

Case No. 72 - June 1907 Term.

New Jersey Court of Errors and Appeals

PENNSYLVANIA, NEW
JERSEY AND NEW
YORK RAILROAD COM-
PANY,

Plaintiff-Appellant,

vs.

MARIE SCHWARZ,
Defendant
~~Plaintiff~~ Appellee.

**On Condem-
nation**

**On Error to
to Hudson
County Cir-
cuit Court.**

BRIEF FOR DEFENDANT-APPELLEE

The defendant-appellee in error, Marie Schwarz, being the owner of certain lands in the Town of West Hoboken, County of Hudson, which were desired by the plaintiff in error for the purpose of building a tunnel for railroad purposes, application was made by plaintiff-appellant to a Supreme Court Justice for the appointment of Commissioners to condemn said lands under the provisions of the Law of 1900, page 79. Said Commissioners were appointed and awarded to defendant-appellee the sum of Two Thousand Four Hundred Dollars. An appeal was taken to the Circuit Court by the plaintiff-appellant, and an appeal was taken also by the defendant-appellee, who considered the award of Two Thousand Four Hundred Dollars insufficient and inadequate, and upon an issue there framed a trial was had and the struck jury awarded to the defendant-appellee the sum of Three Thousand Dollars, which award is now brought before this Court by Writ of Error, sued out by the plaintiff-appellant.

The description of the tunnel (page 7 of printed

case), and the map which was exhibited before the jury in the Circuit Court shows that the land taken by the plaintiff-appellant, is a strip about forty-two (42) feet in width, about one hundred and eighty-two (182) feet below the surface, to be used for railroad purposes. It also appears from the statement of counsel for plaintiff-appellant, (page 58 of printed case), that so far as the plaintiff-appellant had knowledge *there is no other tunnel in the world of the same construction.*

The assignments of error all relate to testimony given by Charles Singer, an expert witness, called by the defendant-appellee for the purpose of proving the damage sustained.

POINT ONE.

The testimony of expert or skilled witnesses was competent.

The general rule as to the relevancy of such evidence is, that the evidence should be necessary for the purpose offered and that it should aid the jury in its work of decision. Cyc. Vol. 17, p. 28.

It would seem that the question as to the damage to property by the building of a tunnel underneath the same is one that could only be determined by expert testimony. The effect of such a construction is not within the ordinary knowledge of mankind, neither is it a matter that could be determined by ordinary observation. The ordinary observer would not see any difference upon the surface of the land and yet a person who was familiar with the values of real estate before and after the construction of a tunnel underneath the same could testify from his peculiar knowledge of the subject, what effect such a construction would have upon the value of the land.

It is said in Cyc. Vol. 17, page 124, "Any person acquainted with real estate or an interest in real estate, involved in the inquiry, may state his estimate of its value, he may also testify as to

the effect upon remaining lands of takings for highway, pipe line or railroad. He may also testify as to the effect of takings for a sewer, water or other purposes; * * * * or what diminution or increase in value either absolutely or comparatively such changes would cause."

There are a number of cases in this State which recognize the principle that in contemplation proceedings expert or opinion evidence is admissible.

Lanning v. United N. J. R. R. Co., 25 Vr. 576.

Poughkeepsie v. Root, 24 Vr. 253.

Bergen Neck Ry. Co. v. Point Breeze Ferry Co., 28 Vr. 163.

POINT TWO.

The testimony of experts being competent upon the point at issue, the questions to the witness, Charles Singer, were competent.

The first assignment of error relates to a question touching the qualification of the witness and was merely preliminary.

As was said in the case of New Jersey Zinc Co. v. Lehigh Zinc Co., 59 N. J. L. P. 194, "Who is entitled to be considered an expert in regard to any question of science or skill cannot be determined by any precise rule, but from the nature of the case must be left very largely to the discretion of the trial judge, and his decision is conclusive unless clearly shown to be erroneous in matter of law." See also Cyc. Vol.17, p. 31.

POINT THREE.

If the testimony of the witness Singer was competent and no objection being made to the admission of such testimony on the ground of lack of qualifications, the questions em-

braced within the second and third assignment of error were Competent.

The question to which error is assigned in the second assignment embraced the whole knowledge of the witness upon the subject matter. It called for an answer which would express the opinion of the witness as to the value before and after the construction of the tunnel and the mere fact that the answer stated the difference in value by a percentage cannot affect such answer.

"When an estimate of damages is merely a short way of stating a difference in the value of property, a witness who could estimate the difference in value may state the damages." Instances of the application of this rule are furnished by cases involving the diminution in value of real estate by the lay-out and construction * * * Pipe lines, railroads, sewers and the like. Cyc. Vol. 17, p. 54.

The same argument applies to the third assignment. The question stated the fact as it appeared in the case and no objection was made that the witness was not qualified to speak. The qualification made by the witness in his answer, would, therefore, go to its weight, but not to its competency.

The fourth assignment of error relating to the effect of a shaft, if any error at all, must have been harmless to the plaintiff for the reason that there was no testimony in the case that any such shaft existed and therefore no damages of this character could have been considered by the jury.

The judgment of the Circuit Court should be affirmed, with costs.

Respectfully submitted,

JOHN J. FALLON,

Attorney and Counsel of Marie Schwarz,
Defendant-Appellee.

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JOHN J. FALLON,

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Defendant-Appellee.

NEW JERSEY COURT OF ERRORS AND
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THE PENNSYLVANIA,)	
NEW JERSEY AND)	10
NEW YORK RAILROAD)	
COMPANY,)	On Condemnation.
Plaintiff,)	On Error to
Appellant Below,)	Hudson Circuit
vs.)	Court.
MARIE SCHWARZ, et als.,)	20
Defendants,)	
Appellees Below.)	
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BRIEF FOR PLAINTIFF IN ERROR.

The plaintiff in error insists that the opinion of Charles Singer as to the amount of depreciation in the value of the Schwarz property, if forty-two feet (42) were taken from that property at a point one hundred and eighty-two (182) feet or thereabouts below the surface of the street, was not admissible, because he had failed to show experience or skill upon that question.

The bills of exception are found on page 64, line 20.

The original question is on page 56, line 40; page 64, line 10; page 65, line 30. 40

The assignments upon these bills of exception are on page 88.

The issue on trial was, (page 22):—

“What is the amount which the railroad company should pay to the owners for the easement sought to be acquired and the damages?”

The easement was the construction and maintain-
10 ing of tunnels for railroad use, on a plot 42 feet wide but 226 feet below the surface (page 17).

The owner had on the surface three frame houses and one stable (page 27).

The statute authorizing the condemnation of this easement is the 23rd section of the act entitled “An act concerning railroads, Revision of 1903,” page 658, which provided:

20 “Such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same firm and safe for buildings and other erections thereon.”

The Company declared on the opening of the case, and made it part of the record (page 26), as follows:

30 “The Company, &c. declares that whenever it shall construct said tunnels it will so build and at all times keep the same in such condition as to make the surface of the ground above the same firm and safe and other erections thereon.”

Charles Singer was called as a witness. He was a Real Estate Agent in the Town of Union.

The land in question was in the Town of West Hoboken.

He had been a Real Estate Agent for six years,
40 in the Town of Union (page 44).

He testified (page 52), that the only tunnel that he had any knowledge of was the tunnel of the West Shore Railroad which was under the land in the Town of Union; that in that tunnel there were shafts through which smoke and gases came; that all he knew about that tunnel was that it was about 80 or 90 feet deep, and that it was built in 1884, and used for freight and passenger engines and trains.

He is then asked (page 56):—

10

“From your knowledge of what has happened in the Town of Union, as regards the effect on realty values after the building of the West Shore tunnel, what, in your opinion, would be the effect as against the values of the Schwarz property, by reason of the construction of that tunnel?”

That question is allowed and exception is taken (page 59).

20

The witness answers this question by asking (page 59).

“The WITNESS: There is one question that I am not positive on, that I would like to ask the Court, if he would enlighten me. If an award is made such as in a railroad of this kind, the owner of course can only sell it subject to this award or whatever is given?”

30

“The COURT: Subject to the tunnel right.

“The WITNESS: That easement?”

“The COURT: That is right.

“The WITNESS: You could not give a full covenant warranty, free and clear of all encumbrance, without making exception, could you?”

40

"The COURT: The right of the railroad to build a tunnel would have to be excepted."

The witness then started in to answer the question and said (page 60):

"I should say that if I owned a piece of property which was affected—

10 "The COURT: Do not answer that way.

"Mr. FALLON: Just state what you find to be the general consensus of opinion.

"By the COURT: In view of your knowledge of the subject, what do you consider the effect on the value of the Schwarz property?

20 "Objection renewed; question allowed and exception taken."

The Schwarz property consisted of a plot of ground and three houses valued by this witness at \$21,200 (p. 49).

The portion of the plot taken was 226 feet below the surface of this land.

He is then asked (page 64):

30 "Q. If some 42 feet were taken from underneath the Schwarz property at a point 182 feet or thereabouts below the surface of the street, what, in your opinion, would be the amount of depreciation in value of that property caused by that taking away?

Question objected to for the same reasons I have just given; incompetent.

Question allowed; exception asked, allowed,
40 signed and sealed.

"A. Anywhere from 30 to 45 or 50 per cent.; I couldn't say; I never had a similar case; but I say that the prejudice—I claim that the damage done is the prejudice a man would have against purchasing a piece of property that would have some covenant or would convey an easement into it, giving a certain right of way.

"Q. Have you in the course of your real estate business ascertained that tenants have a prejudice against living in properties over tunnels?"

"A. I never had any experience of that kind."

The plaintiff in error insists that these questions were incompetent, because this witness was not proved to have special skill on the subject of the depreciation of property by reason of the construction of a tunnel 220 feet below the surface of the ground.

The witness was competent as a real estate agent, to testify as to the value of lands in the neighborhood in which he acted as agent. He did testify as to the value of the lands of Schwarz. But whether the taking of 42 feet of the Schwarz property at a point 182 feet below the surface would depreciate the value of the remaining Schwarz property, and if so, to what extent, were questions upon which he had no information greater than the jurymen.

That was the question which the jury were to answer.

This witness had not qualified himself by study without practice, or by practice without study, to aid the jury on such a question.

Wheeler v. Buckhout, 31 Vr., 104.

He testified that he never had a similar case, and that he had never had any experience that justified him in saying that tenants had a prejudice against living in properties over tunnels (p. 64).

Lawson on Expert Opinion, 2nd Ed., Rule 36, page 231, is:—

“Therefore to render the opinion of a witness admissible on the ground that it is the opinion of an expert, the witness must have special skill in the subject concerning which his opinion is sought to be given.

10

“Matter of opinion is entitled to no weight with a court or jury unless it comes from persons who first give satisfactory evidence that they are possessed of such experience, skill or science in such matters as entitles their opinions to pass for scientific truth.”

and gives illustrations of this character:—

20

1. “The question is as to the customary rates of commission on the sale of a colliery. A. is a real estate broker in Philadelphia, but has had no experience in the sale of collieries. His opinion is incompetent.”

2. “The question is as to the meaning of “acceptance waived” on a draft. The opinion of a notary who has never seen such a draft before is inadmissible.”

30

3. “A shipmaster who has made inquiries concerning the price of labor and materials in the repairing of ships in a foreign port. His opinion is not admissible as to cost of labor and materials at that foreign port.”

There must be some point beneath the surface of the soil, at which the building of a tunnel would have no appreciable effect upon the surface.

What did this witness know on that subject?
40 Nothing.

In Lawson, Rule 38, it is said:—"The opinion of "an expert on a matter of mere speculation is inadmissible."

What was the experience of this witness which justified the court in viewing his answers as other than the merest speculation?

The witness's language is (page 65), to subsequent question of the Court:—

"Q. Is it the mere existence of the easement? 10

"A. I claim that is my argument."

It was his argument, based on what? Based, he says, because he had heard that property over the West Shore tunnel was not as valuable as other parts of the Town of Union. That, and that only.

His answer was:—

"Anywhere from 30 to 45 or 50 per cent." 20

That is, the property in question, which consisted of three dwelling houses and a stable, worth \$21,200, was depreciated by taking 42 feet of the property at a point 182 feet below the surface, either 30 per cent., \$6,360,
or 45 per cent. 9,540,
or 50 per cent. 10,600.

Does not his answer show conclusively that he was merely speculating? 30

The Court informed the witness (page 60), in answer to the witness's question:—

"You could not give a full covenant warranty deed, free and clear of all encumbrances, without making an exception, could you?"

"The COURT: The right of the railroad to build a tunnel would have to be excepted."

This was not strictly accurate. The owner could give a full covenant warranty deed of the property 40

between the surface of the lot and the top of the tunnel—a distance of at least 182 feet.

In *Cook v. The State*, in the Court of Errors and Appeals, 4 Zab., page 843, the competency of a physician to answer certain questions was decided. The Court said (page 852):

10 “The line between questions of science or professional skill to which an expert may legally testify, and questions of mere judgment which the jury alone are to answer upon the facts proved, is not always susceptible of being clearly defined. The distinction stated by Mr. Smith in his note to *Carter & Boehm* (1st. *Smith’s Leading Cases*, 206), is perhaps as satisfactory a statement of the rule as can be made.

20 “The opinion of witnesses possessing peculiar skill is admissible whenever the subject matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without such assistance in other words when it so far partakes of the nature of a science as to require a course of previous habit or study in order to the attainment of a knowledge of it. But the opinion of witnesses cannot be received when the inquiry is into a subject
30 matter the nature of which is not such as to require any peculiar habits or study in order to qualify a man to understand it.”

 “Upon the facts stated by the prosecutrix it is clear that the first question is not within the rule. No peculiar knowledge of the human system was necessary to answer it. It was a mere question of relative strength or mechanical possibility, which an athlete or a mechanic could have answered as well as a physician, and every man upon the jury as well
40as either.”

In Pennsylvania and Poughkeepsie R. R. Company v. Root, 24 Vr., page 253, on error to the Sussex Circuit, the question presented to that court was:

"Is it lawful to ask a witness who is a farmer acquainted with the value of farm land in the neighborhood of the property condemned, what, in his opinion, is the market value of the farm in question, before the running of the railroad through it, and what is its value after such event?" 10

In the opinion Chief Justice Beasley says (page 255):—

"But in cases of the intersection of farms or other lands, by railroads, the problem with respect to the damage thereby inflicted is oftentimes one of greater class of instances just referred to. By such transactions property of this kind is frequently damnified beyond that which ensues from a change merely in its agricultural conditions. For example, let the road run within a few yards of the dwelling house upon the farm; clearly such building may be subjected to some risks of being fired by sparks from locomotives, and its inmates disturbed by night and by day by the noise, dust and smoke occasioned by the frequent trains. It would seem evident that with regard to the damage thus inflicted, no person can claim to be an expert. On this subject all men stand on an equal footing, for each case that arises must necessarily be differently conditioned. It is presumed that no court would permit a witness, because he is a farmer, to be directly asked how much, in his opinion, the value of the farm had been lessened by reason of its dwelling house being subjected to the noise and smoke of passing locomotives." 20
30
40.

In *Koccis v. State*, 27 Vr., page 47, Garrison, J., says:

“The expert witness is one whose possession of special knowledge renders his opinion admissible upon a state of facts within his specialty, without regard to the manner in which the facts are established, without requiring that they should have come, 10 in whole or in part, under the personal observation of the witness; whereas, the sole ground upon which a witness may give an opinion as to matters of ordinary knowledge, is that they not only came within his personal observation, but they come into proof so blended with the opinion to which they give rise that it is receivable in proof as a substitute for a specification of the hosts of circumstances that call it forth.

“A failure to observe this distinction results at 20 times in the offer of an ordinary witness to give an opinion calling for special knowledge merely because he has had actual observation of the facts; and at other times, as in the present instance, in the offer to give an opinion upon a matter of ordinary knowledge arising from assumed facts, by a witness who has not himself observed them, upon the ground that he is an expert upon a special subject.

In either of these classes of cases the proof must 30 be rejected, the rule being that mere opportunity will not change an ordinary observer into an expert, and that special skill will not entitle a witness to give an expert opinion when the subject is one where the opinion of an ordinary observer is admissible, or where the jury is capable of forming its own conclusion from facts susceptible of proof in common form.”

In *Bergen Traction Company v. Bliss*, 33 Vr., page 416, the Court of Errors reversed the judgment 40 of the Supreme Court because at the trial the expert

had been allowed to answer a question which, in some respects, was like the question answered in this suit.

Lang v. The United Company, 25 Vr., page 576, was a case very like the present case.

A real estate agent was asked as to the damage done to the plaintiff's property by appropriating a strip to railroad purposes. The Court of Errors, by Justice Dixon, said:

"On neither of these points had the witness any special knowledge. He was specially conversant with the value of land in the possession of private owners, because his usual business brought inquiries and negotiations for the sale of such lands under his frequent observation. But it is safe to say that he had never known of a transaction for the sale of the private estate in a separate piece of land lying in a public street. Certainly he did not claim experience in dealings of that character. * * * * * The worthlessness of such testimony is hardly a stronger reason for its rejection than the practically limitless amount of it that might be produced."

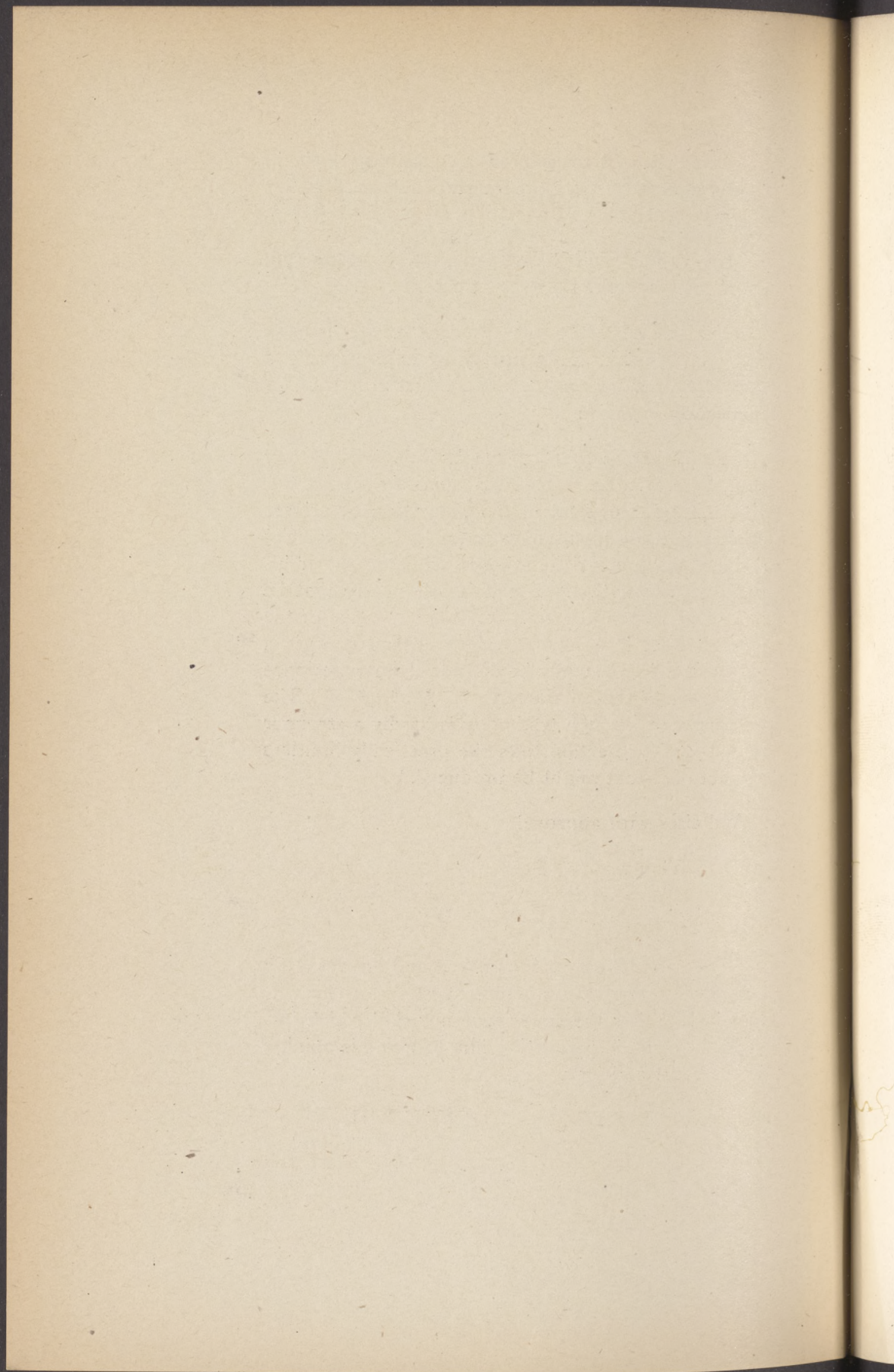
And cites with approval:

Thompson v. Penna. R. R., 22 Vr., 42.

Penna. & Poughkeepsie R. R. v. Root, 24 Vr. 253, above cited.

I insist that the questions asked and answered by this witness were incompetent questions. The witness had neither the experience nor skill which justified the court in permitting him to give his opinion to the court and jury.

JAMES B. VREDENBURGH,
Of Counsel.



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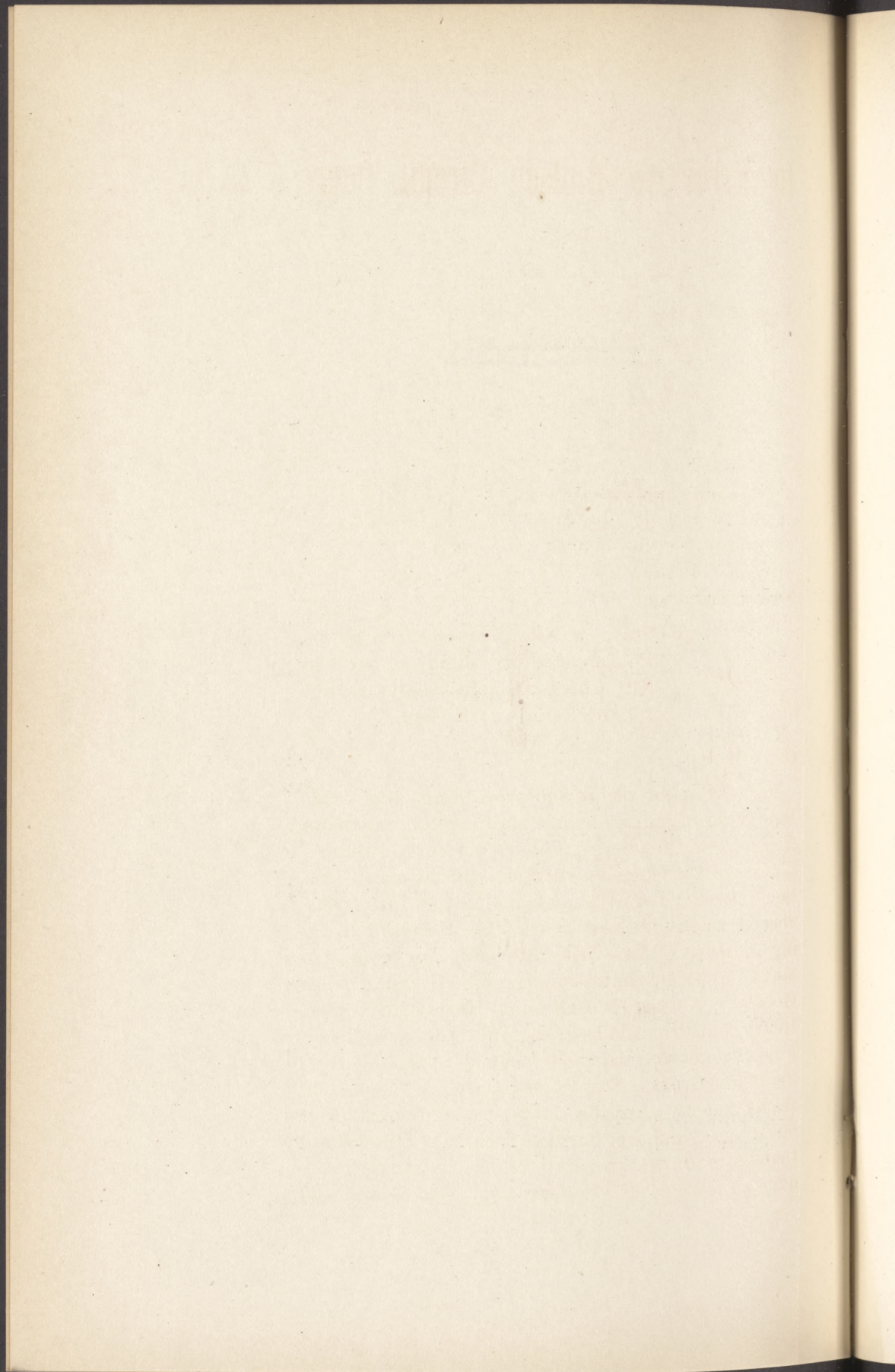
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In Error to Hudson Circuit Court.

PENNSYLVANIA, NEW JERSEY AND
NEW YORK RAILROAD COM-
PANY,

Plaintiff-Appellee,

vs.

MARIE SCHWARZ ET ALS.,

Defendant-Appellant.

10
Writ of Error.

NEW JERSEY, SS.

The State of New Jersey to Charles W.
Parker, Esquire, Judge of our Cir- 20
circuit Court at Jersey City, in and
for the County of Hudson,

[SEAL]

GREETING:

Because in the record and proceedings and also in
the giving of judgment in a plaint which was in our
Circuit Court holden, at Jersey City, in and for said
County of Hudson, between Marie Schwarz, Chris-
tian Schwarz, her husband, the Mutual Life Insur- 30
ance Company of New York, the Excelsior Brew-
ing Company of New York, Adrienne Horstman, Ar-
mand Perdirset, John Brenniser, the Town of West
Hoboken, August Hausellmann, Herman Ludowig,
Henry Geffken, Adelle Chesesaux, Adolph Zielbeer,
Fred. Broket and Reinhold Pladek, appellants, and
the Pennsylvania, New Jersey and New York Rail-
road Company, Appellee, of a plea of the value of
lands taken and the damages incident to the taking
thereof, manifest error hath intervened, to the great
damage of the said Pennsylvania, New Jersey and 40

New York Railroad Company, as by their complaint we are informed.

We being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our
 10 Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on January 29th, 1906, next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

20 WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the tenth day of January, in the year of our Lord one thousand nine hundred and six.

S. D. DICKINSON,
 Clerk.

30 The answer of Charles W. Parker, Esq., the Judge holding the Circuit Court in and for the County of Hudson, and whereof mentioned is within made, the record and proceedings of the plaint within named with all things touching and concerning the same I certify to the Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as within I am commanded.

CHARLES W. PARKER,
 Judge.

40 February 14, 1906.

*To the Honorable Jonathan Dixon, one of the Justices
of the Supreme Court of the State of New Jersey.*

The Pennsylvania, New Jersey and New York
Railroad Company, by this, its petition, respect-
fully shows to your Honor, that your petitioner is a
corporation duly organized under the provisions of
the act of the Legislature of the State of New Jer- 10
sey, entitled "An Act to authorize the formation
of railroad companies and to regulate the same,"
approved April 2nd, 1873, and of the several acts
supplementary thereto and amendatory thereof.

That such organization and incorporation were
made under articles of association duly and properly
filed in the office of the Secretary of State of the
State of New Jersey on the thirteenth day of Feb-
ruary, nineteen hundred and two, for the purpose 20
of constructing, maintaining and operating a rail-
road for the public use in the conveyance of persons
and property, said railroad to extend from the point
of connection with the tracks of the United New
Jersey Railroad and Canal Company, in the Town-
ship of Kearny, in the County of Hudson and State
of New Jersey, and running thence eastwardly to
and over the Hackensack River to and under the
bed of the waters of the Hudson River, an inter-
state river, to a point in or opposite the Township 30
of Weehawken, on the boundary line between the
States of New Jersey and New York, said proposed
railroad being seven miles, more or less, in length,
and lying wholly in the County of Hudson afore-
said, with such depots, yards, freight and engine
houses, sidings, turnouts or extensions as may be
necessary for the maintenance of said railroad and
the transaction of its business.

That your petitioner has determined to construct
said railroad and has fixed the route thereof, and 40

has caused a survey thereof to be filed in the office of the Secretary of the State of New Jersey. That said route, in approaching said Hudson River, lies beneath the surface of certain land in the Town of West Hoboken, in the County of Hudson and State of New Jersey, owned by Marie Schwarz and Christian Schwarz, her husband, and that the right and

10 easement of erecting, constructing and maintaining one or more tunnels and operating and using in each thereof a railroad with one or more tracks below the surface in a portion of the land of such owner beneath the surface thereof are required and are necessary for their purpose to be used and taken in the construction of said railroad. A particular description of said right and easement, and of such portion of said land and a map thereof, and of

20 the surface of the land above said portion are here to annexed and are referred to and made part of this petition. That your petitioner cannot acquire such right and easement in said land by reason of a disagreement with said owner as to the price thereof.

That your petitioner has attempted in good faith to agree with the said owner as to the price of said rights and easements, and has offered and is ready to pay the full value thereof.

30 That the persons or corporations interested in said property are Mary Schwarz and Christian Schwarz, her husband, who are the owners of the said estate sought to be taken, and the Mutual Life Insurance Company of New York, the Excelsior Brewing Company of New York and Adrienne Horstman, who hold mortgages upon said premises, and Armand Perdirset and John Brenniser, who claim to hold judgments affecting said premises, and the Town of West Hoboken, who claims some

lien by reason of non-payment of taxes and assessments.

That the residence of the said Marie Schwarz and Christian Schwarz, her husband, is 474 West street, West Hoboken, N. J.; the residence of Adrienne Horstman is in the City of New York, New York.

The Mutual Life Insurance Company of New York and the Excelsior Brewing Company of New York are corporations of the State of New York. 10

The Town of West Hoboken is a municipal corporation of the State of New Jersey.

The residence of Armand Perdirset is Hudson County, New Jersey.

The residence of John Brenniser is New York.

That the occupants of the said premises are the 20 said Marie Schwarz and Christian Schwarz, her husband, and August Hausellman, Herman Ludwig, Henry Geffken, Adelle Cheseaux, Adolph Zeilbeer, Fred. Broket and Reinhold Pladek.

That the residence of said occupants is in West-Hoboken, New Jersey.

Your petitioner therefore requests your Honor to appoint three disinterested freeholders, resident in the County of Hudson aforesaid, Commissioners to 30 examine and appraise said rights and easements so required and necessary to be taken as aforesaid in the construction of said railroad tunnel or tunnels, and to assess the damages to be sustained in consequence of such taking and occupancy thereof, and to fix the compensation to be paid therefor, and whatever said Commissioners so to be appointed are authorized by law to assess, and that your Honor will appoint a particular time when, and place where, your Honor will proceed to hear this 40

application and make said appointment, and that your Honor will prescribe and direct what notice shall be given by your petitioner to the owners and other persons interested in said property, of this application and of the time and place of hearing the same.

10 And your petitioner, as in duty bound, will ever pray.

Dated Jersey City, N. J., January 27th, 19 5.

THE PENNSYLVANIA, NEW JERSEY
AND NEW YORK RAILROAD COMPANY,

By

JAMES B. VREDENBURGH,

Attorney.

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**A particular description for condemnation
for tunnel easements.**

Under land of Marie Schwartz, of West Hoboken, in the County of Hudson and State of New Jersey, by the Pennsylvania, New Jersey and New York Railroad Company.

The right and easement of erecting, constructing and maintaining one or more tunnels, and operating and using in each thereof a railroad with one or more tracks through a prism bounded by and lying within vertical planes passing through the boundary lines of the land hereinafter described and two horizontal planes one hundred and eighty-four and two-tenths (184.2) feet and two hundred and twenty-six and two-tenths (226.2) feet below the surface as it now exists at the point of beginning of the land hereinafter described, said horizontal planes being also ten and three-tenths (10.3) feet above and thirty-one and seven-tenths (31.7) feet below the datum recognized and used by the public authorities of Hudson County, which prism is below the surface of,

All that certain lot or piece of land situate in the Town of West Hoboken, in the County of Hudson and State of New Jersey, bounded and described as follows, viz.:

Beginning at a point in the southeasterly line of West street at the distance of eleven and seven-tenths (11.7) feet measured southwestwardly along said line of West street from the southwest line of Shippen street; extending thence southeastwardly by a line parallel with the line established for the centre line of the tunnels of the Pennsylvania, New Jersey and New York Railroad Company and thirty-two (32) feet distant northeastwardly therefrom one hundred and seven and nine-tenths (107.9) feet to a

point in the northwesterly line of land of Charles Stoll; thence southwestwardly along said line of land crossing the aforesaid centre line fifty-eight and six-tenths (58.6) feet to a point in the northeasterly line of land of Franciska Remond; thence northwestwardly along said line of land one hundred and eight and one-tenth (108.1) feet to a point
 10 in the southeasterly line of West street; thence northeastwardly along said line of West street twenty-three and seven-tenths (23.7) feet to a point in the aforesaid centre line, and still by the same course the further distance of thirty-two and one-tenth (32.1) feet to the place of beginning.

Being all of lots seventeen (17) and eighteen (18), and part of lot nineteen (19) in block one hundred and twenty-eight (128).

20 Also the right and easement of erecting, constructing and maintaining one or more tunnels, and operating and using in each thereof a railroad with one or more tracks through a prism in extension of the above prism, bounded by and lying within vertical planes passing through the boundary lines of the land hereinafter described, and two horizontal planes one hundred and eighty-four and two-tenths (184.2) feet and two hundred and twenty-six and two-tenths (226.2) feet below the surface as it now
 30 exists at the point of beginning of the land hereinafter described, and said horizontal planes being also ten and three-tenths (10.3) feet above and thirty-one and seven-tenths (31.7) feet below the datum recognized and used by the public authorities of Hudson County, which prism is below the surface of,

All that certain lot or piece of land lying in the bed of West street abutting the above described piece of land bounded and described as follows, viz.:

Beginning at a point in the southeasterly line of West street at the distance of eleven and seven-tenths (11.7) feet measured southwestwardly along the said line of West street from the southwesterly line of Shippen street; extending thence southwestwardly along the line of West street thirty-two and one-tenth (32.1) feet to a point in the aforesaid centre line, and still by the same course the further 10 distance of twenty-three and seven-tenths (23.7) feet to a point in the northeasterly line of land of Franciska Remond, if extended; thence northwestwardly along said extended line of land twenty-five and one-tenth (25.1) feet to a point in the middle line of West street; thence northeastwardly along the middle line of said West street crossing the aforesaid centre line fifty-four and six-tenths (54.6) feet to a point; and thence southeastwardly on a line parallel with the aforesaid centre line, and thirty- 20 two (32) feet distant northeastwardly therefrom twenty-five (25) feet to the place of beginning.

The plan of construction of the tunnels being such as to provide for a roof or archway thereover of sufficient strength to carry any building or improvement on the premises above the same, the foundations or substructures of which shall not extend in depth a greater distance than one hundred and eighty-four and two-tenths (184.2) feet below 30 the surface as it now exists, at the point of beginning of the land hereinabove described.

Before HON. JONATHAN DIXON,
Justice of the Supreme Court.

10	IN THE MATTER OF THE APPLICATION OF THE PENNSYLVANIA, NEW JERSEY AND NEW YORK RAIL- ROAD COMPANY TO ACQUIRE RIGHT AND EASEMENT IN LANDS OF MARIE SCHWARZ ET AL.	}	<i>Appointment of Commissioners.</i>
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WHEREAS, The Pennsylvania, New Jersey and New York Railroad Company have made application to me in writing by petition (to which reference is made) to appoint three disinterested, impartial and judicious freeholders, residents of the County of Hudson, Commissioners to appraise the right and easement and assess the damages which the owner of the portion of land described in said petition has sustained or shall sustain by reason of the occupancy thereof, and whatever else the said commissioners so to be appointed are by law authorized or required to assess, and to appoint a time and place to hear said application, and which right and easement are described as follows:

(Describes the premises same as in petition).

AND WHEREAS, I did appoint the twenty-fifth day of February, nineteen hundred and five, at ten o'clock in the forenoon of that day, at the County Court House, in the City of Jersey City, in the County of Hudson, as the time and place to hear said application:

AND WHEREAS, It appears to my satisfaction that notice of this application for the appointment of commissioners and of the time and place for hearing the same has been given to the said Marie

Schwarz and Christian Schwarz, her husband, the Mutual Life Insurance Company of New York, the Excelsior Brewing Company of New York, Adrienne Horstman, Armand Perdirset, John Brenner, the Town of West Hoboken, August Hausellmann, Herman Ludowig, Henry Geffken, Adelle Cheasaux, Adolph Zeilbeer, Fred. Broket and Reinhold Pladek, the owners and persons interested in said lands, and the said parties now appearing before me upon the return of the said order, at the time and place therein assigned, the said Pennsylvania, New Jersey and New York Railroad Company, by James B. Vredenburgh, its counsel, and and the said Marie Schwarz and Christian Schwarz appearing personally. and having heard the said parties and no sufficient cause being shown to the contrary:

BE IT KNOWN, that I, Jonathan DIXON, one of the Justices of the Supreme Court of the State of New Jersey, by virtue of the power and authority vested in me by law, do hereby appoint Herman Walker, Arthur Seitz and J. W. Rufus Besson, three disinterested, impartial and judicious freeholders, residents of the County of Hudson and State of New Jersey, Commissioners to examine and appraise the said right and easement in the said portion of land of the said Marie Schwarz and Christian Schwarz, her husband, necessary and required to be taken by the said Pennsylvania, New Jersey and New York Railroad Company as in said petition set forth, and to assess the damage to be sustained in consequence of the taking and occupancy thereof, and whatever said Commissioners are by law authorized or required to assess; and I direct that said Commissioners do cause to be given to said Marie Schwarz, Christian Schwarz, her husband, the Mutual Life Insurance Company of New

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York, the Excelsior Brewing Company of New York, Adrienne Horstman, Armand Perdirset, John Brenniser, the Town of West Hoboken, August Hausellmann, Herman Ludowig, Henry Geffken, Adelle Cheseaux, Adolph Zeilbeer, Fred. Broket and Reinhold Pladek, the owners and parties interested, and to said Company, seven days' notice
 10 in writing of the time when, and place where, they will meet and proceed to execute their duties under this appointment, and that said notice shall be served upon Marie Schwarz, Christian Schwarz, her husband, Henry Geffken, August Hausellmann, Herman Ludowig, Adelle Cheseaux, Adolph Zeilbeer, Fred. Broket, Reinhold Pladek and Armand Perdirset, personally or by leaving the same at their usual places of abode with some member of their respective families above the age of fourteen years; upon
 20 the Town of West Hoboken by leaving the same with the Town Clerk; upon the Excelsior Brewing Company and the Mutual Life Insurance Company of New York, Adrienne Horstman, John Brenniser by mailing the same at their last known post office address.

And further, that the said Commissioners do file their report in the office of the Clerk of the County of Hudson, on or before the seventeenth day of April next, unless otherwise ordered.
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JONATHAN DIXON,

Just. Sup. Ct.

Dated February 25th, 1905.

We, Herman Walker, Arthur Seitz and J. W. Rufus Besson, Commissioners appointed by the Honorable Jonathan Dixon, one of the Justices of the Supreme Court of the State of New Jersey, on the application of the Pennsylvania, New Jersey
 40 and New York Railroad Company, made in writing

by a petition to the said Justice, to examine and appraise the right and easement in a portion of the lands therein described and assess the damages to be paid by said the Pennsylvania, New Jersey and New York Railroad Company by reason of the taking, occupancy and use thereof, by the said Company, and whatever we, as such Commissioners, are by law authorized and required to assess as in and by the said order of our appointment it will more fully appear, having first taken and subscribed an oath before Francis V. Many, Esq., a Master in the Court of Chancery of the State of New Jersey, faithfully and impartially to examine the matter in question, and a true report make, according to the best of our knowledge and understanding; and we did appoint Tuesday, the fourteenth day of March, 1905, at the hour of ten o'clock in the forenoon at the office of Lewis, Besson & Stevens, No. 1 Newark street, Hoboken, N. J., as the time when and place where we would meet and execute our duties under said appointment; and it having been proved to our satisfaction that Marie Schwarz and Christian Schwarz, her husband; the Mutual Life Insurance Company of New York, the Excelsior Brewing Company of New York, Adrienne Horstman, Armand Perdirset, John Brennisser, the Town of West Hoboken, August Hausellmann, Herman Ludowig, Henry Geffken, Adelle Chesaux, Adolph Zeilbeer, Fred. Broket, and Reinhold Pladek, the owners of and the persons interested in said land, have been duly notified by at least seven days' notice in writing and in the manner prescribed in said order of appointment of our said meeting.

And the said Pennsylvania, New Jersey and New York Railroad Company and the said owner and persons interested in said lands, having been represented before us, we, the said Commissioners, did

meet at the time and place aforesaid, and we thereafter viewed and examined the said right and easement and the said land, a description and map of which are hereto annexed and made a part of this our report and award, being the same right and easement in the portion of land described in the said petition, which is owned by Marie Schwarz and
10 Christian Schwarz, her husband, and having heard the parties as well as the said Marie Schwarz, Christian Schwarz, her husband, the Mutual Life Insurance Company of New York, the Excelsior Brewing Company of New York, Adrienne Horstman, Armand Perdirset, John Brennisser, the Town of West Hoboken, August Hausellmann, Herman Ludowig, Henry Geffken, Adelle Cheseaux, Adoph Zeilbeer, Fred. Broket and Reinhold Pladek, owners and persons interested in said land, and the
20 said Company, and we having fully examined and appraised the said right and easement in said portion of land, and assessed said damages and fully considered all that was offered before us, by the respective parties, do appraise the value of said right and easement in said portion of land, and assess the damages which the said owners are entitled to, and which they have sustained and will sustain by reason of the taking, occupancy and use of the said right and easement in said lands by the said com-
30 pany, and having made a just and equitable estimate and appraisal of the value of the same, and an assessment of the amount to be paid by the said company for such right and easement in said land and damages aforesaid, do report and award that the said company do pay to the said Marie Schwarz, Christian Schwarz, her husband, the Mutual Life Insurance Company of New York, the Excelsior Brewing Company of New York, Adrienne Horstman, Armand Perdirset, John Bren-
40 nisser, the Town of West Hoboken, August

Hausellmann, Herman Ludowig, Henry Geffken, Adelle Cheseaux, Adoph Zeilbeer, Fred. Broket and Reinhold Pladek, the sum of one hundred and seventy-two dollars and eighty cents, the value of said right and easement in said lands, and the sum of twenty-two hundred and twenty-seven dollars and twenty cents, damages as aforesaid, making a total sum of twenty-four hundred dollars, to be paid for said right and easement and damages. 10

No allowance is made herein for damages to buildings on said land caused by the construction of said tunnel or tunnels on other lands.

No allowance is made herein for damages arising from the failure of the railroad company, whenever it shall construct such tunnel or tunnels, to so build and at all times to keep the same in such condition as to make the surface of the ground above the same firm and safe for building and other erections thereon. 20

WITNESS our hands and seals this fifteenth day of April, nineteen hundred and five.

HERMAN WALKER, [L. S.]
 ARTHUR SEITZ, [L. S.]
 J. W. RUFUS BESSON, [L. S.] 30

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } SS.

Be it remembered, that on this fifteenth day of April, nineteen hundred and five, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Herman Walker, Arthur Seitz and J. W. Rufus Besson, who, I am satisfied are the Commissioners named in and who executed the 40

foregoing award; and I, having first made known to them the contents thereof, they did each severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, and for the uses and purposes therein expressed.

FRANCIS V. MANY,

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Master in Chancery, of New Jersey.

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**A particular description for condemnation
for tunnel easements.**

Under land of Marie Schwartz, of West Hoboken, in the County of Hudson and State of New Jersey, by the Pennsylvania, New Jersey and New York Railroad Company.

The right and easement of erecting, construct- 10
ing and maintaining one or more tunnels, and oper-
ating and using in each thereof a railroad with one
or more tracks through a prism bounded by and
lying within vertical planes passing through the
boundary lines of the land hereinafter described,
and two horizontal planes one hundred and eighty-
four and two-tenths (184.2) feet, and two hundred
and twenty-six and two-tenths (226.2) feet below
the surface as it now exists at the point of begin-
ning of the land hereinafter described, said horizon- 20
tal planes being also ten and three-tenths (10.3)
feet above and thirty-one and seven-tenths (31.7)
feet below the datum recognized and used by the
public authorities of Hudson County, which prism
is below the surface of,

All that certain lot or piece of land situate in the Town of West Hoboken, in the County of Hudson and State of New Jersey, bounded and described as follows, viz.:

Beginning at a point in the southeasterly line of 30
West street at the distance of eleven and seven-
tenths (11.7) feet measured southwestwardly along
said line of West street from the southwest line of
Shippen street; extending thence southeastwardly
by a line parallel with the line established for the
centre line of the tunnels of the Pennsylvania, New
Jersey and New York Railroad Company and
thirty-two (32) feet distant northeastwardly there-
from one hundred and seven and nine-tenths (107.9) 40

feet to a point in the northwesterly line of land of Charles Stoll ; thence southwestwardly along said line of land crossing the aforesaid centre line fifty-eight and six-tenths (58.6) feet to a point in the northeasterly line of land of Franciska Remond ; thence northwestwardly along said line of land one hundred and eight and one-tenth (108.1) feet to a point in the southeasterly line of West street ;
 10 thence northeastwardly along said line of West street twenty-three and seven-tenths (23.7) feet to a point in the aforesaid centre line, and still by the same course the further distance of thirty-two and one-tenth (32.1) feet to the place of beginning.

Being all of lots seventeen (17) and eighteen (18) and part of lot nineteen (19) in block one hundred and twenty-eight (128).

20 Also the right and easement of erecting, constructing and maintaining one or more tunnels, and operating and using in each thereof a railroad with one or more tracks through a prism in extension of the above prism, bounded by and lying within vertical planes passing through the boundary lines of the land hereinafter described, and two horizontal planes one hundred and eighty-four and two-tenths (184.2) feet and two hundred and twenty-six and two-tenths (226.2) feet below the surface as it now exists at the point of beginning
 30 of the land hereinafter described, said horizontal planes being also ten and three-tenths (10.3) feet above and thirty-one and seven tenths (31.7) feet below the datum recognized and used by the public authorities of Hudson County, which prism is below the surface of,

All that certain lot or piece of land lying in the bed of West street abutting the above described piece of land, bounded and described as follows,
 40 viz. :

Beginning at a point in the southeasterly line of West street at the distance of eleven and seven-tenths (11.7) feet measured southwestwardly along the said line of West street from the southwesterly line of Shippen street; extending thence southwestwardly along the line of West street thirty-two and one-tenth (32.1) feet to a point in the aforesaid centre line, and still by the same course the further distance of twenty-three and seven-tenths (23.7) feet to a point in the northeasterly line of land of Franciska Remond, if extended; thence northwestwardly along said extended line of land twenty-five and one-tenth (25.1) feet to a point in the middle line of West street; thence northeastwardly along the middle line of said West street crossing the aforesaid centre line fifty-four and six-tenths (54.6) feet to a point; and thence southeastwardly on a line parallel with the aforesaid centre line, and thirty-two (32) feet distant northeastwardly therefrom twenty-five (25) feet to the place of beginning.

The plan for construction of the tunnels being such as to provide for a roof or archway thereover of sufficient strength to carry any building or improvement on the premises above the same, the foundations or substructures of which shall not extend in depth a greater distance than one hundred and eighty-four and two-tenths (184.2) feet below the surface as it now exists at the point of beginning of the land hereinabove described.

Before the Hon. JONATHAN DIXON, Justice of
of the Supreme Court of New Jersey.

10 IN THE MATTER OF THE APPLICA-
TION OF THE PENNSYLVANIA,
NEW JERSEY AND NEW YORK } *On Condemna-*
RAILROAD COMPANY TO ACQUIRE } *tion.*
BY CONDEMNATION RIGHT AND } *Appeal.*
EASEMENT IN LAND OF MARIE
SCHWARZ ET AL.

20 The Pennsylvania, New Jersey and New
York Railroad Company hereby appeals to the
Circuit Court of the County of Hudson, from the
award of two thousand four hundred dollars made
against said company by Herman Walker, Arthur
Seitz and J. W. Rufus Besson, Commissioners in
Condemnation in the above entitled proceedings,
which report was filed April seventeenth, nineteen
hundred and five.

Dated April 18th, 1905.

30 THE PENNSYLVANIA, NEW JERSEY AND
NEW YORK RAILROAD COMPANY,

By

JAMES B. VREDENBURGH,
its Attorney.

HUDSON COUNTY CIRCUIT COURT.

IN THE MATTER OF THE APPLICA- TION OF THE PENNSYLVANIA, NEW JERSEY AND NEW YORK RAILROAD COMPANY TO ACQUIRE RIGHTS AND EASEMENTS IN LANDS OF MARIE SCHWARZ ET AL.	} <i>In</i> <i>Condemnation</i> <i>On Appeal.</i> <i>Order Fram-</i> 10 <i>ing Issue.</i>
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The Pennsylvania, New Jersey and New York Railroad Company having given notice of appeal from the award of Herman Walker, Arthur Seitz and J. W. Rufus Besson, Commissioners appointed by the Honorable Jonathan Dixon, Justice of the Supreme Court, on application by the Penn- 20
 sylvania, New Jersey and New York Railroad Company, and the appellants having given notice of motion to be heard at the Court House in Jersey City, on the nineteenth day of May, nineteen hundred and five to frame the issue on said appeal, and fix a day for the striking of a jury and a day for the trial of the appeal, and counsel appearing for the respective parties, James B. Vredenburg appearing for the Pennsylvania, New Jersey and New York Railroad Company and John J. Fallon 30
 appearing for Marie Schwarz,

It is, on this sixth day of October, nineteen hundred and five, on motion of James B. Vredenburg, attorney for the Pennsylvania, New Jersey and New York Railroad Company,

Ordered, that Tuesday, the fourteenth day of November, nineteen hundred and five, at ten o'clock in the forenoon, be and the same is hereby fixed as the time for hearing of the said appeal before the 40

Hudson County Circuit Court at the Court House
in Jersey City, New Jersey.

And it is further ordered, that the issue for the
trial of the controversy between the parties is hereby
framed and the issue is, what is the amount which
the Pennsylvania, New Jersey and New York
Railroad Company should pay to the said Marie
10 Schwarz, Christian Schwarz, her husband, the
Mutual Life Insurance Company of New York, the
Excelsior Brewing Company of New York, Adrienne
Horstman, Armand Perdirset, John Brenner, the
Town of West Hoboken, August Hausellmann,
Herman Ludowig, Henry Geffken, Adelle Chesaux,
Adolph Zeilbeer, Fred. Broket, and Reinhold
Pladek, the owners and persons interested in the
lands described in the petition before the Commis-
sioners in condemnation, annexed to and filed
20 with their report, for the rights and easements
therein necessary and required to be taken by the
said petitioner, and also for the damages to be sus-
tained by the said owners and persons interested in
consequence of the taking and occupancy thereof,
and for whatever else is required by law to be
assessed and paid for by the Pennsylvania, New
Jersey and New York Railroad Company in the
premises.

30 And it is further ordered, that a jury be struck
for the trial of said appeal on the twenty-seventh
day of October, nineteen hundred and five, at ten
o'clock in the forenoon, before the Court, at the
Court House aforesaid.

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

C. W. PARKER,
J.

HUDSON COUNTY CIRCUIT COURT.

IN THE MATTER OF THE APPLICATION OF THE PENNSYLVANIA, NEW JERSEY AND NEW YORK RAILROAD COMPANY TO ACQUIRE RIGHTS AND EASEMENTS IN LANDS OF MARIE SCHWARZ ET AL.

*In
Condemnation.
On Appeal.*

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Therefore, to try the issue above joined, let a special jury come before the said Circuit Court, at Jersey City aforesaid, on the sixteenth day of November, nineteen hundred and five, as yet of the term of September, in the year nineteen hundred and five, who neither, etc., by whom, etc., because as well, etc., the same day is given to the parties aforesaid at the same time and place, at which day, before the Court aforesaid, came the parties aforesaid, by their attorneys aforesaid; and the jurors of the jury above mentioned also came, who to speak the truth of the matters aforesaid, being chosen, tried and sworn, and after charge by the Court, say upon their oath, that the value of the rights and easements and damages to said land is three thousand dollars.

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Therefore, it is considered, and on this eleventh day of December, nineteen hundred and five, ordered by the said Court that judgment final be entered in this cause in favor of the said Marie Schwarz, Christian Schwarz, her husband, the Mutual Life Insurance Company of New York, the Excelsior Brewing Company of New York, Adrienne Horstman, Armand Perdirset, John Brenniser, the Town

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of West Hoboken, August Hausellmann, Herman Ludowig, Henry Geffken, Adelle Cheseaux, Adolph Zeilbeer, Fred. Broket and Reinhold Pladek, for the sum of three thousand dollars and against said railroad company.

Judgment entered and signed this December 11, A. D. 1905.

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CHARLES W. PARKER,
Judge.

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HUDSON COUNTY CIRCUIT COURT.

Septemper Term, Nineteen hundred and five.

IN THE MATTER OF THE APPLICA-
 TION OF THE PENNSYLVANIA,
 NEW JERSEY AND NEW YORK
 RAILROAD COMPANY, TO AC-
 QUIRE RIGHT AND EASEMENT IN
 LANDS OF MARIE SCHWARZ ET
 AL.

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*In Con-
demnation.*

This case came on before Hon. Charles W. Parker and a struck jury, on November 14, 1905. 20

James B. Vredenburgh, Esq., for Railroad Company, Appellee and Appellant.

John J. Fallon, Esq., for property owners.

The jury was duly sworn.

MR. FALLON—Will your Honor dictate to the stenographer that both appeals are being heard together, so that we may get it on the record? 30

THE COURT—Both sides are appealing? Your people want more and the railroad company want to pay less?

MR. FALLON—Yes.

Mr. Vredenburgh states to the jury the requirements of the railroad company.

Mr. Vredenburgh asks leave to read declaration.

MR. FALLON—I object to it. I think it mani- 40

festly unfair to make any such declaration, and if made I would like to have my objection noted.

THE COURT—Of course you may have your objection and take your exception. You may read it, Mr. Vredenburgh.

Counsel for property owners excepts.

10 Mr. Vredenburgh reads declaration, as follows:

“The Pennsylvania, New Jersey and New York Railroad Company, on [the trial of the appeal, by leave of the Court, declares that, whenever it shall construct said tunnels, it will so build and at all times keep the same in such condition as to make the surface of the ground above the same firm and safe for buildings and other erections thereon.”

Adjourned for jury to view premises.

20 MARIE SCHWARZ, a witness called on behalf of the property owners and sworn, testified as follows:

Direct examination by Mr. Fallon.

Q. Where do you live? A. West Hoboken, 474 West street.

Q. Are you the owner of the property on the southeast corner of Shippen and West streets? A. Yes, sir.

30 Q. How long have you owned that property. A. Sixteen years.

Q. What does the property consist of; just tell us, please? A. Well, I got two houses in West street; two family houses in West street, and one corner house, a double house, with a saloon, on the corner, and on Shippen street I got a stable and a small house; nine rooms and all improvements in.

Q. You can designate these houses by numbers?
40 A. Yes, sir; on Shippen street I got 519, and the

stable must be—there is no number on the stable—
and 523 Shippen street, 476 West street, 474 West
street, and 472 West street.

Q. Are the houses frame houses or brick houses?
A. Frame houses.

Q. All of them? A. All of them.

Q. Do you know what rents you received from
those houses? A. Yes, sir. 10

Q. How much a year do you receive as rent from
those houses, or how much a month? A. I receive
\$161 a month.

By the Court.

Q. For everything? A. Yes, sir.

Q. Do you live there yourself? Yes, sir.

Q. Have you counted that in the rent? A. Yes.

Q. What do you charge for your own rent? A.
I got on West street— 20

Q. No; what amount do you allow for rent of
the property that you occupy yourself? A. For my
rent?

Q. Yes? A. Fifteen dollars.

By Mr. Fallon.

Q. Do you include that \$15 in the amount of
\$161? A. I include it; yes, sir.

Q. Do you receive a greater rental for your prop-
erty now than you did at the time you appeared be- 30
fore the Condemnation Commissioners? A. Well,
I had plenty of trouble on account of moving.

Q. (Repeated.) A. Well, I should raise my rent
now, but I couldn't on account of that.

Q. Then you do not receive any more now? A.
No.

Q. What rent do you receive for the corner house?

A. I think I make a mistake; in the beginning I
said \$161?

THE COURT—Yes.

THE WITNESS—I received for the corner house \$61.

Q. Does that include your \$15? A. For the corner house.

10 *By the Court.*

Q. Do you live in the corner house? A. No, I don't.

By Mr. Fallon.

Q. How much do you receive from the two houses on West street? A. I receive for a floor \$15, for one floor, and \$20 for the other.

By the Court.

20 Q. Each house? A. Yes, sir.

Q. That is \$54 for the two houses? A. Yes.

By Mr. Fallon.

Q. From the house on Shippen street, the small house? A. I get \$23.

Q. And when the stable on Shippen street is rented what do you receive for that? A. Eleven dollars, because I got storage upstairs and a horse downstairs.

30

By the Court.

Q. Where does your fifteen dollars come in on this? A. What is that?

Q. Which house do you live in? A. 474 West street.

Q. That is one of these West street houses? A. Yes, sir.

Q. And you occupy one floor? A. Yes, sir.

Q. And the corresponding floor of the other house

40

brings \$15, does it—the same floor in the other West street house brings \$15? A. How do you mean? I got two family houses.

Q. And you live in one of them? A. Yes, sir.

Q. The other one is just like it, isn't it? A. Yes; \$12 upstairs and \$15 downstairs.

Q. And you live downstairs in the other? A. Yes. 10

By Mr. Fallon.

Q. Those amounts of rents which you have mentioned seem to me to figure up \$149? A. Only? I think I made a mistake.

Q. Did you make a mistake in the amount you received monthly for rent or did you make a mistake in the amount that you stated the rent to be?

A. Maybe I did not include all my rents. 20

THE COURT—That is in there.

Q. How much do you receive for the store in the corner house? A. I receive forty dollars a month.

Q. How many stories are there to that house? A. Three tenants.

Q. What does the tenant on the first floor pay? A. Twelve dollars.

Q. What does the tenant on the next floor pay? A. Eleven dollars. 30

Q. What does the tenant on the third floor pay? A. Ten dollars.

THE COURT—That is seventy-three dollars; there is a difference of twelve dollars.

Q. Yes. In addition to the rent that is paid by the parties who occupy the Shippen street house do they pay any charges against the property? A. They pay the rent and the water beside; they got a lease, you know. 40

Q. Have you had any difficulty in renting your property at all? A. Sir?

Q. Have you had any difficulty in renting your property to tenants? A. Now? Yes, sir. I will have a different class of people if the tunnel goes on like that.

10 MR. FALLON (to jury)—Do you understand the witness?

A. I say I have a different kind of people before that trouble happens to me, the tunnel; now I have to take anything that comes along, because I don't want to have the house empty.

Q. Since the commencement of this tunnel work near your property have you experienced any noises or vibrations? A. Oh, yes.

20 MR. VREDENBURGH—Question objected to. What vibrations might have been, more or less, cannot be the question in this litigation. This question is on the value of this property under the plaintiff's house, and what the value of the remaining property is, and what damage may have been done somewhere else, certainly cannot be evidence. I object to this question, therefore, as being incompetent and immaterial.

30

MR. FALLON—I submit the plaintiff is entitled to damages.

THE COURT—They are entitled to the damage that they sustain in the taking of the property in the manner provided by law.

40 MR. FALLON—I submit that the question which has now been asked is a proper question and should be admitted.

THE COURT—It seems to me quite plain, gentlemen, that the damages in this case should be such as would arise from the legal taking of the property in a legal way. Now, if the construction of the tunnel is done in such a way as to contravene the language of the statute that would not seem to be within the province 10 of this jury; what this jury is to assess is the injury to the property, due to the construction of the tunnel in such a way as to keep the surface of the ground above the same firm and safe for buildings and other erections thereon. If this company should set off blasts that would break the windows of the building that would be entirely out of this case; if the tunnel, after it is built, 20 should be so imperfectly built as to allow the rock above it to settle down and destroy the buildings on top, that would be an unlawful method. It is not a question, in my mind, of negligence; it is a question of absolute statutory duty, and the violation of that statutory duty on the part of the company would, I think, as Mr. Vredenburgh has suggested, undoubtedly give the owners a 30 right to claim separate damages, and very probably, under the proper case, a right to ask for an injunction against the construction of the tunnel. It will, therefore, have to be the ruling of the Court, for the purposes of this case, and that would result in the exclusion of the pending question.

MR. FALLON—Your Honor overrules that question.

THE COURT—Yes, that question is overruled. Counsel for property owner excepts.

10 THE COURT—Of course, you may put such other questions as you think reasonably necessary to bring out the point, and we may as well consider it as ruled on and disposed of.

By Mr. Fallon.

Q. Since the commencement of this tunnel work, have you, in your opinion, suffered any depreciation in the value of your property?

20 Objected to as incompetent and immaterial.

THE COURT—I think that would seem to be competent.

30 MR. VREDENBURGH—It is the same question, may it please your Honor, in a little different shape, and I object to it for the same reason, incompetent and immaterial. Your Honor will have to charge the jury that the time when this question is to be fixed is the date of application to the Judge who appointed the Commission.

Question allowed.

Counsel for railroad company prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. s.]

40 Q. Do you know, of your own knowledge, about how much of your own property is to be taken by

the Pennsylvania, New Jersey and New York Railroad Company for tunnel purposes? A. I don't understand just exactly what you say; I don't understand very good English.

Q. (Question read). A. Well, I will have my husband answer for this; I don't bother very much about it.

10

By the Court.

Q. You don't know very much about it? A. No; my husband attends to that.

THE COURT—She says she does not know definitely.

By Mr. Fallon.

Q. Did this property come to you through inheritance or by purchase? A. Sir? 20

Q. Did this property come to you through inheritance?

THE COURT—Don't use such big words. Ask whether she bought it.

THE WITNESS—I built the house.

By the Court.

Q. Did you buy the property? A. We built ourselves. 30

Q. Did you buy the lot? A. Yes.

Q. Paid the money for the lot? A. Yes.

By Mr. Fallon.

Q. Who has the management of your property?
A. My husband, Mr. Schwarz.

By the Court.

Q. Where were you born? A. In Paris. 40

Cross-examination by Mr. Vredenburg.

Q. The corner building is a three-story frame building, I think you said? A. Yes, sir.

Q. And the first floor is occupied for what purpose? A. Well, for housework; the tenant lives there.

Q. The saloon? A. No, sir; the saloon first, and
10 then upstairs is a tenant.

Q. What is the first floor?

THE COURT—She is thinking of one flight up; that is the French first floor.

THE WITNESS—Yes; the first floor is the tenant.

THE COURT—On the ground?

20 THE WITNESS—On the ground is a saloon.

Q. Who is the tenant? A. Of the saloon? Mr. Heinzelmann.

Q. And he occupies the basement and first floor, does he? A. No, sir; he occupies the saloon and two rooms upstairs.

Q. How much does he pay? A. Forty dollars.

Q. How long has he been there? A. He has been there now a year and a couple of months.

30 Q. Who occupies the next story? A. Mr. Stowell.

Q. How much does he pay? A. Twelve dollars.

Q. How long has he been there? A. He is there about—well, I think about six or eight months.

Q. Who occupies the next? A. Upstairs is Mr. Scaffen.

Q. How much is he paying? A. Ten dollars.

Q. Are they all the tenants in that building? A. Another one on the other side.

40 Q. What is his name? A. Mr. Meyer.

Q. How long has Mr. Meyer been there? A. One month.

Q. How much does he pay? A. Eleven dollars.

Q. Now, the next house on West street is occupied by whom? A. I occupy the basement and the first floor.

Q. Do you occupy the whole house? A. No; it is the basement downstairs and the first floor, and then another floor upstairs. 10

Q. And who occupies the floor on the second story? A. Mr. Martillio.

THE COURT—You will remember, the first floor in the witness' mind, is the floor above the ground; it is one flight up, it is the first floor with her.

MR. VREDENBURGH—She occupies the first floor and basement of this second house. There is only one other tenant. 20

THE WITNESS—And then I got another tenant upstairs, Mr. Martillio, an Italian.

Q. How much does he pay? A. Twelve dollars.

Q. How long has he been there? A. A year and a half.

Q. The second house? A. It is a basement and first floor, like mine. 30

Q. Who occupies the basement and first floor of that house? A. Mr. Brockey.

Q. How much does he pay? A. Fifteen dollars.

Q. How long has he been there? A. Two years.

Q. Is that all the houses on West street? A. And then upstairs is another floor—on top of those tenants.

Q. And what is his name? A. Silberg.

Q. How much does he pay? A. Twelve dollars. 40

Q. How long has he been there? A. He has been there, I guess a year; I don't know exactly.

Q. Are those the only houses fronting on West street? A. Sir?

THE COURT—Are those the only houses owned by you fronting on West street?

10

THE WITNESS—Yes, sir.

Q. Now, on Shippen street, the first is a stable? A. Yes.

Q. Who occupies that? A. Beckman.

Q. A man by the name of Beckman? A. Yes.

Q. How long has he been there? A. Now, it goes on a month.

Q. How much does he pay this month? A. Seven dollars; and then upstairs over the stable I got to rent yet.

20

Q. How much does that pay, that upstairs? A. Four dollars.

Q. How long has he been there? A. For a year.

Q. Then you have still another house on West street? A. Yes, sir—on Shippen street, you mean?

THE COURT—Another house on Shippen street?

30

THE WITNESS—519 Shippen street.

Q. Who occupies that? A. Girardeau.

Q. How much does he pay? A. Twenty-three dollars.

Q. How long has he been there? A. About nineteen months, something like that, I think.

Q. Is that all the tenants you have? A. That is all the tenants I got.

40

CHRISTIAN SCHWARZ, a witness called on behalf of the property owners and sworn, testified as follows:

Direct examination by Mr. Fallon.

Q. You are the husband of Marie Schwarz, who was just upon the stand? A. Yes, sir.

Q. Do you assume the management of the property of your wife at Shippen and West streets? A. Yes, sir.

Q. How long has your wife owned that property? A. Thirteen or fourteen years.

Q. Do you remember what year you bought it? A. It was 1890 or 1891, something like that.

Q. At the time it was purchased was the property improved, were there any buildings upon it? A. No, sir; there was only a frame house there; in the middle of the yard was a garden; there was in the streets nothing at all, no opening at all.

Q. How much was paid for the lots that you speak of? A. I paid for the land \$2,500.

Q. Did that include the property upon which this small building is erected? A. The small building was on it.

Q. Did you have erected these other buildings which are now upon the property? A. Yes, sir.

Q. When were those erected? A. About one or two years after.

Q. What was the cost of the building of those houses? A. I guess the building cost me around \$13,000, the three buildings, the new ones.

Q. And what was done with the old building which you spoke of? A. I have to improve the old house and put in new glass in the building, and new basement, and fit up a kitchen in the basement with all improvements, and have to pay for that moving—to rebuild the house and make a decent

house of it, I have to pay about a thousand dollar bill.

Q. Had you experienced any difficulty in renting your premises before this tunnel work was commenced? A. None at all.

Q. Have you experienced any difficulty in renting your premises since the tunnel was commenced?
10

Objected to as incompetent, irrelevant and immaterial.

Question allowed.

Counsel for railroad company prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

20

Q. What do you consider to be the value of the property which your wife owns at Shippen and West street? A. About \$30,000.

Q. How do you estimate that? A. Well, for the money expended, and the surroundings—from the income—I have figured all this.

Q. What is the income of the property? A. It is about \$160 a month; \$161 or \$160.

Q. You say that the building of these houses cost you about \$13,000; that is what you stated? A. \$13,000, and then I have to remove the house and pay a thousand dollar bill; then I pay for two streets, two sewers, paving, macadamizing, flagging, curbing, and opening for the streets around in Summit avenue and Oak street; it cost me at least about \$1,500, too.
30

By the Court.

Q. How much are your taxes Mr. Schwarz? A. I am taxed \$7,100.
40

Q. What do you pay a year in taxes? A. I pay about \$165 to \$175; I am not sure; I have not the tax bill with me.

Q. What do you pay for insurance? A. I pay insurance \$75.

Q. One year or three? A. Three years.

Q. That is \$25 a year, is it? A. Yes.

Q. How much have you got the property insured for? A. \$12,500; I insured that property twelve years ago; I insured it for \$12,500; then I raised the prices, but I let that stay.

Q. What does it cost you to keep it in repair? A. About \$75 a year.

Q. \$75 a year? A. Yes.

Q. On those six houses? A. On four houses.

Q. Two houses on West street? A. Yes.

Q. And the big one on the corner? A. Yes, and the small one in the rear. 20

Q. Another in the rear? A. There is nothing to pay for the rear house; the party that leased the place have to repair and do everything, and have to pay the water, and do everything.

Q. How often do you paint? A. Every five years.

Q. How much does it cost you to paint the whole property? A. I paid this year \$200.

Q. For all these buildings? A. Only for the three houses and the barn. 30

Q. What does it cost you to paint the whole property? A. I can tell you when I figure without the other house; I rent to a party and they have to paint it and do everything; they do the repairs and the water.

Q. You have paid \$200 to paint? A. Yes, sir; about; my contract was \$190.

Q. Call it \$200 a year; once in five years; that is, \$40 a year to paint? A. Yes.

Q. Don't you have any repairs to the plumbing to make? A. Well, seldom.

Q. Don't you have any carpenter work to do? A. I do most of the carpenter work myself.

Q. You think you can keep that property in repair for \$75? A. Well, say \$100.

Q. Well, allow \$100; that is the outside figure?

10 A. That is the outside figure.

Q. Any mortgage on it? A. Yes, sir; \$7,000.

Q. At what rate? A. Five per cent.

Q. You have to pay water rents, don't you? A. Yes, sir.

Q. How much are they? A. They vary from \$50 to \$60 a year.

By Mr. Fallon.

20 Q. Can you say whether or not property has increased in value in West Hoboken during this last few years? A. Yes, property has raised about twenty-five per cent. in that neighborhood.

Q. How much has it increased in value, property in your neighborhood, during this past year, do you know?

30 MR. VREDENBURGH—I object to it. He is telling us something that can only be told us, if at all, by experts. I object to it on the ground that the witness is not an expert.

THE COURT—The objection seems to be well taken.

MR. FALLON—Question withdrawn.

40 Q. Do you know of any property that was sold right in your immediate vicinity, lately? A. Well, a house one block from my house, three-story, was sold on the first of November for \$13,500.

Q. Three-story frame house? A. Three-story frame house, without improvements; one side there is opening in the streets in the sewers.

Q. How far from your property was that house which was sold? A. 200 feet, the next block; the corner house.

Q. Would it be north of you or south of you? A. Southwest. 10

Q. You say there is no street right through there? A. No, sir.

Q. How far does the street extend there? A. It goes just in front of the house, and at the side of the house; about fifty feet; an entrance; and then there is a wall here, a fence.

Q. Have you undertaken to keep yourself informed of property values in West Hoboken, and particularly in the vicinity of your property? A. I went around to see another building that was sold 20 for \$14,900, a three-story house in the same block, only it is facing on Spring street—in the same block that I live.

Cross-examination by Mr. Vredenburg.

Q. You were a witness as to the value of the property before certain Commissioners two or three months ago? A. Yes, sir.

Q. About how long ago was that? A. I guess it was in March; it was six or seven months ago, in 30 the Spring.

Q. Did you testify as follows before them? "What do you consider to be the value of the whole property that you have mentioned, in a lump sum?" A. Yes, sir.

Q. And did you swear that you considered it then worth \$25,000? A. Yes, sir.

Q. Now, you say that it is worth \$30,000? A. Yes, sir.

Q. You think in those few months it has in- 40

creased in value \$5,000? A. Increased about 20 to 25 per cent., the property around there.

Q. Now, you say that a house somewhere near you sold for \$13,500? A. Yes, sir.

Q. That was, you say, within 200 feet of you? A. Yes, sir.

Q. When was that sale, Mr. Schwarz? A. The
10 4th of November.

Q. Do you say that was more than it would have sold for a year ago, by 25 per cent? A. Yes, sir; that house was bought by a party.

Q. Just answer my question? A. Yes, it was worth 25 per cent more.

Q. That was really 25 per cent. more than it was worth a year ago? A. Yes, sir.

Q. You said something about water; where do you get your water from? A. From the water
20 company.

Q. There is a water company there that furnishes water to your house? A. Yes, sir.

Q. I understand you to say in answer to the Judge's question, that you had painted the house? A. I had it painted.

Q. You had it painted? A. Yes.

Q. And when was that? A. It was in the Spring; it was about in May.

Q. Well, it was since you testified? A. Yes,
30 sir; of course I have to paint it; the Mutual Life Insurance Company hold a mortgage on it and send an inspector around, and each time they remark that the building needs something, and right away I receive notice it must be done; I received that notice from the Mutual Life Insurance Company; that is the reason I paint it.

Q. The mortgagee obliges you to keep it up? A. I have to keep the property in good order.

Q. You say that you can keep it in good condi-

tion, repair and paint, etc., at an average of \$100 a year? A. Yes, sir.

Q. The four houses? A. I didn't speak about the rear house; of course that house is rented, with the lease that the man has to fix it up.

Q. Which tenant is that? A. In the little house with the barn.

Q. The one that rents for \$23? A. Yes, sir. 10

Q. He has been there nineteen months? A. Yes, sir.

Q. And he had agreed to keep it in repair? A. He agreed to pay the water and keep it in repair.

Q. And the keeping of that in repair is in addition to the \$100; you think \$100 would keep all the rest of the property in repair a year? A. That is what I figure, yes, sir.

Q. You heard your experts swear as to the value of this property before, didn't you? A. Yes, sir. 20

Q. They swore that they thought it was worth \$21,000, didn't they? A. One swore \$22,900.

Q. And the other one? A. The other one, \$22,000.

Q. That is your recollection, is it? A. Yes, sir.

CHARLES SINGER, called on behalf of the property owners and sworn, testified as follows:

Direct examination by Mr. Fallon.

I am in the real estate business; I live in the Town of Union; 145 Bergenline avenue is my office address: I know this property of Mrs. Schwarz. 30

Q. You testified concerning this property before the Condemnation Commissioners, did you not? A. I did.

Q. Did I understand you to say that you were acquainted with property values in the vicinity of the Schwarz property? A. I am. 40

Q. And in West Hoboken generally? A. Yes, sir.

By the Court.

Q. How long have you been in the real estate business in that locality? A. Our firm is in business forty-five years; I have been a member of that
10 firm for six years; I have followed real estate for nine years.

Q. There? A. In that particular locality.

By Mr. Vredenburg.

Q. In the Town of Union? A. The Town of Union.

By Mr. Fallon.

20 Q. Have you examined the Schwarz property?
A. I have.

Q. When did you examine it last? A. I examined it about a week prior to the examination in Hoboken before the Commissioners; I don't remember the exact date.

MR. VREDENBURGH—We have it here; the 24th of March it is here.

30 THE WITNESS—I can't say the date, but I know it is about that time.

Q. Have you seen the property since then? A. I have.

Q. Can you state to us whether or not property in that locality has been increasing in value within the last few years, and if so, to what extent? A. Do you want me to answer as to realty, or taking both together—

40 Q. Real estate; and I mean by real estate, com-

prising the lot and the house? A. Well, real estate has advanced in that neighborhood anywhere from 20 to 25 per cent., construction values, as high as 45 per cent.

Q. You mean by "construction values" what?

A. Building.

THE COURT—The cost of building? 10

THE WITNESS—Yes.

Q. Is there much of a demand for property in that vicinity? A. There is.

Q. Can the demand be supplied as rapidly as one would desire it, in that locality? A. Well, we find not; we find that we have a greater demand than a supply, that is, for renting purposes.

Q. What does the property of Mrs. Schwarz consist of; just tell us that? A. I find that it consists of a frame three-story store and dwelling, No. 476 West street; that is the corner; adjoining that, and part of this building, so to speak, is a double house, two story and basement; a few feet to the west of that is a two-story frame stable, and a little to the west of that, and to the extreme westerly boundary line of that property, is a two and a half story frame basement dwelling. 20

Q. What would you consider to be the value of each parcel of that property, and then also state to us the value of it as a whole. 30

MR. VREDENBURGH—I object to that value as incompetent and immaterial. My reason for objection is that it is not confined to any time, of course, it must be confined to the 28th day of January, 1905; he cannot ask what the property is worth now; that has no materiality at all; the question is what it was worth January 28, 1905. 40

Q. State to us, if you can, what would have been the value of that property in January, 1905; state it particularly, and then generally afterwards? A. In January, 1905, I did not make an examination of this property; I made an examination of this property, I think, about a week prior to this examination held in Hoboken, and from my examination
10 of the property made at the time, I did not see anything extraordinary that had taken place in the shape of repairs.

By the Court.

Q. Would you conclude that its value was the same in January, 1905, as it was at the time you made the examination? A. Yes, sir; only a difference of two months.

Q. If there was any difference, just state it? A.
20 I don't know of any difference.

By Mr. Fallon.

Q. Just state, if you will, what you consider to be the value of the property at that time? A. I calculate this property to be worth, if you will let me give it in my own way, or do you want—

THE COURT—Give it in your own way.

30 THE WITNESS—I estimate the corner, that is No. 476 West street, back to about 80 feet in depth, which is all that is needed for practical building purposes, I estimated that at \$2,200.

THE COURT—The land?

40 THE WITNESS—The land; I estimated the lot next to that—that is, No. 474 West street; I don't know the right number—the same depth, 80 feet, \$1,400; and I esti-

mated the part of the lot, which is about 16 feet, I presume, and it goes back to the full depth—16 feet, and runs back to 28, but that is the extreme end; I should say about twenty-five—I estimated that at \$700; and then I only valued—I give the best value I could to the corner, because I thought that was 10 the most valuable property, and I took that part of the rear, 25 by 78, on which the small building now stands—I estimated that at \$800; now, I may have placed my value on the corner \$100 or \$200 more; if I have, then I have increased the value of the rear; then I could say this lot in the rear was worth more.

20

By the Court.

Q. Have you given us all the land?

THE WITNESS—Yes; that is, \$5,100.

THE COURT—Now the buildings.

THE WITNESS—The building, the three-story frame building on the corner, No. 476, I value that at \$8,000; but I want to say and explain that a value of that 30 kind wouldn't be fair to the owner, and I don't think he would sell it that way; if I were to value the property fairly, I I would take the double house and the corner house together, because there seems to be a party wall there; they are not separate houses; I would estimate the double house adjoining that, this No. 474 and 472, at \$5,700 or, in other words, I would want \$13,700 for the cor- 40

ner and the double house on West street; the stable, two-story frame, I would estimate that at \$400.

Q. Is that on the 16-foot lot? A. No; that is in the rear; the two and a half story frame basement house I would estimate at \$2,000; I calculate \$21,200 to be a fair estimate of value of that property.

10 Q. Do you ever figure your values on the gross and net rentals of property? A. Always in making a value.

Q. What rule do you follow in making that estimate? A. Well, a piece of property ought to bring eight per cent. in the gross?

Q. Ought it not to bring ten per cent. gross? A. Well, some do and some don't.

20 Q. Ought not a property to bring for a saloon, two family houses, a small stable and land pretty well covered up and all tenanted, ought not that to bring ten per cent. gross? A. My experience is that it does not.

By Mr. Fallon.

Q. Now, then, in stating your value to be as you just said, \$21,200, do you consider that that property could be purchased, with those buildings erected upon it, in March last for that figure? A. No.

30 Q. Would it be greater or less then? A. Greater.

Q. How much greater? A. Well, I made inquiry, and my inquiry, as I examined it, was borne out pretty much by the condition of the building.

THE COURT—That would involve new buildings. I do not think that is a fair criterion here. The question is, what would it be worth as it then stood.

40

Question withdrawn.

Q. This \$21,200 valuation that you fixed; did you estimate that as a selling price? A. I would estimate that as a selling price.

Q. Have you any knowledge of a house that was sold in the immediate vicinity of Mr. Schwarz's recently? A. I have of some land, and I have a lot of figures that were submitted in an estimate given to our firm in trying to purchase some land in that 10 neighborhood.

By Mr. Vredenburgh.

Q. You have what? A. He asked me if I had any knowledge of value of any houses; I have no knowledge of houses; I have of land.

By Mr. Fallon.

Q. Substitute the word, "properties" for "houses" and tell us what knowledge you have of the value 20 of property in that vicinity? A. At the southwest corner of Summit avenue and Union street a party named Benner purchased a lot there for \$2,000.

By Mr. Vredenburgh.

Q. On the corner? A. Yes.

Q. 25 by 100? A. Yes.

Q. When? A. Well, I have not the exact date, but it is not very remote; something like six months ago. 30

By the Court.

Q. Within a year? A. Yes.

Q. How far away is that? A. That is several blocks to the south.

Q. Be a little more definite; four or five, or six or twelve? A. I couldn't tell off hand; if you would give me the map.

Map handed to witness.

Q. There is a little black dot on there for the property; how many blocks is it? A. Six blocks.

Q. North or south? A. South.

By Mr. Fallon.

Q. Any other properties that you recall? A. Yes; we have one corner Monastery street and 10 Summit avenue, \$1,800.

Q. How far away would that be?

MR. VREDENBURGH—There is one little uncertainty yet. Did that sale go through your hands?

THE WITNESS—It did not.

MR. VREDENBURGH—How can he tell about it; it seems to be purely hearsay.

20 Q. How did you ascertain those facts? A. I only say this because my own experience is that a corner lot is worth \$2,000 in that particular neighborhood, and sales have borne that out.

Q. You know of sales that have been made that have borne that out? A. Yes.

30 MR. VREDENBURGH—May it please your Honor, he says such a sale took place; he apparently only knows—perhaps he read it in the paper.

THE WITNESS—I heard it in conversation with real estate men.

By the Court.

Q. You have heard other men talk about it? A. Yes.

40 THE COURT—That hardly seems competent, I suppose.

By Mr. Fallon.

Q. Did you learn of these values in the general course of your business as a real estate agent? A. Yes; I have here a lot of facts that I can give you; at that date I think that anybody will tell you that a \$2,000 valuation for a corner lot is a very fair and conservative value anywhere in that locality. 10

By the Court.

Q. You are giving that now as your opinion as a real estate man who has had nine years' experience in that locality? A. I do.

By Mr. Fallon.

Q. Do you know how much insurance is carried on this property? A. I do not.

Q. In your experience as a real estate agent have you ascertained that the building of a tunnel underneath one's property would affect the value of that property? 20

MR. VREDENBURGH—Question objected to as incompetent and immaterial. Certainly that is objectionable; this witness is not an expert on tunnels.

THE COURT—He is entitled to say yes or no to that question. 30

Question read.

MR. VREDENBURGH—I object to that question, and I do it on this ground, that this witness cannot be, and does not pretend to be an expert on the question of tunnels.

THE COURT—We are trying to find out whether he has any experience on the 40

subject. I will let him answer this question.

Counsel for railroad company prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

10 A. Yes.

THE COURT—The other side should be allowed to cross-examine him as to how he found it out.

MR. FALLON—I am perfectly satisfied.

Cross-examination by Mr. Vredenburg.

Q. What tunnel do you refer to? A. The West Shore.

20 Q. At what point of the West Shore tunnel? A. In its passage through the Town of Union.

Q. Any particular point of that tunnel? A. Anywhere between Bergenline avenue and the Town of Union, and Hudson avenue in the Town of Union, between 4th and 5th streets.

Q. Between Bergenline and what other street? A. And practically the entire distance from east to west in the Town of Union, between 4th and 5th streets, which is about the line of the West Shore tunnel in our town.

30 Q. Is that the only tunnel you have reference to? A. That is the only tunnel I have reference to.

Q. How deep is that tunnel? A. About 80 or 90 feet.

Q. What is the character of the tunnel; what is the size of the tunnel? A. It is a two track tunnel.

Q. There are two tracks in one tunnel? A. Yes.

40 Q. Is there more than one tunnel, or are there two tunnels? A. A single tunnel.

Q. What is operated in that tunnel? A. A railroad.

Q. Do you mean it is a freight road or a passenger road? A. Both.

Q. Large freight trains are run through, and passenger trains? A. Such as you would find in the West Shore Railroad, passenger and freight; it is their entrance to their terminal. 10

Q. Operated by electricity or by steam—by engines? A. By engines.

Q. Are there shafts through which smoke and gases come? A. There are.

MR. VREDENBURGH—I respectfully insist that he is not an expert on a question of this kind.

MR. FALLON—I do not suppose he is an expert upon the building of tunnels, but 20 I think perhaps he is an expert on the value of properties crossing tunnels.

MR. VREDENBURGH—This is the position: This gentleman is going to tell us what the effect of this tunnel will be on this house. Now, his experience, in order that he may give an opinion to govern this Court and jury, is that he knows of one tunnel, the West Shore, which is operated, as he says, 80 feet or 90 feet 30 below the surface, by steam, and it operates a freight road, and through it the smoke and steam escape by way of vents. How can a man become an expert, first, only knowing of one tunnel, and secondly, that tunnel being as different from this tunnel as day from night, and yet he is going to give us his opinion as to what the effect would be on this. That is a question for the jury to decide. 40

THE COURT—I think he can be allowed to answer.

Counsel for railroad company prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

10 *By Mr. Fallon.*

Q. What knowledge have you of the depreciation of the values of properties through there, over the tunnel, which you speak of, or immediately adjacent to it?

MR. VREDENBURGH—I object to that question for the same reason; incompetent and immaterial.

20 THE COURT—I will allow your objection and exception to go to the whole line of questions on this subject.

A. I was Clerk of the Town of Union for six years, and I am familiar with land in the Town of Union and its value. Along the line of the West Shore tunnel there was hardly any development whatever.

30 MR. VREDENBURGH—Objected to on the grounds heretofore stated.

THE COURT—He was asked what his experience was.

Counsel for the railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

By the Court.

40 Q. You say you were Clerk of the Town of

Union and are familiar with the conditions there at that time? A. Yes, I am.

THE COURT—Well, you can stop it at that point.

By Mr. Fallon.

Q. During any part of that time were you engaged in the real estate business? A. I was. 10

Q. What knowledge did you acquire through your real estate business, and also as Clerk of the Town of Union, as to the property values crossing that tunnel?

MR. VREDENBURGH—I object to that.

MR. FALLON—I will reframe that question.

Q. During the time that you were engaged in the real estate business state to us, if you can, what knowledge you had of the values of property which are crossed by that tunnel? 20

THE COURT—What do you mean by that question; how many pieces he knows about?

MR. FALLON—I want him to state generally all the knowledge he has of properties affected by the tunnel. I do not want him to pick out isolated pieces. 30

THE COURT—You see, he started to undertake to say what the effect of the tunnel was.

THE WITNESS—You stopped me, your Honor, before I had a chance.

The stenographer reads the answer of the witness, on page 37 of these minutes, as follows: "I was Clerk of the Town of 40

Union for six years, and I am familiar with land in the Town of Union and its value."

THE COURT—Isn't that what you said?

10 THE WITNESS—I thought you meant the local improvements; I meant improvement of the land by building.

20 THE COURT—Development, I mean. Now, I do not propose to have the witness testify as to the erection of new buildings on vacant land, when it has nothing to do with this case. You are entitled to find out how well qualified he is and what, in his opinion, will be the effect of the building of this tunnel, under these circumstances, on this property.

MR. FALLON—Your Honor assumes there is a building covering the entire property along which this tunnel goes.

30 THE COURT—I do not assume anything about that. I say you are trying now to have the jury judge, from what happened in Weehawken, or rather, the Town of Union, as to the West Shore tunnel, that a corresponding effect will happen here, and you are asking him to testify what did happen. We do not want to know what happened in Weehawken; we want to know what he says, as an expert, will happen here in this property.

By Mr. Fallon.

Q. From your knowledge of what happened in the Town of Union, as regards the effect on realty
40 values after the building of the West Shore tunnel,

what, in your opinion, would be the effect as against the values of the Schwarz property by reason of the construction of that tunnel?

MR. VREDENBURGH—I object to the question, may it please your Honor, because the witness has not proved himself to be an expert, and because the question, as put to him, is illegal. His ability to speak as to what the effect of a tunnel is on land is confined to one observation of one thing, which is different from this; it is called a tunnel, but it is a different tunnel from this entirely; there the smoke and gases escape from the engines through shafts. 10

MR. FALLON—There is no testimony of that in this case. I submit, if your Honor please, that he is asserting false premises here. 20

THE COURT—I want to hear Mr. Vredenburg through.

MR. VREDENBURGH (continuing)—So I say that this witness now occupies the same position as the witness in the case of Brose (?) against the State, in which Judge Garrison gave his opinion clearly that he is a mere observer of something that happened more or less under circumstances or which are similar only because it happened to have the name of a tunnel—a tunnel that is only a few feet from the surface, or that is so used that it emits smoke and gases; that is a very different thing and its effect on real estate would be very different from a tunnel that is down many feet from 30 40

surface of the earth, from which no gases and no smoke, and no noise come. So I respectfully insist that this witness has not placed himself in such a position as to entitle him to answer in this Court this question.

10 THE COURT—Do you mean to say Mr. Vredenburgh, that there is not any other tunnel which is substantially similar, in all its characteristics to the one now proposed to be constructed?

MR. VREDENBURGH—I do not know of any in the world of the same construction as this.

20 THE COURT—Then may we not take the best criterion that we have; otherwise there would be no criterion by which to estimate the depreciation.

MR. VREDENBURGH—No; but the jury are as competent to pass on that question as the witness.

30 THE COURT—What evidence would the other side be entitled to lay before the jury, from which they could judge? They could go there and inspect the premises, and then pass upon the depreciation of the value, without any testimony at all, as to the effect of a tunnel.

MR. VREDENBURGH—It has to be confined to a tunnel of similar character to this.

MR. FALLON—You say there is none.

40 MR. VREDENBURGH—Any tunnel, may it please your Honor, does not support evidence before this jury and this Court as to depreciation here. This gentleman is

nothing more than an observer. A man who had gone up there and stood on the West Shore tunnel, and inquired among the neighbors who lived there, would he be a competent witness to say what this tunnel would do? He was a mere observer, as we all are observers; Courts are observers, juries are observers, and all occupy the same position so far as observation is concerned; that is the point, may it please your Honor. 10

Your Honor will also recollect this decision, "The opinion of an expert upon matters of mere speculation is inadmissible." Now, what can be more a matter of speculation than to ask this witness what he speculates as to the damage there? 20

THE COURT—I will let him answer.

Counsel for railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

THE WITNESS—There is one question that I am not positive on that I would like to ask the Court, if he would enlighten me: If an award is made, such as in a railroad of this kind, the owner, of course, can only sell it subject to this award, or whatever is given? 30

THE COURT—Subject to the tunnel right.

THE WITNESS—That easement?

THE COURT—That is right.

THE WITNESS—You could not give a full covenant warranty, free and clear of all 40

encumbrance, without making an exception, could you?

THE COURT—The right of the railroad to build a tunnel would have to be excepted.

10 MR. VREDENBURGH—I object further; he is here to ask questions, it appears; he has not any opinion; he asks the Court—

MR. FALLON—He is asking the Court's opinion as a lawyer.

20 MR. VREDENBURGH—Then he don't know; he is forming his judgment on some basis he don't know, and what is his judgment worth? I respectfully insist that he has shown by his last question that he is not entitled to give an opinion.

THE COURT—The jury will have to decide.

MR. VREDENBURGH—I except.

THE WITNESS—I should say that if I owned a piece of property which was affected—

THE COURT—Do not answer that way.

MR. FALLON—Just state what you found to be the general consensus of opinion.

30 *By the Court.*

Q. In view of your knowledge of the subject, what do you consider the effect on the value of the Schwarz property?

Objection renewed. Question allowed.

Counsel for railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

40

C. W. PARKER, J. [L. S.]

A. Anywhere from thirty to fifty per cent.

By Mr. Fallon.

Q. What actuates you in placing that percentage upon the depreciation? A. Because Mrs. Schwarz or any other individual who will own property affected as this property will be, to sell that property, cannot give a full covenant warranty deed without placing that exception and saying that the exception is that there is a railroad that has a right under this property, practically its entire length. 10

MR. VREDENBURGH—I object, may it please your Honor, to that answer, and ask that it be stricken out, because it does not help us at all.

THE COURT—I will let it stand.

Counsel for railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly. 20

C. W. PARKER, J. [L. s.]

Q. What other reasons have you, if any, for reaching the conclusion that the property will depreciate in value from thirty to fifty per cent.? A. Because of my experience in the town in which I live; as I say, the West Shore tunnel traverses that town from east to west, and the entire town has developed except that particular portion; property above that tunnel was not held by anybody to be worth as much as the property in other parts of the town. 30

Q. Prior to the commencement of the tunnel property at that point was not held to be as valuable?

MR. VREDENBURGH—Your Honor, this gentleman was not in business when that tunnel was built. 40

THE WITNESS—I was not in business, but I have a very distinct recollection of the construction of that tunnel.

By the Court.

Q. That was built about 1884? A. Yes; somewhere around that.

10

MR. VREDENBURGH—He is going to tell us of a year before the tunnel was built, and it is shown he was not in business at that time.

Question withdrawn.

By Mr. Fallon.

Q. What are the relative values of properties in the Town of Union as compared with the Town of West Hoboken; can you state? A. Well, if you can say under similar circumstances, property of the same kind—

20

THE COURT—Ordinary property, irrespective of the tunnel?

A. About the same, except Bergenline Avenue, where they are four times as valuable as this particular property.

30 Q. Does this West Shore tunnel run through Bergenline avenue? A. It passes along there.

Q. Can you state to us what amount of depreciation was caused in the real estate values of the properties through which this tunnel passed in the Town of Union, other than Bergenline avenue property.

40

MR. VREDENBURGH—Objected to; incompetent and immaterial. The witness has said he was not in the real estate busi-

ness when that tunnel was built; he cannot be permitted to pass on the value of property before the tunnel was built.

THE COURT—I think I will exclude the question.

Q. As a real estate man, do you find there is much demand for the property that is over the West Shore tunnel? A. There was no demand for a long time; there was an auction sale and that disposed of some of it. 10

Q. And is there much of that property? A. Yes.

Q. For residential purposes, over the tunnel? A. Well, there is residences pretty much all over the tunnel; that is to say, the tunnel in Union Hill only touches the rear of the lots; it doesn't touch the front; the blocks in Union Hill are 250 feet deep, and I think the West Shore tunnel comes very near the center of the block in passing through. 20

MR. FALLON—I have spoken to Mr. Vredenburg about admitting in regard to the measurement of the property to be taken by the tunnel under the Schwarz property.

THE COURT—It is part of this record. Just state your question.

MR. FALLON—I want to get it stated on the record that there are 55 feet and 8 inches being taken on the West street end of the property, and 58 feet and 6 inches on the rear. 30

THE COURT—That is not a rectangular lot.

MR. FALLON—I am just reading from the map provided my client by the railroad company. 40

THE COURT—The map shows it is not rectangular; it would be slightly less than that if rectangular; it is diagonal; call it 55 and 58 and you will have it about right.

10 Q. If some 42 feet were taken from underneath the Schwarz property, at a point 182 feet or thereabouts below the surface of the street, what, in your opinion, would be the amount of the depreciation in value of that property caused by that taking away?

MR. VREDENBURGH—Question objected to, for the same reasons I have already given—incompetent, your Honor.

Question allowed.

20 Counsel for railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

A. Anywhere from 30 to 45, or 50 per cent.; I couldn't say—I never had a similar case, but I say that the prejudice—I claim that the damage done is the prejudice a man would have against purchasing a piece of property that would have some covenant or would convey an easement into it, giving a
30 certain right of way.

Q. Have you, in the course of your real estate business ascertained that tenants have a prejudice against living in properties over tunnels?

Objected to on the same grounds.

A. I never had any experience of that kind.

By the Court.

40 Q. Your idea as to depreciation in value is

due to what you consider to be a fact, that if a deed is offered to a purchaser and it has an easement, the purchaser would not be as willing to buy it, and that depreciation is from thirty to fifty per cent. in the case of a tunnel? A. I think that would certainly be the damage.

Q. And that is irrespective of any question whether there is any shaft or not? A. Yes, sir. 10

Q. It is the mere existence of the easement? A. I claim that is my argument.

By Mr. Fallon.

Q. Did you say that the shaft would make no difference? A. No, I would not.

THE COURT—He said he did not ascribe the shaft as a reason; if there was something in the deed to show there was an easement. 20

Q. If there was to be a shaft leading from 100 to 250 feet from the Schwarz property, would that increase or depreciate the value?

Same objection, ruling and exception, and sealed accordingly.

C. W. PARKER, J. [L. s.] 30

A. If it were a shaft for mere air, I don't believe it would make any difference; but if it were a shaft from which smoke was to be emitted, or gases coming up, then I think that there might be some considerable objection.

Q. In the West Shore tunnel that you speak of, have you noticed whether there was any smoke or gases arising from the shaft of that tunnel? A. Yes, there was considerable complaint and the Tunnel Company was compelled to raise their shaft, 40

and that was because of smoke coming from the engines.

Q. Do you recall ever having noticed smoke coming from the tunnel of the Lackawanna Road, or do you know anything of that tunnel? A. I have seen that, just casually passing, but I never had any experience there.

10 Q. But have you noticed whether it came out in small or large volume?

Question withdrawn.

Cross-examination by Mr. Vredenburg.

Q. The property through which the West Shore tunnel runs was owned by the Cosset estate, almost entirely, was it not? A. I believe you are right; I am quite sure you are right.

20 Q. And that Cosset estate was never put on the market until a few years ago, was it? You spoke of that public sale; that was the Cosset sale, wasn't it? A. No, sir.

Q. Well, that was the sale of the Cosset property? A. The Cosset property was never sold, to my recollection, at public sale.

Q. When was it put on the market to your recollection? A. The Cosset property was put on sale about 1888, I think.

30 Q. Well, prior to that date the tunnel had been built through this Cosset property? A. Yes, sir.

Q. And since that date the Cosset property, or the property over the tunnel, has been improved in the way of residence and buildings of different sorts? A. Yes, generally improved.

Q. Now, you say that your view of the depreciation is, that if a man owns a piece of land for which he cannot give an absolute deed, it immediately depreciates the property from thirty to fifty per cent., you think? A. I didn't say that; I said that in this

40

case, where there is a covenant, or where there is an easement given, whereby a man giving a deed would have to say, "I cannot give you all; I only can give you so much, subject to this easement,"—that I believe in that case the property would at least suffer from thirty to fifty per cent., very much depending upon the prejudice of the purchaser.

Q. That would be the same then, if it was to be occupied by a telegraph company, wouldn't it? A. No, I don't think so.

Q. Why not; what is the difference? A. Well, because the theory of realty is, that a man owns right down to the bowels of the earth, and if you are going to cut him off—

Q. Suppose these tunnels were to be used for the telephone or telegraph, the depreciation would be the same, wouldn't it? A. No.

Q. Why not.

20

THE COURT—Do you mean to lay cables in?

A. I believe it would be a difference.

Q. He would have to give a deed for that? A. Yes.

Q. Then he couldn't give an absolute deed; he would have to say the parties had a right to lay those electric wires and cables there, wouldn't he? A. That is right; but I say that the reason why I place my estimate of damage is because of the prejudice which a man has—he will simply say it is not free and clear. Here is a railroad beneath this property—

30

Q. It would be the same if these were wires; he would have to say he couldn't give a deed? A. Yes, but the existence of a wire would give no possible trouble of any kind, whereas the railroad may cause this man to fear his house is going to fall down.

40

Q. Then it would be because of a fear that this house was going to fall through those rocks? A. Yes.

Q. You think that is the reason? A. Yes, sir; I do.

Q. That is the ground of your judgment? A. Yes, sir.

10 Q. When a man went to buy that lot he would have to at least take thirty per cent off, because the man would be afraid his house was going to drop? A. I mean to say as a general proposition; a man might have a deed which is not entirely clear, and the purchaser would say that is not the condition I want, which is to have it free and clear; now you have a railroad that has a right under my property.

20 Q. Well, wouldn't the same thing be true if these things were to be used for cables? A. Yes, but of course the question of cables is not to be compared with the railroad.

Q. What would be the difference; you think in addition to this there will be a nuisance? A. Yes.

Q. And that affects your judgment? A. Yes, sir.

30 Q. What do you know about its being a nuisance? You have got to know something in order to arrive at a conclusion that the railroad is going to be a nuisance; what do you know about the noises that that will make; have you any knowledge at all? A. I only have the general knowledge.

Q. You guess at it, don't you? A. No.

Q. What is the weight of the cars; you couldn't tell me that, could you? A. No.

Q. What is to be the length of the trains? A. You gentleman say.

Q. You are guessing about that, aren't you? How many cars are to run through this a day? A.

40 I don't think that is a fair way to put it; you ask

me my experience; you only ask me to give reasons; I am not a mind reader.

Q. I know you are not, but you are a prophet. I am trying to find out what the foundation is upon which you do prophesy. I understood you first to say that your depreciation of the property was on account of the fact that a man couldn't give a deed for it? A. I believe that in itself is a 10 prejudice which any man will raise, always.

Q. That accounts for this amount you mention, thirty per cent? A. My contention is that the fact that it is a railroad.

Q. How much does the fact that it is a railroad have to do with it; suppose it was only for wires; how much would it be, what per cent.? A. Well it may differ a few per cent. on that; about twenty-five to forty per cent.

Q. That is if for wires? A. Well, maybe half 20 that sum.

Q. You would cut it in half if they intend to use it for wires? A. Yes, sir.

Q. What is your foundation for that? A. Because a man if he is selling a piece of property, and there is merely a wire under his property, that could be no nuisance; but I would have an awful time to convince him that a railroad was no nuisance.

Q. And you think that about fifteen per cent. 30 would be the amount which would convince him that the wires would be no nuisance, and thirty per cent. if it was a railroad without regard to the number of times the trains would run there, or the weight or noise, or light or anything of that kind? A. I mean to say this, that if I sold a piece of property, I would have to be more convinced than what you tell me you are going to do. You put hypothetical questions; I say, if a man was to sell realty and was held down to a written contract, 40

and he finds here is such a condition; he discounts the price of that property; there are uncertain questions which you don't include.

Q. Suppose there was a telegraph wire on the surface, right along past this man's house, where they would be compelled to put up wires and poles, what would that take off of the value; he couldn't
10 give a deed for that, could he? A. He has no right to give a deed, but he has a right to sign a consent.

Q. But he would have to make his deed subject to the right of the telegraph company to keep the poles up there? A. Yes.

Q. He couldn't give an absolute deed? A. Yes, he can; I can give an absolute deed for that, and I believe it is the custom in realty matters; any real estate man is only presumed to sell to the house
20 line.

Q. What would you say would be the depreciation in a lot if a telegraph wire went right in front of assuming that the man couldn't give a deed unless he told the purchaser, "Now, those people have a right to have these poles there, and any wires they please can be placed on there;" how much would you say that would depreciate the property?

A. I don't know, but I know that a man can raise the question; if he saw it there he would say,
30 "This nuisance in front of me has an affect upon its value, and for that reason I don't want your property."

Q. The city has a right to put a sewer through? A. Yes.

Q. A man must sell subject to that sewer, must he not?? A. Yes.

Q. He cannot give an absolute deed for that? A. I say he can.

Q. You think he can? A. Yes.

Q. Then a sewer wouldn't depreciate it at all? A. It benefits it.

Q. Notwithstanding he couldn't give a deed? I will assume that to be the law for the purposes of this case? A. I don't want to discuss law with Mr. Vredenburg; a sewer is a public benefit; this is a private benefit; that is what I mean.

Q. Assuming that the city owns the sewer and that a property owner cannot give an absolute deed unless he excepts the right of the city in the sewer, would the sewer injure the property? A. If you mean to tell me that there is to be a sewer in front of my property— 10

Q. No; you can either say "yes" or "no" to that question? A. Not if I could build the sewer myself.

Q. Suppose you couldn't build it yourself? A. Then I would say it would not be as valuable as another piece, for want of sewerage. 20

Q. What per cent. would you say? A. It is hard to say; about fifty per cent., because you couldn't put improvements on it; possibly fifty or seventy-five per cent. if I cannot get such privileges, because I could not put an improved house on it.

JACOB WEBER, a witness called on behalf of the property owners and sworn, testified as follows: 30

Direct examination by Mr. Fallon.

Q. What business are you in? A. Real estate and insurance. Q. How long have you been in that business? A. Nine years December 15th this year.

Q. Where do you live? A. 415 Clinton avenue, West Hoboken; I have lived in West Hoboken forty-two years.

Q. Are you acquainted with property owners 40

throughout West Hoboken generally? A. I have been since I have been in business.

Q. And are you acquainted particularly with property values about Shippen and West street? A. I am.

Q. Do you know the Schwarz property? A. I do.

Q. When did you examine it? A. Three days
10 ago.

Q. Describe the property? A. The property is located on Shippen and West streets; on the corner there is a three-story frame store and dwelling; adjacent to that there is two two-family houses.

THE COURT—This is where?

THE WITNESS—On West street near Shippen; and in the rear of Mr. Schwarz's property there is a stable; in the rear of that property there is a one-family house,
20 frame and brick basement.

Q. Can you state to us what in your opinion is the value of that property? A. The value of that property, in my estimation, is about \$22,000.

Q. And how do you estimate that? A. I would estimate the ground on the frontage of 476 West street at \$2,000; I am talking of the land now first; the lot next to the property I value at \$1,400; the
30 rear, 16 by 28 at \$700, and where the small building is located the property is valued at about \$1,000; I should say \$1,000.

Q. The property and building? A. No; just the land I am talking of; I am taking the land first.

By the Court.

Q. How much is the total for the land? A. \$5,400.

By Mr. Fallon.

Q. And for the buildings? A. The buildings at the corner I value at \$8,500; the two buildings on West street at \$6,500; the stable at \$500 and the basement house, that is, the house in the rear, at \$2,500.

THE COURT—That is \$18,000 for the build- 10
ings?

THE WITNESS—\$18,000; making a total of about \$23,000.

Q. \$23,400, isn't it? A. Well, I am giving the rear lot \$1,000; that would raise it about \$200 valuation on that street.

Q. Do you find, in the course of your business, the fact that a tunnel runs under property in any-wise affects the value of that property? 20

MR. VREDENBURGH—Objected to as incompetent and immaterial; the witness is not proved to be an expert.

THE COURT—Question allowed.

Counsel for railroad company prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

A. It does depreciate the value. 30

Q. Have you undertaken at any time within this last six months to sell property which is adjacent to this proposed tunnel? A. I have had calls—

MR. VREDENBURGH—Question objected to.

MR. FALLON—What is the objection to that?

MR. VREDENBURGH—How can he prove it; what has the experience of a man selling this property to do with it? 40

THE COURT—He may answer this.

A. Yes, it does affect it.

Q. In what respect? A. The people, as soon as they find an easement of that kind in property, decline it.

Q. Have you any personal knowledge of any such case? A. I have, in one particular—

10

MR. VREDENBURGH—I object to that question as immaterial.

THE COURT—He has answered it. What question are you objecting to?

MR. VREDENBURGH—The last question.

THE COURT—Do you object to that question?

20

MR. VREDENBURGH—Yes; I objected to it before he answered. I object to it because it is incompetent and illegal, and because this witness has not been shown to be an expert on that question; what the effect of a tunnel is on that property.

MR. FALLON—I submit the witness is entitled to state the fact as he found it.

30

THE COURT—One such question does not make a rule. The question was answered before objection, and I do not understand there is a motion to strike it out.

MR. VREDENBURGH—Yes, I did object. The witness goes on answering and does not give me a chance to object.

THE COURT—What do you want me to do; strike the answer out and overrule the question?

40

MR. VREDENBURGH—I want you to pass upon the objection.

THE COURT—I think your objection is well taken; the question should be overruled.

Q. Have you personal knowledge of any objections made by prospective purchasers to property which is located over a tunnel? A. As I stated before, yes, sir; I have had experience. 10

Q. What experience, what knowledge have you of that? A. I know I was about to close a sale of a piece of property and they had \$100 down, and the man had to forfeit the deposit because that wasn't put in the contract.

THE COURT—That does not seem to be a parallel case. That is where the contract agreed to give full title and he found the tunnel was to be there. If the purchaser found the title was subject to encumbrance, when the contract didn't mention it, of course he was not bound to take it. Do I understand, Mr. Weber, in this case you have reference to, the agreement said nothing about any tunnel and that it developed afterwards on the offer of the deed? 20 30

THE WITNESS—Yes, sir.

THE COURT—It was not in the agreement, but the objection was made when the party came to take his deed?

THE WITNESS—Yes.

By Mr. Fallon.

Q. Was any objection made by the prospective 40

purchaser against taking that property on account of the tunnel?

Objected to; question overruled.

10 Q. Do you know of any case where a person has objected to the purchase of property and has stated as his objection the fact that he ascertained that the tunnel was under the property? A. Yes, sir.

THE COURT—That question was excluded; the situation of making an agreement first.

MR. FALLON—I am stating the question generally; I think I have a right to have it answered. I would like to press the question the way I have stated it.

20 THE COURT—I exclude it in that form. Counsel for property owners excepts.

THE COURT—The Court gives you notice now that it will consider a question based upon the mention of the tunnel at the time negotiations for sale were going on. I do not say I will admit it; I say I will consider it.

30 Q. What has been your experience as a real estate man as to the desire of prospective purchasers of property to buy property over a tunnel?

Objected to as incompetent and immaterial.

By the Court.

Q. How much experience of that kind have you had? A. Nine years.

40 Q. How much experience of that kind have you had in regard to the objection of parties to buying over a tunnel?

A. I have half a dozen in Oak street, where people wouldn't buy when they knew a tunnel was there, this one I was going to tell about; there are cases; I know of several cases where parties wouldn't buy in that case.

MR. VREDENBURGH—I move that the answer be stricken out as incompetent and irrelevant. 10

THE WITNESS—You asked me the question; I am just giving it.

THE COURT—You do not need to argue in regard to your own answers. What is the competency, Mr. Vredenburgh?

MR. VREDENBURGH—Because it is a statement by this witness of what he has heard—hearsay evidence—he has stated 20 to us what somebody has said.

THE COURT—I understand the question to be put to his qualifications as an expert, showing his experience. I will allow the answer to stand as given.

Counsel for railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly. 30

C. W. PARKER, J. [I. S.]

By Mr. Fallon.

Q. From your general knowledge of the real estate business, gained during the time that you have been in that business, can you state to us what, in your opinion, would be the percentage of depreciation in the value of the Schwarz property, caused by reason of the construction and operation of a tunnel underneath it? 40

MR. VREDENBURGH—That question I object to as incompetent and illegal, because the witness has not proved himself to be in a position to be a prophet.

THE COURT—You are entitled to cross examine him on his qualifications; if you wish to.

10

By Mr. Vredenburgh.

Q. Where do you live? A. 415 Clinton avenue, West Hoboken.

Q. And your office is where? A. 294 Summit avenue.

Q. Where else have you an office? A. That is all.

20 Q. What is your business? A. Real estate and insurance.

Q. Which is the nearest tunnel to where you live? A. The present tunnel in question.

Q. Which is the next nearest? A. The one that Mr. Singer referred to.

Q. Have you ever seen the tunnel in question? A. Yes, sir; I mean the shaft, at least.

Q. You saw the shaft, and you call that the tunnel; that is what you saw? A. Yes, sir.

30 Q. Is that as much as you saw of the West Shore tunnel? A. No; I have seen more of the West Shore tunnel than that.

Q. Have you seen the shaft? A. Yes, sir.

Q. Ever been in the West Shore tunnel? A. Yes, sir.

Q. When? A. Only three months.

Q. What did you go in there for? A. I went through with the train: that is going in the tunnel.

Q. You were going away for the summer and went out that way? A. Yes, sir.

40 Q. What shaft have you been near that shaft of

the West Shore tunnel? A. I have not been in any shaft?

Q. How near to any shaft in the West Shore tunnel? A. On the outside of it.

Q. Which shaft were you on the outside of? A. Between Fourth and Fifth street, near Bergenline avenue.

Q. When were you there? A. I passed by there 10 last week.

Q. For what purpose? A. Just passing by in the cars.

Q. You were riding on the horse car? A. No, on the trolley.

Q. But have you ever been to the shaft itself? A. For personal inspection, never.

Q. When you rode through in the trolley car, how near were you to it? A. Well, I should say about forty feet; fifty feet from the tunnel. 20

Q. Did you notice the shaft at that time? A. Yes, sir.

Q. Was there smoke coming out of it? A. Yes.

Q. And gas? A. Yes.

Q. Do you know how far the surface there is above the tunnel—the top of the tunnel? A. Not personal knowledge; no, sir.

Q. Do you know the size of the tunnel? A. It is a two track tunnel.

Q. You don't know the number of feet, in width? 30
A. No, sir.

Q. You know that it is operated by steam? A. Yes, sir.

Q. And engines pull large freight cars through and passenger cars? A. Yes.

Q. Do you know whether the surface of Mr. Schwarz's lot is stone or rock? A. Well, from the shaft, which is about two hundred feet away, I should say it was on the same basis.

Q. You have not answered the question yet? A. Well, it is stone, part of it stone.

Q. Trap rock? A. Yes, sir.

Q. You think that comes up to the surface of Mr. Schwarz's lot? A. Not altogether; no, sir.

Q. How much of it? A. I should say about 20 feet.

10 Q. What reason have you for saying 20 feet? A. Well, from general observation from the shaft.

Q. From the shaft it comes right up to the top, doesn't it? A. No, not altogether.

Q. At the surface of the shaft you stand right on the stone? A. Exactly, but you go in further and you see lots of stone.

Q. You go in from where? A. Toward Mr. Schwarz's property, from the shaft.

20 Q. You think there is a fall of 20 feet of rock there? A. It might be; I should judge that; I didn't make personal observation.

Q. What facts have you to judge it is a fall of 20 feet? A. Where I seen the street cut through, Shippen street.

Q. What cut was there in Shippen street when you saw it? A. Well, I didn't see but six feet or eight feet cut through there, and there was no rock on Shippen street.

30 Q. On this corner west of Shippen street? A. Yes, sir.

Q. You say it was cut six feet down? A. That was some time ago; I say from personal knowledge, it was about six feet.

Q. You think that the surface of Shippen street was six feet above where the surface of the street is now? A. Pardon me; I said where it cut into the street there; to make it level to the other side.

40 Q. What reason have you for thinking that there is, as you state, twenty feet of soil above the rock on Mrs. Schwarz's property? A. That is only a

judgment; I would not say that for a certainty; I take that from the outlook of the shaft sloping down toward Mrs. Schwarz's property; general observation; that is all.

Q. Do you know how deep this tunnel is to be?

A. I believe 182 feet.

Q. When did you find that out? A. I got that from the watchman on the premises, here about— 10 over two months ago.

Q. Was that the top of the tunnel or the base of the tunnel? A. He said "We are going down 182 feet."

Q. So you think because he said that, that this tunnel was 182 feet? A. I am talking of this tunnel.

Q. You think the tunnel was to be 182 feet because he said "We are going down 182 feet?" A. Yes. 20

Q. What tunnel have you observed beside the West Shore tunnel; you told us what you observed in the West Shore tunnel; what other tunnel have you observed? A. The Lackawanna tunnel.

Q. You have gone through that, have you? A. As I stated before, I have not made an observation of this tunnel, but I have been over it.

Q. Have you been in any houses in New York over the Subway there? A. No, I have not.

Q. Do you know anything about the effect of the 30 trolley on houses in New York City, by personal experience? A. No, I do not.

By Mr. Fallon.

Q. Did you notice an emission of smoke from the shafts of the Lackawanna tunnel that you have spoken of? A. Do I notice?

THE COURT—Have you noticed?

THE WITNESS—I have noticed; yes, sir. 40

Preceding question of Mr. Fallon (p. 64)
read as follows:

10 Q. From your general knowledge of the real estate business, gained in the time you have been in that business, can you state to us what, in your opinion, would be the percentage of depreciation in the value of the Schwarz property, caused by the construction and operation of a tunnel underneath it.

THE COURT—Answer yes or no to that question.

A. I can say.

Q. Just state to us?

Objection renewed.

20 Question allowed.

Counsel for railroad company prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. [L. S.]

Q. Just explain to the Court and jury, what you consider to be the amount of depreciation in value of that property?

30 Same objection, ruling and exception.

A. About 25 to 30 per cent. from what I know of depreciation in value along that tunnel, because I have houses for sale right along there.

By Mr. Vredenburg.

40 Q. Since the tunnel was fixed—since the route was fixed through this Town of West Hoboken, have there been any sales of property over the tunnel to your knowledge. A. Yes, sir.

Q. Where was that sale, and do you know of more than one; you hesitated a little; I thought perhaps you knew of more than one? A. Only one.

Q. Where was that? A. 210 Oak street, I think it is; 210 or 212 Oak street, Weehawken Heights.

Q. That is not in West Hoboken? A. No, but that is the tunnel line.

Q. I asked you about West Hoboken; that is the only one you have heard of? A. Yes. 10

Q. Mr. Weber, I want to ask you one other question. You spoke about buying property in West Hoboken; what is the percentage of value that property is assessed at in West Hoboken?

MR. FALLON—I object to that. I do not know that this witness would be competent to answer that question; they have their assessor here. 20

MR. VREDENBURGH—I have a right to know what this gentleman knows about real estate in West Hoboken.

MR. FALLON—Surely they do not assess property at full valuation.

THE COURT—Let the witness answer.

A. They assess it at about fifty per cent., but some they don't, and some they do. 30

By the Court.

Q. You mean they do not assess higher than fifty per cent., and sometimes lower? A. Yes, sir.

By Mr. Vredenburg.

Q. They assess your property at fifty per cent.; you own property, do you? A. No, sir.

Q. Your clients property that assess at about fifty per cent. in West Hoboken? A. Yes, some. 40

Q. And some they assess less than that? A. Yes.

Q. Is it the general rule to assess all property at about fifty per cent. of its value? A. Well, that is the rule, but they don't go directly after the rule of the statute, in assessing the full fifty per cent.

Q. They don't even assess the full fifty per cent. of the value? A. No; but sometimes they assess it
10 a great deal more.

Q. How do you account that this property was assessed at \$6,000 a year ago, and this year it is assessed at \$7,000 if fifty per cent. is the rule.

MR. FALLON—I object to that; he is not competent to answer for the acts of the assessors; I think it calls clearly for inadmissible testimony.

20 THE COURT—The question I think, is entirely proper, because it is cross-examination upon the witness's valuation, and it appears in his testimony it was assessed at \$7,000 and he says it is worth \$23,000.

Counsel for property owners excepts.

A. Because it is worth a good deal more money now.

Q. You think then, when it was assessed at
30 \$7,000, it was worth about \$14,000?

MR. FALLON—I object to that. This witness says it is very rarely assessed at fifty per cent. Let us get Mr. McDermott and find out what this particular property was assessed at.

MR. VREDENBURGH—Perhaps he does not understand my question. It may be I
40 did not make it as clear as I should.

Q. You say this property is worth \$21,000? A. \$23,000 was my valuation.

Q. \$23,000. Then you say the assessment in that city is, as a rule, fifty per cent. and this property is assumed to be assessed at only \$7,000.

Objection renewed.

Question allowed. Counsel for property owners excepts. 10

A. Well, I think this property is assessed too low.

MR. FALLON—I understand that your Honor has eliminated or tends to eliminate from this case all testimony as to damage which has been caused thus far by this blasting, to property in the vicinity, and that the jury would have no right to take those injuries into consideration, as a means of enabling them to infer what damage was likely to result to Mrs. Schwarz? 20

THE COURT—That is about the Court's idea. If you want to test it further, you might make an offer to prove.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

PENNSYLVANIA, NEW JERSEY AND
NEW YORK RAILROAD COMPANY,

10

Plaintiff-Appellee,

vs.

MARIE SCHWARZ ET ALS.,

Defendant-Appellant.

*In Condemna-
tion.*

*On Writ of
Error to Hudson
Circuit Court.*

ASSIGNMENTS OF ERRORS.

20

Afterwards, that is to say, on the *twenty-sixth* day of *February*, nineteen hundred and six, in the Court of Errors and Appeals of the State of New Jersey, comes the said the Pennsylvania, New Jersey and New York Railroad Company, by James B. Vredenburgh, its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit:

30

I. That the said Judge before whom, etc., at and upon the trial of the said issue so joined between the parties aforesaid, permitted the following question to be asked of and answered by Charles Singer, a witness for the said Marie Schwarz et al., against the objection of the said appellant:

Q. What knowledge have you of the depreciation of the values of properties through there, over the tunnel, which you speak of, or immediately adjacent to it.

40

A. I was Clerk of the Town of Union for six years, and I am familiar with land in the Town of Union, and its value. Along the line of the West shore tunnel there was hardly any development whatever, and therein erred.

II. There is also error in this, to wit, that the 10
said Judge before whom, etc., at and upon the trial
of the said issue so joined between the parties afore-
said, permitted the following questions to be asked
of and answered by Charles Singer, a witness for
the said Marie Schwarz et al., against the objec-
tion of the said appellant:

Q. From your knowledge of what happened
in the Town of Union, as regards the
effect on realty value, after the building 20
of the West Shore tunnel, what, in your
opinion, would be the effect as against
the values of the Schwarz property by
reason of the construction of that tunnel?

Q. (By the Court). In view of your knowl-
edge of the subject, what do you con-
sider the effect on the value of the
Schwarz property?

A. Anywhere from thirty to fifty per cent.,
and therein erred. 30

III. There is also error in this, to wit, that the
said Judge before whom, etc., at and upon the trial
of the said issue so joined between the parties afore-
said, permitted the following question to be asked
of and answered by Charles Singer, a witness for
the said Marie Schwarz et al., against the objec-
tion of the said appellant:

Q. If some 42 feet were taken from under- 40

neath the Schwarz property, at a point 182 feet or thereabouts below the surface of the street, what, in your opinion, would be the amount of the depreciation in value of that property caused by that taking away?

- 10 A. Anywhere from thirty to forty-five or fifty per cent.; I couldn't say; I never had a similar case, but I say that the prejudice—I claim that the damage done is the prejudice a man would have against purchasing a piece of property that would have some covenant or would convey an easement into it, giving a certain right of way, and therein erred.

IV. There is also error in this, to wit, that the
20 said Judge before whom, etc., at and upon the trial of the said issue so joined between the parties aforesaid, permitted the following question to be asked of and answered by Charles Singer, a witness for the said Marie Schwarz et al., against the objection of the said appellant:

- Q. If there was to be a shaft leading from
100 to 250 feet from the Schwarz property, would that increase or depreciate
30 the value?

- A. If it were a shaft for more air, I don't believe it would make any difference; but if it were a shaft from which smoke was to be emitted, or gases coming up, then I think there might be some considerable objection,

and therein erred.

Therefore, the said the Pennsylvania, New Jersey and New York Railroad Company prays that the judgment aforesaid, by reason of the aforesaid errors, and other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that it, the said defendant, may be restored to all things that it has lost on occasion of said judgment.

10

JAMES B. VREDENBURGH,

Of Counsel with Plaintiff in Error.

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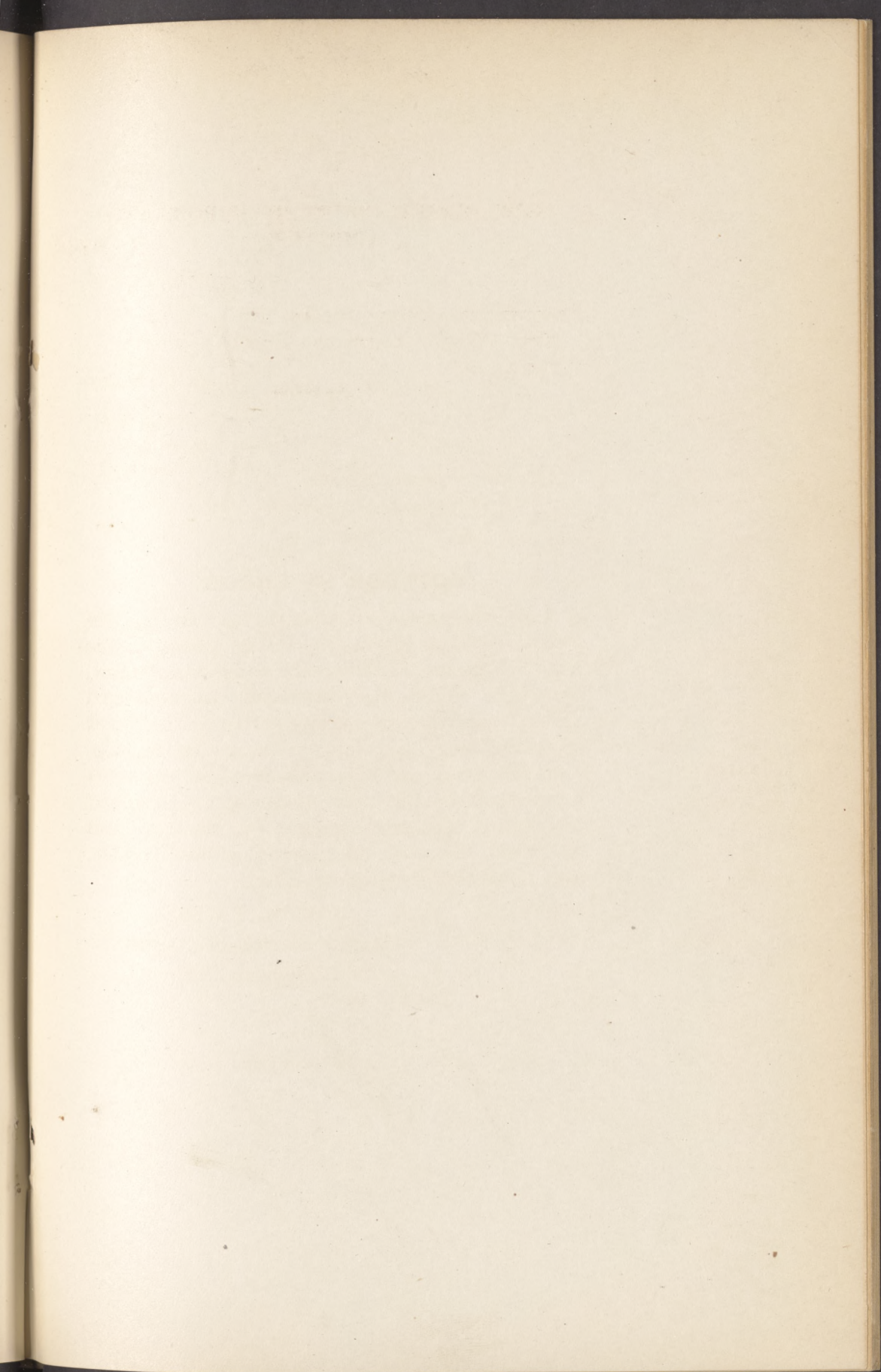
NEW JERSEY COURT OF ERRORS AND
APPEALS.

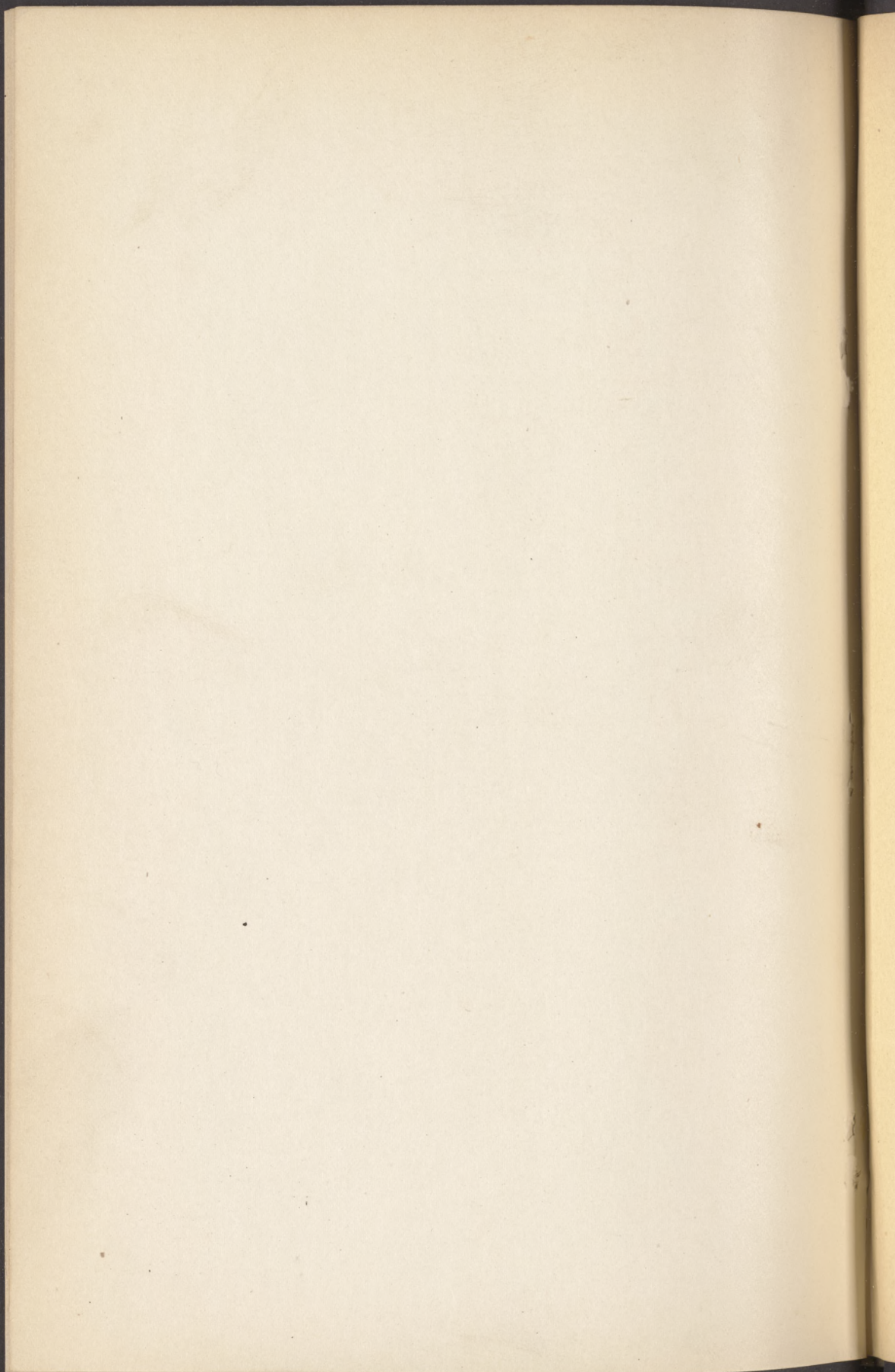
10	PENNSYLVANIA, NEW JERSEY AND NEW YORK RAILROAD COM- PANY, <i>Plaintiff-Appellee,</i>	}	<i>In Condemna- tion.</i>
	<i>vs.</i>		<i>On Writ of Er- ror to Hudson Circuit Court.</i>
	MARIE SCHWARZ ET ALS., <i>Defendants-Appellants.</i>		

JOINDER IN ERROR.

And whereupon, afterwards, to wit, on the
twelfth day of March, A. D. one thousand nine
20 hundred and six, the said Marie Schwarz and others,
by John J. Fallon, their attorney, come into Court
and say that there is no error either in the record
and proceedings aforesaid, or in giving the judg-
ment aforesaid, and they pray here that the Court
here may proceed to examine as well the record and
proceedings aforesaid, assigned for error, and that
judgment aforesaid, in manner aforesaid given,
may in all things be affirmed, &c.

30 JOHN J. FALLON,
Attorney for and of Counsel
with Defendants in Error.





New Jersey Court of Errors & Appeals

Wm. H. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk
John W. Woodcock, Clerk

In the Matter of the Estate of the Wife of Desert Her Husband Was Shown

The Court of Errors & Appeals, upon appeal from the Superior Court of the County of Hudson, do hereby certify that the following is the opinion of the Court in the above entitled case, as rendered by the Court on the 10th day of June, 1888.

The Court of Errors & Appeals, upon appeal from the Superior Court of the County of Hudson, do hereby certify that the following is the opinion of the Court in the above entitled case, as rendered by the Court on the 10th day of June, 1888.

