 per cent, for all practical purposes.

The Court: Very well.

The Witness: In Section No. 3, the same thing; sand and gravel 100 per cent.

Q. The proportion, I want?
A. The proportion there, I think, 66 per cent gravel and 34 per cent sand.

The Court: Practically the same?

The Witness: Practically the same. In Section No. 4, my recollection is that the gravel ran 47 per cent and the sand 53 per cent. The average of the three was 60 per cent gravel and 40 per cent sand.

Q. You can take the stand now. Oh, point out on the map, please, any sidings on the railroad in that area of sand and gravel?

Mr. Frazer: I think that is a further railroad detail.

The Court: I will allow it on the same theory.

A. There is an existing siding at this point (indicating) which was used to remove 100,000 cubic yards of sand and gravel from the Ringwood section.

Mr. Frazer: May that be stricken out?

The Court: The latter part of it will be stricken out because it is not responsive.

Mr. Frazer: May I ask the Court to instruct the witness not to volunteer. He is an experienced man, and does that very often.

The Court: I do not think the witness needs to be told of the impropriety of adding anything excepting to answer the questions. Counsel is thoroughly competent, if you do not give all the information that you have in your mind before the jury, to elicit it by proper questions.

The Witness: Will I repeat that answer for the record?

The Court: No, I have stricken it out as not responsive. Part of it. The question was where there was a siding, and that you have told us.

The Witness: Yes; there is another siding just south of the Greenwood Lake Road at Erskine.

The Court: At where?

The Witness: At Erskine.

A. There is another siding at Forge Pond. I think those three are all that there are within the limits.

The Court: Very well.

By Mr. Lewis:

Q. Mr. Frazer said a moment ago that you are very familiar with the giving of testimony in courts. Have you ever been on the witness stand except in this case?

A. I have to admit this is my first experience on the witness stand in my life.

The Court: Very well. You are excluding the testimony you gave in the proceedings in this cause before the Commission, I presume?

The Witness: I am speaking of the regular hearing. I have testified at the previous informal hearings, yes.

Mr. Frazer: I might say that Captain Crockett was known as a pinch hitter below, as he testified on so many subjects.

Q. Point out where the stations are on that railroad that are within the taking?

A. There is one station on the Ringwood Branch at Erskine. There is another station on the main line at Boardville.

Q. And they are known as what stations on the Greenwood Lake Railroad?

A. Well ——

Q. Boardville station?

A. Boardville station and Erskine station. Two separate stations.

Q. I will ask you this.

A. I have not finished it.

Q. Go ahead.

A. There is another station at Ringwood Junction.

Q. Where is Ringwood Junction?

A. That point. (Indicating.)

Q. Why is it so-called? Is there a junction of the railroad there?

A. Yes; the Ringwood Branch and the main line join at that point, and it is called Ringwood Junction. There is a station at that point.

Q. Are you familiar with the land along the railroad way through the gravel lands?

A. Yes.

Q. Is there any land there that is adapted to construction of sidings?

Mr. Frazer: I object. Now we are going into building of railroads.

Mr. Lewis: Not at all, but I am just going to show the adaptability of the land for the construction of a siding there, that is all, and take that into consideration last March. If you were buying the property you would say, "Yes, I can put a siding here, or I cannot put a siding here."

Mr. Frazer: These things which can be shown have got to be shown to have some relation to market value.

The Court: I will allow it.

Mr. Frazer: Exception, please.

The Court: You may have it.

A. There are many such places where a siding could be constructed.

The Court: In other words, a railroad does not usually run over mountains, but runs into a fairly level valley, doesn't it?

The Witness: Yes, sir.

The Court: Very well. I thought so. Anything more?

Q. Now you can take the witness stand. What have you to say from your experience as to the quality of the sand and gravel—I will withdraw that. I suppose I must go on and show these samples. You made an analysis, you say, of the sand taken from the borings upon the property and made an examination and test as to quality?

A. Yes.

Q. Just describe—in the first place, how many such samples were examined?

A. One hundred and thirty odd samples were examined.

Q. And you have spoken of boxes with compartments in them that were placed alongside the borings. Were the samples that were examined the samples that were placed in those boxes as you have described?

A. Yes. They were first placed in the boxes, and then examined.

Q. You say there were 138?

A. I said that.

Q. I would say ——

The Court: He did not say that. He said one hundred and thirty odd.

Mr. Lewis: Oh, I thought he said that.

Mr. Frazer: It turned out to be even.

Q. How many samples were there?
A. There were 138.
Q. That is what I understood.

The Court: You did not say so. You understood it from knowledge you had otherwise, not from knowledge you got from the witness on the stand.

The Witness: Your Honor has a good memory.

Q. Can you describe the analyses of those samples that were made, to the jury?

A. Yes, I really believe I described that. I can do it again.

The Court: I thought he did. I think he has gone all over that.

Q. Can you tell us what was shown by those analyses?

Mr. Frazer: I object to that any further than what he has already testified to, the presence of sand and gravel.

The Court: I think he has testified to the kind of examinations that he gave; samples that he took from these borings and from the pits. Now did you make your examinations, Captain Crockett, from all of these 138 samples?

The Witness: Yes, sir.

The Court: Doesn't that answer your question?

Mr. Lewis: No, sir; really it does not.

The Court: Very well.

Mr. Lewis: As I understand the matter.

Q. Could you, without reference to any data that you have, tell us the result of those tests and analyses from memory?

A. Yes.

Q. Of the whole 138?

A. Not individually. In general.

Q. Oh, yes. I am asking individually.

A. No, I cannot.

Q. Have you such data with you?

A. Yes.

Q. Which would enable you to testify? I submit he may refer to his data?

The Court: He may if it was properly taken.

Mr. Lewis: Yes.

The Court: Is it material, Judge? Is it material to this issue, that he give us the details of these results of these examinations? Why isn't it sufficient for our purposes if he give us the general results?

Mr. Lewis: Because there is a variation. The tests were made for the purpose of showing the character of this sand and gravel, and there is a variation that runs to a certain extent through these various samples, and of course ultimately the witness will testify that it is not a variation that affects the quality of the gravel.

The Court: That is what I had in mind, whether he could not make a short cut and save a little time.

Mr. Lewis: I will ask the witness. I will ask the witness whether the sand and gravel that he dug out and bored out on the land was of a quality useful for the making of concrete?

A. Yes, it was.

Q. How would it compare with sand and gravel generally found in other lands that you know of in quality?

Mr. Frazer: I object. He has not shown any knowledge of other lands anywhere.

Q. With other sand and gravel that you have seen and inspected?

Mr. Frazer: I object to comparisons. He has made the direct statement that the sand and gravel is suitable for the making of concrete.

Mr. Lewis: I want to show it is of the very highest quality.

The Court: I will allow it.

Mr. Frazer: Exception.

The Court: You may have it.

Q. Now ——

Mr. Matthews: Exception?

The Court: Yes, you may have an exception.

A. I might just say I lived on Long Island about 20 years where the sand and gravel business is most prevalent ——

The Court: Oh, no.

Q. You have seen sand and gravel lands?
A. Yes; I come from that country.
Q. Now then, tell us, Captain?
A. I consider, from my knowledge of Long Island gravels and other gravels, that the sand and gravel at Ringwood is inferior to none that I know of.
Q. How does it compare with most sand and gravel deposits that you are familiar with? Is it any higher or lower in quality?
A. It is higher. The material is quite as hard as the Long Island gravel ——

The Court: Quite as hard?

A. Is quite as hard as the Long Island gravels, quite as strong, but has this advantage over the Long Island gravels. Whereas the Long Island gravels are round, like little spheres, are worn through water action and so forth, the Ringwood gravels are angular; they are granite crystals; consequently, when they are put into concrete their friction between each other is much greater than the round balls, and the cement has more surface to which to cling. One of the objections that the ——

Mr. Frazer: I object.

A. —— that the crushed stone men make ——

Mr. Frazer: I object to further lectures.

The Court: I think it is responsive.

A. One of the objections which crushed stone men make, or one of their talking points in competition with gravel, is that crushed stone is better than gravel because it offers more surface for the adhesion of the cement. They are referring particularly to such gravels as you find on Long Island.

Mr. Frazer: That is not responsive.

A. That is not the case with the Ringwood gravels. They are angular, as a rule.

The Court: Just a moment. Will you please answer the questions specifically? This is interesting, but is highly non-responsive to the specific question that was asked you.

(Question and answer repeated by stenographer.)

The Court: I will allow the answer to stand.

Q. Give us any other details that occur to you of the character of that sand and gravel which makes it a superior kind of sand and gravel. You have spoken of the angularity of the pebbles.
A. Yes. Its high compressive strength, I should say.

Mr. Frazer: The witness has stated he has never made a compression test and knows nothing about it.

Mr. Lewis: I was going to show those compression tests, and they were waived, as I understand it.

I can show the tests here. We have graphs here, as they are called—blue prints.

The Court: I think all that we are interested in is this expert statement that this is a high quality of gravel. He has told us that, and he has compared it with other gravels. Isn't that all that is material?

Mr. Lewis: I want to show in addition the details in which that superiority appears in his mind. He told us the angularity of the stone or gravel gives it a great advantage in the making of concrete.

A. I am talking about sand particularly there.
Q. I mean sand.

The Court: He may proceed along that line.

A. I had not really finished my answer.

Mr. Frazer: I interrupted.

The Court: Go ahead and finish it.

A. The sand and gravel is quite free from humus or vegetable matter. The proportion of gravel is high. The proportion of gravels occurring in this bed are approximately those that would be used in making concrete. Usually you do not find that the case. You find most sand and gravel deposits carrying say 25 or 30 per cent gravel and 70 or 75 per cent sand. In making concrete you use sand and gravel of this proportion that you use less sand. Say you used two parts sand, you would use four parts of gravel. In the Ringwood deposit that is

approximately the ratio in which the two items occur. In other deposits, most of the other deposits that I know, there is a large surplus of sand. They only have say one-quarter of the whole would be gravel and three-quarters of the whole or the rest of it would be sand. That is the advantage of the Ringwood deposit over the ordinary deposit.

Q. Do you know of any uses to which that sand and gravel has been put? I mean the sand and gravel in the Ringwood tract?

A. Yes.

Q. Tell us those uses?

A. The North Jersey District Water Supply Commission has been using sand and gravel in that vicinity for the last—since they started construction.

Q. That would be how long ago?

A. Oh, on the Gehagan contract, about four years ago.

Q. How did they use it?

A. They used the sand and gravel except for 1500 yards at the beginning—they used the sand and gravel without any washing, they used it just as it came out of the bank, and simply screened it to get proper proportions of sand and gravel.

Q. What did they use it for?

A. For the making of the core wall in the Wanaque Dam.

Q. Is the core wall made of sand and gravel?

A. The core wall is concrete, made of sand and gravel, cement and water.

Q. Then they used this sand and gravel for the making of the concrete in the core wall, do I understand you?

A. Just as it came from the bank with screening. Further than that, sand was used in the construc-

tion of bridges and culverts by the road and railroad contractors. That sand came from these deposits. It was used without washing.

Q. Can you tell us any other uses?

A. I think that is all.

The Court: Well, you used it yourself in certain concrete construction work that you had on the land, did you not?

The Witness: Oh, yes.

The Court: Haven't you already so stated?

The Witness: Yes.

The Court: The dam at Lake Erskine?

The Witness: Yes.

The Court: And the bridge up somewheres else?

The Witness: Yes. I understood Judge Lewis to localize the question, but I was mistaken.

Q. No, I didn't intend to localize it.

A. Yes.

Q. Just describe then the other concrete constructions that have been made in that vicinity that you know of with this sand and gravel?

Mr. Frazer: I object to further examination along this line. The specific instances in which this sand and gravel may or may not have been used is immaterial. It is not the specific instance—it is quality. The witness has amply testified to that as

an expert, and he does not have to go on and qualify his expertness with instances.

The Court: It is only cumulative, but if Judge Lewis wishes to have him say that it was used in other places except in the instances that have been described, I haven't any objection. I think myself that it is rather a waste of line.

Mr. Lewis: All right, sir; I will withdraw it.

The Court: In other words, this witness has stated that this sand and gravel was used in the core wall on this dam, and what more do you want?

Mr. Lewis: In the core walls of other dams.

The Court: Or other developments and the work he has described.

Q. Have you determined the weight in the land of a cubic yard of gravel?

A. Yes.

Mr. Matthews: Wait a minute.

Q. What is its weight?

Mr. Matthews: I object as immaterial. We are digging these lands up now, and we are taking it out in sections to weigh it.

Mr. Lewis: It is adapted to that.

Mr. Frazer: Not adapted to taking it out as sections. Might as well count the peaches on the peach trees.

The Court: I will allow it. It may prove to be material.

Mr. Frazer: Exception.

Q. Proceed.

A. In the section where the gravel ran 47 per cent, a cubic yard of material in place weighed 3175 pounds. In the place where the gravel ran 66 per cent, a cubic yard ran 3450 pounds. I should say that conservatively speaking throughout the whole area that the weight of a cubic yard in place would be 3200 pounds.

Q. When dug up and particles broken as would occur through digging, how much would a cubic yard of it then weigh?

Mr. Frazer: I object to this hypothetical digging on the ground. We are getting into stuff which has no concern at all. We are wasting time.

The Court: I will allow it.

Mr. Frazer: Grant me an exception.

A. It would weigh the same as it weighed in the ground.

Q. How much would a cubic yard weigh when taken out, Mr. Crockett?

The Court: He has stated, hasn't he, 3100 pounds?

A. I misunderstood.

Q. How much would the cubic yard measure after it has been taken from the ground?

The Court: He said 3100 pounds.

Q. In the ground. Now you take a cubic yard and throw it on the ground and put a cubic yard together, how much would that weigh?

A. A cubic yard of gravel ——

Mr. Frazer: I object to this. This is a sort of a proposition that when you take it out and throw it around it ceases to have the same compactness it did in the ground, because you wouldn't be able to assemble it unless you get a hydraulic press or something and squeeze it back again. What possible bearing has it in this case?

The Court: I don't know.

Mr. Frazer: I submit it is absolutely immaterial and incompetent, irrelevant and improper, and I move that this land examination be stopped.

The Court: I will allow it and grant you an exception.

Mr. Frazer: Exception.

Q. Go ahead.

A. A cubic yard of gravel in the loose state weighs about 2500 to 2600 pounds.

Q. Captain Crockett, did you ascertain the number of cubic yards of sand and gravel that are on the areas which you have described?

A. Yes.

Q. How many cubic yards?

Mr. Frazer: I object.

Q. —— were there found ——

Mr. Frazer: I object.

Q. —— by you?

The Court: What is the materiality of that?

Mr. Lewis: I am going to show by this witness, that is, I desire to show, I propose to show for the purpose of enhancing, showing how much the value of the lands is enhanced by this sand and gravel, how much of it there is there.

The Court: Is this witness prepared to state the value of the land as it is?

Mr. Lewis: I am not going that far with him.

The Court: Then how can you separately do it?

Mr. Lewis: I can simply do it for the purpose of permitting the jury to determine what the land is worth. It can do it without any evidence as to value. That is within their province.

The Court: I do not so understand the law.

Mr. Lewis: That is where we differ about the law, unfortunately, for the first time, but I have no doubt at all that that is the rule. I remember very distinctly a case where I was defending years ago an electric light company, a trolley company or something, which was being sued for the killing of some trees; and Justice Dixon was on the bench at that time, and I asked that the jury be directed to find

a verdict for the defendant because no value of the trees had been proven in the case. "Oh," he says, "that is not necessary. That is one of the functions of the jury, to determine that value, if there is no proof at all, and that that rule has been followed as far as I know in many other cases."

The Court: If there is any testimony before the jury with respect to the value of this land by reason of the gravel deposits on it, I think it is perfectly competent and all right under the rulings of the Court of Errors and Appeals of this State. I do not think the courts of this State have gone so far as they did in the Washington State case that you referred me to.

Mr. Lewis: No; I will say, your Honor, may I interrupt and right there apologize to your Honor, that I gave you a reference to that case under a misapprehension—absolutely. I admit that that case does not furnish the rule here in this court as it is. Although I propose eventually to make an offer—that being a Supreme Court decision of this State—which will cover that point, so that we may possibly have it reviewed by the Court of Appeals, but I admit that the court is not governed by that.

The Court: You agree with me then that the Washington State case is not followed in this State?

Mr. Lewis: Not at all. Clearly the Ross case sets down a different rule.

The Court: Yes. Well, under the Ross case and the Manda case, as I understand it, you cannot separate the values of the property by showing the

value of the nature of the soil as a separate item or the value of the trees that might be on it as a separate value. In other words, I think if this witness were competent to say that he valued this land with these gravel deposits on it as so much, then I think that might be competent, but if he is attempting, and I anticipate that he is, to calculate as an expert on gravel without any relation to the value of the land, otherwise the exact value of the gravel deposit, and then you wish to add that to the testimony of some of the witnesses as to the land values, I am of the opinion that I am not permitted to allow you to do that.

Mr. Lewis: I think you are right, sir. I agree.

The Court: Under the theory ——

Mr. Lewis: Under this curious law we have in New Jersey.

The Court: Under the theory of the Ross case and the Manda case, both Manda cases.

Mr. Lewis: I quite agree with that. I am not going to do it at all. I am not going to put the proof in in that way. I am going simply to leave for the present, so far as this witness' evidence is concerned, to the jury, under their province, in determining the value of the land, to take into consideration the fact that there are 22,000,000 cubic yards of sand and gravel there.

Mr. Frazer: I object to that as being wholly improper, if it please the court, for Judge Lewis to come out and state a definite figure in that way in the argument.

The Court: I do not know that it is improper for him to do so, to state it, because if that is his only purpose, to show this witness' estimate of the amount of gravel that may be there, I do not know but what that may be all right. I will hear you on that.

Mr. Frazer: Very well, sir. Now let us see where we are leading to. In the first place, we have had by a very clever process, a translation of cubic yards into tonnage, in two different ways, tonnage of gravel in place, tonnage of gravel after it has been displaced and is ready to be shipped. That is of value for two reasons, because the railroads ship on tonnage basis and the water people ship on yardage basis. There is going to be an effort to compare freight rates in the two instances. That is going to come out. It is all going along this same business of giving to the jury the impression that the quantities of sand and gravel, which has been in the land since the last glacial epoch, and which has scarcely been used at all, as a value, as though it were taken down into the Metropolitan section and was actually in a yard somewheres there for distribution in building materials. That is the purpose of it. Now how do they arrive at it? By having this man on the stand now go and drive 38 test pits on various sections of 430 acres and then saying that because I am a geologist or because I am a something or another and have had an education at Cooper Institute, I can figure what the depth of those 37 holes is, just what the geological formation beneath is, and I know to a single cubic yard how much sand and gravel is there. He doesn't know anything of the kind. He has not any data upon which he can base a conclusion, and yet a con-

clusion is made, and he has already sworn that he can tell you how many cubic yards are there, and Judge Lewis has come up and told you so, because he felt he was not going to get it in here, he has gone and mentioned the amount. This man has no data upon which he can figure it, and if he had the data, it would be the extraction of sand and gravel from the lands on which they are and putting them into the market on a separate calculation altogether —wholly irrelevant, wholly improper under the ruling in the Manda case, and the ruling in the Ross case and the decisions that have come down to us; and Judge Lewis says to you his opinion is improper, but he is going to do it in some other way. I don't know what he means by that, but he is going to try by indirection as he has been doing all the way through, to do those things which your Honor says he cannot do directly. Otherwise that whole tendency—and that was the reason throughout that I have been objecting to the line of examination as to railroads, tracks and everything else of that kind. He is building up a foundation from which, once in evidence, he can go before the jury and says this follows logically from that—so many cubic yards, so many tons—a mathematical calculation.

The Court: Of course, Captain Crockett has not attempted to testify to anything other than his estimate of what there may be there in the way of the extent of the gravel, and he has told you how he arrives at his estimate, and of course the jury know perfectly well that he may be right and he may be wrong. He has not taken this gravel out; it is there, and all that he says that he has done has been to make examinations of the land in the area that

he has described, from which he estimates from that data, the quantity of gravel that he is about to testify he estimates to be there. Now that is an estimate, and nothing but an estimate, and is for the jury to determine as best they can with the knowledge that they have, and especially after your cross-examination and any witnesses that you might bring to refute it as to its accuracy. Now then, in the Ross case, reading the language of Justice Black, he says, "The stone ——" This was, as you will of course know, a piece of land along the Palisades; that was on a cliff, as I recall it; along the edge of the Palisades, along the Hudson—Justice Black says, "The value of the land as stone land suitable for quarrying, is a proper subject of consideration, both of the witnesses and the jury in fixing the amount of just compensation to be awarded, but not the value of the stone separately and apart from the land. The value of the land is not measured by such facts. That stone is a component part of the land and must be taken as a whole." In the Manda case, where there was a nursery development, it was not permitted to have this testimony and thus to show the separate value of the shrubs and trees that were on the land, top soil. They had a value. They were there, and they had a right to be taken into consideration as a whole, not separately.

Mr. Lewis: That is Manda v. Delaware, Lackawanna & Western?

The Court: That is the one I am talking about. Now then it seems to me that if that be so, and I repeat if there is a witness who can say that by reason of the gravel that is there I value this land

to be so much—you do not have to mine it, you do not have to carry it to market—he has got to value it as it is and as it lays there in its virgin condition —I think that would be competent. That is my judgment under these decisions. Now up to this point, aside from your notion as to the back door method that Judge Lewis may be using ——

Mr. Lewis: That is not so. My friend Frazer always blackguards me.

The Court: I think up to this point that he has only shown the extent of the deposit and the nature of it; that is, the quality of it in its natural state. Now if he can tie that up with the value competently, I think it is proper. If he cannot, except by doing it separately, I will not allow it.

Mr. Frazer: May I speak then, your Honor, on the question of the present question? That is the extra yardage. That Capt. Crockett has shown no tests sufficient for him to be able competently to compute the yardage.

Mr. Lewis: Now I propose right here to save time—Captain Crockett says he can—I will turn him over for cross-examination as to his ability to do a problem in—not even in differential calculus, I think; you may not take it; but in mathematics.

Mr. Frazer: I have no desire to cross-examine upon what I consider an incompetent question and thus make it competent. That is kind of you to offer me that trap. I do not mean to step into it. The point is this. Your Honor has stated that the jury will take into consideration the nature of the

details under which Captain Crockett has arrived and so on in weighing the weight the jury have given to the evidence. I do not think that follows. A man with the erudition of Captain Crockett, the jury is bound to be impressed by his figures.

Mr. Hunt: We will admit that.

Mr. Frazer: I would respectfully submit that in the absence of anything which will show his ability as a geologist, as a man familiar with the general character of that terrain below, the mere making of 37 test holes on 419 or whatever the acreage may be, acres, does not give him the proper mathematical basis for a calculation leading to any conclusion as to yardage.

The Court: I will allow it for what it might be worth.

Mr. Frazer: I ask an exception.

The Court: You may have an exception.

Q. Now, please, Captain Crockett, what did you find to be the yardage contained in the 449 acres?
A. 22,000,000 yards, very closely.

Mr. Matthews: Is this dollars or yards?

A. I should say cubic yards to be exact, of gravel and sand. Do you want the exact computation?
Q. No; I am satisfied with your statement myself.
A. It was in excess of 22,000,000 yards.
Q. You know how to make such a calculation, I suppose?

A. Yes.
Q. And did you make it with due care?
A. Yes.
Q. And that was the result?
A. Yes. I made it in the usual ——
Q. Did you find the number of cubic yards on each section?
A. Yes.
Q. Can you tell us the number of cubic yards on each section?

Mr. Frazer: What is the object of dividing it up?

Mr. Lewis: Why, because we are considering it in seven sections.

The Court: I will allow it to be divided, if you wish.

Mr. Frazer: I ask for an exception.

The Court: You may have it.

A. I would have to refer to my notes to give you those figures exactly.
Q. Please refer to your notes, and come down to the map and point it out. Stand here with your back towards me, please, Captain, so the jury can see.
A. Section 7, indicated by my pointer, according to my calculation contains or is possible that—let me start again.

Mr. Frazer: Yes, you better.

Q. Thank you.

Mr. Frazer: You are welcome.

A. In Section 7 there are possible of recovery, according to my measurement, three million ——

Mr. Frazer: I object to that. He is talking about recovering and taking this stuff out of the land.

A. At least —— The point of Section 7 ——

Mr. Frazer: I object.

Q. Sand and gravel?

The Court: That is all we want. We want nothing else.

A. I want to say that there is more than my figures. I am taking what is commercially ——

Mr. Frazer: I object to the commercial attitude of this thing.

A. All right. The volume of sand and gravel in Section 7 is 3,968,118 cubic yards, according to a calculation made by myself.
Q. Now proceed.
A. Section 6, a small section, is 145,393 cubic yards. Section 5, the section right through here, had 2,068,148 cubic yards. Section 4, outlined in that way, has 5,879,110 cubic yards. Section 3, outlined in that way, has 1,284,147 cubic yards. Section 2 has 7,671,646 cubic yards. Section 1, Forge Pond, has 1,069,037 cubic yards. Making a total of 22,085,599 cubic yards.
Q. I am reminded that I did not ask you whether

the borings that you made went down to the rock in every case?

A. They did not.

Q. Could you specify those that did and those that did not?

A. Yes.

Q. Do so, please, on the map.

A. In the Forge Pond section, all of the borings went to rock. In the Ringwood Junction, between the fork of the railroad, only one of the four borings went to rock, and that hit rock at a depth of 71 feet. In Section 4 I have totalled eight or nine holes—I have to count them—four went to rock. In Section 5 the total of 1, 2, 3, 4, 5, 6—four went to rock. In Section 2, a total of eight holes or nine—total of nine holes—seven went to rock. In Section 6, both holes went to rock. Right here. In Section 7, I totalled six holes, only one hole went to rock, and that hit rock at 85 feet.

Q. When you speak of rock, do you refer to some ledge or strata or ——

A. When I speak of rock I mean that our drilling was brought to a stop; it might have been a large boulder or might have been ledge rock. For practical purposes and for our purposes we called it rock.

The Court: Unless it was a boulder, and then you took up the pipe and took a new boring close by.

The Witness: Yes.

The Court: All right.

Mr. Lewis: Now, if your Honor please, I would like for the witness to, inasmuch as the testimony

has now gone in as to the cubic yardage in each of these sections, I would like the witness to mark on the map for the convenience of the jury the yardage that was shown.

The Court: You mean in the various points?

Mr. Lewis: Yes.

Mr. Frazer: No, no.

The Court: I do not think that is necessary.

Mr. Lewis: Only for the purpose of showing the detail to them, that is all. It is so difficult to carry in the memory, and the marking on the map in respect of that yardage it seems to me might be quite helpful.

The Court: Is it objected to?

Mr. Frazer: Oh, yes, yes.

Mr. Lewis: All right, if it is objected to.

The Court: All right. Objection sustained.

Mr. Lewis: Cross-examine.

Mr. Frazer: No questions.

The Court: That is all, Captain.

Mr. Lewis: That is all, Captain.

(Witness left the stand.)

The Court: Captain, I would like you to come back just a moment, please. Am I right in my recollection that you said that the gravel was used in the core wall of the Wanaque Dam, in the Erskine Dam, and on a bridge?

The Witness: Well, gravel from this—from the section in question we are talking about now, was used on the Wanaque Dam.

The Court: That is what I say, on the core walls of the Wanaque Dam?

The Witness: Yes.

The Court: All right.

By Mr. Lewis:

Q. Wait a minute. The Judge asked you a little bit more than that.

The Court: On the Erskine Dam and on the bridge?

A. No, sir; they were taken from the gravel deposits nearby, not these.

The Court: All right.

Q. Please point out on the map the place from which the gravel that you have just spoken of was being put in the Wanaque Dam was taken, one or the other?

A. Gravel that was used in the Wanaque Dam has been taken from this section here (indicating),

and running up partly on our property, on Section 7.

Q. That is to say, that only a portion of the sand and gravel used in the Wanaque Dam was taken from within the taking—was taken from the part mrked in buff; is that right?

A. Oh, yes; that large quantities have been taken from this section just below—Section 7.

Q. Is the section from which you indicate from which the other parts of the sand and gravel was taken by the Commission, marked there as "East Jersey Water Company?"

A. Yes.

Q. And adjacent to Section 7?

A. Yes.

Q. Now was it taken from any other place for the Wanaque Dam?

A. The gravel in general ——

Q. I mean from lands belonging to the Ringwood Company?

A. Not for the Wanaque Dam.

Q. Now for the Lake Erskine, where was it taken from?

A. For the dam at Lake Erskine we got gravel from this section right here. (Indicating.)

The Court: Indicating a point to the north of the present Lake Erskine?

The Witness: To the south.

The Court: South? Oh, yes, I see that arrow now.

The Witness: Yes, sir.

Q. Now was there any confusion about Ryerson Dam and Lake Erskine Dam? Was there gravel taken from the taking used in the Ryerson Dam?

A. Yes.

Q. Now show where that gravel was?

A. Under the Heller contract gravel was taken from this vicinity here and was used in the construction of the Ryerson Dam.

The Court: Indicating what point on the map?

The Witness: Section just north and immediately adjacent to Section 7.

The Court: All right.

The Witness: Gravel was taken from there for that purpose.

The Court: That is on the Ringwood land?

The Witness: That is on Ringwood Company land, yes.

The Court: Very well.

Q. Where you spoke of some abutments that were constructed from the Ringwood gravel—did you not —sand and gravel?

A. I don't recall mentioning it.

Q. Culverts?

A. Culverts, yes.

Q. Where were those culverts?

A. The Winston Company constructed a culvert —the first one where their line of reconstructed railroad crosses the Cupsaw Brook. The sand used in

that construction came from the Fujita property, which is adjacent to the Ringwood Company property in this vicinity.

Mr. Matthews: What materiality has that?

Mr. Frazer: I do not think it has any.

Q. To make it clear, so there won't be any confusion ——

A. The culvert across the Ringwood Brook was constructed from sand taken from the same place.

The Court: Not on your land—not from the gravel deposits that you have testified to, but other adjacent properties?

The Witness: On the Fujita property, but I am coming to the Napoli's contract.

Q. Well, come to it.

Mr. Frazer: Judge Lewis said he was through with this witness.

Mr. Lewis: Your Honor called him back.

Mr. Frazer: Your Honor asked some one question. Now we are getting into a whole new field of things, whether we got the stuff off the Fujita land or where we got it.

Q. I do not want you to tell anything about Fujita land. I want you to testify to what sand and gravel was taken off the Ringwood Company land and used in such construction.

Mr. Frazer: I object to further testimony along

this line as being immaterial and irrelevant and going outside the taking.

The Court: I will allow it.

Mr. Frazer: Exception?

The Court: You may have it.

A. The various culverts constructed by Napoli Brothers Company, the first contract for reconstructing the Greenwood Lake Highway in its new location used sand and gravel taken from the Ringwood Company's property in the vicinity of the place where the Cupsaw Brook crosses the Ringwood Road.

Mr. Matthews: That is all after March 19th, 1925.

The Court: Yes, I understand, but it was there before.

Mr. Matthews: It was there, but it is being taken out now and mined, and that is contrary to the Manda case.

Mr. Lewis: It was used.

The Court: I will allow it over your objection.

Mr. Lewis: I would like, if your Honor please, to ask something that I omitted to ask in direct examination. It is an omission on my part.

The Court: You may ask it.

By Mr. Lewis:

Q. You have testified to the borings—you have testified to the test pits which were made for the purpose of determining the character of the sand and gravel upon that area. Were there any other means existing upon the land by which you could come to a determination or be aided in coming to a determination as to the quality of the sand and gravel?

A. Yes.

Q. What were they?

Mr. Frazer: My general objection to this line of testimony.

The Court: Yes. Your objection will be noted.

A. Between these test holes—borings that were put down, we investigated and found that there were exposures of sand and gravel between all these holes, with the purpose of ascertaining whether or not the hole was continuous—the deposit was continuous.

Q. Was there anything else that you saw besides the surface?

A. Well, when I say "surface exposures" I mean places where roads have been cut through and where railroads have been cut through.

Q. Now, what is the most extensive exposure made by a railroad on the property?

A. Alongside of Section 3 by Ringwood Junction and there the gravel is in a bank that is 20 feet high for half a mile.

Mr. Lewis: That is all.

The Court: Any cross-examination?

Mr. Frazer: No questions.

The Court: That is all, Captain.

FELIX G. PITTET, sworn.

Direct examination.

By Mr. Lewis:

Q. Mr. Pittet, where do you live?
A. Linden Park.
Q. Do you live there all the year 'round?
A. No.
Q. Where do you live in the summer time?
A. From the first of May until the first of November I live at West Milford.
Q. And do you know of a property of the Ringwood Company at Ringwood?
A. I know by going through it, driving through it.
Q. How long have you been in the habit of driving through?
A. Oh, about 35 years or more.
Q. Just a little louder, won't you, please?
A. Thirty-five years or more.
Q. What is your business?
A. Building.
Q. Just keep your voice up, won't you, Mr. Pittet?
A. A builder.
Q. How long have you been in that business?
A. 37 years.
Q. Where have you carried it on?
A. In ——

Q. I mean to say, where is your office?
A. Paterson, New Jersey.
Q. And where have you put up buildings?
A. I put up buildings in this State and other States.
Q. What material do you use in the construction of buildings? I mean, is it a mason construction or stone construction or wood construction or gravel, or whatever it may be?
A. Well, we use all sorts of material for building.
Q. What is the branch of it that you are familiar with? You are not familiar with carpenter work, are you?
A. Yes, we do general construction.
Q. Oh, you do general construction?
A. Yes.
Q. Does concrete enter into the construction of the work that you do?
A. Yes, sir.
Q. Have you been familiar in the way of concrete in that business yourself?
A. Yes, sir.
Q. For how long a time?
A. I have been familiar with concrete construction for the last 28 years; 28 to 30 years.
Q. In what sorts of buildings or constructions was the concrete used in that period?
A. Re-inforced concrete construction, consisting of industrial buildings, some dams, power houses, dry-dock work, and other water-tank work, filtration plants ——

Mr. Matthews: Excuse me, Mr. Witness, so we may interrupt at this time. It is stated, I am informed by our legal associate, Mr. Stafford, that he

is a very competent builder, so we do not want to waste time qualifying him, if it is from the standpoint of an expert builder. I see the Judge with three mysterious jars in front of him, all of which, however, are dry. I could well understand this builder's testimony might well be along the lines of the character of gravel and concrete and his experience in it would qualify him for that. If he is being offered for any other purpose we would like to know it. In other words, we would like to pay a tribute to this local man from our local associate that he is a builder and competent to testify.

Mr. Lewis: I am not at all surprised with the generosity, but I have learned, early in life, to be aware of the Greeks when they come bearing gifts, and I do not want any Greeks ——

Mr. Matthews:: There is no Greek in this case, I assure you.

Mr. Lewis: I would like to show by this witness ——

The Court: Proceed.

Mr. Matthews: I am sorry, Mr. Builder.

Q. Now, Mr. Pittet, do you make concrete yourself in your construction work?

A. You mean with my hands, personally?

Q. Well, all right?

A. I have, yes, sir, not just lately, but I have, in my life, mixed concrete.

Mr. Matthews: I did not hear that.

The Court: I have, not lately, but I have, in my life, mixed concrete. Inferentially, he does not have to any more.

The Witness: I am not able to because I am crippled.

The Court: It is because he is crippled, not because he is rich.

The Witness: That is right.

The Court: All right, go ahead.

Q. Please tell us how you make the concrete in your construction work?

A. Well, the term "concrete" is a combination of cement, sand, gravel or crushed stone, watered—and the composition of this concrete is regulated by the requirements that it may be used for. There are many kinds of concrete for different purposes. A combination of concrete, primarily, is cement, sand, stone or gravel and waters, mixed together in proper proportions, properly mixed for its purposes.

Q. Do you know how to make those mixtures?

A. Yes, sir.

Q. What is the best material or mixture of material for making?

A. That depends on what the concrete is for; what the work is. It depends on the engineer of a job or the kind of work that you are going to do.

Q. Do I understand, from that, it depends on what the engineer has specified for the particular job?

A. Yes, sir.

Q. Do you use sand and gravel in the making of concrete? I think you said yes?

A. Yes.

Q. And does sand and gravel vary in quality at all?

A. Sand and gravel?

Q. Between the different deposits of sand and gravel is there a variance for sand and gravel that may come from one bed? Can you say that it is superior in quality to the sand and gravel that may come from some other bed?

Mr. Matthews: I object to it, if your Honor please. That would call for a conclusion. He is entitled to express the differences of sand and gravel, but if this witness does not know what is in the Ringwood bed, and what is in other beds, and has not made the comparison so we may cross-examine as to the other beds, he would not be competent to so conclude.

Mr. Lewis: I am going to show that he did examine.

The Court: Why don't you qualify him first? Let us take a recess now, however, until two o'clock.

FELIX G. PITTET, resumed.

Direct examination, continued.

By Mr. Lewis:

Mr. Lewis: Will you read the last question and answer, please?

(Testimony read.)

Q. Mr. Pittet, in the making of the concrete have you been in the habit of purchasing sand and gravel for the purpose of making concrete?

A. Yes.

Q. For how many years?

A. Thirty years or more.

Q. When sand and gravel is purchased by you for that purpose, do you make an examination of the sand and gravel before you make it into concrete?

A. I do.

Q. And what do you examine it for?

A. To make sure that the quality of the sand and gravel is suited to the class of work I may be doing at the time.

Q. And what does that quality depend upon, or what is it in relation to?

A. It depends on the quality—it has to be a standard which has been established. That is the theory of it, and it has to be to the satisfaction of the engineer and the builder as well.

Q. And your examination, then, is made to see whether it conforms to that specification?

A. That is right.

Q. Now, in the making of those specifications, is there any particular standard that you generally find running through all specifications, standard of requirements, as to the character of the sand and gravel to enter in the concrete?

A. Well, the general standard which would cover the various different qualities or kinds of concrete that may be called for requirements and materials which is clean, particularly of foreign matter such as vegetable, clay, humus. That applies both to sand and gravel. That is the important factors to be looked out for in the selection of sand and gravel for the composition of concrete.

Q. Is there anything generally and usually required in such specification which relates to the size of the stone or gravel?

A. Yes.

Q. What is that general requirement?

A. Well, that depends, again, on the work that you happen to be doing at the time. The size of the stone or gravel particularly is regulated by the kind and quality of the work you may be doing at the time; also the sand first. That applies to sand as well as the stone.

Q. And it varies then as the work varies?

A. Yes, sir.

Q. That variation consists in what thing?

A. I don't know whether I understand you right or not.

Q. Is there a variation, for instance, in the size of the gravel?

A. Yes.

Q. That is required?

A. Yes.

Q. Now, what are the limitations within which that variation generally runs?

A. If I can give you a little description of the different kinds of concrete that may be called for.

Q. If you know how to do it better than I can ask you, go ahead, Mr. Pittet.

A. I will answer that: If it happens to be re-inforced concrete such as we use for re-inforced construction, commercial buildings, including footings, columns, walls, floors, divisions, which is highly re-inforced with steel, to pour forms, the ingredients, usually the stone is of a smaller size than it would be for larger pours.

Mr. Matthews: I take it he means stone each time, and not gravel.

The Witness: No, I mean either one. When I say that I mean either one because it is of the stone material. Either one may be called for.

Mr. Matthews: Excuse me.

The Court: All right.

A. (Continued) Now, if it is a foundation we will say, for instance, a foundation for a piece of machinery, engine foundation where the bulk is heavy, or something larger, we use a larger sized gravel or stone, always mixing it in the proper proportions with the other ingredients, to meet the requirements of the load that it is to carry, or the engineer's directions.

Q. Are there other concrete works that you wanted to describe in order to illustrate?

A. The only difference there is between what I would call fine concrete and coarse concrete is the size of the ingredients, outside of the cement itself and the water.

Q. And the size of the gravel and the size of the sand, too?

A. To some extent the sand. There is not as much variation in the sand as would be in the stone.

Q. Now, to illustrate, if you can give it to us in inches long, thick or round, diameters or circumference, any way you like.

A. What is considered as concrete in material are gravel or broken stone will range from half an inch to an inch and a half and two inches in cube, or round, whatever the formation of the material may happen to be that is being used at the time. I would say from half inch to two inches.

Q. Now, then, when you have a job to do involving

concrete construction, and you purchase your sand and gravel, do you make any inspection of the sand and gravel you are going to get before you order it?

A. I have always been in the habit of doing that myself when it comes to any sort of an important job.

Q. And where do you make the inspection?

A. First at the pit, the deposit.

Q. In the lands themselves?

A. Yes, sir.

Q. And that is what you base your order on?

A. Not always.

Q. Well, generally?

A. Whenever it is possible. Sometimes it is not possible to get out to the pit. We have to examine our ingredients as they are handed to us from the market; from the people who handle and sell it.

Q. Can you give any idea as to the amount of concrete work you have done and performed within the last, say, ten years, fifteen or twenty years?

A. That is pretty hard to answer. You mean in volume of yardage, or dollars?

Q. Any way you can give us something that will convey an idea to our mind in dollars or in yardage or whatever cubic feet?

A. I could tell you in value, in money value, much easier than I could in volume of cubes.

Q. Well, say it in money value?

A. Well, in the last thirty years I have had to do with concrete construction on my account and my father's to the extent of between ten and twelve million dollars.

Q. Ten or twelve million dollars?

A. Yes, sir.

Q. And you are still in business?

A. Yes, sir.

Q. Now, then, did you make an examination of the Ringwood lands?

A. Yes, sir.

Q. That are now being taken by the Water Commission?

A. Yes, sir.

Q. Will you come down to the map and point out to the jury the portions of the lands you examined, Mr. Pittet?

(Witness approaches map).

A. Where is the highway?

Q. This is the highway. (Indicating.) There is Poole's Hotel over here. (Indicating.)

A. The first piece of gravel—I was led to out right here. (Indicating.) We came down this road (indicating) across an iron bridge and swung around to this property where it has been very well opened up.

Mr. Matthews: Do I understand when you point there, do you mean at that point (indicating), or where the test pit is?

The Witness: I walked pretty much over the portion which is opened up.

Mr. Matthews: Is it stipulated—he seems not to know the map any better than I do—is it the test pit that is opened up that he is referring to now?

Mr. Anderson: No, sir, he is referring to the—

Mr. Lewis: This is all out of order.

Mr. Matthews: I asked the witness for the purpose of location for the jury and myself for cross-examination because, as I understand it, there were three bore holes and one test pit. He said the land that was opened up, and I think the test pit was the only opened up place.

Q. Please look at the map and see if you find a section number on that map?

A. Section No. 7.

Q. Now, do you understand that all in buff there is included in Section No. 7? That is, all in buff to the west of the Wanaque River shown on that map?

A. I understand what you say.

Q. Now, conceding that to be so, please explain what examination you made of that Section 7?

A. I arrived, after crossing that bridge there, I remember that very distinctly, because there was an awful bad icy spot. You had a job to get up. Finally, we swung around, I should judge, we stopped about one-third of the distance on this buff spot, as you call it, and spent some time walking around. The portion that I examined, the gravel was the portion of the bank where they had a steam shovel and dug through it, leaving a bank possibly from ten to fifteen or more feet high. We walked along the beds of that bank and dug several holes to get through the surface of it. It was pretty well froze up, to get a view of the raw material.

Q. I do not think the jury can hear you.

A. That is the only thing I examined, was the exposed portion of the excavation. I was shown one hole, one so-called test hole, and saw the result of the excavation. I saw the hole. Scattered around on the outside of the hole, and I looked at that one.

The balance of my examination consisted of looking at the banks which had been cut through by the steam shovel. I presume it was a steam shovel.

Q. Did you walk over Section 7, the surface, and examine the surface at all?

A. Yes, sir.

Q. So as to get a notion as to what was there?

A. Well, I could tell you in relation to that coloring there. I do not know. I can't just tell you exactly to ten yards where I happened to be, but we walked down very close to where they are building a dam there, and possibly an eighth of a mile back of that—I remember the location here particularly on account of the proximity of the bridge here. I should judge I covered possibly, in walking over that spot, a mile or a little over a mile and a half of walking.

Q. Did you make such an examination as you are in the habit of making on lands for the purpose of determining the value of the sand and gravel for concrete?

A. I did.

Mr. Matthews: I object to that as immaterial to this issue, the value of sand and gravel for sand and concrete is not the measure of damage, and, therefore, this man's examination for its value can have no effect here. It is the quality.

The Court: I understand the question to mean quality.

Mr. Lewis: Exactly. That is what I do mean, the quality of the sand and gravel there.

The Court: I will allow it then.

Mr. Matthews: Will your Honor allow us an objection to the question itself?

The Court: Yes.

A. (Continued) That is exactly what I did, because you asked me to do it that way, to tell you what the quality of the sand and gravel was there, and I saw it.

Q. Now, I call your attention to Section 6, which is on the east side of the Wanaque River, the small section, just tell the jury what inspection you made there?

A. That is a low piece of land there, and there was some evidence of digging there and gravel was around the hole that they dug. I saw that gravel, but there is no exposed bank there on the other side.

Q. Did you make such an inspection as to quality that you would make if you were going to buy gravel there for concrete work?

A. I did. What I saw on the ground, it has been taken out of the ground.

Q. I suppose that is where you went first on Sections 6 and 7?

A. 7 and 6, yes.

Q. Now, where did you go?

A. Next, to make an inspection.

Q. Please point out on the map?

A. I drove along this road here. (Indicating.) I do not know whether I can remember the road very well, but we drove along in this section 7 until we got to a road that turned to the left. I know a man that runs a place there. He is an Italian. His name is Trinchieri, and we took that road and went down to the railroad, across the railroad, and finally went on the west side. Let us see— Oh, here we are. And here (indicating) this is the place I remember now.

That is the west side of the railroad. It must be here (indicating), across, we crossed and walked along where he showed me a square hole about four feet square.

Mr. Matthews: Will you locate that for the record, Mr. Lewis, please?

Mr. Lewis: Being Section 3.

A. (Continued) And there is a hole there about four feet square lined with a wood box, I should judge that that hole—I did not measure it, but just looking at it—was anywhere from 12 to 15 feet deep.

You could not see much in there excepting a lot of dirt in the bottom and boards around the lining, but on the outside there were piles of sand and gravel. I examined that and then we walked up here quite a ways (indicating), but I did not see anything there at all but level fields. We finally came back to the edge of the bank and walked all along here. (Indicating.)

Q. When you say along here, do you mean along the railroad track?

A. Along the railroad bank. There is a steep bank there. I am wrong. It is not along the railroad bank. It is along the river bank. I wanted to see that, because it has quite a high bank at an angle of 45. I dug two or three holes there with a spade to see what the material was there underneath, the tumbled down sod and top soil. I examined that along this edge here. (Indicating.) When we got through with that we came back over the same road and then we went up a hill there and entered a place with an old steam shovel still there. There was an opening on the left side of the road where they have

taken gravel and sand out and on the other side there is a huge cut which starts from the edge of the road and swings around almost—yes, it does—swings along this cross road. (Indicating.)

Q. Now, you are on section what?

A. Section 2. Then that is a builder's cut. They took material out of there for some purpose or other,—to fill, I suppose. I saw that, and then we walked around this other place, and he showed me several holes. I do not remember how many, because there were five or six places where they had made soundings, and I looked at the material that was brought up to the surface. From that we came back and continued our run with the automobile, and finally came off to this place here (indicating), Section 1. That is a piece of ground along there which is pretty well opened up, and they are taking material there. I do not know what for. I examined that pit or bank but I did not see any holes there. I did not examine any holes there. That is all I saw.

Q. Now, you have testified to the examinations of Sections 7 and 6?

A. 7 and 6.

Q. Three and Section 4?

A. No, I did not stop there.

Q. You did not stop at 4?

A. No.

Q. Section 5, up along the road, 4 and 5?

A. Wait a minute. There is a pit on the right side of the road beside where the same steam shovel is. There is quite a hole there. At the edge of the hole, I went on around and was shown two more of those square holes on this side (indicating) and two or three of the so-called pipe soundings. That is the one there I remember that very well. I do not think that was over 12 feet deep, as I can remember.

Mr. Matthews: That is marked "test pit" on the map?

The Witness: That is it, right there. (Indicating.)

Mr. Matthews: You say that is what? I did not get you.

The Witness: That was 12 feet or more. I did not measure it.

Mr. Matthews: Thank you, sir.

Q. Now, you also testified that you saw 1 and 2?

A. Yes.

Q. Did you notice any characteristics of the land on the sections that you examined which constitutes Section 5—4, which would give you any reason to believe that they differed in quality through the whole area?

A. The nature of the material that I saw of sand and gravel that I went to look for is very similar throughout the deposit. It seems to be pretty much of one kind of material. It is coarse, gritty, granite, sand and gravel.

Q. Now, does your answer include all the tracts shown on the map?

A. All that I saw exposed to view.

Q. Your making an examination, as I understood you, Mr. Pittet, of the same kind that you make for quality when you are purchasing sand and gravel?

A. Yes.

Q. And did the inspection which you made satisfy your mind as to the quality of sand and gravel throughout the entire area?

A. As a building material?

Q. Yes.

A. Yes, sir.

Q. Did you take any samples of the same gravel which you brought home with you?

A. I did.

Q. Are you in the habit of doing that in your business when you are purchasing sand and gravel?

A. When it is a matter of buying material that we are not familiar with, a new kind, a new pit or a new firm, I usually make it my business to satisfy myself that the material is not contaminated with foreign matter which may cause some trouble. I make those examinations myself. I did that in this case because you asked me to tell you what I thought of it as a building material. In order to satisfy myself, I simply took there what you see from different places in order to find out what there was of foreign matter. I did not expect to bring it here. It was for my own satisfaction, to answer you.

Q. You might point out to the jury where you took those samples from?

A. I took them from four different places.

Mr. Matthews: May I see them here?

The Witness: I took some from the big cut.

Mr. Matthews: Meaning test pit?

The Witness: No, I mean the open bank which was made by the bridge. I took it half way up from the bank.

Mr. Matthews: Where they were using it?

The Witness; Well, nobody was using it there, but somebody had made a cut there.

Mr. Matthews: That is in Section 3? No, that is Section 7.

A. (Continued) I don't mean here. (Indicating.)

Mr. Matthews: All right, we are taking the section number from here. (Indicating.)

The Witness: That is right. Then I took some from 7—I took some from Section 4, I guess you call it.

Mr. Matthews: It is marked 5 in here. Section 5. Here is 4 down here. (Indicating.)

The Witness: What is this in here?

Mr. Matthews: Judge Lewis will tell you that, or Capt. Crockett, I guess, will tell you that. Call on him.

Mr. Crockett: 4 and 5.

The Witness: It is neither one. I am in between.

Mr. Matthews: He says it is both.

The Witness: All right; the other is Section 2 here. (Indicating.) I took that from the bank. I did not take any of that material from any of the test holes. I took that sand from which I thought was the right place to take it in an exposed average surface.

Mr. Matthews: You took that sand from which you thought was a right place to take it in an exposed average surface?

The Witness: I did.

The Court: In fact, I understood you to say that in the pit that you examined you could not tell much about it?

The Witness: Only what happened to be brought out.

The Court: On the side?

The Witness: On the side.

The Court: And that was because there was ice and snow in the bottom?

The Witness: Well, grass and sod.

The Court: And all that you know with respect to the pits is what you saw on the side of the pit which you assumed was thrown up from the pit?

The Witness: Well, it looked very much like that. The dirt thrown over.

The Court: All right.

By Mr. Lewis:

Q. Well, did you have any difficulty in making up your mind as to the quality of the material?

A. No.

Q. In any instance?

A. No, sir, none whatever. That is, not at all. I was satisfied that the average of what I examined did not have any more dirt in it than you see in that little bottle there.

Q. I am coming to that. When you took the samples in these various places, did you put them together?

A. Yes, that is an average of the whole lot. I did not make any special test of any one of them, because to my eye that looked so similar I did not think it was necessary.

Q. I show you a jar containing stone and sand and ask what the contents of that jar is? Describe it more minutely than I have in the question.

A. Sand and gravel.

Q. And it is an average, you say, of the sand and gravel that you examined on the premises?

A. Well, I would not say it was in texture of the ingredients, but it is not of the quality. There is much bigger stones to be found in the pit that I did not have a chance to carry along with me, and there is some stratas of sand scattered through those deposits that is much finer than would show in this lot here, but that is, I consider, an average; outside of one exception, that the stones, that is, the gravel part runs very much heavier than that.

Mr. Matthews: Pardon me. I do not want to test this witness' qualifications, because I admitted them, although they were not accepted, but if he is going to testify as an expert by taking tests from this land that that is a sample and that is what the sample is, I think I ought to be allowed to cross-examine him on his ability in examinations of that kind.

The Court: Very well.

Cross-examination.

By Mr. Matthews:

Q. Just one question, Mr. Pittet. In taking samples for your own satisfaction do you always take a little bit like that?

A. The object of taking a sample—

Q. No, tell me please, Mr. Pittet—pardon me for pressing you to the answer—do you always take a small portion like that?

A. Well, I have taken as much as one cubic foot.

Q. Yes; isn't that the usual amount?

A. Just about.

Q. That is the proper test?

A. Yes.

Q. You didn't do it in this instance, did you?

A. No.

Mr. Matthews: Well, I won't object—I think I will let Mr. Pittet go on without any further objection, it being stipulated, however, that he did not take a cubic foot per sample.

The Court: He has so stated.

Re-direct examination.

By Mr. Lewis:

Q. Well, proceed, Mr. Pittet, and tell us the contents of the three bottles which I now have placed before you?

A. Well, this is a very fair average of the sand, that is, the part that we call sand, and this is ——

Mr. Lewis: I will ask that be marked. I will offer it in evidence now.

Mr. Matthews: I do not object to that being offered in evidence as some sand, but as not typical of all the sand, because he said the proper method to take it—in order to arrive at the real sandage and gravelage of it we would have to have a cubic foot, as he has candidly admitted. If there be more sand in a larger volume than within the limitations of a small portion he took, leaving the big portions behind, it is really worthless. I do not want to rule out the witness' testimony, but I think the offer ought to be circumscribed by that limitation, that this is a sample in the quantity that is in these jars only.

The Court: It is so understood. That is his testimony.

Mr. Matthews: Not typical of the entire terrain.

The Court: I understand.

Mr. Lewis: I think I know what we all have in mind. I will come to it, Mr. Pittet.

A. Well, I am a little bit sensitive about this test here, and I am proud of my business and I love my work and I do not want to be misunderstood—not that I fear any man—to what I did, when I did that and why I did it. That is all there is to it.

Q. I am going to ask you ——

Mr. Matthews: That is why I am going to let the witness go on, because I do believe he is telling frankly what he did.

Mr. Lewis: This is offered in evidence.

The Court: I think you better offer the other one first, because he describes it as gravel and sand.

Mr. Lewis: The first bottle I offer in evidence is a mixture of sand and gravel.

The Witness: Yes.

(Jar marked Exhibit O-83.)

Mr. Lewis: I offer in evidence the jar containing what Mr. Pittet says is a sample of the sand.

Mr. Matthews: Within the same limitations.

The Court: Yes.

(Jar marked Exhibit O-84.)

Mr. Lewis: All right. Now I show you another bottle, a small one, and ask you to tell what that is.

Mr. Matthews: Is that admitted as a bottle or a jar?

Mr. Lewis: Well, that depends whether you have anything to carry it with.

A. You will have to repeat that.

Q. Please tell us what is contained in the jar that I now show you?

A. Well, there is a great many things in the little jar, but the predominating material there, I would call it silicate. There is some clay in there. There

is some very small portion of humus. The method which I adopted would not pass the acid test of these gentlemen here. It is an old way that I was—it has been done for centuries, I guess. We use water, heat, and grease to find out what that is. That is a practical method of doing it.

Q. When you say to find out what it is, do you mean to separate it from the whole mass?

A. It is to satisfy my own mind as to what that building material contains.

Q. Do you mean that the process which you have just described is the process you used to separate that from the whole mass of the sample that you took?

A. Yes, sir.

Mr. Lewis: Now I want to offer it.

Mr. Matthews: Within the same limitations. This is 100 years old but just as good today although not scientific method as required by these gentlemen here, I suppose you refer to the engineers?

A. I refer to the lawyers.

(Jar marked Exhibit O85.)

Q. Now, as I understand, the contents of all three of those bottles, when you took a sample, was in bulk and not separated as it is now?

A. It was in a bulk, yes, but it was not all taken on the same spot. It is a mixture of—I forget whether it was four or five different spots.

Q. As you have testified to the taking of the samples?

A. Yes.

Q. Where did you apply the process which resulted in getting that sample and those three bottles; at home or up there on the ground?

A. My house kitchen, where I eat breakfast.

Q. Will you just describe now, to the jury, what you did with the samples so as to bring it to the state in which it is now?

A. I don't think it would do very much good.

Q. Eh?

A. I don't know whether I care to answer that, Judge.

The Court: You mean it is a secret process?

A. Well, there is a secret, Judge.

Mr. Matthews: We won't press him for it.

A. You can accept it or refuse it. It is a test of my own.

Q. If you don't want to answer that question I am not going to press it.

A. I would rather not.

Q. All right, sir.

A. Other people ——

Q. But you applied a process that is familiar to you?

A. Yes, sir.

Q. Had you used that process before for determining the same thing?

A. Hundreds of times.

Q. Have you, as a result of that process, proceeded to use sand and gravel so tested for the making of concrete?

A. To my own satisfaction.

(Question repeated by stenographer.)

A. Yes.

Q. What gives a superiority in sand and gravel deposits so far as the proportion of sand and gravel in the deposit is concerned?

A. I don't think I understand you.

Q. I think you will, if it is read to you.

(Question repeated by stenographer.)

A. Well, that depends again on the requirements which the sand and gravel is going to be applied.

Q. Well, I am not asking you now, anything about the application; I am asking you for the thing as it is there in the ground. Is there any superiority —I will put it in this way—in a deposit which contains a larger proportion of gravel to the sand than you may find in some other deposit?

A. Well, the proportion of gravel that I saw in this case would be greater than the proportion of sand, if that is it.

Q. Well, now, that being so, would you regard the quality under those circumstances as superior to sand and gravel where the proportion of gravel was lower and the proportion of sand higher?

A. Having gravel of that kind, yes.

Q. Yes. Well, I see I am coming a little close to value. Now tell us, if you please, first, whether or not, in your opinion, the sand and gravel on these seven sections is fit for the making of concrete?

A. Yes, sir.

Q. Is its quality high or low?

A. High.

Q. What makes the quality high?

A. The quality, the grade, well—particularly the quality of the stone itself. It is a granite.

A. Now, the amount of sand and gravel used in Paterson, in its immediate vicinity, which is furnished by the trade here, I would say approximately a half a million yards a year—Paterson and its vicinity, immediate vicinity, that is, taking all the work that is being done, everything.

Q. Does that half a million yards include stone or crushed stone gravel, or do you confine it to sand?

A. I am speaking of sand and gravel. I believe that is what you asked me?

Q. Yes.

The Court: When you say sand and gravel, you do not mean pure sand, but you mean the admixture of sand and gravel?

A. Yes. I mean, sir, everything that comes in under the head of sand and gravel, in all its different grades.

The Court: Well, if you were building a building of concrete and were using cracked stone rather than gravel, you would use sand in conjunction with the cracked stone?

A. Yes.

The Court: And the sand that you would thus use is not the kind of sand and gravel you are talking about?

The Witness: No. That is strictly sand.

The Court: That is what I meant. There is a distinction between your sand and gravel and pure sand?

The Witness: That is right.

The Court: Such as is used when concrete is made with cracked stone or where sand is used for plaster or other uses?

The Witness: Yes. You have to refine that and screen it.

The Court: I understood it, but I only wanted to make it clear to the jury. I did not think it was quite clear as you did describe it. Perhaps it was. It was not quite, to my mind.

Q. You have spoken of crushed stone. That is a thing, as I understand it, either from beds of gravel like this or from quarries?

A. Yes.

Q. The stone on a deposit of this kind which is above the size which goes into a mixture for cement, if there be any quantity of it, can be crushed and used as crushed stone, can it not?

A. Yes, sir.

Q. Is there much of that large-sized stone on this deposit?

A. Well, I don't know as I could tell you the percentage, but there is stones there ranging from two-inch cube up to, possibly, ten- or twelve-inch cube.

Q. Yes.

A. A few. Of course, intermediately there is all kinds of sizes there.

Q. Well, would you say that there was much of that large stone there?

A. No, I wouldn't say there was much in proportion to the other.

Q. What would you do to get the two per cent

clay and one and a half per cent humus out of this sample in the small jar?

A. What would I do?

Q. Yes.

A. Better ask that to some chemist here. I can't tell you.

Q. We won't go any further with that.

A. No, sir. You can have that done very easily.

Q. Would the sample that you have there, when mixed with the whole mass in the three jars, deprive the whole mass of use in making concrete?

A. No.

Q. You could use it all together?

A. Yes, sir. I would like to correct something, if you please, Judge. You said one and and a half per cent of humus. I did not say one and a half. I said one half of one per cent.

Mr. Matthews: No.

Mr. Lewis: I did not follow you.

Mr. Matthews: That is a standard quantity in liquid measure.

Q. Do you happen to know how much crushed stone is used in Paterson?

A. No, I do not. I couldn't tell you that off-hand, Judge. A good deal of it.

Cross-examination.

By Mr. Matthews:

Q. You just said, however, that there is a good deal of it; isn't that so?

A. Oh, yes.

Q. Just a question or two, that is all, Mr. Pittet. What part of a cubic foot do you think you have in front of you there in your total element?

Mr. Lewis: Oh, Mr. Matthews, before you go on, would you permit me to bring out one thing I forgot to mention?

Re-direct examination.

By Mr. Lewis:

Q. You said that the usual method in making tests of sand and gravel was to take a cubic foot of the sand and gravel for the purpose of making a test?

A. Yes.

Q. But you did not take a cubic foot?

A. No.

Q. Did it make any difference in the results? Would it make any difference in your determination of the quality of the sand and gravel?

A. Not in my own personal determination.

Q. For your own personal purpose?

A. Not for my own personal determination, no, sir.

Q. You could tell it just as well with what you have as you could with a cubic foot?

A. To my own satisfaction, yes.

Q. Would you use that in your business?

A. I would, yes.

Re-cross examination.

By Mr. Matthews:

Q. That is only to your own personal satisfaction?

A. Yes.

Q. That depends upon that test that you don't want to talk about, doesn't it?

A. No. I would rather—this has been brought here, this test was made to enlighten myself and so I could answer the Judge's questions intelligently as to whether that material was good for building purposes.

Q. That is, that material that you have in front of you?

A. Yes, that is the reason I made this test.

Q. All right. Just a minute. Just a question or two, that is all. You told Judge Lewis that you took the sample from places that you saw exposed?

A. Banks.

Q. Banks that you saw?

A. Yes.

Q. That is the only fair way to judge gravel, isn't it, in its total content from a large exposed surface?

A. That is the way that I can tell the best.

Q. Yes; that is the way that the ordinary building man would do?

A. Usually the only chance we have really, because as a rule when you are about to buy building material in the way of sand and gravel there is already a bank that has been opened up and you go and examine it.

Q. Sure; and you can get a better slant on it from the bank than you can from a little hole in the ground?

A. Well, I could, yes, not having dug the hole myself.

Q. Yes, certainly. So that you took it from the open bank because you thought that you could get a fairer sample from this open pits?

A. I did, yes.

Q. You took four or five samples from these open pits and that made up the total quantity you have in front of you?

A. Yes.

Q. That is about one-tenth of a cubic foot?

A. This?

Q. Yes.

A. Oh, no, it is not that.

Q. The whole business?

A. Oh, you mean this, the whole business?

Q. Yes.

A. Well, one-tenth ——

Q. My engineer told me that.

A. It is not even that.

Q. It is not even a tenth. All right. Thank you, sir.

The Court: That is all, Mr. Pittet.

By Mr. Lewis:

Q. But it was sufficient for your purpose?

Mr. Matthews: I object as not re-direct examination.

The Court: Objection sustained.

Mr. Lewis: He has already testified.

Mr. Matthews: If he has, that is not re-direct.

The Court: You have already covered it. That is all, Mr. Pittet. You will have to leave your samples, you know.

The Witness: Welcome to them.

ROBERT B. GAGE, sworn.

Direct examination.

By Mr. Lewis:

Q. Mr. Gage, where do you live?
A. Trenton, New Jersey.
Q. What is your profession?
A. I am a chemical engineer.
Q. By whom are you employed?
A. By the State of New Jersey.
Q. In what capacity?
A. As a chemical engineer for them.
Q. What is your business as a chemical engineer there?
A. Why, I have charge of the State Laboratory and the principal business is qualifying and passing on all the materials that is used in highway construction and other building construction and also making analysis for the different materials that are sent in by the different State institutions and departments.
Q. Did you receive samples of sand and gravel from Ringwood?
A. Yes; I received samples that was sent to me by Mr. Crockett marked from Ringwood.
Q. They were contained in what, do you remember?
A. I think they were contained in a small wooden box.
Q. Did you apply any tests to the samples that were sent you?
A. Yes, sir.
Q. For what purpose?

A. We analyzed those samples to see that they would comply with our standard requirements used in passing on such materials for concrete work for State use.
Q. In State use of what?
A. For use in concrete pavements or foundations or whatever class of concrete we were going to use them in.
Q. Did it include highways?
A. It would include highways, yes.
Q. What did you find the quality of the sand and gravel sent to you to be?
A. Well, out of the ——
Q. I will withdraw that question, Mr. Gage, and I will ask you whether you found by your analysis that the sand and gravel which you examined was fit for use in the construction of highways, State highways?
A. The sample of gravel we received did not comply with our requirements, due to the fact that it was a bank run of gravel, and it would have had to have been washed and cleaned to get proper grading before we could approve it.
Q. What do washing and screening do to it?
A. It would remove any silt, clay, humus or any kind of matter that was there, and it would grade it into different sizes that would be required for use in concrete.
Q. And that is the process that was applied to the sample that you got?
A. No, the sample evidently was a bank run sample.
Q. Did that make the sample better or worse?

Mr. Frazer: Mr. Kestenbaum, will you read the answer to the next to the last question?

(Read.)

The Witness: I took too much for granted in the end of the answer preceding the last question, and I would like to modify that, that in that answer I may have assumed more than I was justified in doing. I assumed this was bank run sample of gravel simply from the character of gravel that was in it. I see that it has in it material practically passing a three-inch ring with very little material passing the one-quarter inch. It may have been, however, screened and the sand taken out before the sample was sent to us, but we do not approve of gravel having in those larger pebbles.

Q. But this could be removed by screening?
A. It could be removed by screening and washing.

The Court: Screening and washing?

The Witness: Washing.

Q. And the washing would take out the silt?
A. And clean the gravel.
Q. Now, if that were done would the samples that you got indicate a quality of sand and gravel that could be used under the State specification in the construction of the State's highways?

Mr. Frazer: I object. This sample which was sent to the witness in its then condition, now Judge Lewis is asking him to do certain things to it and then say what it could be. It is the land as is and the gravel as is.

The Court: And he also answers on two assumptions.

Mr. Frazer: Yes, sir.

The Court: First, that it was taken under certain conditions, and secondly, that it might have been hand-screened which, perhaps, makes quite a difference.

Mr. Frazer: The Judge is not asking what the gravel is as it existed, but how it could be changed into something else.

The Court: Yes. The objection I had in mind was a little more fundamental than that, even though that might be so, this witness does not know where it came from, or what its condition was, or whether it had been screened before he had it or not, which seems to me to be rather important before his testimony is worth anything.

Mr. Lewis: I realize the hiatus there, sir. I did not want to press it on that account.

The Court: Very well.

Q. But you are reading from something there, what is that, Mr. Gage?
A. These are reports. These are the original reports which we sent you a copy on the result of the analysis on the samples forwarded to us.
Q. Which sample are you particularly referring to now? The sample of sand or gravel?
A. I am referring to the samples of gravel.
Q. To samples of gravel?
A. Yes.
Q. Well, the samples of sand—were they fit for use, and could they be used under the State's specifications?

A. Of the three samples of sand sent us, two of those complied with the requirements of our specification, and the third one might be considered as practically complying. That is, for concrete sand.

Mr. Lewis: I would like to withdraw the witness for a moment, and put Mr. Crockett on the stand.

The Court: Is there any objection to that?

Mr. Frazer: It seems to me we ought to be able to finish with the witness, and not continuously bring them up to fill in holes, the pinch hitters coming in.

The Court: I assume what Judge Lewis wishes to put Capt. Crockett on for was simply to show the samples he sent to this witness.

Mr. Lewis: I did not think the commission would want to go into the technical proof of that kind.

The Court: I thought you had covered that, Judge. Capt. Crockett, if I recall his testimony, testified he took certain samples and sent them to be analyzed to this institution.

Mr. Lewis: Yes, he did testify to that.

The Court: Now, isn't that all that you seek to put him on for?

Mr. Lewis: That is about all.

The Court: What is the use of it, then?

Mr. Lewis: I thought that your Honor had over-

ruled the examination—the questions I put to the witness, because there was a failure of proof in that respect.

The Court: Not quite that. Not quite that. The witness testified, as I recall it, this witness, in the alternative. He testified with respect to one sample, and assuming it was this, and assuming it was that. That is all he can testify to, all he knows is that he got a sample and found such and such a fact to exist.

Mr. Lewis: Well, he said that he thought it was the run of the bank. He was not sure. Is that what your Honor refers to?

The Court: Yes, that is not the point Mr. Frazer made, however.

Mr. Frazer: I raised this additional point besides the one which the Court raised, that you are asking the witness to do certain things to this, and what would be the character of the gravel after certain things had been done, which is changing the condition of what he is testifying about.

Mr. Lewis: I will ask this question.

Q. Can you determine whether a sample of sand and gravel which is in an unwashed condition would be usable when washed in the ordinary processes of the production of gravel for the market?
A. You mean by the tests we would make?
Q. Yes, sir.
A. Yes, sir.
Q. What did you find about those samples as

to their usability within the specifications of the State?

A. The gravel sample, when properly screened and the oversize removed, would comply with the requirements of the specifications, as far as the grading of the aggregate goes and the quality of the aggregate in this gravel, I would like to say it is not the best we have used in this State for the gravel does contain some decomposed troubles, some weathered gravel.

Mr. Lewis: I ask that be stricken out.

The Court: I think it is responsive. You asked him ——

Mr. Lewis: I did not ask him about that sample, sir.

The Court: No, you do not know about that sample, Mr. Gage.

The Witness: Well, I confine it to my own sample.

The Court: You do not know whether the sample you had was the same as this or not.

The Witness: Continuing my testimony along the same lines I was at: Our specifications make allowances for a certain percentage of decomposed pebbles in the gravel. Now, decomposed pebbles is practically in all glacial gravel which is not to exceed the per cent that our classification would approve. So we could approve the gravel as practically complying to any glacial gravel that exists in north Jersey.

Q. Have you the data with you that shows the results of your examination?

A. Yes, sir.

Q. I ask you to produce that?

A. It is right here.

(Produced.)

Mr. Lewis: I offer them in evidence.

Mr. Matthews:: May we examine them, please?

The Court: It may be examined.

The Witness: These are the letters, receipts and replies, and these are our analyses. (Handing papers to Mr. Matthews and Mr. Frazer.)

Mr. Frazer (after examination): We have no objection, Judge.

Mr. Lewis: I offer them in evidence.

The Court: They will be received and marked.

Q. May those be left here?

A. You will return them to us after, when you are through?

The Court: They will have to be left here if they are offered in evidence, Mr. Gage.

The Witness: I know, and I better leave them then.

(Papers received in evidence and marked Exhibit O86.)

Q. Would the duplicates serve your purpose, those that you sent to the Ringwood Company?

A. Yours is copied from ours.

Q. Would you rather have the originals?

A. If you will return our originals when you get through, it will be all right.

The Court: Cross-examine.

Cross-examination.

By Mr. Frazer:

Q. Mr. Gage, you have referred to this as glacial gravel?

A. Yes.

Q. What is the distinction between glacial gravel and other gravel?

A. Glacial gravel is gravel that was deposited at the end of the ice flow, at the end of the glacial period. Now, we have, in northern Jersey, we have two kinds of glacial gravel, the real deposited glacial gravel and the river-worked glacial gravel from a line north of Trenton. The gravel south of that is altogether of a different character than the character of the north, of the glacial origin.

Q. In what respect does it differ?

A. The gravels in south Jersey are pretty near all poor qualities. Gravel like you would secure on Long Island. It is a very hard, dense gravel, and some of those contain very few decomposed pebbles, practically none. Now, the glacial gravels all contain a certain amount of decomposed material, depending on the rock from which the gravel was ground or taken from. Now, some of the river-worked glacial gravel off Trenton contains quite a

few of those red shale pebbles which are pretty badly decomposed, and in drawing up the specifications, I purposely put into this State specification five per cent on flat and elongated decomposed pebbles so we could use these glacial pebbles.

Q. You consider them as high quality of gravel as the others you referred to?

A. No, poor quality of gravel is the sounder gravel. While the text-books, in one of the tests put out, say that the angularity of some of these gravels gives them superiority to the rounder pebble gravels. If you are basing the theory on pure laboratory tests that might be so, and for that fact that is the reason why the stone is so superior to the gravel in the test, but when you go out into actual construction, the rounder pebbles in the smaller sizes are much easier to work and the contractor makes a denser and more viscous mixture of his concrete than he does with the larger material. He gets workability with less water, and that gives him a stronger concrete. Now, we have tested that out on our roads repeatedly, and those smaller sizes are smooth, easy-working gravel, gives us densities and the best concrete.

Q. That is the kind you would get out of the so-called Cow Bay?

A. Yes, and Port Jefferson, Long Island, gravels.

Q. Now, were the samples that were submitted to you, what you call well-graded gravels?

A. Well, no; the gravel sample was not graded. It complied with our requirements.

Q. Now, do you know to what extent the glacial gravel is to be found in north Jersey?

A. Well, it is very widely distributed over north Jersey. There is a tremendous quantity of it in different places. There is a big deposit up at Pomp-

ton Plains, from which we constructed that concrete pavement on Road 8. There was a small gravel plant put up there, and we built that pavement out of that gravel, but since that date, I do not remember we used any gravel from there, or very little. There is a tremendous lake, a glacial lake, just outside of Dover, where several mining concerns are mining gravel in there, but that is mostly sand, and mostly shipped out of the State for sand into Pennsylvania.

Q. That is all, Mr. Gage. Could the samples which were sent to you, of gravel, have been used without further washing?

A. No, they could not.

Re-direct examination.

By Mr. Lewis:

Q. Why do you say further washing?

A. I did not say that.

Q. I thought you said it was run of the bank?

A. The attorney said further washing. They could not have been used as received, is what I meant.

Re-cross examination.

By Mr. Frazer:

Q. I notice on your reports, Mr. Gage, that the samples of gravel were entitled "Washed Gravel," so I assumed that implied washing—on Exhibit O76 —"Kind of material: washed gravel?"

A. Well, that may be the way the sample was

marked when received by us; but one of those gravel samples certainly was not washed, for it was coated with clay, a certain amount of fine material attached to the gravel that I examined yesterday. If that had been washed it was never washed sufficient to remove the clay material that was sticking to it. This notation on our reports was taken off the boxes received, and it might be put on a class, as a sample of washed gravel that should be washed before used.

Q. That is my error of interpretation, then?

A. Now, this evidently is taken off the sample as received, for that is our instructions. The receiving clerk is to put our notations on each sample, all data that is on the sample itself or in the letter, and this might have been on the samples.

By the Court:

Q. When you speak, Mr. Gage, of your specification, you mean the specification the State adheres to in State work?

A. The State Highway Construction, yes.

Q. There is no State law?

A. Oh, no.

Q. Governs the specification for private work in any way, is there?

A. No; we make up specifications and change them to meet the conditions.

Q. I asked the question because the previous witness spoke about State regulations, or words to that effect, and I want to make it clear that the only State regulation that you refer to, or that you know anything about, was the specifications that have to do with road work?

A. To a certain extent, your Honor. It is within the last three or four years that we have been get-

ting the other institutions that are using these materials to adopt our standards.

Q. For State work?

A. Yes, for we use about 75 per cent of the total output of these concerns, and the different engineers come in and draw up separate specifications which they think should be used, and they cannot get the material. All plants are standardized on our specification, and it saves in cost and time of delivery.

Q. What do you mean, plant?

A. The gravel plants and the stone plants, too.

The Court: Is there anything further, Judge?

By Mr. Lewis:

Q. Does not the report show, as to gravel "Approved subject to classification?"

A. That is as to the sand.

Q. Look and see whether it is not the gravel.

A. Wait. Let me look to be sure whether it is not. That is the three samples of concrete sand. I will read this, what I have: "Enclosed herewith are copies"—addressed to Mr. Crockett—"Enclosed herewith are copies of analyses on three samples of concrete sand submitted by you, marked 'Cupsaw,' 'Ryerson,' and 'Ringwood Junction.' This will inform you that after screening in the laboratory these samples practically comply with our requirements for concrete sand. You will note, however, that one of these samples is deficient in material passing the 30- and retained on the 50-mesh sieve. This condition would have to be corrected before general approval could be given on these materials." Now, what is meant here as the screening in the

laboratory is that all these samples contained some over-size pebbles, that is, half-inch and quarter-inch pebbles. We screened that out and make this test for the balance, because that is the way you screen it when you mine it. Here is a sample of 12 per cent retained on quarter-mesh screen.

Q. Your description of the sample on these papers sometimes in regard to gravel first as washed gravel, as I understand that, there was no basis for your describing it, that you know of?

A. Well, no. I think that was copied off the label that came in. Now, one reason that might be on that way is because we have another kind of gravel. We have a road gravel where you do not wash it and you use it direct as dug out. All this class of gravel is washed as used. That is what would make the difference.

Q. This gravel, such as you have there, is always washed before it is used?

A. For concrete purposes?

Q. Yes.

A. The other type of gravel is road gravel that you see in gravel roads in south Jersey. That is used as dug out, not washed, and this might have been put on to distinguish it so there would be no doubt about its being that.

Q. Is there any gravel, Mr. Gage, that has not, or gravel that can be taken out of the bank and used under the State specifications without being washed or screened?

A. Washed and screened? You meant there is no gravel bank in this State that is sufficiently uniform enough in composition in the ratio of the fine aggregate to the coarse aggregate is such that you would not be using that kind of material? This has all got to be washed and screened.

Q. You said there was no gravel in this State that would comply to my last question. Do you know of any gravel in any other State that could be taken out of the bank and comply with the State specification without washing?

A. Why, I know of deposits where they have done it, or did it there.

Q. Was it used in State work?

A. Yes, in some western State work, but the quality of the concrete was very questionable.

Q. The specifications in various States vary, don't they?

A. Well, yes.

Q. I am asking you now as to the specification of the State of New Jersey?

A. Not in New Jersey, we would not permit it.

Mr. Lewis: That is all.

By Mr. Frazer:

Q. This last question refers to the so-called washed gravel as distinguished from the other kind? You have made different classifications?

A. I do not get what you mean.

Q. Well, you have stated there are two kinds of gravel?

A. Yes.

Q. One which you have been pleased to designate as "washed gravel" to discriminate it from some other kind of gravel?

A. Yes, to separate it from the road gravel used directly as mined.

Q. And the gravel of Long Island?

A. That is all a washed gravel.

Q. That is all a washed gravel also?

A. Yes, sir.

Mr. Frazer: That is all.

The Court: That is all, Mr. Gage.

STEWART M. NEFF, sworn.

Direct examination.

By Mr. Lewis:

Q. Mr. Neff, where do you live, sir?
A. Rochester, N. Y.
Q. What is your business?
A. I am in the sand and gravel business.
Q. How long have you been in that business?
A. In Rochester since August 1st.

The Court: What year?

The Witness: 1926.

Q. Before that where were you in business?

A. I was in business in Southern New Jersey, near Millville, in the sand and gravel business from 1913 to 1918.

Q. And were you in the sand and gravel business before that at all?

A. No.

Q. That is the period with which you have been familiar with deposits of sand and gravel?

A. Yes.

The Court: In other words, from 1918 to August, 1926, you were not in the business; is that correct?

The Witness: Yes.

The Court: That is correct?

The Witness: Yes.

Mr. Matthews: I did not get that.

The Court: He was in the sand and gravel business in South Jersey from sometime—I do not recall—until 1918; and then in Rochester, New York, from August 1st, 1926, to date. My question was, during the period from 1918 to August 1st, 1926, he was not in the sand and gravel business, and he said he was not.

Mr. Matthews: Thank you, your Honor.

The Court: That is correct?

The Witness: That is right.

Q. What was your business during the interval between 1918 and August, 1926?

A. I have done various different kinds of work. I have been interested, however, in sand and gravel in the meantime.

Q. How were you interested?

A. I was making reports for various people that wanted to put money in the business, and I was looking up sand and gravel deposits over the entire country.

Q. Were you working the Millville deposit and

selling it, or working it on a royalty, or working it for such profit as you could make?

A. Well ——

Mr. Matthews: I object to this as immaterial, if your Honor please, even in qualifying this man.

The Court: What materiality is there, Judge?

(After argument, the question was withdrawn.)

Further direct examination.

By Mr. Lewis:

Q. Mr. Neff, do you know anything about the making of concrete?

A. Yes, sir.

Q. What has your experience been?

A. I had 25 years' experience in the contracting business making a specialty of water works and sewerage.

Q. Where was this experience had?

A. All over the country, mostly in the east.

Q. Where were you in business to begin with?

A. In Dover.

Q. Were you born in Dover?

A. Born and raised in Dover.

Q. Do you know these lands at Ringwood?

A. I have been all over them.

Q. That belong to the Ringwood Company?

A. Yes, sir.

Q. Have you made an examination of those lands?

A. Yes, sir.

Q. Alone or in conjunction with someone else?

A. I have been in conjunction with others.

Q. Did you do any work in conjunction with Captain Crockett?

A. Yes, sir.

Q. Tell us what you did up there and what examination of the land and its gravel content was made by you?

A. I looked all over the property, examined the test pits and the borings and made an estimate of the quantity of the material in place.

Q. For what purpose?

A. For the purpose of finding out whether the gravel was worth anything, and to make a general report on it.

Q. Did you determine whether or not it was worth anything for the making of concrete?

A. Yes.

Q. What experience had you, aside from the concrete business that you spoke of, in determining the quality of the sand and gravel there?

A. I was in the sand and gravel business for five years, and then I have investigated sand and gravel plants over the entire country almost, and made reports on some.

Q. How many sand and gravel plants have you inspected?

A. Well, I don't know; I would say 50.

Q. Where were they located?

A. In New York and New Jersey, Ohio, Indiana, Illinois, New Orleans, Texas, California, Colorado, Utah. I guess that is all.

Q. Anything in New England?

A. Yes; all through New England, from Maine down to New York City.

Q. What was the purpose of your inspections of those plants?

A. In New England I looked over properties there with the idea of going into business there; in the west just to keep myself informed and to make some reports.

Q. Keep yourself informed in respect to what?

A. In respect to the best method of production and sales of sand and gravel.

Q. Are there different methods of producing sand and gravel from the lands?

Mr. Matthews: I object to that as immaterial, if your Honor please. The production of it from the land is not part of this issue and it is not part of this witness' qualifications therefor.

Mr. Lewis: It is a part of it, because the question of cheap and easy production or of the sand and gravel in the land, goes to its value as a component part of the land.

The Court: I am inclined to think Judge Lewis is right about that, Mr. Matthews, and if that is the purpose of the question and the only purpose I think it is admissible and I will allow it for that purpose.

Mr. Matthews: Will you hear me a moment?

(An extended colloquy here occurred, participated in by the Court and by Messrs. Matthews and Frazer for respondent, and Lewis for appellant, the same concluding and the examination then continuing as follows:)

Mr. Lewis: I want to reply to Mr. Frazer on that

point simply for the purpose of saying I am not trying to pyramid uses, but I do submit to your Honor that I can show any and every use to which this land may be adapted or capable of, and leave it to the jury to determine what they consider is the best use under the evidence, and to value it in view of that use. That is the proposition.

The Court: I shall permit you to do that, but will overrule this question because of its immateriality to show that very thing.

Mr. Lewis: Your Honor, I beg an exception there.

The Court: You may have it.

Q. Have you seen these lands about the time of the condemnation proceedings?

A. I went over the lands for the first time early in 1925.

Q. Did you go over them quite thoroughly, Mr. Neff?

A. Very thoroughly.

Q. Tell us what you did in addition to the boring and tests, if anything, that you speak of?

A. I walked all over the land along the river, and up above. At that time they were about to dig the test pits. They had not dug them at that time, or some of them, anyway. I asked them to locate some other pits, which was afterwards done, and as they were dug from time to time I went out there again and looked the thing over.

Q. Now, can you tell us from that inspection whether the lands were so situated at that time as to make them workable for the production of sand and gravel by the most economical means of such production?

Mr. Matthews: I object as immaterial, and before any question, without the immaterial part of it is asked, I would like the privilege of cross-examining the witness as to his inspection, such as would qualify him to testify as an expert on the gravel content.

The Court: You may examine him now, if you wish, on that point.

Preliminary cross-examination.

By Mr. Matthews:

Q. Mr. Neff, you said you went all over the property and examined the test holes that had been dug or plugged with the pipe, is that right?

A. Dug.

Q. Do you remember testifying in the last proceeding?

A. Yes.

Q. Did you testify this way, at page 292, Judge Lewis, of the previous hearing. I am reading—you were under examination then by Mr. Frazer in preliminary cross, like I am crossing you now for your capability to testify. Mr. Frazer asked you: "Q. Did you bore all over this ground? A. In certain places." Did you so testify?

A. Well, I must have if it is there.

Q. Well, it is here, therefore you say you did, is that right?

A. Yes.

Q. Were you asked this question: "Q. Do you know whether there is gravel between any borings or at the borings?" And did you answer: "Nobody knows."

A. Yes.
Q. That is true today, is it?
A. Yes.

Mr. Matthews: That is all I have to ask him.

The Court: Now, the question that you objected to as ——

Mr. Matthews: I object to the immateriality of that question.

Mr. Lewis: Let me bring in this, then.

Direct examination, resumed.

By Mr. Lewis:

Q. When you said nobody knows, Mr. Neff, what did you mean by that language?

Mr. Matthews: I think, if your Honor please, that is patent, and we can get the construction.

Mr. Lewis: I can get the explanation of the language he used, what he had in mind.

The Court: I will allow it.

A. I meant that you could not see under the ground, and the character might vary.
Q. Did you mean to say that no one could make any inference as to what the content was?

Mr. Matthews: I object to that.

Q. (Continued.) And know in that way?

Mr. Matthews: I object to that as leading and inconsequential, therefore, immaterial to this issue, because he is bound by the testimony. I have no objection to his saying: Do you want to change your testimony, but he cannot do anything ——

Mr. Lewis: I am not asking that. I am asking him to explain his testimony.

The Court: I will allow it.

Q. Go ahead.
A. What was the question?

(Question read.)

The Witness: No.

Q. What is the fact as to the ability to determine what was in between?
A. My idea is there was enough borings there. I could from a business standpoint, infer that between the holes there was gravel.
Q. And what was the basis of such an inference?
A. That the borings were sufficient.
Q. What?
A. That there were sufficient borings there.
Q. I know, but what was the basis for assuming that between the borings there was sand and gravel? Why would you reason that way?
A Because all the borings showed sand and gravel.
Q. Well, had you seen similar experiments on other lands?
A. Certainly.
Q. Which have afterwards been developed?

A. Certainly.

Q. And what was shown under those subsequent developments of the land?

A. That the material between the holes was very similar to the borings.

Q. Then, as I understand it, you confine the meaning of the words "Nobody can tell" to nobody can tell so far as seeing is concerned?

Mr. Matthews: I object.

Mr. Lewis: I will withdraw it. He has already said that.

Mr. Matthews: He said nobody knows. Nobody knows, is all I can get out of it. He is somebody.

The Court: The question is withdrawn.

Mr. Lewis: Now then, I will ask the last question be read.

Mr. Matthews: I would like to re-cross that "Nobody knows" proposition.

The Court: You may.

Preliminary cross-examination.

By Mr. Matthews:

Q. The question I asked you whether you remember having been asked the last time was: "Do you know whether there is gravel between your borings or at the borings?" And you answered "Nobody knows" didn't you?

Mr. Hunt: What page is that, please?

Mr. Matthews: Page 292, sir. The question was: "Do you know whether there is gravel between your borings or at the borings?" And you answered, "Nobody knows."

Q. Isn't that what you answered?

A. Yes, but not at the borings.

Q. Just yes or no, please, for the moment. You said "Nobody." That meant no person, didn't it?

A. Right.

Q. And know?

A. Yes.

Q. Therefore, when you said that you meant that nobody knows, and you did not know what was between the borings, didn't you?

A. Surely.

Mr. Matthews: That is all.

The Court: Now, let the question ——

Mr. Lewis: We are going into a lot of psychology in this thing.

The Court: Well, do not let us go any further.

Q. When you speak of "knows" the knowledge you have already explained, as I understand it, that you limited that expression to the knowledge, through seeing a thing?

A. Absolutely.

Q. And that is what you meant and nothing else?

A. Absolutely.

Q. Now, can you form an opinion as to what is

between the borings as to the contents of the grounds between the borings from the experience you yourself have had in that business, Mr. Neff?

A. Yes.

Q. And what is your conclusion as to that?

A. That the gravel is over the entire area.

Q. Now, I ask you whether or not from your inspection at that time the character of the ground was such as to enable you to work it and produce gravel under the most economical circumstances ——

Mr. Matthews: I object. The same question was asked before.

Q. (Continued). —— and the conditions?

The Court: I will sustain the objection on that for the reasons already given.

Mr. Lewis: Your Honor will grant me an exception on that?

The Court: Yes.

Q. How does this sand and gravel deposit compare in quality with the other sand and gravel deposits which you say you have inspected all over the country?

A. It is excellent material.

Q. How does it compare?

Mr. Matthews: That it is excellent, can only compare favorably.

The Court: I will let him say. How does it compare, Mr. Neff?

The Witness: I do not think there is any better.

Q. Mr. Neff, can you tell us from your experience and inspection of the Ringwood lands whether those lands are so located as to be useful in the establishment and carrying on of a gravel and sand business?

Mr. Matthews: There is the same objection.

Mr. Lewis: For the purpose of making my record.

The Court: Same ruling.

Mr. Lewis: Exception?

The Court: Certainly.

Q. Are you familiar with the royalties usually payable for the privilege of digging sand and gravel from a deposit of this kind?

Mr. Matthews: Objected to as immaterial.

The Court: Same ruling, Judge.

Mr. Lewis: And same exception?

The Court: You may take an exception.

Q. Can you tell us from your experience in the sand and gravel business and your inspection of various sand and gravel plants what that sand in the Ringwood gravel lands is worth per cubic yard as it stands on the property?

Mr. Matthews: I object to that as immaterial to this issue, and within the same ruling, if the Court please.

Mr. Lewis: I anticipate that, sir. I just want to get the record.

The Court: The ruling, of course, you anticipated will be that I sustain the objection.

Mr. Lewis: May I have an exception?

The Court: You may have an exception.

Q. Assuming that the jury would find that there are approximately 22,000,000 cubic yards of sand and gravel upon this property, what would you say that the property was worth?

Mr. Matthews: I object to that as immaterial, within the same proposition, because while it asks the worth of the property it also asks the value of it from the standard of 22,000,000 yards of mined gravel, and makes it immaterial under the cases.

The Court: The cases say that you cannot separate the one thing from the other, Judge, and this question must of necessity separate it, because this man is not qualified to value anything but gravel, and for that reason the objection is sustained.

Mr. Lewis: He is not qualified—I did not quite get that?

The Court: The question must of necessity be answered with respect to the value of the gravel as

distinguished from the value of the entire property. If you qualify him as an expert on realty values, then you might ask him that question, and I will allow it; but the decisions, as I understand them, hold that you cannot separately value the property, but must value it as a whole, and this witness is not qualified yet except with respect to sand and gravel, and his answer must of necessity be based entirely on the one element.

Mr. Lewis: Yes.

The Court: And for that reason ——

Mr. Lewis: I anticipated that your Honor would so rule.

The Court: Very well.

Mr. Lewis: May I have an exception?

The Court: You may.

Q. I would ask you, paying no regard whatever to any other part of the property than the 450 acres of land on which the gravel deposits are, and if it should be found as a fact by the jury that there are 22,000,000 cubic yards of sand and gravel upon the property, what would you say that the property was worth?

Mr. Matthews: That is ingeniously immaterial, if the Court please, because it takes the acreage and mines the gravel and separates it from the whole and gets the value. Not only immaterial from that standpoint, but is incompetent as a pyramided use.

Mr. Lewis: I assume the ruling is the same?

The Court: The ruling will be the same.

Mr. Lewis: And an exception allowed?

The Court: Exception allowed.

Q. I will ask you this further question: Assuming that the 450 acres of land upon which the sand and gravel is shown to be, is of no value whatever, aside from the sand and gravel upon it, what do you say is the value of the property?

Mr. Matthews: I object, if your Honor please.

The Court: Objection sustained.

Mr. Lewis: And an exception?

The Court: And an exception allowed.

Mr. Lewis: The value of the 450 acres, of course, is understood as being intended by the question?

The Court: I understood your question.

Mr. Lewis: Cross-examine.

Mr. Matthews: No questions.

The Court: That is all, Mr. Neff.

Jay M. Whitham, sworn.

Direct examination.

By Mr. Hunt:

Q. Where do you live, please, Mr. Whitham?
A. Philadelphia, Pa.
Q. What is your profession?
A. Consulting Engineer.
Q. Have you specialized in any particular branch of engineering?
A. Yes.
Q. What is that?
A. Hydraulic and power engineering, water power, steam power and electric power.
Q. Please state what your professional training has been?
A. I have had about fifty years training and experience in engineering. I was in the Engineers Corps of the Navy.
Q. Were you educated at Annapolis?
A. At Annapolis, and remained in the service for eight years and a half, then I resigned and took the Chair of Engineering in a western university for six years; in 1891, coming to Philadelphia, I practiced engineering and have so continued. In about 1884 I began my hydraulic studies, embracing the yield of streams, measuring the amount of streams, the study of hydraulic problems, development of powers, improvements on powers, the values of powers—water powers—and the meaning of grants of water from an engineering standpoint. About 1893 I started the study of the meaning of so-called indefinite grants of water rights, such as water to

run a grist mill or water to run stones for a flour mill, or water to run a saw, and so on, for various purposes for which grants were made, and I have spent since that time a great many—in the aggregate a great many years in the interpretation from an engineering standpoint of the meaning of grants of water.

Q. Now in modern times what terms are used to define a grant of water?

A. Generally in the quantity of water, so many cubic feet per second.

Q. So many cubic feet per second. Now in old times what terms were used?

A. More with reference to the use the water was to be made, such as to run a grist mill or forge or a sawmill or tannery or a trip hammer or bellows, a pearl barley mill, a variety of uses—a paper mill.

Q. Are you familiar with the lands of the Ringwood Company in Passaic County?

A. Yes, sir.

Q. Do you know where the site of the old works owned and operated by Ryerson in the 1830's is?

A. Yes, sir; I have examined that many times.

Q. Can you tell me whether I point it out with approximate correctness on the map?

Mr. Frazer: I object to it as immaterial.

The Court: I suppose you have finished your qualifications, Mr. Hunt?

Mr. Hunt: No, sir; I should like to let the witness state whether it is true that he has any special qualifications with respect to this particular property.

The Court: All right.

A. In 1896 and again in 1906 and again in 1911 and 1912, I was called on, first by Mr. Abram S. Hewitt, and later by the Hewitt Estate, to examine the water powers on the Hewitt property, first up at what is now known as Hewitt, New Jersey, and in the later examinations in 1911 and 1912 and I think in '06, not only at Hewitt but at points along the stream below Hewitt, and I got up designs and specifications and made estimates ——

Mr. Frazer: I object.

Q. I do not want to go into that.

The Court: He doesn't wish you to go into that.

Q. Now will you state whether the studies you made at the times you have mentioned, coupled with the professional training and experience that you said you have had, enable you to define in terms of cubic feet of water per second the quantity of water necessary to operate the machinery which was installed at Ryerson's works in 1837?

Mr. Frazer: I object.

Mr. Hunt: This simply calls for yes.

Mr. Frazer: I know but it is in the line of examination—and I think we might as well urge the objection at the beginning. It is wholly immaterial. It involves the question which the Court has already ruled on in that section of the deeds relating to the so-called Ryerson grant. The only possible signifi-

cance it can have would be under those deeds, and the Court has already ruled.

The Court: If that is the purpose ——

Mr. Hunt: This is another effort, your Honor, in another manner and by means of another witness, to get into the evidence in this case the so-called Ryerson reservation. I thought that I might have failed in stating the matter clearly enough to enable the Court to see that that is a right which the land owner is properly entitled to get before the jury. The point of the matter is this ——

Mr. Frazer: If we are going to argue the whole question of the Ryerson grant, I think the jury should be asked to retire.

Mr. Hunt: I will not speak for a longer time than it will take for the jury to go out and return.

The Court: Very well.

Mr. Frazer: It is not how long he speaks, but what he says while speaking that I am interested in.

The Court: I shall not exclude the jury.

Mr. Hunt: The point of the matter is this: This property is being taken for water supply purposes, and one of the uses in respect of which we may undertake to prove its value is that particular use. Its value for that use depends in part, among other things, on the quantity of water passing through the premises, and on the question whether

any additional quantity drawn from storage off the premises can be made to pass through the premises. I assert, that in those respects there are facts which tend to greatly increase the value of our property for water supply purposes, and I beg leave to offer them by this witness.

The Court: I will sustain the objection with respect to the Ryerson grant, so-called, on the ground that it was objected to and sustained before, and will grant you an exception.

Mr. Hunt: Will your Honor permit me to get my formal offer of proof on the record? I am sure it does not contain any values or figures.

The Court: I have no objection to that.

Mr. Hunt: By this witness who I offer to prove possesses the requisite expert qualifications, I offer and request the privilege of showing the amount of power necessary to operate the machinery mentioned in the Ryerson reservation set forth in the deed marked Exhibit O41 for identification, and the quantity of water which would be required under the head existing at the date of said deed, 1837, and still existing to operate said machinery expressed in terms of cubic feet per second, and gallons per 24 hours. By this witness I offer further to prove the quantity of power which by the exercise of the right created or reserved by the said deed, O41 for identification, could be produced on the lands being condemned, and on other lands of the Ringwood Company upon which, by reason of this taking, it becomes impossible to produce as much power, or to produce it as economically. I also offer this wit-

ness to prove the facts before recited for the purpose of laying—and this is a most important phase of my offer—for the purpose of laying a necessary and proper foundation for testimony hereafter to be given by other duly qualified experts hereafter to be called to the effect that the value for water supply purposes of the lands being taken is substantially enhanced by reason of the Ringwood Company possessing, as a legal appurtenance to the lands being taken or to certain parts thereof, the right created by said reservation in the deed above mentioned; and to prove that this taking prevents the Ringwood Company from ever realizing on or in connection with any part of its lands either within or without the taking such enhanced value for water supply purposes given to its lands by the said right or reservation continued in said deed, for which reasons I respectfully submit the Ringwood Company is entitled to prove and recover in this proceeding the enhanced value which said right gives to the lands being taken, and the damages which this taking does to its remaining lands by rendering the exercise of the said right in or on said land less productive, less useful, and less beneficial than if the taking had not occurred. That states the purpose of my offer.

The Court: Very well.

Mr. Frazer: May I, for the purpose of the record, make this additional statement, that I object further to the offer of any evidence along this line for the reason that the so-called Ryerson right relates to its exercise to a portion of the lands of the Ringwood Company not contemplated in the present proceedings, and not within the taking lines and is

therefore in no respect interfered with by the present proceedings.

The Court: Very well.

Mr. Hunt: It was for that reason, your Honor, if I may say, that I produced the additional witness and made the additional tender. I thought I had not made it plain before that this taking does interfere with the use upon the lands being taken of the water secured to us by this reservation which, if employed at the old site mentioned in the reservation must, in the course of nature and by the requirement of law flow on down the river through the entire extent of the lands being taken.

The Court: I understand the point, and the ruling is it is immaterial to this issue for the reasons that have already been stated and are in the record, that are stated at the time the exhibit mentioned by you, the grant, was offered and rejected.

Mr. Hunt: Yes.

The Court: And you may have an exception.

Mr. Hunt: Yes, and my exception, your Honor, may go to each of the several purposes for which I tender this offer of proof?

The Court: Certainly.

Mr. Hunt: Then, that is all, Mr. Whitham.

The Court: Any cross-examination?

Mr. Frazer: No cross-examination.

The Court: That is all.

Mr. Hunt: I call Mr. Houman.

GARRET C. HOUMAN, sworn.

Direct examination.

By Mr. Hunt:

Q. What is your profession, please, Mr. Houman?
A. Lawyer.
Q. Do you practice law, and where?
A. In Pompton Lakes, New Jersey.
Q. You are a member of the New Jersey bar?
A. I am.
Q. And of any other bar?
A. New York.
Q. You have been practicing how long?
A. I think about seven years.
Q. Have you had any experience in the searching of real estate titles in New Jersey?
A. I have.
Q. Have you examined the state of the title to a certain piece of property mentioned by the witness for the Water Supply Commission, Mr. Hershfield, as the property formerly called Rotten Pond now called Lake Le Grande?
A. I have made an examination of that title, yes.
Q. What does that examination disclose in respect of the question whether there has been any recent conveyance of that property by anybody to anybody?

Mr. Frazer: I object. I do not know what the purpose of this is. The question here is of the value of the lands under condemnation. If we are going into the question of title to all lands which may incidentally be referred to in the course of the proceedings, we are going into a very broad field.

The Court: I assume this witness is put on to rebut some testimony that Mr. Hershfield gave as to the extent of the tract, or with respect to intervening land between the tract Mr. Hershfield spoke of and Pompton Lakes, perhaps, or Rotten Pond.

Mr. Hunt: Not exactly for that purpose, your Honor, but for this purpose: Mr. Hershfield testified to a sale of this tract, I think, for a price of $260,000. I am not sure of that sum. I propose to prove that there has been no sale of this tract in so far as public records are concerned.

Mr. Frazer: Public records do not show it.

Mr. Hunt: No, but Mr. Hershfield testified the sale was approximately two years ago, although that might be wrong by six months in either direction. I submit it is competent for the jury to draw the inference if there was no deed on record there has been no conveyance as long ago as 18 months to thirty months.

The Court: It might prove that, and it might not.

Mr. Hunt: I say the jury could draw such an inference because it is a fair inference that the purchaser of a property for which the sum of $260,-

000 is paid would not run the risks that adhere in leaving a title stand in the cellar during all that period.

Mr. Frazer: There are very many things which might not appear of record as far as the real estate conveyance is concerned. The title to this property was in a corporation. There is more than one way of purchasing corporate property. It is not necessarily done by the transfer of a deed. It might very well be stated that a sale was made, as far as a real estate expert is concerned, if there were a transfer of the corporate stock of the corporation.

The Court: I think it is competent, however, for the purpose that it has been stated that it has been offered for.

Mr. Frazer: Very well, I ask for an exception.

The Court: You may have it.

Mr. Hunt: May the question be read?

(Question read.)

A. To answer that, if I may be permitted to do so, I would say that title passed, I believe, in 1909 from a William Porter to Ramapo Park, Inc.

The Court: William Porter?

The Witness: Yes.

Mr. Frazer: What year was that, Mr. Houman?

The Witness: 1909, I believe. And that conveyance was of about 1900 acres of land, and is what I have identified to my own satisfaction as the Rotten Pond tract which was referred to here. There was a conveyance by the Ramapo Park and others in 1914 to Ruth A. Van Slyke of 32 and a fraction acres.

The Court: Now, how many acres, 1900?

The Witness: That original conveyance was about 1900 acres.

The Court: And that was Porter to who?

The Witness: Ramapo Park Corporation. There were two or three conveyances with reference to that 32 acres, one was a corrected deed, and another was an assertion of reservations with reference to that 32 acres with relation to other property which I can go into further if Mr. Hunt wishes to.

The Court: That Slyke deed was when?

The Witness: 1914, sir.

The Court: That was the Ramapo Park Corporation to Van Slyke?

The Witness: To Ruth A. Van Slyke; yes, sir.

Q. Now with the exception of the 32 acres sold by the Ramapo Park Corporation to Van Slyke in 1914, where does the title rest, so far as public records disclose, to the 1900 acres of Rotten Pond

property sold by Porter to Ramapo Park Corporation in 1909?

A. Some of its title has passed to others. There is a deed on April 30th, 1925, from Ramapo Park to Elinore G. Gifford.

Q. How many acres?

A. Five acres. Deed in 1925 by Ramapo Park, Incorporated, to Alfred B. Van Liew.

Q. How many acres?

A. Five acres.

The Court: A New York lawyer, I think.

Mr. Frazer: Yes; retired and making money. He is a business man now.

A. Deed from Ramapo Park, Incorporated, to Maximilian M. Stallman.

The Court: Another Newark lawyer.

A. October 1st, 1925, is the date.

The Court: How many acres?

A. Five acres. A further conveyance from Ramapo Park to Bernois R. McAvoy, October 1st, 1925.

Q. How many acres?

A. Five acres. Further one from Ramapo Park, Incorporated, to Fred Borden, October 1st, 1925, five acres. Further a deed from Ramapo Park, Incorporated, October 1st, 1925, to C. F. McAvoy, who was the president of the corporation.

Q. How many acres?

A. Five acres of land. Further a deed Ramapo Park, Incorporated, to Ruth A. Van Slyke, October 1st, 1925, five acres. Further one from Ramapo Park, Incorporated, to Harold W. Pell, October 1st, 1925, five acres. Further a deed Ramapo Park to W. J. McAvoy, October 1st, 1925, five acres. That, with the exception of three or four deeds which concern only changing or correcting reservations, is all that I find of record.

Q. In other words, out of the 1900 acres conveyed to the Ramapo Park Corporation in 1909, it has conveyed one tract of 32 acres more or less and nine other tracts of five acres each, and it retains the title to the remainder of the 1900 acres?

A. With the exception, I would like to state, that the 1900 acres is an approximation of the acreage, that is correct.

Q. Well, I was just using that approximate sum. Has your investigation been of such a character as to enable you to say with assurance that this is the very property mentioned by Mr. Hershfield as the Rotten Pond or Lake Le Grande property?

A. I am satisfied that it is from my examination.

Q. In what counties does it lie?

A. Partly in Bergen and partly in Passaic County.

Q. In what counties have you examined?

A. I have examined in both Bergen and Passaic Counties.

Q. Are you familiar with the location of a tract which the witness Fay for the Water Supply Commission spoke of as a tract of 33 or 35 acres lying along the Ramapo River and which he called by the name of Modeltown?

A. I would say yes, with the approximate location; I don't know the exact boundaries.

Q. Have you made an examination of the record title to that property?

A. I have.

Q. What does it disclose with respect to the question whether or not Frank P. Fay has any right, title or interest in the property or any part thereof?

Mr. Frazer: I make the same objection.

The Court: On the same ground?

Mr. Frazer: The same ground.

The Court: Same ruling.

Mr. Frazer: Pray an exception.

A. As of the present date?

Q. Yes.

A. As of the present date I do not find any interest in Frank P. Fay, Jr., to the property which was conveyed or contracted to be conveyed by Isaac A. Hopper and wife. That is the tract that was testified to.

Q. Yes. As of any earlier date did you find the record disclosing that Mr. Fay had or had had any interest?

A. Only such interest as a person to whom a contract is made would have.

Q. Well now, just what do you mean by that?

A. You might consider ——

Q. Is there a contract on record?

A. There is a contract on record.

Q. What is the nature of that contract? First state its date, please.

A. The agreement is dated September 20th, 1922.

Q. Recorded what volume?

A. Q31 of Deeds, page 344, Passaic County.

Q. Who are the parties?

A. Isaac A. Hopper and Frank P. Fay, Jr.

Q. And Hopper appears in what capacity?

A. Party of the first part, the grantor.

Q. Yes. What interest does that contract give to Mr. Fay?

A. It contracts to convey approximately 31 acres of land, excepting from that 31 acres such property as had already been conveyed under the terms of the contract, and with the further exception of lots designated in the contract as lots Nos. 22 and 23 in Section 6, on the Modeltown map.

The Court: The date of that contract, please, Mr. Houman?

The Witness: September 20th, 1922.

The Court: You say that Mr. Fay was the grantor?

The Witness: The grantee or the ——

The Court: You said he was the grantor, I thought.

The Witness: I intended to say that Isaac A. Hopper was the grantor.

The Court: I understood you to say the other way. Perhaps I was wrong.

Mr. Hunt: I think he said Mr. Hopper was party of the first part.

The Court: Perhaps he did.

Q. Then by this contract you say Mr. Hopper agreed to sell certain things to Mr. Fay?

A. That is correct.

Q. Was the agreed consideration stated in the contract?

A. The consideration of $7500 is stated in the contract.

Q. Now do the public records of Passaic County contain anything to indicate that this contract was ever carried out or performed?

A. There are certain terms of it which have by the public records been carried out.

Q. What were those terms?

A. I might state, if it is the proper reply, that there was an assignment of this contract.

Q. I see; by Mr. Fay?

A. By Mr. Fay to Modeltown, Inc.

Q. Mr. Fay assigned the contract to Modeltown, Inc?

A. That is correct.

Q. When was that?

A. I don't have the date in my typed notes, and I think I could find it in my pencil notes here. I can give you the date of record or the book and page of record as P-32 of Deeds, page 570.

Q. Yes.

A. And I thought I had noted the date. My recollection is it was 1925, but I am not certain of it. I believe it was in 1925.

Q. What month?

A. I don't have the month, Mr. Hunt.

Q. Was that assignment operative with respect to all of the rights which the contract vested in Mr. Fay?

A. Excepting those that had already been carried out.

Q. What had been carried out?

A. There had been some conveyances, I believe, to Modeltown, Inc., of certain lots which Mr. Hopper had agreed to sell under the contract to third parties.

Q. Can you tell how many lots and their approximate size?

A. I believe it is 11 or 12; that is, including those that were conveyed by Mr. Hopper before the assignment of the contract and those conveyed afterwards, I believe, aggregate 11 or 12.

Q. And those 11 or 12 lots were conveyed by Mr. Hopper to persons other than Frank P. Fay, Jr., and Modeltown, Inc?

A. Other than Frank P. Fay, Jr., but I think some of them may have been conveyed to Modeltown, Inc.

Q. Look and see about that, please.

A. Some of them were conveyed to Modeltown, Inc.

Q. How many?

A. I have note of four—I beg your pardon; there is a further—eight altogether. That is ——

Q. Lots of what size?

A. I do not want to be sure. Either 25 foot frontage or 50 foot frontage, but I didn't pay attention to that.

Q. Now with respect to the balance of the tract of 31 acres over and above these lots, where does the title vest today as indicated by the public records?

A. My investigation does not come down to today, but down to a few days ago when I examined the records, and the title to the 31 acres less the two lots, lots 22 and 23, is in—and less the lots that have been conveyed as I have indicated ——

Q. That is the eight lots?

A. Yes—is in Isaac Hopper, but two lots reserved from the original contract and not passing or not being contracted to be sold under that contract were covered by a supplemental contract later for a further consideration.

Q. I see. How large are those lots, 25 or 50 feet?

A. Either 25 or 50 feet frontage, I believe. That supplemental agreement was made direct with Modeltown, Inc., and not with Frank Fay, Jr.

Q. Now did you hear Mr. Fay testify that Pompton Borough had approved the Modeltown map and accepted a road he put there?

A. I did not hear that testimony, but I heard of it.

Q. You have seen the record, have you?

Mr. Frazer: He has answered it. What difference does it make?

Mr. Hunt: I assumed he understood, if he knows such testimony was given.

Q. Just state whether or not Modeltown and the road entering it lie in Pompton Borough?

A. There may be roads in Modeltown and entering Modeltown from the west or north, possibly south, which are in Pompton Borough and may be public streets, but so far as the road entering from Paterson-Hamburg Turnpike is concerned, that or a part of it is not in Pompton Lakes Borough.

Q. What municipality is that in?

A. Wayne Township.

Q. Yes.

A. And so far as I know, and I believe I am correct, it is not at the present time a public road and

cannot be accepted by the Borough of Pompton Lake, because it does not lie within its boundaries.

Q. You say it is not a public road. What kind of a road is it?

Mr. Frazer: I object. I don't suppose this man knows anything about that at all.

The Court: I doubt very much if he does, Mr. Hunt.

Mr. Hunt: If the Court please, if a lawyer who says he has done a good deal of work in examining titles, I think that is ——

Q. Have you made any investigation to find out what kind of a road it is?

A. I have a copy of the statement in the contract which gives that right.

Q. That is in the contract by which Hopper agreed to sell to Fay, do you mean? The contract that Fay assigned to Modeltown?

A. Yes.

Q. What does it state about its right?

A. "It is understood and agreed that the party of the first part conveys to said Isaac A. Hopper ——" this being a copy of a former description ——

Q. The description by which Hopper bought the property?

A. Yes, "the right of way of the lane now in use to the bridge and of the road leading along the west side of the river as now in use over the lot set off to Harriet M. Colfax, et als, and recorded in X-9 of Deeds for Passaic County, page 297." The description of the road as contained in the contract is

only by reference and the reference is to this statement which I read which I find in the former deed.

Q. Yes. That is, you find it in the deed by which Hopper, who was Fay's contractor, got title to the property?

A. That is correct.

Q. Where does that land mentioned there as lands set off to Harriet Colfax lie with reference to the Modeltown tract and the Hamburg Turnpike?

A. It is to the west of the river which bounds Pompton Lakes on the east. I might state further as a complete answer to my question, that there is a further statement as to road rights in that deed: "Also a right of way along the west line of said third tract, therein released to Harriet Colfax, et als, and a way to the sheep lot as therein set forth."

Q. Is there anything more said in the contract about roads or rights of way?

Mr. Frazer: I object, if we are going into details of contracts. I was permitting Mr. Houman to testify to the facts in the record, because I thought he was going to save time, but I am not willing to have contracts picked apart and certain sections taken out of them when I have no opportunity of seeing the contract.

Mr. Hunt: I would be very glad to offer the whole contract to counsel.

Mr. Frazer: If it has any materiality whatsoever. I thought it was a question of showing the record, and I did not want to be technical in my insistment, but I do not see anything about the rest of the paragraphs, and I don't know these contracts, I don't know what may be in it.

Q. Have you got a certified copy of the contract, Mr. Houman?

A. I do not, but it is recorded in 231 of Deeds, at 244, and I think the book can be brought up if Mr. Frazer wishes it.

Mr. Hunt: Well, the book would hardly be taken by the jury and it may be needed in the clerk's office while they were out. If Mr. Frazer will consent to a certified copy of that contract being put in I will obtain one. Unless he will consent I do not want to spend three or four dollars of my client's money for certification.

Mr. Frazer: I do not know the purpose and I cannot very well consent to the admission of a paper that I do not know. It may be colorful and I cannot admit anything without having seen it; but I will state if Mr. Hunt would let me know what the purpose of this examination is I might be able to save considerable time.

Mr. Hunt: I have never seen the contract myself. The purpose of my offering it, or expressing my willingness to offer it if they will admit it, is with a view to letting the jury see the whole picture of Frank P. Fay's right, title and interest in this Modeltown property which he said repeatedly on that witness stand he had bought. I do not know what is in it. I have never seen it, but I express my willingness and in fact my desire now to put in a certified copy of that contract. I now tender a certified copy of the contract and ask the Court for a ruling, if the Court permits it to be put in I will order it from the clerk's office at once. May it be understood that I tender it now?

The Court: Very well.

Mr. Frazer: We have gone over the deed, and we learned it was a deed from Colfax to Hopper, from Hopper an agreement to Fay and a subsequent series of conveyances to Modeltown, Inc., all of those things and that there is a balance, apparently, which is more or less in the air, that does not appear on the records. That seems to be the testimony, as I understand it. Now, it seems to me we have a complete history of the title, and as far as that goes it has no relevancy to this issue.

The Court: And therefore you object to it?

Mr. Frazer: I object to any unnecessary encumbering of the record. If Mr. Hunt can show this contract has any further relevancy other than the parties to it, that I have no objection to.

The Court: In view of the testimony of Mr. Fay I think it might be relevant, and if Mr. Hunt wish to produce a certified copy I will permit it.

Mr. Frazer: Very well, and I make no objection to it.

Mr. Hunt: Mr. Houman, order one from the clerk's office as soon as you leave the witness stand, please.

The Witness: I will.

Mr. Hunt: Cross-examine.

Cross-examination.

By Mr. Frazer:

Q. Mr. Houman, a conveyance from Colfax to Hopper?

A. I do not think that I so testified. I think I read from the extract here: "It is understood and agreed that the party of the first part conveys to said Isaac A. Hopper right of way of a lane now in use to the bridge, and of the road leading along the west side of the river and now in use over the lot set forth to Harriet A. Colfax, et al."

Q. Weren't you reading from the Colfax deed?

A. I am reading from the deed.

Q. A consideration of $5000?

A. No, I am reading simply the extract that I took out from E29, page 85. That is the record of documents from which I took this abstract.

Q. That is a deed from Colfax to Hopper?

A. I really don't know. I knew when I took the extract from it.

Q. But you expected to be testifying today and you anticipated some examination on the question of where you got your records?

A. I can very easily ascertain it and be glad to give you the information.

Q. You do not know whether it is the Colfax deed?

A. I do not know. I made an examination some time ago and took out the pertinent part of it.

Q. You will give me that information?

A. I will be glad to.

Q. Did you make personally this examination, or was it brought up to you from some assistant?

A. No, I made the examination myself.
Q. Now, do you know Mr. Isaac A. Hopper?
A. No.
Q. Do you know what his relations were though with Mr. Fay?
A. No, I do not.
Q. You never heard?
A. I did not even know who Mr. Fay bought his property from until I heard it in this case.
Q. You did not?
A. No, I did not.
Q. I notice you used the expression "Mr. Fay bought his property from," so to your mind there was a sale too?
A. If you want to so call it. There was a contract of sale.
Q. And did you examine this certificate of incorporation of the Modeltown, Inc.?
A. I did not.
Q. You did not?
A. No.
Q. So you do not know that Mr. Fay is the majority stockholder as shown on that certificate?
A. I do not. I assumed that he was.
Q. You assumed that he was?
A. Yes.
Q. So for the purpose of your examination you went on the assumption that Mr. Fay and the Modeltown, Inc., were essentially the same thing?
A. I thought that might be correct.
Q. Now, you said that no part of one of those roads leading from the Hamburg Pike was in Pompton Lakes?
A. No, I said a part of it was not.
Q. But a part of it?
A. I believe that. Yes, I know that would be so.

Q. What they call the Canal Bridge is the division line between the two, between Wayne Township and Pompton Lakes Borough?
A. I believe that is correct.
Q. And part of this property is on both sides?
A. Part of Mr. Fay's property do you refer to?
Q. Fay's property or what was here called Modeltown tract is all on the borough side, isn't it?
A. I believe that is correct.

Mr. Hunt: I believe they call it the Hopper property. The fact is it remains in his name.

Q. The fact is that all of that property along that road is in the Borough of Pompton Lakes?
A. I believe that is so.
Q. Now, going back to the Ramapo Park, Inc., I suppose you examined the deeds?
A. Yes.
Q. And you found that Mr. Clifford McAvoy was the president of the company?
A. I believe that is correct.
Q. Did you examine any earlier deeds?
A. I do not think—I did not go back of the Metropolitan Museum of Art to Frothingham.
Q. Was there any conveyance, that 1909 conveyance?
A. I believe that is correct.
Q. And one to Van Slyke in 1914 of 32 acres?
A. I believe that is correct.
Q. Do you remember who was the president of the company at that time?
A. I think it was Mr. McAvoy.
Q. In 1914?
A. I am not certain; I do not recall.
Q. As a matter of fact you are familiar with the

transactions around here. You know that Mr. McAvoy within recent years obtained the control of the stock of the Ramapo Park, Inc., don't you?

Mr. Hunt: I object to that as incompetent and immaterial. What if he did? My point in putting on the witness and bringing out these facts was to show it was not true as testified by Hershfield that the property had been sold. I have never heard in a condemnation case where inquiry was into the value of land a witness might predicate the value of the land being taken upon the sum which somebody has paid for a block of stock less than the whole, and considerably less than the whole in the stock of a corporation which owns some lands elsewhere in the county but whose debts, whose other property ownerships, whose difficulties or advantages of one kind or another are not before the Court at all.

The Court: That is not the purpose of the question as I conceive it. There has been testimony in here with respect to who owned the property, and the purpose of the question is to show what was meant by the witnesses when they said so and so owned the property. I think it is competent to show by this testimony if it tends to show that what the witness had in mind, perhaps, when he made that statement was with respect to the ownership of the corporation, and in that sense, and if that be the situation, I think it is a competent question.

Mr. Hunt: But if the Court please ——

The Court: It does not go, as I understand it, Mr. Hunt, to the question of value at all at this stage.

Mr. Frazer: Simply for the purpose of showing there had been a transfer in interest of this company, that a real estate agent may talk about the sale of property instead of an actual deed which carries the transfer.

The Court: I do not think it has anything to do with the value.

Mr. Hunt: No, but it goes strongly to the credibility of the witness Hershfield, and will your Honor permit me to refer back to his testimony, to his examination by Mr. Matthews at page 205, he says:

"Q. Do you know of it in the practice of the real estate man?"

Answer by Mr. Hershfield:

"Yes, sir. I know of a sale of approximately 2000 acres in the same territory.

"What is the name of this property?

"A. We used to call it Rotten Pond. It is now know as Lake LeGrande, and I think it has another name since.

"Q. 3000 acres?

"A. 1960 acres, with a 100-acre lake on it, four or five miles of road and three buildings, a lodge house, a caretaker's house, and a club house on the island in the lake.

"Q. What was it sold—was it sold in its native wildness or rottenness, whichever the case may be?

"A. Only the pond was rotten, and when the dam was raised it ceased to purge, and it lost its name, and the stuff is not wild. I suppose on that property there has been spent $350,000 in improvements.

"Q. Now, give me the answer to my question. My question was, was it sold as virgin country?

"A. It was sold as it was. The nucleus of the development, the lake and the roads.

"Q. Does the territory compare in terrain and other features?

"A. It is almost contiguous to the Ringwood buildings.

"Mr. Hunt: When was the date?

"The Court: When was the date?

"The Witness: Within three years."

And then a question by Mr. Matthews:

"Q. What was the price?

"A. The property, consisting of 1960 acres."

Then there was an interruption and colloquy, and then:

"Q. The acreage was 1960?

"A. Yes.

"Q. What was the price?

"A. $260,000."

Now, that is the witness swearing 1960 acres sold for $260,000, and I say he cannot get out of it by attempting to show now that somebody bought a block of stock in a corporation that own the 1960 acres, and paid something for the block of stock. When you buy stock in a corporation that is not buying land. If the corporation owned a piece of land and nothing more, and it was free of debts, except as they were mortgage debts as attached to the land, and you bought every share of the stock of the corporation, then, I suppose, you might say that the transaction was a purchase of the land; but in the absence of proof of that kind, this examination is utterly incompetent. I may say that from what I understand of the transaction it will be impossible for Mr. Frazer to prove—I am perfectly willing to have Mr. McAvoy brought here. He is one of the Water Supply Commission contractors,

or I would bring him myself. I do not want to bring any more of these people than I have to. I am perfectly willing to have him brought here to inquire what percentage of that stock he bought and whether $260,000 was all that he paid for it, and how much burdened that stock was for which he paid the sum that he did pay, but until that be done it is impossible to attempt to save Mr. Hershfield's credibility by trying to assimilate this purchase of a part interest in a corporation to what he described, under oath, in plain language two or three times as a sale of 1960 acres for $260,000.

The Court: As I understand Mr. Frazer that is not the purpose of this question.

Mr. Hunt: Except for such a purpose, your Honor, the question could not have any materiality or competency at all, it seems to me.

The Court: It may have competency as far as it goes. It may not go as far as it might, but I will allow it for such materiality as it may have.

Mr. Frazer: Will the stenographer read the question? I have forgotten it.

The Witness: I have forgotten it too.

(Question read.)

A. I am familiar with some transactions that took place around here, but I was not familiar with that one.

Q. You never heard of it at all?

A. I heard that Mr. McAvoy had bought some-

thing up there, and I thought he had bought just the lodge house that I believe is up there.

Q. But when you came to examine the records you discovered that Mr. McAvoy was selling other tracts of land out of that tract as president of the company?

A. That is true. He was not selling them. He was signing the deeds as a president.

Q. And when you did find that it led you rather to revise your ideas of what Mr. McAvoy had purchased, and you after that believed that he had a real interest in the whole business, didn't you?

A. I believe now that he has.

Q. In fact, he is a very substantial owner of it today?

A. I have no knowledge of how much stock he owns in the organization.

Q. What other lands did this company own?

A. What company are you referring to?

Q. The Ramapo Park, Inc.

A. So far as my examination led me there was a substatial part of what has been known as Ramapo or Rotten Pond tract, and with the exceptions of the sales out of them I did not examine the records to find whether they had acquired anything else or not. I cannot say a word about it.

Q. Now, you, however, found no mortgages against that property?

A. I did not search thoroughly, but so far as my examination led me I did not find any made by Ramapo Park. There may have been some on the property which they took subject to.

Q. And you found no judgments against the company?

A. I did not search for any judgments.

Q. You did not search for judgments?

A. No, sir.

Q. And you did not make a complete search of it?

A. No, I only examined the chain of title.

CORNELIUS C. VERMEULE, sworn

Direct examination.

By Mr. Hunt:

Q. Where do you live, please, Mr. Vermeule?

A. In East Orange, New Jersey.

Q. How long have you lived in the State of New Jersey?

A. Well, I was born there, but I have not lived there continuously. I lived in the City of New York for ten years.

Q. Aside from that, you have spent your life in the State of New Jersey?

A. I have.

Q. Where were you educated?

A. At Rutgers College.

Q. With what degree?

A. On graduation, with the degree of M.S.

Q. That is Master of Science?

A. B.S., rather, and three years later M.S., and two years after graduation Civil Engineer.

Q. What has been your life work, Mr. Vermeule?

A. I have been in engineering practice since 1878. The first ten years I was in the employ of the State in charge of the topographic survey of the State with some incidental work.

Q. Well, now, I point to Exhibit C4 which is the

geological survey map of the State of New Jersey and ask you whether you had anything to do with the work that went into the production of that map?

A. I had entire charge of everything, surveys plotting and the engraving.

Q. What have you to say as to whether the map is or is not substantially accurate?

A. I will say, with due modesty, that I have the testimony of many very prominent engineers that it is far and away the best map of any State in the Union. Those include engineers such as those of the Boston and Maine Railroad in New England, the Lackawanna Railroad in this State, several other railroads and Clement Herschell, who laid out the East Jersey work on the Peconic told me that he had laid out the work on this map.

Mr. Frazer: I object to any further statements.

Q. In what connection did these railroad engineers happen to refer to this map?

Mr. Frazer: I object. It is not qualifications.

The Court: I think it is proper with respect to the accuracy of the map.

Mr. Frazer: Well, I know that is not in the question. I understand that Mr. Hunt is qualifying Mr. Vermeule.

The Court: Yes, if it has to do with his qualifications, it is all right.

Mr. Hunt: I think I have qualified him far enough already as a man who did the work to speak

to the accuracy of this map. Then, I will go on and qualify him as to anything else.

The Court: You may cross-examine him as to that.

Mr. Frazer: I offered the map, and I think it is fair to assume that I did not consider it an inaccurate map if I offered it.

Mr. Hunt: Then why was it objected to when I spoke of the contours?

Mr. Frazer: Contours, yes. I offered it as a topographic map, but the Ringwood Company's witnesses have testified as to the contours being inaccurate, and in that they agree with me.

Mr. Hunt: The question to which objection has been put goes directly to the question of the substantial accuracy of the contours on this map.

The Court: Very well, I will allow it.

Mr. Hunt: Read the question to him, please, Mr. Kestenbaum.

(Question read.)

A. They said they had made paper locations of railway lines on this map, and had been able to run those out and build them without substantial change. That is a severe test for any map.

Q. In what respect is that a test of the map?

A. Because elevations must be accurate, and the locations must be accurate.

Q. What bearing have the elevations on the contour lines, or what bearing have the contour lines to the elevations?

A. Contours are one method of showing elevations. Elevations are shown at certain points by figures, but mainly by contour lines.

Q. Well, now, have you specialized in any particular branch of engineering, Mr. Vermeule?

A. I have a rather wide range of practice, but have specialized to a very considerable extent in water supply and water power.

Q. For how many years have you been specializing in water supply?

A. Practically since 1888.

Q. What experience have you had in the purchase or sale of lands for water supply purposes, and in the development of water supplies, and in advising clients concerning purchase and sale and developments for water supply purposes in that period?

A. I have advised in all about sixty cities and water companies, approximately about half of them in the State of New Jersey, half in some other states, some in the West Indies. On the question of values of land for reservoir generally I inventoried a number of sites, appraised a number of sites for the State in various parts of the State, including four rather important factors on the Ramapo and Wanaque River.

Q. When was that?

A. 1909. At the present time I am consulting and directing engineer in charge of the dismantling and disposal of the property of the Morris Canal and Banking Company for the State of New Jersey.

Q. Who does that property belong to now?

A. It belongs to the State. It is held by a company continued by a corporation in trust for the

State. It is owned by the State of New Jersey and being sold by the State of New Jersey. It is a part of my duty to make appraisals of that property and to report concerning sales of the property and the price.

Q. Has the State been selling some of the property?

A. The State has sold a great many parcels of the property.

Q. Upon whose part has it acted in fixing the price exacted in those sales?

A. Always on my advice. I was detained for that purpose.

Q. In what counties did the lands that have been thus sold under your advice lie?

A. In Hudson County, Essex, Passaic, Morris County, Sussex and Warren.

Q. Have you bought any lands for any New Jersey municipalities for water supply purposes?

A. I bought ten parcels of land aggregating about 900 acres for the City of East Orange.

Q. Have you appraised any large country tracts in or near Passaic County for other parties than the owner in the present condemnation proceeding?

A. I have appraised property for the late Joseph Wharton in Morris County near the Passaic line.

Q. How did that property compare in general physical characteristics and topography with the property under condemnation?

A. That particular property is mountain property largely with some level land. The larger tract, of course—there were other tracts. I acted in that general capacity with Joseph Wharton for fifteen or sixteen years or more.

Q. And did the Wharton property compare with the property under condemnation as regards the volume of water flowing in the streams?

A. That property included Lake Denmark and the head waters of Lake Denmark.

Mr. Frazer: I cannot hear the witness.

Mr. Hunt: Keep your voice up so that we can all hear you.

A. (Continued) With some of the fact reaching over on the head waters of the branches of the Pequanock River.

Q. I call your attention to Sussex Borough and ask you if you had anything to do there with regard to the acquisition of property for water supply purposes?

A. I located lands and advised them concerning the purchase and also concerning the purchase of Lake Rutherford which is a storage reservoir for their supply.

Q. Have you done anything in the same connection for the Edison Portland Cement Company?

A. I have advised the Edison Company for many years as to purchases of land, and they have made purchases of land at my instance, and they have requested me to make negotiations with the owners for them.

Q. Now, name any municipalities in New Jersey for which you have acted as adviser in regard to the acquisition of lands for water supplies?

A. Jersey City. I was for some years consulting engineer for the Board of Finance, and a little later for the Board of Works, and that is concerning water supply. I built the works in East Orange. I appraised the Orange Water Company which was bought out at that time.

Q. In whose behalf did you make that appraisal?

A. The City of East Orange. I appraised the works of the Morris Aqueduct at Morristown, owned by the late Vice-Chancellor Pitney and his associates. I have acted in a similar capacity for the Hudson County Water Company. To a limited extent for the East Jersey Water Company; for the Hackensack Water Company, the Middlesex, Plainfield, Union, Somerville, the City of New Brunswick, the City of Perth Amboy, for South Jersey Water Company, Asbury Park, Cape May. I built the works at Bordentown. Designed works for Burlington, Tinturn Monmouth Water Company.

Q. Have you done any work of that kind for cities outside of New Jersey?

A. Yes, New England, a very considerable amount. In the State of New York for various cities, and am at present advising the Mayor of the City of New York in connection with the water supply, also the Merchants Association of New York. I did some of my earlier work immediately after 1888, I was retained for the Old Aquaduct Board, the Croton Supply of New York. It included Yonkers, the Pontico Water Company, some other towns in Westchester County. I built the works at Hudson, New York, and did considerable appraisal work at Troy, also at Hudson Falls, New York.

Q. Any other cities in that section of the State?

A. I suppose so. I can't think of them all now, but Ithaca, during the typhoid epidemic I had charge of relieving Ithaca and put in a temporary supply and appraised the water works which at that time were condemned and taken over.

Q. Where was that?

A. Ithaca, New York. The trouble had originated under the management of the Water Company at that time. The City bought the Water Company out.

Q. Have you done a similar service for any other New York cities?

A. Elmira, New York, Elmira Water and Light Company, made complete appraisals. The last few years several towns in the immediate vicinity of Buffalo.

Q. Now name some of the New England cities in which you have done similar work?

A. York, Maine. I did appraisal work at Providence, Rhode Island. I also designed works for four cities in Cuba.

Q. Including what one?

A. Cienfugos, Santiago and Caibarien, and the other name escapes me—it is a peculiar name, but just for the moment I do not think of it.

Q. I call your attention to Brooklyn. Have you done anything for Brooklyn?

A. I did a good deal for Brooklyn at various times, and I did a good deal for Brooklyn on the Ramapo watershed. In the old days when the Ramapo Water Company had made an offer to the City of New York, immediately following that City of Brooklyn investigated the offer and investigated the possibility of building works then at that point. I have also done appraisal work for the Citizen's Water Supply Company in Queensboro, New York, and for the Queens County Water Company on Long Island.

Q. The Ramapo River rises in New York State and flows into New Jersey, doesn't it?

A. Yes, sir.

Mr. Hunt: I offer the witness for cross-examination as to his qualifications.

Mr. Frazer: I would like to know for what line Mr. Vermeule is offered.

Mr. Hunt: Valuing this property for water supply purposes.

Mr. Frazer: On valuation?

Mr. Hunt: Yes, for water supply purposes, possibly for other purposes; if so, I will have to qualify him later on, on the other purposes.

Cross-examination.

By Mr. Frazer:

Q. You worked for the Orange Water Company, Morris Aqueduct, the Hudson County Water Company, the Hackensack Water Company, the East Jersey Company; all of those were in relation to existing companies, were they not?

A. No. I did considerable construction work for some of those companies.

Q. In what instances, Mr. Vermeule?

A. The Hudson County Water Company particularly. The Morris Aqueduct I advised for years, making my appraisal of that property at the end of—practically at the time the company sold its property.

Q. The appraisal for what purpose, rate making purposes?

A. Also for purpose of sale.

Q. Purpose of sale for selling waters?

A. Yes, sir.

Q. Your work for the Hudson County Water Company was for what purposes?

A. I built a pumping station for them and developed a well supply.

Q. On property belonging to them?

A. Property which they purchased at my recommendation.

Q. Which they had purchased some time before?

A. No; they purchased it when I was connected with them.

Q. How many years ago was that?

A. Nineteen—somewhere in the neighborhood of 1907 to 1912, I don't know exactly.

Q. Your East Orange Water Supply was way back there, too, wasn't it?

A. 1903 and 1904.

Q. That was the purchase of certain lands in which driven wells were put?

A. Lands purchased for the purpose of developing well supply.

Q. You put a well supply in?

A. Yes.

Q. You were engaged by East Orange from the engineering standpoint as to whether there was an available supply of water in the section up back of Milburn, wasn't it somewheres in there?

A. My engagement was by no means as limited as that. I did not want to undertake as much work as I was requested to do by the Council, but I could not see my way clear to refuse to do it. I actually purchased their land at their request, at their insistence.

Q. 1903?

A. 1903 and 1904.

Q. 900 acres?

The Court: That is when you met Mr. Meeker, I suppose?

The Witness: No; Mr. Meeker was not on the carpet until after that. If I had been there when

Mr. Meeker started, something different would have happened.

The Court: Very well.

Q. East Jersey Water Company was an appraisal matter of a going water concern, wasn't it?

A. No; the East Jersey Water Company was a question of the sufficiency of their reservoirs on the Pequanock; it also involved some sanitary questions —rather broad.

Q. Nothing to do with the acquisition of lands?

A. No. Appraisal of lands—property.

Q. And the Middlesex Water Company was a matter of a rate proceeding brought against a going water concern, wasn't it?

A. Well, not all of it. I advised the Middlesex Company for some time. I have been in a rate case or two for them.

Q. Never bought any land for the Middlesex Company?

A. No; I have appraised land for them, a great deal of it.

Q. After it had been acquired by the Water Company?

A. Yes.

Q. The Somerville Water Company, the same thing is true, isn't it?

A. No; the Somerville Water Company was a case where they got in a good deal of—they got up against an impossible situation and wanted advice.

The Court: I thought you were going to say they got into hot water.

The Witness: Well, it was pretty nearly that, your Honor.

Q. Ever buy any lands for New Brunswick?

A. No; I don't think I bought any lands for New Brunswick. I located the reservoir which is now being built there for New Brunswick.

Q. You located that as a matter of engineering technique, didn't you; you determined you could get a reservoir at that point?

A. Included that, and the appraisal of the property and my estimate of the cost.

Q. Yes; and they afterwards acquired the lands independent of you?

A. Yes.

Q. You had nothing to do with the negotiations?

A. No; I did not negotiate for it.

Q. The same is true of Perth Amboy?

A. Perth Amboy ——

Q. Or was that a rate case?

A. It was after their works were built that I was retained there. It takes a pretty good memory to remember all these things back as far as that.

Q. The Tinton Manor Works were built long before you were associated with it?

A. No; I was associated with them longer ago than you think. That is the difficulty.

Q. Well, you look so young it is hard for me to realize how long you have been doing this.

A. Well, I appreciate your difficulty, but that is the situation.

The Court: I think he said he started about in 1888.

Mr. Frazer: Which makes 39 years?

Mr. Hunt: 39 years, yes.

Q. Now in the case of the Middlesex Water Company, your most recent relations with them were in a rate case, weren't they?

A. No. In a quo warranto—yes, it was a rate case.

Q. Where the company was seeking to get an increase in its water rates before the Board of Public Utility Commissioners?

A. There were two matters which came fairly close together; one was a difficulty with Rahway and the other was a rate case, but I think the rate case was last.

Q. It was a rate case in which you had anything to do with values?

A. Yes; that is when I made the valuations.

Q. And you were an expert witness for the Middlesex Water Company in that rate case?

A. Yes.

Q. And they were seeking to show an increased valuation which would justify an increase in their rates; is that it?

A. Either that or to sustain the rates, I have forgotten which.

Q. Well, if you just think a minute, you will remember the application was for increased water rate?

A. Wasn't it an appeal?

Q. I said the application. I did not say an appeal.

A. I don't recollect now exactly the circumstances but I am not sure that that was not on an appeal that I appeared.

Q. Oh ——

A. From the Public Utilities Commission.

Q. From their ruling?

A. Yes.

Q. That was only a few years ago, wasn't it?

A. Not very long; three or four years, I should say.

Q. Is it still pending in the courts?

A. Well, it is pretty hard to tell. There is so many of those things. Whether it is a new one or an old one I don't know.

Q. It was actually a matter before the United States District Court for the District of New Jersey, on an appeal or on an attempt of the Middlesex Water Company to have rates fixed by the Board of Public Utilities.

A. Yes; I recall now that it was.

Q. That refreshes your memory?

A. Yes.

Q. And the District Court rendered its opinion of a report of the Special Master which was filed May 5th, 1925, wasn't it?

A. Well, I don't follow those.

Q. A little over a year?

A. That is dull reading. Legal reports are not interesting to me and I do not follow it.

Q. Did you appear as a witness in that matter?

A. In the Middlesex case? Yes.

Q. Did you give any testimony as to the value of lands in that?

A. Yes. Value of three parcels. Let me see—yes, three parcels of land, as I recollect it.

Q. You tried to show special value of those lands for water supply purposes, did you not, Mr. Vermeule?

A. Well, I think I showed it. The question was the value of that property as it was, as a source of water supply.

Q. Yes; and you tried to show it had certain special values for water supply purposes, and the Court did not permit you to do that; is that correct?

A. I never heard that.

Q. You did not?

A. I never heard that, because I was permitted to do it and I testified at great length.

Q. As to its special value?

A. Yes, sir.

Q. You are quite sure of that?

A. Why, I certainly did—before Mr. Dawes, Aaron Dawes.

Q. That was before Mr. Dawes, a Special Master?

A. Yes.

Q. Now, did you testify in that case below before the Public Utilities Commission?

A. I don't think so. I don't recall it.

Mr. Hunt: I submit we are losing time in asking him whether he testified before the Utilities Commission. The question is whether he is an expert.

The Court: Yes, I understand it.

Mr. Hunt: If he will rush along and get to it, I can get through with him today.

Mr. Frazer: I just want to know what his expertness is and what he is trying to do.

Q. What was this Joseph Wharton property?

A. That was a property at the head of Lake Denmark which he thought was valuable for water supply purposes and which had been offered him by certain parties in New York, and he asked me to make an appraisal of that.

Q. You found it was not valuable for water supply purposes?

A. Well, I did not recommend its purchase, but I gave him the value of it.

Q. That is the property which subsequently has been taken over for arsenal purposes by the United States?

A. No; it is just north of that.

Q. Just north?

A. Yes, sir. I do not think that has been taken over—not to my knowledge.

Q. You were a witness in the Sage case, weren't you, before the Commission, in New York?

A. Yes.

Q. For the land owner?

A. Yes.

Q. And attempted there to prove the special value of lands for water supply purposes?

A. I testified to the value of reservoir lands in that case.

Q. And the theory upon which you testified was overruled by the Commissioners, wasn't it?

A. Well, the Commissioners had—it depends—well, you don't mean the final court?

Mr. Hunt: I object to this as immaterial. It might have been, but I will admit for the witness it was, so we can pass on.

Mr. Frazer: I would like to know what Mr. Vermeule's ——

Mr. Hunt: The case went to the Supreme Court of the United States by several steps—Commission, Supreme Court, Appellate Division, Court of Appeals, Supreme Court at Washington. Are we going to go through it all?

Mr. Hunt: No. The courts refuse to accept the

The Court: I do not think so.
theory of valuation which Mr. Vermeule applied to the Sage property in the Sage case, because of the fact that the Sage property was only a fraction of one per cent of all the lands embraced in the taking.

Mr. Frazer: No, no.

Mr. Hunt: I will clearly admit it.

Mr. Frazer: That was not the reason at all.

The Court: I think that was the McGovern case, wasn't it, Mr. Hunt?

Mr. Hunt: Oh, excuse me, that was McGovern. Sage followed McGovern and laid down the same principle evolved in the McGovern case.

The Court: Very well.

Mr. Hunt: With some adaptation to it.

A. If I may, I would like to explain why I cannot testify as to what happened in those cases. I do not want to appear to be reluctant to testify, but at that time I was being called out of the country four times a year, spending at least four months each and every year out of the country, and when I was in the country I was extremely busy, I had no time to stop to read those cases or find out what happened to them.

By Mr. Hunt:

Q. Where were you being called to, Mr. Vermeule?

A. Cuba.

Q. In connection with your professional work there?

A. Yes; I maintained an organization in Cuba for 20 years.

Mr. Hunt: May I put a question to Mr. Vermeule?

Mr. Frazer: Surely.

Q. Have you been quite a frequent witness in the courts of the State of New Jersey upon value of lands for water supply purposes?

A. Fairly frequent. Of course, I don't know how many times, but I have appeared a number of times in the courts of New Jersey and in the courts of New York.

Q. Do you recall any trial court ever having held you disqualified to testify to the value of lands for water supply purposes?

Mr. Frazer: I object to that.

The Court: Objection sustained.

Mr. Hunt: All right. I thought we might establish a 39-year precedent, your Honor, and save time by proceeding on that basis.

By Mr. Frazer:

Q. Mr. Vermeule, in making your appraisals of water companies, what is your theory of valuation?

Mr. Hunt: I object to that as irrelevant to the present inquiry.

The Court: Objection sustained. The point now is whether his qualifications entitle him to be an expert witness on values.

Mr. Frazer: Yes. I think it is very relevant for the Court to know upon what theory this gentleman has valued lands for these purposes. We have certain court decisions which show that the method which has been employed by Mr. Vermeule was an improper method. If that be the case, then he is not an expert, no matter what his experience in dealing with water companies is, if he shows a theory of valuation which is contrary to legal principles.

The Court: I think that is a matter which ought to come up after the Court has ruled upon his qualifications. He may not be asked about that.

Mr. Frazer: All right, sir. I will ask an exception to the Court's ruling.

The Court: You may have it.

Mr. Frazer: I have no further questions.

Re-direct examination.

By Mr. Hunt:

Q. Mr. Vermeule, how long have you been familiar with the lands of the Ringwood Company being taken in this proceeding and with its adjoining and surrounding lands?

A. I knew that land first in 1881, but I went there especially with Mr. Abram S. Hewitt at times between 1890 and 1895, and I became very familiar with the property about that period.

Q. Between 1890 and 1895, in what connection were you investigating this property?

A. Mr. Hewitt asked me to go up there at times and look matters over with him at Hewitt Furnace, at Greenwood Lake and other points, and the mines at Ringwood.

Q. What have you to say as to the adaptability of the property being taken in the condition in which it was on March 19th, 1925, which was the date of the commencement of this proceeding?

The Court: Just a moment, Mr. Hunt. Are you assuming that he is admitted as an expert?

Mr. Hunt: Yes. I thought Mr. Frazer had admitted him.

The Court: No; he only said he had no further questions to ask.

Mr. Hunt: Excuse me. I must ask your Honor for a ruling.

The Court: My ruling is he is competent.

Mr. Hunt: Thank you. I did not mean to be presuming.

The Court: I was not sure whether you were proceeding to further examine him as to qualifications.

Mr. Hunt: No; I think I must have read the judicial facial expression for the judicial verbal expression.

The Court: Very well. He is qualified. I was not seeking to escape responsibility, however.

(Question repeated by stenographer.)

Q. —— for use for water supply purposes?

A. It was peculiarly adapted for that purpose.

Q. Why? What natural characteristics does it possess that tend to make it adapted?

A. It was a catchment area which was remarkably free from population; was composed of gneissic rocks underlying the watershed, which always yield a soft water—favorable to the softness of the water.

Q. A little bit louder, please.

A. There were gravels in the valleys at a number of points, which tend to increase the purity of the water.

Q. Why do they tend to increase the purity of the water?

A. Through natural filtration. It is very difficult for impurities to pass through gravel or sand.

Q. Why does gneiss rock tend to soft quality of water?

A. Because it has no lime in it or magnesia; it has none of the hardening elements which occur in limestone and some other things.

Q. That gneiss that you refer to is g-n-e-i-s-s, isn't it, not n-i-c-e?

A. Yes, that is right.

Q. Name any other natural characteristics that you say make this land peculiarly adaptable to water supply purposes?

A. It is largely covered with forest, which is also favorable both to quality and quantity in dry weather. The valleys are of such shape as to lend themselves very readily to the storage of water; and the fact that so large a part of the catchment area has been in a single owner has made it desirable from the standpoint of easy control.

Q. When you say "catchment area" what do you mean?

A. I mean the area of lands which drains into the Wanaque River.

Q. Yes.

A. And its branches.

Q. All of the land from which the water comes into the reservoir will drain ——

A. Yes.

Q. All right, proceed.

The Court: That is another term for watershed, isn't it, Mr. Vermeule?

The Witness: It is. It is more strictly accurate, because watershed is confusing. Watershed is often used as the watershed line where the water divides, part going one way and part the other. For that reason engineers use catchment area as more specific and accurate.

A. Another advantage that the catchment area has—the Wanaque has, is its accessibility to points

of demand. In the northeastern part of the State there is a large population, a growing population, which is continually requiring more water to supply it; and this watershed lies peculiarly accessible. It is somewhat superior to the Ramapo, which is near it, for the reason that a portion of it in the State of New York is not populated to any considerable extent, and is not adapted to large population; it is very rough land. The Ramapo is quite populous in the New York State portion, and for that reason New Jersey towns and cities and Commissions are not in the same position to control the purity of that stream—the pollution of that stream—prevent it. This makes the Wanaque, taken all in all, the very best of the remaining water supplies of the State of New Jersey ——

Mr. Frazer: I object to the characterization. I think he may show what the facilities are, and I have not objected to that, he has pointed them out, but I think he has no right to come into a comparison with other watersheds.

The Court: Isn't that correct, Mr. Hunt? I do not think we are concerned with the other, except as he points out the natural advantages of this, as he has already done.

Mr. Hunt: Yes. Isn't the value of this property, like that of so many properties, of various kinds, to be determined from the standpoint of quantity, area and quality?

The Court: More than that ——

Mr. Hunt: Like the diamond; a diamond of two

carats of the same degree of fineness is worth more than the diamond of one carat.

The Court: He has already done that, and there is no objection to that, but when he begins to bring in all of the other possibilities and compare with those, I think it is immaterial.

Mr. Hunt: All right. I will pass it by. Read the last part of the answer, Mr. Kelley.

(Latter part of the answer repeated as follows: "The Ramapo is quite populous in the New York State portion, and for that reason New Jersey towns and cities and Commissioners are not in the same position to control the purity of that stream —the pollution of that stream—prevent it. This makes the Wanaque, taken all in all, the very best of the remaining water supplies of the State of New Jersey.")

Mr. Frazer: I understood that to be stricken out.

The Court: That is objected to and that will be stricken out.

Mr. Hunt: Your Honor bear with me just a moment; I am looking for something.

Q. Do you know of any pronouncement made by the North Jersey District Water Supply Commission in the year 1925, concerning the relative purity of waters of the Wanaque catchment area as compared with those of other areas?

Mr. Frazer: I object. Another effort to get in the report.

The Court: I think that is the same question we just passed upon, Mr. Hunt. This witness has said that it is because of the nature of the soil and the gravel and nice gneiss and other things that it is very desirable, and I think that is all we want on that line, and I think we can all assume that the North Jersey District Water Supply Commission agreed with that or they would not have gone there.

Mr. Hunt: I thought I might be able to get in a certain statement of theirs as an admission against interest on their part, that is all, your Honor.

Q. Now has the North Jersey District Water Supply Commission in the year 1925 put out any publication which shows where it will be necessary for the district that it serves to go for water after this Wanaque supply is developed and a further new supply is needed?

Mr. Frazer: I object.

The Court: Objection sustained.

Q. What relation does the nearness to market or remoteness from market of a water supply have to the value of the lands within which the supply may be developed?

A. The lands are more valuable as the distance is less, due to the cost.

Mr. Frazer: I object to all questions of cost, being intended ——

Q. Do not mention any figures, Mr. Vermeule, but just describe, due to what cost?

Mr. Frazer: They are closer to the sections where waters would be used—there is the answer—and the question of cost and other things should not be presented, because we are beginning to come to the matter of putting something on the land which does not exist there now.

The Court: I anticipate the answer is just that, that because of the fact that it is more economical to transport it a shorter distance than that.

Q. The aqueduct is shorter?

The Court: That is the answer.

A. That is the answer.

Q. At what time did this Ringwood property first come under consideration, if you know, by any of the New Jersey municipalities for a water supply?

Mr. Frazer: I object to that as immaterial.

The Court: What is the materiality of that, Mr. Hunt?

Mr. Hunt: Well, simply to show your Honor how long it has been known that eventually a water development was going to come there. You see, that had its effect, we claim, on the retarding of developments that otherwise would have had occurred in that valley. Nobody wants to go into a place and build a house where five or ten years later or even where 15 or 20 years later it is going to be condemned and taken away.

Mr. Frazer: That is perfectly good matter on the argument before the jury.

Mr. Hunt: I must have a basis for the argument.

The Court: I think it is proper and I will allow it.

Mr. Frazer: Exception.

The Court: You may have it.

A. In 1909 I recall that there were several applicants, at least Newark and Paterson were both applicants for that source of supply. I think the East Jersey Water Company had purchased land there in the basin.

Q. Now, Mr. Vermeule, if you know, at what price per million gallons is the City of Newark selling water to other municipalities of this State?

Mr. Frazer: I object.

The Court: Just a moment.

(Question repeated by the stenographer.)

Mr. Hunt: I will withdraw the question.

Q. Mr. Vermeule, do you know for how much of the daily supply to be produced at the Wanaque Reservoir the City of Newark has contracted?

Mr. Frazer: I object to that as being immaterial to this issue. What our plans are are wholly immaterial.

The Court: What is the materiality?

Mr. Hunt: The materiality is this, your Honor. By this question and the question which I withdrew and would put again after this one, if allowed, I offer to prove by this witness that Newark has contracted to take a certain very large portion of the whole daily flow of the Wanaque Reservoir that is being built throughout the whole time that that reservoir remains in existence and in operation. I offer further to prove that Newark is now selling water at the rate of ——

Mr. Frazer: I object.

Mr. Hunt: —— many millions of gallons to other municipalities in this State. I offer to show that the difference between the prices at which Newark will get water from the Wanaque and the price at which it sells it to these other municipalities, is a sum sufficient to yield a very high return on Newark's investment in Wanaque water, to give Newark a profit which it is wholly unjust to allow anybody to have at the expense of this owner through taking his land at the low price which has been offered here. I think that when ——

Mr. Frazer: If we are going along this line, if I may interrupt, I think that we should argue this matter again in the absence of the jury.

The Court: I think Mr. Hunt is about finished.

Mr. Hunt: I am finished, all but one sentence, and that is perhaps repetition. I think that when the Wanaque Reservoir water is being sold to its chief customer, the City of Newark, and that that chief customer is already reselling a lot of it at a great

advance over the cost of the water to it, making a big profit, we are entitled to show that fact for the bearing it has on the value of these lands, because the value of these lands for water supply purposes, just like the value of any lands for any purpose, is more or less affected by the revenue that can be produced from the use of the lands for such a purpose.

Mr. Frazer: I should like to answer that. In the first place, the question is purely hypothetical. No one knows what the City of Newark is going to do with any supplies which it may obtain.

Mr. Hunt: What the City of Newark is doing now from what it now has.

Mr. Frazer: It may very well be that at the time of the completion of these works the City of Newark will need all of the water it now has and all of the water which it may obtain from these works. The mere fact these works are being constructed indicates there is some necessity for more water. The point and the object of this question is again the object which has time and time been asserted by the courts of highest resort in this country, including the United States Supreme Court, that the public necessity may not be capitalized by the private owner. That is all this line of examination tends to do, to capitalize as against the public and the necessities of the public the value of these lands. Now all we are required to do is to pay the reasonable market value of the lands, not some fictitious value which is placed upon them by considering them in conjunction with other lands that may be devoted for a certain public use.

The Court: That may be so. That may be one of the reasons that the question is asked, but there is another reason that I can conceive. But aside from that, I shall sustain your objection on the ground that it is highly speculative and is therefore improper and immaterial, and will grant you an exception.

Mr. Hunt: May we have an exception?

The Court: Exception allowed.

Mr. Hunt: Now, your Honor, I am going to put another question that goes somewhat to the same matter, although I submit that it is new.

Q. Mr. Vermeule, have you any knowledge concerning any contracts already entered into by the City of Newark to sell and deliver to any other municipality water which Newark is to get from this Wanaque Reservoir beginning with the time of the delivery of the water from the Wanaque Reservoir?

Mr. Frazer: I object.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may have an exception. If we have come to a good stopping place, I mean that you are now about to open another package, inasmuch as Mr. Vermeule cannot be finished with today, I have no objection to taking an adjournment at this time.

Mr. Hunt: Your Honor, I will be at a perfect stopping place if I am permitted to put one more question.

The Court: All right, you may.

Q. Please state your opinion of the value of the 2350 acres under condemnation in the State and condition in which they were on March 19th, 1925, for the uses of a water supply?

Mr. Frazer: I object, and I would suggest, if the Court please, that on my objection we adjourn, and that we excuse the jury for a few minutes on Monday morning, as I think that is the problem which is going to take quite a little discussion.

The Court: That is the question I have been waiting for.

Mr. Hunt: Well, your Honor ——

The Court: If you think it might be possible to obviate Mr. Vermeule coming back on Monday ——

Mr. Hunt: I thought possibly it might be, but then furthermore I know Judge Lewis had promised his two remaining gravel witnesses, who are very busy men, to put them on the stand the first thing Monday morning, and I had taken advantage of that to give myself a half hour's leaway and drive up again Monday morning instead of coming up Sunday night. So if Judge Lewis could go on with his gravel witnesses on Monday morning ——

The Court: Well, Mr. Frazer would wish to cross-examine Mr. Vermeule in any event.

Mr. Frazer: I should like to. If this question were sustained, and I have every reason to believe it will not be, because Mr. Hunt seems to feel it will not be, as he thought I was going to be through with him on my objection—if that is the feeling I am perfectly willing the Court should rule at once in my favor, but if it is going to be a matter to be discussed I think we ought to have some time to do it.

Mr. Hunt: I took the pains—I thought the Court had anticipated this trouble—I want his book here on which I wrote something on a page. I thought your Honor had already announced a ruling on this question, and I wrote it down on the cover page of one of these volumes last night. Now I do not see the volume.

The Court: The only difficulty with that, Mr. Hunt, is that the—I think I have in mind what you have reference to. You are quite correct in asking what you are asking, but on the other hand, Mr. Frazer has made some objections to this, inferentially at any rate, by his cross-examination of this witness as to his qualifications, with reference to special value. Now, I understand the law to be that the highest use to which lands may be put may be testified to. Now you have some experts, some witnesses who have said that the highest use to which this land can be put is for residential purposes; you have other witnesses who indicate that the highest use to which some of it at any rate could be put is gravel deposits ——

Mr. Lewis: Might I interrupt, your Honor, just a moment?

The Court: Just a second. And then you had this witness, who I assume will say that in his opinion the highest use to which this land is naturally adapted is for reservoir purposes. Now assuming that that would be his answer, if he values them—he being qualified as an expert—why isn't he entitled to answer that question? Assuming that he says—he has not yet been asked that question, but assuming that his testimony is that in his opinion the highest use to which this land can be put is reservoir purposes, what is there in the decisions that you have in mind that make that improper?

Mr. Frazer: If your Honor please, there were some decisions that were called to your Honor's attention this morning in the argument by Mr. Matthews. I think it was referred to as the Sage case, but I think actually the McGovern case. Those two I continuously confuse in my mind. In other words, what we have to bear in mind in all of these propositions, and I think sometimes we lose thought of it in the excitement of the trial, is that the specific use is not the criterion. The criterion is the market value.

The Court: That is true.

Mr. Frazer: Now, whatever Mr. Vermeule's opinion may be as to the value of this property for water supply use has nothing to do with it. He must be in a position before he can express an opinion to state what the value of that land is in the market, not what in his opinion ——

Mr. Hunt: I withdraw my question.

The Court: Question withdrawn.

Q. Mr. Vermeule, in your opinion, what was the most valuable use to which this property could be devoted on the 19th of March, 1925?

Mr. Frazer: I object.

The Court: I will allow it.

Mr. Frazer: Exception.

The Court: You may have it.

A. Water supply is the best use, the most valuable use to some extent.

Q. What in your opinion was the value of the property on the 19th of March, 1925, in the condition in which it then was?

Mr. Frazer: I object.

The Court: For that purpose?

Q. For any purpose?

Mr. Frazer: I object. Now do you wish to hear argument at this time?

The Court: I think it is too late.

Mr. Frazer: That is what I felt, and I think it is an argument that is going to take a few minutes.

The Court: Yes.

Mr. Hunt: May Judge Lewis be permitted to keep his arrangement made with his gravel men and put them on first Monday morning?

The Court: Yes. We will take a recess then until Monday morning at 10 o'clock.

CORNELIUS C. VERMEULE, recalled.

Mr. Frazer: Now this is the argument I anticipated having at the beginning of the court and I suggest that the jury be given a vacation.

The Court: Very well. The jury will be excused.

(The jury retired to the jury room.)

The Court: What was the pending question, Mr. Kelley?

(Question repeated by stenographer as follows: "Q. What in your opinion was the value of the property on the 19th of March, 1925, in the condition in which it then was, for any purpose?")

The Court: That is objected to, and I will hear Mr. Frazer.

Mr. Hunt: I will strike out the words "for any purpose." I don't know whether the objection is grounded on that point.

Q. What in your opinion was the value of the property being taken, on the 19th of March, 1925, in the state and condition in which it then was?

Mr. Frazer: That is objected to.

The Court: It is objected to on what ground?

Mr. Frazer: On the ground that in the first place the word "value" is not the basis which is here under consideration, but market value.

Q. All right, I amend it to read market value.

Mr. Frazer: Then the objection is renewed on the theory that Mr. Vermeule has not shown himself to have any knowledge of the market value of lands, but only a limited knowledge as to the value, if he has shown that, of lands for a specific purpose. If I recall Mr. Vermeule's testimony, he was called purely as an expert in relation to the use of these waters—of these lands for water supply purposes. He said in many regards he believed that to be the highest use—some such thing, somewhat qualified. It is quite obvious that he is now about to testify in regard to his opinion of value in relation to that specific use, for that is the only one upon which any qualifications whatsoever have been shown. Now, if we consider the cases, the market value as distinguished from a value for a specific use is the only thing which may be testified to. Apparently the idea of strategic value is involved, as it was in the Chandler-Dunbar case, where the United States Supreme Court says: "Strategic value, for which $15,000 has been allowed, is altogether speculative. It is based not upon the actual market value, which shows clearly the distinction, for all reasonable uses and demands, but the possible worth of the property to the Government. A strategic value might be realized by a price fixed by the necessities of one person buying from another free to sell or to refuse as the price suited him, but in a condemnation proceeding the value of the property to the Government for this particular use is not a criterion." We are here taking land for water supply purposes, and this standard which the United States Supreme Court has said is not a criterion is here being sought to be injected. If we go to the

well known McGovern case, where a very similar situation arose, and where Mr. Vermeule himself was the witness upon whose testimony the whole issue turned—if your Honor remembers that case, Mr. Vermeule testified on a certain theory as to the value of certain property, and when the theory was elicited upon cross-examination, on motion the Commission before whom he was testifying struck the testimony out as being improper and gave a value for the land of some four per cent roughly of what Mr. Vermeule had testified that in his opinion it was fairly worth for the specific purpose. That case went up to the Appellate Division in New York, where Justice Sewell wrote the opinion, and in criticizing the evidence as offered, Justice Sewell for the Appellate Division said: "It is to be noticed that this evidence did not tend to prove the present market value of the property or its value at the time it was taken, but its probable value after other property is acquired and millions of dollars are expended on the construction of a reservoir which may and may not be built. It was simply his opinion on the value based upon the necessity of the land to the City or what the City could afford to pay rather than do without." And in coming to that conclusion he cites an older case in 22 Hun., Matter of Boston, H. T. & W. R. Co., in which it was claimed that the land was specifically valuable for railroad uses, and Justice Larned in that case said:

"All that he can have is compensation. Now, if the railroad company are to pay what the piece of land is worth for railroad purposes, and if the road must be built through that pass, then they must pay any sum which the prospects of a successful railroad will warrant. For the land would be worth for railroad purposes any sum, however large,

which would not actually prevent the building of the road. Such a rule would do away with nearly all the benefit of the compulsory power of eminent domain. It would be giving more than compensation."

Justice Sewell, after citing that case, goes on and lays down this rule:

"In determining the question of value, it is proper to show the condition of the property and its surroundings, the uses to which it has been applied, and its capacities for other uses, including that for which it is required, and then the witness can give an estimate of its value, in consideration of all the uses and elements of value; but he cannot give an opinion of its value for any special use."

What is meant by a witness in that case is a witness who is qualified to testify to market values, not a witness who is qualified as to only one specific use, as Mr. Vermeule was in that case; and it was on that very point that the Justice is speaking when he held the Commission below to have acted rightly in striking out the testimony which was given. "The value of property," Justice Sewell continues, "is not limited by the present use, or the use for which it is sought, as either may be more or less than its market value. For example, land may be valuable, abstractly considered, for reservoir purposes, but its market value would depend upon a demand for such a purpose." Later, "The question, therefore, is not whether the property is peculiarly adapted for the special use, but whether purchasers can be found who would pay more for it because of its adaptability to the use. It is only when it is shown that the chances or probabilities of a sale for some special use have affected the price which the property would bring in market that its availability or adaptability can be considered in determining the market value."

"No evidence was given in the present case tending to show that before the land was taken by the City it was regarded as more valuable because of its advantage of location and adaptability for use as a reservoir. It is substantially undisputed that the value for reservoir purposes is entirely due to the fact that the City has determined to build the reservoir, and that the owner is now seeking to make the necessity of the City his opportunity."

That case was carried to the Court of Appeals of New York, and was sustained there on the opinion of Justice Sewell below—memorandum opinion—and it was then taken to the United States Supreme Court. Mr. Justice Holmes wrote the opinion: "It is conceded that the owner is not permitted to take advantage of the necessities of the condemning party ——" quoted from the opinion below. "—— and it would seem that it well might be that the Commissioners regarded it as too plain to be shaken by evidence on the public facts that the value of the land for a reservoir site could not come into consideration except upon the hypothesis that the City of New York could not get along without it, and that its only means of acquisition was voluntary sale by owners aware of the necessity and intending to make from it the most they could. It is just this advantage that a taking by eminent domain excludes."

Further in the same opinion Mr. Justice Holmes says "that the plaintiff in error was entitled to pay only for what was taken from him as the title stood, and could not add to the value by the hypothetical possibility of a change, unless that possibility was considerable enough to be a practical consideration and actually to influence prices." That is the United States Supreme Court. "In estimating that

possibility the power of effecting change by eminent domain must be left out. The principle is illustrated in an extreme form by the disallowance of the strategic value for improvements of the Island in St. Mary's River in the United States v. Chandler-Dunbar."

Then I come to the part which I have found very comforting, because I hear the case cited many times:

"The paintiff in error relies upon cases like Mississippi and so forth Boom Company v. Patterson, to sustain his position that while the valuation cannot be increased by the fact that his land has been taken for water supply still it can be by the fact that the land is valuable for that purpose. The difficulties in the way of such evidence and the wide discretion allowed to the trial court are well brought out in Sargent v. Merrimac, 196 Massachusetts."

If we go to the Sage case—which came up the other way around, and these two are like the two sides of forceps; they have got to get it right between them, because in one case testimony was stricken out and lower award was made, and the land owner appealed, and in the other case a higher award was made and the City appealed; so that we had the approach of the Court from both angles; and in the case the City appealed, the highest award was set aside where the jury had allowed certain things for specific value for specific use in addition to what they considered the general value; and Mr. Justice Holmes again writing the opinion from the other angle:

"What the owner is entitled to is the value of the property taken; that is, what it fairly may be believed a purchaser in fair market conditions would have given for it and not a tribunal at a later date

may think a purchaser would have been wise to give; nor a proportion of the advance due to its union with other lots. The City is not to be made to pay for any part of what it has added to the land by thus uniting it with other lots, if that union would not have been practicable, or have been attempted except by the intervention of eminent domain. Any rise in value before the taking, not caused by the expectation of that event, is to be allowed, but we repeat, it must be a rise in what a purchaser might be expected to give."

Now those citations might be further carried on; there are a number more of them, but I think the situation is clear from those. It will undoubtedly be argued by my opponent that this is not a case where the power of eminent domain had to be invoked, because the tract is so large that some kind of water supply development may be made upon their own lands and on lands over which they claim the right of flowage, irrespective of the exercise of eminent domain, therefore the eminent domain factor in this case does not enter. What does enter, however, sir, is the rule which is laid down as a corollary—or perhaps the eminent domain is merely a feature in the general rule; I think that would be the better way to put it—that the general rule is that these special uses which are brought in, before they become of any value, must be shown actually to have had such an effect upon the public mind in relation to that property that there is an actual public desire to take the property at a price enhanced by reason of the existence of this special capability. There has been nothing here to show that. In addition, although it may be argued that the power of eminent domain is not yet to be con-

sidered, there is another factor which is equal in character and brings us down to the ruling in the Morris & Cummings Dredging case. In that case it was pointed out that certain developments and improvements could not be submitted to the jury and consideration given to them for the reason that they were altogether speculative and hypothetical in character, depending, as they necessarily did, upon certain governmental grants of power and rights to proceed, action of Congress and other public bodies. If we come to the question of water supply development—ever since certainly the decision in McCarter v. Hudson County Water Company, in 70 New Jersey Equity, it has been definitely asserted, following a trend of earlier cases, but perhaps not brought to the point of definiteness which the opinion in that case by the Court of Errors brought it to—that there is no private right of property in the flowing waters of our streams; that the riparian user within various defined limits is the only right which the land owner fronting upon those streams has and that the residuum of the State runs wholly in the State, in the interest and as trustee for the people at large and that no private rights may be predicated upon any claim of property in the waters; and in the exercise of that theory the State established a control of these running waters without a license to take which no private right exists in the waters, and no right, sir, exists to establish this private water supply which is here being brought up as a factor of value. It is a right which exists in the State of New Jersey for the benefit of the State of New Jersey, and there is no right in any private owner to come along and say, "We have land here, and we can, provided the State will let us, create a water supply here; and since

we can, providing the State will let us, we have a right to mulct the State, because the State now comes along and says it wants to do the very thing which we say we can, providing the State gives us the permission." The whole right to develop this private water supply is predicated upon grant under existing statutes, first from the Conservation Board for the diversion of waters, and secondly, from the Water Commission which is here in court seeking to develop them as far as they relate to municipal supplies; and the whole testimony in the case which the land owners have submitted shows that the market which they assert to exist for those waters is a municipal market—the only market. In addition they are subject to regulation by the Board of Public Utilities Commission, Mr. Matthews remarks. We have State agencies all over. And to have a witness come on the stand now and testify as to the value of this property for a specific use which is conditioned and predicated upon a hypothetical State grant is wholly vicious and improper, and in addition, the witness has not shown himself to be qualified in any way as to market value, and that is the only subject under consideration here. We respectfully submit that the question is improper.

Mr. Hunt: Your Honor wish to hear me?

The Court: Yes.

Mr. Hunt: It is quite true we have State Commissions everywhere, but I have not understood so far that a State Commission or the State itself could deprive a land owner of his property without paying him for it. Now the Sage and McGovern cases

have been discussed at great length. I do not propose to talk about them at equal length. It is very significant in the McGovern case that two Justices dissented, and Justice Holmes in writing the opinion took pains, twice or three times, I forget which, to record that he was writing it for that particular case and no other case. It was a case of special circumstances, pure and simple. Your Honor has read the opinion in the Appellate Division from which alone of all of these reports the facts are to be derived. It appears that the land involved was less than one per cent of all the area embraced in the Ashokan Reservoir.

The Court: You are now talking about the McGovern case, not the Sage case.

Mr. Hunt: Yes, the McGovern case; and the Ashokan Reservoir, the Supreme Court then described in its opinion as a dam that might never be built; in other words, it was still in the tentative stage. Here is a dam that is actually being built, and here is almost 50 per cent of all the area embraced within the taking, and of course that makes it a different situation altogether, and brings it squarely into line with the right which the Supreme Court in the Sage case—if I reverse the titles, the second of those two companion cases—the interpretative one—said was the land owner's. In this Sage case the Court says:

"The decisions appear to us to have made the principles plain. No doubt when this class of questions first arose it was said in a general way that adaptability to the purposes for which the land could be used most profitably was to be considered; and that is true. But it is to be considered only so far as the public would have considered it if the

land had been offered for sale in the absence of the City's exercise of the power of eminent domain."

Now I submit, your Honor, that it is only necessary to look at those maps that have been put in here to see that the availability of this land for water supply purposes is a circumstance that the public would have considered if the lands had been offered for sale in the absence of the right of eminent domain. When you look at a single piece of property in one ownership and see that it comprises practically 50 per cent of the entire taking for this vast project, and that all three streams that will feed this reservoir flow through it for miles, why, certainly those are facts that the public would have considered if the land had been offered for sale in the absence of the exercise of eminent domain. So I come back to the Currie case and the Rum River Boom case, as the foundation stones here on which the ruling on this question must be based. In the Currie case the Court of Errors and Appeals stated the question in these words:

"May the situation and surroundings of lands sought for railroad purposes impart to it a special value for such purpose generally; and, second, if such special value was shown, may the owner reap the benefit of it when called upon to part with his land by the compulsory process of eminent domain."

They answered both questions in the affirmative, but in principle there is no difference between special availability for railroad purposes and special availability for dam purposes. If this land were being taken for railroad purposes, it might be said of the Ringwood Company, just as is said of it in relation to public water supplies, that it has no franchise to operate a railroad—has no franchise

to operate a public water supply. True enough, but the question is, leaving the condemning party out of it, looking to the general situation in the State, would there be a market for this land because of its availability for water supply purposes. If there would, then proof of its value for that purpose is permissible. And I think it already appears here that so early as 1909 Bayonne and Paterson bought land in this valley; Newark applied for a permit to develop a water supply in this valley; for 15 years or more the finger of water supply development has pointed directly at this valley. Now that being so, certainly this enormous tract of land, capable of storing as much water within its own boundaries as it is, must have a value for that purpose, and its value is properly the subject of inquiry under these cases.

To read just a word from the Rum River Boom case, "Its value is to be determined viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses. Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use."

In regard to its value because he is unable to put it to any use: "Others may be able to use it and make it subserve the necessities or conveniences of life." Its capability of being used gives it the market value which can be readily estimated. It is that market value, because of its capability for being applied to that purpose that we now seek to prove.

The Court: The difficulty of that, as I see it, neither the Currie case nor the Boom case possesses

the elements that are possessed here in view of the Cummings decision. The matter is speculation, and was not present in the Boom case, and the Boom Company had a right to use these lands for their own purposes. They had a franchise. There was nothing speculative about that. The theory of the Court of Errors and Appeals in this State in the Morris & Cummings Dredging Company case was not present in there, nor was it present in the Currie case. Here was a railroad company seeking the Currie lands, who was qualified and had a franchise. Here we have a situation, it seems to me, that runs right in the Cummings case. You have all these contingencies that must be present, that are present, that must be hurdled before we can arrive at the market conditions. I think I am absolutely controlled by the Cummings, aside from these other features that Mr. Frazer has argued with respect to the Supreme Court of the United States decision in the McGovern and Sage and Dunbar cases, and as I understand the ruling and the reasons in the Ross case and the Manda case and in the Cummings case, I think they must be my guiding stars rather than the Supreme Court of the United States where, as I say, there are distinguishable features in my mind and I therefore sustain the objection and will grant you an exception.

Mr. Hunt: And I have an exception, if your Honor please. Now, I will put another question practically placed in the language of the Rum River Boom Company case:

Q. Mr. Vermeule, having regard to the availability of the 2354 acres under condemnation for valuble uses, including use for water storage and water

supply purposes, what was its value in the market on March 19, 1925, in the condition in which it then was?

Mr. Frazer: I object on the ground the witness has not shown himself qualified as to market value.

The Court: Objection sustained, and an exception allowed.

Q. Assuming that there were no North Jersey District Water Supply Commission in existence, and no condemnation proceeding under way, would there or would there not be a demand for these lands for water supply purposes from corporations or municipalities having a right to develop water supplies?

Mr. Frazer: I object on the ground it is a hypothetical question of conditions which does not exist.

The Court: The objection is sustained.

Mr. Hunt: May we have an exception?

The Court: Yes.

Mr. Lewis: Might we observe that the jury is not present.

The Court: I assume Mr. Hunt, having in mind the Court's rulings, is asking these questions for the purpose of the record. Isn't that correct?

Mr. Hunt: Yes. That is what I am doing, your Honor. Of course, if the jury is permitted to be

brought in I would much rather make the record in the presence of the jury.

The Court: I have no objection to that.

Mr. Frazer: I see no merit in that. If Mr. Hunt has questions that your Honor is going to overrule ——

The Court: The only purpose of excluding the jury is that argument might be prejudicial.

Mr. Hunt: I do not want to take your Honor's time unduly.

The Court: Suppose we do this—I had forgotten that the jury was out—suppose you go back a way and have the clerk read the last questions since my ruling.

Mr. Hunt: All right, sir.

The Court: Bring in the jury.

Mr. Hunt: Before the jury is brought in. It seems to me our situation here is exactly similar to the situation of Currie in the Currie case, and Patterson in the Boom case. Currie did not have any franchise to build a railroad.

The Court: That is true.

Mr. Hunt: It was the condemning party that had. Patterson did not have the franchise to build or operate a log boom. It was the condemning party that had, yet, in each of those cases, the owner was

permitted to prove his property was specially adaptable for the purpose which the condemning party had.

The Court: The point I made is that the general public, and not these municipalities that were in the market were not in the position that the Boom case was or the condemnor in the Currie case. I imperfectly stated it. In other words, it seems to me the real controlling situation is the speculative end of this thing in view of the Cummings case.

Mr. Hunt: That is what I do not understand, and I would appreciate it if your Honor would enlighten me. This is one of the important rulings of the case.

The Court: Yes.

Mr. Hunt: This ruling, if adhered to, absolutely prevents us from proving value for the very purpose for which the property is being taken. Now, really, I do not understand why your Honor describes that as speculative. I do not propose to prove that the building of the dam on our property to store so much water would cost so much or anything of that kind.

The Court: That is not the speculative end of it.

Mr. Hunt: My question goes to the property in the state or condition in which it is, absolutely without any change.

Mr. Frazer: May I reply to Mr. Hunt?

Mr. Hunt: I have not finished yet.

Mr. Frazer: Oh, I beg your pardon.

The Court: You may finish.

Mr. Hunt: Yes. My question goes absolutely to the property in the state and condition in which it was on the 19th of March, 1925, when it was taken.

The Court: I appreciate that.

Mr. Hunt: Now, I do not see, your Honor, how that is speculative.

The Court: The speculativeness is the special value that you seek to show by this witness which is immaterial and incompetent, to show the fair market value as of that time, because of the contingencies that prevent its use, perhaps, for that purpose which cannot be hurdled so easily as was laid down in the Morris & Cummings Dredging case. For instance, here is the governmental agencies that must intervene.

Mr. Hunt: There, I do not agree with your Honor. That has been stated by counsel, but I did not suppose it was accepted so readily by the Court.

The Court: I was not taking counsel's statement of it, but I have read carefully the cases, and I take judicial notice of the fact of these other decisions.

Mr. Hunt: Oh, certainly.

The Court: And the fact that the State has control over potable waters.

Mr. Hunt: That is true enough, but your Honor will take judicial notice of the fact that the municipalities of the State being in such need of increased water supplies as they are, are not prevented by the State from going out and developing them, but there is development taking place on every stream that will permit it. Your Honor probably is aware of the report put out by this Water Board last year saying in eight years' time they must have another 8,000,000 per day, and they propose to go to Chimney Rock to build another storage base.

The Court: That is it, but the private owners in Chimney Rock cannot develop that.

Mr. Hunt: No, but they are entitled to have the same price for it, the same value for it that it would possess if it were due to anybody's development. The State cannot deprive the land owner of a part of the value of his property, concentrating the right to develop in one hand, in the hand of one agency. You cannot destroy values that way. Suppose that the State should take over some other—the performance of some other function in life, railroads, for example, all the railroads in the United States were to be owned and operated by the Government, and then it is necessary to build a new line somewhere, either a through line or a branch or a spur or something of that sort, had to go over some land, and it is made to appear that that land is especially adapted to railroad purposes, especially available for a getting another line of rails in here to tidewater, Jersey City, for example. The owner of that land could not be deprived of one penny of its value for that purpose by reason of the fact that we no longer had nine trunk lines crossing New Jersey,

but only one great vast railroad system owned and operated by the Government. His land would still have to be valued on the same principle that would obtain if there were nine competitive systems crossing the State. The State cannot destroy the value of the property by taking to itself a monopoly of certain things.

The Court: That is true, but the State says it does not destroy property. It is refusing you to be permitted to put a value on this property that is purely strategic and that does not exist, and is not market value because it is too speculative, too fanciful.

Mr. Hunt: Leave the Water Supply Commission out of it, then you have got Bayonne, Newark, Jersey City, Elizabeth, perhaps, Paterson, five or six municipalities, and East Jersey, Plainfield, Union, perhaps three or four private companies, every one of them needing additional supplies, every one able at greater or less economy to develop this supply and connect it up with its existing lines. They would all be competitive bidders for it. That is what makes value and market. Now, that market and that value we cannot be deprived of, the benefit of, by having the State, and the power of one single body, to come into this particular valley and make a development.

The Court: But here was a piece of land that had great strategic value. It was on the waterfront and it had great possibilities of a warehouse.

Mr. Hunt: Well ——

The Court: Oh, no. We have got to have the intervention of Congress. You have got to have the intervention of something else. We have got to have the intervention of something else. That is speculative, and it seems to me it is on all fours with this case.

Mr. Hunt: I think the difference is because that is speculative, because none of these improvements that the witness in that case foresaw coming sometime had been actually started, or even authorized by law; but in this case the improvement is started. It is on the way. Nothing speculative about the Wanaque Reservoir. It is being built. It absolutely requires these lands.

The Court: But speculativeness is the marketability of this land for the other people that you speak of.

Mr. Hunt: Well, but that is not speculative either, your Honor, because their need for water and for increased supplies, increased storage, from which they can draw the increased daily drafts is made evidence by this very project, this project is to serve twelve municipalities. That is evident proof that twelve municipalities, at least, need additional supplies. Now, here is Bayonne, a matter of common knowledge, and a matter I think that judicial notice could be taken of, was induced and persuaded and dragooned, as nearly as they could be dragooned, to come into this project, to help develop this and share the cost of it, and finally refused. Bayonne is needing at least 25,000,000 gallons every day, and no place at the present to go and get it. So that there is another market. The

very fact that this project is under way is evidence of the market. The market arises from the need, and if there were no need there would be no Wanaque Reservoir being built. The Water Supply Commission's report that I have marked for identification, although it did not go in evidence, gives evidence of the continuance of a need and the growth of the need, because it says in so many words that the district served by this Water Supply Commission, that is the twelve municipalities alone ——

Mr. Frazer: Oh, no.

Mr. Hunt: (Continuing.) The district, then, served by the Water Supply Commission will need an additional supply over and above this, and their other sources of supply beyond its 100,000,000 gallons daily every eight years. Ample evidence that there is nothing speculative about the market. Nothing speculative about the demand, because the fact is that the demand is most pressing, the demand of the northern section of New Jersey. The moment that it becomes no longer possible to obtain this increased supply of water, that moment Northern New Jersey stops. It is dead. It is done. It cannot grow anywhere without water. The moment it comes at the end of its water reserve, it is done. The same thing is true with New York City. New York City now has decided to go to the Delaware River. That shows the extent of the need of New York City in going to the Delaware River just as soon as possible to produce a supply there—150 miles from the city, by the route they will have to bring it. The need is greatest in this northern section of New Jersey. The demand is most pressing.

The market is undoubted. There is not a possibility or shadow of speculation about it. Their demand proves it, because this dam, in the remarks of counsel in his opening address to the jury, is to serve twelve municipalities. Now, then, suppose that the State had not created the Water Supply Commission, suppose that the State Legislature at this session may abolish the Water Supply Commission, as it may—it constantly creates and abolishes boards—then you have got twelve cities needing this water.

Mr. Frazer: Eight.

Mr. Hunt: Very well, you say eight. I thought in your opening remarks you said twelve. Have you got the first day's testimony?

Mr. Frazer: It does not make any difference.

The Court: It does not matter. Let us assume it is twelve for the purpose of this argument.

Mr. Hunt: There is market. There is total and complete ——

The Court: I think I would be presumptuous indeed, Mr. Hunt, with the views and understanding I have, having read Mr. Lewis, and having read these opinions, and having formed an opinion for me to rule other than I have. I am not closing the door to you. I mean by that, if I am wrong and your viewpoint is the correct one you will have your forum in which you can get redress. Of course, I am not basing it on that at all, but I appreciate this is a big question, and I appreciate its ramifications

and its shades, and perhaps you may be right that this is distinguishable from the Cummings case because of the matters that you have so forcibly and eloquently set forth; but I cannot see it in that light, and I must therefore, with those views, in justice to myself and my intelligence and my understanding of the decisions as I read them, adhere to my decisions.

Mr. Frazer: I know it is very bad practice to argue after the Court has decided a motion in one's favor, but I could not help, while Mr. Hunt was speaking, having my mind turn to the case: In re Central New Jersey Railroad, 65 Atlantic Reporter 906, in an opinion by Mr. Justice Reed, because Mr. Hunt in emphasizing his view spoke of the demands which might exist for a particular tract of land in laying out a railroad, distinguishing it from the Currie case. I took it, where a railroad already was in existence, and the lands there under question had nothing to be done to them. They had their value by reason of their location in connection with a great public corporation. But he painted another picture where, perhaps, you are going to open a new line and extend it, and I could not help thinking of a case which holds:

"That upon the trial of the appeal from the award of appraisers in a proceeding to condemn land taken by the railroad company it was error to admit an unproved map showing a route filed by another railroad over the same land, and if the map had been proved, it was error to admit testimony that the centre line of this route passed over the property in question."

Now, there is a very clear pointing out of a distinction in these water suppy developments that

Mr. Vermeule wishes to testify about. It is not the testimony in relation to land as it exists today. There must be something done to it before this use can come into being. You have got to create all of these great works in order to get to a value. It is necessary for him to figure the supply when developed, how much can be developed, how much it is going to cost and, necessarily, he comes back to the whole bases of figuring his value upon the cost of development, and what he can realize from the product when he has got it. One of the factors in that cost of development is the fact we are here to determine. He has suggested the Wanaque water is going to be cheap. He does not know whether it is going to be cheap until he knows how much our land is going to cost. It is going to be expensive, if he has his way. It is going to be expensive. How much the cost of acquiring and developing the supply is going to be, and then in some system of capitalization he has to figure out—Major Pratt gave me and Mr. Matthews a very excellent sample. He said, suppose we are throwing a bridge across the Hudson River. Engineers have studied it and decided the narrowest point is here, and the underlying land is rock suitable to support the abutments on two particular places, one on the New York side and one on the Jersey side, two municipalities with houses and developments, and the bridge is determined to be there. Can those people, by reason of the fact that they are located there, and to make a bridge construction at that point cheaper than it is somewhere else, capitalize that against the bridge construction? That is what they seek here, and in this same way, in this Atlantic Reporter case, it is perfectly clear "that your land is suited to run out lines of railroad, and so suited that it was indicated two railroads were seeking it, was not properly evidential of the value of the land.

The Court: Very well.

Mr. Hunt: Since that case has been mentioned, will your Honor permit me to read a few lines from it?

The Court: Yes.

Mr. Hunt: Here is what the case says about the law of the matter. This is In re Central Railroad of New Jersey, 65 Atlantic 906: "Indeed the land owner can show peculiar availability of his tract for any use, including that for railroad purposes."

Now, what follows, your Honor, I submit is exactly what I have been trying to show by this witness:

"He can show a contracted space suitable for such purposes, how much of that has been already occupied, what the demand for the remaining space, including his own tract, will be for such use. He can show all this to exhibit the increase in commercial value of his property." I thought what I was trying to do with Mr. Vermeule was exactly in line with what Justice Reed said in this decision I could do. I had forgotten I had that decision in my memorandum until I heard it mentioned by counsel on the other side. He can show a contracted space suitable for water supply purposes. How much of such has been already occupied around it, are these other streams, Rockaway, already occupied, what the demand for the remaining space, demand so great that from here they meet to the Raritan, and from the Raritan they meet to the Delaware, includ-

ing his own tract, will be for such use. He can show all this to exhibit the increase in commercial value of his property.

Mr. Frazer: That is all he can show.

Mr. Hunt: I think the language of Judge Reed ought to move your Honor to re-open the ruling.

The Court: I think when you put the acid test on that it practically says you are putting a strategic value. You are saying it is not the value of this market, but the State, because of the great need ——

Mr. Hunt: That is what Judge Reed says you can do here.

The Court: I do not agree with him.

Mr. Frazer: Applications had been made by the City of Newark and Paterson on this very supply back as far ago, I think, as 1909 and 1910. He did not say that the reason the supply was not developed at that time was that the State Water Supply Commission at that time refused to grant to any one of the municipalities the right to develop it, and that is a matter of State record, and it was not developed for that very reason, which goes to show that this question of the legal restraint and the control of the waters by the State of New York is so great that it might destroy any water supply project which these gentlemen have under consideration.

The Court: All right.

(The jury then returned to the court room.)

The Court: Now, Mr. Stenographer, read the question put while the jury was out. I might say the question that was asked Mr. Vermeule on Thursday as to the value of the land was objected to and I sustained the objection, and now Mr. Hunt asked some other questions while you were out, and I think you should hear the questions so that you may know what they were directed to bring out. They were not permitted to be answered in view of my ruling.

(The following was then read by the stenographer.)

"Q. Mr. Vermeule, having regard to the availability of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purpose, what was its value in the market on March 19th, 1925, in the condition in which it then was?

"Mr. Frazer: I object on the ground the witness has not shown himself qualified as to market value.

"The Court: Objection sustained and exception allowed.

"Q. Assuming that there were no North Jersey District Water Supply Commission in existence, and no condemnation proceeding under way, would there or would there not be a demaned for these lands for water supply purposes from corporations or municipalities having a right to develop water supplies?

"Mr. Frazer: I object on the ground that it is a hypothetical question of conditions which does not exist.

"The Court: Objection sustained.

"Mr. Hunt: May we have an exception?
"The Court: Yes."

Q. Does or does not the value of the 2354 acres under condemnation for water supply purposes arise from or depend upon the fact that the North Jersey District Water Supply Commission had undertaken the construction of the Wanaque Reservoir.

Mr. Frazer: I object to that.

The Court: Objection sustained.

Mr. Frazer: I presume my objections are all based on the argument which preceded it?

The Court: Yes.

Mr. Hunt: And we may have an exception, your Honor?

The Court: Yes, you may have an exception.

Q. From what circumstances does the value of these lands for water supply purposes arise? What are the circumstances that give these lands special value for water supply purposes?

The Court: There is no objection to that question.

Mr. Frazer: There is no objection if that is within the limits of the ruling. I do not know exactly what Mr. Hunt may intend by it. It is a pretty general question.

The Court: Very well, I will allow it.

A. From their peculiar adaptability for the purposes, and from the large demand in the near neighborhood of the supply after such a water supply.

Q. Where does that demand exist?

Mr. Frazer: I object on the ground that the demand is one that is a public demand, and one which is controlled by the statute.

The Court: Objection sustained for the reasons already given. You may have an exception.

Mr. Hunt: Am I permitted to ask whether the demanded is a demand within the geographical limits of the State of New Jersey, whether he refers to that kind of a demand?

The Court: You may, certainly.

The Witness: Yes, the demand is within the State of New Jersey.

Q. You know, of course, do you not, Mr. Vermeule, that the waters of the State cannot be taken outside of the State to supply the people of other states?

A. Yes, I know that.

Q. State what, if any, chartered water companies already possessing the right to divert water and the right to furnish public water supplies have plants so situated with regard to the property under condemnation, and have such a demand upon them for the furnishing of additional supplies of

water as to make them probable purchasers of the property under condemnation for water supply purposes?

Mr. Frazer: I think the impropriety of that question is shown by the very use of the word "probable," and dealing with a hypothetical situation which does not exist today

Mr. Hunt: Then I will omit the word "probable," and make it absolute.

Mr. Frazer: Then I think the objection is just as sound.

The Court: Objection sustained for the reasons already given.

Mr. Hunt: May we have an exception?

The Court: Yes, you may have an exception.

Mr. Hunt: Cross-examine.

Mr. Frazer: No questions.

The Court: That is all, Mr. Vermeule.

Mr. Hunt: I can, perhaps, save time by making an offer. I offer Mr. Robert E. Horton, of Albany, New York, and Mr. Clyde L. Potts of Morristown, New Jersey, and to qualify them as expert hydraulic and water supply engineers, duly qualified to testify concerning the value of property for water supply purposes, and I offer to prove by them the value of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes in the condition in which it was on March 19, 1925.

The Court: In the same way, asking them the same questions that you asked Mr. Vermeule?

Mr. Hunt: It would be the same line of examination.

The Court: Objection is made, Mr. Frazer, I take it?

Mr. Frazer: The objection would be the same.

The Court: And the ruling would be the same, and you may have an exception.

Mr. Hunt: I might say, in principle—Mr. Horton, will you stand by, please—I would propose also to prove by Mr. Horton the actual sale of a number of properties for water supply purposes with a view to qualifying him to testify concerning the value of this property under condemnation on March 19th, 1925, in the condition in which it then was, but having regard to the adaptability that it possesses for being used for water supply purposes.

The Court: Well, assuming that Mr. Horton and Mr. Potts would be qualified, as Mr. Vermeule was, of which I have no doubt, and assuming that you would ask them the same questions that you asked Mr. Vermeule, then my ruling would be precisely what it was in the Vermeule situation for the reasons that I have given, and objection would be made precisely the same as was made then, and the rul-

ing, of course, would be the same, and you will have an exception to my ruling now made.

Mr. Hunt: Yes.

The Court: That makes your record clear.

Mr. Hunt: I think so, yes. May I ask this further question: I apprehend your Honor's ruling would not be any different by reason of the fact if it turned out to be the fact that Mr. Horton would have testified to having himself been involved in or handled a much larger number of actual sales of lands available for water supply purposes than Mr. Vermeule.

The Court: No, that is a proper assumption because the ruling was not predicated on that point, but on the legal principles that I enunciated.

Mr. Hunt: Very well, step aside, Mr. Horton.

The Court: Very well.

Mr. Hunt: Your Honor may realize ——

The Court: Do you wish a recess at this time?

Mr. Hunt: Thank you, very much.

Mr. Hunt: Will the Court permit us to recall Mr. Vermeule for two or three questions. I think they will be very brief; just some matters that we feel should be touched upon in view of the turn that the case has taken.

The Court: Very well.

CORNELIUS C. VERMEULE, recalled.

Direct examination.

By Mr. Hunt:

Q. Mr. Vermeule, at what other place or places in the State of New Jersey approximately equal in distance to the site of the Wanaque Dam could there be produced a supply of potable water approximately equal in quantity and quality to that which will be produced in the Wanaque Reservoir?

Mr. Frazer: I object to that as immaterial.

The Court: What is the materiality?

Mr. Hunt: Well, it is just in line with this Central Railroad Company case, that the Court says he can show a contracted place suitable for such purpose; how much of such already has been already occupied; what damage to the remaining space, including his own tract will be for such use ——

The Court: Yes, but I think that is immaterial in view of the Court's ruling, and I will sustain the objection and you may have an exception.

Mr. Hunt: Yes. Another question with the same purpose as the other, your Honor.

Q. After the development of the Wanaque project, where else within approximately the same distance of Newark and the other cities being served by the North Jersey District Water Supply Com-

mission in the Wanaque project, can there be produced a water supply of approximately the same quantity and quality as that afforded by the Wanaque project?

The Court: Same ruling.

Mr. Hunt: Same exception.

The Court: You may have it.

Mr. Hunt: Did I except to the former question?

The Court: Yes.

Q. After the development of the Wanaque supply and the development, if that ever should occur, of a water supply project in the Ramapo Valley, where next would Newark and the other cities served by the North Jersey District Water Supply Commission have to turn for a further supply of potable water.

Mr. Frazer: I object on the same grounds.

The Court: Same ruling and you may have an exception.

Mr. Hunt: That is all, Mr. Vermeule.

FRANK F. GALLAGHER, sworn.

Direct examination.

By Mr. Lewis:

Q. Mr. Gallagher, where do you live, sir?
A. New York City, 141 East 38th Street.
Q. What is your age?
A. 43.
Q. What is your business?
A. I am Treasurer of the Goodwin-Gallagher Sand and Gravel Corporation.
Q. What is the business of the Goodwin-Gallagher Sand and Gravel Corporation?
A. Mining sand and gravel.
Q. Where does it get its sand and gravel from?
A. Long Island.
Q. What is the extent of its business?

Mr. Frazer: I object to that as immaterial.

The Court: What is the materiality, Mr. Lewis?

Mr. Lewis: Why, it is very material, sir, for the jury to be able to determine the character of a witness who is about being qualified.

The Court: Part of his qualifications?

Mr. Lewis: Part of his qualifications, yes.

The Court: I will allow it.

Mr. Frazer: May we have an exception?

The Court: Yes.

(Question repeated by stenographer.)

A. Does a yardage of about three and one-half million yards.

The Court: A day?

The Witness: A year.

Q. How does its business compare in volume of business with that of other sand and gravel companies?

Mr. Frazer: That is objectionable, sir. That does not show the qualification.

Mr. Lewis: Whether he is a big man in the business or not? The jury, sir, cannot determine from that whether he is one of the large operators in the business, or whether that is a small company.

The Court: Ask him that.

Q. Well, I will ask you: Are you one of the large operators in the sand and gravel business?

A. We are.

Q. How long has the Goodwin-Gallagher Sand and Gravel Company been in business?

A. The present company has been incorporated 14 years and their predecessors been in business 30 or 35 years.

Q. Who were their predecessors?

A. Goodwin Sand and Gravel Company, and Gallagher Brothers.

Q. Were you related to the Gallagher that you mentioned?

A. Yes.

Q. Then he carried on business before you; is that right?

A. Yes, sir.

Q. Please describe to the jury the detail of that business as to how you conduct it?

Mr. Frazer: I object to that as wholly immaterial. The physical operation of the business has nothing to do with his qualifications.

Mr. Lewis: Yes, sir.

The Court: I do not see myself just what that might be material for, Judge. If you tell me and it is, I will allow it. We are not concerned particularly with this man's business except as to the experience that he might have had, so he may be qualified as a man that is expert in this field. Now he has said he has been in it for a long time and his concern and its predecessors were old-time gravel people, and that they had a very large business.

Mr. Lewis: Well, sir, I appreciate the fact that your Honor is the judge of the limitation in this matter as to his qualifications, and if you think I should not go into that I will of course desist.

The Court: I think you have gone far enough for the purpose myself.

Q. Now where are the plants of the company on Long Island?

A. They are on Hempstead Harbor.

Q. What is the extent in acres of land?
A. I should say we have about 2000 acres.
Q. How long have they been operated?
A. Present plant has been operated 25 years.
Q. What are the markets of the company for sand and gravel? Where are the markets?
A. Where the the markets? We go as far east as Bridgeport on the Sound, taking everything—we take in Staten Island we take in Jersey as far as Newark, Brooklyn, New York City—we call our Metropolitan District.
Q. Are you familiar with the markets for sand and gravel in this neighborhood?
A. I am.
Q. Are you familiar with the prices which sand and gravel bring in these markets?
A. I am.
Q. Have you bought sand and gravel lands yourself?
A. I have.
Q. Where were they located?
A. Long Island.
Q. How many purchases have you made?
A. About a half a dozen.
Q. What has the locality to do with the availability of a sand and gravel proposition—lands?
A. Locality has a lot to do with it, where you are going to get rid of your material.
Q. Tell us then what it has to do with it?
A. Well, if you buy a piece of property for sand and gravel business in any locality, first of all you have to find out where your market is and how much your market will take, to get rid of your material.
Q. Are you familiar with the needs of transportation?

A. I am.
Q. Of sand and gravel; and with the costs of transportation?
A. I am.
Q. Are you familiar with the costs of the development of sand and gravel from lands containing them?
A. I am.
Q. And with the various methods that may be adopted?
A. Yes, sir.
Q. Do you know the lands of the Ringwood Company at Ringwood, New Jersey?
A. Yes, sir, I do.
Q. Are you familiar with any lands there which contain sand and gravel?
A. Yes, sir.
Q. Do you know what the acreage is?
A. Well, I was told from an engineer there was about 450 acres in it.
Q. Have you visited those lands?
A. I have.
Q. I would ask you to step down to that map and look at Exhibit O7 and examine the plan in buff on that map and tell us whether that shows the area over which you—upon which you made your examination?

Mr. Frazer: That would be wholly unnecessary, because the situation is now the acreage is obtained from the information by the engineer. That has already been brought here in the map. There is nothing to be gained by the witness testifying to something he has already said he got by hearsay.

Mr. Lewis: Well, it simply identifies the thing he looked at.

The Court: I will allow it for that purpose.

Q. Just come down and see whether the lands that you examined at Ringwood conform in appearance and area to the lands which you were informed about by the engineers?

(Witness approaches map.) I will tell you before you get to the first place, Mr. Gallagher, the map is drawn on a scale of 400 feet to the inch.

Mr. Frazer: Now, if the Court, please, I cannot hear a bit of this examination.

Mr. Lewis: He can come up to this map.

Mr. Frazer: If you sit in this chair I can hear you, and the witness can hear you.

Mr. Lewis: Yes, but I cannot point to the map.

Mr. Frazer: Well, speak a little louder, please.

Mr. Lewis: Well, I cannot.

Q. (Continued) Having in mind that those areas in buff on the map—I will withdraw that question ——

Q. Having in mind that this map is drawn to the scale of 400 feet to the inch, can you tell us whether the areas in buff on this map are the ones that you examined at Ringwood?

A. Yes, sir.

Q. Have you been in the habit of determining the quality of sand and gravel ——

A. Yes, sir.

Q. ——in your business?

A. Yes, sir.

Q. And for how long a time?

A. Well, I have been in the business eighteen years, myself.

Q. You said that you are treasurer of the company. How long have you been treasurer?

A. Two years.

Q. And what other positions have you held in the company?

A. Secretary, I was prior to that.

Q. And what other positions?

A. That is the only two.

Q. What other work in the company did you do?

A. I have done all kinds of work, practically, from an office boy up.

Q. Are you familiar with all the business of the company?

A. I am.

Q. And all its operations?

A. All its operations.

Q. And its methods of excavation of sand and gravel?

A. Yes, sir.

Q. And with its transportation and sale of sand and gravel?

A. Yes, sir.

Q. Did you examine the lands at Ringwood with a view of determining the quality of sand and gravel there?

A. I did.

Q. And what decision did you come to?

Mr. Frazer: I object.

Q. (Continued) As to its quality?

Mr. Frazer: Now, that ceases to be a qualification question, I take it, and is now a definite question of the expert witness.

Mr. Lewis: It is a qualification, sir—I mean to say, it is a necessary qualification to show that he is familiar enough to enable him to testify, to give opinion as to the value of the land.

The Court: Yes, but Mr. Frazer may examine him before he answers the question.

Mr. Lewis: I am perfectly willing for him to do that.

The Court: If he wishes to do that.

Mr. Frazer: I want to ask Mr. Gallagher a couple of questions.

Preliminary cross-examination.

By Mr. Frazer:

Q. Does that look like your sand and gravel, sir? (Handing witness a bottle.)
A. Can I throw it out on a piece of paper?
Q. Yes.
A. (Witness dumps contents of bottle on paper.) No, that is not ours.

The Court: The question is does it look like yours.

The Witness: No.

Q. Yours is practically a colorless sand, isn't it?
A. No.
Q. You use it without washing?
A. Beg pardon?
Q. You use it without washing?
A. Ours?
Q. Yes.
A. No, sir.
Q. You could not?
A. Engineers would not.
Q. You obtain it by the washing process?
A. Yes, we wash it.
Q. That is the way you mine it?
A. That is not the way we call it. We call it surface mining.
Q. Now, look at the other bottles there.
A. This? (Indicating.)
Q. Yes.
A. (Witness empties bottle on paper.)
Q. Does that look like yours?
A. I take it this gravel has not been washed.
Q. I am sure I don't know.
A. It don't look to me as if it had.
Q. I understand that has been processed.
A. Beg your pardon?
Q. It has been processed, but the process was testified to as having been a secret one. What that involves I do not know. What would you call that in the little bottle?

The Court: He has not told us anything about the big sample yet; I do not think.

A. What is the question?
Q. Whether it looks like yours.
A. Like ours?

The Court: The one that you just emptied.

The Witness: I know it is not ours, but it looks enough like it it might come out of our bank.

Q. You think that is possible?
A. Yes.
Q. What do you think of that? (Handing witness bottle.)
A. Give me a little more sample.
Q. Sure.
A. What do you call it?
Q. I don't know. I am asking you as an expert?
A. What I would call this? Sand, I should say.
Q. Good sand?
A. Well, there is some clay in it; dirt in it, at least.
Q. You wouldn't get that sort of sand out of your bank?
A. Oh, yes; we get worse than that at times.
Q. What do you do with it when you get it?
A. This? (Indicating.)
Q. Yes.
A. I would sell it.
Q. For what purpose?
A. For sand.
Q. And to be used—to whom would you sell it?
A. Anybody that would buy it.
Q. Do you find a large market for it?
A. Well, I never went in particularly on the market like this, but if I had enough of it I would find a market for it.
Q. And for what purpose would they use it?
A. Why, they could use it making for concrete.
Q. For concrete?
A. Yes.

Q. Did you ever buy any lands in New Jersey?
A. No, sir, I never have.
Q. Did you ever buy any lands that were removed from the water shore?
A. Yes, I have.
Q. On Long Island?
A. Yes.
Q. And how far from the water shore?
A. Three miles.
Q. Contiguous with other lands of your company?
A. Beg pardon?
Q. Were they contiguous with other lands of your company?
A. No; a highway in between them.
Q. A highway in between them?
A. And a railroad.
Q. Have you ever mined any of that?
A. No, we hold it for reservation.
Q. Hold it in reserve until such time as your water portion traffic is exhausted?
A. No, I would not say that; until we need it. We don't know when we will need it.
Q. How many years have you held it?
A. Oh, fifteen.
Q. Do you know anything about purchase of sand and gravel land in this section, around Wanaque?
A. Around where?
Q. Around the section on the map?
A. I have never bought any in that section.
Q. Do you know of any sales there?
A. No, sir, I do not.

Mr. Frazer: That is all.

Direct examination, resumed.

By Mr. Lewis:

Q. Now, Mr. Gallagher, I just want to ask you whether you supposed that sand was taken out of any place in its simple form as it appears there in the bottle?

A. I don't quite get your question.

Q. Did you suppose when Mr. Frazer asked you about the quality of the material in the small bottle, did you suppose that that sand was taken out of the same land in the form that it now is without being mixed with anything else?

A. No, sir, I did not.

Q. Suppose that the contents of those three bottles formed one sample, and that the gravel was separated from the sand, and the fine sand in the small bottle separated from the other, what would you say as to the quality of such sand and gravel?

A. I would say it is good, commercial; it could be used.

Q. And when you say it did not look like your sand and gravel, does the appearance of the thing have any effect upon its value?

A. No; our Cow Bay sand is more brown in color, but it don't make any material difference to the quality of the sand, what color it is.

Q. Are you familiar with the means of determining the value of land upon which there is sand and gravel?

A. Yes, sir.

Mr. Lewis: I think he is sufficiently qualified.

Mr. Frazer: I do not know what the qualifications

are. If he testified to value, I submit he is not qualified. He has shown knowledge of purchases of sand and gravel land six or seven of them, on Long Island. He shows that most of them lie on the waterfront, Hempstead Bay. He shows that he has purchased one piece of sand and gravel land which he has held fifteen years in reservation. He has testified that he knows nothing about any sales in the vicinity of these, or the conditions which exist there as to market. And, if I may quote to your Honor from the case of Brown against the Short Line Railroad ——

The Court: It is not necessary. I think he is qualified with respect to the quality of sand and the quality of sand and gravel that he may find on that property, but I do not think he is qualified with respect to values.

Mr. Lewis: He has testified, sir, of course that is subject to cross-examination, that he has for all the years of his business life, practically, been familiar with sand and gravel lands. He has bought some. He is familiar with the method of determining the value of sand and gravel lands, and he says that he knows how to make that determination.

The Court: In a certain area where conditions are present that are not present here, and which is some distance removed from this point, and he does not even have a point as his market. This is outside of his market.

Mr. Lewis: I thought I had brought enough of that in to qualify him.

The Court: He said his market extended to Newark. He did say that he knew conditions here, but he does not—it is outside of his territory.

Mr. Lewis: I understand him to say, and I will ask him ——

Q. Are you familiar with the market for sand and gravel within the reach of the Ringwood sand and gravel?

A. Yes, sir.

Q. I will ask you this: Does locality—I will withdraw that. I will leave that just there, sir. I think he is qualified under the circumstances, and I would like to give my reasons if there is any doubt in your Honor's mind on that point.

The Court: I have no doubt of his qualification with respect to the character of the sand and gravel that is there, Judge. Do not take any time on that.

Mr. Lewis: I understand that.

The Court: You may ask him about that, if you wish, but when you ask him about the value of these lands he does not qualify.

Mr. Lewis: Now then, if your Honor's mind is still open enough for me to present my notion ——

The Court: Glad to have you do it.

Mr. Lewis: Because it is an interesting subject and a somewhat confusing one, I think. The objection is made to his testifying as to the value of sand and gravel lands only because these sand and

gravel lands with which he is familiar in the sale of are located in Long Island and not in New Jersey.

The Court: Well, that does not go to the root of the matter. In my mind the proposition is that here is sand and gravel in its virgin state; it is not mined, it is in the ground.

Mr. Lewis: Yes.

The Court: And I think that all that he can show under the Manda case and the other cases that we have so often referred to is the character of it and so forth, but when he mines it and when he takes it to market and when he does all of the things which can only be conjectured, it cannot show the present value or value in the immediate future under the decisions—the Manda case—the other cases. You see, he hasn't anything to base it on. It is too remote. It is too speculative.

Mr. Lewis: I hope your Honor will still permit me to go on?

The Court: I will, but I interrupted you ——

Mr. Lewis: I do not regard the Manda case as going to such a length that you cannot view a situation, or you cannot view something to which the land can be presently adapted or which gives it a value by reason of its adaptability. We do not have to show that this gravel is going to market. We do not have to show how much it is going to cost to send it to market. We do not have to show any of those sorts of things as to how much it is going to

cost to excavate it or anything of that kind. All we have to show, sir, is that on that land at this time there is sand and gravel which in the eyes of an expert who knows the sand and gravel business gives to that land a value which he can understand and know from his own experience. For instance, the Manda case—I would like to present this illustration to you. You say you cannot view, you cannot speculate upon what may be done with land, and thereby determined its value. That is very true. But nevertheless, an agent may say what land in a given condition is worth, and he, by reason of his expertness, is able to determine exactly what the land is worth in its present condition. For instance, imagine, if you please, sir, a block on an avenue, in a city; every one of the lots on that block has been improved, had houses put on them—all except one—all except one—and a real estate agent, familiar with the sales of the land in that neighborhood, comes, and he says, "I know of the sales in the course of my business of every one of these lots on this long avenue block. They all brought $5000 apiece." The question is, what is this remaining lot worth? It happens that that lot is in a sort of a gully, and it happens that it has to be filled in to make it level with the rest of the property, so that it shall have the same value as the other lots, that is, $5000, and as soon as you fill that lot in that lot is worth $5000. Its present value is that amount, less the cost of filling it. Now the real estate agent, who is familiar with market prices, familiar with the usual business in the sale of lands, comes to look at that lot there in the gully, and he mentally says, "Why, I can fill that in for $1000." He don't prove that, but he knows that as a matter of business experience, and he says, "The market value

of that lot is $4000." Now that is the present value of it, in its present condition. Of course, it may be arrived at by a process of ratiocination, but men are not supposed, particularly experts, to be mere dumb people that do not understand anything. They can reason upon that matter and produce the answer. Now, then, of course, this problem is of a larger extent, but it involves the same principle. A man—take myself—I see 100 acres of land covered with sand and gravel and another 100 acres alongside of it without any sand and gravel on it, usable only so far as appears as building lots or as timber land. I don't know anything about the sand and gravel business, but the expert does. One of the best things to start with in the line of reasoning upon that subject, it seems to me, is a quotation from the book which your Honor has on the desk, as to what is an expert, what is the function of an expert. "It must appear," says Lewis there at 437 in your book—"It must appear that he has some peculiar means of forming an intelligent and correct judgment as to the value of the property in question or the effect upon it of a particular improvement beyond what is presumed to be possessed by men generally." A man shows me a diamond; I cannot tell its value, but the fellow who deals in diamonds, by looking at it, recognizes at once the intrinsic value within that. A piece of gold is in the same way. So it comes to the point where you get a man in the sand and gravel business, who looks at that land, and he sees and knows the value it has from the experience he has had in his business.

The Court: If it were on the waterfront at Long Island.

Mr. Lewis: No; anywhere.

The Court: Where his experience has been.

Mr. Lewis: I will ask him this question, sir:

Q. Does the ability to determine the value of gravel lands fail because one tract happens to be on the water side of Long Island and the other in the hills at Ringwood?

Mr. Frazer: I object.

The Court: Objection sustained. That is my province, not his, under the Brown case.

Mr. Lewis: I think myself, sir, that it is your province to determine whether it qualifies him.

The Court: Yes; and that is the only purpose of your question.

Mr. Lewis: But to ask him whether as a matter of fact it makes any difference in the value ——

The Court: Your analogy between the diamond and the gravel is not a proper analogy, because a diamond you carry around in your vest pocket, but you cannot carry around 248 acres of gravel that easily, and it is not mined; and the Brown case that Mr. Frazer started to talk about and I stopped him, it seems to me sets forth the rule, and there be knowledge of sales after the expert is an expert. This man has knowledge and great knowledge, of course, of the situation in the field where he works. He knows all about Long Island field. He doesn't have any market up here. He knows, by knowledge that he gained incidental to his business, of market conditions here and of gravel deposits here, perhaps, but he has never—not only never bought any here, but he even has not qualified by having known of any sales in this field, and for that reason he is not qualified to give testimony as an expert on land values. He is stopped by the Brown case, and I therefore rule, as I did before, that he is not qualified in my judgment under the decisions as to the value of these gravel lands in this tract. He is competent to tell all you may wish to prove from him as to the character or the quality of it, but he is not qualified to give an opinion, because there are so many things that enter into the value of these lands as gravel deposits, that he has not shown qualification for in my judgment. It is highly speculative—aside from the theory that I have just spoken of. And your illustration about the lot I do not think is analogous either, because there you are dealing with a expert on real estate values that presumably was qualified, an expert in that particular locality, because of sales he had had in that locality or knowledge which he had derived from others. You see, this man never heard of a sale as far as his testimony goes of gravel lands in this region.

Mr. Lewis: Well, assuming, sir, that he had heard, that in itself I submit would not be enough to qualify him—merely that—because he may have found a sale of gravel land where the proportion of sand and gravel was of such disparity between them that you could not liken the two parcels at all in that respect, but he had to come as an expert to a conclusion in his own mind as to the volume of sand and gravel and the quality of sand and gravel

on a particular area. I would like to ask the witness this further question:

Q. What are the essential elements in the determination of the value of sand and gravel lands?

A. First of all, the quality of the material; what you could put a plant on, take the stuff out and put it in the market to sell it and get a price, and what profit there would be out of it.

The Court: Then we run right plumb into the Manda case, and he cannot dis-associate his mind, when he gives you the value, if he were permitted to, with all the speculative things he would have to go into in order to put a value. Perfectly apparent to me that that is so, Judge. I must insist on my ruling as I have.

Mr. Lewis: My colleague suggests this offer which I now make.

The Court: Very well.

Mr. Lewis: We will offer to prove the sand and gravel is delivered from Long Island in Newark, at prices which the sand and gravel at Ringwood can undercut in price in the same market.

The Court: I shall not permit it. You may have an exception.

Mr. Lewis: And that there is a volume of a million tons per year from Long Island into Newark.

The Court: Same ruling. You may have an exception. It is immaterial in my judgment.

Mr. Lewis: Yes, I get your point, sir. I ask for an exception, of course, on that.

The Court: You may have it.

Mr. Lewis: I don't know whether I asked the witness, and I wish to do so now:

Q. What in your opinion is the value per acre of the sand and gravel lands, on the 450 acres ——

The Court: Do not answer it.

Q. ——at Ringwood, which you examined?

Mr. Frazer: I object for the reasons before stated.

The Court: Objection sustained and an exception allowed.

Mr. Lewis: Exception permitted.

Mr. Lewis: Just read that question to me.

(Question read.)

Mr. Lewis: Make that "value per acre of the sand and gravel land."

The Court: Let the question be amended, accordingly, and the same ruling.

Mr. Lewis: That is clear on the record?

The Court: Is that all, Judge?

Mr. Lewis: Just a moment, sir, for a thought.

Q. I will ask you this: What, in your opinion, is the quality of the sand and gravel at Ringwood?
A. Very good quality.
Q. Which is the more valuable, sand or gravel?
A. Gravel.
Q. And what is the proportion of sand and gravel at Ringwood?
A. It looked to me as if it was about fifty-fifty; about fifty per cent gravel and fifty sand.
Q. I would like, for the sake of the record, and I know your Honor's disposition of it, but I would like to have it: What, in your opinion, is the value of the sand and gravel in place on the lands at Ringwood?

Mr. Frazer: I object to it.

The Court: Objection sustained.

Mr. Lewis: And an exception allowed?

The Court: An exception allowed.

Q. What price can be obtained in the market at Newark for a cubic yard of the sand and gravel on the lands at Ringwood?

Mr. Frazer: I object to that as incompetent and immaterial.

The Court: Objection sustained.

Mr. Lewis: And an exception allowed?

The Court: An exception is allowed.

Q. How does the percentage of gravel in the lands at Ringwood compare with the percentage of gravel in the lands at Long Island that you have testified to?

Mr. Frazer: I object as being immaterial to the issue.

The Court: Objection sustained. I do not think it is material. You may have an exception.

Q. If the proportion of gravel in the Long Island lands was as high as the proportion of gravel in the Ringwood lands, would the Long Island lands be of greater value than you take them to be today?

Mr. Frazer: I object. That is a hypothetical question.

The Court: Objection sustained.

Q. How does the Ringwood gravel compare in roundness with the Long Island gravel?

Mr. Frazer: I think these comparisons of gravel are wholly immaterial.

Mr. Lewis: Well, there was evidence here somewhere about some angularity in the Ringwood gravel which goes to the quality. You allowed the evidence as to quality.

The Court: You are now comparing it, however, and that was the thing I have overruled as immaterial. You may ask him of the angularity of the component parts of this gravel, if you wish to. I

haven't any objection to that, if you will ask him with respect to the angularity of this gravel.

Mr. Lewis: There has been some testimony here as to the superiority of the Long Island gravel over the Ringwood gravel owing to the fact that the Ringwood gravel is more angular in its shape than the other. I simply wanted to find out from this witness as to whether the Ringwood gravel has greater angularity or is smooth and round, or about the same degree that the gravel of Long Island.

Mr. Frazer: My recollection is that Capt. Crockett volunteered on one of his long lectures on gravel a statement, their witness, that this was very fine gravel because it was sharper, less round than Long Island. That is what he said.

The Court: I cannot see the materiality of it, and if it is just corroborative of something that one of your witnesses said, that does not make it competent.

Mr. Lewis: I understand that.

The Court: But, if there is something that was brought out by the other side ——

Mr. Frazer: We have had no testimony on gravel, sir.

The Court: I understand that you have not. Then, I do not see the point.

Q. Would you describe this Ringwood gravel as being an angular gravel or round gravel?

A. I describe it as being first class, good, commercial gravel.

The Court: A little louder, please, Mr. Gallagher.

The Witness: First class, good, commercial gravel.

The Court: Now, the question is is it angular or round, as much angularity?

The Witness: Well, what I saw out there is all shapes and sizes. I would call it a good, round gravel.

Mr. Lewis: That is all, Mr. Gallagher.

The Court: Cross-examine.

Mr. Frazer: No questions.

The Court: That is all, Mr. Gallagher. The next witness, Judge.

Mr. Hunt: We will call James G. Shaw.

JAMES G. SHAW, sworn.

Direct examination.

By Mr. Hunt:

Q. Where do you live, please, Mr. Shaw?
A. New York City.

Q. What is your business?
A. Sand and gravel.
Q. Whereabouts do you carry on your operations?
A. In Long Island.
Q. Are you a producer and shipper of sand and gravel?
A. Yes, sir.
Q. Into what markets do you ship?
A. In tidewater markets.
Q. What part of Northern New Jersey does the term "tidewater" embrace?
A. Newark, Passaic, Belleville, Perth Amboy and New Brunswick.
Q. What part of that territory do you ship into?
A. Into all that territory.
Q. You ship into all that territory?
A. Yes.
Q. Just, in approximate terms, how much gravel per year do you ship into points on Newark Bay?
A. Sand and gravel, probably 300,000 yards a year.
Q. How many tons would that be, roughly?
A. 360,000 tons.
Q. What is the whole volume, if you know, of sand and gravel from Long Island moving into Newark Bay points, annually?
A. It is more or less guess. We can get at it by comparing the figures. I presume they are moving a million cubic yards over there.
Q. Have you bought gravel lands on Long Island?
A. Yes, sir.
Q. Whereabouts?
A. Port Jefferson.
Q. How long have you been in the business?
A. Four years in the sand and gravel business,

and thirty-five years in the broken stone business preceding that.
Q. Are you informed concerning purchases of gravel lands made by other gravel producers on Long Island?
A. Yes, sir.
Q. What is it that gives any value to any gravel lands?

Mr. Frazer: I object to a conclusion on this witness' part.

The Court: Until he is qualified.

Mr. Hunt: This is not a conclusion, your Honor. This is a fact. Here is a man who is mining and producing sand and gravel for four years, and bought gravel lands. I will put a preliminary question or two.

Q. Suppose that you were offered the opportunity to buy, or that the gravel land—strike that out

---

Q. Suppose the existence at a point 25 miles from a railroad of just such a bed of sand and gravel as that on this property under condemnation, would it have any commercial value?

Mr. Frazer: I object.

The Court: Why, I think that goes to his qualifications, Mr. Frazer. I will allow it.

Mr. Frazer: I would think it went to his opinion, as an expert after he has been qualified. It seems to me purely a question of opinion, not a question of fact as to his experience.

The Court: Yes, I think there is a distinction there. Suppose you qualify him a little further before you ask him that.

Q. To what extent are you familiar with the gravel business in the eastern part of the United States, Mr. Shaw?

A. I think I am familiar with it over the East. I have been all over the East.

Q. Whereabouts are the big producing centers?

A. Hempstead Harbor is the greatest producing center in Long Island.

Q. And where else?

A. Port Jefferson, Northport and Port Washington.

Q. Yes. Now, what is the market for that production area?

A. Seaboard points.

Q. Seaboard points?

A. Yes, sir.

Q. Now, where is there another big producing area?

A. Well, it is spread all over here. I presume that the largest single plant we have here in New Jersey is at Morris Plains, the largest one I have seen here in the East.

Q. Where does that plant find a market?

A. Newark.

Q. Yes.

A. Elizabeth.

Q. Yes.

A. And points even beyond Newark. I have known them to ship up to Washington.

Q. Now, let us move on to the West. Where is the big production area in Pennsylvania?

A. Tullytown is the big producing point in Pennsylvania.

Q. Whereabouts does the Tullytown gravel find a market?

A. Principally in Philadelphia and Trenton and Wilmington.

Q. And by what manner is the Tullytown gravel transported to Philadelphia, Wilmington and Trenton?

A. By rail, and also by water.

Q. What is the water movement?

A. Beg your pardon?

Q. What is the water movement of Tullytown gravel, on what stream?

A. The Delaware River.

Q. Do you know how the bulk of the Tullytown movement is carried, whether by water or rail?

A. By rail.

Q. How far is Tullytown from Philadelphia, if you know?

A. Thirty odd miles.

Q. How far is Ringwood from Newark?

A. Forty miles. Oh, no; it is less than that; about thirty-one miles; about thirty.

Q. About thirty-one or thirty miles?

A. Yes.

Q. How far is it from Belleville; less or greater than thirty miles?

Mr. Frazer: I object to these computations. They are matters which the Court can take judicial notice of.

The Court: I think the jury know it too. If you think it is important, I will let him answer.

Mr. Hunt: No; I will withdraw it.

Q. State what the situation is in any part of the country in which you are familiar with the gravel business as regards the location of the gravel deposits that are being worked in relation to the location of some large center of population?

Mr. Frazer: May I ask that question be read? I did not quite follow it.

The Court: Read it, please.

(Question read.)

Mr. Frazer: That is purely a hypothetical question and goes into the whole question of gravel areas everywhere.

Mr. Hunt: No, it calls for a statement of fact.

The Court: I think it is all right. It is right along the proximity of Tullytown and Philadelphia.

A. We get the gravel bank as near as you can to the center of population.

Q. Why is that?

A. To shorten your haul, to decrease the cost of delivery.

Q. To reduce the cost of delivery?

A. Yes.

Q. Upon what elements does the determination depend whether or not gravel from certain sources can be put into the market in a certain place?

A. You must first determine the market value of the material, and then determine whether or not you can take the material from a piece of property you have in mind to your market and deliver it and make any money out of it.

Q. How can you determine whether or not you can take gravel from a piece of property in question and deliver at the market in question and make any money out of it?

A. You determine first the market value of it, and then look at the property and you can get it within a few pennies of what it costs to take it out of the ground, prepare it and place it in the market, when you have the freight rates.

Q. Now, the cost of placing gravel in the market involves how many elements, Mr. Shaw?

Mr. Frazer: I object to that.

The Court: He has already given them.

Mr. Frazer: He has given the elements, and we are getting into the Manda case. We are taking this out and getting into the Ross case, taking it out of the ground and figuring the cost of transportation and mining.

Mr. Hunt: No. I am not going to take anything out of the ground and show any cost, but I think from this qualified witness we have a right to show what the two factors that enter into a given market are, and whether it can go into that market.

The Court: If that is the only purpose, I will allow it.

Mr. Frazer: Exception.

The Court: You may have it.

Q. The two elements are production on the

ground and the cost of transporting it to the market, are they not?

A. Yes, sir.

Q. Are you familiar with these beds shown on this map exhibit, and existing on the Ringwood property?

A. Yes, sir.

Q. State what the existing conditions on the ground on that property are that have any bearing on the question of whether the production of gravel on those beds can or cannot be accomplished at costs no greater than the production of gravel on Long Island?

Mr. Frazer: I object. We are getting into the position where on generally framed questions, neatly veiled, the whole question of costs of mining and so on must be brought into this issue. The questions which Mr. Hunt is now framing employ all of the elements of cost which the cases have excluded. They do not directly ask them, but the conclusion which the witness is to give is based upon those elements of costs.

The Court: That seems to me to be so. And that being so, and inasmuch as I could not let you go to the extent that it would be necessary to go to make this testimony valuable or intelligible or of any use to you at all, I will sustain the objection.

Mr. Hunt: Would your Honor hear me on that for just a moment?

The Court: Yes.

Mr. Hunt: I do not want to show what the cost

of production, either on Long Island or on our property, is. If my adversaries wish to show it, I have no objection whatever. I do not want to show it. I feel I do not have to show it, but I do submit I have a right to show, without mentioning any figures at all, whether the conditions on our property are such as to enable the production of gravel there as cheaply as it can be produced on Long Island, and then I anticipate the further examination which would doubtless bring forth further objections. I submit I further have the right to show whether or not the cost of transporting our gravel into this Northern New Jersey market, Newark, and the surrounding cities, is or is not greater than the cost of transporting it into the same market from Long Island, because neither our gravel nor the Long Island gravel would have any value unless there was some market that it could go to and there meet the competition of any other field that could ship in there. But both gravels have a value if both can meet and compete in that market. Now, I can see your Honor experienced a little difficulty from the fact that we brought a man from Long Island to testify to this. Well, the trouble is that Long Island is the nearest by place where operations of such magnitude as these conditions on this property would permit to be carried on are carried on. It would not be any use to bring somebody from a small steam-shovel operation or pick and shovel operation. We are confronted with exactly the same situation, carried not to the same degree as would confront us if this condemnation proceeding embrace the Ringwood Mines. In that case, has your Honor realized where we would have to go for our experts as to the value of those mines? We would have to go to Michigan, because there is the

competitive mining area. We would have to go to Michigan. Now, here we have to go to Long Island. We could have gone to Tullytown, but we considered it fairer to our adversary to go to Long Island, because the comparison of our gravel with Tullytown gravel would be unduly in our favor—the Tullytown gravel to come from there to Jersey City, would have to travel a distance, in round figures, sixty miles by rail, more than double, almost three times the rail haul from Ringwood into Newark.

The Court: But it seems to me, if we start this line we must, of necessity, logically and properly go into some detail, and I do not see how we can escape considering railroad rates and other contingencies that as I understand the decisions we are not permitted to go into. I must be consistent in my rulings, because I cannot see the distinction that you draw.

Mr. Hunt: Well, may I put it this way: There is an existing railroad rate. I am willing to prove it and ready to prove it, if you will permit me.

The Court: Yes, I appreciate that.

Mr. Hunt: There is here already in the evidence a market for more than a million tons a year, right here on Newark Bay. As a matter of fact, we can prove a larger amount. Here are gravel deposits. Here are Long Island deposits. Now, if our deposits cannot be got to this market or some other market, I can see this would be the market right here in the metropolitan area of New Jersey, if they cannot be got to that market at a cost no

greater than bringing the Long Island gravels here, then there is no market for them, and the land would have no enhancement of value because of the existence of gravel beds. If our gravel can be brought here at the same cost as the Long Island gravel, then it would be on a competitive basis with Long Island gravel, and it would be competent for the jury to find that the value of these gravel lands was like the value of Long Island gravel lands which this gentleman and the preceding witness can prove. If it were shown that our gravel could be brought here at a substantially lower cost than the Long Island gravel, then it would be a fair presumption for the jury to draw that these lands were worth even more than the Long Island gravel lands, so I submit while I perhaps haven't the right, and I do not have the desire, do not need to ask the witness what the actual figures are. I do submit I should be permitted to ask what the comparative situation is. Can this gravel be excavated and worked as cheaply as Long Island gravel? Can it be transported into this market as cheaply as the Long Island gravel? If he says yes, then there is a basis for comparison of value, for the statement of value, based on Long Island prices. If he says no, then my gravel case collapses. If the gentlemen are not satisfied with his general statement, assuming it to be an affirmative statement, then they have a right to cross-examine him, and it would then appear in detail, if they can make it appear, that the cost of production on our property would be greater than that on Long Island, or the cost of transportation would be greater than that from Long Island.

Mr. Frazer: The whole viciousness of Mr. Hunt's argument is this: That he assumes a going, pros-

perous business to be capable of being transferred here, and he has given us a beautiful analogy in referring to the Ringwood mines. In order to get a comparative area he would have to go to Michigan. Why does he have to go to Michigan? Because that is the nearest iron mine that is working profitably. We have the Raplogle mine and a whole lot of other mines up there that would be perfectly comparable. More than that they would show a perfectly analogous situation, that if they have these tremendous deposits up there, after all these developments are all dependent upon economic conditions, and that the thing which he is seeking here to demonstrate were possible economically it would have occurred in fact and we would have had these great deposits up there many years ago. Now we come down here with a whole group of hypotheses carefully framed in order to elict from us a cross-examination which will go into the question of values, so that he in turn may put on some other expert to testify to values which are arrived at in the mysterious expert manner and to give the jury something to hang their hat on. All of that business is brought here merely for that purpose, and the whole argument which he has just been putting up is vicious and is continuously renewed and has taken hours and hours and a waste of time by these futile offers that he knows under the rules must necessarily be rejected.

The Court: Too speculative. Objection sustained.

Mr. Hunt: Yes. Will your Honor permit me to put two or three questions simply for the purpose of perfecting the record?

The Court: Certainly.

Q. When did gravel first come into extensive use in the making of concrete?

A. The first gravel that went into concrete in this country was about 1904 or 1905. That was in a very limited way, under pavements. Up until that time it was not considered concrete material.

The Court: Now it is considered concrete material to the extent that you have gone out of the cracked stone business and into the gravel business; is that right?

The Witness: Yes, sir.

Q. When did that occur?

A. That I quit the cracked stone business?

Q. Yes.

A. In 1921, I think.

Q. What was the cause of that, Mr. Shaw?

A. It occurred to me that if you could find gravel deposits of sufficient magnitude where the gravel content predominated, as it does in the Ringwood property, for instance, if you could produce it so much cheaper than you could produce broken stone

—

Mr. Frazer: I object.

A. Broken stone, he asked me about.

The Court: I will allow it. I will allow him to finish the answer as to why he went into the gravel business.

A. That the stone man hadn't any chance to live against the gravel man.

Q. Now does the year 1921 in a general way mark the period when the great advance in the use of gravel where crushed stone had formerly been used, took place?

A. No, no. They had been using it theretofore with all the gravel they could find in the market.

Q. How long before that?

Mr. Frazer: I object to that as immaterial.

The Court: I don't know. I will let Mr. Hunt continue if he thinks it is material.

A. It had a gradual advance from about 1904, 1905, up until about 1912, 1915. They used all the gravel they could get.

Q. Is the use of gravel today on the increase or on the decrease as compared with the use of crushed stone?

A. All that is being produced is being used. The use of concrete, I think, is increasing rapidly, consequently the use of gravel and also the use of broken stone in the absence of gravel is increasing.

Q. Now what two factors determine whether or not gravel deposits have any commercial value?

Mr. Frazer: I object.

The Court: He has already answered that, Mr. Hunt.

Mr. Hunt: That is true, yes.

Q. State whether or not gravel from the deposits

on the property under consideration could be put into Newark Bay market at costs that would enable it to compete with gravel from Long Island coming into that market?

Mr. Frazer: I object.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may have an exception.

Q. You say you have bought gravel lands on Long Island?

A. Yes.

Q. How recently?

A. Four years—four or five—five years, I guess. Four or five years.

Q. You know of purchases made by other concerns of Long Island gravel lands?

A. Yes.

Q. What in your opinion is the value of the gravel bearing lands as shown on the map exhibit within the lines of this taking?

Mr. Frazer: I object.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may have an exception.

Mr. Hunt: Cross-examine.

Mr. Frazer: No question.

The Court: That is all, Mr. Shaw.

Mr. Hunt: That is all, Mr. Shaw.

The Court: I am wondering whether both of you can finish your summations tomorrow. In that event ——

Mr. Hunt: I think so.

The Court: Do you, Mr. Matthews?

Mr. Matthews: I will be guided by Mr. Hunt's summation.

The Court: That is a matter that we will meet when we come to it. My practice always has been not to limit counsel in their summation. This is a matter of so great importance that it is a case that I would wish to follow my usual practice particularly, and I doubt very much whether my charge to the jury will take an hour. I am not sure, but I doubt very much that it will take that long, and may only take half of it. Now, it seems to me, then, we could finish day after tomorrow at the latest if we do not have a view, and if we do, we could surely be finished by Friday. As I have indicated to you gentlemen before, I do not wish to give this case to the jury at a late hour.

Mr. Matthews: If that is the case, we ought not to start the summing up tomorrow even if we finish the testimony tomorrow. It would be very nice if we could divide our summation so that we could be through by noon time.

The Court: Well, if you finish the summation by the adjournment hour tomorrow we could dismiss the jury and I could charge them fresh the next morning.

Mr. Hunt: May I put a question about this summation business? As I look at the situation, it seems to me that there rests upon us the affirmative burden of maintaining that this property is worth more than $600,000 that they now admit through the witness Hershfield they offered us. That being so, I think it is our right to have the last word to say to the jury.

Mr. Matthews: We decided that at the beginning of this cause.

Mr. Hunt: When your Honor's decision was made at the beginning of the trial the case was not as well known to the Court as it is now, surely, and certainly I suppose your Honor—at least I do not know—but I would be very glad if the Court charged the jury that the result in the former trial of this case was a binding guide, and it was for the Water Supply Commission to demonstrate that it was not. In that case, it would be perfectly proper for them to have the last word, but if the instruction to the jury is that the Water Supply Commission offer having been admitted, and no more, it is for us to demonstrate that the property is worth more than that, the burden is on us under every rule. He, who has the burden, is entitled to the last word.

The Court: Yes, but the State on the other hand also appealed, and the State said something different, and why can't you say that the burden is on the State.

Mr. Matthews: We took it.

The Court: Equally, with your argument ——

Mr. Hunt: Because the only figure before the jury is what your Honor pleases to call the State's offer to us. Now, if there were another figure, if there were a former adjudication before the jury, having prima facie weight as evidence, or as a finding of the value, then their position would be quite right. If this case so stood, that the award below was prima facie evidence of the value of the property, that the representatives of the Water Supply Commission had to overcome, then it would be right to give them the last word, but I do not understand that to be the case. No evidence concerning that award has been offered. I am ready to offer it if the Court is willing to permit it to be offered.

The Court: The Court is not.

Mr. Hunt: No, no. Then, the only thing is their proof that they made us an offer of $600,000 for this property. Now, that puts upon us the burden of proving that it is worth more. That is the only sum before the jury at all. They have offered $600,000. We claim more. We have got to prove more. Now, he who is required to prove, is entitled to the last word. That is the rule in every cause and court, as far as I know, no matter what the nominal position of the parties on the record may be. The real situation is: Who is to carry the burden? Now, we have to carry the burden because, your Honor will probably charge the jury that the Water Supply Commission is not bound to any extent beyond the amount that it offered. Your Honor will probably charge they are bound up to the amount of that offer.

The Court: I had not intended doing that.

Mr. Hunt: No, not even that. Then, the burden is upon us to prove the value in so far as we claim it to exceed by one dollar the estimate of their highest witness, whether it be Hershfield or Fay. I do not remember. They were close together. One was a little closer to the other, and say it was $450,000 that was testified to by the other. If we say the value is $451,000 we must carry the burden of proving it.

The Court: I do not see it that way. Here is a double appeal. Here is the award of Commissioners that was appealed from by both of you, and it does not seem to me either of you carry any burden. I shall make that clear to the jury, if it will help the situation. The issue is what is the market value at that time, and one asserts one thing and the other the other, and you are both under equal duty to carry the burden of your testimony.

Mr. Frazer: I thought this whole matter was settled in a preliminary motion.

The Court: That was the theory I went on when we discussed this at the very outset of the case. The general rule seemed to be, as I then understood it, that the owner of the property had the last say.

Mr. Hunt: That is what the Bonnell case held.

The Court: That is what Lewis said.

Mr. Hunt: That is what the Supreme Court said in the Bonnell case, which is the only case we have in the State.

The Court: But in view of the fact that the other practice was the one that had been followed before the Commission, it did seem to me that was the more orderly way to do it. Under these circumstances, I do not think it is a matter of any great importance one way or the other, but it does seem to me inasmuch as we had started with that proposition you better finish it. You took exception at the time to my ruling to that effect, and I do not think there is any necessity for your doing it again, but you may if you wish, in view of the fact that you have again at this time raised the point.

Mr. Hunt: Yes, if your Honor will permit me then, I will have it noted that we now request the right to last address the jury in the summing up of the case, and our request is overruled, and we have an exception.

The Court: You may have an exception.

Clifford F. McAvoy, sworn.

Direct examination.

By Mr. Matthews:

Q. Mr. McAvoy, where do you live?
A. I live in Newark.
Q. Are you the owner of property called Rotten Pond?

A. Well, the natives call it Rotten Pond, and myself and associates own the majority stock in the corporation.

Mr. Lewis: If the Court please, I object—go ahead, Mr. Matthews.

Q. And yourself and your associates own the majority stock of that corporation. What is the corporation called?

Mr. Lewis: I object to that question as irrelevant, incompetent, and I object to any inquiry from this witness as to the Rotten Pond property.

Mr. Matthews: It certainly is competent, not only in rebuttal of what has been said concerning the testimony of Mr. Hershfield, but it is competent in rebuttal beyond that. That is why Mr. McAvoy is offered. Mr. McAvoy is offered in answer to the statement that the testimony of Mr. Hershfield concerning the Rotten Pond was purchased at a certain time was not true, and that is the only purpose I put him on, although I construe that he would be competent even beyond that in rebuttal.

Mr. Lewis: This is an entirely collateral inquiry, sir, that is now being entered upon and may throw some light, if it were pursued far enough, and we had an opportunity of answering what is now attempted to be proved—it might throw some light on the value of the Rotten Pond property, but it would not throw any light—admitting it would throw some light on this, it would throw no light whatever upon a sales price of the property, which is the only thing which we are interested in.

Mr. Matthews: I offer this witness to disprove the allegations that the title to this property did not pass at a certain price per acre in the year that Mr. Hershfield testified it did. I do offer it for that purpose, and I am going to be able to show by this witness the price that he, the man referred to by Mr. Hershfield, paid, because Mr. Hershfield's testimony was attacked on the ground that the title was in Ramapo Park—just as Mr. Bugg in their testimony said he operated as the Bugg Realty Company, and every other corporation—and I construe it to be my right to show that this man, Mr. McAvoy, has control of the assets of this company, which I am prepared to show was land and the land alone, and what he paid for it as land.

The Court: But Mr. Bugg did not testify with respect to values of lands, did he?

Mr. Matthews: No. I offered that as a simile to the proposition of title. Your Honor is familiar enough with business negotiations to know that where the assets of the corporation are land, and stock is issued for the assets of the corporation, that the stock and land are interchangeable in value. I can get that for your Honor, if your Honor desires it. The purpose of this witness is to refute in rebuttal what was brought out in cross-examination of Mr. Hershfield, that the title to this property is not in the man who he said paid so much for it.

Mr. Lewis: It might be well if Mr. Matthews would be good enough to indicate precisely the testimony on our side which is now attempted to be rebutted by this witness.

The Court: He has done so.

Mr. Lewis: I don't understand it, your Honor.

The Court: Because Mr. Hershfield made the statement in his examination that the Rotten Pond was comparable property and had been sold within two or three years at a certain price. Now on cross-examination it was brought out that there had been no sale of property; that the title had not been changed from a corporation, that is, prior to the time Mr. Hershfield referred to and the present time. And then in answering that the testimony now sought to be elicited is that, while it is true that the title remains still in the same corporation that it did theretofore, the stock of that corporation or 70 per cent of it or some other percentage of it has been acquired by this man, which Mr. Matthews says is tantamount to a sale of the property. Now the point that Judge Lewis makes, I understand, is that that is not competent and is inadmissible for the reason that it is not the test that the law says may be used to show values, for the reason that it goes into a collateral matter, and if the testimony is allowed that Mr. McAvoy purchased a percentage, even a controlling percentage, it would be necessary, in order for that to be evidential, to delve into all of the transactions collateral to the matters directly in issue here; that is to say, what was the condition of the corporation he acquired a majority interest in? Was the stock hypothecated? Were there debts of the corporation? What were all the circumstances and conditions? Now aren't we going far afield when we use that method to prove value of land? Mr. Lewis, in his work, says, I am told by Judge Lewis, and he has handed me a memorandum this morning which I have not had a chance to examine, but he quotes Mr. Lewis

for authority to this effect: "To render proof of sales competent, they must be for money and not by way of exchange, in whole or in part, or in payment of a debt." Now I will hear you on the question of whether the quotation from Lewis is apropos of this situation.

Mr. Matthews: Why, your Honor, then that would bar all this testimony of market value from corporate purchases. That would be a corporate purchase of assets, leaving the title in the original corporation. For instance, supposing I owned Rotten Pond and I am a corporation with three or four others, and I sell Rotten Pond in this fashion, I sell to Mr. McAvoy 70 per cent of the stock of a certain value per share, and offering him at the same time, as I hope to show, the entire 100 per cent; and that on or about or later than that I purchased more of that stock at a certain percentage, so that the percentage is always above 70 per cent. Now the only assets of that corporation are land. I shall show that there are no debts or liabilities of the corporation, for there was no interest for me to buy nor them to sell. Certainly it is just as much market value as if I said, "Mr. McAvoy, I will sell you 27 acres of this property at $100 an acre." In other words, what Judge Lewis is now handing you is that exchange of properties cannot be shown, although we did not object to it—Bugg yesterday talked about an exchange of properties on the Switzer proposition; I construed that that could not be, but here is a man who owns the entire proposition with several others. He owns 70 per cent of the stock of the corporation which represents the lands, and he paid cash money for it.

The Court: No; he paid the cash money for stock.

Mr. Matthews: He paid cash money for stock which represented land.

The Court: Well, that is the point, did it represent land or did it represent something else?

Mr. Matthews: Well, I will be able to show by a preliminary examination, and offer to do that at this point.

The Court: How could that be met?

Mr. Matthews: Easily enough, if your Honor please.

The Court: By the other side?

Mr. Matthews: Here is a witness on the stand. He says that he bought at that time the assets of that corporation. What were the assets of the corporation? Land. That is all the assets of the corporation were.

The Court: Suppose that he finds that there are encumbrances against the land which he knows nothing of? Suppose that the owner of this 70 per cent of the stock was willing to sell it at a price because he knew forsooth, there was a bad title to some of his land or a questionable title, or because of the fact that there were taxes, or something that had not been paid?

Mr. Matthews: I am prepared to show this title was searched by the Essex Guarantee Company for

this very man when he bought it. I am prepared to show that this man owns this property free and clear of any incumbrances, and with the title guaranteed. Moreover, I do not offer him for its value at this time. I offer it in rebuttal of Houman's testimony. Houman went on the stand and said when Mr. Hershfield testified that this property, Ramapo Park, was bought by Mr. McAvoy that is not so, because the records show it is still in Ramapo Park. Shall I leave with the jury that impression that Mr. Houman gives? Mr. Houman's testimony contained at page 2670 says:

"Q. In other words, out of the 1900 acres conveyed to the Ramapo Park Corporation in 1909 it has conveyed one tract of 32 acres, more or less, and nine other tracts of five acres each, and it retains the title to the remainder of the 1900 acres?

"A. With the exception, I would like to state, that the 1900 acres is an approximation of the acreage, that is correct.

"Q. Well, I was just using that approximate sum. Has your investigation been of such a character as to enable you to say with assurance that this is the very property mentioned by Mr. Hershfield as the Rotten Pond or Lake LaGrande property?

"A. I am satisfied that it is from my examination.

"Q. In what counties does it lie?

"A. Partly in Bergen and partly in Passaic County.

"Q. In what counties have you examined?

"A. I have examined in both Bergen and Passaic Counties.

"Q. Are you familiar with the location of a tract which the witness Fay ——"

And so forth, that is Modeltown.

Now at page 2669:

"Further one from Ramapo Park, Inc., to Fred Borden."

He gives all the transfers from Ramapo Park to Borden, and at page 2667 and 2666:

"Mr. Hunt: No, but Mr. Hershfield testified the sale was approximately two years ago, although that might be wrong by six months in either direction. I submit it is competent for the jury to draw the inference if there was no deed on record there has been no conveyance as long ago as eighteen months to thirty months."

"It might prove that, and it might not," your Honor said.

"Mr. Hunt: I say the jury could draw such an inference because it is a fair inference that the purchaser of a property for which the sum of $260,000 is paid would not run the risks that adhere in leaving a title stand in the seller during all that period."

Your Honor sees therefore to rebut that proposition I have got to produce the man. That is what I am using this witness for. It is absolutely rebuttal.

The Court: Well, it might be rebuttal on the point of explaining that there was no actual sale of the land, but an actual transfer or sale of the controlling part of the stock. It is competent to show that, but you don't offer him for that purpose alone. You offer him for the purpose of showing what he paid for the stock, what proportion of the stock that he bought is to the whole, therefore, deduce from that what the price of land was at the time of this transaction.

Mr. Matthews: I offer him simply to remove from the record the inference that Mr. Hunt wanted to draw that because title remained in the Ramapo Park Corporation that there was no transfer of the land. I offer this man to prove, first of all, that in the year that Mr. Hershfield said he bought 70 per cent of the stock of this company, and then I want to show what were the assets of that corporation. I asked Mr. Bugg that yesterday, unobjected to, and I have him prepared to testify what those assets were. Then, 70 per cent of those assets were those assets. Then, if your Honor holds I cannot ask the question How much did you pay for it, I would desist, but I would argue it with your Honor when I come to that. Mr. Hershfield gave as a sale, or indication of value, something that was not there, he said, because he said title remained in the Ramapo Park Company, and I say the jury could draw such an inference, because it is a fair inference that the purchaser of a property for which the sum of $260,000 is paid would not run the risks that adhere in leaving a title stand in the seller during all that period. If they had any objection to this that was their time. Our door is wide open. They have used the very figure given by Mr. Hershfield. They have said if that figure was paid, that these men would not run the risk of leaving the property in the name of the seller all of that time. If I can not rebut that, then I fail to see what rebuttal is.

The Court: I haven't any doubt but that you can rebut that part of it; but the question in my mind, and the question that Judge Lewis raises, is the propriety of using this testimony for the purpose of showing value of the land at that time. That

is his objection. He does not object, I don't understand, to showing the transactions that Mr. Hershfield testified to, and which Mr. Hershfield called something a sale.

Mr. Matthews: Yes, your Honor.

The Court: And that has been brought out on cross-examination as not having been a sale of the property, technically. Now, I will allow the testimony ——

Mr. Lewis: If your Honor please, right on that point, so long as we go into no collateral inquiry as to the value of the property, that disposes of that point. Now, the question is whether they may offer evidence in rebuttal of what was said by Mr. Houman, who testified to a fact which threw doubt upon Mr. Hershfield's testimony. Mr. Hershfield said there had been a sale of the property. That was his testimony, and nothing else. Mr. Houman went on the stand and said the records of conveyances in Passaic County do not show any such conveyance. That is all he testified to. Now, they may rebut that, if they can, and show that the records of Passaic County do show such a conveyance, and that is the limit of their right, sir, in rebuttal.

The Court: I do not think so. I will allow this man to tell what the transaction was, so that the jury will understand what Mr. Hershfield had in mind when he used the words "sale of the property." But when we get to the point of allowing this witness to testify with respect to all of the details of the transaction, with respect to the price that he paid for the stock so that, on Mr. Matthews'

theory, it might then be deduced by the jury from these circumstances what the land was sold for, or what the land was worth at that time, then I have some doubts as to the propriety of going into that.

Mr. Lewis: As to the other point, sir, if you will pardon my insistence: If Mr. Hershfield says that this plain language which he used:

"Yes, sir, I know of a sale of approximately 2,000 acres in this same territory.

"What is the name of this property?

"We used to call it Rotten Pond. It is now known as Lake La Grande, and I think has another name since.

"Rotten Pond is now known as Lake La Grande?

"Yes. It has been changed. 3,000 acres, 1,960 acres with 100-acre lake on it, four or five miles of road, three buildings, a lodge house, caretaker's house, and a clubhouse.

"Was it sold in its native wildness or rottenness, whatever the case may be?

"Only the pond was rotten, and when the dam raised it ceased to purge and it lost its name. The stuff is not wild. I suppose on that property there has been spent $350,000 in improvements.

"Now, give me an answer to my question. My question was: Was it sold as virgin country?

"It was sold as it was. The nucleus of the development, the lake and the roads.

"What was the price?

"The property consisted of 1,960 acres.

"The acreage was 1,960?

"Yes.

"What was the price?

"$260,000.

"What was the acreage price?

"Approximately $130 an acre, including those other things.

"What was the name of the grantee?

"Also another company, as far as I know.

"What kind of deed was given in that transaction, a general warranty deed?

"To the best of my knowledge and belief, yes."

Now, that is Mr. Hershfield's testimony. It is said now that Mr. Hershfield, when he used the language he did use had in his mind a transaction by which some interest in the property passed to Mr. McAvoy by reason of the purchase of stock in the company owning the land. It is not for Mr. McAvoy to appear to explain Mr. Hershfield's testimony. If Mr. Hershfield wants to correct that testimony and say what I meant was that there was a transfer of stock in the company to Mr. McAvoy, well and good; but to have Mr. McAvoy come in here and open up this whole thing, I submit, your Honor, it is not right.

Mr. Matthews: I think we are rebutting Mr. Houman's statement that there was no sale of the property, as Mr. Hershfield testified. "I say," said Mr. Hunt, "the jury could draw such an inference because it is a fair inference that the purchaser of a property for which the sum of $260,000 is paid would not run the risks that inhere in leaving a title stand in the seller during all that period."

There, their inference was clear. That is why they put Houman on the stand. They opened up the door wide to me to bring in other evidence; but now, according to your Honor's ruling, all I wish to do is to show by this witness, and I hope to argue a bit later with your Honor about value—I won't

ask him about value, as to what came into this witness' possession, in order that we may rebut Mr. Houman's testimony.

Mr. Lewis: But that does not rebut Mr. Houman's testimony. Mr. Houman's testimony was, notwithstanding the fact that Mr. Hershfield said there was a sale, a conveyance of the property by, as he thought or supposed a general warranty deed. Mr. Houman merely says he—he does not say that is not so—he does not say there was not such a deed executed. All Mr. Houman says is that there is no such deed on record in the office of the Clerk of Passaic County. That is all, and that is the point to rebut.

Mr. Matthews: But, Mr. Hunt went right along

Mr. Lewis: It is opening up their case. We would have to start all over again. Just think of the investigation that we would be entitled to make upon the trial of that question of fact. We are not bound by Mr. Matthews' statement nor by Mr. McAvoy's statement or the oath of any witness that they put on the stand, unless we have an opportunity of contradicting the evidence so produced.

Mr. Matthews: We will give you the corporate books of the property.

Mr. Lewis: We would take our own way of investigating, and we have that right, and we would ask your Honor for a postponement of this hearing for a sufficient length of time to make inquiry into that issue, and that is what we would have to do.

Mr. Matthews: I submit, if your Honor please, all I want to do is to rebut the testimony of Houman, and I will stop at that point, and then I would ask your Honor to let me argue whether I could not give the value in rebuttal as well as the other; but I will not ask any questions concerning the value, but I will ask the question that will rebut the statement by Mr. Hunt when he said: "No, but Mr. Hershfield testified the sale was approximately two years ago, although that might be wrong by six months in either direction. I submit it is competent for the jury to draw the inference if there was no deed on record there has been no conveyance as long ago as eighteen months to thirty months. I say the jury could draw such an inference because it is a fair inference that the purchaser of a property for which the sum of $260,000 is paid would not run the risks that adhere in leaving a title stand in the seller during all that period."

There is the proposition they want to make out, that this man whom I am prepared to show, if I were allowed, not only has title, but guaranteed title, that this man did not actually purchase the property. There is their inference. I want to show what this man did to rebut that. It is not that there is a deed on record. It is so preposterous to assume that when a corporation owns assets that consist of land, that in order to sell those assets you have to transfer by deed on record.

The name remaining the same, the assets may be transferred by the transfer of the corporate stock. Mr. Frazer argued that way: "This is not necessarily done by the transfer of a deed," Mr. Frazer said. "It might very well be stated that a sale was made, as far as a real estate expert is concerned, if there were a transfer of the corporate stock of the corporation."

However, your Honor seems to be going to rule that we cannot show value, but we can show the transfer of the title in so far as ownership of the title passed to this man. That is all we want to do in order that Mr. Hershfield's testimony rebutted by Mr. Houman may be rebutted.

Mr. Lewis: Now, then, sir, that is just the point. It has come down to that last point. Now, I again submit to your Honor that if they wanted to prove a transfer of title to this property, it was their duty to do it fully on their main case. When they closed their main case, it was up to us, according to the vernacular, to answer what they had proven. Now, we answered it by saying there was no deed on record such as Mr. Hershfield said he supposed there was, and that is all.

Now, if Mr. Hershfield wants to explain his testimony, that is another thing, because the permission of the Court may be granted to a witness who says "I made a mistake in the way I testified. I did not mean to testify to a sale. I had in my mind a transfer of stock. That is what I meant."

If he wants to show that is what he had in his mind, well and good, but to produce parties to the transaction at this stage of he case, it is beyond any rules of ordinary, regulated trials in court. The only thing to be rebutted, as Mr. Hunt just said again, the only testimony to be rebutted is Mr. Houman's, and all Mr. Houman says is, there is no deed on record.

Mr. Matthews: Mr. Houman says the Ramapo Park deed is on record and shows no transfer from Ramapo Park to Mr. McAvoy. There may be no transfer. There is no transfer from Ramapo Park,

but there is a total transfer of the stock of Ramapo Park, and that is to leave the inference that Mr. Hunt said that no man would pay this money for this land and leave the title on record as it is, and we are entitled to rebut it.

The Court: I shall allow testimony of Mr. McAvoy to rebut that, but you will please not ask him anything about value.

Mr. Matthews: I will not. And, Mr. McAvoy, may I instruct you ——

Mr. Lewis: Your Honor will permit me an exception to the ruling of the Court upon that matter?

The Court: Either at this time, or as the questions are asked, as you please. I think you can now take a general objection to this line of testimony.

Mr. Lewis: I also made objection to the specific question.

The Court: That will be asked on that point, and you are allowed a general exception.

Mr. Matthews: May I, with the permission of the Court, instruct Mr. McAvoy to answer my question literally. Do not mention anything of value, even though you might think you would mention the figure. Just wait at each question for the objection of my opponent.

Q. Mr. McAvoy, do you know the concern Ramapo Park, Inc.?

A. Yes, sir.

Q. How long have you known it?
A. Since September or October, 1924.
Q. In October, 1924, did the Ramapo Park estates, or Ramapo Park, Inc., if you know, own the territory known as Rotten Pond?
A. They said they did.
Q. And what did it consist of?

Mr. Lewis: I object to it as incompetent, immaterial and irrelevant.

The Court: I will allow it and grant you an exception.

A. 2,006 and 7/10ths acres of mountain and lake property in the Ramapo Mountains between Wanaque and Oakland.
Q. Did you purchase the assets of that corporation? Answer yes or no.

Mr. Lewis: I object to that question.

The Court: The objection is overruled.

Mr. Lewis: I object as incompetent, immaterial and irrelevant.

Mr. Matthews: Well, as rebuttal, I think it is competent.

The Court: I will allow it and grant you an exception.

A. Yes.
Q. Did you make an investigation as to what the assets of that corporation were? Answer yes or no?

A. Yes.

Mr. Lewis: I object to that.

The Court: I understand you are objecting to every question along these lines, and I am giving you a general exception. That being so, is it necessary to object to every question?

Mr. Lewis: I suppose it may be understood in the court above that is necessary. I would rather not take any chances.

The Court: Very well, you may then have an exception.

Q. Did or did not the assets of that corporation consist of anything else besides lands and buildings thereon?

Mr. Lewis: I object as immaterial, irrelevant and incompetent.

The Court: The same ruling and exception.

A. They did not.
Q. In the year 1924 did or did you not purchase the stock or any part thereof of the Ramapo Park, Inc.?

Mr. Lewis: I object as incompetent, irrelevant and immaterial.

The Court: I will allow it and grant you an exception.

A. 700 of the thousand shares.

Q. At that time that you purchased the 700 of the thousand shares, did you or did you not cause a search to be made of the title to the property that was the assets of this company?

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial. We will never get through this trial, sir, if we have to go into this.

Mr. Matthews: These are very short questions, and I am holding him to yes or no.

The Court: We are getting now to the point where ——

Mr. Matthews: I won't ask the value. I would rather have the jury exclude it before I argue it. The purpose of this is along that same line to show what the jury might infer, that a man would not run the risk of paying so much ——

The Court: All right, I think this is proper rebuttal.

Mr. Lewis: Don't you see if he testifies he has made an investigation the next is what is the result of that investigation?

Mr. Matthews: No, I won't ask it.

Mr. Lewis: What is the use of asking if you made an investigation?

Mr. Matthews: Leave it to me, Judge, won't you?

Mr. Lewis: All right.

A. I had the title examined by the Essex Title Guarantee Company in Montclair.

Q. Was that before or after you made your purchase?

A. Before making the purchase. Our counsel had a talk with them and they said they had done ——

The Court: Do not tell us.

Mr. Matthews: I consent that be stricken out from the record.

The Court: He has not said what they said.

Q. Your counsel had a conference with them, and as a result of that, was there a title search made?

A. There was.

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled. I will allow it and grant you an exception.

Q. Did I understand you to say that you bought 70 per cent of the stock?

A. Yes, sir.

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial.

The Court: I will allow it and grant you an exception.

Q. And since that time have you held the property?
A. We have.

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial.

The Court: I will allow it and grant an exception.

Q. Have you, since 1924, acquired any of the other stock of the company?

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial.

The Court: I will allow it and grant an exception.

Mr. Lewis: It is going way beyond the time now, in addition, sir.

A. I bought 25 shares last summer.
Q. In addition to yourself, Mr. McAvoy, who are the owners of the balance of the stock of that Ramapo Park, Inc.?

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial.

The Court: What is the competency of that?

Mr. Matthews: To allow my opponents to examine into the proposition as to whether or not there is any diversity of interest here. I will withdraw the question gladly, if they do not want it asked.

The Court: Well, it is objected to, and I think it is immaterial. I will sustain the objection.

Q. At the time that you bought the property, Mr. McAvoy, were there any liabilities of any kind against the property?

Mr. Lewis: I object to that as incompetent, irrelevant and immaterial, and not proper rebuttal.

The Court: I will allow it and grant you an exception.

A. Our counsel made ——

The Court: Was there, yes or no?

A. (Continued.) No.
Q. When you bought the property what buildings were on the property?
A. The same buildings that are there now.
Q. The buildings that are there now?
A. Yes.

Mr. Matthews: Now, I would like to ask that question, and I won't ask it because I imagine your Honor is convinced of the other rule. I would like to have a word in argument.

The Court: You may.

Mr. Matthews: The testimony of Mr. Hershfield was that this property was purchased in the fashion stated. There was no objection to it. He was cross-examined on it. Mr. Houman was put on the stand and testified that there was no record of title trans-

fer. That is to say, that the deed still remained in the Ramapo Park Inc. I submit, since there was no objection to Mr. Hershfield's testimony, and since this witness has now testified that the assets of this corporation was land and the buildings thereon, that he purchased in 1924, 70 per cent of the stock of that corporation, which, of course, represents assets, since there were no liabilities against it, that, certainly and to every intent, was the purchase of the land itself within the true purview of the statute.

In other words, a corporation buys property and does not have title transferred, buys just as truly, if it keeps the name of its predecessor, as if it went and had a deed to itself made out under a new name, put on record, and that is all that was done in this case.

In other words, Ramapo Park, Inc., was a corporation. Along comes Mr. McAvoy and buys 70 per cent at one time and 25 shares at another time, or 725 out of the 1,000 shares of that land. He testifies he has his counsel to get a title company to search the property for him, and after the search he bought the property.

Now, if your Honor please, if he desired, as he did, to keep the name of Ramapo Park, Inc., and did not go to the trouble of having that transferred to himself, or to a new corporation, he being the majority stockholder, that does not interfere at all with market value and market price paid, because the assets of the corporation owned literally, as I cross-examined Bugg yesterday, were land and buildings, the same land and buildings that are on the premises now. Why, it is a perfect earnest of market value, as Mr. Hershfield testified. Mr. Hershfield testified, moreover, to a value that I propose to show by this witness was different. I won't go any further. I am afraid your Honor will rule against me and I might prejudice the proposition.

I submit, therefore, that regardless of what the text book may say, we are entitled to show anything that shows market value. Does the chain of title on record show market value? Not in the least, not in the least. Supposing he had bought 100 per cent of the stock?

The Court: But he did not.

Mr. Matthews: But I am prepared to show that the others who own the rest of the stock hold it at the same price, and that later he bought it at the same price. I am prepared to show that the entire holdings. I am prepared to show what the 100 per cent was, and his value of the 70 per cent. It is perfectly proper to do it. I offer to do it, your Honor.

An attempt, by the technicality of text book, to get out of a comparable property 2,000 acres of it, right alongside of it, at a price which I would hope to show would be illuminating to this jury, therefore, I submit, if your Honor please, that even though the title has not changed on the record, if I show you everybody that owns that title, 70 and some percentage per cent of it in one, the balance of the percentage in others, if I show you that the property was appraised by this man at so much, that they sold it at the appraised value, his percentage and the balance held by others at that same percentage, as I can do, and am glad to do, it seems to me I show market value just so surely as if I went up and paid this money for this property with seven and eight others.

Mr. Lewis: Of course, that is all going upon the assumption of showing it, which assumption, if they endeavor to prove, we would have a right to contradict by evidence and it would go into a collateral inquiry which is forbidden under the rules.

Now to show a fallacy in this thing, to show that stock of a real estate company does not show the value of the land that the real estate company may have, I will give your Honor an illustration cut from a page of my own book. Many years ago, a few of us thought we would make some money out of real estate investment, and we put in a lot of money. Well, we formed a little company, as usual. The land, I think cost us something in the neighborhood of $75,000. Well, we didn't want to pay State taxes; it was not a manufacturing company; we thought we would make the capital small, as it came under the statute, and the result was that the capital stock of that company was $3,000, while the assets were in the tens of thousands of dollars. Now I have seen the other thing done; I have seen business incorporated; I have seen property held by a corporation where the value of the assets, true value, were in no way represented by the stock, which in par value exceeded, oh, tens of times the value of the assets.

Now it is part of the game of life—I do not say it is a good game, but it is a part of the game of life to juggle these stocks, and they do not indicate—the selling price of stocks in no way indicates the value of the property, even if it were permissible to do it at this time, which, as I have before said, is not permissible to do.

The Court: Of course, the corporation that you have reference to that was capitalized at $3,000 and had tens of thousands of assets ——

Mr. Lewis: There the stock would no way be ——

The Court: Could not be sold for $3,000.

Mr. Lewis: No.

The Court: And anybody purchasing the stock in your realty company would not purchase it on the basis of the capitalization of the company.

Mr. Lewis: No, true.

The Court: But would base the price they were willing to pay for the stock on the assets of the corporation that they would then acquire by the acquisition of the stock. So, again—by the capitalization of your company, as in the other illustration that you gave, instead of being nominal, for the reasons that you have given, and were abnormal for the purposes of stock selling or what not—there, again, a purchaser of the stock, or a controlling portion of the stock, would not be deceived at all by the capitalization of the company, but would base the price that he would pay for the stock on the assets of the corporation.

Mr Lewis: Oh, yes; that is very true, sir.

The Court: Therefore, if it be true that Mr. McAvoy was not interested in buying the stock of this corporation, but was interested in buying or getting the ownership in the stock simply as a means of getting the ownership of this tract of land, and if it be further true that the only asset of the corporation was this land, may not the jury infer that when he paid a certain price for the shares of that

stock in the land, it was based entirely on his conception of the value in that tract of land and a conception of the value of the land by the persons from whom he bought the stock? That is Mr. Matthews' point. While we are getting into a collateral matter, it seems to me, on reflection, that this question, predicated on the foundation that has been laid, will be a criterion of the value of this property, and it seems to me further that the extract from Lewis that you give me is not controlling. In the first place, there are no decisions in New Jersey on this particular point that have been brought to my attention, and the reference that you give in Lewis has in mind another situation than the one that we have, distinguishable, it seems to me, from this. Lewis is talking about exchanges, and when he wrote that perhaps had in mind that when two people exchange properties they may put all sorts of fictitious values on their respective properties, and he does not fool anybody except perhaps the man to whom they expect in the future to sell it. In other words, they make the bargain for the exchange of properties, after all, on their own appraisement of the respective properties. But when we take the consideration in the deeds under those circumstances, in view of the fact there has not been actual money paid, as Mr. Lewis says, but something of questionable value, perhaps, something upon which a fictitious or fanciful value has been placed, he says that must not be gone into, because it is not a true criterion. But if it be true, as in the case at bar that Mr. McAvoy, valuing the property at a price, then based the offer he made for the stock on the value that he placed on the property, then I submit it comes without the scope of the extract you have given me from Lewis, and is a proper criterion of market value at that time of the property.

Mr. Lewis: Well, if your Honor please, supposing that it was—in the first place, the evidence was admissible on the production of the main case and might have been put in there at that time; it was possible; although I think myself that the fact that the issue that is framed gives us no notice of any such proofs as that, which would require a lengthy collateral inquiry on our part and a contradiction which would be quite open to us to make of all the facts which the purchaser of the property might relate in regard to his purchase of the stock—the stock—why, it is played with every day. People buy stock and they don't know the value of the property which it relates to. They take the word of something in the newspapers; they take all sorts of talk around the country; and they buy on a chance. The mere fact that Mr. McAvoy was willing to pay the price does not go at all—at least for the stock—go at all to show the sale of a property at a price which has any importance upon this inquiry as to the value of the Ringwood lands.

The Court: I think it is within my discretion to allow them to even re-open their case if need be for the purpose of bringing some testimony in; but aside from that, I do feel that this is in rebuttal of what was brought out on cross-examination and what was testified to upon Mr. Houman's part, and I think it is permissible, within my discretion at any rate, to allow it on that theory. But on the other side of the picture, and answering what you have just said, it seems to me a proper answer to that might be that this is not surprise as a practical matter, for the reason that you understood this transaction as soon as you delved into it after Mr. Hershfield's testimony was given; you immediately

saw that there was not a deed that passed, and you were apprised of the fact that the transaction was a stock transaction, and therefore you have had an opportunity—and yesterday Mr. Matthews announced that he was going to bring Mr. McAvoy—and I will allow you to cross-examine Mr. McAvoy as the majority stockholder, and I will allow you to go into the question of the minority holdings, if you wish.

Mr. Lewis: I have no desire, sir, to make any inquiry, if the Court wants us to try the question—of the whole questions relating to the stock and the stock issues and the value of stocks of the Ramapo Land Company—why, we cannot do it, that is all. We have had no notice and we don't know how to do it at present.

The Court: I will allow you, as I have said, to go as far as you like, properly, in cross-examining this witness.

Mr. Lewis: I am not going to cross-examine him, sir.

The Court: Very well. I will allow the question and grant you an exception, Judge Lewis. I understand that you objected to the question.

Mr. Lewis: I object to the question.

The Court: On the ground it is immaterial and irrelevant?

Mr. Lewis: Yes, sir.

The Court: And I will allow it and grant you an exception.

Mr. Lewis: Yes, sir.

Q. Mr. McAvoy, what did you pay in 1924 for the 70 shares of stock that you bought—70 per cent of the stock?

A. 700 shares of stock, $87,500.

Q. What did you pay for the shares you bought last year in addition?

A. $100 a share.

Q. Who were the other stockholders?

A. Well, now—by that do you mean of my group?

Q. Yes.

A. My brother ——

Mr. Lewis: These questions are all excepted to.

Mr. Matthews: I will withdraw that question.

The Court: Question withdrawn.

Mr. Lewis: There is an objection to each one of those questions.

The Court: I understand it so.

Mr. Matthews: I will withdraw the question.

Q. Then I understand that you have 725 shares out of how many?

A. Out of a thousand.

Q. And that you bought 700 in 1924, and 25 in

A. 1926.

Q. What was the total amount you have paid for the 725 out of a thousand shares?

Mr. Lewis: I object to it as immaterial, irrelevant and incompetent.

The Court: I will allow it.

A. $90,000.

Mr. Matthews: Cross-examine.

Cross-examination.

By Mr. Hunt:

Q. You are one of the contractors for the Water Supply Commission on the Wanaque Reservoir, aren't you?
A. Yes.
Q. What is the volume of your contract in terms of money?

Mr. Matthews: I object to that as immaterial to this issue—volume of his contracts.

The Court: I think it might be admissible on the theory of interest, credibility.

Mr. Matthews: If that is the purpose I have no objection.

The Court: I cannot conceive of any other reason for it. I will allow it.

A. My recollection is about three million two or three.

The Court: Two or three dollars or two or three hundred?

The Witness: Hundred.

The Court: When you talk in millions you must come down to earth for the benefit of the jury.

A. Well, it is the State's money.
Q. You say about two or three million dollars?
A. No ——

The Court: He said three million two or three, and he said he meant two or three hundred thousand, therefore his answer, as I understand, and I will be corrected if I am wrong, is three million two hundred thousand or three million three hundred thousand dollars; is that correct?

The Witness: Yes, sir.

Q. How long have you been working for the Commission?
A. I think it was March, 1923, that we started that contract.

Mr. Hunt: Will your Honor permit me to have a record book brought up from the Clerk's Office?

A. It was March, '24.

The Court: Do you need an officer? Will you please go down and bring it up?

Q. Is the instrument by which you purchased the assets of this company on record?

Mr. Matthews: I submit there is no way ——

A. Simply a transfer of stock, corporate stock.

Q. Mr. Matthews put this question to you: "Did you purchase the assets of that corporation? A. We did, yes, sir." Now is the instrument by which you purchased the assets of that corporation on record?

Mr. Matthews: I submit that that is a technical question in order to make it appear——

The Court: I will allow it.

Mr. Matthews: I withdraw the objection.

A. All the assets of the corporation are represented by deed from some parties to this corporation for the ground.

Q. Well, is that the instrument by which you acquired the assets of that corporation?

A. I think it is the instrument representing all of the assets of the corporation—may be not by which we acquired it, no.

Q. Well, will you answer the question: Is the instrument by which you purchased the assets of this corporation on record or is it not? Yes or no?

A. You know your question was not any too clear in the first place.

Q. Mr. Kelley, read the first question.

(Question repeated by stenographer.)

Q. That is the question you say is not any too clear, eh?

A. Yes.

Q. What don't you understand about it, about that question? Read to him again.

Mr. Matthews: Wait awhile.

A. I told you I purchased stock of that corporation. Now if that is what you mean.

Q. I ask that that be stricken out as not responsive.

Mr. Matthews: He is trying to explain what was not clear, I think.

The Court: I will allow it. You asked him what was not clear.

Mr. Matthews: Go ahead now, Mr. McAvoy.

Mr. Hunt: Well, I asked him what was not clear about my question. Now he begins to talk about something he did.

The Court: I think if you are trying to explain what was not clear about his question I will allow you to answer it.

Q. Are you trying to explain what was not clear about that question of mine?

A. That is what I started to do, yes.

Q. All right. Now you say what is not clear about that question, but before you do so I will ask Mr. Kelley to read the question again.

(Question repeated by stenographer.)

A. No, I think it is not on record.

Q. Well, you were going to explain why that question was not clear.

A. All right. I testified that it was—that we purchased the stock of that corporation.

Q. Yes.

A. Now I didn't know whether you referred to that stock or whether the company had a deed.

Q. I see. Now you also testified as follows:

"Q. (By Mr. Matthews.) Did you purchase the assets of that corporation? A. We did, yes, sir."

Now you say that the instrument by which you purchased them is not on record. Now are you the president of the corporation that now owns the Rotten Pond property?

A. Yes, I think I am.

Q. Did you become president of it at or about the time you acquired the 70 per cent of the stock?

A. Just at that time, yes.

Q. Yes. Did you ever talk to Mr. Hershfield about your acquisition of the stock?

A. Yes.

Q. When was that?

A. Last Sunday.

Q. Ever before that?

A. I don't think so.

Q. I want you to search your recollection.

A. I certainly have no recollection of having talked to him.

Q. You have no recollection whatever of having talked with Mr. Hershfield about having purchased the stock of this company since last Sunday—or before last Sunday, eh?

Mr. Matthews: I object. He said I have no recollection. He did not say I have no recollection whatever.

Mr. Hunt: I asked him whether he has any recollection whatever. That is what I am asking.

Mr. Matthews: You have not asked it. You said, "You say you have no recollection whatever." Now he has not said that. He said he has no recollection, and recollection is memory, and there may be memory that is not at the surface now.

The Court: What is the question?

(Question repeated by stenographer as follows:)

"Q. You have no recollection whatever of having talked with Mr. Hershfield about having purchased the stock of this company before last Sunday, eh?")

A. No, I have no recollection of it.

Q. What date was last Sunday?

A. I don't know.

Q. What?

A. I don't know.

Q. Look and see.

A. This is a pretty small calendar I have here. January 30th.

Q. 1927?

Mr. Matthews: Last Sunday, I think you can take judicial notice of.

The Court: The record would not take judicial notice of it.

A. 1927.

Q. Are you sure that you talked with Hershfield about it last Sunday, January 30th, 1927?

A. Yes. I did not attach any great importance to it. I think it was last Sunday.

Mr. Hunt: May that be stricken out as not responsive to the question, and the question read again?

Mr. Matthews: I submit that answer is responsive. It is abusive, the question is, and the answer is responsive.

The Court: Read the answer.

(Answer repeated by stenographer.)

The Court: I think it is responsive.

Q. Is that the best answer you can make? Now look at me, please. Is that the best answer you can make?
A. I think so, yes.
Q. Where did this talk take place?
A. At my house.
Q. Where do you live?
A. In Newark.
Q. What is the number?
A. 336 Park Avenue.
Q. Anybody else present at this talk?
A. My wife was there. She did not sit in the room with us.
Q. Was there anybody else sitting in the room?
A. No.
Q. Sure?
A. Certainly.
Q. What time of the day did that talk take place?
A. In the afternoon.

Mr. Matthews: I object.

The Court: I will allow it.

A. In the afternoon.

Mr. Matthews: This is an attempt, if your Honor please, to browbeat this witness, that is what it is, and on that ground I object to it. Here is a business man of the City of Newark being subjected to an examination as to the details of a conversation in his home with Mr. Hershfield as to the presence of parties. So purely to raise a smoke screen, because forsooth he has testified to an appalling fact as far as they are concerned.

The Court: I will allow it.

Mr. Matthews: May I have an exception?

The Court: Yes.

(Answer repeated by stenographer.)

Q. What time in the afternoon?
A. Oh, I would say about from four to six.
Q. Between four and six. Was Hershfield there for that length of time, do you mean?
A. Yes.
Q. Two hours?
A. Yes.
Q. You are sure your wife was not in the room during any part of the conversation?
A. Oh, she said, "Hello," to him. I do not think she sat in on any of this conversation, no.
Q. Did she sit in the room long enough to hear any conversation?
A. I don't think so.
Q. What is her first name?
A. Bernice.

Q. She lives at that address also?
A. Yes, sir.
Q. Did anybody come with Hershfield?
A. Yes.
Q. Who?
A. A Mrs. Brensinger, I think—I am not just sure about that pronunciation—and two delightful young boys one about 12 and the other a little older.
Q. Where does Mrs. Brensinger live?
A. I haven't the slightest idea.

Mr. Matthews: Mr. Hersfield can tell you that.

Q. Did she stay in the room during any part of the conversation?
A. No, sir, she did not.
Q. What makes you think that was Sunday last, the 30th day of January?
A. Well, I have been home for the last two weeks ill, and I—in fact, today is the first day out, and my ——
Q. Look at me, please.
A. My notion is that it was last Sunday, but if you are home for two weeks straight, days do not have any importance much.
Q. Last Sunday is three or four days ago. This is Thursday. Can't you remember sure whether it was last Sunday or not?
A. I would be quite positive about it if you were not so determined that maybe it were not.
Q. I have not intimated or suggested—I am asking you whether it was last Sunday.
A. Well, I thought it was.
Q. Are you quite sure that it was last Sunday?
A. I am quite positive.
Q. Yes. I myself, I tell you frankly, Mr. McAvoy, know nothing about it. I only want to know from you. You can shorten your examination if you would tell me that you are quite positive it was last Sunday.

Mr. Matthews: He can shorten the examination by going to a material point.

Q. Unless you will tell me it was—quite positive it was last Sunday—I am going to ask you about every other day.
A. I have already done that.
Q. You are quite positive it was last Sunday?
A. Yes.
Q. Now are you quite positive that you had not at any time before spoken to Mr. Hershfield about this matter?

Mr. Matthews: He said he had no recollection, if your Honor please, therefore he cannot be positive.

Mr. Hunt: I am putting two or three questions to the witness, your Honor, and I respectfully request that the Court will control counsel, as the witness is required to have too much time for reflection.

The Court: There is objection to the question.

Mr. Matthews: Because he has stated he has no recollection.

The Court: It is a new question and there is a different question, and I will allow it.

(Question repeated by stenographer.)

A. No; I spoke to him a number—I have spoken to him a number of times in the last several years about this matter.

Q. Oh, well, then, why did you tell us a little while ago that last Sunday was the first time you had spoken about it?

A. Because you asked me specifically about a sale of the stock. The other time of this talk you asked me about this matter.

Q. That is what I am asking you about now.

A. You didn't say that.

Q. All right.

A. You said this matter.

Q. All right. Now by this matter I mean the matter we were talking about, namely, your purchase of 70 per cent of the stock of the corporation that owns the Rotten Pond. Did you ever, prior to last Sunday, tell Mr. Hershfield about it?

A. Oh, yes.

Q. When?

A. Oh, I think I talked to him about it before we actually bought it, or just about that time, in the fall of 1924.

Q. Now you paid $125 a share?

A. Yes.

Q. For the 70 per cent, didn't you?

A. Yes.

Q. When did you buy that?

A. In late October or early in November, 1924.

Q. And you paid $100 a share for the 25 shares, didn't you?

A. Yes.

Q. When did you buy that?

A. Last summer, summer of 1926.

Q. The company lost money since then, had it, between 1924 and 1926?

A. No, it had not lost any.

Q. The property had depreciated in value in that time, had it?

A. I don't think so.

Q. Had it appreciated?

A. Yes.

Q. Which represents the value of the property, $125 per share paid in 1924, or $100 per share paid in 1926?

A. I think $125 per share represents the value.

Q. Have you got a balance sheet of the corporation as of October, 1924, with you?

A. Oh, no.

Q. Have you any statement of assets and liabilities as of October, 1924, with you?

A. No.

Q. Have you got the certificate of incorporation of the company with you?

A. No, sir.

Q. Have you got the by-laws of the company with you?

A. No, sir.

Q. Have you got any of the corporate books or records with you?

A. None whatever.

Q. Have you got the deed by which the corporation became the owner of this land with you?

A. No, sir.

Q. I will show you the record of the deed. First I will ask you something. Does the company own that land free from restrictions?

Mr. Matthews: The question is whether he purchased it. That is the proceeding. That is the cross-examination of this witness.

Q. Does your company own this land free from restrictions of any kind?

Mr. Matthews: I object, because he is now going to the restrictions that were put on the land by the new owners. I think that their cross-examination must be: "Did you buy this property without restrictions?" We have no objection to that.

The Court: I will allow it, because it may have some bearing on the price of the stock.

Mr. Matthews: He is asking him about restrictions after the company took possession of it. What it may have done afterwards has nothing to do with its purchase.

The Court: I did not understand that to be the question.

(Question repeated by stenographer.)

Mr. Matthews: Does it own it now?

The Court: What is the materiality of that, Mr. Hunt?

Mr. Hunt: Well, if it is restricted it seems to me it has a bearing on the value of the land.

Mr. Matthews: The value when it was purchased —restrictions when it was purchased.

The Court: They may have built a lot of improvements on it now, Mr. Hunt, which would not be material. They may have built a lot of roads since they acquired the property.

Mr. Hunt: I am not asking about any roads.

The Court: You are asking about something that seems to me tantamount to that.

Mr. Hunt: All right.

Q. Are the conditions of the title of that property of such a character that I can go up there and buy a half an acre and build a bungalow on it?

Mr. Matthews: I object to the conditions of the title now as immaterial. The inquiry is what he paid for this property at a certain time. That is what I have examined him on.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may.

Mr. Hunt: Moreover your Honor, upon the theory that this Rotten Pond property was offered as a comparable property to that under condemnation as of the date of March 19th, 1925, I now offer the deed contained in Book Q-31, Passaic County, showing the existence of restrictions with regard to the Rotten Pond property of such a character that the jury would be permitted to draw the inference that the restrictions served to depreciate the value of the property.

Mr. Matthews: I object to that statement, if your Honor please, and I object to the evidence on the ground that it is restrictions in a deed after the pur-

chase of this property by this man, and when he says the restrictions depreciated the value of the property he knows he misstates it, because the restrictions that are put on would appreciate the value of the property, perhaps. So I submit that restrictions that have been put on when this man sold in there is immaterial to this cross examination. The question I have no objection to is, "Were there any restrictions on it when you bought it at such a price that you testified?"

Mr. Hunt: If your Honor will rule on the question I will pass on.

The Court: I will sustain the objection.

Mr. Hunt: May we have an exception?

The Court: You may.

Q. Did you ever at any time tell Henry G. Hershfield that you had paid $260,000 for the Rotten Pond property?

A. No, sir.

Q. What?

A. No, sir.

Q. Did you ever at any time tell Henry G. Hershfield what you had paid for the Rotten Pond property?

A. I don't think I did.

Q. Did you ever at any time tell Henry G. Hershfield that you had paid $260,000 for the capital stock of the corporation owning the Rotten Pond property?

A. No, sir.

Q. Or some part of said capital stock?

A. No, sir.

Q. Did you ever at any time tell Henry G. Hershfield that you had acquired the Rotten Pond property by a general warranty deed?

A. I don't believe so.

Q. Did you ever at any time tell Henry G. Hershfield that you had a good title to the Rotten Pond property?

A. I told him I owned it.

Q. Read the question, please, Mr. Kelly?

A. I heard the question and the answer is no.

Q. Are there any streams on the Rotten Pond property?

A. No; there are no permanent streams.

Q. How far is it from the lake to the extreme northerly end of the property, the Rotten Pond property?

A. I think it is pretty close to three miles. I have never walked it or measured it exactly.

The Court: The jury did, and they think it is thirty.

Q. You have never measured it or walked it, eh?

A. No.

Re-direct examination.

By Mr. Matthews:

Q. Mr. McAvoy, did you ever use the figures $260,000 with Mr. Hershfield in discussing this property?

A. I don't think I did.

Q. Did you ever discuss figures with him, do you remember?

A. I haven't any definite recollection of having discussed figures with him.

Q. Will you say that you did not discuss figures?

Mr. Hunt: I object. He has been examined on it and he has answered it, and this is a re-direct examination.

Mr. Matthews: I am searching his recollection, because my opponent is going to tell the jury because, forsooth, Hershfield remembers a figure that this witness does not remember, forsooth, Hershfield is a liar. I just want to search his memory.

The Court: I will allow it.

(Question repeated by stenographer.)

A. No; I won't say that I did not.

Q. That is all, thank you, Mr. McAvoy.

Mr. Hunt: That is all.

The Court: That is all, Mr. McAvoy.

COURT'S CHARGE TO THE JURY.

Members of the jury, I join with counsel for both sides in expressing thanks to you all for the patient and attentive way you have performed your duties. This case has taken a long time to try. As I recall, it was begun on the 3rd of January, one month ago yesterday. It was necessarily a long and tedious trial. Perhaps the court is to blame more than counsel for the time that has been consumed in that perhaps I might have shortened it by making suggestions and stopping some of the details that were gone into. It did not appear to me, however, to be fair to do that, nor wise, considering the magnitude of this case and its importance, and for that reason I permitted counsel to try it in their own way and take all the time that they considered it necessary to take. This case is tried by you as struck jurors. The law requires that there be struck jurors to try a case of this kind, and the struck jurors are selected by the court, and the court and the court only is responsible for the names that are selected on that panel, and you are twelve people of forty-eight that the court selected, to make up the panel from which these twelve were to be chosen; and that being so, it is with a peculiar pleasure that I add my thanks to that of counsel after the inconvenience and the quantity of time that has been taken out of your other activities to perform this important public service. I shall try to refer to the respective parties to this controversy in the course of my charge as the owner and as the Commission, as a matter of convenience. Now under the basic law of this State, the Constitution and the Statute Law based thereon,

no private property can be taken for public use without there be just compensation paid to the owner. The State has the right for public purposes to take private property, and the State may delegate that right to municipalities, to other subdivisions of the State, and to certain quasi-public corporations. In this case the Legislature created a Commission, known as the North Jersey District Water Supply Commission, and invested it with the power of eminent domain. Its duty is to conserve and provide the potable waters, and in pursuance of that duty it decided to impound the waters of this valley for potable purposes and build thereon a dam and reservoir. It found it necessary, in pursuance of that great work, to take the lands of the owner in this case, and it negotiated through its representatives and members of the Commission with the owner, I think the testimony is, for the purchase of that land, and to compensate the owners for such damage to contiguous land as might be shown. The negotiations were not successful. They could not agree upon a price. It, therefore, became necessary for the Commission to apply by petition to the Supreme Court Justice holding this circuit, who has power under the law, jurisdiction under the law in that respect, to appoint Commissioners to fix the value, and the Supreme Court Justice did appoint three disinterested Commissioners, who had hearings and viewed the property and then made an award. The award that was made by that Commission need not and did not have to be accepted by either the owner or the Commissioners. As a matter of fact it was not accepted by either. Both of the parties to this controversy appealed from that award. Presumably the owner appealed because he thought the amount was inadequate, and presumably the Commission appealed because it thought the amount was too high. So they have come here, as they have a perfect right under the law to do, and ask that the matter be tried anew; that a jury be impaneled to try the issue. That is how it comes before us. We have nothing to do with the Commission; we have nothing to do with the findings of the Commission, as far as your consideration of this matter is concerned it is as though there had been no Commission hearings. There has been no testimony adduced before you as to the amount of the award of the Commission. Nevertheless, you may know what the amount of their award was, because I myself since the beginning of this trial have seen the figures in the newspapers, and so I say to you that if you know, because of having been told outside of this Court room or having read in the paper what that award was, I must ask you to obliterate it from your mind, because it is not evidential before you, and it has absolutely nothing to do with your deliberations. The issue that is before you is framed in the only paper that I will submit to you, and it recites the fact that there has been an appeal by both sides, and it is the order of the Court framing the issue, and it recites, as I have said, the fact that there was an appeal by both of the parties to this Court from the award of the Commissioners, and then describes by metes and bounds the property taken, I think it consists of some fifteen separate and distinct tracts of land, and then frames the issue. Leaving out the names and substituting owner and Commission, the issue is as follows:

"The said jury shall assess the value of the lands of the owner, the Ringwood Company, taken and appropriated as aforesaid by the Commission for

the purpose of constructing a new and additional water supply at Wanaque in the County of Passaic, State of New Jersey, which said lands are hereinbefore particularly described, and the damages sustained by reason of such taking." Now that is the issue that you are to decide. And that means that the duty that devolves on you is to find the facts from which you will be able to decide that issue. It is the province of the jury to find facts. That is, the fact that you must find is: What is the market value of the property that has been taken, plus the consequential damages, if any of the contiguous lands of the owner? I will refer more particularly to that later on. It is the function and the duty of the Court, on the other hand, to explain to you the law governing this situation and you must, of course, assume that what the Court tells you is the law, is a correct statement of it. That will be your guide in arriving at your decision, what the Court tells you in this charge is the law which must govern you. I have been asked by counsel for the owner to charge you with respect to the law in sixteen separate and distinct matters or paragraphs. Many of the matters that he has asked me to charge I had already prepared in my own charge, in my own language. However, and for fear that I have not adequately expressed the thoughts that are in his mind I, at the expense of some repetition, will charge as requested by counsel for the owner, save in one respect, and that is with respect to Paragraph 15 which I refuse to charge. In all other respects as I am about to read, I charge that the law is as follows:

1. All compensation for the taking under these proceedings must now be allowed to the owner of

the property taken once for all, including all damages that the owner may ever hereafter sustain due to such taking, inasmuch as any damage that the owner may hereafter sustain for all times to come on account of the taking under these proceedings cannot be hereafter recovered.

2. The amount of compensation should be made upon the basis that the condemning parties will make the most injurious use to the owner that can lawfully be made within the right taken by them as disclosed in their petitions.

3. That the jury should take into consideration and determine under the evidence in the case the best use to which the property taken is adapted, and award to the owners such sum as in their judgment will afford the owners just compensation for the lands taken in view of such use.

4. In estimating the value of the property taken from the owners, the jury should consider all the capabilities of the property, and all the uses to which it may be applied or for which it is adapted.

5. That when the jury have determined all the capabilities of the property and all the uses to which it may be applied and for which it may be adapted they are to estimate its value in relation to such capabilities, uses and applicability, and not merely in relation to the condition it was in on March 19, 1925, and the use to which it was then applied by the owner.

6. The ultimate question for you to determine is: What is the property worth in the market view not

merely with reference to the uses to which it was applied at the time this condemnation proceeding was commenced, March 19, 1925, but with reference to the uses to which it was then plainly adapted. That is to say, the question is: What was the property worth on that date from its availability for valuable uses? The property is not to be deemed worthless because the owner lets it go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it and make it subserve the necessities or conveniences of life. This capability of being made thus available gives it a market value which can be estimated by you.

7. It would be contrary to economic law and repellent to common justice to permit the fact that the lands are selected by the Water Supply Commission because of their availability for Water Supply purposes, to strip them of any element of value which, independently of the Water Supply Commission and prior to its taking, they possessed. The owner is to be given by way of compensation for the land its fair price for any use for which it has a commercial value of its own at the time of the taking or in reasonable anticipation in the near future. It is for the owner's deprivation of any existing value that the owner is to be compensated.

8. The special value of land due to its adaptability to use in a particular business is an element which the owner is entitled to have considered in determining the amount to be paid as the just compensation upon a taking by eminent domain. And while the witnesses offered for that purpose by the land owner were not permitted by the Court's rulings to testify to the value of the land for water supply purposes or to testify to its value by reason of the presence of gravel deposits upon it, the jury are nevertheless entitled, having seen the land and having seen the gravel deposits, and having heard testimony concerning the adaptability of the land for use for water supply purposes, and having heard testimony regarding the extent and character of the gravel deposits, to consider and determine what the value of the land is considering its adaptability for water supply storage and considering the adaptability of the gravel deposits.

9. When you have determined the value of the property as of March 19th, 1925, your verdict shall be for the amount so found by you, to which sum, upon the return of your verdict, the Court will add interest at six per cent. from the 17th day of April, 1925, on which date the owner permitted the Water Supply Commission to have possession, it having been retained by the Water Supply Commission ever since.

10. Under the statute by which these proceedings are governed the Water Supply Commission has the right, if it desires, to abandon these proceedings at any time within twenty days after the rendering of your verdict, upon payment to the owners of their reasonable costs, expenses and counsel fees to be determined by a Justice of the Supreme Court, and upon filing a discharge of lien of notice of *lis pendens*. On the other hand, the owner cannot in any manner prevent the Water Supply Commission from condemning and taking the property if it desires to do so. His only right is to make claim to the compensation to which the law entitles him.

11. In the foregoing statements in regard to the amount of compensation to which the owner is entitled, the Court has referred only to the value of the property taken. You are to understand, however, that the owner is also entitled to be compensated for any damage which the taking does to its contiguous lands which are not taken. You are not to bring in a special verdict for the amount of this damage, but if you find that the taking does any damage to lands not taken, you are to add the amount of such damage to the amount of damage you find for the lands to be taken.

12. In cases of this kind, no amount can be mathematically fixed as to the amount of your verdict. You must therefore trust somewhat to your own judgment in arriving at this definite amount, and one of the objects and purposes of the view which you have made is to enable you to use your own senses and judgment by obtaining such information as an eye witness can gain of the general quality and condition of the land, the uses to which it has been put, or to which it is applicable, and better to understand and apply the evidence of the witnesses who have testified before you. If, in your judgment, the evidence is conflicting as to the value of the property taken and the injury to the balance, you should resort to the knowledge gained upon your view as bearing upon the weight to be given to the various and conflicting statements and estimates.

13. The fair market value is the price at which a man willing but not bound to sell can obtain from one willing but not bound to buy, and, when such value is determined, it is a matter of indifference, and one not affecting market value, that the seller pays a commission on the sale to an agent.

14. That the jury are to award the owner just compensation for the lands taken from it by the Commission and such just compensation is a sum of money equivalent to the market value of such lands; such market value is the price which you believe that a man willing but not bound to sell could obtain for those lands from one willing but not bound to buy, and, when such value is determined, it is a matter of indifference, and one not affecting market value, that the seller pays a commission on the sale to an agent.

16. The assessed valuation of real estate is not evidence of its market value. There is no evidence before you concerning the assessed valuation of the 2354 acres under condemnation. That is the end of the requests.

Evidence was given as to Mr. McAvoy's purchase of corporate stock in the company which was the owner of the so-called Rotten Pond tract. Mr. McAvoy testified as to what the assets of the company were, its liabilities, and all the conditions at the time when he purchased the stock. He also testified the price that he paid for the stock, and the number of shares he received, as well as the proportion of the entire stock issued by the company which he had thus acquired.

This testimony was given for the purpose of showing in effect the market value of that property at that time.

I allowed it as being evidential on that point. You, however, are to give it such weight as you may consider it to have in view of all the testimony given by Mr. McAvoy or anyone else as to the details of that transaction.

Much of the testimony given in this case was

given by experts, men who were declared by the Court competent by reason of their business or professional experience to testify, gave their opinions based upon their knowledge and experience.

You are the sole judges of the weight to be given such opinion testimony. You must weigh it from the standpoint of the extent and nature of the qualification of such witnesses. You are not bound to accept their opinions, but may consider them in connection with all other facts in evidence.

In weighing the testimony of experts on real estate value, you may consider the reasons given by them for the opinions which they have expressed on the witness stand. Consider their testimony as to the properties which they referred to as being comparable to the lands taken, and the sales price of such comparable property which were particularly described to you by the various real estate experts.

Adaptability of the property to the purposes for which it could be used most profitably can be considered only so far as the public would have considered it had the land been offered for sale in the absence of the exercise of eminent domain.

The owner is entitled to the value of the property taken. That is, what it fairly may be believed a purchaser in fair market conditions would have given for it, and not what a tribunal at a later date may think a purchaser would have been wise to give.

You may consider the adaptability of the property to the various purposes which have been testified to, namely, for various classes of resident use, for the making of lakes, for the utilization of water power, the gravel and sand contained therein, the timber thereon, and any other use which may have

been testified to. In thus considering its availability for the various purposes, its highest value, you must eliminate from consideration any speculative value, but must base your verdict upon the condition of the property as of the date of March 19th, 1925. The fact that there was gravel and sand on the property in large quantities and of good marketable quality, while a factor to be considered, must be considered as being unmined and as a component part of and not separate and apart from the land. It would, under the law of this State, be improper to speculate as to the cost of mining it and marketing it, and so estimate the possible profit to be made from it, and so enhance the value of the land by any such reasoning, because there are so many contingencies, so many uncertain factors in such a process as to make such considerations too speculative.

Again, as to the use of the land or parts of it for the building of lakes, and the enhancement of values of lands adjacent to such proposed lakes for summer residences, or what not, cannot be considered, because the lakes were not in fact built, and the cost of building the dams and other works necessary and the laying out of plots of land, building of roads and other improvements, is governed by the same rules of law which I have already stated relative to the sand and gravel deposits.

The same is equally true as to the water power possibilities and the availability of the property for reservoir purposes. The owner may, as was done in this case, offer a plan or plans showing possible schemes of development for which the property may be most available, but he cannot go further and describe in detail to the jury a speculative enterprise for which in his opinion or in the opinion of

experts the land might be used and base his estimate of values upon the profits which he would expect to derive from the enterprise.

Another illustration. The owner of undeveloped land cannot introduce evidence of the return he would receive from cutting it up in building lots or plots, since this would involve pure conjecture as to how fast the lots would be sold and the price that each would bring. And the details of other possible improvements and the expected profits therefrom are equally inadmissible for the same reason.

Such evidence does not tend to show market value, since it utterly disregards the fact that other land upon which the same development could be equally well undertaken can be bought at prices determined by cold and unimaginative bargaining between seller and buyer and the immutable laws of supply and demand. As I said, the market value of the property is what must govern you. The market value is the price it will bring when it is offered for sale by one who desires but is not obliged to sell it, and is bought by one who is under no necessity of having it.

In estimating its value all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner, within the rules and limitations which I have already stated.

It is not a question of the value of the property to the owner; nor it is a question as to the value of the property to the Commission. That the property may have to the public a greater value than its fair market value affords no just criterion for estimating what the owners should receive. The

question is, what has the owner lost? What has been taken from him? Not what has the Commission gained.

The compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing conditions or wants of the community, or such as may be reasonably expected in the immediate future.

The highest court of this State has stated the rule in this language:

"The value in the immediate present or in reasonable anticipation in the near future."

I repeat, the condition of the property and all its surroundings may be shown, and its availability for any particular use.

If in the condition it was on March 19th, 1925, it had a peculiar adaptation for certain uses, this may be shown; and if such peculiar adaptation adds to its value, the owner is entitled to the benefit of it; but when all the facts and circumstances have been shown, the question at last is, what is it worth in the market?

Counsel for both sides have very ably, not only tried this case, but have very ably summed up. It has, therefore, seemed to me unnecessary to take more of your time by referring to the evidence or the exhibits or to comment thereon; but if, during the course of my charge, I may have referred to matters in evidence, you are not to consider what I said the evidence was, unless it coincides with your own recollection, because you must decide this case entirely on your recollection of what the testimony was. I may have erred; my memory may be at fault; and in a few instances during the course of my charge I may have referred to some things that were in evidence; only consider that, however, in

so far as it corresponds with your recollection, because the test is not what I may remember of the testimony, nor what counsel may have said about the testimony in summing up, but your recollection of what the testimony is. That is your guide, and on that you must decide this case.

While, of course, the answer to this question as to the market value of this property, as I have spoken of it, may be difficult for you to arrive at, still it is a narrow issue after all. There has been a vast amount of testimony adduced before you, and it is your function to carefully weigh and analyze it, and when you have done so, to render your verdict giving the amount which you find this Commission is to pay the owners of the property for its fair market value as of March 19th, 1925, with interest, which, as I have stated, will be computed by the Court.

With that you may retire.

CONDEMNOR'S EXCEPTIONS.

Mr. Frazer: May it please the Court, I would ask an exception to your Honor's charge of the fifteen requests to charge which your Honor has.

The Court: You may have it.

Mr. Frazer: Beyond that, nothing.

APPELLANT'S EXCEPTIONS TO CHARGE.

Mr. Lewis: If your Honor please, I beg leave to request an exception to your Honor's refusal to charge that the jury in determining the fair market value of the property taken in these proceedings should not take into consideration any evidence given on behalf of the condemnors as to what sums of money was paid by Mr. McAvoy or anyone else for shares of stock in the Ramapo Park Land Company, the company owning the property known as Rotten Pond.

The Court: That is the fifteenth, isn't it?

Mr. Lewis: That is the fifteenth.

The Court: Yes.

Mr. Lewis: I pray an exception to your Honor's refusal to charge that to the jury.

The Court: You may have it. Appellant's 15th request, the failure to charge which was excepted to as above set forth, was in the following words:

"The jury in determining the fair market value of the property taken in these proceedings should not take into consideration any evidence given on behalf of the condemnors as to what sum of money was paid by Mr. McAvoy, or any one else, for shares of stock in the Ramapo Park Land Company, the company owning the property known as Rotten Pond."

Mr. Lewis: I also pray an exception, sir, to that part of your Honor's charge which directed the jury that they might consider the evidence of Mr. McAvoy and the other evidence in the case concerning the purchase of stock in the Ramapo Land Company by Mr. McAvoy and others, and all that your Honor said about that subject.

The Court: You may have it.

APPENDIX I.

Copy of deed, Ryerson to Morris Canal & Banking Co., reserving right to draw on water of Greenwood Lake.

Jacob M. Ryerson & Harriet his wife To The Morris Canal & Banking Company	Transcribed from Liber V-3 of Deeds, page 322.

THIS INDENTURE, made this twenty seventh day of March in the year of our Lord one thousand eight hundred and thirty seven.

BETWEEN Jacob M. Ryerson and Harriet his wife of the township of Pompton in the County of Bergen and State of New Jersey parties of the first part and the Morris Canal and Banking Company of the State aforesaid party of the second part.

WITNESSETH that that said parties of the first part for and in consideration of the sum of Twenty two thousand two hundred and sixty one dollars and fifteen cents money of the United States of America to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowleged and the said parties of the first part therewith fully satisfied content and paid have given granted bargained sold aliened enfeoffed conveyed

and confirmed and by these presents do give grant bargain sell alien enfeoff convey and confirm unto the said party of the second part and to their successors and assigns forever.

ALL those ten certain tracts or parcels of land and premises hereinafter particularly described situate lying and being in the township of West Milford in the County of Bergen and State of New Jersey, which said lands are covered with water by reason of the recent erection by the said party of the second part of a dam across the outlet of Long Pond below its junction with the stream called Belchers Creek.

The First Tract being a lot of swamp land containing seventy two acres and forty four hundredths of an acre lying at the southern extremity of the Long Pond Reservoir of said party of the second part and adjoining the Ringwood and Long Pond Turnpike Road on the south side.

The Second Tract is a lot of meadow land containing six acres and seventy eight hundredths of an acre lying on the north side of and adjoining the said Turnpike road and at the eastern shore of said Reservoir.

The Third Tract is a lot of meadow land containing seventy three acres and fifteen hundredths of an acre adjoining the said Turnpike road on the north side and the last above described lot on the west side, known as the "Long Pond Meadows" and intersected by Belchers Creek.

The Fourth Tract is a lot of meadow land containing five and a half acres lying on both sides of Belchers Creek and on both sides of the Turnpike Bridge crossing said Creek.

The Fifth Tract is a lot of swamp land containing three acres and seven hundredths of an acre lying

northwest of Belchers Creek adjoining lands of Joseph Woodruff.

The Sixth Tract is a lot of meadow land containing twelve acres known as "The Beaver dam" and lying at the south western extremity of said reservoir.

All the above mentioned six tracts or part of lands conveyed by Richard G. Ryerson to said Jacob G. Ryerson to said Jacob M. Ryerson by deed bearing date the twenty ninth day of June A. D. 1821 and recorded in Book S 2 of Deeds for the County of Bergen pages 47 et seq.

The Seventh Tract is a lot of Meadow lands containing sixty nine acres and six hundredths of an acre lying northerly of the above described tracts on both sides of Belchers Creek and known as the Boudinot meadow.

The Eighth Tract is a lot of swamp land containing twenty four acres and fifteen hundredths of an acre lying adjoining the last described lot on the north and known as the Boudinot Swamp which two last described lots are part of a survey returned to the heirs and assigns of the Earl of Perth the twenty eighth day of December A. D. 1789 and recorded in the Surveyor Generals Office at Perth Amboy in Book S 8 page 342.

The Ninth Tract is a lot of meadow land containing five acres lying west of and adjoining the said Boudinot meadow.

The Tenth Tract or lot contains sixty one acres and nine hundredths of an acre and is part of the Great Long Pond tract containing six thousand and eighteen acres and eighty eight hundredths of an acre returned to Oliver De Lancey, Henry De Cuyler and Walter Rutherford at the request of Peter Hausenclover on the thirtieth day of November A. D.

1764 and recorded in the Surveyor Generals Office at Perth Amboy in Book S 5, pages 211 et seq.

The part of said tract hereby conveyed lying along the eastern shore of said Reservoir and extending in a line two chains east of the Raceway half a chain below the line of the new stone dam of said party of the second part and thence westerly parallel with the line of the western section of said dam four and a half chains and thence northerly at right angles with the last line to the water edge of said Reservoir including a small house erected for the gate tender at said dam. Excepting and reserving to the said Jacob M. Ryerson his heirs and assigns forever the exclusive and sole right of fishing below said dam. Provided however that no erection for that purpose shall be so placed as to obstruct injuriously the flow of water through the gates of said dam. Excepting and reserving also to said Jacob M. Ryerson the wood and timber growing and being upon said tracts or any of them with the right of ingress and egress for the purpose of procuring and removing the same. Excepting also and the said Jacob M. Ryerson hereby expressly reserves to and for himself his heirs and assigns forever the right of drawing and having at all times from said Reservoir through the gates of said New Dam so much water as will with the natural flow of the intermediate streams be sufficient for all the necessary purposes of a forge with two fires and a saw mill with one saw at the site of his present Long Pond forge and saw mill he or they being bound to keep the said forge and saw mill dam in good repair and to draw no more water than shall be really necessary for such Forge and saw mill or other works not requiring a greater quantity of water with the right also of using the water to be drawn as aforesaid upon any intermediate works which he or they shall erect between the dam of said Reservoir and said Long Pond Forge. Subject to the exceptions and reservations aforesaid the above described ten tracts or lots of land and premises are hereby conveyed.

TOGETHER with all and singular the profits, privileges and advantages with the appurtenances unto the same belonging or in any wise appertaining also all the estate right title interest property claim and demand whatsoever (excepting as above reserved) of the said parties of the first part of in and to the same and of in and to every part and parcel thereof.

TO HAVE AND TO HOLD all and singular the above described tracts or lots of land and premises with the appurtenances (excepting as above reserved) unto the said party of the second part their successors and assigns to the only proper use benefit and behoof of the said party of the second part their successors and assigns forever. And the said Jacob M. Ryerson doth for himself his heirs executors and administrators covenant and grant to and with the said party of the second part their successors and assigns that they the said parties of the first part are the true lawful and right owners of all and singular the above described lands and premises and every part and parcel thereof with the appurtenances thereunto belonging, and that the said land and premises or any part thereof at the time of the sealing and delivery of these presents are not encumbered by any mortgage judgment or limitation or by any encumbrance whatsoever whereby the title of the said party of the second part hereby made or intended to be made for the above described land and premises can or may be

changed, charged, altered or defeated in any manner or way whatsoever and also that the said parties of the first part now have good right full power and lawful authority to grant bargain sell and convey the said land and premises in manner aforesaid. Also that he will warrant secure and forever defend the said land and premises unto the said party of the second part their successors and assigns forever against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Jacob M. Ryerson (LS)
Harriet Ryerson (LS)

Signed Sealed and Delivered in the presence of
James Speer

N. B. the word "thereby" erased on this page and "they" attend to "he" in the warranty before signing.
J. Speer.

NEW JERSEY, SS. Before me James Speer, Master in Chancery of the State of New Jersey personally appeared Jacob M. Ryerson and Harriet, his wife known to me to be the grantors in the within Indenture of Deed named and they having been first made acquainted with the contents thereof severally acknowledged that they signed sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Harriet on a private examination separate and apart from her said husband acknowledged that she signed sealed and delivered the same freely without any fear threat or compulsion from her said husband.

Acknowledged March 31st, 1837.
James Speer
Master in Chancery

Received in the office and Recorded the 7th day of April, A. D. 1837.
Saml. H. Berry
Clerk.

STATE OF NEW JERSEY } SS.
COUNTY OF PASSAIC }

I, JOHN R. MORRIS, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of the Deed, given by Jacob M. Ryerson et ux to The Morris Canal and Banking Company as the same is taken from and compared with the transcript thereof, recorded in Book Z of Bergen County Transcripts on page 340 and now remaining on record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said County, at Paterson, this eighteenth day of January A. D. Nineteen hundred and twenty seven.

(Seal)

JOHN R. MORRIS
Register.
JOHN PIERCE
Deputy.

APPENDIX II.

Copy of deed, Ryerson to Morris Canal & Banking Co., reserving right to maintain and renew "Old Dam" at Greenwood Lake if Canal Co. shall fail to maintain "New Dam".

Jacob M. Ryerson & Harriet, his wife, Peter M. Ryerson & Mary A. his wife & Martin John Ryerson

To

The Morris Canal & Banking Company

Transcribed from Liber V-3 of Deeds, page 317.

THIS INDENTURE, made this twenty seventh day of March in the year of our Lord one thousand eight hundred and thirty seven.

BETWEEN Jacob M. Ryerson and Harriet his wife Peter M. Ryerson and Mary Abigail his wife and Martin John Ryerson all of the township of Pompton in the County of Bergen and State of New Jersey, parties of the first part and "The Morris Canal and Banking Company" of the State aforesaid party of the second part.

WITNESSETH, that the said parties of the first part for and in consideration of the sum of four thousand eight hundred and eighty seven dollars and

fifty cents money of the United States of America to them in hand well and truly paid by the said party of the second part at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said parties of the first part therewith fully satisfied content and paid have given granted bargained sold aliened enfeoffed conveyed and confirmed and by these presents do give grant bargain sell alien enfeoff convey and confirm unto the said party of the second part and to their successors and assigns forever.

ALL those four certain tracts or parcels of land and premises hereinafter particularly described situate lying and being in the township of West Milford in the County of Bergen and State of New Jersey which said lands are covered with water by reason of the recent erection by the said party of the second part of a dam across the outlet of "Long Pond" below its junction with the stream called "Belchers Creek."

The first tract being a lot of meadow land containing twenty acres and fifty hundredths of an acre upon which the old dam at the outlet of said Long Pond (belonging to said parties of the first part) is now standing being also part of a survey of One hundred and sixty two acres and eighty hundredths of an acre surveyed and returned by Lemuel Cobb on the twenty third day of January in the year of our Lord one thousand eight hundred.

The second tract is a lot of cedar swamp containing thirty acres and ninety four hundredths of an acre after deducting six acres of pine ridge included therein.

The third tract is also a lot of Cedar Swamp containing twenty seven acres and twenty one hun-

dredths of an acre. The two last mentioned lots are both included in a survey made for the heirs or assigns of Anthony Sharp on the fifth day of July in the year of our Lord one thousand seven hundred and forty and recorded in the Surveyor Generals Office at Perth Amboy in Book S page 167.

The Fourth Tract is a lot of land lying on the east side of the original outlet of Long Pond containing fourteen acres and twenty two hundredths of an acre which four lots contain ninety two acres and eighty seven hundredths of an acre, strict measure.

TOGETHER with all and singular the profits, privileges and advantages with the appurtenances unto the same belonging or in any wise appertaining (excepting the wood and timber now growing and being thereon which is hereby expressly reserved for the use and benefit of the said parties of the first part with the privilege of ingress and egress for the purpose of procuring and removing the same excepting also the right of re-constructing and maintaining the said "Old dam" and drawing and appropriating the waters of said Long Pond in the same manner as the said parties of the first or either of them have heretofore done whenever the said new dam of the party of the second part shall not be kept up and used for the purpose of saving water which said right is hereby expressly reserved to and for the use and benefit of the said Jacob M. Ryerson his heirs and assigns forever also all the estate right title interest property claim and demand whatsoever except as above reserved) of the said parties of the first part of in and to the said premises and of in and to every part and parcel thereof.

To Have and To Hold all and singular the above described land and premises with the appurtenances

(except as above reserved) unto the said party of the second part their successors and assigns to the only proper use benefit and behoof of the said party of the second part their successors and assigns forever and the said Jacob M. Ryerson Peter M. Ryerson and Martin John Ryerson do for themselves their heirs executors and administrators covenant and grant to and with the said party of the second part their successors and assigns that they the said parties of the first part are the true lawful and right owners of all and singular the above described land and premises and of every part and parcel thereof with the appurtenances thereunto belonging and that the said land and premises or any part thereof at the time of sealing and delivery of these presents are not encumbered by any mortgage judgment or limitation or by any encumbrance whatsoever whereby the title of the said party of the second part hereby made or intended to be made for the above described lands and premises can or may be changed charged altered or defeated in any manner or way whatsoever and also that the said parties of the first part now have good right full power and lawful authority to grant bargain sell and convey the said lands and premises in manner aforesaid, also that they will warrant secure and forever defend the said land and premises unto the said party of the second part their successors and assigns forever against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Jacob M. Ryerson (LS)
Harriet Ryerson (LS)
Peter M. Ryerson (LS)
Mary A. Ryerson (LS)
Martin John Ryerson (LS)

Signed, Sealed and Delivered in presence of
James Speer
The Word "part" interlined before signing.
J. Speer

NEW JERSEY SS. Before me, James Speer, Master in Chancery of the State of New Jersey personally appeared Jacob M. Ryerson and Harriet his wife Peter M. Ryerson and Mary Abigail his wife and Martin John Ryerson known to me to be the grantors who executed the within indenture of deed and they having been first made acquainted with the contents thereof severally acknowledged that they signed sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

And the said Harriet and Mary on private examination separate and apart from their said husbands acknowleged that they signed sealed and delivered the same freely without any fear threats or compulsion from their said husbands.

Acknowledged April 1st, 1837.
James Speer
Master in Chancery
Received in the Office and Recorded the 7" day of April A. D. 1837.
Saml. H. Berry, Clerk.

COUNTY OF PASSAIC } SS.
STATE OF NEW JERSEY }

I, JOHN R. MORRIS, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of the Deed, given by Jacob M. Ryerson et als to The Morris Canal and Banking Company as the same is taken from and compared with the transcript thereof, recorded in Book Z of Bergen County Transcripts on pages 333 &c. and now remaining on record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said County, at Paterson, this eighteenth day of January A. D. Nineteen hundred and twenty seven.

(Seal)

JOHN R. MORRIS
Register.
JOHN PIERCE
Deputy.

APPENDIX III.

Extracts from "North Jersey District Water Supply Commission's Report, 1925," offered in evidence by appellant and excluded.

Additional Supply Studies. With the construction of the Wanaque Reservoir well on the way towards completion, it is very evident that construction of additional supplies must be started in the immediate future in order to avoid water shortage at least in parts of the District. Population and water needs are increasing at such a rate that a new supply of 100 million gallons a day—that is an amount equal to that of the Wanaque Project—will be needed about every eight years. Studies of all of the watersheds of the northern part of the State have been very carefully considered and the cost of many projects estimated. The requirements of the situation are such as to make it desirable that the next development be in the southwestern part of the District and that it be a project that can be developed in successive steps, the first step not to be too costly. The supply which meets these requirements best is the so-called Chimney Rock Project which has an ideal reservoir site between the First and Second Watchung Mountains at a point north of Bound Brook, to which reservoir water could be brought from the Upper Raritan, Musconetcong, Pequest and other rivers west to the Delaware.

Projects proposed by others have also been studied by the Commission. The so-called Stony Brook Project, proposed by Mr. Weston E. Fuller for the City of Elizabeth as a supply of 35 to 45 million gallons a day at a first cost of $8,770,000, calls for a reservoir located between the First and Second Watchung Mountains just west of Plainfield, holding 11,000 million gallons of water to be pumped from the Passaic River in the vicinity of Sterling and filtered before delivery to the City of Elizabeth. It is, however, a development too small to be considered for the North Jersey Water Supply District. The so-called Long Hill Project, proposed in 1922 to the Board of Conservation and Development by Mr. Allen Hazen, calls for an immense reservoir on the upper Passaic River filled with water from the streams to the west brought to the reservoir through aqueducts and tunnels. This development would be too large. It provides for 750 million gallons a day, or more than three times the present requirements of the District. The cost per million gallons a day for the full development is low but its total cost of $130,000,000 to $150,000,000 is such as to make the complete development impracticable; and if built in successive steps, an initial development to supply about 150 million gallons of water per day would be much more costly than an equal supply from the Chimney Rock Project as proposed by the North Jersey District Water Supply Commission.

Chimney Rock Project. The reservoir site proposed for the Chimney Rock Project is ideal. It has a comparatively small population, no railroad to relocate, and no sources of pollution in the watershed. It is so situated that it may be easily filled

with water from any of the streams in the watersheds to the west as far as the Delaware River. With a flow line 20 feet higher than that of the proposed Wanaque Reservoir, available storage in this reservoir would be about 66,000 million gallons, or 2½ times that of the Wanaque. The estimated cost of the first step in the Chimney Rock Project including a reservoir and with an aqueduct leading water from the north and south branches of the Raritan River to it, and to furnish a supply of about 150 million gallons a day, is $46,000,000, or at the rate of $305,000 per million gallons a day. This is about one-half of the cost of the first development of the Long Hill Project. The estimated cost of the Wanaque water, which is by far the cheapest of the undeveloped supplies in the District, is $204,000 per million gallons a day. The Chimney Rock Project can be enlarged by successive steps until a final amount of 750 million gallons a day or more is developed.

The North Jersey District Water Supply Commission believes that any further expenditures made in connection with the development of additional supplies in this District should be for detailed studies of the Chimney Rock Project and that work on these studies should be started at once so that, upon the completion of the Wanaque Project, work will be under way on an additional supply of 150 million gallons a day to be available by 1935. Experience has demonstrated that the time intervening until that date is none too long to accomplish all the many steps necessary to build another great water works development.

CHAPTER III.

ADDITIONAL SUPPLY

NEED OF NEW WATER SUPPLIES.

Capacity of Present Supplies. The existing water supplies of the densely populated northeasterly section of the State of New Jersey have a combined capacity of about 266 million gallons a day. This will be supplemented in the near future by the completed Wanaque Project with its capacity of about 100 million gallons a day. Certain existing surface supplies pumped from polluted streams with a combined capacity of about 70 million gallons a day are becoming increasingly unsatisfactory to the communities served and may, for that reason, be eliminated from the list of supplies available for public consumption, leaving a balance of about 300 million gallons a day, which may be considered available.

Limit of Capacity of Present Supplies to be Reached in 1930. The combined demands of all consumers in this section during the past decade are shown in the following table:

TABLE 16.
WATER CONSUMPTION IN DISTRICT DURING LAST DECADE

1913	183 Mgd.
1914	189 "
1915	189 "
1916	208 "
1917	222 "
1918	239 "
1919	243 "
1920	245 "
1921	228 "
1922	231 "

1923.....242 "
1924.....239 "

Note: In this and the following chapters "million gallons a day" is frequently written as Mgd. for the sake of brevity.

Consumption for the years 1918 to 1920 represents a peak demand and for that reason the 1920 figure of 245 million gallons a day is a good basis for estimates of future consumption. Comparison of the consumption of 1913 with that of 1924 shows an increase of about 2.5 per cent. per year. Applying this rate of increase to the 1920 figure of 245 million gallons a day indicates that the present supplies, less those considered unsatisfactory, will be utilized to capacity soon after 1930.

Construction of Supply in Addition to Wanaque Should Begin. It is apparent then that construction of additional supplies besides the Wanaque must be started in the immediate future if water shortage in parts, at least, of this section is to be avoided. Any additional supply should be planned to supplement the existing supplies of the whole section and should be capable of expansion or extension to meet the naturally increasing demands of a growing population. The needs appear to be increasing at the rate of 100 million gallons a day about every 8 years.

Realizing the importance of the situation, the North Jersey District Water Supply Commission has begun a study of the matter. For the purposes of this study, the area to be served by any comprehensive water supply system has been assumed to consist of the most densely populated and rapidly growing part of the District. For convenience in compiling the statistics and for discussion, this part

of the District will be called the Six Counties and comprises Bergen, Essex, Hudson, Union, Passaic (excluding the portion west of Pompton), and Middlesex (excluding the portion south of New Brunswick), although some of the larger municipalities outside of this area, but bordering upon it, would be included in any comprehensive project.

Growth of Population.

Rate of Increase in Population. Census records showing total population, density per square mile and percentage increase per decade for the Six Counties are shown in Table 17.

It is not to be expected that the rate of growth shown for the past fifty years will be equalled in the future. Inspection of these records leads to the conclusion that the three more densely populated counties of Hudson, Essex and Passaic are in a period of declining rate of growth and that this is also probably true of the combined population of the Six Counties. The rates of past growth for the three counties of Union, Bergen and Middlesex do not indicate conclusively that these counties have passed their period of most rapid growth.

Detailed study of where, within the Six Counties, the greatest growth of population will occur will be of vital importance in the actual design of water supply systems, but our present consideration is with the broader aspects of the problem and only a

TABLE 17.
POPULATION OF SIX COUNTIES—1860 TO 1920.
(Note: In computing density of population per square mile, the area of the meadows adjacent to tide water is omitted.)

Year	BERGEN Population in Thousands	BERGEN Density per Square Mile	BERGEN Per Cent Increase per Decade	ESSEX Population in Thousands	ESSEX Density per Square Mile	ESSEX Per Cent Increase per Decade
1860	22	95	..	99	820	..
1865	25	110	..	124	1,032	..
1870	30	134	39	144	1,197	45
1875	36	158	44	169	1,405	36
1880	37	164	22	190	1,582	32
1885	40	178	12	214	1,778	27
1890	47	210	28	256	2,130	35
1895	65	292	64	312	2,618	46
1900	78	350	66	359	2,995	40
1905	100	447	53	410	3,410	31
1910	138	616	76	513	4,270	43
1915	179	798	79	566	4,720	38
1920	211	940	53	652	5,430	27

Year	HUDSON Population in Thousands	HUDSON Density per Square Mile	HUDSON Per Cent Increase per Decade	UNION Population in Thousands	UNION Density per Square Mile	UNION Per Cent Increase per Decade
1860	63	2,550	..	28	289	..
1865	88	3,555	..	35	369	..
1870	129	5,160	106	42	436	51
1875	163	6,530	86	52	538	46
1880	188	7,510	45	56	579	33
1885	240	9,620	48	62	643	19
1890	275	11,030	47	72	754	30
1895	328	13,130	37	85	890	38
1900	386	15,450	40	99	1,031	37
1905	450	17,920	37	117	1,222	37
1910	537	21,490	39	140	1,459	41
1915	571	22,830	27	167	1,742	43
1920	629	25,100	17	200	2,089	43

Year	PASSAIC Population in Thousands	PASSAIC Density per Square Mile	PASSAIC Per Cent Increase per Decade	MIDDLESEX Population in Thousands	MIDDLESEX Density per Square Mile	MIDDLESEX Per Cent Increase per Decade
1860	25	368	..	21	206	..
1865	31	452	..	24	235	..
1870	45	660	79	28	274	33
1875	50	733	61	31	304	29
1880	64	942	43	33	324	18
1885	79	1,159	58	36	353	16
1890	100	1,472	57	40	392	21
1895	128	1,889	63	46	450	28
1900	150	2,200	49	54	530	35
1905	170	2,490	32	69	676	50
1910	209	3,060	40	82	803	52
1915	227	3,339	34	107	1,050	55
1920	249	3,660	19	121	1,188	47

Year	SIX COUNTIES Population in Thousands	Density per Square Mile	Per Cent Increase per Decade
1860	258	406	68
1865	327	515	63
1870	418	660	62
1875	501	790	53
1880	568	895	36
1885	671	1,058	34
1890	790	1,242	39
1895	964	1,515	43
1900	1,125	1,770	43
1905	1,317	2,070	37
1910	1,619	2,550	44
1915	1,817	2,860	38
1920	2,062	3,255	27

general idea of what the growth in the whole section will be during the next fifty years is of importance at present.

Estimated Future Population. The census records show that fifty years ago the Six Counties were growing at the rate of about 60 per cent. increase per decade. The present rate is about 30 per cent. increase per decade. Assuming that this rate of decrease will hold for the next fifty years, we would have a growth of 15 per cent. per decade in 1970, and a total population of 5,350,000, as shown in the 5th column of Table No. 18.

Another estimate has been made by applying a decreasing rate of growth to the three more densely settled counties of Hudson, Essex and Passaic, and a uniform rate of growth to the counties of Bergen, Union and Middlesex, which indicates a total population in 1970 of 7,360,000, as shown in the 6th column of Table No. 18.

Estimates of future population of the Six Counties, by the two methods outlined, are compared in the table with estimates made by other students of the problem. The estimates used in this study are shown in column 7.

TABLE 18.
ESTIMATES OF FUTURE POPULATION IN THE SIX COUNTIES.

Year	By Hazen, Whipple & Fuller	By North Jersey Transit Commission	By a Commercial Company	By North Jersey District Water Supply Commission		
				1st Method	2nd Method	Used
(1)	*(2)	†(3)	(4)	(5)	(6)	(7)
1930	2,650,000	2,700,000	2,660,000	2,620,000	2,610,000	2,600,0 0
1940	3,300,000	3,420,000	3,240,000	3,240,000	3,510,000	3,300,000
1950	4,000,000	4,180,000	3,850,000	3,920,000	4,540,000	4,000,000
1960	4,800,000	.....	.....	4,650,000	5,780,000	5,000,000
1970	5,600,000	.....	.....	5,350,000	7,360,000	6,000,000

* In Report of 1922 on "Water Resources of the State of New Jersey."

† In Annual Report dated Jan. 1, 1925.

Speculation as to the probable population in the Six Counties 50 years from now has no great bearing on the problem of how to plan additional water supply for the District. It is valuable only in arriving at an approximate idea of the speed with which new construction work must be carried on.

The question of whether the population will double in 50 years or will triple in 50 years does not materially affect the consideration of the general plan of additional water supply.

Growth of Water Requirements.

Past and Present Water Consumption. The total water requirements of a community vary not only with growth of population, but also with changes in the per capita consumption of water.

The business of furnishing water in the modern way to cities or groups of cities is still comparatively young and records of consumption per capita are not as complete or dependable as census records of population. Records of past per capita consumption within the Six Counties and for other communities, taken from various reliable sources of information, are shown in the following table.

TABLE 19.
WATER CONSUMPTION OF VARIOUS CITIES AND DISTRICTS IN GALLONS PER DAY PER CAPITA.

Year	Metropolitan District of Mass.	New York City	City of Newark	Jersey City	State of New Jersey	Six Counties of Northeastern New Jersey
1880	...	65	...	...	...	44
1890	...	67	...	...	...	73
1895	91	96	97	...	...	...
1900	112	114	90	...	...	...
1905	126	118	109	145	...	109
1910	108	111	104	161	...	...
1915	87	100	110	155	...	...
1916	90	107	120	158	...	106
1917	93	110	116	157	117	111
1918	108	122	118	162	117	118
1919	100	120	106	177	...	118
1920	105	131	108	190	114	118
1921	95	128	93	181	109	109
1922	95	128	100	169	109	109
1923	97	128	103	163	...	113
1924	96	130	102	...	...	110

Sources of Data: Metropolitan District of Mass.—Metropolitan District Commission. New York City—New York Board of Water Supply. City of Newark—Newark Bureau of Water. Jersey City—Department of Streets and Public Improvements. State of New Jersey—Dept. of Conservation and Development. Six Counties—1880 to 1905—Hazen, Whipple & Fuller; 1916 on—Public Utilities Commission and Federal Census Reports.

Factors Affecting Consumption. The use of water by the individual or by industries has been undergoing radical changes in the last few decades and it is not at all certain that the business can be said to be stabilized or that new or enlarged demands for water will not arise from changes in the character of community life. From the time about fifty years ago, when public water supplies were first built in anything like modern practice, up to 1890 or 1900, the per capita consumption nearly doubled.

During the last 25 years there has been no well-defined trend in the individual use of water and perhaps it would be safe to assume that the records of this period will be duplicated during the next 50 years.

There are a number of elements affecting the per capita consumption which should be considered in making an estimate of what demands will be made on public water supplies in the future.

The waste of water is one phase of the water supply business that has been given considerable attention, and progress has been made in reducing that portion of the waste which is preventable by the installation of meters and regulations relating to careless use of water supplied. It is safe to assume that further improvements along these lines will be made, but there will always remain the element of inevitable waste, such as leakage from conduits, mains and other underground structures, that will probably increase as time goes on and structures become older.

Demands for individual use have increased in the past, due to the construction of more modern houses with a larger number of fixtures and also due to

changes in living conditions which are undoubtedly partly due to ample and cheap supplies of water. It would be unsafe to assume that public and domestic requirements have reached their ultimate maximum. The most important element that tends to increase the consumption of water, however, is its comparative cheapness. The total cost of water supply projects may seem high, but the individual consumer knows that his water bills are among the smallest he pays for the necessities of life.

The demands by industry are even more difficult to predict than those by individuals. Industrial use of water is undoubtedly stimulated by improvement in quality, as water-consuming industries are thereby encouraged to locate in the District. Industries have in many cases installed their own private supply systems, so that figures showing consumption do not give a true picture of the total use of water. It should be assumed that private industries will turn more and more to the public water supplies to meet their demands, not only because the public supply will be cheaper and more dependable, but also because sources of additional private supplies will not be as readily available as in the past.

Estimated Future Water Requirements. In the Report of 1922 on estimates for additional supplies for the Massachusetts Metropolitan District, presented by the Massachusetts State Department of Public Health and the Metropolitan District Commission, it is recommended that the present per capita consumption of that district be increased at the rate of about 0.8 per cent. per year, which would increase their 1920 figure of 105 to 146 in 1970. Other recent reports have made similar recommendations.

In presenting an estimate of per capita consumption fifty years in the future, it should be made plain that the accuracy of the prophecy affects only the time when new construction will be necessary and does not materially affect the broad outline of a proposed project.

In order to use actual figures, the future water requirements in this study are estimated as indicated in the following table:

TABLE 20.
FUTURE WATER REQUIREMENTS OF DISTRICT.

(1) Year	(2) Estimated Population	(3) Estimated Consumption. Gallons per day per capita	(4) Water Requirements M. G. D.
1920	2,062,000*	118*	245*
1930	2,600,000	125	325
1940	3,300,000	130	430
1950	4,000,000	135	540
1960	5,000,000	140	700
1970	6,000,000	145	870

* Actual records.

The Wanaque River is a branch of the Passaic rising in New York State and flowing in a general southerly direction to a junction with the Ramapo and Pequannock at Pompton. The area above the Wanaque Dam, comprising 94.4 square miles, is now being fully developed by the North Jersey District Water Supply Commission to furnish about 100 Mgd., which will be delivered to the center of the metropolitan district at Elevation 190. When the Wanaque Project is completed, no further development of that watershed will be profitable, except in conjunction with some other area.

If water is ever delivered to the Wanaque Reservoir from other watersheds, it might be desirable to make use of the storage in Greenwood Lake by some other means than by way of the Wanaque River. Greenwood Lake is at an elevation of about 640, and the watershed of 27.1 square miles, tributary thereto, could be diverted to a high-level supply by way of Macopin Intake on the Pequannock. This area would probably furnish 20 Mgd., and could be delivered to the District at an elevation of about 400. Such a development would necessitate the construction of 9 miles of tunnel, or a somewhat longer grade aqueduct skirting Wanaque Reservoir.

The only advantages of such a development would be the delivery of part of the Wanaque water at a higher level and the release of some available storage in Wanaque Reservoir for use in conjunction with water from some other watershed.

The quality of the Wanaque water as delivered to the mains will be superior to any surface supply in Northern New Jersey. It will be low in color, soft, agreeable in appearance, low in bacteria, and suitable for all industrial, domestic and dietectic uses.

TABLE 21.
SUMMARY OF ALL POSSIBLE SOURCES OF WATER SUPPLY FOR THE SIX COUNTIES

Watersheds	Area in Square Miles	High-level Supplies	Intermediate-level Supplies	Pumped Supplies	Total Supplies
		—In Million Gallons Per Day—			
HACKENSACK					
New Milford	115			50	50
PASSAIC					
Saddle	40			20	20
Ramapo	147		130		130
Sloatsburg	75*		60*		
Mahwah	98*		90*		
Oakland	147*		50*		
Oakland (intake)	147*		40*		
Wanaque	94		100		100
Greenwood Lake	27*	20			
Pequannock	64	64			64
Rockaway	119		69		119

Rockaway (branches)	55*	50	50		
Passaic (remainder)	349			260	260
RARITAN					
Green Brook	7		7		7
Stony Brook	5		5		5
Middle Brook	17		17		17
North Branch					
Pleasant Valley	20*		20*		
Ravine Lake	27		27		
Peapack	4		3		
Black	32	20	25		25*
Rockaway Creek	8		6		
North Branch (remainder)	121			60*	
South Branch					
Buddvale	65	65	65		65*
Spruce Run	13		10		
South Branch (remainder)	198			100*	
Combined North and South Branches	468*			414	414
Millstone	286			150	150
DELAWARE					
Musconetcong	123		120		120
Hopatcong	25*	25*			
Hackettstown	72*	70			
Pohatcong	40		20	20*	20
Pequest	116		116		116
Beaver Brook	32		32		32
Paulins Kill	124		124		124
Flat Brook	63		63		63
Delaware (remainder)	500			500	500
WALLKILL	132		130		130
Pochuck	101		100		100
Wawaynada	21*	20			
GROUND WATER				40	40
Totals	2942	309	1219	1434	2581

*Figures are included elsewhere and are omitted from totals.

TABLE 22.

SUMMARY OF WATER RESOURCES

Showing Developed Supplies and New Supplies Which Are Worthy of Consideration for Development Before 1970.

Watershed	Developed Supplies Mgd.	Practicable New Supplies Mgd.
HACKENSACK	40	10
PASSAIC	50	210
Ramapo	...	130
Wanaque	100	...
Pequannock	57	18
Rockaway	57	62
ELIZABETH AND RAHWAY	12	...

RARITAN		
Green Brook	...	7
Stony Brook	...	5
Middle Brook	...	17
North Branch	...	120
South Branch	...	175
DELAWARE		
Musconetcong	...	120
Pequest	...	148
Paulins Kill	...	124
Flat Brook	...	63
WALLKILL	...	230
MISCELLANEOUS	10	...
GROUND WATER	40	...
Totals	366	1439

NOTE: At least 70 Mgd. of existing supplies will probably be eliminated or soon placed in reserve due to changes in requirements as to pollution.

Wanaque Watershed.

Description. The watershed of the Wanaque River, including Post Brook and the area tributary to Greenwood Lake, has an area of 94.4 square miles. The topography of the watershed is, in general, rugged, and its location with respect to transportation facilities and the general character of the terrain are such that its use for residential or industrial purposes, in any large measure, is improbable. The elevation along the ridge-top west of Greenwood Lake is about 1,450 with a maximum of 1,487 at Bear Fort triangulation station and the average elevation of the watershed is about 760. The population of the watershed, according to the 1920 census, averaged 24 per square mile—much less than the adjoining Ramapo watershed or the Rockaway and Hackensack in the immediate vicinity. To a considerable extent this population is concentrated in the vicinity of Greenwood Lake so that the large storage of this lake intervenes between any pollution in this locality and the proposed reservoir. Swamp

areas in the watershed are so small, ledge rock is so hard, and soil is of such a character that the waters of the streams are low in color and contain only small amounts of mineral and vegetable matter.

Hydrology. Records of rainfall, runoff and temperature of the watershed have been carefully gathered by the Commission, beginning in 1919 and the results are shown diagrammatically in Appendix 4. The flow of the Wanaque River was also measured and recorded by the United States Geological Survey from December 16, 1903, to December 31, 1905, and by the New Jersey State Water Supply Commission for the years 1913, 1914 and 1915. Such data as has been obtained indicates that the runoff of the watershed per square mile is slightly in excess of that of the adjoining Pequannock watershed, which is of similar character and for which hydrological records have been scientifically compiled since the construction of the Newark waterworks in 1892.

Yield. On account of the similarity in conditions prevailing in the Pequannock to those in the Wanaque watershed, the safe yield of the Wanaque watershed has been estimated on the basis of the Pequannock records. In order to determine the safe yield, the Pequannock records were studied in detail, the studies showing that with sufficient storage a yield in excess of 1.25 million gallons per day per square mile of watershed could be obtained in a dry period similar to that of 1900-1901, the most severe drought recorded. The first yield studies for the reservoir were made in connection with the smaller project and it was found that the Wanaque and Post Brook watersheds, having an area of 67.3 square

miles, could be counted on at all times to yield in excess of 52 million gallons per day. Studies were made showing the relation of safe yield to storage for large developments, both excluding and including the Greenwood Lake shed, the results being approximately 81 million gallons per day for the former and 108 million gallons per day for the latter condition, the flow line of Wanaque Reservoir being Elevation 292 and Elevation 300, respectively. Any greater development in either case resulted in either excessive cost or excessive periods of depletion.

Wanaque Reservoir.

General. The first project, as described in the 1918 contract with the City of Newark, provided for a reservoir to have a flow line at Elevation 275, to be formed by the construction of a dam across the Wanaque River at the plant of the Wanaque River Paper Co., and three smaller dams. Wanaque Reservoir under such conditions would have a water surface of 1,450 acres, an average depth of 26 feet, and a maximum depth at the dam of 65 feet. Its total capacity would be 12,300 million gallons, and under normal conditions of operation, with the line of minimum draft Elevation 240, the capacity available by gravity would be 10,700 million gallons.

As compared with the smaller project, the reservoir now under construction, with flow line at Elevation 300, will have a water surface of 2,310 acres and a total capacity of 27,600 million gallons, 26,000 million gallons of which will be available for draft by gravity. The increase in magnitude of the reservoir is strikingly illustrated by the following comparisons:

TABLE 6.
WANAQUE RESERVOIR.
Comparative Data for Small and Large Projects

	Flow Line Elev. 275 (50 Mgd. Project)	Flow Line Elev. 300 (100 Mgd. Project)
Water surface—acres	1,450	2,310
Capacity (total) million gallons	12,300	27,600
Capacity (available) million gallons	10,700	26,000
Average depth—feet	26.0	36.7
Length of dams—feet	2,155	7,600
Highway relocated—miles	5	8
Railroad relocated—miles	4	6

The reservoir floor is made up in part by the comparatively level valley of the Wanaque River and the remainder by the lower slopes of the adjoining hills. The more level portion of the reservoir floor is to a large extent arable land, though only a very small percentage has recently been actually under cultivation. A small portion of the area is made up of swamps and natural or artificial ponds.

The site of the reservoir is traversed by the tracks of the New York and Greenwood Lake Division of the Erie Railroad, and by two important highways, the Greenwood Lake Turnpike and the "Ringwood" or "Valley" road, as well as several unimportant roads. Four small cemeteries were present and required removal.

Capacity. Topographic surveys of the entire reservoir have been made, based on a series of precise traverses, and a topographic map prepared to the scale of 100 feet to an inch, showing contours at 5-foot intervals. By means of this map the capacity curve of the reservoir has been determined and plotted for all elevations up to Elevation 310 for the purpose of calculating the yield of the watershed and deciding upon the appropriate flow line elevation.

After the completion of the construction activities, these maps and the capacity curve will be revised and used as a guide in determining the amount of water flowing into the reservoir.

Quality of Water. In the Wanaque works as finally projected the reservoir was of such large capacity and the quality of the waters tributary to the reservoir proved upon analysis to be so satisfactory, that the Commission believed the quality of the supply, after storage, aeration and conveyance to Newark through a closed conduit, would be excellent. In order, however, to obtain expert sanitary-engineering opinion on the matter, Mr. Robert Spurr Weston, Sanitary Engineer of Boston, Massachusetts, was engaged to examine and report specifically with regard to the question of quality, bearing in mind the plans as proposed. An opinion was also asked with regard to the expected quality of the Wanaque Supply as compared with the present supply of the City of Newark from the Pequannock.

An abstract of Mr. Weston's conclusions on the matter is given in Appendix 8. Topographic conditions in the reservoir and watershed area are very favorable. Swampy areas are small. The steep hillsides, the insoluble character of the rocks and the good quality of the overlying soil are all factors tending to produce a water which will be soft, low in color and containing only a small amount of vegetable matter in solution. The growth of micro-organisms depends upon their food supply or organic and mineral matters which, being very small, is the basis for the estimate that these objectionable growths will be unimportant in the Wanaque Reservoir. The greatest concentration of population in

the watershed, with its potential pollution, is located on the upper reaches of the watershed a long distance from the reservoir and a very great proportion is transient during the summer season. The concentration, moreover, is in relatively small areas, rendering the future policing of the watershed comparatively simple. The very long period of storage in Wanaque Reservoir and Greenwood Lake which will intervene between this population and the participating municipalities constitutes a purifying agency of great effectiveness, which in itself assures the ultimate consumers of receiving a water of excellent quality. Bacteria, micro-organisms and color are all reduced by long periods of storage and, in this respect, conditions at Wanaque Reservoir will be superior to those existing at most of the reservoirs in the State. It is estimated that the water as delivered from Wanaque Reservoir will have an average color of only about 12 parts per million and a maximum of 16, as compared with Pequannock water, which has an average color of about 24 parts per million and a maximum of 40. Similar comparisons of these two sources of supply in relation to bacteria, micro-organisms and sediment are equally favorable to the proposed new supply from the Wanaque River.

APPENDIX 8a
ABSTRACT OF
REPORT ON QUALITY OF WATER, WANAQUE PROJECT, BY WESTON AND SAMPSON, CONSULTING ENGINEERS, DECEMBER, 1922.

This report was presented to the New Jersey District Water Supply Commission on December 30, 1922, by the sanitary engineering firm of Weston and Sampson, who were engaged to submit an opinion as to:

1. The quality of water which will be delivered to the city of Newark from the proposed Wanaque Reservoir, if constructed in accordance with the present plans of the Engineering Department, which involves storage for a considerable period in the reservoir, thorough aeration below the reservoir and conveyance to Newark through a conduit.

2. The quality of the Wanaque supply as compared with the present supply of the city of Newark from the Pequannock River for the reason that the two waters will in all probability be mixed in the distribution system of the city of Newark before the delivery to the ultimate consumer.

The conclusions drawn from observations begun in August, 1922, and continued to include the effect of autumnal overturn of the waters of Greenwood Lake and the Newark Reservoir are summed up in the following words:

"During the period of four months, we have made a careful prediction of the character of the water which will be supplied from the Wanaque Reservoir now under construction and have compared this with the present Pequannock supply using the following basis:

Population
Physiography and Geology
Color of Water
Bacteria, including B. Coli
Microscopic Organisms
Sediment

While the density of population on the Pequannock is less than that on the Wanaque watershed, especially during the summer season, the bulk of that on the former is concentrated in villages lying between the first row of reservoirs and the Macopin Intake, while that on the latter is located largely around Greenwood Lake and along the feeders to the reservoir. On the Wanaque, therefore, more storage will intervene between the sources of pollution and the consumer than on the Pequannock.

The Wanaque Reservoir is better placed and affords longer storage than do the Pequannock Reservoirs. Furthermore, the Wanaque is easier to police.

The swampy areas on the Wanaque are less in area, the slopes of the hills steeper, the mean depth, the storage ratio and the drainage area greater, the rocks harder and the soil better from the standpoint of water supply than is the case on the Pequannock watershed. The Wanaque Reservoir will yield a water lower in color and containing less mineral and vegetable matters than contained in the water now supplied to Newark. In these respects, therefore, the Wanaque source is decidedly better.

The Wanaque, after storage in the reservoir, will have an average color of about 12 p. p. m. and a maximum color of about 16 p. p m., as compared with a mean color of about 24 p. p. m., and a maximum color of 40 p. p. m. now characterizing the water supplied from the Macopin Intake. Furthermore, the greater storage capacity of the Wanaque Reservoir, with its equalizing effect, will result in less wide fluctuations in degree of color.

Our analysis indicates that the water discharged from Wanaque Reservoir will be superior bacteriologically to the Pequannock water at the Macopin Intake, before disinfection, largely because of the protection afforded by its greater storage and the comparative remoteness of the sources of pollution.

We have shown that trouble, due to growths of micro-organisms in the reservoirs in the North Jersey Highlands, is a function of the amount of storage and that least trouble will be experienced with waters stored longest. In this respect, the Wanaque will be superior to any of the Pequannock Reservoirs with the possible exception of Canistear Reservoir. Micro-organisms also depend on organic matter, their food supply for growth, and as less organic matter will reach the Wanaque Reservoir than now reaches the Pequannock Reservoirs, we believe it will contain less micro-organisms for this reason also.

The sediment tests indicated that better appearing water may be expected from the Wanaque than from the Pequannock sources.

In general, we believe that the Wanaque Reservoir will supply water superior in every respect to that now supplied to the City of Newark from Pequannock Reservoir; because it is in a more favorable location both culturally and topographically; because it has a higher storage ratio; because it will deliver water directly to the aqueduct and not

through an open channel before reaching the same, and because it is supplied with water which, disregarding population, is intrinsically better than that supplied to the Pequannock Reservoirs. Furthermore, any problems, due to increased pollution in the future, may be solved by disinfection and those due to excessive depletion—with a consequent decrease in storage—by filtration.

Because serious depletion can hardly occur before the consumption reaches 135 Mgd., and because it might be obviated by the development of additional sources, it is not necessary to consider the filtration of the Wanaque at the present time.

Respectfully presented,

WESTON & SAMPSON,
Consulting Engineers.

SUMMARY AND RECOMMENDATIONS

Summary. A summary of the principal projects already described is shown in Table 23. With the data in this table, which is by no means complete, but will serve for the present study, two very pertinent facts are evident:

First: It is clear how inexpensive the Wanaque water really is when compared with other projects for the Six Counties. Probably never again will it be possible to develop and deliver a supply of 100 million gallons a day in this part of New Jersey for anywhere near $204,000 per million gallons a day, the estimated cost of the Wanaque Project.

APPENDIX IV.

EXHIBIT "A"

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

May 11, 1923.

The Ringwood Company,
50 Church Street,
New York City.

ATTENTION MR. JAMES P. ANDERSON.

Gentlemen:

The Board of Conservation and Development at its meeting on May 10 approved the plans and specifications for the construction of a dam at Ryerson Furnace on the Wanaque River, as prepared by William H. Boardman, Consulting Engineer, and filed with this Board under the date of April 2, 1923, subject to the following terms and conditions:

1. That the work shall at all times be subject to supervision and inspection by representatives of

this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

2. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam.

3. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

4. That a report, on forms to be submitted by the Department of the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month the work upon the dam has been completed.

4. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month until the work upon the dam has been completed.

5. That if this work is not completed on or before two years from date of this approval, this permit,

if not previously revoked or specifically extended, shall cease and be null and void.

Action on the plans for a dam on Cupsaw Brook was deferred pending the examination of the site by our engineer and the receipt of his report on the examination of the plans and specifications.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
HENRY B. KUMMEL
State Geologist and Director.

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

September 14, 1923.

Ringwood Company,
50 Church Street,
New York City
Attention Mr. James P. Anderson.

Gentlemen:

The Board of Conservation and Development at its meeting on September 13 approved the revised plans for the construction of the Ryerson Furnace dam as prepared by William H. Boardman, Consulting Engineer, dated August 4, 1923, superseding plans dated March 16 and March 24, 1923, which

were approved by the Board on May 10, 1923. The revised plans were approved subject to the following terms and conditions:

1. That the work shall at all times be subject to supervision and inspection by representatives of this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of this Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

2. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam.

3. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

4. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month until the work upon the dam has been completed.

5. That if this work is not completed on or before two years from date of this approval, this

permit, if not previously revoked or specifically extended, shall cease and be null and void.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) H. B. Kummel
H. B. Kummel
HTC.H State Geologist and Director

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

June 14, 1923.

Ringwood Company,
50 Church Street,
New York City.
Attention Mr. James P. Anderson.

Gentlemen:

The Board of Conservation and Development at its meeting on June 14 approved the plans and specifications for the construction of a dam on Cupsaw Brook, as prepared by William H. Boardman, Consulting Engineer, and filed with this Board under date of April 2, 1923, subject to the following terms and conditions:

1. That the work shall at all times be subject to supervision and inspection by representatives of this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

2. That an opening approximately three feet by four feet shall be provided in at least one of the abutments of the spillway in order to give access to the interior of the hollow dam for inspection purposes.

3. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam.

4. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

5. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month until the work upon the dam has been completed.

6. That if this work is not completed on or before two years from date of this approval, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) Henry B. Kummel
State Geologist and Director.

HTC.H

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

July 16, 1923.

Ringwood Company,
50 Church Street,
New York City.

Gentlemen:

The Board of Conservation and Development at its meeting on July 12 approved the plans and specifications for the construction of a combination earth embankment and concrete overflow dam on the Wanaque River at the site of the old Wheeler dam, plans for which were prepared by William H. Boardman, Consulting Engineer, subject to the following terms and conditions:

1. That the work shall at all times be subject to supervision and inspection by representatives of this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

2. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam.

3. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

4. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month until the work upon the dam has been completed.

5. That if this work is not completed on or before two years from date of this approval, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

Please acknowledge receipt of this communication.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) Henry B. Kummel
H. B. Kummel
State Geologist and Director.

HTC.H

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

December 6, 1923.

Ringwood Company,
50 Church Street,
New York City.
Attention Mr. James P. Anderson.
Re Lower Cupsaw Dam.

Gentlemen:

The Board of Conservation and Development at its meeting today approved the plans and specifications prepared by William H. Boardman, Consulting Engineer, Newark, N. J., for the construction of a reinforced concrete earth fill dam on Cupsaw Brook, a few hundred feet above its junction with Wanaque River in Ringwood Boro, subject to the following terms and conditions:

1. That the work shall at all times be subject to supervision and inspection by representatives of this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

2. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam.

3. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

4. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month, until the work upon the dam has been completed.

5. That the work shall be started within five months from the date of this approval, unless extension of time is granted after proper application to this Department; also that if this work is not completed on or before two years from date

of this approval, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

Please acknowledge the receipt of this communication.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) Henry B. Kummel
H. B. Kummel
State Geologist and Director.

HTC.H

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

June 5, 1924.

Ringwood Company,
50 Church St.,
New York City.
Attention Mr. James P. Anderson.
Re Lower Cupsaw Dam.

Gentlemen:

The Board of Conservation and Development at its meeting today granted an extension in time for the beginning of construction of the lower dam on

Cupsaw Brook, plans for which were approved by the Board December 6, 1923, the extension of time being for one year from May 5, 1924.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) H. B. Kummel
H. B. Kummel
State Geologist and Director.

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

June 5, 1924.

Ringwood Company,
50 Church St.,
New York City.

Attention Mr. James P. Anderson.
Re Cupsaw Dam—Carleton Site.

Gentlemen:

The Board of Conservation and Development at its meeting today approved the plans and specifications for the erection of a dam on Cupsaw Brook at the Carleton site in the Boro of Ringwood, New Jersey, as prepared by William H. Boardman, Consulting Engineer of Newark, New Jersey, subject to the following terms and conditions:

1. That the work shall at all times be subject to supervision and inspection by representatives of this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

2. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam .

3. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed on any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

4. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, N. J., on the first day of each month until the work upon the dam has been completed.

5. That the work shall be started within one year from the date of this approval, unless extension of time is granted after proper application to this Department; also that if this work is not completed on or before two years from date of this approval, this permit, if not previously re-

voked or specifically extended, shall cease and be null and void.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) H. B. Kummel
H. B. Kummel
State Geologist and Director.

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
STATE OFFICE BUILDING, TRENTON.

The Department of Conservation and Development represents the interest of the people of New Jersey in Geology, Forestry, Potable Waters, Idle Lands and all Undeveloped Resources. It publishes maps and detailed information, and offers advice about Minerals, Soils, Streams, Wells, Forests, Shade Trees. It conducts the State Testing Laboratory, Museum, Forest Fire Service and Land Registry.

August 15, 1924.

Ringwood Company,
50 Church St.,
New York City.

Gentlemen:

The Board of Conservation and Development at its meeting today upon the recommendation of its engineer approved the plans and specifications for the repairs to the Forge Pond dam located in the Boro of Ringwood, New Jersey, as prepared by William H. Boardman, Consulting Engineer, Newark, subject, however, to the following terms and conditions:

1. That the dam be built as shown on plans

filed, or if desirable to the owners, that the 100-foot concrete wall spillway be reduced to 62 feet, and the entire dam be raised so that the top of the dam will be 3.5 feet above spillway crest, thus allowing for a 3-foot head and a 6-inch freeboard.

2. That the work shall at all times be subject to supervision and inspection by representatives of this Department, and that no changes in plans and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the plans and specifications as may be considered necessary, and further reserves the right to suspend or revoke this permit at any time should such action be deemed advisable in the interest of public safety.

3. That the work shall be under the direction of a competent engineer, and that he or a competent representative shall be on the ground daily during the construction and until the completion of the dam.

4. That the Department shall be notified in advance of the proposed time of commencement of this work; that no material shall be placed in any portion of the foundation until such portion of the foundation has been approved in writing by a representative of this Department.

5. That a report, on forms to be submitted by the Department, on the status of the construction work shall be mailed to the Department of Conservation and Development, State Office Building, Trenton, New Jersey, on the first day of each month until the work upon the dam has been completed.

6. That the work shall be started within one year from the date of this approval, unless extension of time is granted after proper application to this Department; also that if this work is not completed on or before two years from date of this approval, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

In accordance with condition No. 4, please advise us in advance of the proposed time of commencement of this work so that we may arrange for proper inspection.

Yours very truly,
DEPT. OF CONSERVATION AND DEVELOPMENT
(Snd.) H. B. Kummel
H. B. Kummel
State Geologist and Director.

HTC:MRH

EXHIBIT O86.

(1/26/27.)

(Consisting of 9 papers, i. e., 4 letters and 5 reports of analysis. All admitted and marked together as an exhibit, under above number.)

———

(Rubber Stamp)
RECD. OCT 10 1925
FILE .....
FILE .....

(Rubber Stamp)
[FILE]
Office of
RINGWOOD COMPANY
Peter's Mine
RINGWOOD, N. J.

October 9, 1925. 19

(Rubber Stamp)
RECD. OCT 10 1925
FILE .....
FILE .....

Testing Laboratories,
State Highway Commission,
Trenton, N. J.
Gentlemen:—

We are sending you three (3) bags of concrete sand by express, asking that you test them and report their suitability, for concrete use. They are marked "Cup Saw",* "Ryerson,,† and "Ringwood Junction".‡

Yours very truly,
Robert E. Crockett,
R

* 60026 csd 3 (in lead pencil).
† 60027 csd 4 (in lead pencil).
‡ 60028 csd 5 (in lead pencil).

(Rubber Stamp)
SAMPLE REC'D.
OCT 13 1925
REPORTED

Re: Material—Concrete Sand.
J. G. Bragg/AM
November 12, 1925.

Laboratory
Quarry & Taylor Place.

The Ringwood Company,
Ringwood, N. J.

Gentlemen: Att'n. Mr. Robert E. Crockett:

Inclosed herewith are copies of analyses on three samples of Concrete Sand submitted by you marked "Cup Saw", "Ryerson" and "Ringwood Junction".

This will inform you that after screening in the Laboratory these samples practically comply with our requirements for Concrete Sand. You will note, however, that one of these samples is deficient in material passing the 30 and retained on the 50 mesh sieve. This condition would have to be corrected before general approval could be given on these materials.

Very truly yours,
R. B. Gage,
Chemical Engineer.
(In lead pencil)
Office

L-11—2M—3-25.
(Rubber
[FIL

From:	Ringwood Compan
Proposed Use	
Kind of Material	
Producer	
Location of Plant	
Sample Taken From	
Quantity Represented	R
Marks on Sample	
Sampled By	Sub
Date Taken	10-
Date Rec'd at Lab.	10-1
Job Sample No.	C S
Laboratory Serial No.	600

*SIEVE AN

Passing	Retained On	
¼-Inch	10-Mesh	2
10-Mesh	20- "	2
20- "	30- "	2
30- "	40- "	
40- "	50- "	
50- "	80- "	
80- "	200- "	
200- "		

Specimens Tested	1
	11

Tension Briquettes	1	
	2	
	3	
Age 7 Days	Ave.	
Tension Briquettes	1	
Compression	2	
	3	
Age Days	Ave.	
Elutriation	0.7 %	

*Analysis made on material

* 60026 csd 3 (in lead pencil).
† 60027 csd 4 (in lead pencil).
‡ 60028 csd 5 (in lead pencil).

(Rubber Stamp)
SAMPLE REC'D.
OCT 13 1925
REPORTED

Re: Material—Concrete Sand.
J. G. Bragg/AM
November 12, 1925.

Laboratory
Quarry & Taylor Place.

The Ringwood Company,
Ringwood, N. J.

Gentlemen: Att'n. Mr. Robert E. Crockett:

Inclosed herewith are copies of analyses on three samples of Concrete Sand submitted by you marked "Cup Saw", "Ryerson" and "Ringwood Junction".

This will inform you that after screening in the Laboratory these samples practically comply with our requirements for Concrete Sand. You will note, however, that one of these samples is deficient in material passing the 30 and retained on the 50 mesh sieve. This condition would have to be corrected before general approval could be given on these materials.

Very truly yours,
R. B. Gage,
Chemical Engineer.
(In lead pencil)
Office

L-11—2M—3-25.

(Rubber Stamp)
[FILE]

STATE OF NEW JERSEY
STATE HIGHWAY COMMISSION
Trenton, N. J.

Report of Analyses of
CONCRETE SAND OR STONE DUST
Serial No. 60028
11-12-25
T. K. M.

From:	Ringwood Company (Peters Mine)	
Proposed Use	Concrete	
Kind of Material	Concrete Sand	
Producer	Ringwood Company,	
Location of Plant	Ringwood, N. J.	
Sample Taken From		Reported To
Quantity Represented	Ringwood Jct.	
Marks on Sample		Ringwood Co.
Sampled By	Sub. by R. E. Crockett	
Date Taken	10- 9-25	
Date Rec'd at Lab.	10-13-25	
Job Sample No.	C Sd 5	Standard
Laboratory Serial No.	60028	Ottawa

*SIEVE ANALYSIS				*COMBINED SIEVE ANALYSIS			REQUIRED	
Passing	Retained On			Passing	Retained On		Min.	Max.
¼-Inch	10-Mesh	26.32 %	%	¼ Inch	10-Mesh	26.32 %	5.0 %	25.0 %
10-Mesh	20- "	28.50 %	%	10 Mesh	30- "	48.68 %	30.0 %	60.0 %
20- "	30- "	20.18 %	100 %	30- "	50- "	15.58 %	20.0 %	40.0 %
30- "	40- "	9.22 %	%	50- "	200- "	9.20 %	5.0 %	15.0 %
40- "	50- "	6.36 %	%	200 "		0.22 %	0.0 %	5.0 %
50- "	80- "	5.70 %	%	Percent of Entire Sample				
80- "	200- "	3.50 %	%	Passing ½-Inch Screen		99.7 %	100.0 %	%
200- "		0.22 %	%	Passing ¼ Inch Screen		88.3 %	95.0 %	100.0 %

STRENGTH TESTS

Specimens Tested		1 Cement 3 Sand 11.0% Water	1 Cement 3 Sand 9.3% Water	Strength Per Cent of Standard Ottawa	Required	Strength Retest Serial No.	Strength Retest Standard Ottawa
Tension Briquettes	1	300	300		100		
	2	315	295		Per Cent		
	3	325	295		Standard		
Age 7 Days	Ave.	313	297	105.4	Ottawa		
Tension Briquettes	1				100		
Compression	2				Per Cent		
	3				Standard		
Age Days	Ave.				Ottawa		

Elutriation 0.7 % Max. Elutriation Allowed 4.0 % Colormetric Clear

*Analysis made on material passing ¼-Inch Screen

Signed

L-11—2M—3-25.

(Rubber S
[FIL

From: Ringwood Compan
Proposed Use
Kind of Material
Producer
Location of Plant
Sample Taken From
Quantity Represented C
Marks on Sample
Sampled By Sub

Date Taken 10-
Date Rec'd at Lab. 10-1
Job Sample No. C S
Laboratory Serial No. 600

*SIEVE AN

Passing	Retained On	
¼-Inch	10-Mesh	1
10-Mesh	20- "	9
20- "	30- "	2
30- "	40- "	1
40- "	50- "	1
50- "	80- "	
80- "	200- "	
200- "		

Specimens Tested 1

11

Tension Briquettes 1
2
3

Age 7 Days Ave.
Tension Briquettes 1
Compression 2
3

Age 7 Days Ave.
Elutriation 1.5 %
*Analysis made on material

L-11—2M—3-25.

(Rubber Stamp)
[FILE]

STATE OF NEW JERSEY
STATE HIGHWAY COMMISSION
Trenton, N. J.

Report of Analyses of
CONCRETE SAND OR STONE DUST
11-12-25
T. K. M.
Serial No. 60026

From: Ringwood Company (Peters Mine)

Proposed Use	Concrete	
Kind of Material	Concrete Sand	
Producer	Ringwood Company,	
Location of Plant	Ringwood, N. J.	Reported To
Sample Taken From		
Quantity Represented	Cup Saw	Ringwood Co.
Marks on Sample		
Sampled By	Sub. by R. E. Crockett	
Date Taken	10- 9-25	
Date Rec'd at Lab.	10-13-25	
Job Sample No.	C Sd 3	Standard
Laboratory Serial No.	60026	Ottawa

*SIEVE ANALYSIS				*COMBINED SIEVE ANALYSIS			REQUIRED	
Passing	Retained On			Passing	Retained On		Min.	Max.
¼-Inch	10-Mesh	11.40 %	%	¼ Inch	10-Mesh	11.40 %	5.0 %	25.0 %
10-Mesh	20- "	21.05 %	%	10 Mesh	30- "	46.49 %	30.0 %	60.0 %
20- "	30- "	25.44 %	100 %	30- "	50- "	26.76 %	20.0 %	40.0 %
30- "	40- "	13.16 %	%	50- "	200- "	14.25 %	5.0 %	15.0 %
40- "	50- "	13.60 %	%	200- "		1.10 %	0.0 %	5.0 %
50- "	80- "	9.43 %	%	Percent of Entire Sample				
80- "	200- "	4.82 %	%	Passing ½-Inch Screen		98.9 %	100.0 %	%
200- "		1.10 %	%	Passing ¼-Inch Screen		94.5 %	95.0 %	100.0 %

STRENGTH TESTS

Specimens Tested		1 Cement 3 Sand 11.0% Water	1 Cement 3 Sand 9.3% Water	Strength Per Cent of Standard Ottawa	Required	Strength Retest Serial No.	Strength Retest Standard Ottawa
Tension Briquettes	1	315	300		100		
	2	310	295		Per Cent		
	3	340	291		Standard		
Age 7 Days	Ave.	322	297	108.4	Ottawa		
Tension Briquettes	1				100		
Compression	2				Per Cent		
	3				Standard		
Age 7 Days	Ave.				Ottawa		

Elutriation 1.5 % Max. Elutriation Allowed 4.0 % Colormetric Clear

*Analysis made on material passing ¼-Inch Screen Signed

Office of
RINGWOOD COMPANY
Peter's Mine
RINGWOOD, N. J.

May 7, 1925 19
(Rubber Stamp)
RECD MAY 12 1925
FILE .....
FILE 10

Testing Laboratory, State of N. J.,
Quarry & Taylor Place,
Trenton, New Jersey.

Gentlemen:— Att. Mr. R. B. Gage.

We are sending you by express two samples of gravel, two of sand and one of crushed stone marked as follows—

"R G"	—	Ryerson gravel	52575 cgd 1
"R S"	—	Ryerson sand	52576 csd 1
"C G"	—	Cupsaw gravel	52577 cge 2
"C S"	—	Supsaw sand	52578 csd 2
"B R"	—	Boardville rock	52579 cse 1

(In lead pencil)

The sand and gravel samples after being taken from the bank were dropped into a barrel and the water then decanted. This of course would not give as thorough a washing as when dredged.

We should be pleaded to have you examine these five samples of material and O. K. then for use on general construction.

Yours very truly,

Ringwood Company.
R. E. Crockett,
D.
Asst. Mg'r. of Mines.

(In lead pencil)
Recd. 5-11-25
(Rubber Stamp)
SAMPLE REC'D.
MAY 11 1925
REPORTED

Office of
RINGWOOD COMPANY
Peter's Mine
RINGWOOD, N. J.

May 13, 1925 19

Testing Laboratory, State of N. J.,
Quarry & Taylor Place,
Trenton, N. J.

Gentlemen:— Att. Mr. R. B. Gage.

We sent you two samples of gravel and sand to be examined. We would like to know if you have the results.

Yours very truly,
Ringwood Company.
R. E. Crockett,
D.
Asst. Mg'r. of Mines.

L12—5M—5-24

(Rubber
[FI

From:
Proposed Use
Kind of Material
Producer

Location of Pit
Sample Taken From
Quantity Represented
Marks on Sample
Sampled By
Grade Specified

Date Taken
Date Rec'd at Lab.
Job Sample No.
Laboratory Serial No.

Mechanica

SCREEN AND SIEVES	Re
Total Per Cent. Passing	Sa
2¼ "	91.
1½ "	72.
1¼ "	66.
¾ "	
½ "	34.
¼ "	7.
10-Mesh	3.

Remarks:
Approved as to quality
Requires washing and s
(In lead pencil)
R. B. Gage

(In lead pencil)
Recd. 5-11-25
(Rubber Stamp)
SAMPLE REC'D.
MAY 11 1925
REPORTED

Office of
RINGWOOD COMPANY
Peter's Mine
RINGWOOD, N. J.

May 13, 1925 19

Testing Laboratory, State of N. J.,
Quarry & Taylor Place,
Trenton, N. J.

Gentlemen:— Att. Mr. R. B. Gage.

We sent you two samples of gravel and sand to be examined. We would like to know if you have the results.

Yours very truly,
Ringwood Company.
R. E. Crockett,
D.
Asst. Mg'r. of Mines.

L12—5M—5-24

(Rubber Stamp)
[FILE]

STATE OF NEW JERSEY
STATE HIGHWAY COMMISSION
Trenton, N. J.

Report of Analyses of
WASHED GRAVEL
Serial No. 52577
T. K. M.
5-19-25

From:	Ringwood Company	
Proposed Use	General Construction	
Kind of Material	Washed Gravel	
Producer	Ringwood Company	
Location of Pit		
Sample Taken From		Reported To
Quantity Represented		
Marks on Sample	"C. G" Cupsaw gravel	Ringwood Co.
Sampled By	sub by Mr. R. E. Crockett per D	
Grade Specified		Parlington

Date Taken	Letter of 5-7-25
Date Rec'd at Lab.	5-11-25
Job Sample No.	CG1-2
Laboratory Serial No.	52577

TESTS

Mechanical Analysis

SCREEN AND SIEVES Total Per Cent. Passing	Rec'd as Sample	Required Min.	Required Max.	Determination
2¼ "	91.5 %	100 %	%	
1½ "	72.8 %	%	%	Specific Gr.
1¼ "	66.7 %	25 %	60 %	
¾ "	—— %	%	%	Wt. per Cu. Ft.
½ "	34.0 %	0 %	12 %	
¼ "	7.8 %	0 %	2 %	Per Cent. Wear
10-Mesh	3.3 %	%	%	

Physical Analysis

As Rec'd	Required Min.	Required Max.

Remarks:
Approved as to quality only.
Requires washing and screening to proper size.
(In lead pencil)
R. B. Gage

Signed

L12—5M—5-24

(Rubber
[FIL

From:
Proposed Use
Kind of Material
Producer

Location of Pit
Sample Taken From
Quantity Represented
Marks on Sample
Sampled By

Grade Specified
Date Taken
Date Rec'd at Lab.
Job Sample No.
Laboratory Serial No.

Mechanical

SCREEN AND SIEVES	Rec
Total Per Cent. Passing	a Sam
2¼ "	76.4
1½ "	68.7
1¼ "	62.4
¾ "	
½ "	28.8
¼ "	6.6
10-Mesh	0.8

Remarks:
Approved as to quality c
Requires washing and sc
(In lead pencil)
R. B. Gage

L12—5M—5-24

(Rubber Stamp)
[FILE]

STATE OF NEW JERSEY
STATE HIGHWAY COMMISSION
Trenton, N. J.

Report of Analyses of
WASHED GRAVEL
Serial No. 52575
T. K. M.
5-19-25

From: Ringwood Company
Proposed Use
Kind of Material Washed Gravel
Producer Ringwood Company

Location of Pit
Sample Taken From
Quantity Represented
Marks on Sample "R G" Ryerson gravel
Sampled By sub by R. E. Crockett per D

Reported To
Ringwood Co.
Ringwood, N. J.

Parlington

Grade Specified
Date Taken Letter of 5-7-25
Date Rec'd at Lab. 5-11-25
Job Sample No. CGl-1
Laboratory Serial No. 52575

TESTS

Mechanical Analysis

SCREEN AND SIEVES Total Per Cent. Passing	Rec'd as Sample	Required Min.	Required Max.
2¼ "	76.4 %	100 %	%
1½ "	68.7 %	%	%
1¼ "	62.4 %	25 %	60 %
¾ "	—— %	%	%
½ "	28.8 %	0 %	12 %
¼ "	6.6 %	0 %	2 %
10-Mesh	0.8 %	%	%

Physical Analysis

Determination	As Rec'd	Required Min.	Required Max.
Specific Gr.			
Wt. per Cu. Ft.			
Per Cent. Wear			

Remarks:
Approved as to quality only.
Requires washing and screening to proper size.
(In lead pencil)
R. B. Gage

Signed

L-11—2M—3-25.

(Rubber
[FIL

From: Ringwood Compan
Proposed Use
Kind of Material
Producer
Location of Plant
Sample Taken From
Quantity Represented R
Marks on Sample
Sampled By Sub

Date Taken 10-
Date Rec'd at Lab. 10-1
Job Sample No. C S
Laboratory Serial No. 600

*SIEVE AN

Passing	Retained On	
¼-Inch	10-Mesh	2
10-Mesh	20- "	2
20- "	30- "	2
30- "	40- "	1
40- "	50- "	1
50- "	80- "	
80- "	200- "	
200- "		

Specimens Tested 1

11.

Tension Briquettes 1
2
3

Age 7 Days Ave.
Tension Briquettes 1
Compression 2
3

Age Days Ave.
Elutriation 1.1 %
*Analysis made on material

L-11—2M—3-25.

(Rubber Stamp)
[FILE]

STATE OF NEW JERSEY
STATE HIGHWAY COMMISSION
Trenton, N. J.

Report of Analyses of
CONCRETE SAND OR STONE DUST
Serial No. 60027
11-12-25
T. K. M.

From: Ringwood Company (Peters Mine)
Proposed Use Concrete
Kind of Material Concrete Sand
Producer Ringwood Company,
Location of Plant Ringwood, N. J.
Sample Taken From
Quantity Represented Ryerson
Marks on Sample
Sampled By Sub. by R. E. Crockett

Reported To
Ringwood Co.

Date Taken 10- 9-25
Date Rec'd at Lab. 10-13-25
Job Sample No. C Sd 4 Standard
Laboratory Serial No. 60027 Ottawa

*SIEVE ANALYSIS				*COMBINED SIEVE ANALYSIS			REQUIRED	
Passing	Retained On			Passing	Retained On		Min.	Max.
¼-Inch	10-Mesh	20.87 %	%	¼ Inch	10-Mesh	20.87 %	5.0 %	25.0 %
10-Mesh	20- "	20.43 %	%	10 "	30- "	41.08 %	30.0 %	60.0 %
20- "	30- "	20.65 %	100 %	30 "	50- "	23.91 %	20.0 %	40.0 %
30- "	40- "	13.04 %	%	50 "	200- "	13.48 %	5.0 %	15.0 %
40- "	50- "	10.87 %	%	200 "		0.65 %	0.0 %	5.0 %
50- "	80- "	9.57 %	%	Percent of Entire Sample				
80- "	200- "	3.91 %	%	Passing ½-Inch Screen		80.6 %	100.0 %	%
200- "		0.65 %	%	Passing ¼-Inch Screen		64.2 %	95.0 %	100.0 %

STRENGTH TESTS

Specimens Tested		1 Cement 3 Sand 11.0% Water	1 Cement 3 Sand 9.3% Water	Strength Per Cent of Standard Ottawa	Required	Strength Retest Serial No.	Strength Retest Standard Ottawa
Tension Briquettes	1	300	300		100		
	2	290	295		Per Cent		
	3	320	295		Standard		
Age 7 Days	Ave.	303	297	102.0	Ottawa		
Tension Briquettes	1				100		
Compression	2				Per Cent		
	3				Standard		
Age Days	Ave.				Ottawa		

Elutriation 1.1 % Max. Elutriation Allowed 4.0 % Colormetric Clear

*Analysis made on material passing ¼-Inch Screen

Signed

STIPULATION.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

RINGWOOD COMPANY, *Appellant,* v. NORTH JERSEY DISTRICT WATER COMMISSION, *Respondent.*	On Appeal. Stipulation.

Appellant and respondent in the above-entitled cause, by their respective attorneys, stipulate as follows concerning the record on appeal:

1. The description by metes and bounds of the lands owned by appellant and taken in condemnation by respondent, as appearing in the record in the Circuit Court, need not be printed. In lieu thereof any maps admitted in evidence in the trial Court may be referred to on the argument of the appeal to show the location, boundaries and area of the lands taken and the relation thereof to the remaining lands owned by the appellant, and to other lands.

2. No exhibit admitted in evidence in the trial Court, or which, having been offered, was excluded,

need be printed or otherwise reproduced in the record, but in lieu thereof the original exhibits, or matters offered as exhibits, may be used on the argument of the appeal; and for that purpose each party will, on reasonable notice from the other, have present at the argument any exhibits offered by it at the trial.

3. If the Court of Errors and Appeals, at or after the argument, shall require the printing or reproduction of any of the exhibits, the same shall be done, in the first instance at the expense of appellant and subject eventually to such order as the Court may make with regard to the taxation of costs.

4. Notwithstanding the foregoing,

(a) Appellant may, at its option, print as a part of the record such descriptions contained in the judgment roll and print or otherwise reproduce such exhibits as it may deem advisable.

(b) If respondent, after signing of this stipulation, shall consider it necessary to print or reproduce anything that it is herein agreed need not be printed or reproduced, appellant will print or reproduce the same; or, if appellant thinks it unnecessary to do so, the parties will submit the question to the Judge who presided in the trial Court, or, in his absence, to any Justice or Judge of the Court of Errors and Appeals, and abide by his decision as to such printing.

The cost of printing or otherwise reproducing any part of the record in accordance with this paragraph shall be paid in the first instance by the ap-

COURT OF ERRORS AND APPEALS
OF NEW JERSEY.

RINGWOOD COMPANY,
Appellant,

v.

NORTH JERSEY DISTRICT WATER SUPPLY
COMMISSION,
Respondent.

ON APPEAL.

BRIEF FOR APPELLANT.

FOREWORD.

The rulings of the trial Court involved in this appeal resulted in the jury being compelled to determine the value of 2354 acres of land condemned for water supply purposes without having heard a single word of testimony concerning its market value for that purpose, although it was shown that through the land there flow a small river and two large brooks of pure water, and that within its bounds is a natural basin capable of holding billions of gallons if these streams be dammed, and although it was sought to be shown that as an appurtenance the land possesses the right to draw 22,400,000 gallons per

day from the storage of Greenwood Lake; and that in numerous communities within easy reach of the property there existed, at the time the condemnation proceeding was commenced, a pressing demand for large increases in public water supplies.

By other rulings the jury was deprived of hearing a single word of testimony concerning the value of the property by reason of its containing beds of sand and gravel having a superficial area of 450 acres, and ascertained by exploration work to contain approximately 22,000,000 cubic yards of material of the highest quality for the making of concrete and other uses.

These constitute the chief, although not the only, errors assigned for reversal.

ABSTRACT, OR STATEMENT OF THE CASE.

(Pages 1-450 of Record are in Vol. I; pages 451-937 in Vol. II.)

This case arises out of an eminent domain proceeding brought by the respondent to acquire from the appellant 2354 acres of land lying in the Wanaque Valley in Passaic County, as a part of the site for the Wanaque reservoir now being constructed by the respondent.

The land from appellant constitutes about 41% of the entire area acquired or to be acquired by respondent for the reservoir and its protective belt. (Record, p. 955, l. 34.)

These 2354 acres form the *heart* (although, like the human organ, they lie to one side of the body) of about 24,000 substantially contiguous acres owned by appellant in Passaic County.

Essentials of the "lie of the land" which, appellant will urge, bear materially upon the question of its value, are shown on a map folded into this brief. The entire land holdings of appellant are indicated thereupon in pink, except the parts thereof which will be flowed by the water of the reservoir, which are given the color (blue and are cross-hatched) ascribed to the water of the reservoir in general but are identified by cross-hatching. Shown in other colors but identified by horizontal cross lines, are other lands owned by third persons but in which appellant, in connection with its ownership of the 2354 acres taken, owns flowage rights—a fact which appellant asserts adds to the value of the lands taken.

The general taking line of the respondent is indicated in yellow. There is also indicated the course of the Wanaque River (main feeder of the reservoir) as it flows from Greenwood Lake to and below the point where respondent's dam is being erected, and the courses of important tributary streams flowing through appellant's lands and feeding the reservoir—namely, West Brook, entering the Wanaque from the west; Cupsaw Brook, entering it from the east; and Ringwood River, entering it from the northeast.

The 2354 acres taken from appellant comprise the stream bed of the Wanaque River and its tributary brooks so far as these streams flow through the 2354 acres, and the meadows lying along these streams which will be flooded by the water of the reservoir; also the hillsides rising at various angles, ranging from gentle slope to precipitous cliff, running back to respondent's "taking line" and affording a protective belt several hundred feet in width around the entire reservoir.

The lands taken are the best and most valuable (we repeat, the "heart") of appellant's 24,000

acres, much of the remainder consisting of high mountain land lying westerly of the Wanaque, the valleys of which are narrow and the streams small.

On account of the small size of the map folded into the brief, it is impossible to show effectively contours and other topographical data, but these are shown on large maps that were introduced at the trial at the circuit and will be produced at the argument of this appeal.

For reasons which will appear as the facts are further developed, there are also indicated on the map attached to the brief the following:

The site of the old "Ryerson's Long Pond Forge" as it existed in 1837 and for many years before and since that date (half way between the foot of Greenwood Lake and the head of the Wanaque Reservoir).

Sites indicated (but not to scale) by circles drawn within the 2354 acres, at which the State Board of Conservation and Development (prior to the commencement of the condemnation proceeding) had authorized appellant to erect dams (2 on Wanaque River and 3 on Cupsaw Brook).

The respondent, conceiving that the land taken had no value save such as it might possess for real estate development purposes, put in as witnesses to its value only real estate (and building value) experts. By their chief witness of this character (Mr. Henry G. Hershfield) they sought to prove the value of the 2354 acres by reference to prices paid for other tracts of land, more or less similar in character (though for the most part much smaller in area) within a radius of a few miles from the taking.

At the opening of the trial (Rec. p. 70, l.14) Appellant requested the right to open and close, and again at the close of the trial (Rec. p. 808, l. 12) requested the right to make the closing argument to the jury. The refusal of these requests and grant of these rights to Respondent form the basis of Grounds of Appeal Nos. 1 and 2.

Appellant agreed with respondent that the lands taken did have a value for real estate development purposes, and, as the jury might conceivably find that its highest value was for that purpose and therefore put its verdict on that basis, appellant sought by witnesses of its own to prove what the value for this purpose was.

Appellant asserted that the value of lands situated where these are is enhanced if the natural capability exists of producing thereupon lakes, which add ornamental features to the landscape, permit boating, fishing and bathing, and also enable the production of hydro-electric power to serve a local community. Both to assist the jury in the formation of its own opinion, and as a basis for opinion evidence to be given by its real estate experts, appellant sought to show that the lands being taken possessed this capability. The consent of the State being necessary (under P. L. 1919 p. 83) to the damming of streams for the production of lakes, appellant first undertook to prove (by Dr. Henry B. Kummel, Director of the Department of Conservation and Development, which, under the law, grants consent in behalf of the State) that the State's consent had been given, prior to the commencement of the condemnation proceeding, to the construction of six dams within the 2354 acres under condemnation. It also sought to show (by official records in the custody of the witness) the character of the dams to the construction of which the State had given approval, the area to be flowed by them, etc.

The Court overruled appellant's demand for the admission in evidence of the official records proving the facts in respect of the matters mentioned. Its action in so doing in respect to one dam, the building of which was almost finished at the time (March,

1925) when the institution of the condemnation proceeding resulted in stoppage of the work, forms the basis of ground of appeal No. 5. Its action in so doing with respect to four other dams, the construction of which had not been carried beyond the preliminary stages of drawing plans, making test borings for foundations, clearing land, etc., forms the basis of grounds of appeal Nos. 6 and 7.

Appellant sought to prove but was prevented by the Court's rulings that the land taken from it (entirely aside from and independent of any lands taken by respondent from other owners) had a special value for two certain purposes: (a) for the production of electric energy for water power; and (b) for the production of supplies of potable water for public use, from storage that could be produced by building dams on and flooding the land taken from appellant and other adjacent lands (see map) over which appellant possesses flowage rights. And as the value of lands in general, for either of these purposes, materially depends upon the *volume of flow* of the streams passing through them, appellant undertook, as steps in the proof of the value of its 2354 acres for these purposes, to prove:

First: That appellant, in connection with its land holdings (including the 2354 acres being taken) owned and possessed the perpetual right to draw water from Greenwood Lake and pass it down the natural channel of the Wanaque River through the 2354 acres taken, at the rate of 22,400,000 gallons per 24 hours, over and above the natural flow of the Wanaque River, at an equal rate of flow throughout the entire 24 hours of each day, or at an accelerated rate during shorter periods of time in each 24 hours, thus adding substantially not only to the flow of water for the production of power, but also to the

potential daily yield of potable water derivable from storage in reservoirs on the lands condemned.

Second: That the water stored in Greenwood Lake, together with the natural drainage into the lake, was sufficient to permit, as a practical matter, the withdrawal of 22,400,000 gallons per day the year round in excess of the normal discharge from the lake through the Wanaque River.

To prove its legal right to thus draw from the storage of Greenwood Lake, appellant, having first shown itself to be successor in title to Jacob M. Ryerson (which the Court found to be the fact, Record, p. 275, l. 7), offered in evidence a certified copy of a deed given by said Ryerson and wife to the Morris Canal & Banking Company, dated March 27, 1837, and transcribed from Liber V3 of Deeds, p. 322, whereby Ryerson conveyed to the canal company 10 certain tracts of land located at and about the site of the dam then recently built (and still existing) at Greenwood Lake, and including part of the lands flowed by the waters of the lake, subject to the following reservation (R. p. 264, l. 24):

> "Excepting also and the said Jacob M. Ryerson hereby expressly reserves to and for himself his heirs and assigns forever the right of drawing and having at all times from said reservoir through the gates of said new dam so much water as will with the natural flow of the intermediate streams be sufficient for all the necessary purposes of a forge with two fires and a saw mill with one saw at the site of his present Long Pond forge and saw mill he or they being bound to keep the said forge and saw mill dam in good repair and to draw no more water than shall be really necessary for such forge

> and saw mill or other works not requiring a greater quantity of water with the right also of using the water to be drawn as aforesaid upon any intermediate works which he or they shall erect between the dam of said reservoir and said Long Pond Forge. Subject to the exceptions and reservations aforesaid the above described ten tracts or lots of land and premises are hereby conveyed."

The offer of the deed was objected to on the ground that the place for the exercise of the right reserved was outside the taking. (It was also said by counsel for the respondent in argument that the right had been lost by non-user, but no proof of this was offered or attempted.)

The Court excluded the deed upon the ground that it was "immaterial and irrelevant." (Record, p. 311, l. 32, *et seq.*, also p. 310, l. 7.)

The exclusion of this deed affords the basis for grounds of appeal numbers 9, 12 and 13.

Next, to prove its legal right to take measures insuring, as a practical matter an uninterrupted flow of water from storage in Greenwood Lake, appellant offered in evidence a certified copy of another deed, of the same date and between the same parties, transcribed from Liber V3, p. 317, whereby Ryerson "expressly reserved for the use and benefit of himself, his heirs and assigns forever the right of reconstructing and maintaining the said 'old dam' and drawing and appropriating the water of said Long Pond in the same manner as the said parties of the first or either of them have heretofore done whenever the said new dam of the party of the second part shall not be kept up and used for the purpose of saving water." (To explain this, the "Old Dam" was one erected and maintained by Ryerson

and his predecessors in title to provide stored water for power for the Long Pond forge and sawmill, prior to the building of the new (and present) dam, which considerably increased the size of Greenwood Lake—known in and prior to 1837 as Long Pond.)

This deed was excluded upon the same grounds as the other and its exclusion is covered by ground of appeal No. 12.

Appellant sought also, by two qualified witnesses (both of them engineers—one of them perhaps the most eminent authority in the country on the measurement of ancient water grants) to have translated into terms of cubic feet per second and gallons per 24 hours the quantity of water described in the Ryerson reservation as "so much water as will with the natural flow of the intermediate streams be sufficient for all the necessary purposes of a forge with two fires and a sawmill with one saw at the site of his present Long Pond forge and sawmill;" by way of supporting appellant's assertion that the quantity was 37 second feet or 22,400,000 gallons per day.

The action of the Court in overruling questions designed to bring out this fact affords the basis for grounds of appeal numbers 8 and 14.

Appellant proved that prior to the institution of the condemnation proceeding it had commenced the construction of a concrete dam at a point on the Wanaque River within the taking, known at the present time as "Ryerson Furnace" (not the site of Ryerson's "Long Pond Forge" of 1837) and that this dam was almost finished when the institution of the condemnation proceeding resulted in a stoppage of work. Appellant then (by questions put to an engineer witness, Mr. James P. Anderson), sought to show that the exercise of the reservation contained in Ryerson's deed to the canal company would "add to the amount of water power that could

be produced in the Ringwood property'' (under condemnation) at the site of this dam, and therefore that the mere existence of the right added to the value of the property.

The overruling of this question affords the basis for ground of appeal No. 11.

Appellant, in the course of the examination of one of its engineer witnesses (Mr. Jay M. Whitham, the expert in the measurement of old water grants above referred to) specifically called the attention of the Court to the fact that the Ryerson reservation greatly added to the value, for water supply purposes, of the 2354 acres taken, appellant's counsel saying:

> ''I also offer this witness to prove the facts before recited (i. e. that the water to be drawn under the Ryerson reservation amounted to 22,400,000 gallons per day) for the purpose of laying—and this is a most important phase of my offer—for the purpose of laying a necessary and proper foundation for testimony hereafter to be given by other duly qualified experts hereafter to be called to the effect that the value for water supply purposes of the lands being taken is substantially enhanced by reason of the Ringwood Company possessing, as a legal appurtenance to the lands being taken or to certain parts thereof, the right created by said reservation in the deed above mentioned; and to prove that this taking prevents the Ringwood Company from ever realizing on or in connection with any part of its lands either within or without the taking such enhanced value for water supply purposes given to its lands by the said right or reservation contained in said deed, for which reasons I respectfully submit the Ringwood Company is entitled to prove and recover in this proceeding the enhanced value which said right gives to the lands being taken, and the damages which this taking does to its remaining lands by rendering the exercise of the said right in or on said land less productive, less useful, and less beneficial than if the taking had not occurred. That states the purpose of my offer.''

And, this offer being objected to upon the ground that the Ryerson ''Long Pond forge'' of 1837 lay outside the taking, counsel further explained the purport of the question by the following statement:

> ''It was for that reason, your Honor, if I may say, that I produced the additional witness and made the additional tender. I thought I had not made it plain before that this taking does interfere with the use upon the lands being taken of the water secured to us by this reservation which, if employed at the old site mentioned in the reservation must, in the course of nature and by the requirement of law flow on down the river through the entire extent of the lands being taken.''

The Court overruled this offer upon the ground that ''it is immaterial to this issue,'' and this ruling is challenged by ground of appeal No. 14.

As an initial step toward this end appellant put to an informed witness (as he was not permitted to answer he must be presumed to have been informed), questions designed to prove that the City of Newark had contracted with respondent to take more than 40% of the entire daily yield (of 100,000,000 gallons) of the Wanaque Reservoir, and that Newark had already contracted to sell and deliver to other municipalities water thus to be ob-

Appellant then sought to show the value of the lands taken by proving the profits which the takers would derive from their use.

tained from the Wanaque Reservoir, beginning with the time of the delivery of water to it; and that "the difference between the price at which Newark will get water from the Wanaque and the price at which it sells it to other municipalities is a sum sufficient to yield a very high return on Newark's investment in Wanaque water, to give Newark a profit which it is wholly unjust to allow anybody to have at the expense of this owner through taking his land at the low price which has been offered here."

Such questions were objected to as immaterial. Sustaining the objection, the Court said, "It is highly speculative and is therefore improper and immaterial."

These rulings afford the basis for grounds of appeal numbers 15, 16 and 17.

The rulings just referred to rendering nugatory any attempt to prove (as appellant was prepared to prove) the cost to Newark per million gallons of the water it will obtain from the Wanaque Reservoir, and the price per million gallons at which it has contracted to resell water from the reservoir, appellant undertook in another manner to give the jury a basis upon which to value its property for water supply purposes, as follows:

First: To prove by respondent's 1925 report that the district served by respondent would require at the end of every eight-year period beginning with the year 1925, an increased supply of water in the amount of 100,000,000 gallons per day.

Second: To prove (by Mr. Cornelius C. Vermeule, recognized as a leading authority on the public water supplies of New Jersey and expressly declared by the Court to be qualified—that after completion of the Wanaque project and the development

of possibly one other source of near-by supply (the Ramapo) the district served by respondent would have to go to much more remote sections to obtain further supplies (according to respondent's own report for 1925, first to the Raritan basin and eventually to the Delaware River and its tributary streams).

An objection to the offer of the pertinent portions of respondent's 1925 report, made without any ground being assigned, was sustained by the Court without any reason being stated (Record, Vol. III, p. 952) and affords the basis of grounds of appeal numbers 31, 32 and 34.

The questions put to Mr. Vermeule were objected to as immaterial and sustained upon that ground (Record, p. 763, l. 8, *et seq.*; p. 764, l. 1, *et seq.*) and these rulings afford the basis for grounds of appeal numbers 26, 27 and 28.

Appellant next sought to prove by Mr. Vermeule (a) that if there were no water supply commission in existence and no condemnation proceeding under way, there would be a demand for appellant's lands for water supply purposes from corporations or municipalities having the right to develop water supplies; (b) the location of the points of such demand; (c) that the value for water supply purposes of appellant's lands under condemnation does not arise from or depend upon the fact that respondent has undertaken the construction of the Wanaque Reservoir; (d) what chartered water companies possessing the right to divert water and furnish public water supplies are so circumstanced as to make them purchasers or probable purchasers of appellant's lands under condemnation.

These inquiries were objected to on the ground that they referred to "a hypothetical question of

conditions which does not exist" and the objections were sustained upon the reasoning (suggested rather than expressly stated) that the inquiries were speculative and forbidden by the *Morris & Cummings Dredging Co.* case, 96 N. J. L. 248.

Rulings upon these questions afford the basis for grounds of appeal (in the order stated) numbers 21, 23, 22, 25 and 24.

As the foregoing résumé of a part of the examination of Mr. Vermeule indicates, all questions put to him designed to bring out *specific facts upon which the jury might form its own opinion as to value for water supply purposes* failed. Appellant also, however, put to Mr. Vermeule questions designed to bring out *his own naked opinion* as to value for this purpose. The Court, having first heard him subjected to a qualifying examination, direct and cross, twice declared that it found him to be qualified. Thus (Record, p. 715, l. 9):

> "The Court: Objection (by counsel for appellant to a question put by counsel for respondent) sustained. *The point now is whether his qualifications entitle him to be an expert witness on values.*" and on this point the Court said "my ruling is he is competent."

Appellant then put to the witness (Record, p. 731, l. 24) the question: "What in your opinion was the value of the property being taken, on the 19th day of March, 1925, in the state and condition in which it then was?"

This was objected to on the ground that *market* value was the proper basis and was thereupon amended by the insertion of the work "market" before the word "value."

The question as thus amended was objected to on the ground that "Mr. Vermeule has not shown himself to have any knowledge of the market value of lands, but only a limited knowledge as to the value, if he has shown that, of the lands for a specific purpose."

The objection was sustained on the ground that "*the matter is speculative*" and the Morris & Cummings Dredging Co. case invoked to support the ruling; which is challenged by grounds of appeal numbers 18 and 19.

The following question was then put to the witness (Record, p. 743, l. 33), "Mr. Vermeule, having regard to the availability of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes, what was its value in the market on March 19, 1925, in the condition in which it then was?"

This was objected to on the ground that "the witness has not shown himself qualified as to market value" and the objection was sustained without, however, any reason being stated.

The ruling is challenged by ground of appeal No. 20.

(Upon the whole record it is quite plain that the Court, in the two rulings last mentioned, did not mean to place its rulings *upon the reason assigned*—thereby reversing the two previous declarations, "my ruling is he is competent," and, "he is qualified."

After concluding the examination of Mr. Vermeule, appellant sought once more to prove the value of its lands for water storage and water supply purposes; making the following tenders of proof:

> "Mr. Hunt: I can, perhaps, save time by making an offer. I offer Mr. Robert E. Horton, of Albany, New York, and Mr. Clyde L. Potts of Morristown, New Jersey, and to qualify them as expert hydraulic and water supply engin-

eers, duly qualified to testify concerning the value of property for water supply purposes, and I offer to prove by them the value of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes in the condition in which it was on March 19, 1925."

I would propose also to prove by Mr. Horton the actual sale of a number of properties for water supply purposes with a view to qualifying him to testify concerning the value of this property under condemnation on March 19th, 1925, in the condition in which it then was, but having regard to the adaptability that it possesses for being used for water supply purposes."

The Court overruled these offers and excluded the testimony for the reasons stated in the concluding part of the foregoing discussion of Mr. Vermeule's evidence, and exceptions to these rulings constitute the basis for grounds of appeal numbers 29 and 30.

Appellant also offered to prove "that portion of the report for 1925 of the North Jersey District Water Supply Commission which deals with the quality and the purity of the waters of the Wanaque Shed, including the lands under condemnation." The purpose of the offer was to show that according to respondent's own statements, appellant's lands taken, *because of natural characteristics mentioned in respondent's report, and of the protective policy followed by appellant and its predecessors during their long ownership of the property,* possess a value for water supply purposes greater than that ordinarily possessed by a tract of like size and having a like stream flow.

Objection, put upon the ground that the offer was

"immaterial to this issue" was sustained, and appellant's exception forms the basis of ground of appeal No. 33.

Appellant proved the existence within the 2354 acres taken of three large deposits of sand and gravel, aggregating about 450 acres surface area and having such (proven) depth as to give a content of about 22,000,000 cubic yards of sand and gravel, averaging more than 50% gravel (that is, material ¼" to 3" in diameter), of the highest quality. It proved that these deposits lay in close proximity to the Wanaque River and Cupsaw Brook and to the tracks of the Erie Railway Co., where said streams ran through and said tracks adjoin the property of appellant, and with railroad sidings already existing or physical conditions readily allowing of their construction; so that the situation on the ground permitted the excavation of the material by dredging (the most economic method) and delivery from the washing and size-assorting machinery of the dredge directly into railroad cars.

Having proven the foregoing facts, appellant sought further to prove (by Stewart N. Neff, a producer of sand and gravel near Rochester, New York, formerly a producer in New Jersey) the following facts: (a) that its gravel lands were "so located as to be useful in the establishment and carrying on of a gravel and sand business;" (b) whether the witness knew "the royalties usually payable for the privilege of digging sand and gravel from deposits of this kind;" (c) whether the witness knew "what that sand in the Ringwood gravel lands is worth per cubic yard as it stands on the property;" (d) the value of the property, assuming that the jury would find that it contained approximately 22,000,000 cubic yards of sand and gravel; (e) the value of the property upon the assumption stated "paying no regard

whatever to any other part of the property than the 450 acres'' of gravel land; and (f) the value of the property because of the presence of the 450 acres of sand and gravel land ''assuming that it is of no value whatever aside from the sand and gravel upon it.''

Questions going to these points were objected to as immaterial and the sustaining of the objections gives rise to grounds of appeal numbers 36, 37, 38, 39, 40 and 41.

Appellant then produced as a witness, Frank F. Gallagher, and proved him to be treasurer of a corporation which produces 3½ million cubic yards of sand and gravel per year on Long Island and ships sand and gravel, ''into Jersey as far as Newark.'' The witness further testified that the business of this corporation (and of the partnership which preceded it and out of which it grew) had been carried on for 30 or 35 years, and that the witness had himself been employed in the business for 18 years and had ''done all kinds of work, practically, from an office boy up'' and was familiar with ''all the business of the company'' and all ''of its operations,'' including methods of excavation, transportation, and sale of its sand and gravel. Also, that he was thoroughly familiar with the market for sand and gravel in the neighborhood of Newark and with the prices fetched by gravel lands on Long Island, in the district which ships sand and gravel to Newark, he having made ''about a half a dozen'' purchases of such lands himself. He also testified that he had visited and thoroughly inspected the sand and gravel areas of appellant's lands under condemnation.

Having shown these facts, appellant offered to prove by this witness that ''sand and gravel is delivered from Long Island in Newark, at prices which

the sand and gravel at Ringwood can undercut in price in the same markets.'' The Court said, "I shall not permit it"

And also ''that there is a volume of a million tons per year from Long Island into Newark;'' ''Same ruling. You may have an exception. It is immaterial in my judgment.'' and the Court said:

These two offers were excluded and the rulings are covered by grounds of appeal numbers 42 and 43.

Thereafter appellant put to the witness questions asking his opinion as to ''the value per acre of the sand and gravel lands on the 450 acres;'' and ''the value of the sand and gravel on the lands at Ringwood.''

Objection was made and sustained (presumably on the ground that the witness was not qualified to speak as to value—see Record, p. 785, l. 10). Grounds of appeal numbers 45 and 46 challenge these rulings.

Appellant then asked the witness ''what price can be obtained in the market at Newark for a cubic yard of the sand and gravel on the lands at Ringwood.''

Objection, put on the ground that the question was incompetent and immaterial, was sustained and the ruling is covered by ground of appeal No. 47.

Appellant then asked the witness ''How does the percentage of gravel in the lands at Ringwood compare with the percentage of gravel in the lands at Long Island that you have testified to.''

This was objected to as immaterial. The objection was sustained and the ruling is challenged by ground of appeal No. 48.

Having thus been prevented from eliciting from this witness either his opinion as to value, or facts upon which the jury might form an independent opinion of its own, appellant produced as a witness, James G. Shaw, and proved him to be a Long Island

sand and gravel producer, in that business for four years prior to the trial and in the crushed stone business for 35 years preceding his entry into the gravel business. He testified that he shipped sand and gravel from Long Island to "Newark, Passaic, Belleville, Perth Amboy and New Brunswick" and shipped 300,000 cubic yards (360,000 tons) per year *to points on Newark Bay.* He "presumed" that a million cubic yards of Long Island sand and gravel was shipped to Newark Bay points annually. He testified that he had bought gravel lands on Long Island and was informed concerning purchases of such lands by others, and was familiar with the gravel business throughout the eastern part of the United States. He was familiar with the gravel beds on the lands being condemned.

To questions asking (in effect) how it could be determined whether a given gravel deposit had commercial value, he said, "You must first determine the market value of the material and then determine whether or not you can take the material from a piece of property you have in mind to your market and deliver it and make any money out of it." And further, "You determine first the market value of it, and then look at the property and you can get it within a few pennies of what it costs to take it out of the ground, prepare it, and place it in the market, when you have the freight rates."

Thereupon the following question was put to him:

> "State what the existing conditions on the ground on that property are that have any bearing on the question of whether the production of gravel on those beds can or cannot be accomplished at costs no greater than the production of gravel on Long Island?"

This was objected to on the ground that it tended

to "employ all of the elements of cost which the cases have excluded;" and the objection was sustained and is challenged by ground of appeal No. 49,

Appellant then asserted a right to submit proofs as follows: "Without mentioning any figures at all, whether the conditions on our property are such as to enable the production of sand and gravel there as cheaply as it can be produced on Long Island;" and "whether or not the cost of transporting our gravel to this northern New Jersey market, Newark and the surrounding cities, is or is not greater than the cost of transporting it to the same market from Long Island;" and "there is an existing railroad rate. I am willing to prove it and ready to prove it if you will permit me;" and "I should be permitted to ask what the comparative situation is. Can this gravel be excavated and worked as cheaply as Long Island gravel. Can it be transported to this market as cheaply as Long Island gravel? If he says Yes, then there is a basis for the comparison of value for the statement of value based upon Long Island prices. If he says No then my gravel case collapses."

The right to submit proofs on the points just stated having been denied, appellant put this question: "State whether or not gravel from the deposits on the property under consideration could be put into Newark Bay market at costs that would enable it to compete with gravel from Long Island coming into that market."

Respondent objected without assigning any ground, and the Court sustained the objection without stating any reason. This ruling is challenged by ground of appeal No. 54, and the rulings just previously discussed by grounds of appeal numbers 50 to 53.

Efforts to lay before the jury *definite facts* from

which it might draw its own conclusions as to the value of the gravel lands (or the value of the entire 2354 acres because of the presence of the gravel lands) having thus been frustrated, appellant put to the witness the question: "What in your opinion is the value of the gravel-bearing lands as shown on the map exhibit within the lines of this taking?" This was objected to without ground assigned and the objection sustained without reason stated, and the appellant's exception constitutes the basis for ground of appeal No. 55.

In rebuttal respondent produced a witness named Clifford F. McAvoy (incidentally, he held contracts to execute work for respondent on the Wanaque reservoir to the amount of about "three million—two or three" dollars) and put to him the question "Are you the owner of property called Rotten Pond?" The witness replied, "Well, the natives call it Rotten Pond, and myself and associates *own the majority stock in the corporation.*" Respondent's counsel then asked "* * * what is the corporation called?" and Mr. Lewis, for appellant, immediately objected, saying, "I object to that question as irrelevant, incompetent, and I object to any inquiry from this witness as to Rotten Pond property."

Back of the question and the objection lay the following earlier incidents of the trial:

Respondent's principal real estate expert witness (its chief appraiser of real estate, Mr. Hershfield), had stated, in support of his opinion concerning the value of appellant's property under condemnation, that the "Rotten Pond" property, which he described as consisting of about 1960 acres having certain improvements, had been sold in 1924 for $260,000. (See Record, p. 82, l. 30.) Appellant, in presenting its case, had proved by Mr. Garret C. Houman, a lawyer of Passaic County, that the public records in the register's office failed to indicate any transfer of this property at the time mentioned by Mr. Hershfield and, on the contrary, indicated that a corporate owner which had taken title in 1909 still owned all the land that was then conveyed to it, excepting only one tract of 32 acres and nine other tracts of 5 acres each, which it had conveyed away at various dates between 1909 and 1927.

In response to appellant's objection, respondent's counsel said (*inter alia*) "Mr. McAvoy is offered in answer to the statement that the testimony of Mr. Hershfield concerning the Rotten Pond was purchased at a certain time was not true, and that is the only purpose I put him on, although I construe that he would be competent even beyond that in rebuttal." (Record, p. 809, l. 20.)

Appellant's counsel replied that this was "an entirely collateral inquiry" and "would throw no light whatever upon a sales price of the property, which is the only thing which we are interested in."

Respondent's counsel answered and, concluding a lengthy colloquy, spoke as follows:

> "Mr. Houman says the Ramapo Park deed is on record and shows no transfer from Ramapo Park to Mr. McAvoy. There may be no transfer. There is no transfer from Ramapo Park, but there is a total transfer of the stock of Ramapo Park, and that is to leave the inference that Mr. Hunt said that no man would pay this money for this land and leave the title on record as it is, and we are entitled to rebut it."

The Court then ruled as follows:

> "I shall allow testimony of Mr. McAvoy to rebut that, *but you will please not ask him anything about value.*"

Mr. Lewis, for appellant, asked leave to note an exception. The Court said: "Either at this time, or as the questions are asked, as you please. I think you can now take a general objection to this line of testimony," and further—"and you are allowed a general exception."

Thereafter, in total disregard of the Court's instruction to "not ask anything about value," respondent's counsel put to the witness a series of connected questions, which were calculated to and did elicit that the witness and "his associates" owned the majority stock of the corporation which owned the land (725 shares out of 1000), having bought the same in or about 1924; that the corporation's property consisted only of the "Rotten Pond" tract; that before buying the stock the witness had a title search of the property made; that the search disclosed that there were no liabilities of any kind against the property; and—finally—the price paid by the witness and the other stockholders for the 725 shares purchased.

Appellant's general objection and general exception, as allowed by the Court, form the basis of ground of appeal No. 56. Its exceptions to the Court's further rulings are covered by grounds of appeal No. 57, (a) to (s), (each directed to a specific question), culminating with the inquiry as to what was paid for the 725 shares.

In cross-examining this witness appellant's counsel put the question—"Are the conditions of the title of that property of such a character that I can go up there and buy a half an acre and build a bungalow on it?" Respondent's counsel objected "to the conditions of the title now as immaterial. The inquiry is what he paid for this property at a certain time. That is what I have examined him on."

The objection was sustained and the ruling is challenged by ground of appeal No. 58.

Immediately after this ruling appellant, "upon the theory that this Rotten Pond property was offered as a comparable property to that under condemnation, as of the date of March 19, 1925," offered in evidence the record of the deed (dated 1909) conveying the property to its corporate owner, because of its "showing the existence of restrictions with regard to the Rotten Pond property of such a character that the jury would be permitted to draw the inference that the restrictions served to depreciate the value of the property."

Respondent's counsel objected. (As the statement of his objection is rather obscure we do not attempt to interpret it, but refer to Record, p. 851, l. 33.) The Court sustained the objection, overruled the offer of the deed, and granted an exception, which is covered by ground of appeal No. 59.

Appellant requested the Court to charge the jury, in regard to Mr. McAvoy's evidence, as follows:

> "The jury in determining the fair market value of the property taken in these proceedings should not take into consideration any evidence given on behalf of the condemnors as to what sum of money was paid by Mr. McAvoy, or any one else, for shares of stock in the Ramapo Park Land Company, the company owning the property known as Rotten Pond."

The refusal to so charge affords the basis for ground of appeal No. 60.

The Court did charge the jury upon this matter as follows:

> "Evidence was given as to Mr. McAvoy's purchase of corporate stock in the company which was the owner of the so-called Rotten Pond

tracts. Mr. McAvoy testified as to what the assets of the company were, its liabilities, and all the conditions at the time when he purchased the stock. He also testified the price that he paid for the stock, and the number of shares he received, as well as the proportion of the entire stock issued by the company which he had thus acquired.

This testimony was given for the purpose of showing in effect the market value of that property at that time.

I allowed it as being evidential on that point. You, however, are to give it such weight as you may consider it to have in view of all the testimony given by Mr. McAvoy or anyone else as to the details of that transaction." (Italics are counsel's.)

The correctness of this charge is brought in question by ground of appeal No. 61.

I.

THE COURT'S RULINGS UNLAWFULLY DEPRIVED APPELLANT OF ITS RIGHT TO PROVE THAT THE LANDS TAKEN POSSESSED A VALUE—OR AN ENHANCEMENT OVER WHAT WOULD OTHERWISE BE THEIR VALUE—BY REASON OF THEIR PECULIAR FITNESS FOR AND NATURAL ADAPTABILITY TO THE PRODUCTION OF HYDRO-ELECTRIC POWER.

Under this general heading there may be argued rulings brought up by grounds of appeal, numbers

8, 9, 11, 12 and 14. (These same grounds of appeal also involve points relating to the value of the property for water supply purposes, but their applicability in that connection will be argued under a separate heading.) We set forth matters of fact necessary to a correct understanding of the legal points argued under this heading, as follows:

Grounds of appeal numbers 9 and 12 challenge the action of the trial Court in refusing to admit the two deeds, marked O41 for identification and O42 for identification, printed at p. 871 and 878, respectively, of the Record. Deed O41, if admitted, would have afforded proof that Jacob M. Ryerson, in 1837, conveyed to the Morris Canal & Banking Company the lands upon which stand the dam then and still existing at Greenwood Lake, and other lands lying about Greenwood Lake and under the waters thereof; and that the lake at the time of this conveyance stood at the same level at which it now stands. It also would have shown that in conveying these lands Ryerson reserved to himself, his heirs and assigns, a certain right described in said deed in the following words:

"Excepting also and the said Jacob M. Ryerson hereby expressly reserves to and for himself his heirs and assigns forever the right of drawing and having at all times from said reservoir through the gates of said new dam so much water as will with the natural flow of the intermediate streams be sufficient for all the necessary purposes of a forge with two fires and a sawmill with one saw at the site of his present Long Pond forge and sawmill, he or they being bound to keep the said forge and sawmill dam in good repair and to draw no more water than shall be really necessary for such forge and sawmill or other works not requiring a greater quantity of water with the right also of

Both first offered p. 239, l. 8; l. 17; 34, and ruling deferred. Again offered, with argument pro and con admission, p. 261, l. 6 et seq. Again offered (with grounds formally stated) p. 311, l. 32; p. 315 - l. 22 - For final exceptions see. p. 314, l. 18; p. 316. l. 19.

using the water to be drawn as aforesaid upon any intermediate works which he or they shall erect between the dam of said reservoir and said Long Pond forge. Subject to the exceptions and reservations aforesaid the above described ten tracts or lots of land and premises are hereby conveyed."

Deed 042, for identification, if admitted would have shown that Ryerson in conveying to the Canal Co. other lands lying about and under the waters of Greenwood Lake reserved for himself, his heirs and assigns the right to forever maintain an *old dam* at Greenwood Lake (existing long prior to 1837), in case the Canal Company should at any time fail to maintain the new dam mentioned in and conveyed by Deed 041; so that the power to provide a perpetual head of water for Ryerson's "Long Pond forge" of 1837 was secured to Ryerson and his heirs and assigns, independently of the Canal Company's future conduct in regard to keeping up the new dam.

A long chain of mesne conveyances proving the devolution upon the Ringwood Company of the two rights thus reserved by Ryerson, had already been introduced in evidence (see testimony of James P. Anderson, Record, p. 213, l. 34, *et seq.*), and the Court, by way of permitting the questions now under discussion to be come to, had ruled concerning these conveyances as follows:

Rec. p. 275. l. 6 -

"The Court: Very well, I will decide the paper title in whatever rights Mr. Ryerson had in the waters that flowed past his forge and sawmill, whatever they were, came down in an unbroken chain to the Ringwood Company. That is the paper rights, and that is aside from the question, of course, of whether or not those rights are now existing."

Had Deed 041 been admitted, the next step in the order of proof would, of course, have been to demonstrate mathematically what quantity of water was secured to Ryerson and his heirs and assigns by the reservation contained in that deed of so much water "as will be sufficient" for the purposes therein mentioned. Notwithstanding the exclusion of the deed, such an effort was made and grounds of appeal numbers 8, 11, 12 and 14 go to the overruling of questions or offers of proof designed to show the daily flow of water which would, by the exercise of the right reserved in Deed 041, be caused to pass down the Wanaque River through the lands taken from appellant, and that the quantity was sufficient to produce a substantial amount of power and, therefore, to add substantially to the value of the lands taken.

A suggestion by respondent's counsel that the right had been lost by non-user was immediately challenged by appellant as not proven (see Record, p. 277, l. 16-22), and respondent made no attempt to prove it, and the only ground of objection actually pressed, and upon which the Court predicated its ruling excluding the deeds was that *the site for the exercise of the Ryerson right was outside the taking, and that, therefore, the right "is immaterial because it is above the taking."* (Record, p. 278, l. 7 to 22.)

In thus ruling that these deeds were irrelevant and not harmful to appellant, the Court overlooked a natural fact and a rule of law, which, operating together, cause the Ryerson reservation to add substantially to the value of the lands taken. It also

overlooked the fact that the building of the reservoir destroyed that value as effectively as though the place for the exercise of the Ryerson reservation were inside the respondent's taking line. To elaborate this:

Natural fact: Water runs down hill. Legal rule: An owner through whose lands it passes may use it, but may not divert it. So (see map, Exhibit O-14), water drawn from Greenwood Lake under the Ryerson reservation, after having passed through power wheels at the site of Ryerson's 1837 works, would flow through the entire reach of lands taken from appellant, and, within the boundaries of those lands, could be used for power as many times as topography would permit. The building of respondent's Wanaque reservoir, however, converting the Wanaque, throughout the whole extent of the lands taken from appellant, from a running stream into a lake, prevents the use of the water for power purposes and destroys the value for that purpose not only of the lands taken from appellant, but of appellant's right to use on these lands water drawn from Greenwood Lake under the Ryerson reservation.

Three times appellant sought, but without success, to bring the trial Court to a realization of this situation. Thus, in offering the two deeds, appellant said (Record, p. 449, l. 18, grounds of appeal No. 12):

> "I renew the offer of these deeds upon the grounds that we have a right to show the rights created by those deeds and which today belong to and inure to the benefit of the Ringwood Company, because of the fact that by the exercise of those rights the Ringwood Company could develop at the site of the concrete dam ——
>
> (Interruption.)

> Mr. Hunt: ——*at the site of the concrete dam standing on the lands of the Ringwood Company within the taking,* a few hundred feet north of the Hook Road, *an amount of water power so substantially greater than the amount that can be produced without the exercise of this right* as to materially and substantially affect the value of the land taken."

(The "concrete dam" thus referred to was one whose existence had previously been proved. See Record, p. 121 l. 33.)

Again, in seeking to have translated into terms of cubic feet per second the quantity of water described in Ex. O41, for identification, as "so much as will * * * be sufficient for all the necessary purposes of a forge with two fires and a sawmill," etc. (See Record, p. 874, l. 28, *et seq.*), counsel, in his formal offer of proof, said (among other things), (see Record, p. 671, l. 29, *et seq.*): (Grounds of Appeal No. 14)

> "* * * By this witness I offer further to prove the quantity of power which by the exercise of the right created or reserved by the said deed, O41, for identification, *could be produced on the lands being condemned, and on other lands of the Ringwood Company upon which, by reason of this taking, it becomes impossible to produce as much power, or to produce it as economically.*"

And, respondent having objected on the ground previously stated, that the place for the exercise of the right was outside the taking and the "right is therefore in no respect interfered with by the present proceeding," appellant's counsel said (Record, p. 673, l. 15):

"Mr. Hunt: It was for that reason, your Honor, if I may say, that I produced the additional witness and made the additional tender. I thought I had not made it plain before that *this taking does interfere with the use upon the lands being taken of the water secured to us by this reservation* which, if employed at the old site mentioned in the reservation must, in the course of nature and by the requirement of law, flow on down the river through the entire extent of the lands being taken."

One of the questions excluded (covered by ground of appeal No. 8) was the following, addressed to an experienced engineer for many years manager for Ringwood Company (q. is in p. 302, l. 10, ruling and exception, p. 309, l. 13):

"Q. Mr. Anderson, would the exercise of the Ryerson right by the Ringwood Company cause any substantial volume of water to flow down the Wanaque River in its natural channel every 24 hours?"

One of the things offered to be proven (by Mr. Jay M. Whitham, perhaps the most foremost authority on the measurement of ancient water rights —see his qualifying examination, Record, p. 667, *et seq.*) was this (Grounds of appeal, no Record, p. 671, l. 24):

"The quantity of water which would be required under the head existing at the time of said deed (1837) and still existing, to operate said machinery expressed in terms of cubic feet per second and gallons per 24 hours."

Of course, the exclusion of testimony of the kind under discussion, when sought to be given, compels a presumption that the facts, if admitted, would have been favorable to appellant. To show *how* favorable they were however, and to save the Court from making a mathematical calculation to determine whether the exclusion of these proofs did substantial injury to appellant, we believe it not improper to say that the draft on Greenwood Lake water reserved by the Ryerson reservation, expressed in modern terms, is 37 cubic feet per second, or about 22,400,000 gallons per day. We deem it also not improper to say that had the questions and offers of proof now under discussion been entertained by the Court, they would have been followed by the tender of further proofs calculated to show that Greenwood Lake affords a storage and a catchment area capable year-end to year-end of yielding this volume of water per day over and above the quantity normally passing from it down its outlet, the Wanaque River.

It hardly needs the citation of authority to sustain the proposition that *water which the appellant had the right to draw under this reservation, it had the right to use, not only at the site of Ryerson's Long Pond forge of* 1837, *but at any other site within its property and at any number of such sites, successively.* Nor would the appellant have to use the water in the manner or for the purpose in or for which Ryerson used it in 1837. The reservation of "sufficient water to operate two forges and a sawmill" at a certain place does not limit the *purposes* for which the water may be used, nor the *place* where it may be set to work, but only serves to prescribe the *quantity*. *Johnston v. Hyde,* Court of Errors, 1881, 33 N. J. Eq. 633. As was said by the Supreme Court in *Asbury Fountain v. Perth Amboy* (1897), 60. N. J. L. 410:

> "* * * It has been considered as settled law, ever since the decision of Luttrell's Case, Coke, vol. 2, pt. 4, p. 86a (where the question first came up for solution), that when the easement is of a certain quantity of water the grantee *is not restricted to use it in a particular manner, though the purpose for which it is used be specified in the grant. He may use the water in a different manner or at a different place if he sees fit, provided the quantity used is not increased and the change does not prejudice the rights of others.* Carlisle v. Cooper, 6 C. E. Gr. 576, 595; Johnston v. Hyde, 6 Stew. Eq. 632."
>
> (Italics ours.)

In *Iszard v. Mays Landing Water Tower Company,* 31 N. J. Eq. 511 (Aff. 34 Ibid 556) the principle was applied in this manner: A grant of the use of water for certain purposes, with prohibition against certain other *specific* uses, was construed to permit the grantee to use the water *for any purpose not prohibited.*

The most recent case on this point that has come under our observation is *Essex Co. v. Gilson,* decided by the Supreme Court of New Hampshire in October, 1925, 130 Atl. p. 846. It holds exactly as does *Johnston v. Hyde, supra.*

Butler Hard Rubber Company v. Newark, 61 N. J. L. 32 (1897), establishes the proposition that where a taking in eminent domain destroys or injures a water power, damages must be paid.

It may be said that appellant was *making no use* of this water power, or of the Ryerson reservation. Grant this, and it does not follow that appellant was, therefore, not entitled to prove that it possessed these rights, or to recover for the *value of the rights,* according to what the jury might deem them to be

worth. The ruling of the trial Court, however, took away from the jury all possibility of its forming an opinion concerning the value of the property in view of its possession of these rights. The jury is entitled to consider what a purchaser would pay for the property in view of its possessing such rights and availibilities, and the landowner is entitled to afford the jury knowledge upon which to base its judgment on this as on any other material element of value.

As was said by the Federal Supreme Court in *Mississippi & Rum River Boom Co. v. Patterson,* (1879), 98 U. S. 403, 25 L. Ed. 206:

> "The inquiry in such cases must be what is the property worth in the market, viewed not merely with reference to the uses to which it is then applied, *but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses?* Property is not to be deemed worthless because the owner allows it to go to waste, *or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated.*"
>
> (Italics are Counsel's.)

The leading New Jersey case of *Currie v. Waverley & N. Y. Bay R. R. Co.,* 52 N. J. L. 381, decided by this Court in 1890, cites approvingly the Federal Supreme Court decision just mentioned, and says, concerning the possession by a tract of land of a specific availability for a particular business, that:

> "Whether this circumstance does or does not impart an appreciable money value to any given

> piece of land *is a pure question of fact,* and must be treated as such."

As it is a question of fact, it is for the jury to consider and the owner is entitled to have the evidence put before the jury.

Of this right to have the jury informed concerning the value of its lands, appellant was deprived, when the trial Court excluded evidence showing that appellant possessed the right to draw 22,400,000 gallons of water from Greenwood Lake during every 24-hour period (at a regular rate of flow or at accelerated rates during shorter periods of time in each 24 hours), and that this water in its passage through the lands under condemnation might be made to produce hydro-electric energy to such and such an amount.

If, in answer to this, it be said that appellant sought to prove the value of its lands for a *particular* purpose, when the real question was their *general* value, the reply is that general value cannot be intelligently determined without knowledge as to particulars having a bearing upon it; and that in consequence of the exclusion of such evidence appellant was never permitted to lay a foundation enabling it to put to a qualified witness a question calling for his opinion of the general value of the land in view of its possessing such characteristics as it does possess.

This argument need not rest on logic alone, but is supported by precise authority. The Circuit Court of Appeals, 7th Circuit, in *Ford Hydro-Electric Co. v. Neely* (1926), 13 Fed. (2d) 361, said:

> "The availability of the land for the development of water power, and the value of it for such purposes, was a proper element to be considered by the jury in fixing its market value."

The Court applied this rule even in the face of the claim that Neely's lands *alone* had no value for this purpose, and that to give them such value it was necessary to unite them and other lands (a situation not claimed to exist in the present case, so far as concerns water power, although claimed by respondent and denied by appellant to exist as regards potable water supply purposes.)

On November 1, 1926, the Supreme Court denied an application for a writ of certiorari in this case. See U. S. 71 L. Ed., Adv. Opinions No. 5, p. 276.

II.

THE COURT'S RULINGS UNLAWFULLY DEPRIVED APPELLANT OF THE RIGHT TO PROVE THE VALUE OF ITS PROPERTY FOR WATER SUPPLY PURPOSES.

By way of introduction to this point, we first cite authority to show that the law gave appellant the right to prove the value of its property for this purpose.

Textwriters state the rule as follows:

> *Lewis on Eminent Domain,* 3d Edition, Volume 2, Section 707, page 1233:
>
> **The market value of property includes its value for any use to which it may be put. If, by reason of its surroundings, or its natural advantages, or its artificial improvements, or its intrinsic character, it is peculiarly adapted to some particular use, all the circumstances which made up this adaptability may be shown, and the fact of such adaption may be taken into consideration in estimating the compensation. Some of the cases hold that its value for a particular use may be proved, but the proper inquiry is, what is its market value in view of any use to which it may be applied and of all the uses to which it is adapted?**

The leading case in New Jersey is *Currie v. Waverly & N. Y. Bay Railroad Co.,* 52 N. J. L. 381, decided by this Court in 1890. Others are *In Re Central Railroad Co. of N. J.,* 74 N. J. L. 395, 65 Atl 905 (Supreme Court, 1907); *Phila. Trust, etc., Co. v. Merchantville,* 74 N. J. Eq. 334.

Leading Federal cases are *Mississippi & Rum River Boom Co. v. Patterson* (1879), 98 U. S. 403, 25 L. Ed. 206; *Shoemaker v. U. S.* (1893), 147 U. S.

282, 37 L. Ed. 170; *Mitchell v. U. S.* (1925), 267 U. S. 345, 69 L. Ed. 644.

The facts and the reasoning of these cases (especially *Currie* and *Rum River Boom Co.*) so fit the present situation that extracts from the opinions will be frequently quoted as the argument proceeds.

Concerning the *Rum River Boom Co.* case it was said by the respondent at the Circuit and doubtless will be here that decisions since rendered have overruled or modified it. At this point we say merely that they have not. Later, and under a distinct heading, we will trace the history of this decision from its rendition to the present time, analyze the decisions claimed by respondent to overrule or modify it, and thereby demonstrate its present-day validity and vigor.

The right whose existence is established by the decisions above mentioned was denied to appellant by rulings of the trial Court in this case, in numerous instances and in divers ways. These denials will now be dealt with under subheadings, groupings together those which are so related to each other as to permit it, and referring to the particular grounds of appeal involved under each subhead.

III.

THE EXCLUSION OF EVIDENCE RELATING TO THE RYERSON RESERVATION.

The first group of rulings to which exception is taken under the above general heading consists of those relating to the exclusion of evidence to establish the existence in appellant of the right created by the old "Ryerson reservation," and the amount of water which, by the exercise thereof, could be caused

to flow through the lands taken in condemnation. The grounds of appeal involved in these rulings are numbers 8, 9, 11, 12, 13 and 14. They have already been referred to in arguing the preceding point, but have separate and distinct application under this subhead.

One of the *essential elements* in relation to the value of any property for water supply purposes concerns the *volume of water flowing through it.* The purpose of building reservoirs is to impound water, so as to have storage from which to draw in dry times when the current flow is insufficient to supply current daily needs. A tract of 2,354 acres containing no flowing streams would be of little or no value for water supply purposes. The greater the flow, within reasonable limits, the greater the value for this purpose. Certainly where, as in the present case, the reservoir is estimated or intended to yield 100,000,000 gallons per day, the ability to increase the daily flow by the amount of 22,400,000 gallons is a circumstance tending to add value to a tract of land which possesses it.

By the questions and the offers of proof embodied in the grounds of appeal above mentioned, appellant sought to prove (a) that in connection with its ownership of 24,000 acres, including the acreage under condemnation (or, more specifically, in connection with its ownership of a certain tract of 8,000 acres comprising a part of the 24,000 acres and identified by the witness, James P. Anderson, general manager for appellant, at p. 271, l. 10 of the Record), it possessed the right to draw 22,400,000 gallons of water per day from the stored waters of Greenwood Lake; and (b) that if it exercised this right the waters thus drawn from Greenwood Lake would inevitably flow through the 2,354 acres being condemned by respondent; and (c) with these facts

proven, the way would have been open for appellant:

2. To *argue* to the jury that the 2,354 acres, by reason of these facts, possessed greater value for water supply purposes than they would otherwise have possessed, because appellant in selling them to a purchaser who desired them for that purpose could contract to forever exercise the "Ryerson right" and thereby secure the purchaser the benefit of the increased flow.

3. To *argue* to the jury that since the taking prevented appellant from realizing the value of the "Ryerson right" in its relation to water supply the right had to be taken into account in arriving at the valuation in the present proceeding, either because its existence added to the value of the lands taken, or because the taking deprived the right of its chief element of value and, therefore, worked a consequential injury to appellant.

The situation was brought clearly to the attention of the trial Court when appellant made the offers of proof whose rejection affords the basis of grounds of appeal Numbers 13 and 14, appellant's counsel saying (Ground No. 13, Record, p. 670, l. 30):

> "The point of the matter is this: This property is being taken for water supply purposes, (and) one of the uses in respect of which we may undertake to prove this (its) value is that particular use. Its value for that use depends in part, among other things, on the quantity of water passing through the premises, and on the question whether any additional quantity drawn from storage off the premises can be made to

1. To further prove that, with the aid of this increased flow its 2354 acres (plus the adjoining 744.38 acres, in which it possessed flowage rights - see map folded into brief), would yield such and such a daily draft supported through dry seasons by such and such storage.

> pass through the premises. I assert, that in those respects there are facts which tend to greatly increase the value of our property for water supply purposes, and I beg leave to offer them by this witness."

And (Ground No. 14, Record, p. 671, last line):

> "I also offer this witness to prove the facts before recited (*i. e.*, among others, the daily draft of water obtainable from Greenwood Lake under the 'Ryerson Reservation,' for the purpose of laying—and this is a most important phase of my offer—for the purpose of laying a necessary and proper foundation for testimony hereafter to be given by other duly qualified experts hereafter to be called to the effect that the value for water supply purposes of the lands being taken is substantially enhanced by reason of the Ringwood Company possessing, as a legal appurtenance to the lands being taken or to certain parts thereof, the right created by said reservation in the deed above mentioned; and to prove that this taking prevents the Ringwood Company from ever realizing on or in connection with any part of its lands either within or without the taking such enhanced value for water supply purposes given to its lands by the said right or reservation contained in said deed." (Add as per p. 672.)

And, ground of appeal No. 8 goes to the overruling of this question put to the general manager of the Ringwood Company, an engineer of many years' experience (the question appears at p. 302, l. 10; the ruling and exception at p. 309, l. 13):

> "Q. Mr. Anderson, would the exercise of the Ryerson right by the Ringwood Company cause

any substantial amount of water to flow down the Wanaque River in its natural channel every 24 hours?''

Moreover, when the Court, during the examination of the witness, James P. Anderson (p. 295, l. 2), suggested that the admission of the deed containing the Ryerson reservation was immaterial, appellant's counsel had said (Record, p. 298, l. 28):

''Mr. Hunt: Now if the Court will permit me to answer. I submit that the evidence is material, first, because by the exercise of this right we can cause 22,400,000 gallons of water per day to flow through the property under condemnation in the regular channel of the Wanaque River, thus giving to the 2354 acres under condemnation a greater availability and capability and adaptability for the production of potable water supply, which could be, and in the absence of such a body as the North Jersey District Water Supply Commission would have to be, acquired and developed, either by a municipality or municipalities of this State, or by chartered water companies, to supply a presently existing demand and need for increased supplies of potable water to the municipalities of this State situated in Essex, Hudson, Passaic and Union Counties, which, as we shall hereafter prove in the following up this evidence, if it be admitted, now need an increased supply of 100,000,000 gallons daily, and will as, if this evidence be admitted, we shall further prove by the official report of the North Jersey District Water Supply Commission, issued in the year 1925, require an additional supply of 100,000,000 gallons daily at the end of every eight year period beginning with the year

1925. These facts we claim give to the property under condemnation a greater value than it would otherwise have, for which reason we are entitled to put before the jury the evidence now sought to be admitted. Secondly, because the water controlled by this reservation can be used by us, owing to the natural lay of the land within the Ringwood property, six times as it flows through the Ringwood property for the production of hydro-electric energy, four of the places adapted for such use of the water being outside the taking and two of the places adapted to such use of the water being inside the taking.''

After some colloquy this was corrected to read three places inside and three places outside the taking, and counsel continued (p. 300, l. 19):

''* * * Thirdly, the Ryerson right in the possession of the Ringwood Company is a valuable asset for the exercise of which the company could obtain the payment of money to it by private water companies down stream on the Passaic River system from the Ringwood lands on the Wanaque River, who would be willing to pay as we shall propose to show a substantial sum annually to the Ringwood Company for exercising this right and thereby adding 22,400,000 gallons of water to the daily flow of the Wanaque River and the streams into which the Wanaque enters.''

Both the deed itself and all the questions and offers relating to the reservation were excluded and as a consequence the jury were not permitted to consider the property rights of appellant created by this reservation— an error which deprived Appellant of the due process of law guaranteed by Amendment XIV to the Federal Constitution.

Earlier, in pressing for the admission of Ex. O 41 Id. (deed containing the Ryerson reservation) appellant's counsel, answering the charge, that the deed was "immaterial" said (R. p. 279, l. 22):

> "Mr. Hunt: (Continuing.) Now, our claim is that the property being condemned has an intrinsic—I mean the 2354 acres alone—has an intrinsic value of its own for water supply purposes, separate and distinct from any need for using a single acre of anybody else's ground, for the reason that within the lines of these 2354 acres condemned there may be produced a water storage in the ponds which we call the three Vermeule ponds of somewhere from thirteen to fifteen billions of gallons of water—I forget the exact amount, so I state it thirteen to fifteen—and that from the storage thus produced, plus the draft on Greenwood Lake afforded by this Ryerson reservation, there may be had a daily yield of potable water of 62,000,000 gallons per day, net, after allowing 10,000,000 gallons per day to go down the stream for sanitary purposes and for the use of the lower owners, just as the Water Supply Commission is required to allow to go down from this Wanaque Reservoir."

Now, in the *Currie* case, *supra,* this Court stated the questions brought before it for decision in the following words:

> "* * * The questions raised by this ruling are: (1) May the situation and surroundings of land sought for railroad purposes impart to it a special value for such purposes generally? (2) If such special value is shown may the owner reap the benefit of it when called upon to part with his land by the compulsory process of condemnation?"

It answered both questions in the *affirmative.* When the trial Court, in the present case, dealing with a situation *identical in principle,* refused to admit evidence proving that appellant could cause to pass through the lands taken, from other lands miles distant, *from storage created at another's expense,* a quantity of water constituting more than 25% of the entire daily supply to be yielded by the reservoir being built by respondent (as estimated by respondent itself), it violated the rule established by this Court in the *Currie* case. It excluded proofs of the "situation and surroundings of the land sought for *water supply* purposes, imparting to it a special value for such purposes generally." It made it impossible for the owner to "reap the benefit" of the special value created by the situation and surroundings of the land when it was taken from him by eminent domain.

IV.

THE EXCLUSION OF EVIDENCE RELATING TO PROFITS TO BE MADE BY THE CITY OF NEWARK FROM THE SALE OF WANAQUE WATER.

Grounds of appeals numbers 15, 16 and 17 involve another manner in which appellant was deprived of the right to prove facts tending to show that its property possessed a substantial value for water supply purposes. These grounds are as follows:

No. 15 (Question is at Record, p. 723, l. 27; ruling and exception at top p. 726):

"Q. Mr. Vermeule, do you know for how much of the daily supply to be produced at the Wanaque Reservoir the City of Newark has contracted?"

No. 16 (Record, p. 724, l. 1):

"Mr. Hunt: (Responding to a question by the Court.) The materiality is this, your Honor, by this question and the question which I withdrew and would put again after this one, if allowed, I offer to prove by this witness that Newark has contracted to take a certain very large portion of the whole daily flow of the Wanaque Reservoir that is being built throughout the whole time that that reservoir remains in existence and in operation.

I offer further to prove that Newark is now selling water at the rate of ——

Mr. Frazer: I object.

Mr. Hunt: —many millions of gallons to other municipalities in this state.

I offer to show that the difference between the price at which Newark will get water from the Wanaque and the price at which it sells it to these other municipalities, is a sum sufficient to yield a very high return on Newark's investment in Wanaque water, to give Newark a profit which it is wholly unjust to allow anybody to have at the expense of this owner through taking his land at the low price which has been offered here. I think that when ——"

No. 17 (Record, p. 726, l. 27):

"Q. Mr. Vermeule, have you any knowledge concerning any contracts already entered into by the City of Newark to sell and deliver to any other municipality water which Newark is to get from this Wanaque Reservoir beginning with the time of the delivery of the water from the Wanaque Reservoir?"

To quote again from the *Currie* case, this Court there said, concerning the principle governing the valuation of land taken by eminent domain, that:

"Its owner shall be given by way of compensation for his land, its fair price for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the near future. It is for the owner's deprivation of any existing value that he is to be compensated."

And the Federal Supreme Court in the *Rum River Boom Company* case said:

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded *as in a sale of property between private parties.* The inquiry in such cases must be what is the property worth in the market, not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses?"

And, dealing with a situation common alike to the two cases cited and to this case, namely, *that the owner himself could not apply the land to the purpose to which the condemnor proposed to apply it,* the two Courts spoke as follows:

"*Currie* case: It would be contrary to economic law and repellant to common justice to

permit the fact that the lands are selected by a public agent because of this availability to strip them of any element of value which, independently of the new-comer and prior to his advent, they possessed. The fact that the special value acquired by lands thus situated has arisen from their availability for purposes similar to those to which the condemning party proposes to put them, is without significance."

Rum River Boom Co. case: "Property is not to be deemed worthless because the owner allows it to go to waste, *or to be regarded as valueless because he is unable to put it to any use.* Others may be able to use it, and make it subserve the necessities or conveniences of life. *Its capability of being made thus available gives it a market value which can be readily estimated.*"

To state shortly the principles thus enunciated by this Court and the Federal Supreme Court, they are the following: (a) the same considerations are to be taken into account as would be taken into account in a private sale; (b) the value is not to be lessened by the fact that the private owner cannot devote the lands to the use to which the condemning party proposes to devote them.

Now, consider grounds Nos. 15, 16 and 17, in the light of these principles, aided by the rule of evidence laid down in the *Currie* case that a fact sought to be proven, but illegally excluded, is to be considered as an "admitted fact" in the case.

Certainly, in any fair private sale, a factor which an intelligent seller would take into account is the profit which the buyer can make from the use of the lands, and, consequently, the *capital* which he might reasonably be expected to invest in them.

Values in the economic sense, are normally determined with reference to the mutual advantage of the parties dealing with each other. A man owns a vacant lot on Broadway. It brings in no rental. He must pay taxes on it and go without income on the invested capital. Nevertheless, in a fair bargain, with a willing buyer who proposes, for example, to erect an office building on the vacant lot, the price demanded by the seller will be influenced by the anticipated profit which the purchaser can derive from the completed building, and not governed exclusively by the carrying charges on the vacant property. The price that a willing purchaser will pay is influenced by the same consideration. When the law steps in and authorizes a taking by eminent domain, this consideration cannot be laid aside. The owner has a right to prove—and this appellant had a right to prove in this case—that the price at which the condemnor sought to obtain the land (already in evidence from the condemnor's witnesses, who testified that its value was thus and thus) was so low that the profits which those supplying the money to the condemnor and in whose behalf it was acting, would make an unconscionable profit from the transaction, and hence, so low that "between private parties" such an offer would not be accepted. True, evidence of this kind would not definitely establish the value of the property. It is nevertheless proper evidence for the jury to take into consideration, among other things. It tends to prove that the value as sought to be established by the condemnor is unreasonably low. To select the City of Newark, as the contributor of more than 40% of the cost of the project and the taker of a proportionate amount of the daily yield of the reservoir, and to show the profits which it would derive from reselling water obtained by it

from the reservoir, was an appropriate first step in demonstrating the profits to be derived by all of the group of cities as whose agent the condemnor acts. It is respectfully submitted that the Court erred in excluding this line of testimony.

Granted, for the sake of argument, that the value of the water *to Newark itself, for its own use or the use of its inhabitants,* is not the proper subject of inquiry. The questions were not directed to such a situation, *but to Newark's selling this water to other municipalities*—which is not a governmental function, but an entry into the field of commercial business. Suppose, for example, that Newark will obtain this water at a cost of $50 per million gallons and will sell 30 million gallons per day to Elizabeth and other cities at $90 per million gallons. If this is a fact, appellant should be permitted to prove it.

V.

THE EXCLUSION OF THE EVIDENCE OF EXPERT WITNESSES ON THE QUESTION OF VALUE FOR WATER SUPPLY.

The next respect in which the Court erred in rejecting evidence of the value of the land for water supply purposes is in excluding opinions of *witnesses expressly declared by it to be qualified to testify* as experts on this question. The grounds of appeal involved under this sub-heading are Numbers 18, 19 and 20, reading as follows (questions addressed to Mr. C. C. Vermeule):

No. 18 (question is on p. 731, l. 25: ruling and exception on p. 743, l. 27):

> "What in your opinion was the value of the property being taken, on the 19th of March, 1925, in the state and condition in which it then was?"

No. 19 (question on p. 732, l. 1: ruling and exception on p. 743, l. 27):

> "What in your opinion was the market value of the property being taken, on the 19th of March, 1925, in the state and condition in which it then was?"

No. 20 (question on p. 743, l. 33: repeated in jury's presence on p. 757, l. 14: ruling and exception on p. 757, l. 25):

> "Mr. Vermeule, having regard to the availability of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes, what was its value in the market on March 19, 1925, in the condition in which it then was?"
>
> (The condemnation proceeding was instituted on March 19, 1925.)

No. 29. (Record p. 760, l. 29.)
"Mr. Hunt: I can, perhaps, save time by making an offer. I offer Mr. Robert E. Horton, of Albany, New York, and Mr. Clyde L. Potts, of Morristown, New Jersey, and to qualify them as expert hydraulic and water supply engineers, duly qualified to testify concerning the value of property for water supply purposes, and I offer to prove by them the value of the 2354 acres under condemnation for valuable uses, including use for water storage and water supply purposes in the condition in which it was on March 19, 1925."

No. 30. (Record. p. 761, l. 20)
" I would propose also to prove by Mr. Horton the actual sale of a number of properties for water supply purposes with a view to qualifying him to testify concerning the value of this property under condemnation on March 19th, 1925, in the condition in which it then was, but having regard to the adaptability that it possesses for being used for water supply purposes."

Previous to the making of these objections the Court had twice ruled that the witness was qualified. At p. 704, l. 33, immediately following extended direct examination of the witness concerning his experience in valuing lands for water supply purposes, the following colloquy took place:

"Mr. Hunt: I offer the witness for cross-examination as to his qualifications.

Mr. Frazer: I would like to know for what line Mr. Vermeule is offered.

Mr. Hunt: *Valuing this property for water supply purposes.*

Mr. Frazer: *On valuation?*

Mr. Hunt: *Yes, for water supply purposes,* possibly for other purposes; if so, I will have to qualify him later on, on the other purposes."

Respondent's counsel then cross-examined the witness at length regarding his qualifications, after which appellant's counsel again took him under direct examination and the following transpired:

"The Court: Just a moment, Mr. Hunt. Are you assuming that he is admitted as an expert?

Mr. Hunt: Yes. I thought Mr. Frazer had admitted him.

The Court: No; he only said he had no further questions to ask.

Mr. Hunt: Excuse me. I must ask your Honor for a ruling.

The Court: *My ruling is he is competent.*

Mr. Hunt: Thank you. I did not mean to be presuming.

The Court: I was not sure whether you were proceeding to further examine him as to qualifications.

Mr. Hunt: No; I think I must have read the judicial facial expression for the judicial verbal expression.

The Court: *Very well. He is qualified. I was not seeking to escape responsibility, however."*

Almost immediately (that is, within two pages of testimony) *after the Court had sustained the objections now under discussion,* the Court again affirmed the competency of the witness as an expert on value for water supply purposes. Thus, appellant's counsel tendering other witnesses of the same character, the following occurred: (Ground of Appeal No. 29, Rec. p. 18 l. 7)

"Mr. Hunt: I can, perhaps, save time by making an offer. I offer Mr. Robert E. Horton, of Albany, New York, and Mr. Clyde L. Potts of Morristown, New Jersey, and to qualify them as expert hydraulic and water supply engineers, *duly qualified to testify concerning the value of property for water supply purposes, and I offer to prove by them the value of the* 2354 *acres under condemnation for valuable uses, including use for water storage and water supply purposes in the condition in which it was on March* 19, 1925.

The Court: In the same way, asking them the same questions that you asked Mr. Vermeule?

Mr. Hunt: It would be the same line of examination.

The Court: Objection is made, Mr. Frazer, I take it?

Mr. Frazer: The objection would be the same.

The Court: And the ruling would be the same, and you may have an exception.

Mr. Hunt: I might say, in principle—Mr. Horton, will you stand by, please—I would propose also to prove by Mr. Horton the actual

sale of a number of properties for water supply purposes with a view to qualifying him to testify concerning the value of this property under condemnation on March 19th, 1925, in the condition in which it then was, but having regard to the adaptability that it possesses for being used for water supply purposes.

The Court: *Well, assuming that Mr. Horton and Mr. Potts would be qualified, as Mr. Vermeule was, of which I have no doubt,* and assuming that you would ask them the same questions that you asked Mr. Vermeule, then my ruling would be precisely what it was in the Vermeule situation for the reasons that I have given, and objection would be made precisely the same as was made then, and the ruling, of course, would be the same, and you will have an exception to my ruling now made.

Mr. Hunt: Yes.

The Court: That makes your record clear.

Mr. Hunt: I think so, yes. May I ask this further question: *I apprehend your Honor's ruling would not be any different by reason of the fact if it turned out to be the fact that Mr. Horton would have testified to having himself been involved in or handled a much larger number of actual sales of lands available for water supply purposes than Mr. Vermeule.*

The Court: No, that is a proper assumption because *the ruling was not predicated on that point,* but on the legal principles that I enunciated."

In the face of this record it is impossible to suppose that the Court sustained the objections upon the grounds on which respondent's counsel assigned them. The real ground upon which the Court sustained these objections is to be gathered from the colloquy between Court and counsel for both parties, occupying pages 732 to 757 of the record. In substance, and to state it shortly, the view expressed by the Court was that opinion evidence, although sought to be elicited from an admittedly qualified expert, was "speculative," and that its exclusion was required by the decision of this Court *in re Morris & Cummings Dredging Co.* (96 N. J. L. 248.) The Court held the view, which appellant's arguments utterly failed to shake, that the *Morris & Cummings Dredging Co.* case afforded the rule for the instant case and that the *Rum River Boom Co.* case in the Federal Supreme Court and the *Currie* case in this Court were not applicable.

At p. 747 of the Record, l. 13, the Court said:

"The Court: The speculativeness is the special value that you seek to show by this witness which is immaterial and incompetent, to show the fair market value as of that time, because of the contingencies that prevent its use, perhaps, for that purpose which cannot be hurdled so easily as was laid down in the Morris & Cummings Dredging case. For instance, here is the governmental agencies that must intervene."

It had previously said at p. 746, l. 4:

"The Court: The point I made is that the general public, and not these municipalities that were in the market were not in the position that the Boom case was or the condemnor in the Currie case. I imperfectly stated it. In other words, it seems to me the real controlling situation is the speculative end of this thing in view of the Cummings case."

The questions were not speculative because of assuming any change in the condition of the property. They expressly referred to the property "in the state and condition in which it then was" at the time of the institution of the proceedings; and in that respect were proper.

If the Court meant that the questions were "speculative" in the sense that since *appellant* could not use the lands for public water supply, it could not recover their value for that purpose, it was clearly wrong. Mr. Currie could not use his lands for railroad purposes. He had no franchise and no power to acquire a right-of-way outside his own boundaries. Mr. Patterson could not use his islands for a log boom. He had no franchise and did not own the opposite bank, essential to the construction of a boom and already in the ownership of his adversary. Both parties, nevertheless, were permitted to prove and recover the *value of their lands for the purpose for which they were taken.* These cases are true precedents for and control the case *sub judice.*

The *Morris & Cummings Dredging Co.* case is recent and its facts are fresh in the minds of the Court. It bears not the slightest resemblance to the present case. Here, lands are actually being taken for a reservoir. There, a right-of-way easement for a sewer 60 feet beneath the surface was being condemned, and it was held improper to allow the owner to assert a claim for consequential damage based upon the theory that at some indefinite future time the State and Federal Governments might legislate, and they and the railroads might expend money, to such ends as to render the lands under condemnation available for the erection of warehouses at a great terminal port, in which case their value would be lessened by reason

of the fact that the height of the warehouses would be limited by the depth to which, by the presence of the sewer, the sinking of shafts for plunger elevators would be restricted. The questions ruled out in the *Morris & Cummings Dredging Co.* case involved a *fancy* that might or might not in the course of time become something more. The proofs excluded in the present case relate to present-day *fact*—"the value of the property on the day the condemnation proceeding was commenced, in the state and condition in which it then was—having regard to its availability for water storage and water supply purposes"—the very use for which it was being taken.

It is respectfully submitted that nothing decided in the *Morris & Cummings Dredging Co.* case has any application to the facts presented in the instant case, and that the trial Court erred in taking it as its "guiding star." (Record, p. 743, l. 23.) (So also with regard to the Manda case, 82 N. J. L. 686, and Ross case, 90 N. J. L. 461, also referred to by the Court but so inapplicable to the point now under discussion as to require no comment.)

VI.

THE EXCLUSION OF EVIDENCE PROVING THE EXISTENCE OF A DEMAND AND A VALUE FOR WATER SUPPLY PURPOSES INDEPENDENT OF THE CONDEMNOR AND ITS NEEDS.

The next respect in which the Court denied appellant the right to prove facts tending to show the value of its lands for water supply purposes involves grounds of appeal Numbers 21, 22, 23, 24

The rulings complained of under this Point deprived Appellant of due process of law, in violation of the Fourteenth Amendment to the Federal Constitution, by denying it the right to have a witness, admittedly qualified, state the value of the property in view of its adaptability to an important use, for which it admittedly possessed adaptability.

and what appellant here sought to do was merely to prevent the condemnor from acquiring the lands at a price which did not reflect their special value for the special purposes for which they were best adapted—to save themselves from being mulcted. The respondent in this case, as a reading of the record will show, sought constantly to procure rulings rested upon the assumption that there was no market for appellant's property for water supply purposes *except to respondent,* and that, therefore, the price respondent had to pay for it was to be measured, not by its value for such a purpose generally, but solely by its value for other uses, claimed to be of lesser influence and worth. This explains respondent's resting its case upon the evidence alone of builders and sellers of lots and houses. The trial Court's acceptance of this theory, urged upon it by respondent throughout the whole of a four weeks' trial, is responsible for most of the erroneous rulings, including the major error that shut out all evidence whatsoever of the value of the property for water supply, stated in terms of money, and of all facts tending to show the existence of this special value, and upon which the jury might itself (at least theoretically) have formed an opinion of the special value of the lands for this purpose.

That the Court erred in accepting respondent's theory is clearly demonstrated by this portion of the reasoning of the opinion in the *Currie* case:

> "The fact that the special value acquired by lands thus situated has arisen from their availability for purposes *similar* to those to which the condemning party proposes to put them is without significance. Such an availability is not *special* to this one carrier; it is *general* to all who are engaged and to all who may be engaged in similar enterprises, whose existence

> or presence as a class at or near these lands became an admitted fact by the rejection of testimony competent to prove it. Whether this circumstance does or does not impart an appreciable money value to any given piece of land *is a pure question of fact and must be treated as such.*"

And this further extract:

> "Neither the individual advantages to the party acquiring the land, nor the necessity of its acquisition, can be considered in computing the loss of the land to the owner; but there is nothing in this principle which I have stated as favorable to the public agent, as the law admits, which will enable a condemning party to take, without payment, land values not created by it nor based upon its advantage or necessity, but which, on the contrary, *antedated its advent and owe their existence to natural situation and growth of trade, and the general economic laws underlying all commercial values. The rule, that the special advantage of the land to the acquiring corporation shall not add to the compensation to be paid the land owner applies to cases where the taking, which is advantageous to the purchaser, is not pecuniarily disadvantageous to the seller. If, however, the advantageous feature is of such a nature that it is of commercial value in the hands of either, then one cannot take it from the other without paying for it.*"
>
> (Italics in both quotations are counsel's.)

In putting the questions whose exclusion is now under discussion, appellant only sought to apply in this case the principle thus illustrated in the *Currie*

case and to show that, *aside from the Water Supply Commission and its project, there was a demand for lands like appellant's for water supply purposes, and agencies in existence legally qualified to acquire and develop lands for the purpose of supplying this demand.*

It is true that in the absence of any such demand it would be unfair to the condemnor and improper to attempt to prove a special value for this special purpose; but the *Currie* case holds that in the presence of such a demand it is equally unfair and unjust to the land owner to exclude evidence concerning it—"*if, however, the advantageous feature is of such a nature that it is of commercial value in the hands of either, the one cannot take it from the other without paying for it.*" Certainly, had not the creation of the Commission relieved its eight constituent cities from the necessity of seeking, each for itself, an additional supply (either directly or through the medium of chartered water companies already serving some of these cities), the advantageous features of appellant's lands for water supply purposes would have had a commercial value in the hands of appellant in the dealings which must have arisen between it and one or more of the cities and chartered companies referred to, or other cities or companies furnishing water in the congested area of northeastern New Jersey.

Here is an appropriate place to dispose of another ill-founded view constantly urged upon the trial Court by respondent, namely, that by the very act of creating the Water Supply Commission, and by other legislation giving to the State Department of Conservation and Development the power to apportion the potable waters of the State amongst the municipalities needing water supply, the State had deprived appellant's lands of any special value

they might otherwise have possessed for water supply purposes.

Counsel believe that the mere statement of such a proposition is sufficient to demonstrate to this Court its constitutional invalidity. The act of the Legislature creating the North Jersey District Water Supply Commission, and the acts amendatory thereof and supplementary thereto, are cited in the margin;[1] so, also, are the acts creating the State Department of Conservation and Development (and its predecessor, the State Board of Conservation and Development), and acts amending and supplementing such legislation.[2]

To avoid unnecessary length we will not set forth any of the provisions of these acts in this brief. Without hesitation, however, we affirm concerning them that the Legislature did not intend, and, had it intended, could not with due regard to private rights secured by the Constitution, have accomplished by this legislation any impairment of the value of privately owned lands.

For the sake of argument we may concede that the State has power to vest in a given municipality the exclusive right to divert the waters of a given water shed for the purpose of public water supply. It is impossible, however, with due regard to Constitutional guarantees, to argue that the vesting of such an exclusive right in a given municipality has the effect of impairing the value of privately owned

---

[1] P. L. 1916, ch. 71, p. 129, as amended by P. L. 1917, ch. 273, p. 893; P. L. 1924, ch. 190, p. 410 (Cum. Supp. to Comp. Stats. p. 3806); P. L. 1925, ch. 205, p. 488; P. L. 1926, ch. 253, p. 428. For grant to Commission of authority to permit diversions of water for municipal supplies see Cum. Supp. to Comp. Stats. (1910) p. 3810, Sec. 232-46 l.

[2] P. L. 1912, p. 437, as amended by P. L. 1913, p. 173; P. L. 1919, p. 83; P. L. 1915, p. 426, as amended by P. L. 1924, p. 416 (Cum. Supp. to Comp. Stats. p. 621). For provision requiring Department's consent to the damming of streams, etc., see Cum. Supp. to Comp. Stats. (1910), p. 3800, Sec. 232.

lands on the watershed in question by means of restriction of the use to which the waters of that shed may be applied.

Let us suppose that appellant's lands, lying as they do within a few miles of all of the most populous and growing cities of northern New Jersey, are equally available and convenient as a source of water supply to Newark, Montclair, the Oranges, Kearney, Jersey City, Hoboken and Bayonne. Some of these municipalities obtain their supplies from chartered water companies—quasi-public corporations—for example, the East Jersey Water Company. Others have developed their own supplies. Others obtain water partly from their own developments and partly from chartered companies. The Legislature creates the Water Supply Commission and vests in the Department of Conservation and Development the power above referred to. That Department grants to the Water Supply Commission the exclusive right to develop sources of supply in the Wanaque Valley and to divert the waters thereof to the communities in whose behalf and at whose expense it is acting. By no stretch of the imagination can it be said that by reason of these facts appellant's lands are to be valued upon the theory that the only possible market for them is in one taker—the Commission. On the contrary, they must be valued in the light of the existence of such a market as it is possible to prove, taking into account the fact that they are so situated as to serve, with more or less convenience, the various communities that might draw their supply from this source; and taking into account what the needs of these communities are, in the present and immediate future. Only by a valuation arrived at in pursuance of such principles can there be conformity with the Constitutional provi-

sions that "private property shall not be taken for public use without just compensation" and that "no person shall be deprived of life, liberty or property without due process of law." Certainly it is not due process of law to legislate in such a manner as to destroy the value inhering in lands by virtue of ordinary and universal economic laws, as a prelude to the institution of a proceeding by an agency created by the State for the acquisition of the lands by eminent domain.

True, the State has a measure of control over its waters, and water is not the subject of exclusive private ownership; but true, equally, that the *lands in which the waters must be impounded* are private property, and their owner, therefore, is entitled to reap the benefit of the specially advantageous character, for water supply, that they possess—as testified by the witness Vermeule, Record, p. 717, l. 15, *et seq.;* and as admitted by respondent in its official report (Record, p. 899, l. 15; p. 903, l. 6; p. 906, l. 23; p. 907, l. 30; p. 908, l. 22). These special advantages are as much the object of legitimate private gain as are (for example) the special advantages of Hudson River frontage over Newark Bay frontage as a site for the development of trans-Atlantic passenger steamship terminals. Respondent would not seek to acquire lands not capable of impounding water, or whose rocks gave off deliterious chemical substances, or whose soil yielded impurities threatening the public health.

For the reasons stated, the situation is utterly different from one in which, as an *incidental* consequence of the exercise of police power, property values are destroyed; and such a *direct* destruction of values as respondent insists has resulted from legislation is legally impossible.

VII.

THE EXCLUSION OF EVIDENCE CONCERNING CONSIDERATIONS INVOLVING THE ECONOMIC LAW OF SUPPLY AND DEMAND.

Grounds of appeal Numbers 26, 27 and 28 may be argued together. They involve a group of questions by the overruling of which the trial Court prevented appellant from proving that the value of its lands for water supply purposes arose (to quote again from the Currie case), "independently of the newcomer and prior to his advent" and "owe their (owes its) existence to natural situation and growth of trade and the general economic laws underlying all commercial values."

Again we repeat the grounds of appeal now to be argued:

No. 26 (Record, p. 763, l. 8):

> "Mr. Vermeule, at what other place or places in the State of New Jersey, approximately equal in distance to the site of the Wanaque Dam, could there be produced a supply of potable water approximately equal in quantity and quality to that which will be produced in the Wanaque Reservoir?"

No. 27 (Record, p. 763, l. 32):

> "Q. After the development of the Wanaque project, where else within approximately the same distance of Newark and the other cities being served by the North Jersey District Water Supply Commission in the Wanaque project, can there be produced a water supply of approximately the same quantity and quality as that afforded by the Wanaque project?"

No. 28 (Record, p. 764, l. 16):

> "Q. After the development of the Wanaque supply and the development, if that ever should occur, of a water supply project in the Ramapo Valley, where next would Newark and the other cities served by the North Jersey District Water Supply Commission have to turn for a further supply of water?"

Respondent objected to these questions as immaterial and the trial Court accepted this view and did not permit them to be answered. We request that their materiality be judged in the light of the foregoing and the following further quotations from the *Currie* case:

> "That land near a centre of trade increases in value with the growth of commerce and in the line of its requirements, is not more self-evident than that as the locations for railroad access to such a centre are taken up and occupied, the residue of the lands available for such purposes increases in special value in proportion to the demand thus created and to the scarcity thus produced. *From the same elements of common knowledge it results that the value arising from this situation of affairs is an existing value, inherent in the residue of such lands at whatever time any portion of such residue is sought by a new claimant for railroad facilities.*"

And also these words of the Supreme Court in *In re Central Railroad of New Jersey,* 74 N. J. L. 395, 65 Atl. 905:

> "He (the land owner) can show a contracted space suitable for such purposes, how much of it has been already occupied, what the demand

for the remaining space, including his own tract, will be for such use. *He can show all this to exhibit the increase in commercial value of his property.*" (Italics are counsels'.)

The words just quoted are the expressions of this Court and the Supreme Court regarding the principles to be applied to the taking of lands for *railroad* purposes. Can reason hold that they do not equally apply to a taking for water supply purposes? In the long run, no matter who the actor in the condemnation proceeding, it is the public that pays for property acquired for either of these public uses. Water is no less the life blood of growing communities than are railroads the arteries of an increasing trade and commerce. The Constitution is violated when, whether by laws or court rulings preventing proof of value, a private land owner is compelled to contribute more than his ratable share to the cost of a public water supply project by being stripped of lands taken for such a development at a price which fails to reflect the value created by the natural law of supply and demand so strongly stressed in the two cases cited. Let us assume that the answers to these overruled questions would have been that after the development of the Wanaque project and the development (if that be feasible) of a project on the Ramapo (a river which rises in New York and at least a part of whose waters may conceivably, therefore, in future be diverted in that State and not flow into New Jersey), the respondent must go twice the distance, and therefore expend twice the money in the construction of an aqueduct or pipe line to supply its further needs in the near future. Respondent has publicly stated in its report (Record, Appendix III, especially p. 884, l. 18) that the district served by it must at the

end of every eight years, beginning with 1925, have an additional supply of 100,000,000 gallons daily. If these be facts (and the exclusion of the questions makes them, for the purpose of this appeal, admitted facts under the Currie case), then the land owner is entitled under that and *In re Central Railroad of N. J., supra,* to "show all this to exhibit the increased commercial value of his property." The last-mentioned case expressly says that he may show "what the demand for the remaining space, *including his own tract,* will be, for the special use in question."

VIII.

EXCLUSION OF RESPONDENT'S OFFICIAL REPORT.

The next respect in which the Court denied appellant's right to prove the value of its lands for water supply purposes is closely allied to the one just argued and its exposition may be very brief. It involves the exclusion, first of the whole, and later of certain parts of the official report publicly issued by respondent in 1925, in which the demand for additional water supply for the districts served by respondent, in the immediate present and near future, is set forth; and in which, also, respondent certifies to the peculiar excellence of appellant's lands for this purpose.

The grounds of appeal relating to this phase of the case are Numbers 31, 32, 33 and 34, reading as follows:

No. 31:

"The Court erroneously overruled appellant's offer, made during the direct examina-

Rec. p. 433 l. 31
" " 440. l. 7.

tion of its witness, Robert E. Crockett, to put in evidence the entire official report of the North Jersey District Water Supply Commission, issued in 1925, and appellant duly excepted."

No. 32:

Rec. p. 954 l. 31.

"I offer the book once more for those parts of it which are pertinent for that purpose, for the purpose of showing what the estimate of the North Jersey District Water Supply Commission is with respect to the needs of the district or the communities served by it for the taking of steps immediately or in the immediate future for the provisions of further water supplies than the supply which will be provided by the Wanaque reservoir."

No. 33:

Rec. p. 955, l. 12.

"Mr. Hunt: I also offer that portion of the report for 1925 of the North Jersey District Water Supply Commission which deals with the quality and the purity of the waters of the Wanaque shed, including the lands under condemnation."

No. 34:

Rec. p. 953. l. 12

"Captain Crockett, are you able to point me to any place in this report where the Water Supply Commission speaks of the immediate needs there ——

(Mr. Frazer: I object to any more.)

—— for the further development of water supplies for the district served by the commission?"

The parts of respondent's report, the exclusion of which is just challenged, are printed in the Record

as Appendix III, p. 884, *et seq.* (See especially p. 884, "Additional Supply Studies;" p. 899, "Wanaque Water Shed;" and p. 905, "Report in Quality, &c.")

The applicable legal principles are the same as those discussed under the head immediately preceding this, and, in addition, the ordinary principles concerning the admissibility and evidential value of admissions made by a party against his own interest.

According to the excluded report (Appendix III, p. 884, l. 18, of Record), the district served by respondent will need every eight years, beginning with 1925, an additional supply of water amounting to 100,000,000 gallons daily.

According to another part of the report (Appendix III, p. 885, *et seq.,* and tables on pp. 897-8) these further supplies must be obtained from much more remote sources—first from the Raritan Basin, and eventually from the Delaware watershed. Their delivery at the point of demand will therefore involve the construction of aqueducts and pipe lines of much greater length and correspondingly greater cost than those required to carry waters from appellant's lands. It will also involve pumping, and, because of the lesser purity of the water as compared with that found on appellant's lands, filtration or other purification treatment will be necessary—processes that not only involve expense but render the water less palatable for use.

This quality of the water from appellant's lands that it is so pure as to require neither filtration nor chemical treatment—is stressed in respondent's report and in the report of engineers employed by respondent to advise it. If Appendix III, p. 902 to 908 be read, it will appear that respondents certify the superiority of the site as a source of water supply in the highest terms. Their expert advisers, at

page 907 of Record, l. 30, state that the water will be "superior in every respect to that now supplied the City of Newark from Pequannock reservoir;" *and they ascribe its superiority to causes inherent in the land or arising from the course of conduct voluntarily pursued by the owners of the land*—this appellant alone owning more than 40% of the entire drainage area.

To show the materiality of the excluded portions of this report, we quote again the first of the questions stated, and answered affirmatively, by this Court in the *Currie* case:

> "May the *situation and surroundings* of land sought for railroad purposes impart to it a special value for such purposes generally?"

We repeat that, upon principle, the answer must be the same if the question is directed to water supply instead of to railroad purposes.

Then, are not such considerations as the condemnor's own official estimate of the increasing demands of the district served by it in the present and the immediate future, and its own admissions concerning relative nearness to point of demand, and concerning purity, material factors in the "situation and surroundings of the land" under condemnation, the value of which the jury is to determine?

Moreover, respondent's report states *why* the waters found on appellant's lands are purer. The reasons, as stated by respondent, are (a) the chemical composition and natural arrangement of the rocks and soil—neither rock nor soil contains deleterious substances, and the soil, being sand and gravel, affords natural filtration; (b) the light population and the timbered character of much of the land.

Now, if the rocks and soil of appellant's lands happen to have been made by nature of such a character as to better the quality of the springs rising in the land and of the streams flowing through it, that is a natural advantage which, under our legal conceptions, inures to the benefit of the owner, and the advantage of which the owner is entitled to reap. Otherwise it would have to be said that land which contained no gushing springs, land that gave forth water of unwholesome chemical composition, and land of such topography as not to permit the construction of a reservoir by the mere process of damming a valley, had, in the eye of the law, an equal value for water supply purposes with lands possessing such characteristics as those which respondent itself attributes to appellant's lands.

Moreover, if appellant's lands (situate from 30 to 35 miles from New York City and correspondingly nearer the large cities of northern New Jersey) are relatively free from population and to a large extent well timbered, this must be so because appellant and its predecessors in title pursued a policy that produced such a result. And whether this policy was or was not pursued with a deliberate view to enhancing the value of these lands for water supply purposes (opportunity to offer proof upon this point did not arise because of the earlier restrictive rulings), appellant alone, as the owner of the land, is entitled to the benefit of the situation, and therefore entitled to show that the advantage of this situation, in relation to the creation of a water supply, was recognized by respondent and deemed by it to be of sufficient importance to warrant notice in its report.

As the Court will have seen, all of the grounds of appeal that go to the exclusion of evidence tending to establish the value of the property for water

supply purposes are more or less related. Our separation of them into groups for the purpose of argument doubtless falls short of perfection. We hope, however, that some labor has been saved the Court by our process of grouping, however imperfect it may be.

Concluding our argument upon this general phase of the case, we respectfully submit that the rulings of the trial Court were erroneous; that they were violative of established principles constantly declared and applied by the courts of this State and the Federal Supreme Court; that they resulted in grave injustice to the appellant, whose property was taken for a special purpose without the jury being permitted to hear one word as to its special value for this purpose; and that for these rulings alone, regardless of any others made in the case, the judgment ought to be reversed.

They and the instant judgment cannot both stand. So also, unless it be reversed, the jurisprudence of the State and of the Federal government, touching this important principle, will be absolutely at variance.

From among the many cases in numerous jurisdictions that declare or apply the same legal principles as those laid down in the Boom Co. case, the Currie case, and In re Central R. R. Co. we cite below.

As they are merely cumulative, and state no new principle, we refrain from quoting from these opinions.

IX.

THE COURT'S RULINGS UNLAWFULLY DEPRIVED APPELLANT OF THE RIGHT TO PROVE THAT ITS PROPERTY POSSESSED A VALUE—OR AN ENHANCEMENT OVER WHAT WOULD OTHERWISE BE ITS VALUE —BY REASON OF THE PRESENCE THEREUPON OF LARGE DEPOSITS OF MARKETABLE SAND AND GRAVEL.

The legal principles and the authorities relied upon by appellant under this head are to a great extent the same as those cited under the preceding point. Argument will, therefore, consist principally of an exposition of the facts, although references to cases may at times be necessary, especially by way of showing that appellant's claims under this point are supported, not in conflict with the decision of the Supreme Court in *Ross v. Commissioners of Palisades Park* (1917), 90 N. J. L. 461.

The grounds of appeal that fall under this head are numbers 36 to 55. Preliminary to their discussion, we will indicate certain facts already in evidence when the questions covered by these grounds of appeal were put, and which, we respectfully submit, laid a foundation that entitled appellant to prove the matters embraced in these exceptions.

James P. Anderson, general manager of the Ringwood Company, had produced a map which was marked Exhibit O70 for identification (Record, p. 385, l. 8). After various objections, met for the most part by actually cutting out parts of the paper showing data to the display of which respondent objected, the map was admitted as Exhibit

O70. (Record, p. 391, l. 30—the map again stated to be admitted, p. 414, l. 31).

Thereafter (Record, p. 418, l. 29, *et seq.*) the witness interpreted the map to the jury as depicting the following: (1) Certain areas of sand and gravel "within the taking and belonging to the Ringwood Company" comprising a total of 449.94 acres (p. 422, l. 29); (2) the presence, immediately alongside of each sand and gravel deposit of (a) a running stream of water of adequate volume (as to two beds, the Wanaque River, as to another the Cupsaw Brook (Record, p. 419, l. 6; p. 420, l. 12; l. 15); and (b) tracks of the Erie Railroad Co. actually existing and in use (Record, p. 429, l. 19), with, in some cases, sidings actually existing alongside the gravel beds. (See testimony of Crockett, following.)

Thereafter Robert E. Crockett was called and testified as follows (Record, p. 524, l. 21, *et seq.*): That he was a graduate civil and mining engineer and land surveyor (describing his education and naming his degrees) of "17 years' experience on general engineering work" (including 2 years in the army during the war—enlistment as private, discharge as captain of engineers); that he had been about 7 years in the employment of appellant as an engineer and was at present assistant to the general manager; that both by study and practical experience he was familiar with the approved methods of concrete making and the materials suitable therefor.

Appellant's counsel having stated (p. 532, l. 23) that it was the intention "to prove by Captain Crockett that the sand and gravel on the Ringwood lands is the kind of sand and gravel which enters into the making of concrete and is suitable for that purpose," respondent cross-examined to ascertain

the qualifications of the witness. (Beginning foot of p. 532.) The cross-examination elicited the fact that both in school and in practical work Captain Crockett had subjected sand and gravel to laboratory tests and practical tests to ascertain its fitness for use in concrete, and had taken part in a great deal of concrete construction work. Respondent's counsel, at the conclusion of his cross-examination (p. 536, l. 28), said:

> "I submit that the witness has not had such experience as will permit him to testify as an expert on the qualities of sand and gravel;"

But the Court ruled, "I will allow him to testify as an expert."

Thereafter (beginning p. 537, l. 15) the witness testified to his familiarity with the lands under condemnation. He identified the gravel map, Exhibit O70, and said that he had done the exploration work which afforded the data for the map. Beginning at the last line of p. 537 he described the method of doing the exploration work, which consisted of digging test pits and driving test holes to determine the extent, depth and character of the sand and gravel deposits. He stated (p. 549, l. 30) that Exhibit O70 truly depicted the sand and gravel areas within the taking and explained the manner in which was indicated the location and depth of each test boring and test hole. (One of the holes went to a depth of 85 feet; many went to 30, 40 or 50 feet; few were less than 30 feet; the average was 40 feet—see especially pp. 554-556.) At p. 594, l. 8, the witness states which holes went to rock and which were still in gravel when drilling was brought to a stop.

At p. 562, l. 15, *et seq.*, the witness described three test pits that were dug under his supervision,

saying that they were 4 or 5 feet square and "one of them was 18 feet and one was 15, and the other one was in between those two depths." At p. 563, l. 14, he described how the material taken from these dug test pits was separated into sand and various sizes of gravel. He states the percentages of material taken from the pits as follows (p. 567, l. 21): test pit in Section No. 7, 67% gravel, 33% sand; (p. 568, l. 13): test pit in Section No. 3, 66% gravel and 34% sand; (p. 568, l. 17): test pit in Section No. 4, gravel 47%, sand 53%; average of the three test pits, gravel, 60%, sand 40%.

At p. 591, l. 27, *et seq.*, the witness testified that the gravel areas as depicted on the map containing more than 22,000,000 cubic yards of sand and gravel, and beginning at p. 592, l. 30, he stated in detail the number of cubic yards in each "Section" as indicated on O70.

During cross-examination by respondent to determine his expert qualifications the witness had described the methods of testing sand and gravel to determine their fitness for concrete making and had said (p. 536, l. 14): "With the Ringwood Company we made all such necessary tests as were required to determine whether or not the sand and gravel was good;" and (l. 24): "We checked those determinations or results by having the State do the same in a report to us, in corroboration. We found we were correct."

Beginning at top of p. 543, the witness testified further, under re-direct examination, concerning the character of the tests of the sand and gravel made by him for appellant. After interruption by respondent's counsel he continued on p. 547, l. 3, with a statement concerning the tests made by him, and other tests for the making of which samples

were sent to the State of New Jersey (State Highway Commission Testing Laboratory—its report will be referred to later), saying, at p. 573, l. 3, and again at l. 30, that 138 samples were taken for purposes of test and analysis.

Beginning at p. 556, l. 30, the witness identified on Exhibit O70 public roads, the Wanaque River, Cupsaw Brook, and Ringwood Creek, as well as the main line of the Greenwood Lake division and the Ringwood Branch of the Erie Railroad as existing at the time the condemnation proceeding was commenced; and said that these things, in their relation to the gravel beds, were properly shown on the map.

At p. 560, l. 5, *et seq.*, he testified that the sand and gravel was so located as to enable access to be had to it by water. (The importance of this fact, as adding value to the deposits, will appear in the analysis of the testimony of the witnesses Gallagher and Shaw, gravel producers, who testified that the presence of water enabled the recovery of the material by the cheapest and best method—dredging.)

At p. 568, l. 24, appellant's counsel asked the witness to "point out on the map, please, any sidings on the railroad in that area of sand and gravel" and in reply he pointed out (foot of p. 568) one siding; (p. 569, l. 23), another; and (p. 569, l. 30), a third. At p. 570, l. 21, *et seq.*, he pointed out three railroad stations within the area under condemnation; and, being asked (p. 571, l. 10), "Is there any land there that is adapted to construction of sidings?" he said (foot of p. 571), "There are many such places where a siding could be constructed."

The Court having, as above stated, held this witness to be qualified to testify as an expert regarding the quality of sand and gravel, the witness said,

at p. 575, l. 7, that the material was "of a quality useful for the making of concrete" and, after having testified to 20 years' familiarity with gravel lands, he said (p. 576, l. 10), "I consider, from my knowledge of Long Island gravels and other gravels, that the sand and gravel at Ringwood is inferior to none that I know of." He went on to state that it was *better* than Long Island gravel, because the particles are angular whereas those occurring on Long Island are round; and because of "its high compressive strength." At p. 578, l. 25, he said:

> "The sand and gravel is quite free from humus or vegetable matter. The proportion of gravel is high. The proportion of gravels occurring in this bed are approximately those that would be used in making concrete. Usually you do not find that the case. You find most sand and gravel deposits carrying, say, 25 or 30 per cent gravel and 70 or 75 per cent sand. In making concrete you use sand and gravel of this proportion that you use less sand. Say you used two parts sand, you would use four parts of gravel. In the Ringwood deposit that is approximately the ratio in which the two items occur. In other deposits, most of the other deposits that I know, there is a large surplus of sand. They only have, say, one-quarter of the whole would be gravel and three-quarters of the whole or the rest of it would be sand. That is the advantage of the Ringwood deposit over the ordinary deposit."

At p. 579, beginning at l. 10, he stated that the respondent, North Jersey District Water Supply Commission, had been using the sand and gravel from the vicinity ever since they started construc-

tion of the Wanaque reservoir about four years before. At l. 20 he said: "They (the Water Supply Commission) used the sand and gravel except for 1500 yards at the beginning—they used the sand and gravel without any washing, they used it just at it came out of the bank, and simply screened it to get proper proportions of sand and gravel." Asked what they had used it for, he said (p. 579, l. 28), "for the making of the core wall in the Wanaque Dam;" and he added (foot of p. 579), "Just as it came from the bank with screening. Further than that, sand was used in the construction of bridges and culverts by the road and railroad contractors. That sand came from these deposits. It was used without washing."

Appellant next called Mr. Felix G. Pittet, whose examination begins at p. 602 of the Record. Mr. Pittet testified that he had been in business as a builder, in Paterson, for 37 years and had "put up buildings in this State and other States" and had done general construction work. He said (p. 603, l. 26), "I have been familiar with concrete construction for the last 28 years; 28 to 30 years," using it in "re-inforced concrete construction, consisting of industrial buildings, some dams, power-houses, dry-dock work, and other water-tank work, filtration plants——." Whereupon respondent's counsel interrupted to say that "he is a very competent builder, so we do not want to waste time qualifying him."

This further statement, however, came out incidentally from the witness, at p. 610, l. 30:

> "Well, in the last thirty years I have had to do with concrete construction on my account and my father's to the extent of between ten and twelve million dollars."

Beginning at the top of p. 607, he stated that for thirty years or more he had "been in the habit of purchasing sand and gravel for the purpose of making concrete" and that the material had to conform to a certain standard of quality.

Beginning at top of p. 611, he stated that he had made an examination of the Ringwood lands and pointed out the various gravel areas shown on Exhibit O70 as having been inspected by him. Asked by Judge Lewis, p. 613, l. 17, "Did you make such an examination as you are in the habit of making on lands for the purpose of determining the value of the sand and gravel for concrete?" he replied, "I did." At p. 617, l. 20, he said, "The nature of the material that I saw of sand and gravel that I went to look for is very similar throughout the deposit. It seems to be pretty much of one kind of material. It is coarse, gritty, granite, sand and gravel." He was then asked and made answer to the following questions (p. 617, l. 28):

"Q. Your making an examination, as I understood you, Mr. Pittet, of the same kind that you make for quality when you are purchasing sand and gravel?

A. Yes.

Q. And did the inspection which you made satisfy your mind as to the quality of sand and gravel throughout the entire area?

A. As a building material?

Q. Yes.

A. Yes, sir.

Q. Did you take any samples of the same gravel which you brought home with you?

A. I did.

Q. Are you in the habit of doing that in your business when you are purchasing sand and gravel?

A. When it is a matter of buying material that we are not familiar with, a new kind, a new pit or a new firm, I usually make it my business to satisfy myself that the material is not contaminated with foreign matter which may cause some trouble. I make those examinations myself. I did that in this case because you asked me to tell you what I thought of it as a building material. In order to satisfy myself, I simply took there what you see from different places in order to find out what there was of foreign matter. I did not expect to bring it here. It was for my own satisfaction, to answer you."

The witness then went on to state that he had taken samples from four different places, identifying them and saying (p. 619, l. 28):

"I did not take any of that material from any of the test holes. I took that sand from which I thought was the right place to take it in an exposed average surface."

At p. 622, l. 30, the witness, producing three bottles containing material from the samples he had taken, stated that he had tested them to his own satisfaction by a process the nature of which he did not care to disclose, which was (p. 625, l. 20), "100 years old but just as good today although not scientific method as required by these gentlemen here, I suppose you refer to the engineers?" And which he had used before for determining the quality of sand and gravel for concrete (p. 626, l. 33), "hundreds of times;" and finally he was asked and answered questions as follows (p. 627, l. 28, *et seq.*):

"Q. Now, tell us, if you please, first, whether or not, in your opinion, the sand and gravel on

these seven sections is fit for the making of concrete?

A. Yes, sir.

Q. Is its quality high or low?

A. High.

Q. What makes the quality high?

A. The quality, the grade, well—particularly the quality of the stone itself. It is a granite.

Q. Yes.

A. It is what we call a granite sand and granite gravel, almost without exception. There is some other classes. You may find a few—in the stones you may find a few pieces of sandstone, gravel and quartz, but the predominating part of that gravel is granite, and granite is a very high-grade material.

Q. Does the presence or absence of humus or clay in the deposit have any effect upon its quality for building purposes?

A. It certainly has. If there is any humus or vegetable matter in it, it is very bad.

The Court: How about clay?

A. Also. That is, up to a certain percentage.

Q. Now, first in comparison with sand and gravel deposits which you have seen, as you say, how does the quality of humus compare?

A. From my examination with my eyes and my judgment I have seen—all that I have seen there exposed, I would say it was very good material; as I said before, to satisfy you, you cannot always tell by looking at a material or by its color; you have to put it to some sort of a test to determine the dangerous element that may be in there, which I did. Now, I considered that that was enough to satisfy my mind, to answer you as to whether that was a

good building material, and I believe it is a good building material."

At p. 629, l. 30, in response to a question asking him to compare the quality of this material with other material, he said, "Well, it is superior to anything that we have in our vicinity of Paterson in the way of sand banks and sand deposits—concrete." At the top of p. 630 he said that approximately half a million yards per year of sand and gravel was used in Paterson and its immediate vicinity.

The next witness called by appellant was Robert B. Gage, who testified (top of p. 636) that he was employed by the State of New Jersey as a chemical engineer. He said (p. 636, l. 17), "I have charge of the State Laboratory and the principal business is qualifying and passing on all the materials that is used in highway construction and other building construction and also making analysis for the different materials that are sent in by the different State institutions and departments."

He then testified to the receipt of samples from the Ringwood property which Captain Crockett had testified he had sent to him and that he analyzed the samples "to see that they did comply with our standard requirements used in passing on such materials for concrete work in State use"—"for use in concrete pavements or foundations or whatever class of concrete we were going to use them for"—including highways.

Perhaps appellant, in calling this witness, encountered somewhat the same experience as that of Mrs. Bardell's counsel in examining Samuel Weller in the celebrated case reported by Dickens. However, like Pickwick's faithful servant, Mr. Gage admitted the facts, testifying (p. 639, l. 26) from what he called 'the original reports which we sent you

a copy on the result of the analysis on the samples forwarded to us." He said (top of p. 640), "Of the three samples of sand sent us, two of those complied with the requirements of our specification, and the third one might be considered as practically complying. That is, for concrete sand." And at l. 3 of p. 642, he said:

> "A. The gravel sample, when properly screened and the oversize removed, would comply with the requirements of the specifications, as far as the grading of the aggregate goes and the quality of the aggregate in this gravel, I would like to say it is not the best we have used in this State for the gravel does contain some decomposed troubles, some weathered gravel."

At l. 29 of p. 642 he continued:

> "Continuing my testimony along the same lines I was at: Our specifications make allowances for a certain percentage of decomposed pebbles in the gravel. Now, decomposed pebbles is practically in all glacial gravel which is not to exceed the per cent that our classification would approve. So we could approve the gravel as practically complying to any glacial gravel that exists in north Jersey."

At p. 644, l. 28, under cross-examination by respondent, he makes a statement to the effect that the glacial gravels of north Jersey, notwithstanding their containing some decomposed pebbles, are better than the gravels of south Jersey and of Long Island. At p. 648, l. 28, he read from his report to the Ringwood Company the following, which explains the respect in which the one sample of sand failed to comply to State requirements:

> "* * * 'This will inform you that after screening in the laboratory these samples practically comply with our requirements for concrete sand. You will note, however, that one of these samples is deficient in material passing the 30- and retained on the 50-mesh sieve. This condition would have to be corrected before general approval could be given on these materials.' Now, what is meant here as the screening in the laboratory is that all these samples contained some over-size pebbles, that is, half-inch and quarter-inch pebbles. We screened that out and make this test for the balance, because that is the way you screen it when you mine it. Here is a sample of 12 per cent retained on quarter-mesh screen."

From his concluding statement it clearly appears that the objection he mentions would be cured automatically in the mining process—"that is the way you screen it when you mine it." As to washing, he admits (at p. 649, l. 20, *et seq.*) that gravel is always washed before it is used for concrete making and that New Jersey specifications would not permit the use of *any* gravel in concrete work done for the State, without washing.

Mr. Gage's most valuable contribution to the facts of the case is that which he made when he submitted his reports on the samples in November, 1925, before he was aware that the samples might be involved in any litigation between the land owners and a State agency. The appellant's correspondence with him and his reports of analyses are reproduced at pp. 925 to 931 of the Record. Mr. Gage's letter to appellant, accompanying the reports, is quoted above.

From the reports themselves the following facts appear: The concrete sand covered by the report

printed on p. 927 showed an elutriation of .7% against a maximum of 4% allowed under the State's specifications. In the sample of concrete sand covered by the report, set forth at p. 928, the elutriation is 1% and in the sample covered by the report set forth on p. 933 it is 1.1% as against the allowed maximum of 4%. The reports printed on pp. 931 and 932 covering gravel contain at the foot a notation—"Remarks: Approved as to quality only. Requires washing and screening to proper size." *Note the absence* of any reference to "decomposed pebbles," "weathered gravel" or objectionable factors of any kind.

We recapitulate as follows the proofs just set forth at length:

(1). It was proven that on the land under condemnation there were very large deposits of sand and gravel.

(2). It was proven that the deposits lay immediately alongside both water and the tracks of an existing railroad—a common carrier of goods—and that there were at hand, on appellant's lands under condemnation, three existing side tracks and suitable sites for the installation of others.

(3). The geographical situation—that the deposits are located at such and such distances from Newark, Paterson, Jersey City and other populous and growing areas in North Jersey—is a fact of which the Court will take judicial notice. (23 C. J. p. 78, sec. 1860.)

In order for appellant to claim from the jury any value or enhancement of value for its property because of the circumstances just recited, it remained

for it to show that there was a market for the sand and gravel, and that the material could be delivered into the market at a cost permitting it to compete with—or to displace—like materials coming from other sources of supply. For this purpose it called three witnesses, all producers of sand and gravel in large quantities and for considerable periods of time. Each in part corroborated and in part added somewhat to the foundation already laid. Thus:

The first witness called was Steward M. Neff (Record, p. 651), a producer of Rochester, N. Y., formerly (1913-1918) a producer at Millville, N. J., and (R. p. 653, l. 20) with "25 years' experience in the contracting business making a specialty of waterworks and sewerage" and who had (R. p. 654, l. 23) "investigated sand and gravel plants over the entire country almost, and made reports on some" —his investigations ranging from New York and New England through the Middle West and Rocky Mountain States to California. He testified (R. p. 653, l. 33) that he had examined appellant's gravel lands "for the purpose (R. p. 654, l. 14) of finding out whether the gravel was worth anything, and to make a general report on it." He also determined "whether or not it was worth anything for the making of concrete." At R. p. 656, l. 21, he testified that he went over the lands "very thoroughly." At R. p. 662, l. 30, he said appellant's sand and gravel deposit was "excellent material" and at top of p. 663, having been asked to compare its quality "with the other sand and gravel deposits which you say you have inspected over all the country" he said, "I do not think there is any better."

Respondent's counsel, endeavoring to profit by the witness having said at the hearing before the condemnation commissioners that "nobody knows" what material occurred "between the borings" made

in the course of the exploration work, the witness (R. p. 659, l. 20, *et seq.*) emphatically asserted that he "could from a business standpoint, infer that between the holes there was gravel;" and he said that the borings were sufficient and that similar exploration work on other lands, that were afterwards opened and developed, showed "that the material between the holes was very similar to the borings;" and he explained (R. p. 661, l. 28) that his phrase "nobody knows" referred simply to "knowledge through seeing a thing" and that his conclusion was (R. p. 662, l. 6) "that the gravel is over the entire area."

On the foundation thus laid there were put to Mr. Neff the questions, the exclusion of which gives rise to grounds of appeal numbers 35 to 41.

Number 35 is (R. p. 662, l. 7, *et seq.*):

> "Q. Now, I ask you whether or not from your inspection at that time the character of the ground was such as to enable you to work it and produce gravel under the most economical circumstances ——"

This question was objected to (R. p. 662, l. 12) on the ground that "the same question was asked before." Perhaps it was, in substance if not in precise form, at R. p. 656, l. 33, where appellant's counsel put a question which resulted in an argument and a "preliminary cross-examination" by respondent. The Court's ruling on the question under discussion (R. p. 662, l. 18) was: "I will sustain the objection on that for the reasons already given." The only reason previously given for sustaining any objection made during the examination of this witness was that the question was immaterial. (See R. p. 653, l. 4; p. 655, l. 11; p. 656, l. 9; p. 657, l. 1; p. 658, l. 10; p. 659, l. 2.)

We assume, therefore, that the question was excluded as *immaterial,* and concerning that we say: The ultimate fact to be found by the jury was the value of the land—or its enhancement in value— by reason of the presence of the gravel beds. The *Rum River Boom Co.* case and *Currie* case, already so frequently cited, establish the general principle. If the "character of the ground" was such as to enable the production of gravel "under the *most economical circumstances,*" that would certainly be one of the "considerations * * * to be regarded * * * in a sale of property between private parties;" held to be material and admissible in the *Boom Co.* case. It would be material upon "the inquiry * * * what is the property worth in the market," said in the case cited, to be the ultimate question. It would likewise be material under the rule laid down in the *Currie* case that the owner "shall be given, by way of compensation for his land, its fair price for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the near future."

It is common knowledge that in these days, in *all* lines of production, the chief effort is to obtain *economy in working,* and thereby to produce an article at a less cost than a competing producer does or can. High or low cost of production is frequently the factor determining whether or not a given product (of any kind) can find a market. Production "under the most economical circumstances" is the factor that has caused western-grown wheat, grain and cattle to displace in eastern markets eastern-grown wheat, grain and cattle; it has caused Minnesota iron ores to replace New Jersey iron ores; copper from shallow steam-shovel-operation mines in Utah and Chile to replace copper from deep mines in Michigan; nitrates manufactured from the

air in Germany and Sweden to replace nitrates mined from the ground in Chile; paper pulp from Baltic forests to displace on our Atlantic seaboard paper pulp from the forests of New England and Wisconsin; a million small motor-cars manufactured by Mr. Ford to displace the product of a dozen small factories of ten years ago.

The examples just given show how even adverse transportation costs, resulting from lengthy rail hauls or over-seas carriage, sometimes with import duties superadded, can be overcome by *economy in production.*

We submit that fundamental economic law renders material the question: "Is the character of the ground such as to enable you to work it and produce gravel under the most economical circumstances?" If it be said that an objectionable question remains objectionable even though an untenable ground of objection be assigned, we submit in reply that *no ground* exists for denying the right to prove a fact of so determinative a character concerning the value of land because of deposits of potentially useful raw materials contained in it.

Number 36 (R. p. 663, l. 3, *et seq.*) is the following:

> "Q. Mr. Neff, can you tell us from your experience and inspection of the Ringwood lands whether those lands are so located as to be useful in the establishment and carrying on of a gravel and sand business?"

Respondent's counsel said: "There is the same objection," and the Court said: "Same ruling." We say the same argument as that just addressed to the exclusion of the question embraced in ground of appeal No. 35 demonstrates the erroneous character of this ruling. As was said by Mr. Justice

Black, speaking for the Supreme Court, in *Ross v. Commissioners of Palisades Interstate Park,* 90 N. J. L. 461:

> "The value of the land as stone land suitable for quarrying is a proper subject of consideration both by the witness and the jury in fixing the amount of just compensation to be awarded, * * * "

No "stone land" would be "suitable for quarrying" unless "so located as to be useful in the establishment and carrying on" of a stone business.

The mere presence of stone would not render any lands necessarily "suitable for quarrying." Remoteness from a railroad (for example) or from a market would render the best of deposits unsuitable and useless for quarrying. So also with gravel, and it was the owner's right to have an answer to this question as a preliminary to further inquiries addressed to the question of the enhancement of the value of the land by reason of the presence of the sand and gravel. Whether "*so located as to be useful*" is an essential inquiry, of prime importance.

Numbers 37 and 38 (R. p. 663, l. 19, and R. p. 663, l. 30) are as follows:

> 37. "Q. Are you familiar with the royalties usually payable for the privilege of digging sand and gravel from a deposit of this kind?"
>
> 38. "Can you tell us from your experience in the sand and gravel business and your inspection of various sand and gravel plants, what that sand in the Ringwood gravel lands is worth per cubic yard as it stands on the property?"

We are not unmindful of the fact that at first view these two questions, standing alone, may seem to come into conflict with the *Ross* case, just cited.

They were not objected to on that ground, but on the ground that they were immaterial. As the Court will observe, they did not call for the witness to state what the usual royalties were, or to state the value of the material "per cubic yard" as it stands on the property. They simply *asked whether the witness had knowledge concerning these facts.* They were introductory only and designed to assist in the demonstration of the fact that the witness possessed such a range of knowledge as would enable him, when the question should be put, to express a sound opinion on the question of the value of the lands—or their enhancement in value—by reason of the presence of the gravel deposits. So considered, we submit the questions are entirely proper and their overruling was erroneous; because, as all must agree, the hypothetical owner willing but not compelled to sell, and the party willing but under no necessity to buy, must be considered to be persons of at least ordinary intelligence, who, in striking a bargain, would take into consideration such circumstances as the royalty obtainable by an owner on gravel removed from his land, and the value which the material has in place, measured by the price which a purchaser of the material would pay for the privilege of being permitted to dig and carry it away.

Numbers 39, 40 and 41 may be argued together. They are as follows:

> 39. (Question at R. p. 664, l. 15; ruling at p. 665, l. 22): "Q. Assuming that the jury would find that there are approximately 22,000,000 cubic yards of sand and gravel upon this property, what would you say that the property was worth?"
>
> 40. (Question at R. p. 665, l. 24, *et seq.*; ruling at p. 666, l. 3): "Q. I would ask you, paying no regard whatever to any other part of the property than the 450 acres of land on which the gravel deposits are, and if it should be found as a fact by the jury that there are 22,000,000 cubic yards of sand and gravel upon the property, what would you say that the property was worth?"

> 41. (R. p. 666, l. 9): "Q. I will ask you this further question: Assuming that the 450 acres of land upon which the sand and gravel is shown to be, is of no value whatever, aside from the sand and gravel upon it, what do you say is the value of the property?"

Numbers 39 and 40 were objected to and excluded as immaterial. Number 41 was not dignified by the statement of a ground for the objection or a reason for sustaining it.

The fact that the property under condemnation contained approximately 22,000,000 cubic yards of sand and gravel, had been established, at least *prima facie* and sufficiently to lay a foundation for these questions, by the testimony of Mr. Crockett. (See R. p. 591, l. 25.) The questions, as the Court will perceive, are addressed to the *value of the property,* that is, of the entire acreage under condemnation and not merely of the 450 acres of gravel land. The questions were put in this way, because Mr. Neff made no pretence of ability to value the property, or any part of it, by reason of any other fact than the presence of the gravel deposits; and, their provable value being what it is, appellant was quite willing to frame the questions in this manner, thereby avoiding objection based on the *Ross* case, *supra.*

Even this inquiry, however, "What is the property under condemnation worth because it embraces these sand and gravel deposits—paying no regard whatever to any other part of the property"—was

held to be immaterial. This ruling was a violation not only of the *Rum River Boom Co.* case and *Currie* case but of the *Ross* case itself, from which we quote further:

> "The stone in place is a part of the land. It cannot be valued separately and apart from the land. To what extent, if any, the value of the land is enhanced by the stone may be shown. The value of the land as stone-land suitable for quarrying is a proper subject of consideration both by the witness and the jury in fixing the amount of just compensation to be awarded, but not the value of the stone separately and apart from the land. The value of the stone is not measured by such facts. *The stone is a component part of the land.*" (Italics Counsels'.)

In the questions under discussion the gravel was treated as a component part of the land and the witness was asked to state the value of the land because of the presence of the gravel.

We beg leave to emphasize the very significant fact that neither respondent's counsel nor the Court, at any time during the examination of Mr. Neff, questioned his *expert qualifications* to testify concerning the value of the property because of the presence of the gravel deposits. Evidently his long and extensive experience (R. p. 651, p. 655) was considered to put his qualifications beyond question. Mr. Matthews, for the respondent, did (R. p. 657, l. 3) ask "the privilege of cross-examining the witness as to his inspection, such as would qualify him to testify as an *expert on the gravel content.*" He did cross-examine as to this, but contented himself with bringing out the fact, already referred to, that the witness on a previous occasion had said that "nobody knew," in the sense of having actually *seen* what was underground.

The questions under consideration were excluded solely on the ground that they were immaterial. The materiality of the inquiry, what is the land worth because it contains these gravel deposits, is so apparent that it need not be further argued.

The effort to obtain from Mr. Neff an opinion as to the value of the land because of the presence of the gravel deposits having thus been frustrated, the appellant next called for that purpose Frank F. Gallagher, whose testimony begins at R. p. 765.

Mr. Gallagher testified that he is treasurer of the Goodwin-Gallagher Sand and Gravel Corporation, which is in the business of mining sand and gravel on Long Island and produces about 3½ million cubic yards per year; that the corporation and its predecessor partnership had been in business for 30 or 35 years (R. p. 766, l. 30) and that he himself (R. p. 771, l. 5, *et seq.*) had been employed in the business for 18 years and had "done all kinds of work, practically, from an office boy up" and was familiar with all the company's business and all of its operations, including "its methods of excavation of sand and gravel" and "transportation and sale of the same," and the cost of the various methods of "development of sand and gravel from lands containing them."

At p. 768, beginning with l. 1, the witness testified that his company owned about 2,000 acres of gravel land, and as to the market for its production, he said:

> "A. Where are the markets? We go as far east as Bridgeport on the Sound, taking everything—we take in Staten Island, we take in Jersey as far as Newark, Brooklyn, New York City —we call our Metropolitan District."

He also said that he was "familiar with the markets for sand and gravel in these neighborhoods"—"familiar with the prices which sand and gravel bring in these markets;" and that he himself had made "about a half a dozen" purchases of gravel lands on Long Island.

At R. p. 769, l. 12, *et seq.*, Mr. Gallagher testified to having visited and inspected appellant's gravel lands. Questions were put to him and answered as follows (R. p. 768, l. 25):

> "Q. What has the locality to do with the availability of a sand and gravel proposition—lands?
>
> A. Locality has a lot to do with it, where you are going to get rid of your material.
>
> Q. Tell us then what it has to do with it?
>
> A. Well, if you buy a piece of property for sand and gravel business in any locality, first of all you have to find out where your market is and how much your market will take, to get rid of your material."

During the course of an argument (beginning foot of p. 776) concerning the witness' qualifications, the Court made the following statement (R. p. 778, l. 1), rather astonishing in view of the uncontradicted testimony the witness had given:

> "The Court: He said his market extended to Newark. *He did say that he knew conditions here, but he does not—it is outside of his territory.*"

Immediately after this statement by the Court the witness was asked:

> "Q. Are you familiar with the market for sand and gravel within the reach of the Ringwood sand and gravel?"

And he replied:

> "Yes, sir."

The Court then spoke as follows:

> "The Court: I have no doubt of his qualification with respect to the character of the sand and gravel that is there, Judge. Do not take any time on that.
>
> Mr. Lewis: I understand that.
>
> The Court: You may ask him about that, if you wish, but when you ask him about the value of these lands he does not qualify."

With Mr. Gallagher on the stand appellant made the two following offers of proof, which were excluded and afford the basis for grounds of appeal numbers 42 and 43:

> 42. (R. p. 784, l. 25): "Mr. Lewis: We will offer to prove the sand and gravel is delivered from Long Island in Newark, at prices which the sand and gravel at Ringwood can undercut in price in the same market."
>
> 43. (R. p. 784, l. 32): "Mr. Lewis: And that there is a volume of a million tons per year from Long Island into Newark."

Respondent made no objection to either offer, but the Court said, as to the first: "I shall not permit it. You may have an exception." And as to the second: "Same ruling. You may have an exception. It is immaterial in my judgment."

We presume that supposed immateriality was also the ground for rejecting the first offer. We think it unnecessary to argue at length the erroneous character of these rulings, or their extreme harmfulness to appellant. The witness had testified that his firm shipped sand and gravel into New

Jersey as far as Newark and shipped also as far east as Bridgeport and to Staten Island, Brooklyn, and New York City, and that he was familiar with "the markets for sand and gravel in this neighborhood" and with "the prices which sand and gravel bring in these markets." (See R. p. 768, l. 13, *et seq.*)

It had previously been shown that in the lands under condemnation there were 22,000,000 cubic yards of sand and gravel of high quality, lying alongside railroad and water and distant only a few miles from Newark and Paterson and the whole populous area of northeastern New Jersey. Whether the presence of this material added anything to the value of appellant's lands depended upon two facts: (1) Was there a market for the sand and gravel? (2) Could it be got to market at a price enabling it to compete with similar materials from other sources? The matters embraced in the two offers under discussion had a direct and material bearing on these questions. If sand and gravel from appellant's lands could be delivered in Newark at a price that could "undercut" Long Island gravel, that fact would open to this material the market of "a million tons per year" existing in Newark as proven by the delivery of that quantity of material there from Long Island. No case ever decided warrants the exclusion of such evidence. No citation of authority could add to the force of the argument that arises from the mere statement of the situation. To say that it is *immaterial* to undertake to show that there exists at Newark a market for a million tons per annum of this material, and that material from appellant's lands can be delivered in Newark at a price lower than the material now supplying that demand, indicates a failure to apprehend the character and force of the proffered proofs. *Demand creates value, and* (*quality being*

at least equal—here it is shown to be superior) *ability to deliver at a lower price dictates whether the demand shall be served from one source of supply or another.*

Ground of appeal No. 45 brings up this question addressed to this producer of 18 years' experience, mining and selling 3,500,000 cubic yards per year and serving the Newark market:

> "Q. (R. p. 785, l. 9.) What in your opinion is the value per acre of the sand and gravel lands, on the 450 acres ——"

Before the framing of the question was completed the Court interrupted to say, "Do not answer it." Respondent's counsel objected "for the reasons before stated" and the Court sustained the objection. The only "reason before stated" for objecting to or overruling any question thus far put to this witness was immateriality. (See R. p. 765, l. 21; 767, l. 10; 784, l. 35.) The Court sustained the objection. Immediately thereafter appellant's counsel finished his question by adding (R. p. 785, l. 24) "Make that value per acre of the sand and gravel land" and the Court affirmed its former ruling.

This question, we submit, was proper under the rule laid down by the Supreme Court in the *Ross* case (90 N. J. L. 461) that:

> "The stone in place is a part of the land. * * * It cannot be valued separately and apart from the land. * * * *The value of the land as stone land suitable for quarrying is a proper subject of consideration both by the witness and the jury* in fixing the amount of just compensation to be awarded, but not the value of the stone separately and apart from the land."

As the Court will have observed, the question was

different from that put to Mr. Neff. He was asked to state the value of the entire 2354 acres by reason of its containing the gravel areas. Mr. Gallagher was asked to state *the value per acre of the gravel lands*. We submit that it was the right of the landowner to inquire the value per acre of the gravel lands alone. Value per acre once stated, the value of 450 acres is a simple matter of computation. Where 2,354 acres of land of widely varying qualities and characteristics (see map exhibits) are being taken, there can be no objection to asking a witness to testify *concerning the value of a part, of such a character as his experience and knowledge enables him to appraise,* and not asking him to testify to the value of the whole. Mr. Nichols says (Nichols on Em. Dom. 2nd Ed. 1917, vol. 2, p. 1188, sec. 453):

> "A witness duly qualified to state to the jury his opinion of the value of a parcel of land may either state what he considers to be the value of the entire parcel, or he may estimate its value per acre, or square foot or other unit of measurement, and leave the dimensions of the parcel and amount of land contained therein to be established by other evidence."

Grounds of appeal numbers 46 and 47 will not be pressed.

Ground of appeal number 48 brings up the overruling of this question put to Mr. Gallagher (R. p. 787, l. 1):

> "Q. How does the percentage of gravel in the lands at Ringwood compare with the percentage of gravel in the lands at Long Island that you have testified to?"

The question was objected to and overruled on the ground of immateriality.

The witness, Crockett (Record, p. 567, l. 21, *et seq.;* p. 578, l. 31, *et seq.*), had already testified to the extraordinarily high percentage of gravel in the beds on appellant's lands. As is well known, of the two commodities gravel is much more valuable and in all markets commands at least twice as much per ton as sand, while its cost of recovery is no greater. If, for example, the gravel content of appellant's beds was approximately twice as great as that of the Long Island beds, the value of the land was correspondingly increased. We submit, therefore, that the question was a proper one to put to a witness who had himself purchased six tracts of gravel land on Long Island and was treasurer of a corporation owning 2,000 acres of it. An answer would have been a step towards the proof of the ultimate question—the value of appellant's lands—by showing that because of the high gravel percentage, these beds were of greater intrinsic value than the gravel areas of Long Island, which serve the market into which gravel from these deposits would naturally come.

Appellant next called James G. Shaw (R. p. 789, l. 30), who testified that he was a producer and shipper of sand and gravel on Long Island and had been for four years, and shipped into "tidewater markets," including Newark, Passaic, Belleville, Perth Amboy and New Brunswick in New Jersey; and that (R. p. 790, l. 20) he shipped probably 300,000 yards (360,000 tons) of sand and gravel per year to points located on Newark Bay. He said that he "presumed" that the whole volume of sand and gravel shipped from Long Island to points on Newark Bay, annually, was a million cubic yards. He said that he had himself bought gravel lands at Port

Jefferson on Long Island and was informed concerning purchases made by other gravel producers on Long Island.

At R. p. 791, l. 8, appellant put to the witness this question: "What is it that gives any value to any gravel lands?" Respondent objecting "to a conclusion on this witness' part," appellant, after some colloquy, examined the witness concerning his knowledge and experience, for the purpose of demonstrating whether or not he was qualified to testify concerning the factors "that give any value to any gravel lands" and to the question of value itself. The examination (beginning R. p. 792, l. 4) brought out the following: That the witness was familiar with the gravel business all over the eastern part of the United States; that the nearby big producing centers were certain places on Long Island, which found their market in "seaboard points;" one at Morris Plains in New Jersey which found its market in Newark and Elizabeth and other New Jersey cities; one at Tullytown in Pennsylvania which found its market "principally in Philadelphia and Trenton and Wilmington" (the bulk of its shipments being made by rail). Thereafter the witness was asked (R. p. 794, l. 1):

> "State what the situation is in any part of the country in which you are familiar with the gravel business as regards the location of the gravel deposits that are being worked in relation to the location of some large center of population?"

He replied (l. 23):

> "We get the gravel bank as near as you can to the center of population."

Thereupon followed these questions and answers:

"Q. Why is that?

A. To shorten your haul, to decrease the cost of delivery.

Q. To reduce the cost of delivery?

A. Yes.

Q. Upon what elements does the determination depend whether or not gravel from certain sources can be put into the market in a certain place?

A. You must first determine the market value of the material, and then determine whether or not you can take the material from a piece of property you have in mind to your market and deliver it and make any money out of it.

Q. How can you determine whether or not you can take gravel from a piece of property in question and deliver at the market in question and make any money out of it?

A. You determine first the market value of it, and then look at the property and you can get it within a few pennies of what it costs to take it out of the ground, prepare it and place it in the market, when you have the freight rates.

Q. Now, the cost of placing gravel in the market involves how many elements, Mr. Shaw?

Mr. Frazer: I object to that.

The Court: He has already given them.

Mr. Frazer: He has given the elements, and we are getting into the Manda case. We are taking this out and getting into the Ross case, taking it out of the ground and figuring the cost of transportation and mining.

Mr. Hunt: No. I am not going to take anything out of the ground and show any cost, but I think from this qualified witness we have a right to show what the two factors that enter

into a given market are, and whether it can go into that market.

The Court: If that is the only purpose, I will allow it.

Mr. Frazer: Exception.

The Court: You may have it.

Q. The two elements are production on the ground and the cost of transporting it to the market, are they not?

A. Yes, sir.

Q. Are you familiar with these beds shown in this map exhibit, and existing on the Ringwood property?

A. Yes, sir.

Q. State what the existing conditions on the ground on that property are that have any bearing on the question of whether the production of gravel on those beds can or cannot be accomplished at costs no greater than the production of gravel on Long Island?''

The question last stated is the one whose exclusion gives rise to ground of appeal No. 49. Respondent objected to it because if it were allowed to be answered ''the whole question of cost of mining, etc.,'' must be brought into this issue. The Court permitting appellant's counsel to speak in support of its right to have the question answered, he said (R. last line of p. 796): ''I do not want to show what the cost of production, either on Long Island or on our property, is. If my adversaries wish to show it, I have no objection whatever.'' He then went on to tender offers of further proof, the overruling of which gives rise to grounds of appeal numbers 50 to 53, inclusive, reading as follows:

50. (Offer, R. p. 797, l. 4; ruling p. 800, l. 31.) ''Mr. Hunt: (After denial that he intended to undertake to show the cost of production of sand and gravel.) ——But I do submit I have a right to show, without mentioning any figures at all, whether the conditions on our property are such as to enable the production of sand and gravel there as cheaply as it can be produced on Long Island.''

51. (Offer, R. p. 797, l. 10; ruling, p. 800, l. 31.) ''I submit I further have the right to show whether or not the cost of transporting our gravel to this northern New Jersey market, Newark and the surrounding cities, is or is not greater than the cost of transporting it to the same market from Long Island.''

52. (Offer, R. p. 798, l. 21; ruling, p. 800, l. 31.) ''(After comment by the Court including the remark, 'And I do not see how we can escape considering railroad rates and other contingencies that as I understand the decisions we are not permitted to go into.') Mr. Hunt: Well, may I put it in this way: There is an existing railroad rate. I am willing to prove it and ready to prove it if you will permit me.''

53. (Offer, R. p. 799, l. 18; ruling, p. 800, l. 31.) ''I do submit I should be permitted to ask what the comparative situation is. Can this gravel be excavated and worked as cheaply as Long Island gravel? Can it be transported to this market as cheaply as Long Island gravel? If he says yes, then there is a basis for the comparison of value, for the statement of value based upon Long Island prices. If he says no, then my gravel case collapses.''

The question (No. 49) and offers (Nos. 50 to 53, inclusive) followed one upon another in swift sequence, without the Court ruling on the offers as

made. If the record be read (pp. 796-800) it will appear that the Court's disposition to exclude the proffered proofs (made manifest at R. p. 796, l. 25; 798, l. 12) was "challenged when made" (shown), (*Kanouse v. Donatonia,* 94 N. J. L. 516); and that counsel's "dissent therefrom was clearly manifest" (*Leconey v. Koch,* 133 Atl. 478). The phrase, "I beg to note an exception" does not, however, appear in the record.

If these words are a shibboleth, these grounds cannot be argued. If the very evident dissatisfaction of respondent's counsel with the Court's refusal to admit the proffered evidence serves to save them, the argument to support them is the same as that now to be set forth in regard to ground of appeal No. 54, to which appellant did except in due form.

Ground of appeal No. 54 brings up an excluded question involving the ultimate fact sought to be proven by the question and the offers embodied in grounds Nos. 49 to 53, inclusive.

The question reads (beginning last line of p. 802):

> "Q. State whether or not gravel from the deposits on the property under consideration could be put into Newark Bay market at costs that would enable it to compete with gravel from Long Island coming into that market?"

The witness had already been permitted to say that the two elements determining "whether or not you can take gravel from a piece of property in question and deliver it at the market in question and make any money out of it" were the cost of production on the ground and the cost of transporting it to market. (See R. p. 794, l. 23 to p. 796, l. 3.)

Presumably, the one million tons (or one million cubic yards as the case may be) of sand and gravel

that moves annually from Long Island into Newark Bay is produced and sold at a profit. Else, presumably, the movement would not continue. It follows, therefore, that if gravel "from the deposits on the property under consideration could be put into Newark Bay market at costs that would enable it to compete with gravel from Long Island coming into that market," *that fact would tend to prove that the lands had value because of the gravel deposits.*

Counsel assigned no ground for his objection to this question nor the Court any reason for sustaining the objection. We submit that no sound reason could have been assigned and that, upon the legal principles already stated in the argument of other points, the exclusion of this question was an error of the most harmful character to appellant.

After exclusion of this question the witness testified (p. 803, l. 12, *et seq.*) that he had within 4 or 5 years past bought gravel lands on Long Island and knew of purchases of such lands made by other concerns. He was then asked the question, the exclusion of which gives rise to ground of appeal No. 55 (R. p. 803, l. 23):

> "What, in your opinion, is the value of the gravel-bearing lands as shown on the map exhibit within the lines of this taking?"

Objection made without the statement of any ground was sustained without the statement of a reason, and appellant excepted. The erroneous character of this ruling is demonstrated by what has already been said in discussing the exclusion of like questions put to Mr. Neff and Mr. Gallagher.

We point out that in the case of this witness, as in the case of Mr. Neff, his qualification to testify as an expert concerning the value of gravel lands was not challenged, and the rejection of the testimony

sought to be adduced from him was not based on that ground. Presumably, his opinion of "the value of the gravel-bearing lands" was held to be immaterial. He was the last of the witnesses produced by appellant to testify on this phase of the case, and with the exclusion of the evidence sought to be elicited from him the case went to the jury without its having heard a single witness state an opinion of the value of the land because of the presence of the gravel.

The judgment of the Circuit Court should be reversed and a new trial awarded.

EDGAR W. HUNT,
Attorney for Appellant.

WILLIAM I. LEWIS,
JOHN MILTON,
Of Counsel.

The rulings complained of under this Point, like those under Point V, violate the Fourteenth Amendment in depriving Appellant of due process of law, through totally denying a hearing covering matters of fact about which the jury had to be informed in order to be able to arrive at an intelligent conclusion, rather than indulge in a mere guess, regarding the value of the property.

ADDENDA.

The Boom Co. case.

MISSISSIPPI & RUM RIVER BOOM CO. v. PATTERSON, (1879) 98 U. S. 403, HAS NOT BEEN OVERRULED OR MODIFIED AND CORRECTLY STATES THE LAW APPLICABLE TO THOSE QUESTIONS RAISED IN THIS CASE WHICH INVOLVE THE RIGHT TO PROVE AND RECOVER A VALUE ARISING FROM SPECIAL AVAILABILITY FOR OR ADAPTABILITY TO A GIVEN PURPOSE.

The *Boom Co.* case (as we shall now, for brevity, call it) was cited by this Court as the chief authority to support the reasoning of Mr. Justice Garrison, upon the point mentioned in the heading, in delivering the opinion in *Currie v. Waverly and New York Bay Railroad Company* (1890), 52 N. J. L. 381 (see especially p. 396). Throughout the whole of the trial at the Circuit, respondent strenuously asserted that the *Boom Co.* case had been modified or overruled, and that, whether so or not, the principle laid down in that decision had no application in the case *sub judice*. Anticipating a similar claim here, we have carefully traced the subsequent history of the case and analyzed the cases cited by respondent in opposition to it, and we shall now set forth:

(1). Recent approving citations, in the Federal Supreme Court or other Federal tribunals, of the *Boom Co.* case.

(2). An analysis of every case said by respondent

in the Court below to overrule or modify the *Boom Co.* case.

And in advance we set forth the following conclusions drawn from these studies:

First, the doctrine laid down in the *Boom Co.* case remains today in full force and vigor and the cases asserted by respondent to overrule or modify it do not have that effect.

Second, the decision in the *Boom Co.* case correctly states the law of New Jersey concerning the measure of compensation to be paid for land taken by eminent domain, and the right of the owner to make proof of its value because of its special availability for or adaptability to a given special use.

The further reading of this point will be necessary only in case the Court entertains any doubt concerning either of the propositions just stated.

1.

Recent Re-affirmations of the Boom Co. Case.

The feature of the *Boom Co.* decision to which we call especial attention is its holding that the special adaptability of lands for a special purpose is "a circumstance * * * which the owner had (has) a right to insist upon as an element in estimating the value of his lands" (98 U. S. 408). The following is the state of facts which evoked the declaration of this rule:

Patterson owned three islands in the Mississippi River. As Mr. Justice Field said in delivering the

opinion of the Court (98 U. S. p. 405): "The position of the islands specially fitted them, in connection with the west bank of the river, to form a boom of extensive dimensions * * *," and (p. 408): "The Boom Co. would greatly prefer them to more valuable agricultural lands, or to lands situated elsewhere on the river, as, in utilizing them in the manner proposed, they would save heavy expenditures of money in constructing a boom of equal capacity."

The jury (in the Circuit Court of the United States for the District of Minnesota) to which the case was taken from the State Court on the ground of diversity of citizenship) "found a general verdict assessing the value of the land at $9,358.33, but accompanied it with a special verdict assessing its value aside from any consideration of its value for boom purposes at $300, and, in view of its adaptability for those purposes, a further and additional value of $9,058.33." On motion for a new trial the owner elected to reduce the verdict to $5,500, pursuant to an election given him by the trial Court, and judgment was entered for this amount and the case taken to the Supreme Court by writ of error.

The *Boom Co.* asserted itself to have exclusive privileges, by virtue of its charter, touching the handling of logs in the river. As to this the Court said (98 U. S. p. 409):

> "The contention on the part of the plaintiff-in-error is, that such adaptability should not be considered, assuming that this adaptability could never be made available by other persons, by reason of its supposed exclusive privileges; in other words, that by the grant of exclusive privileges to the company the owner is deprived of the value which the lands, by their adaptability for boom purposes, previously possessed, and, therefore, should not now receive anything

> from the company on account of such adaptability upon a condemnation of the lands. We do not think that the owner, by the charter of the company, lost this element of value in his property."

As appears from the foregoing, the facts of the case are quite analogous to those in the case *sub judice.*

The *Boom Co.* case is cited with approval and quoted from at length in *U. S. v. Chandler-Dunbar Water Power Co.* (1913), 229 U. S. 53, 57 L. Ed. 1063 (one of the cases said by respondent to overrule or modify the *Boom Co.* case, and to be referred to further hereafter in that connection).

It is also cited by the Supreme Court in *Mitchell v. U. S.* (1925), 267 U. S. 341, 69 L. Ed. 644, in support of the following proposition:

> "The special value of land, due to its adaptability for use in a particular business, is an element which the owner of land is entitled, under the 5th Amendment, to have considered in determining the amount to be paid as the just compensation upon a taking by eminent domain."

Curiously, perhaps, the only other case cited by the Court to sustain the proposition just quoted is that of *N. Y. v. Sage* (1915), 239 U. S. 57, 60 L. Ed. 143, *said by respondent to overrule the Boom Co. case* and hereafter further referred to in that connection. It is unnecessary to cite authority to support the statement that under the 14th Amendment the land owner has the same rights against a State as he has against the central government under the 5th Amendment.

The *Boom Co.* case was also cited by the Supreme

Court in the Minnesota rate cases—*Simpson v. Shepherd* (1913), 230 U. S. 352, 57 L. Ed. 1511, to support the following proposition (p. 451 of 230 U. S., p. 1562 of 57 L. Ed.): "If, in the case of any such owner, his property had a peculiar value or special adaptation for railroad purposes, that would be an element to be considered." (The words "any such owner" are shown by the context to refer to the owner of lands once applied to railroad purposes, the railroad on which had been "obliterated," after which the lands became the subject of eminent domain proceedings and availability for railroad purposes was urged as an element of value.

The Circuit Court of Appeals, First Circuit, in *U. S. v. Boston, C. C. & N. Y. Canal Co.* (1921), 271 Fed. 877, cited the *Boom Co.* case to support the proposition that value due to availability for special purposes is provable if the property has availability to "other parties who could use the property for the particular purpose intended by the taker." (To apply this phrase to this case—if appellant's property, in the absence of any Water Supply Commission, would have an availability to a chartered water company or a municipality seeking a further water supply.)

Judge Mayer, in the U. S. District Court for the Southern District of New York, in *National City Bank v. U. S.* (1921), 175 Fed. 855, at p. 860, quoted the *Boom Co.* case in support of the statement that: "It is well settled that a person whose property is taken is entitled to its market value for the most valuable use although as matter of fact he did not devote it to that use, and for some reason or other could not do so. In such case, however, he would be free to sell it to a person who could so use it." (This case affirmed by the Second C. C. A., 279 Fed. 71.)

State courts in the following cases (all involving availability for reservoir or water supply purposes) cited the *Boom Co.* case with approval:

Court of Appeals of Maryland, in *Brack v. Baltimore* (1915), 125 Md. 382, 93 Atl. 995.

Supreme Court of Iowa, in *Tracy v. Mt. Pleasant* (1914), 165 Ia. 444, 146 N. W. 81.

Supreme Court of Pennsylvania in *North Shore R. Co. v. Penna. Co.* (1916), 251 Pa. 450, 96 Atl. 990.

Supreme Judicial Court of Mass. in *Smith v. Commonwealth* (1911), 210 Mass. 259, 96 N. E. 666.

2.

Analysis of Cases said by Respondent to Overrule or Modify the Boom Co. Case.

The cases invoked by respondent for the purpose stated were the following:

MvGovern v. New York (1913), 229 U. S. 363, 57 L. Ed. 1228;

New York v. Sage (1915), 239 U. S. 57, 60 L. Ed. 143;

U. S. v. Chandler-Dunbar Water Power Co. (1913), 229 U. S. 53, 57 L. Ed. 1063.

(We have stated them in the order of the importance seemingly attached to them by respondent.)

None of these cases has the effect claimed for it by respondent. Respondent in seeking to apply them to the case *sub judice* overlooked a principle in regard to the interpretation of judicial opinions stated by the Federal Supreme Court (Chief Justice Marshall) as early as 1821 and twice restated in 1926: "Every opinion is to be read having regard to the facts of the case and the question actually decided." *Cohens v. Va.*, 6 Wheat. 264, 399, 5 L. Ed. 257, 290; *Weaver v. Palmer Bros. Co.*, 270 U. S. 402, 414, 70 L. Ed. 654, 658; *Bramwell v. U. S. F. & G. Co.*, 269 U. S. 483, 489, 70 L. Ed. 368, 392. In the case last cited the principle is put in these words: "It is a rule of universal application that general expressions used in a Court's opinion are to be taken in connection with the case under consideration."

Analysis of the three cases invoked by respondent shows the following: (1) The facts of each of the cases serves to distinguish it from the instant case; (2) Each of the three cases, in laying down *general principles* in the expression of judicial dicta, supports the *Boom Co.* case and its application to the present case.

We now particularize.

As to *McGovern v. New York*: The only opinion in which the facts of this case are set forth at length is that of the Appellate Division, 130 App. Div. 350, 114 N. Y. Supp. 541. From that Court's opinion we quote the following:

> "The chief question presented by this appeal is whether the commissioners erred in striking out the evidence of Cornelius C. Vermeule, a civil engineer, as to the value of the property of the company, the intrinsic value of the reservoir, and the value of the water to be impounded by it. The witness testified that the fair and reasonable value of this parcel on the 22nd day of July, 1907, when it was taken by the city, was $99,280, and that in arriving at this estimate he considered the special adaptability of the reservoir site, of which the parcel is a part, and the special availability of it as compared with other possible sites, and secondly, the reasonable value of water delivered to a city for city use and the cost of delivery.

He also testified that the Ashokan reservoir site was worth $34,000,000 and that this value was based upon the capacity of the reservoir, the reasonable market price of the water when delivered at the furthest city in which it would be likely to be used, and the cost of delivery; *that the storage capacity of the property in question would be* 76/100 *of* 1% *of the whole capacity of the reservoir;* that on that basis the intrinsic value of the property taken would be $248,200, and the market value was 40% of that sum or $92,280."

* * * * * * * *

"It therefore appears that the opinion of the witness as to the value of the premises in question was based upon its value in conjunction with the other parcels included in the reservoir site, upon the value of the reservoir, the feasibility and cost of conveying water in pipes or an aqueduct to the City of New York, and the value of the water to the city. *It is to be noted that this evidence did not tend to prove the present market value of the property, or its value at the time it was taken, but its probable value after other property is acquired, and millions of dollars are expended in the construction of a reservoir, which may and may not be built. It was simply his opinion of the value based upon the necessity of the land to the city or what the city could afford to pay rather than do without it.* Such an estimate is in the highest degree uncertain and speculative."

* * * * * * * *

"No evidence was given in the present case tending to show that before the land was taken by the city it was regarded as more valuable because of its advantage of location and adaptability for use as a reservoir. It is substantially undisputed that the value 'for reservoir purposes' is entirely due to the fact that the city has determined to build the reservoir, and that the owner is now seeking to make the necessity of the city his opportunity."

Now, if appellant's exceptions, based on the exclusion of testimony sought to be adduced from Mr. Vermeule be examined (grounds of appeal, numbers 15 to 28) *it will appear that not one single question put to him or tender of proof made while he was on the stand bore any resemblance or relation to the questions put and excluded* (*rightfully as we may agree*) *in the McGovern case.* Per contra, he was asked to state his opinion as to "the value" or the "market value" or the market value "having regard to availability for valuable uses, including use for water storage and water supply purposes"—in each instance as of the date of the taking (19th of March, 1925) with the property "in the state and condition in which it then was."

He was asked, or appellant offered by him to prove (grounds of appeal, numbers 15, 16 and 17), whether Newark had not already contracted to sell water to be derived from this project then under construction and approaching completion to other municipalities, and, if so, at what price. He was asked (grounds, numbers 21 to 25, inclusive) questions concerning the value of the property for water supply purposes *on the assumption that the North Jeresy Water Supply Commission was not in existence and no condemnation proceeding was under way.*

As stated above, therefore, there is a diametrical difference between the facts sought to be shown in the two cases. There was taken from McGovern 60 acres out of several thousand. His property af-

forded storage for less than 1% of the whole body of water to be retained in the reservoir. There is being taken from this appellant almost 50% of all the land being acquired for the reservoir project and, as the map exhibits show, the greater part of the property taken from appellant will be flooded to great depth and on it will rest a large part of the total amount of the water contained in the reservoir.

To paraphrase the words of the Appellate Division, the evidence sought to be presented in the case *sub judice did* "tend to prove the present market value of the property" and *not* its probable value after other property is acquired and millions of dollars are expended in the construction of a reservoir, which may or may not be built. There was no effort to elicit from the witness "his opinion of the value based upon the necessity of the land to the city." On the other hand, the effort was to elicit his opinion of the value based upon the hypothesis that the condemnor was not in existence, and that a purchaser for the property must be found elsewhere.

The *McGovern* case was brought to the Federal Supreme Court on writ of error to the Supreme Court of the State of New York upon the ground that the exclusion by the condemnation commissioners (affirmed by the Supreme Court, the Appellate Division, and the Court of Appeals of New York) of evidence offered by the landowner "had the effect of depriving McGovern of his property without due process of law, contrary to the 14th Amendment of the Constiution of the United States." (See p. 369 of 229 U. S., p. 1232 of 57 L. Ed.)

The sole question decided by the Supreme Court was that the exclusion of the evidence did not violate the 14th Amendment.

Mr. Justice Holmes wrote the opinion; Mr. Justice Day dissented (without opinion). The opinion states:

> "The statute requires the commissioners to determine 'the just and equitable compensation which ought to be made.' *If there has been any wrong done it is due not to the statute, but to the courts having made a mistake as to evidence, or at most as to the measure of damages. But, of course, not every judgment by which a man gets less than he ought, and in that sense is deprived of his property, can come to this court.*"

Mr. Justice Holmes then refers to a mistake in laying down the rule of damages for conversion in a trover case as an analogy and proceeds:

> "When property is taken by eminent domain, it equally is recognized that there must be something more than an ordinary honest mistake of law in the proceedings for compensation before a party can make out *that the State has deprived him of his property unconstitutionally.*"

He then cites earlier cases laying down the rule that, in the Federal Supreme Court, the final judgment of a State court "ought not to be held in violation of the due process of law enjoined by the 14th Amendment unless by the rulings upon questions of law the company was prevented from obtaining substantially any compensation," and then says:

> "The present case, of course, does not show disregard of McGovern's rights, or that he was prevented from obtaining substantially any compensation. Even if the plaintiff-in-error is right, it shows only that the commissioners and courts of New York adopted too narrow a view upon a doubtful point in the measure of damages. It hardly even is so strong as that; *for*

> *the ruling of the commissioners is not to be taken as an abstract universal proposition, but the judgment concerning this particular case, found by men presumably, as the plaintiff-in-error says, men of experience, who had or were free to acquire outside information concerning the general conditions of the taking and the selected site.''*

The opinion concludes with this sentence:

> ''We are satisfied on all the authorities that whether we should have agreed or disagreed with the commissioners, if we had been valuing the land, *there was no such disregard of plain rights by the courts of New York as to warrant our treating their decision, made without prejudice, in due form, and after full hearing, as a denial by the State of due process of law.''*

The Court refers also to the fact that ''there are said to have been hundreds of titles to different parcels of that land'' (*i. e.,* land acquired for Ashokan Dam) and ''if the parcels were not brought together under eminent domain, the chance of their being united by agreement or purchase in such a way as to be available well might be regarded as too remote and speculative to have any legitimate effect upon the valuation.''

Opposed to this in the instant case are the repeated attempts made by appellant to prove that its property alone and without joinder to any other was sufficient for the production of a substantial independent source of public water supply.

We refer to only one more aspect of the *McGovern* case. Mr. Justice Holmes, by way of meeting the contention of McGovern that the *Boom Co.* case supported his position, referred to the Massachusetts

case of *Sargent v. Merrimac* (1907), 196 Mass. 171, 81 N. E. 970, 11 L. R. A. (N. S.) 966, 124 Am. St. Rep. 528, saying it was a case that ''well brought out'' the difficulties in the way of such evidence and the wide discretion allowed to the trial Court.

Upon reading this decision we find it to be rested upon the proposition that the questions excluded may have involved collateral inquiries and that the rulings appealed from may have been within the discretion of the trial Judge. These rulings, however, plainly denied what are regared as fundamental rights in this State and ran contrary to the holding of this Court in the *Currie* case, and would not be sustainable here as within the discretion of the trial Judge. Moreover, the opinion shows the Massachusetts case to be in direct opposition to the New Jersey case of *Ross v. Commissioners of Palisades Park* (1917), 90 N. J. L. 461.

Tracing this Massachusetts case we find it to be utterly departed from (overruled in effect, without saying so) by the Supreme Judicial Court of Massachusetts in *Smith v. Commonwealth,* 210 Mass. 259, 96 N. E. 666, from which we quote the following:

> ''Touching the brook as an element of value in the real estate, the jury were instructed that its availability as a source of water supply 'should be entirely disregarded' and that the brook 'is a feature which you have a right to consider if you think it throws some light upon the question of value on the theory that if there was not a brook there the soil would not be as fertile as it is. You have a right to consider that as one of the features, but you have a right to consider it to no other extent, not for any possible use to which the brook might be put.' *Considered abstractly, it is plain that this does not state the law. One whose land is taken by*

> *eminent domain is entitled to be compensated in money for the fair value in the market of that of which he has been deprived.* In ascertaining what that value is, all the uses to which it is reasonably adapted may be considered. *If the property is so exceptionally fitted for a municipal water supply and the necessity for such use is so imminent as to add something to its present value in the minds of buyers, that element may be considered.''*

We refer also to the annotation of the report of the Sargent case in 124 Am. St. Rep. p. 528, in which there is pointed out the inconsistency involved in excluding evidences of value of land because of its special adaptability for water supply purposes, while holding that the measure of damages should be "made up of the value in the market of the land apart from its special adaptability for water supply purposes, plus such sum as a purchaser would have added to that value because of the chance that the land in question might be some day used as a water supply."

As to *City of New York v. Sage*:

This case was removed from the State courts to the Federal District Court of New York on the ground of diversity of citizenship. Opinions were delivered in the U. S. District Court for the Southern District of New York (190 Fed. 413); the Circuit Court of Appeals for the Second Circuit (206 Fed. 369); and the Supreme Court (239 U. S. 57). None of the three opinions lays down any novel legal principle. It is obvious that the Supreme Court reached a different conclusion from that reached by the Circuit Court of Appeals *simply because it ascribed a different meaning to the language employed by the condemnation commissioners in their*

report. (Such seems also to be the understanding of Judge Peck of the U. S. District Court for the Southern District of Ohio. See his opinion in *C. G. Blake Co. v. U. S.* (1921), 275 Fed. 861, 865.).

The Supreme Court set forth the language of the condemnation commissioners' report as follows (at p. 60 of 239 U. S., p. 146 of 60 L. Ed.):

> "The sum of $7,624.45 for land and buildings and the further sum of $4,324.45 for reservoir availability and adaptability, being a grand total of the sum of $11,948.90, is the sum ascertained and determined by us * * * to be paid to the owners of and all persons interested in said land for the taking of the fee thereof, designated * * * as Parcel 733."

As the report in 190 Fed. 413 shows, the "City of New York moved to confirm the report as to $7,624.45 only, contending that there should be no award for reservoir availability."

Judge Lacombe for the U. S. Circuit Court for the Southern District of New York, in overruling this motion commented as follows:

> "The evidence shows that the land in question, together with that of claimant's neighbors, was available as a reservoir site, and that such availability was not confined to the uses of New York City. Apparently the award is not made on the basis of the value of the reservoir lands to the City of New York alone; had such been the basis, the valuation would have been much higher. But the commissioners have taken into consideration as an element of value the circumstance that, had New York City never gone to this watershed, some other political community or some water company created by statute might have been willing to pay more than their

value as farming land for the parcels which would enable it to impound water there. Under Boom Company v. Patterson, 98 U. S. 403, 25 L. Ed. 206, this was a proper method of determining value."

The City appealed, and Circuit Judge Coxe, writing for the Circuit Court of Appeals, 2nd Circuit, after referring to some of the evidence in the case, says (206 Fed. 369, 372):

> "In short, without entering further into details, it can hardly be disputed that the Ashokan site was the natural place for the reservoir which is to supply the fast increasing multitude of people who dwell on both sides of the Hudson, and that this availability had been proved and was publicly known long before the City of New York instituted these proceedings. It must have been evident to all intelligent landowners that their property would, in the near future, inevitably be acquired as part of an immense water system. That this demand increased the value of these lands follows as a necessary conclusion. To value them only according to the tons of hay or the bushels of potatoes they produce, ignores the other element of value, namely, that their possession was necessary in order that water might be furnished to the increasing millions along the banks of the Hudson."

He then points out that the evidence in this case embraced facts (namely, the facts giving rise to the conclusions set forth in the extract just quoted) that were not proven in the McGovern case (referred to by Judge Coxe as "matter of semblance") and says: "We are not at all convinced that, with

the question upon the testimony in this record, the State courts would have decided as they did" in the McGovern case.

Then, saying, "We cannot find that they (the State courts) have passed (in the McGovern case) upon the precise question involved in the cases relied on by the plaintiff-in-error," Judge Coxe summed up the conclusions of the Circuit Court of Appeals in the following words:

> "In these circumstances we deem it our duty to follow the case of Boom Company v. Patterson, 98 U. S. 403, 25 L. Ed. 206, which holds, in substance, that the value of the land in question is increased because of its availability as a reservoir site. Patterson owned some islands in the Mississippi River about an eighth of a mile from its western bank; when connected with the mainland a boom of immense capacity for holding logs was formed which was of great value to the company. The islands were worth about $300, but their availability for forming, in connection with the mainland, a receptacle in which millions of logs could be stored, added to their value about $5,000, and a judgment for $5,500 was affirmed. The Supreme Court held that the adaptability of the islands for boom purposes added greatly to their value and was properly considered in estimating the value of the land. See also Great Falls Mfg. Co. v. U. S., 16 Ct. Cl. 160, affirmed 112 U. S. 645, 5 Sup. Ct. 306, 28 L. Ed. 846; Matter of Gilroy, 85 Hun. 424, 32 N. Y. Supp. 891; in re Gough, L. R. 1 K. B. 417."

Thus, as is plain from the two opinions, the Circuit Court and the Circuit Court of Appeals understood the commissioners' report to mean the same

as though it had read, "We find the market value of the land, in view of all its elements of value, including its availability and adaptability for reservoir purposes, to be $11,948." Had the Supreme Court so interpreted the language of the commissioners, it would obviously have affirmed the two lower courts. It, however, interpreted this language to have a different meaning. It said (foot of p. 60 of 239 U. S., p. 146 of 60 L. Ed.):

> "Upon an inspection of the record it appears to us, as the language of the commissioners on its face suggests, that their report *does not mean that the claimant's land had a market value of* $11,948.90—that it would have brought that sum at a fair sale—*but that they considered the value of the reservoir as a whole and allowed what they thought a fair proportion of the increase, over and above the market value of the lot, to the owner of the land,* subject to the opinion of the Court upon the point of law thus raised. Upon that point we are of opinion that they were wrong."
>
> * * * * * * *
>
> "It is said that in this case there was testimony that the lot was worth more than the total allowed. But the only explanation of the separation of items by the commissioners is that they were not prepared to say that the market value of the lot was $11,948.90, seeing that the claimant bought it a few days before for $4,500, but that they thought the additional value gained by the City's act should be taken into account and shared between the City and the owner of the land—a proposition to which we cannot assent." (Citing the *Minn. Rate Cases,* 230 U. S. 352, and the *McGovern Case, supra,* 229 U. S. 372.)

Then, having thus reversed the two lower courts solely upon the ground of its different interpretation of the wording of the commissioners' award, the Supreme Court proceeded to lay down, as abstract principles of law, the very rules for which appellant contends, saying:

> "The decisions appear to us to have made the principles plain. *No doubt when this class of questions first arose it was said in a general way that adaptability to the purposes for which the land could be used most profitably was to be considered;* and that is true."

We deem it worth while also to call attention to two other outstanding contrasts in facts between the *Sage* case and the case now before the court. First, the Supreme Court's opinion shows that Sage had bought the land only a few days before the condemnation proceeding was instituted and had paid for it only $4500—a circumstance which, to say the least, did not serve to arouse in his behalf the sympathetic interest of a judicial tribunal. The appellant here, on the contrary, has owned the lands under condemnation since the year 1906 (R. p. 245, l. 28). Moreover (R. p. 242, l. 3), appellant is nothing more than a corporate creature brought into being by the widow of the late Abram S. Hewitt to enable her to more conveniently dispose by her will among her children of these lands which she had acquired from her father and her husband, whose acquisition of them dates back to the years

Secondly, the Supreme Court in the *Sage* case, *dealing with a single parcel of land which constituted but a fraction of one per cent of the total area required* for the Ashokan reservoir said:

> "The fact that the most profitable use (of Sage's land) could be made only in connection with other land is not conclusive against its being taken into account, if the union of properties necessary is so practicable that the possibility would affect the market price."

And the whole opinion, in its connotations, suggests that the Court did not consider in that case such a union "so practicable that the possibility would affect the market price."

In the instant case, per contra, the fact situation is as follows (see respondent's map Exhibit R-1;

Of the 5846 acres under acquisition by respondent,

This appellant owns in fee	2354 acres
This appellant owns flowage rights in	
Edward R. Hewitt's land	184.6 "
Miss Sarah C. Hewitt's land	559.78 "
Total owned and controlled by appellant	3098.38 " or 53% of the whole (Record p. 957 l. 18)

(Edward R. Hewitt is one of the six children of Mrs. Hewitt and beneficial owner under her will of 1/6 of appellant's capital stock. Sarah C. Hewitt, another of said children, owns 1/6 of said stock under the will of her mother and another 1/6 under the will of her deceased sister, Miss Eleanor Hewitt, who was her mother's legatee of that amount.)

Moreover, the lands owned by appellant, coupled with those in which it owns the flowage rights, and coupled with the exercise of the Ryerson reservation, likewise owned by appellant, constitute an independent source of water supply.

As was pointed out earlier in this brief (see p. , *et seq.*), appellant asserts that on these lands owned by it and the adjoining lands in which it owns the flowage rights, there could be developed (with the aid of the Ryerson reservation) an enormous water storage and a daily yield not much below the daily yield of the Wanaque reservoir as estimated by respondent; and that, in the absence of such a body as the North Jersey District Water Supply Commission, municipalities and chartered water companies possessing the right to develop public water supplies would resort to these lands for that purpose.

As to *U S. v. Chandler-Dunbar Water Power Co.*:

The major question involved was "whether the Chandler-Dunbar Company has any private property in the water power capacity of the rapids and falls of the St. Mary's River which has been 'taken,' and for which compensation must be made under the 5th Amendment to the Constitution?" A subordinate question was "second, if so, what is the extent of its water power right and how shall the compensation be measured?"

As to the first question, the Court held against the claim of the company, saying that "The title of the owner of fast land upon the shore of a navigable river to the bed of the river is, at best, a qualified one," and holding that "it is subordinate to the public right of navigation, and however helpful in protecting the owner against the acts of third parties, *is of no avail against the exercise of the great and absolute power of Congress over the improvement of navigable rivers.*"

Holding that the St. Mary's was a navigable river and that the water power company had no rights in its "water power capacity" as against the power of Congress to improve the navigation of the stream,

the Court set aside the award of $550,000 made below for the value of the "rapids and falls to the Chandler-Dunbar Company as riparian owners of the shore and appurtenant submerged land."

As the foregoing statement shows, the case in this aspect is wholly unlike the case *sub judice.*

As though for the very purpose of avoiding the doing of injustice to an owner possessing such rights as the appellant possesses in the case *sub judice,* the Supreme Court (at p. 69 of 229 U. S., p. 1078 of 57 L. Ed.) said:

> "*We may put out of view altogether the class of cases which deal with the right of riparian owners upon non-navigable stream to the use and enjoyment of the stream and its waters.*" (Italics counsel's.)

Minor items included in the award to the Chandler-Dunbar Company and under review in this decision concerned rights like those of the appellant in the instant case, *and these were upheld.* Thus, the Court says (p. 74 of 229 U. S., p. 1080 of 57 L. Ed.):

> "Coming now to the award for the upland taken:"
>
> * * * * * * * *
>
> "The gross sum awarded included the following elements:"
>
> * * * * * * * *
>
> "(b). For its special value for canal and lock purposes an additional sum of $10,000."
>
> * * * * * * * *
>
> "The United States excepted to so much of the awards as constituted an additional value by reason of availability for lock and canal purposes."
>
> * * * * * * * *

> "The exception taken to the inclusion as an element of value of the availability of these parcels of land for lock and canal purposes must be overruled. That this land had a prospective value for the purpose of constructing a canal and lock parallel with those in use had passed beyond the region of the purely conjectural or speculative. That one or more additional parallel canals and locks would be needed to meet the increasing demands of lake traffic was an immediate probability This land was the only land available for the purpose. It included all the land between the canals in use and the bank of the river. Although it is not proper to estimate land condemned for public purposes by the public necessities or its worth to the public for such purpose, it is proper to consider the fact that the property is so situated that it will probably be desired and available for such a purpose. Lewis Em. Dom. Sec. 707; Mississippi & R. River Boom Co. v. Patterson, 98 U. S. 403, 408, 25 L. Ed. 206, 208; Shoemaker v. United States, 147 U. S. 282, 37 L. Ed. 170, 13 Sup. Ct. Rep. 361; Young v. Harrison, 17 Ga. 30; Alloway v. Nashville, 88 Tenn. 510, 8 L. R. A. 123, 13 S. W. 123; Sargent v. Merrimac, 196 Mass. 171, 11 L. R. A. (N. S.) 996, 124 Am. St. Rep. 528, 81 N. E. 970."

And immediately following the extract from the opinion just set forth, the Court printed at length an epitome of the *Boom Co.* case, quoting the rule for which appellant here contends, in the words in which it is there laid down. It quoted also at length from *Shoemaker v. U. S., supra,* the language stating that:

> "The market value of the land includes its value for any use to which it may be put, and all the uses to which it is adapted, and not

> merely the condition in which it is at the present time, and the use to which it is now applied by the owner; * * * that if, by reason of its location, its surroundings, its natural advantages, its artificial improvement, or its intrinsic character, it is peculiarly adapted to some particular use—*e. g.*, to the use of a public park—all the circumstances which make up this adaptability may be shown, and the fact of such adaptation may be taken into consideration in estimating the compensation.''

Along with the *Chandler-Dunbar* case and covered by the same opinion there was decided the case of *St. Mary's Power Co. v. U. S.* This company was the owner of an island for which the trial Court had awarded them $21,000, made up as follows (p. 79 of 229 U. S., p. 1081 of 57 L. Ed.):

> ''a. As a base value, for general purposes, as for a cottage or fishing station $1,000
>
> b. As a strategic value, growing out of the extent to which it may control or block the most available development by up-stream owners 15,000
>
> c. As an additional value, by reason of its special suitability for lock or canal purposes .....5,000''

The Government's exception was sustained as regards the item of $15,000 for ''strategic value.'' As to the award of $5,000 for ''additional value by reason of its special suitability for lock or canal purposes,'' the opinion is silent. This silence can mean only that the award was approved, especially as the similar item of $10,000 to the Chandler-Dunbar Co. for special value for the same purpose was specifically approved.

It is clear from the foregoing that the things which the Supreme Court held ought not to taken into account as elements of value in the *Chandler-Dunbar* case were not sought to be put in in the instant case; and that the things which, in the instant case, were excluded, are admissible under the doctrine of the *Chandler-Dunbar* case—that is, the ''additional value (enhancement of value as our State Supreme Court said in the *Ross* case) by reason of availability for lock and canal purposes'' (water supply purposes).

In conclusion we repeat that the three cases just analyzed, said by respondent to overrule or modify the *Boom Co.* case, have no such effect. That, on the contrary, they reaffirm the soundness of the *Boom Co.* case in every situation wherein the facts are such as properly to bring it into play. We submit likewise that this is such a situation, there being no difference, in principle, between the special availability of appellant's land in the case *sub judice* for water supply purposes and the special availability of the lands of the several owners concerned in the foregoing cases for the particular purpose present in each case.

What we have said concerning the *Boom Co.* case applies equally to the *Currie* case, which lays down in this Court the same principles which the Federal Supreme Court laid down in the *Boom Co.* case.

DENVER PUBLIC LIBRARY