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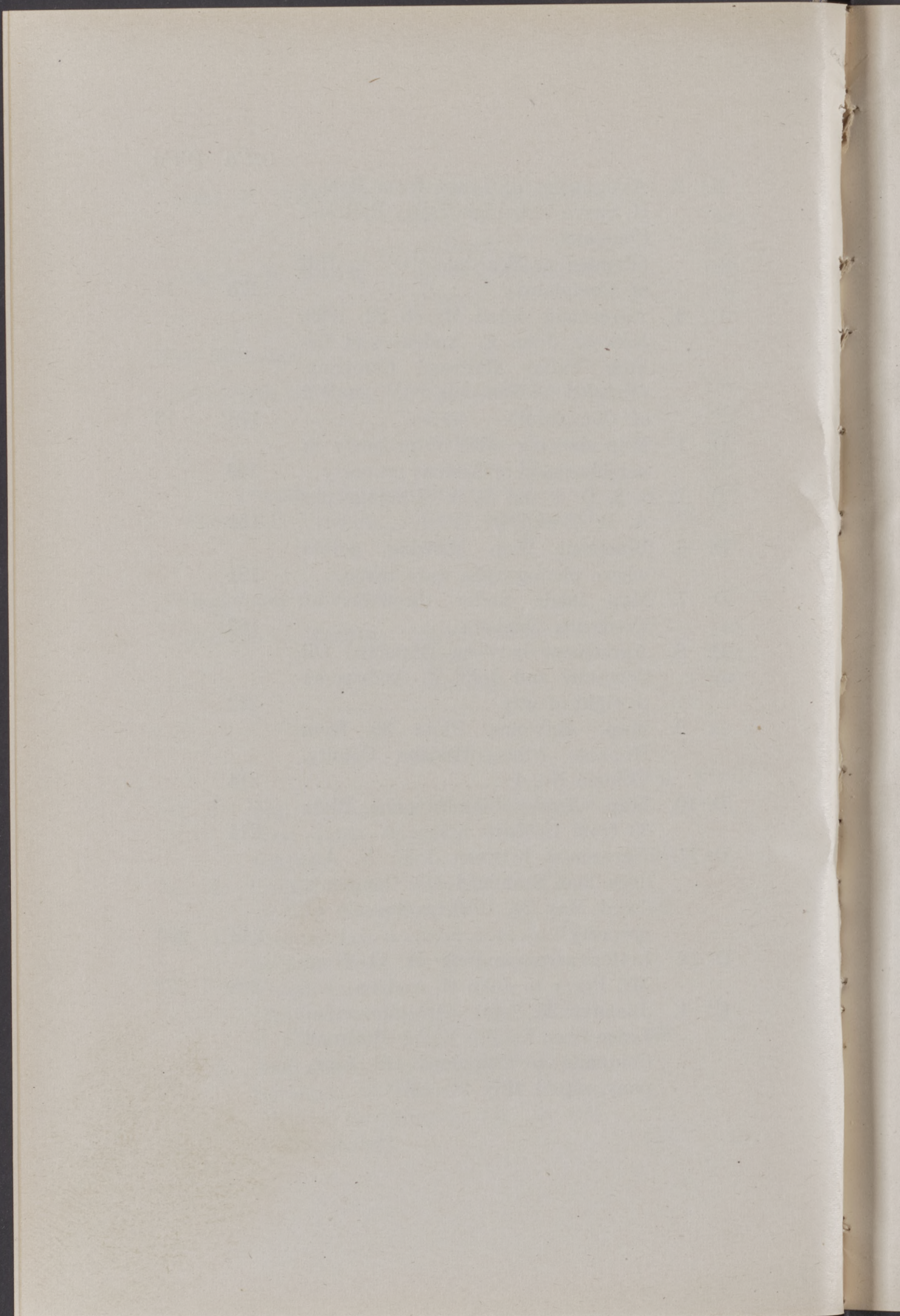
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Bill of Complaint.

BILL OF COMPLAINT.

Filed May 31, 1919.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey. 10

The complainant, LEHIGH VALLEY RAILROAD COMPANY, a body corporate of the State of Pennsylvania, respectfully shows that:

1. On June 5, 1889, John E. Andrus, of Yonkers, Westchester County, New York, of the first part, and F. Joseph Sheehan, of the second part, entered into an indenture of lease under seal with covenants by the respective parties thereto, wherein and whereby the said John E. Andrus did grant, demise and to farm let unto the said F. Joseph Sheehan certain land, land under water and rights in the City of Bayonne, in the County of Hudson and State of New Jersey, whereof said John E. Andrus was in possession seized in his own right as of fee and in said indenture described as follows, namely: "All that certain piece or parcel of land, land under water and rights, situate, lying and being at Constable's Hook, Bayonne, New Jersey, being the same land, lands under water and rights conveyed to the party hereto of the first part by Peter C. Cornell and others, trustees, by deed dated November 1, 1881, and recorded in the Hudson County Register's Office January 27, 1883, in Liber 375 of Deeds, page 354, etc., with all the appurtenances, for the term of sixty years from the fifth day of June, 1889;" the rental to be payable in quarterly payments in advance, the amount for the first 20 years to be \$4,250 per year, the first payment of \$1,062.50 to be made on the execution and delivery of said lease, and the rental for the next 20 years to be determined by arbitration as therein provided, and for the remaining 20 years 20 30 40

Bill of Complaint.

in like manner. And therein and thereby the said party of the first part did covenant that the said party of the second part, on paying the said yearly rent and performing the covenants in said indenture contained to be performed on his part, should and might peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid. And the said party of the second part did covenant to pay to the said party of the first part the said yearly rent as specified, namely, \$4,250 per annum, in equal quarterly payments in advance during the first 20 years of the term, and thereafter to pay in like manner the rent which should be fixed by arbitration as thereafter provided, and also as part of the consideration of that lease annually thereafter to pay the taxes, assessments, water rents, and other municipal, state or governmental charges and impositions whatsoever charges upon said premises. And it was further in said indenture agreed by the parties thereto that during the first half of the twentieth year of the term aforesaid said parties should each appoint one arbitrator, and the arbitrators so appointed should fix the annual rental to be paid by the complainant during the succeeding 20 years, and that in case the arbitrators could not agree then they should select an umpire to act with them, and the award of any two of them, signed and delivered to the said parties on or before the expiration of the first half of the twentieth year of said term should be binding upon both of said parties, and the rental so fixed should be payable in equal quarterly payments in manner aforesaid. And it was further in said indenture agreed by the parties thereto that during the first half of the fortieth year of the term a like arbitration should be had with like effect for the determination of the rental for the last 20 years of said term, and that in fixing the said rental the arbitrators should consider the rental value of the premises excluding the cribbing, piers and structures or buildings on the

Bill of Complaint.

piers. And it was further in said indenture agreed by the parties thereto that during the first half of the sixtieth year of said term the value of the improvements placed upon said lands by the tenant should be ascertained by arbitrators selected in manner aforesaid and that their award, or the award of any two of them, signed and delivered to the parties at or before the expiration of the first half of the sixtieth year of said term, should be binding upon said parties, and at the expiration of said term the landlord on retaking the premises should pay to the tenant the value of said improvements so ascertained, and that said improvements should be construed to include only cribbing, piers and structures or buildings on the piers to the height of one story only, and that if any buildings thereon should have a greater height than one story they should be valued as if they were one story in height. And it was further in said indenture agreed by the parties thereto that if for any cause a valid award fixing rentals should not be made and delivered at or within the time limited, then the landlord might recover by action from time to time at law or in equity a fair quarterly compensation for the use and occupation of the demised premises, and that if for any cause a valid award fixing the value of the improvements as provided should not be made and delivered at or within the time limited for that purpose, then the tenant might recover by action at law or in equity the value of the said improvements as so defined. It was further in said indenture agreed by the parties thereto that that instrument should bind the heirs, executors and administrators and assigns of the respective parties thereto. A true copy of said indenture is hereto annexed, made part hereof and marked "Schedule A." Said indenture was duly acknowledged by the parties thereto, and was recorded in Book 514 of Deeds for the County of Hudson on pages 90, etc.

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Bill of Complaint.

2. On September 8, 1890, the said F. Joseph Sheehan, by writing under his hand and seal, assigned the said indenture and all his rights thereunder to Robert H. Sayre, his executors, administrators and assigns, for the rest, residue and remainder of the term thereby demised from and after the date of said assignment, subject, nevertheless, to the rents, covenants, conditions and provisions of said indenture. A true copy of said assignment is hereto annexed, made part hereof and marked "Schedule B." Said assignment was duly acknowledged by said Sheehan and was recorded in Book 514 of Deeds for the County of Hudson on pages 93, etc.

3. On September 8, 1890, the said Robert H. Sayre, by writing under his hand and seal, assigned the said indenture and all his rights thereunder to complainant, its successors and assigns, for the rest, residue and remainder of the term thereby demised, from and after the date of said assignment, subject, nevertheless, to the rents, covenants, conditions and provisions of said indenture. A true copy of said assignment is hereto annexed, made part hereof, and marked "Schedule C." Said assignment was duly acknowledged by said Sayre and was recorded in Book 755 of Deeds for the County of Hudson on page 394.

4. Ever since September 8, 1890, complainant has been in possession of the said demised premises, and has performed all the covenants therein contained to be performed by the party of the second part thereto.

5. When it became time to fix the rental under said indenture for the second period of 20 years of the term demised, said Andrus and complainant mutually desiring to modify the provisions of said indenture so as to have the rent fixed for periods of 10 years instead of 20 years, and in other particulars, appointed Edlow W. Harrison and Charles W. Fuller arbitrators to fix the annual rental for the period of ten years from June 5, 1909, and said arbitrators reported that they had agreed upon the sum

Bill of Complaint.

of \$7,500 as the annual rental to be paid for said period, and on March 22, 1909, said Andrus and complainant, by written agreement under their seals reciting the said indenture and two assignments above mentioned and the appointment and action of said arbitrators, mutually agreed as follows, namely, that the terms of said lease upon which the rental fixed by arbitrators would be payable for the term of 20 years should be modified so that said rental so fixed by arbitrators should be payable for the next term of ten years, to wit, from June 5, 1909, until June 5, 1919—all the other terms, covenants and conditions of said lease, except as therein modified, to remain unchanged. And it was further mutually agreed that the rate to be paid by complainant as rental for said premises from June 5, 1919, to June 5, 1929, should be fixed and determined by arbitrators appointed in the last half of the year 1918 in the manner provided by said lease, and that thereafter the rental should be in like manner so fixed from time to time for ten-year periods in the last half of the years 1928 and 1938 respectively, until the termination thereof on June 5, 1949, instead of the twenty-year period fixed in said lease. A true copy of said agreement is hereto annexed, made part hereof, and marked "Schedule D." Said agreement was duly acknowledged by said Andrus and duly proved as to complainant, and was recorded in Book 1025 of Deeds for Hudson County at page 621.

6. Prior to September 26, 1918, said Andrus appointed William M. Greve, of the Borough of Brooklyn, City and State of New York, and complainant appointed Thomas A. Ryer, of Jersey City, Hudson County, New Jersey, as arbitrators to fix and determine the annual rental to be paid for said demised premises for the term of 10 years, beginning June 5, 1919, and said arbitrators inspected the demised premises and had several conferences, but could not agree upon such rental. On November 25, 1918, when

Bill of Complaint.

it became evident that the said arbitrators could not agree on a rental, said Thomas A. Ryer, the arbitrator appointed by complainant, proposed the selection of an umpire in accordance with the provisions of said indenture of lease. To this proposal said William M. Greve, the arbitrator appointed by said John E. Andrus, acceded,
 10 and each of said arbitrators suggested various persons for umpire, but none named by either arbitrator was satisfactory to the other, and before December 5, 1918, it became evident that it was impossible for the arbitrators to select an umpire. Since that date and up to the exhibiting of this bill of complaint it has been impossible for said arbitrators either to agree upon a rental or to select an umpire. Such failure to agree or to select an umpire has not been due to any fault on the part of the complainant or of the arbitrator appointed by it.

20

Complainant is without adequate remedy in the courts of law, and therefore prays:

1. That said John E. Andrus, who is the defendant to this suit, may, without oath, answer this bill of complaint and each statement therein made.
2. That this Court will, by reference to a Master, or in such other way as to the Court shall seem equitable and just, fix and determine the amount of annual rental
 30 which complainant must pay for the period of 10 years beginning June 5, 1919, of the term demised by said lease.
3. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

COLLINS & CORBIN, (SEAL.)
Solicitors for and of Counsel with Complainant.

Bill of Complaint—Schedule A.

SCHEDULE "A."

Lease, John E. Andrus to F. Joseph Sheehan, dated June 5, 1889.

THIS INDENTURE, made the 5th day of June, 1889, between JOHN E. ANDRUS, of Yonkers, Westchester County, New York, of the first part, and F. JOSEPH SHEEHAN, of the second part. 10

WITNESSETH: That the said party of the first part has letten and by these presents does grant, demise and to farm let, unto the said party of the second part, ALL that certain piece or parcel of land, land under water and rights, situate, lying and being at Constable's Hook, Bayonne, New Jersey, being the same land, lands under water and rights conveyed to the party hereto of the first part, by PETER C. CORNELL and others, trustees, by deed dated November first, 1881, and recorded in Hudson County Register's Office, January 27th, 1883, in Liber 375 of Deeds, page 354, &c., with all the appurtenances, for the term of sixty years from the fifth day of June, 1889, the rental to be payable in equal quarterly payments in advance, the amount for the first twenty years to be Four Thousand Two Hundred and Fifty Dollars, per yr., the first payment of \$1,062.50 to be made on the execution and delivery of this lease. The rental for the next twenty years shall be determined by arbitration as hereinafter provided, and for the remaining twenty years in like manner. 20 30

And it is agreed that if any rent shall be due and unpaid or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and to remove all persons therefrom.

And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rental as herein specified, \$4,250 per annum in equal 40

Bill of Complaint—Schedule A.

quarterly payments in advance during the first twenty years of the term, and thereafter to pay in like manner the rentals which shall be fixed by arbitration as hereinafter provided; and also as part of the consideration of this lease annually hereafter to pay all taxes, assessments, water rents and other municipal, state or governmental charges and impositions whatsoever charges upon said premises; and in default of the payment thereof within ninety days from the time when the same severally become due, the landlord may, if he so elect, pay the same and recover the amount so paid from the tenant as rent in arrears.

And it is agreed that during the first half of the twentieth year of the term aforesaid, the parties to this lease shall each appoint one arbitrator and the two arbitrators so appointed shall fix the annual rental to be paid by the tenant during the succeeding twenty years; in case the arbitrators cannot agree, then they shall select an umpire to act with them, and the award of any two of them, signed and delivered to the parties on or before the expiration of the first half of the twentieth year of the term, shall be binding upon both parties, and the rentals so fixed shall be payable in equal quarterly payments in manner aforesaid.

And it is agreed that during the first half of the fortieth year of the term a like arbitration shall be had with like effect for the determination of the rentals for the last twenty years of the term.

In fixing said rentals the arbitrators shall consider the rental value of the premises excluding the cribbing, piers and structures or buildings on the pier.

And it is agreed that during the first half of the sixtieth year of said term, the value of the improvements placed upon said lands by the tenant shall be ascertained by arbitrators selected in manner aforesaid, and their award or the award of any two of them, signed and delivered to the

Bill of Complaint—Schedule A.

parties at or before the expiration of the first half of the sixtieth year of the term, shall be binding upon the parties, and at the expiration of the term, the landlord, on retaking the premises, shall pay to the tenant the value of said improvements so ascertained.

Said improvements shall be construed to include only cribbing, piers and structures and buildings on the piers to the height of one story only; if any buildings are thereon which have a greater height than one story, they shall be valued as if they were one story in height. 10

And that at the expiration of the said term the said party of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent and performing the covenants aforesaid shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid. 20

If for any cause a valid award fixing rentals shall not be made and delivered at or within the times above limited then the landlord may recover by action from time to time at law or in equity a fair quarterly compensation for the use and occupation of the demised premises.

If for any cause a valid award fixing the value of the improvements as above provided shall not be made and delivered at or within the time above limited for that purpose, then the tenant may recover by action at law or in equity the value of the said improvements as above defined. 30

And it is further agreed that this instrument shall bind the heirs, executors and administrators and assigns of the respective parties hereto.

Bill of Complaint—Schedule B.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) J. E. ANDRUS, (SEAL)

(Signed) F. JOSEPH SHEEHAN. (SEAL)

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SCHEDULE "B."

Assignment of lease, F. Joseph Sheehan to Robert H. Sayre, dated Sept. 8, 1890.

KNOW ALL MEN BY THESE PRESENTS, that I, F. Joseph Sheehan, of the City, County and State of New York, in consideration of One Dollar, lawful money of the United States, to me duly paid by Robert H. Sayre, of South Bethlehem, Northampton County, Pennsylvania, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto the said Robert H. Sayre, his executors, administrators and assigns, a certain Indenture of Lease, bearing date the Fifth of June, in the year Eighteen Hundred Eighty-nine, made by John E. Andrus to me, the said F. Joseph Sheehan, leasing certain lands, lands under water and rights at Constable's Hook, Bayonne, New Jersey, for the term of sixty years from the said fifth day of June, 1889, with all and singular the premises therein mentioned and described, and the buildings thereon, water and all other rights thereon, together with the appurtenances. To HAVE AND TO HOLD the same unto the said Robert H. Sayre, his executors, administrators and assigns, from the eighth day of September, in the year Eighteen Hundred and Ninety, for and during all the rest, residue and remainder of the term of Sixty years mentioned in the said Indenture of Lease, subject nevertheless to the rents, covenants, conditions and provisions therein also mentioned, AND I do hereby covenant and

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Bill of Complaint—Schedule C.

agree with the said Robert H. Sayre that the said premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, assessments, and incumbrances whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this eighth day of September, one thousand eight hundred and ninety. 10

F. JOSEPH SHEEHAN. (SEAL)

Signed, sealed and delivered

in the presence of

CHAS. B. HUGHES.

SCHEDULE "C."

20

Assignment of lease, Robert H. Sayre to Lehigh Valley Railroad Company, dated Sept. 8, 1890.

KNOW ALL MEN BY THESE PRESENTS, that I, ROBERT H. SAYRE, of South Bethlehem, Northampton County and State of Pennsylvania, in consideration of One Dollar (\$1), lawful money of the United States, to me duly paid by the Lehigh Valley Railroad Company, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto the said Lehigh Valley Railroad Company, its successors and assigns, a certain INDENTURE OF LEASE, bearing date the fifth day of June, in the year eighteen hundred and eighty-nine, made by JOHN E. ANDRUS to F. JOSEPH SHEEHAN, leasing certain lands, lands under water and rights at Constable's Hook, Bayonne, New Jersey, for the term of sixty (60) years from the said fifth day of June, eighteen hundred and eighty-nine, and which said indenture of lease, and all the rest, 30 40

Bill of Complaint—Schedule C.

residue and remainder yet to come of and in the term thereof, the said F. Joseph Sheehan, by deed poll of assignment, bearing date the eighth day of September, eighteen hundred and ninety, sold, assigned, transferred and set over unto me, the said Robert H. Sayre (all of which said indenture of lease and the assignment thereof,
 10 it is intended to forthwith record), with all and singular the premises therein mentioned and described and the buildings thereon together with the appurtenances.

To HAVE AND TO HOLD the same unto the said Lehigh Valley Railroad Company, its successors and assigns, from the eighth day of September, in the year eighteen hundred and ninety, for and during all the rest, residue and remainder of the term of sixty (60) years mentioned in the said indenture of lease, subject nevertheless to the rents, covenants, conditions and provisions therein also men-
 20 tioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this eighth day of September, A. D. one thousand eight hundred and ninety (1890).

ROBT. H. SAYRE. (SEAL)

Signed, sealed and delivered
 in the presence of

E. T. PARKER.

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Bill of Complaint—Schedule D.

SCHEDULE "D."

Agreement dated March 22, 1909.

THIS AGREEMENT, made this twenty-second day of March, nineteen hundred and nine, between JOHN E. ANDRUS, of Yonkers, Westchester County, New York, of the first part, and THE LEHIGH VALLEY RAILROAD COMPANY, a corporation, of the second part. 10

WHEREAS, the said John E. Andrus, by Indenture of Lease, dated the fifth day of June, eighteen hundred and eighty-nine, did demise and to farm let, until F. Joseph Sheehan, certain lands at Constable Hook, in the City of Bayonne, New Jersey, for the term of sixty years, which said lease was subsequently recorded in Book 514 of Deeds for the County of Hudson, on page 90, &c., and among other things did provide for an adjustment during the first half of the twentieth year of said term of the rentals to be paid for the occupancy of said premises during the second twenty years of said term, by arbitrators to be appointed by the parties; and 20

WHEREAS, the said lease and the rights to the lands and premises therein described were duly assigned by the said F. Joseph Sheehan to Robert H. Sayre, by assignment dated September 8th, 1890, recorded in Book No. 514 of Deeds, on page 93, and by a further assignment, bearing date September 8th, 1890, recorded in Book No. 755 of Deeds, on page 394, the said lease and the rights to the lands and premises therein described were assigned by the said Robert H. Sayre to the Lehigh Valley Railroad Company, which said Company is in possession of said premises described in the said lease, and has assumed the burdens thereof; and 30

WHEREAS, the party of the first part hereto hath appointed Charles W. Fuller, and the party of the second part hereto, hath appointed Edlow W. Harrison, as the arbitrators to fix the annual rent to be paid by the party 40

Bill of Complaint—Schedule D.

of the second part during the succeeding ten years of said term, to wit: from the fifth day of June, nineteen hundred and nineteen; and

10 WHEREAS, said arbitrators have agreed and have determined, in writing that the cash rentals to be paid for said premises for the ensuing ten years aforesaid, from June fifth, nineteen hundred and nine, shall be at the rate of seven thousand and five hundred dollars (\$7,500) per annum;

NOW THIS AGREEMENT WITNESSETH: That it is mutually agreed as follows:

20 That the terms of said lease upon which the said rental so fixed by said arbitrators would be payable for the term of twenty years, shall be modified so that said rental so fixed by said arbitrators shall be payable for the next term of ten years, to wit: from June fifth, nineteen hundred and nine, until the fifth day of June, nineteen hundred and nineteen. All the other terms, covenants and conditions of said lease, except as herein modified, to remain unchanged. And it is further

30 MUTUALLY AGREED, that the rate to be paid by the party of the second part, as rental for said premises, from June fifth, nineteen hundred and nineteen, to June fifth, nineteen hundred and twenty-nine, shall be fixed and determined by arbitrators appointed in the last half of the year nineteen hundred and eighteen, in the manner provided by said lease, and thereafter the rental shall be in like manner so fixed from time to time for ten-year periods and in the last half of the years nineteen hundred and twenty-eight and nineteen hundred and thirty-eight, respectively, until the termination thereof, on June fifth, nineteen hundred and forty-nine, instead of the twenty-year periods fixed in said lease.

40 IN WITNESS WHEREOF, the party of the first part hath hereunto set his hand and seal and the party of the second part hath caused its corporate seal to be hereto affixed,

Bill of Complaint—Schedule D.

and these presents signed by its President, attested by its Secretary, the day and year first above written.

In presence of: (Sig.) John E. Andrus. (SEAL)

Lehigh Valley as to J. E. Andrus.

Form Approved, (Sig.) Jas. P.

J. F. S. Northrop.

10

(SEAL)

Description W. W. A. LEHIGH VALLEY RAILROAD COMPANY.

Approved By

(Sig.) E. B. Thomas,

Terms and

President.

Conditions J. F. M.

Attest:

Approved J. A. M.

(Sig.)

D. G. Baird,

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Secretary.

Certificates of acknowledgment by John E. Andrus and of proof by Lehigh Valley Railroad Company attached.

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Opinion of Vice-Chancellor on Motion to Dismiss.

**OPINION OF BACKES, V.-C., ON MOTION TO
DISMISS.**

Filed March 2, 1920.

On motion to dismiss bill.

10 For complainant, Messrs. Collins & Corbin.

For defendant, Mr. Edward O. Stanley, Jr. (Messrs. Pitney, Hardin & Skinner, solicitors).

BACKES, V. C.

This motion is to strike out the bill for want of equity. The motion has not been argued. Counsel assuming, and correctly, that I regard the bill as maintainable for the reasons given and upon the authorities cited in my conclusions on the motion herein for a preliminary injunction, suggested that I advise an order denying the motion
20 so as to expedite an appeal; and I have complied.

Mr. Stanley's conception of the contract, as presently stated, is that, arbitration having failed, the substitute for the recovery of rent for the current ten-year period is, "by action from time to time at law or in equity (for) a fair quarterly compensation for the use and occupancy of the demised premises"; and that this is exclusive—but that arbitration is again to be resorted to for the ensuing ten-year term, at the time fixed in the lease.

30 The former motion involved only the single suit commenced before this bill was filed, and it was held to have been properly brought. But what was there said plainly indicated the view that the right of action at law ceased upon the institution of an equitable suit in substitution of the arbitration; and further, that upon an award in equity there would be an adjustment of the recovery and award in the final decree by crediting the amount on the sum of the award, either as a whole or proportionately, depending upon the true construction of the contract.

Answer.

ANSWER.

Filed March 3, 1921.

The answer of the defendant, John E. Andrus. This defendant answering the bill of complaint, says that:

1. He admits the allegations of paragraph 1. 10
2. He admits the allegations of paragraph 2.
3. He admits the allegations of paragraph 3.
4. He admits the allegations of paragraph 4, except that he denies that complainant has performed all the covenants in said lease contained on its part to be performed in that it has not since June 5, 1919, paid rental for said demised premises in advance as therein provided, and in that complainant refused to permit the arbitrator appointed by it to agree with the arbitrator appointed by the defendant upon the annual rental to be paid for said demised premises for the term of ten years beginning June 5, 1919, and in that the complainant refused to permit the arbitrator appointed by it to agree with the arbitrator appointed by the defendant, upon the selection of an umpire to act with them in fixing such annual rental. 20
5. He admits the allegations of paragraph 5.
6. He admits the allegations of paragraph 6, except that he says that the failure of the arbitrators mentioned therein to agree upon a rental or to select an umpire was due to the fault of the complainant and of the arbitrator appointed by it and was not due to any fault on the part of defendant or of the arbitrator appointed by him. 30

This defendant therefore prays that the bill of complaint may be dismissed.

PITNEY, HARDIN & SKINNER,
Solicitors of Defendant.

Replication.

REPLICATION.

Filed March 6, 1921.

The complainant joins issue on the answer of the defendant.

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COLLINS & CORBIN,
Solicitors of Complainant.

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Opening.

June 16, 1921.

IN CHANCERY OF NEW JERSEY.

Between

LEHIGH VALLEY RAILROAD Co.,
Complainant,

and

JOHN E. ANDRUS,

Defendant.

10

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, John H. Backes, Vice-Chancellor, at the Chancery Chambers in the City of Newark, New Jersey, in the presence of Messrs. Collins & Corbin (Mr. Robert J. Bain), for complainant, and Messrs. Pitney, Hardin & Skinner (Mr. John R. Hardin), for defendant.

20

Mr. Bain. Perhaps I ought to state to your Honor that we have some reason to believe that since the bill was filed and about a year later Mr. Andrus sold the property and therefore he would not be entitled to rentals beyond the date that he sold the property.

Mr. Hardin. We have some reason to believe that the complainant is no longer in possession of the property and has parted with its interest.

30

The Court. Perhaps you should have brought in the new party.

Mr. Hardin. I do not think it is necessary. We have an issue that is shorter in time, that is all.

Mr. Bain. The matter before your Honor involves really only the rental from June 5, 1919, to some date in May, 1920, when we have reason to believe the property was sold by Mr. Andrus. We don't know what the facts are in that regard.

40

Opening.

The Court. I think I will fix the rentals for ten years and let you fight the rest out. You better amend your pleadings and bring in the new party. The thing I am to settle under the terms of the agreement is the rental for the ten-year period, not five years or any other period. Is the railroad out of possession?

10 *Mr. Hardin.* That is our understanding.

Mr. Bain. The railroad is in possession, but under another lease from the Standard Oil Company.

Mr. Hardin. Your Honor will remember at the previous hearing there was pending in the Supreme Court of the State of New York an action for use and occupation according to the terms of the lease and there was a judgment obtained for \$13,139.28 for one quarter, that is at the rate of about \$52,600 a year.

20 *Mr. Bain.* The judgment is under appeal.

Mr. Hardin. Mr. Bain states that the thing to be determined here by your Honor is the entire period from June, 1919, forward, but we think this judgment by the Supreme Court of the State of New York is effective as to the first quarter and that that issue is out of the way.

The Court. I think I held otherwise, did I not?

Mr. Hardin. I do not so understand it.

30 *The Court.* I think I held that your recovery there is simply in the nature of an advancement.

Mr. Hardin. I would like your Honor to look at your opinion because I have not been able to put that construction on it.

Mr. Bain. We assumed that if the New York judgment has any effect, although we dispute it has any effect—if your Honor gives it any effect at all it will be merely by way of credit on the total annual rental fixed by your Honor. That is the view we take of the matter.

40

Thomas A. Ryer, direct.

The Court. I think that is the view I intended to express. You may proceed.

Mr. Bain. This New York judgment has not been pleaded in any way.

THOMAS A. RYER, sworn for complainant.

Direct examination by Mr. Bain.

10

Q What is your occupation? A Real estate.

Q Where? A Jersey City.

Q How long have you been in that business? A Twenty years past.

Q All that time in Jersey City? A In Jersey City, Montclair and Monmouth County.

Q Both bought and sold property in Jersey City? A I have, largely.

Q Do you keep a record of all purchases and sales of all property in Jersey City? A I do. 20

Q Have you acted as appraiser of property in Jersey City? A I have.

Q Many times? A A great many times.

Q For both county and state boards? A Yes, sir.

Q Have you been heard as an expert before the courts and state boards as to the value of property in Jersey City? A Many times.

Q Does that include water front property? A It does. 30

Q During recent years what, if any, special attention have you given to the value of water front property? A I have kept records of all the water front properties that have been sold as far back as I could get them. I have been involved in the sale of some water front properties and I have appeared before the State Board of Taxation on tax matters of the different railroads, the D. L. & W., the Erie, the Pennsylvania, the Lehigh Valley, the Central, the National Docks & Storage and New Jersey Junction. 40

Thomas A. Ryer, direct.

Q Have you also appeared before the state tax boards for individuals? A I have, many times.

Q On water front properties? A A great many times.

Q Were you one of the appraisers, or were you the appraiser appointed by the Lehigh Valley Railroad Company in this matter? A The arbitrator; yes, sir.

Q When were you appointed as such arbitrator? A I think it was some time in September, 1918.

Q Do you know the other arbitrator appointed by Mr. Andrus in this matter? A Mr. William M. Greve; yes, sir.

Q Is it a fact the arbitration failed? A Yes, sir.

Q You failed to appoint an arbiter? A I did, or we did.

Q Are you familiar with the location and condition of the Andrus property in Bayonne involved in this matter? A I am.

Q Have you personally inspected the property? A Many times.

Q And you know its location? A I do.

Q I show you a map and ask you to indicate upon that map the Andrus property?

Mr. Hardin. What is the map?

Mr. Bain. The map is a map of Bayonne water front on New York Bay.

The Court. Prove the map.

Q By whom was that map made? A Walter M. Clarkson.

Q Who is he? A Civil engineer and surveyor.

Q He was one time city engineer of Bayonne? A He was.

Q Was that map made under your direction and supervision? A Under my personal supervision and at my request.

Thomas A. Ryer, direct.

Q Does the map accurately show the matters delineated upon it? A It does.

Q Both with regard to the property line and bulkhead line, pierhead line and depth of water? A It does, as near as it could be obtained.

Q From what were the various depths of water shown on that map taken? A Government charts. 10

Q United States Government charts? A Yes, sir.

Q And are the various depths of water shown on the map before you as thus shown upon the Government charts? A I think they are.

Mr. Bain. I offer the map in evidence.

Mr. Hardin. I would like to ask a question or two.

By Mr. Hardin.

Q Did you make this map? A I made the original 20 map, but I did not make this particular map. I made the layouts and then gave it to Mr. Clarkson and asked him to make certain changes in it and make me an original map.

Q From what did you make the map? A From information that I had in my possession.

Q You had not made any actual survey yourself? A No, only—the changes Mr. Clarkson made were from actual surveys that he had made of the different properties.

Q Where is Mr. Clarkson? A Bayonne.

Q Is he living? A Oh, yes; he was the last I heard of him, six months ago. 30

Q Available to prove this map? A I presume so.

Q He is the man that made it? A He is.

Mr. Hardin. I do not think this is shown to be a map made by this witness.

Mr. Bain. He identifies the map as accurately showing the matters delineated upon it.

The Court. You should have had Mr. Clarkson here. 40

Thomas A. Ryer, direct.

Mr. Bain. I assumed that the map was so accurate there would be no question about it.

Mr. Hardin. I am willing to have it taken subject to correction.

The Court. Use the map and later on you may make your objection.

10 *Mr. Hardin.* I do not think your Honor ought to take the testimony until you are satisfied that the map is correct.

The Court. I will take the testimony.

Q Will you please delineate on that map in colors, if you have a colored pencil, and if not, in black, the Andrus property involved in this case? A (Witness complies.) I have outlined the Andrus property in lead pencil.

Q Have you a United States Government chart with you, showing depth of water? A I have.

20 Q Will you please produce that? A (Witness produces paper.)

Mr. Bain. Witness produces and I offer in evidence map entitled "Pierhead and bulkhead lines for the westerly shore of the upper bay, New York Harbor, Clifton, Staten Island to Hudson River, including the northeast shore of Staten Island, New York, Jersey front and Ellis Island included, prepared by the New York Harbor Line Board."

30 Q That is not a Government—the map you produce is not the United States Government map? A No, Harbor Line Board.

Q That is a New York Harbor Line Board map? A Yes, sir.

Q I show you another map, will you identify that as a United States Government map?

The Court. Paper produced by the other side.

40 Q I show you map produced by counsel for the defendant and ask you whether you can identify that as United

Thomas A. Ryer, direct.

States Government map? A That is the United States Government map.

Q Do you know whether that is the map from which the depth of water shown on the map you produced were taken? A I am under the impression it is, although I could not say positively. It was used in connection with the Harbor Line map and all maps were taken together, so I couldn't say if that was the only one used. 10

Q Did you use this? A We—yes; we used that, and Harbor Line map and all the maps we had that were available.

Mr. Bain. I offer it in evidence for the purpose of showing the depth of water.

Mr. Hardin. It may be desirable to know the date of some of these maps with reference to the soundings and things of that sort. We haven't the slightest objection to the use of this map, which is official. Is this map in? 20

Mr. Bain. That map is in.

Clarkson map marked Exhibit C. 1.

The other map marked Exhibit C. 2.

Q What in your opinion was the value of the Andrus property on June 5, 1919, excluding the improvements on the property?

Mr. Hardin. I object as not being a proper statement of the issue in this case as to values. 30

The Court. I do not suppose he can put a comprehensive question—got to get at it somehow.

Mr. Hardin. Get at it easy enough in the language of the lease, the lease defines accurately just exactly what the property is.

The Court. Objection overruled.

Mr. Hardin. May I be heard on it?

The Court. Yes; I assumed you had stopped. 40

Thomas A. Ryer, direct.

10 *Mr. Hardin.* I would like to call your Honor's attention to the language of the lease. The question is as to the value of the property on June 5, 1919, exclusive of the improvements. The term "improvements" is a different thing from the language used in the lease with reference to the valuation to be fixed. Under the lease for the purposes of the issue that is before this Court the lease says in fixing said rentals the arbiters shall consider the rental value of the premises, excluding the cribbing, piers and structures or buildings on the piers. That is the entire definition in the lease. Now, in the question that has been asked the value of this property excluding improvements, without any definition of the improvement—the same issue arose on the trial of the case in New York and the courts there held the examination to the description of the property in the lease.

20

The Court. Objection overruled.

Q Will you answer the question, please, Mr. Ryer? A Do you want it as the land is today?

Q As the land is today. A \$333,612.

Q What does that exclude in the way of improvements? A That excludes the pier, the channel in, the buildings or railroad tracks upon the property or structures.

30 Q What, in your opinion, was the value of the Andrus property as it existed in 1889?

Mr. Hardin. I object as immaterial.

The Court. What is the purpose?

Mr. Bain. I have shown the value of the property as it is. We claim that the rental should be based upon—

The Court. That may be one of the elements—I have admitted that—why go back ten years?

40 *Mr. Bain.* Because we claim that the rental value for the purpose of this lease is the value of the

Thomas A. Ryer, direct.

demised premises as they existed at the time the lease was made. It was not intended by the lease to give the lessor a rental based upon improvements placed upon the property by the lessee.

The Court. You have asked the naked value.

Mr. Bain. That is the value excluding the cribbing, piers and structures and buildings on the piers and channel. There has been considerable fill placed upon the land. In other words the physical condition of the land has been improved. Now, we desire to prove the value of the land unchanged—both in its physical condition and by way of improvements placed upon the land—structures placed upon the land. 10

The Court. Why the need of going back ten years?

Mr. Bain. Because the property has been so changed in the physical condition that we have got to go back to the original condition of the land; that is, so many acres unfilled land and so many acres of land under water—the value of the property in that condition. 20

Mr. Hardin. We have had no description yet as to any change in the physical condition.

The Court. No.

Q Mr. Ryer, do you know what the physical condition of this property was in 1889? A I do. 30

Q How? A There was about twelve acres of upland—(Interrupted.)

Q I am not asking you to describe it, but how do you know what the physical condition was at that time? A I do not think I was on the property at that time, but from the map and from talks with people who had been on the property I know about how it was.

Q How many acres of upland? A I was on the property when it was in about the same condition that it was 40

Thomas A. Ryer, direct.

in 1889. The improvements were not made until 1916. I was on the property when it was as it was in 1889, practically.

Q What do you mean by "practically"? A Well, there might have been some—a slight difference in the land from 1889 to 1916, though—

10 Q Immediately prior to 1916 what was the condition of the land with regard to uplands and land under water?

A There was a small part of it upland and most of it was land under shallow water.

Q Can you fix about the date when that condition obtained? A That existed at—

Mr. Hardin. Wait a minute. You asked him the date immediately prior to 1916.

The Witness. That existed up to about 1916.

20 Q When were you last on the property prior to 1916?

A Well, I have been down there so many times in the last twelve or fifteen years, Mr. Bain, that I couldn't tell you exactly when. I have been over that property numerous times.

Q Can you state the proportion of land under water and upland immediately prior to 1916? A There was twelve and— (Interrupted.)

Mr. Hardin. Wait a minute. May I ask a question, how he knows it?

30

The Court. You may, afterwards.

Mr. Hardin. The only thing he said up to date is he knows it from what other people told him and examination of the map.

The Court. Of his own observation.

Mr. Hardin. He is trying to tell changing conditions. There is no difficulty about accuracy about the situation if the proper witness is brought. This witness does not pretend to have known about this condition back in 1889, except as he has been told

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Thomas A. Ryer, direct.

by other people and as to the map. I want to also object on the ground that under the lease the inquiry as to the value of this property in 1889—or 1909, is entirely immaterial and irrelevant, because the deed itself fixes the method of valuation, or the description of the thing that is to be assessed to be valued at the time of the inquiry that we are now engaged in. 10

The Court. Answer the question.

A There was 12.19 acres of upland and 32.926 of land under water.

Q And what, in your opinion, was the value of the Andrus property as it existed in 1889, based upon the acreage under water and of upland as just mentioned? A I made no valuation as of 1889.

Mr. Hardin. I object.

A (Continuing.) The only valuation I made was of June, 1919, of the land as it was at that time. Prior to that— 20

Q You made a valuation of the land in its physical condition of June 5, 1919, to the present time, and you also made a valuation of the land as of June 5, 1919, but based upon its physical condition in 1889, is that correct? A I did.

Mr. Hardin. That I object to. I objected to the prior question, which he has now succeeded in getting answered, because it is different from the thing which he was asking the witness about. This witness has not undertaken to say he knew the condition of the property in 1889 by personal observation or by any other way. He hasn't pretended that he knew it. He said he made an appraisal of this property in 1916, and that perhaps—(interrupted) 30

The Court. 1919, as of the condition of the land in 1889. 40

Thomas A. Ryer, direct.

Mr. Hardin. He has not shown personal knowledge.

The Court. That is to the weakness of his testimony and not objectionable.

Mr. Hardin. If your Honor thinks it is not objectionable—I merely want to object to it.

10

The Court. You are moving to strike it out?

Mr. Hardin. I would move to strike it out. I want to get my objection on the record, but it may be before the examination is completed, the thing may be cured. I am certainly within my rights when I am objecting as it goes in. It seems to me the inquiry isn't at all pertinent under the terms of the lease. I think your Honor is bound by the lease the same as the defendant and complainant are bound by it.

20

Mr. Bain. The rental value is what the lease says, in fixing said rentals the arbiter shall consider the rental value of the premises.

Mr. Hardin. Exclusive.

Mr. Bain. Of course, exclusive, but the main thing is they are fixing the rental value of the premises themselves; that is what I am doing.

30

Mr. Hardin. I am debating the proposition of the propriety of discussing the rental value of this property without reference to the exclusion, and I am trying to object to this witness testifying from hearsay or any other old way for purposes of comparison of the condition of this land when it was otherwise than it was at the time when this phrase in the lease applies, on June 5, 1919. The Court undertakes to inquire as to what was the rental value of the property at that time, excluding the present cribbing, structures and buildings on the pier. That is a perfectly definite thing. Why are we interested as to how much of this land was

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Thomas A. Ryer, cross.

under water or how much was upland in 1889, or of any changes between that time and the time when this inquiry applies, except such changes as are in the definition in the lease which defines conditions to be considered at the time the rental is to be fixed. I wish to ask to have the answer stricken out if it has been answered.

10

The Court. I deny that.

Q What is your appraisal as of June 5, 1919, of the land based upon its condition in 1889, assuming that at that time 32.926 acres were under water and 12.119 acres were upland.

Mr. Hardin. I object. My objection is on the record.

A \$189,000.

Q What in your opinion is the value of the Andrus property as it now exists, including cribbing, piers, buildings or structures on the piers? A \$617,300.

20

Q Does that include the value given the land for the channel? A It does.

Cross examination by Mr. Hardin.

Q Mr. Ryer, have you bought or sold any property in the immediate neighborhood of the Andrus property?

A I have not.

Q At any time? A No, sir.

30

Q What is the nearest location of property with which you have had personal dealings to the Andrus property?

A I do not think I have had any dealings in the sale of land nearer than Jersey City.

Q In what part of Jersey City? A All parts.

Q How far from the Andrus property is the nearest part of Jersey City, shore front, that part of Jersey City with which you have had personal dealings? A I should imagine about two miles.

Q North, up the Hudson river? A Yes, sir.

40

Thomas A. Ryer, cross.

Q And are conditions comparable there? A You mean on the water front?

Q Yes. A I had no dealings on the water front in Jersey City two miles from the Andrus property.

Q Well, what is the nearest point on the water front to the Andrus property with which you have had any dealings or personal relationship? A On the water front would be Hoboken.

Q And how far is it from the Andrus property to the southerly line of Hoboken? A I should judge five or six miles.

Q And Hoboken is up channel—Hudson river? A Yes, sir.

Q And the water front property of Hoboken is Hudson river water front property and not bay water front property? A It is.

Q I do not think the conditions are comparable there, do you? A They are not.

Q What is the nearest deep water to this Andrus property? A The channel in Kill von Kull.

Q And how far away is that? A I should judge between 4,500 and 5,000 feet.

Q Have you got any map which would show the channel—either of these maps you have put in evidence, show the channel of the Kill von Kull? A They do.

Q This map is not in evidence? A Does it make any difference which map?

Q I want you to take your distance from a map used in evidence. A All right. It will be very difficult to figure from this map, I think, this is such a small scale.

Q Isn't it shown on the other map you put in evidence? A Yes, sir; I think the pierhead lines are shown there and bulkhead lines. No; this doesn't show the channel. It shows out to it, but doesn't show where it reaches the channel.

Q Does the channel of the Kill von Kull touch the Andrus property? A It does not, other than through the

Thomas A. Ryer, cross.

channel which has been made to it from the Andrus property.

Q And does that channel go by the shortest route from the Andrus property to the channel—to the Kill von Kull channel? A Very closely.

Q Will you tell us what you mean by the Kill von Kull channel? A I mean a thirty-foot channel running through the Kill von Kull to the Andrus property. 10

Q Thirty-feet—minimum depth of thirty feet? A Yes.

Q Is that indicated in any way on this Government map, C. 2? A It is in here (indicating), here. The channel comes out here (indicating) and this channel comes out to it. Here is the Andrus channel running out here to meet this channel of the Kill von Kull.

Q Would you call any water thirty feet deep within the channel? A I would. Some of it is deeper. 20

Q Do you know the situation of the piers at Constable Point adjoining the Andrus property on the south? A I do.

Q There are several piers around there? A A number of them.

Q They go to deep waters, do they, to the Kill von Kull channel, those piers along there? A I believe they do.

Q Isn't that property immediately adjacent to the Andrus property, the pier property to which you refer now? A It is, but there is shallow land between that and the Andrus property. 30

The Court. What properties?

Mr. Hardin. Pier property immediately adjoining the Andrus property on the south.

Q Are those properties shown on this Government map? A They are.

Q Are they shown on your other map also? A They are. 40

Thomas A. Ryer, cross.

Q I understand, taking Exhibit C. 1, that the piers shown on the property—on the Standard Oil property immediately adjoining the Andrus property on the south, as you understand, are on the Kill von Kull channel? A They are.

10 Q Extend out to the Kill von Kull channel? A Very nearly. They do not quite. I do not know how far the channel is from there. This charts twenty feet in depth.

Q Where is the channel? A That goes out to meet the channel as it enters the Kill von Kull. It is the channel built from the Andrus property by the Lehigh Valley for the Andrus property.

Q I call your attention that right off the northerly end of the Standard Oil property adjoining the Andrus property is a sounding—northerly end of the Standard Oil there is a sounding marked 30.9 feet? A Yes, sir.

20 Q That goes into the Kill von Kull channel, as you understand it? A No, that is that depth, but there may be lesser depth beyond to the channel and this map does not show it.

Q Your idea is that where there is thirty feet of water, that is deep water, and that land so situated, adjacent to water of that depth— (Interrupted.) A If there is nothing between that and the thirty-foot channel, yes, it would be in the channel.

Q Might be a bar? A Yes, sir.

30 Q You see no bars between the soundings out to the— A Not on this map, but that doesn't mean to say they are not there.

Q Will you then explain to me why you say that the channel, that the thirty-five-foot channel that you have indicated, that you said very nearly went by the shortest point to the Kill von Kull—will you explain what you mean by that in comparison with the deep water that apparently extends to the very corner of the Andrus property? A It did not go in the shortest way from the Andrus property to the Kill von Kull channel. It went in a
40

Thomas A. Ryer, cross.

direct line from the property out to the channel, but it might have gone from the Andrus property to the Kill von Kull channel in a shorter distance, if it had gone south, then in a direct line.

Q As a matter of fact it would be possible to reach the deep water of the Kill von Kull channel from the Andrus property by a much shorter route than the thirty-five-foot channel actually takes? A That might be so. 10

Q You were mistaken when you said that the channel pursued the shortest way from the Andrus property to deep water? A I was.

Q And you included in your valuation that you gave us as of the present time, consideration of the fact that there was access through the thirty-five-foot channel? A I did.

Q Do you know when that channel was put there? A I think it was put there in 1916.

Q You know it was there prior to June 5, 1919? A Yes, sir. 20

Q Now, have you had any experience, personal experience or dealings of any kind with relation to water front property on the Kill von Kull? A I have not.

Q And all your views are the result of consideration of maps and personal visits and consultations with people whom you believe to be familiar with the subject? A And knowledge of sales of property.

Q Where were these sales you refer to? A Well, you mean all the sales there? I had sales on the Kull. 30

Q I want any sales you take into your view in determining your opinion as to the value of this property, and I also want to know how you know about the sales? A The first sale was the purchase of the Pennsylvania Railroad, Greenville land on the bay, and shown on this map.

Q And what is the source of your information as to that sale? A The records.

Q What records? A Court house records.

Q Is the consideration stated in the record as you found it in the court house? A It is. 40

Thomas A. Ryer, cross.

Q Do you know that that was the actual consideration?

A Not of my own knowledge, other than from those sources that I obtained it.

Q Where is that property located with reference to the Andrus property? A That is north of the Andrus property, in Jersey City, on the bay.

10 Q How far north? A I should judge about two miles.

Q And what was the date? A 1889.

Q What recent sales do you know about? A The most recent sales were made by the—purchases were made by the Lehigh Valley Railroad Company just directly north of the Pennsylvania, that I have just mentioned.

Q When were they? A Those were in 1916.

Q And they were also more than two miles away? A Yes, sir.

20 Q Do you know any sale in 1919 in the neighborhood of this property? Never mind, I will ask you about that later.

The Court. Is there a low water line on this map?

The Witness. (Pointing.)

Q I will ask you whether the map, Exhibit P. 1, shows the low water line on the Andrus property—the map on the Vice-Chancellor's desk. A It does.

Q Where? A (Pointing.)

30 Q Does that map show the distinction between the twelve acres of upland and forty-three acres or thirty-two acres—whatever it is? A It does not.

The Court. Is this all filled (indicating)?

The Witness. Yes, sir.

Q Do you know about the sale of the property to the International Nickel Company by the Standard Oil Company in 1916? A I do.

40 Q Where was that property located with reference to the Andrus property? A That was located south of the Standard Oil property

Thomas A. Ryer, cross.

Q On the Kill von Kull? A On the Kill von Kull.

Q So marked? A So designated on this map, International Nickel.

Q How far away is that? A I would have to have a ruler to give the distance—about 3,600 feet.

Q And how have you measured that?

The Court. The piece designated Standard Oil 10
is the piece that was sold?

The Witness. The piece that was sold to the International Nickel is right in there. I have measured that directly across; I haven't taken the shore line.

Q At what point have you measured across? A From pierhead line to pierhead line, directly across the land, four and a half inches, 800 feet to the inch, ruled by the shore would be slightly more.

Q How far would it be if you went out—what point do you go directly across? A From pierhead line to pierhead line; from the southerly pierhead line of the Andrus property to the northerly pierhead line of the International Nickel. 20

Q Suppose you go back in then to the rear, how far is it there? A About 1,600 feet.

Q What was the consideration of this piece? A \$125,000.

Q How do you get at that consideration, the deed says \$1? A From testimony and from different people that I get the information through. 30

Q How many acres are there? A 2.64.

Q Do you know whether there were any stamps on the deed or not? A I do not remember. I cannot tell you off-hand.

Q You did not have the information about the stamps on the deed? A I may have it in my office.

Q And what area do you understand that 2.64 acres covers, the property from the rear to the pier line? A From the pierhead line to the rear. 40

Thomas A. Ryer, cross.

The Court. What is the acreage of the Andrus property?

The Witness. 45.05.

Q What is the acreage rate of this Standard Oil sale, assuming the consideration to be \$125,000? A \$7,348 per acre.

10 Q Now, do you know about another sale in 1916 from Delano to the International Nickel Company? A I do.

Q And where is that property located with reference to the Standard Oil sale we have just been discussing?

A Right next to it.

Q Nearer to the Andrus property? A No, further away.

20 Q I understood you to indicate to the Vice-Chancellor a point of comparison of the Standard Oil deal as being at the further point of the Nickel Company property from the Andrus property. A (Indicating.) The Delano property was further south than the Standard Oil. The Standard Oil was a hundred feet depth strip north of the Delano.

Q Then did I misinterpret you? A I pointed out correctly both times.

Q I got the impression as I was looking on—

30 *The Court.* I did, too.

A This hundred foot strip was the Standard Oil and this was the Delano running on the back.

Q And what was the area of the Delano deal? A That was 6.40 acres.

Q And measured from the rear line of the property?

A To the pierhead line.

Q Partly upland and partly under water? A Yes, it was.

40 Q What was the consideration of that deed? A \$310,000.

Thomas A. Ryer, cross.

Q What would that be as to acreage rates? A \$48,470 per acre. The frontage on the Delano property was, on the bulkhead line, was 201.31 feet and the Standard Oil 100 feet.

Q And the Andrus property, frontage? A The Andrus property on the pierhead line was 508 feet.

Q How much of this Delano property was upland and how much was lowland? A The greater part of it was upland, on the Delano property. I haven't the areas here. 10

Q And at the time, in 1916, when these sales were made to which you refer, this property was entirely unimproved? A Yes, sir.

Q Just open land in the same condition you have assumed in making your valuation of the Andrus property? A Yes, sir.

Q And these figures therefore relate to a condition which is—these figures of the sales relate to the condition—physical condition of the property similar to that which you assume in making your appraisal of the Andrus property? A Exactly. 20

Q And what I have just asked you about the Delano property was also true of the property sold by the Standard Oil Company to the International Nickel Company in 1916? A It was.

Q Which we discussed a little bit earlier. Was this map C. 1 made to a scale? A 800 feet to the inch.

Q Won't you kindly scale this frontage—the frontage of the Andrus property and see whether you are quite accurate when you answered the Vice-Chancellor as to the pierhead frontage? A It scales 560 feet, but my map shows 508 feet. I had that scaled for me by Mr. Clarkson at the time. 30

Q Mr. Clarkson. Do you know whether Mr. Clarkson has agreed that the frontage is 621.81? A He may have since then. It is hard to scale. 621 may be correct.

Q Don't you know as the result of actual survey that the frontage on the pier line is 621.83? A I have a sur- 40

Thomas A. Ryer, cross.

vey here of the Andrus property, I think. If it is surveyed at that that would be correct. I had no survey at the time.

Q If the pier frontage of the Andrus property is 621.83— A That would be correct.

Q Your answer should be corrected? A Should be
10 corrected to 621 feet.

Q Instead of 508? A Yes, sir.

Q Are you familiar with the sale by Finnely & Desbo to the Standard Oil Company? A I am.

Q When was that? A 1920.

Q Where did you get your information? A Same source.

Q Doesn't the deed show the sale was December 4, 1919? A It may show that; either latter part of 1919 or first part of 1920.

Q Was not the contract made some time before the
20 deed? A It may have been.

Q In July, six months earlier? A It may have been.

Q So that the figure of consideration, whatever it was, was arrived at by contract in the late summer of 1919? A It may have been.

Q What was that consideration? A \$300,000.

Q And the area? A 3.987 acres,

Q Where did you get that area from? A I think
30 from the survey made by Mr. Dunn.

Q The map I have before me shows that the area is five and a half acres? A My draftsman has put on here 3.987.

Q You did not put that on yourself? A No.

Q How much an acre would it be at your rate? A \$75,244 per acre.

Q And what was the frontage on the pier line? A I haven't the frontage here.

Q Bulkhead lines? A Yes—no, pier—I haven't the
40 frontage here on the bulkhead lines.

Thomas A. Ryer, cross.

Q 317 feet about right? A Yes, sir. I have it; yes; 318 feet, here.

Q Where is that property located with reference to the property sold by Delano to the International Nickel Company? A Directly south and adjoining.

Q In the angle that is shown? A It takes in the balance of the property. 10

Q Of the Delano property? A Takes the balance of the property to tidewater.

Q It squares out the tract, doesn't it? A It does.

The Court. It is so indicated on the map, Finnely & Desbo. Are the portions of land under water and upland comparable factors, Mr. Hardin?

Mr. Hardin. We will give you the actual figures in that regard. We think they are.

Q Now, take this Finnely & Desbo property; do you know what portion of that is above and what is below water? A I do not. Very small portion of the land under water. 20

Q I think you have already told me you did not know the proportion of upland and lowland in the Delano sale to the International Nickel Company? A No.

Q Now, about the Standard Oil Company? A The same to that.

Q You haven't those figures as to quantity of upland and lowland? A I have not. 30

Q Which is regarded of greater value, under water or upland? A Depends entirely how you use it.

Q Is it also true with reference to the Finnely property that that property at the time of its sale in 1919 to the Standard Oil Company was entirely unimproved and in the same physical condition you have assumed in your figures of the Andrus property? A No; that was filled out further than the International Nickel and the Standard Oil—had an old pier on it 40

Thomas A. Ryer, cross.

Q Did you see that property? Has the Standard Oil made any changes there lately? A I do not think they have.

Q What kind of a structure is that old pier? A Nothing—it was an old pier at one time there; nothing now.

10 Q Tumble down—out of repair? A No value at all.

Q There is no bulkhead there, is there? A I think there is a stone bulkhead there—nothing—it would have to be renewed—

Q What? A It will have to be renewed to make it permanent.

Q Are you familiar with the sales of property by Delano to the Standard Oil Company in 1918? A I am.

20 Q Where was that property located with reference to the Andrus property? A Directly south of the Finnelly & Desbo.

Q And was that improved or unimproved property? A I think that was practically in the same condition; very little difference.

Q How much of it was upland and how much lowland? A I don't know that. There was a total area of 13.81 acres.

Q And what was the consideration of that sale? A \$778,000 or \$56,000 per acre.

30 Q What was the date of the deed? A 1918.

Q March 21st? A March 21st I guess is the correct date.

Q And what is the pierhead line measurement there? A I should judge that was between five and six hundred feet.

Q Is that the bulkhead line or pierhead line? A That would be the pierhead line.

Q That is slightly— A Slightly wider than the bulkhead.

40 Q Are you familiar with the sale of property by the Standard Oil Company to the Lehigh Valley Railroad

Thomas A. Ryer, cross.

Company of property immediately adjoining the Andrus property? A Only in so far as testified to by Mr. Van Duser.

Q Haven't you got the same kind of information on that as you have on these others you have been telling us about? A Largely.

Q Who is Mr. Van Duser? A Real estate agent of the Lehigh Valley Railroad Company. 10

Q When was that sale made? A I think that was in 1920, sometime in the latter part of 1920 or early part of 1921; I do not remember which.

Q You have got your information from Mr. Van Duser; would you take Mr. Van Duser's statement as to the time to be correct? A If Mr. Van Duser said that on the stand I would consider it correct.

Q If he said May 21st, would you think that was the time, 1920? A 1920 I would say was the time. 20

Q May 21, 1920, appears to be the actual date. What was the consideration of that sale? A I do not remember that.

Q You are not familiar with that sale? A Other than as I stated, only in his testimony. I haven't been able to take it up.

Q Didn't you hear—were you in court? A I was.

Q In White Plains when Mr. Van Duser testified? A I was. 30

Q What is the area of that tract? A I don't know; he testified to the area, but I haven't it.

Q Do you recall he testified it was 145 acres? A My impression was it was 148 he testified to, as near as I can recollect.

Q Do you remember he said the consideration was \$2,737,153.75 plus \$84,294.37? Now, will you indicate to the Vice-Chancellor that property on the map Exhibit C. 1? A (Indicating.) 40

Thomas A. Ryer, cross.

Q Marked on the map, Lehigh Valley Railroad Company, within the lines of the track, immediately to the north of the Andrus property? A Yes, sir.

Q That property is part upland and part lowland? A It is.

10 Q And in the same general unimproved condition that you have—or was in 1920, that you have assumed with reference to the Andrus property? A It was.

Q That property is further, is it not, from deep water, than the Andrus property? A Other than through this channel?

Q Through which channel? A The channel into the Andrus property.

20 Q Independent of the relationship to the Andrus property this property sold by the Standard Oil Company to the Lehigh Valley Railroad Company in May, 1920, is further from deep water? A I wouldn't say so, other than maybe a hundred feet.

Q Isn't that further? A I wouldn't say so. It merely means—in fact it is no further. Where the channel turns to the south and goes into the Andrus property it could turn and go into the Lehigh Valley property without being any greater distance, as far as distance is concerned.

30 Q That is, assuming the existence of the present channel. I am eliminating the 35-foot channel to the Andrus property. I am asking you whether the Lehigh Valley-Standard Oil tract, is not further from deep water than the Andrus property? A Assuming that the 35-foot channel of the—

Q I asked you not to assume anything at all about the 35 feet. A I should, assuming that it was not there at all, the distance from deep water in the same line with the Andrus channel would be the same.

40 Q To make that answer correct you would have to go across the Andrus property, wouldn't you, between the bulkhead line and pierhead line? A No, you would

Thomas A. Ryer, cross.

parallel Andrus channel—paralleling that, that would be the same distance.

Q Don't your chart show that as you go north the shallow water increases and widens? A Yes, sir.

Q Are you now talking about the nearest path? A Yes, sir; for the simple reason that the channel into the Andrus property is directly next to the Lehigh Valley property—right together. 10

Q Not by the shortest path to deep water (indicating)? A Not by the path you are designating, but the channel as it goes now; yes, sir.

Q Eliminating the channel, the shortest path from the Andrus property to deep water is shorter than the shortest path from the Lehigh Valley Railroad tract to deep water? A It would be, if you go directly out to the channel in Kill von Kull, directly south.

Q The map shows it? A I do not think it does. I do not know that you can go in a direct line. If you can it would be much nearer. If you have to go out the way they have gone out it would be the same distance. 20

Q Does this Exhibit C. 1 show the depth of water in front of the Lehigh Valley tract? A It does.

Q And in front of the whole tract? A From two feet up.

Q From two feet up, all that portion of it that is under water? A Yes, sir.

Q Now, directly in front of the Lehigh Valley Railroad tract does the water increase rapidly or not? A I think it increases rapidly. 30

Q The figures on this map indicate that, C. 1? A Doesn't show anything.

Q Doesn't it say seven feet? A That is the northerly part. Here in the center it doesn't say any depth at all; on the other side it does show.

Q In that Government map, if you will now—it is also in evidence. A (Referring to map.) It shows—this map shows from six to nine—twenty-two feet, a short distance out. 40

Thomas A. Ryer, cross.

Q Does this shaded matter on this map show shoal water? A It does.

Q And does that shoal apparently cover the entire front of the Lehigh Valley tract front? A It does, at the pierhead line, but as you go out a short distance on the 35-foot channel it ceases.

10 Q Well, now, from the pierhead line to the—how far does that go before you get off that shoal, from the pierhead line? A About 100 feet in the direct line.

Q That is to 22 feet of water? A Yes, sir.

Q By the way, you are not so sure about C. 1 being accurate as you were a while ago? A Accurate so far as the information we had at that time; yes, sir; but it may be that this map is something practically new. They get up new maps and change things all the time. I think this was gotten up right after we finished that map there.

20 That map was correct at the time, but those changes—

Q You would say, looking at this map, Exhibit C. 2, that this little plot in red accurately shows the location of the Andrus property? A I wouldn't say that it accurately showed it.

Q You see it with reference to the channel? A I should say that was the scale.

Mr. Bain. This map was made May 17, 1921.

30 Q Are the figures you have given us today as to the valuation of the Andrus property the same as you gave when you testified as a witness in the New York Supreme Court? A No. I do not think I testified to the same figures. I think that at the time I testified in New York I was asked to give the total value of the property as it is, and I stated that that value was given without street access from the rear. At that time I believe it was demonstrated that it had street access. The figures I have given you today include the street access.

40 Q Your figures were substantially different as just testified to? A I do not think they were any different,

Thomas A. Ryer, cross.

because I do not think they were on the same lines. I do not think I have testified today as to the value of the Andrus property as it is.

Q Do you recall being asked in the New York Supreme Court, where you testified as a witness in an issue between John E. Andrus and the Lehigh Valley Railroad Company, defendants, on November 23, 1920: 10

“Q What was the fair market value of the premises in June, 1919, excluding the cribbing, piers, and structures or buildings on piers? A \$513,168.” Do you recall that question and answer? A I do.

Q What is the figure you gave us today? A There is a difference in the area there. At that time the area was based on 43 acres. Subsequently to that we found it was 45.05 acres. The figures I gave you today were \$617,331.

Q Did you have your valuation of \$513,168 based on 43 acres or 45? A No; it is based on a different calculation. I will give you the difference in the calculation. I have the figures here of \$513,000 and I will show you what it was based on. The \$513,168 was based upon 45.05 acres, at \$20,000 an acre; and I excluded from that the cost of the pier, the bulkhead platforms, piles and bulkhead fence and breakwater and engineering charges amounting to \$387,732, making the net valuation of \$513,168. 20

Q And did you make up your figures before or after you knew the acreage was forty-five? A After. 30

Q And then you added in your figures today, per acre, for the street access? A I have made a different calculation today in arriving at these figures, Mr. Hardin.

Q In your figures today, what did you add—am I right in the assumption that the only difference you indicate between your testimony last November in the New York court and here is the effect of the street access? A No; I made different calculations.

Q Which theory was correct; the one you were using last fall or the one you are using now? A It isn't a 40

Thomas A. Ryer, cross.

question of theory; it is a question of how I have been asked to give figures, and I have given you three separate figures. It all depends entirely on which one you want explained. I have given you \$617,000, \$333,000 and \$189,000.

10 Q What is the \$617,000? A That is the property as it is today, including the channel, but excluding the cribbing, piers and structures.

Q What did the \$513,000 represent, that you testified to in the New York suit? A That was the valuation I made excluding the street access for the entire property, and then excluding the piers, bulkheads, platform, piles, bulkhead fences and breakwater, and engineering charges.

Q Is there any difference between the two except the street access? A Why, yes.

20 Q What is the difference? A In the one case, I made that figure here of the land, of so many acres of land at so much per acre for land under water and so many acres of land filled at so much per acre, and then I added to that the cost of the channel. Entirely different compilation.

30 Q Now, I call your attention to the question which you have said that you remember, and the answer which you gave, which you also said you remembered, and the question was: "What was the fair market value of the premises in June, 1919, excluding the cribbing, piers and structures or buildings on the piers," and your answer was: "\$513,168." Today you are giving us something different as the market values, including the cribbing, piers and structures or buildings on the piers, apparently? A I am giving \$617,331.

Q I am asking you what was there different in your mind today with reference to that \$513,000 that was not in your mind then? A Nothing other than the street access.

40 Q Then what amount per acre have you added? A I have added twenty-five per cent. to it.

Thomas A. Ryer, cross.

Q Twenty-five per cent. per acre? A No—yes, twenty-five per cent. per acre.

Q Because of the street access? A The present street access; yes, sir.

Q So that now your basic figure is \$25,000 an acre instead of \$20,000 an acre? A It is. I testified at that time that the street access would increase that value largely per acre. 10

Q And that was on the theory that the property would not have been very useful for any purpose without street access? A It could only have been useful so far as the water front was concerned—would be no use to men who wanted to get rear access.

Q And rear access is an element of value? A I made it twenty-five per cent.

Q And it is an element of the rental value? A It is an element of value—certainly, rental or sale. 20

Q Anything that adds to property value adds to rental value? A Absolutely.

Q Taking your present figure of \$631,000—\$617,000, how did you reach it? A I had 22.992 acres of land under water at \$3,000 an acre and 22.53 of filled land at \$12,000 an acre, and I add to that the cost of the channel, \$283,720, making the total \$617,331.

Q How much do you say the cost of the channel was? A \$283,720.

Q Who told you what the channel cost? A Mr. Jackson of the Lehigh Valley Railroad Company. 30

Q That is all you know about it? A That is all.

Q And if that is all right your calculation is all right? A Absolutely.

Q Now, where is there any acreage rate there at all? A Well, how do you mean? I tell you I have taken 22.992 at \$3,000 and 22.053 at \$12,000, that is the upland, as I have it.

Q How does that compare with the \$20,000 acreage you took as the basic figure which you were testifying in New 40

Thomas A. Ryer, cross.

York? A It doesn't compare, because the twenty was for completed property. I stated that the property in its present condition, improved as it was, was worth \$20,000 an acre without street access. I have changed that figure today and made it \$25,000 an acre for the land and improvements as they are today, including the channel.

10 Q Average price? A Average price of the whole tract per acre.

Q Excluding what? A Excluding nothing but the buildings upon the pier.

Q And including the channel as you did in New York?

A Including the channel and everything.

Q Excluding the buildings? A No, \$25,000 an acre includes everything.

20 Q That is the value of the plant as of today? A As the plant exists today without any buildings upon the piers or land, including the cribbing and bulkhead and pier and channel and everything, is worth \$25,000 an acre now, excluding everything but the channel and taking it as bare land—so much upland and so much under water, is \$617,331.

Q As compared with \$513,168 which you testified in New York because of the condition of access to the street front? A Yes, sir.

Q What is the aggregate at \$25,000 an acre? A \$1,126,125.

30 Q Why do you include the channel? A Because I was asked to make my figures that way, that is all.

Q Was the channel there in 1889? A No; I didn't say so.

40 Q I know you didn't. Suppose you exclude the channel? A If you exclude the channel, \$333,612. I made up an estimate here of the land as of today with the channel; I have it as of the land as it is today without the channel or anything; then I have made it up as of the land only as it was in 1889 and then gone on further and made an estimate of the value of the entire property with all

Thomas A. Ryer, cross.

the improvements on it as it is today; those are the four estimates I have made.

Q I am still unable to quite get any other difference than access to the street—there may be—between your New York figure and your figure here today? A No, there aren't any differences.

Q You excluded in that figure cribbing, piers and structures or buildings on piers? A Simply left the channel in the same as I have in this figure. 10

Q You did not say anything about the channel in the matter you were testifying in in New York? A No; I simply stated that I simply excluded the piers, bulkhead, platforms, piles and bulkhead extensions and the break-water.

Q You had not yet been told about the channel? A I was not asked to put it that way, Mr. Hardin, that is all. 20

Q Nobody said anything to you about taking the channel into calculation? A They did not say take it out; if they had I would have reduced it that amount.

Q What was the value of the land in 1919, excluding the piers, cribbing and structures or buildings on the premises, but taking into consideration the superstructure and all the improvements upon the land, but not including their value? A You mean to take the land as it is today or was in 1919? 30

Q Yes, or as it was when the lease was made? A Yes, sir.

Q What was the value of the land in June, 1919, as it existed when the lease was made, taking into consideration the presence of superstructure, improvements, everything there, but not adding the value of those improvements? A I do not see how I can give you an estimate of that value, because the value I would give you—or estimate—would be simply the bare land as if it had none of those superstructures on it. 40

Thomas A. Ryer, cross.

Q The superstructures still improves the value of that land, does it not? A Oh, yes; of course.

Q I do not mean in the sense of the added value of the superstructures—the presence of the superstructures add value to the land, do they not? A They certainly do.

10 Q Can you answer that question? A I can only tell you what the land would be worth today if it was in the condition it was in 1889.

Q The surrounding improvements have not improved the value of this land? A There is no surrounding improvements there. It is only this property that has been improved and there has been added fill to it. Originally there was only twelve acres of upland and today there is twenty-three acres of upland.

20 Q When the lease was made there was no railroad and the land was not being used for any purpose? A No, but there was a railroad put there after that and prior to the time this property was improved there was railroad connection to it for a long time.

Q The construction of the railroad and the erection of the—the putting up of the super-structures have all added to the value of what you call this bare land here? A Yes, sir; but I have taken that value as of 1919. Take for instance the Packard, was sold—I was going to mention that.

30 *Mr. Hardin.* I object to it unless we have the details.

The Witness. That property was sold in 1916. That takes in all the elements of improvement that were there in 1916, and my valuation of the bare land takes in all the elements that were there in 1916, but not the improvement on this particular piece of land outside of that. It takes in all other elements of value in fixing my figure of \$333,-612, without the channel or without anything, the bare land, in my judgment it is only worth \$189,600;

40

Thomas A. Ryer, cross.

with the channel you get \$333,612, including the fill that was put in—when you add the channel to that fill, you get \$617,331. Now, when you add the piers and all the improvements that have been made on that property and make it a commercial proposition you get \$1,126,125.

Q That includes the cost of the construction of the improvements? A No, only in the case of the channel. I haven't taken in the cost. It may have cost more than \$25,000 an acre to improve it, but I consider in its present condition it is worth \$25,000 an acre. The only time I have taken the cost has been when I have included the channel. I was asked to give the figures of the land as it is today—that is in the condition it is today, and then add to that the cost of the channel, which I have done. That gives me \$617,000. 10

Q The land is improved in value by the cost of the channel? A I don't know that it is. I do not think the channel would be of any value to the land until you put a pier on it and use it for commercial purposes. 20

Q You have taken into your appraisal the fact that the channel was there and that it added to the land the amount of its cost? A That is cost so much money.

Q Added to the value of the land the amount of its cost? A Yes, sir.

Q Are you quite serious when you say that there are no recent improvements in that neighborhood—no changes? A I mean by that that the property to the north has not been changed. 30

Q Isn't there great activity immediately to the south? A Well, I was going to state that. Directly to the south there has been no change—immediately to the south, but south of the Standard Oil Company's original property there has been considerable activity; that is around on the Kill von Kull—entirely different section. 40

Thomas A. Ryer, cross.

Q And the deep water channel of this property goes up to the Kill von Kull channel? A It does, to the mouth of the Kill von Kull channel, where it enters the Kill von Kull.

Q Now, hasn't this property—property in that neighborhood been rapidly enhancing in value during the last year? A I think it has.

10 Q To the north as well as to the south? A I think so.

Q Hasn't it been because— A I think from 1910 to say 1919 it probably doubled in value. That is the figure I put upon it.

Q How about the likelihood of injury in the future? A Now you are up against this problem—you have got a shipping condition today that no man can tell what is going to happen to water front property. It may go ahead, may stand still—can't tell anything. We are at a very unfavorable time at the present minute.

20 Q Whatever may be the shipping situation, there are large manufacturing properties north and south of this property, are there not? A Yes, sir.

Q And increasing— A Slightly; not what it ought to be. Industrial business is not in the condition it ought to be.

Q Demand for large tracts for such purposes? A It is spreading out over a large area.

30 Q That demand increases its value? A To some extent.

Q If you were told there was a sale by Andrus to the Standard Oil Company, would that fix the value—would that increase the value?

Mr. Bain. That would not show market value.

The Court. If you were a party to the sale from Andrus to the Standard Oil I think that would be conclusive as to its value.

Mr. Bain. We are not a party. Standard Oil might very well pay more than its market value.

Thomas A. Ryer, cross.

The Court. If you were a party to the deal I think I would adopt it as the value.

Mr. Bain. We were not concerned as a purchaser in the deal. The Standard Oil was the sole purchaser.

The Court. It would have a bearing, and very profound bearing, I think. 10

Q What is the particular activity immediately adjoining this property, this Andrus property down there in the numerous visits that you are able to tell us about?

A You mean who is responsible for the activities?

Q No. A Simply enlargement of the Standard Oil plant mostly. On Kill von Kull there has been some other—

Q What sort of business are they carrying on there, refining? A Refining, yes, sir, mostly. 20

Q Constantly increasing the capacity of their plant? A They are. They have been spreading out. The International Nickel—

Q Does the fact that they have been acquiring so much property which is not all actively occupied, indicate their intention to continue for a period of time to stay there? A I presume so.

Q Because of the contiguity to water front? A Of course. 30

Q A distinct advantage? A Yes, sir.

Q That is an advantage for the particular use they are making of the property, is it not? A To some extent, yes, sir. They have got a large piece of water front—before they purchased this property—I think they are looking for more land.

Q It is a fact that they bring oil there by boat—you know that, don't you? A Oh, yes.

Q That is crude oil, bring it in there by boat? A Refine it, pipe it away from there. 40

Thomas A. Ryer, cross.

Q Bring it from all over the world, do they not? A I presume so.

Q You know it comes there in ships? A Yes, sir; it comes from all over, I presume.

Q And they can't pipe oil, for instance, from southern Russia? A I shouldn't think they could.

10 Q Or South America. Now, what kind of use is being made of the Kill von Kull property itself—what is this International Nickel Company, for instance? That is a large concern? A Large manufacturing plant—nickel plant.

Q Refining plant? A Yes.

Q They have largely increased their holdings? A They have and I believe there has been some exchange of the Bergen Port Chemical, south of that.

Q Large enterprises? A Yes, sir.

20 Q Employing a great many men? A All allied with the Standard Oil until you get to Tidewater, all below that is Central Railroad.

Q Where is that? A Just south of the Pacific Coast Borax Co. and Standard Oil latter property.

Q How far across country from the rear of the Andrus property? A I should say that was about—oh, they are within fifteen or sixteen hundred feet on a direct line.

30 Q The same general neighborhood? A They are all right together on the Hook road.

Q Have you figured out the price per acre of that Lehigh Valley sale? A I have not.

Q To the Standard Oil Company? A I have not.

Q You can do it? A I certainly can; around \$19,000.

Q Between nineteen and twenty thousand? A Just about nineteen, a little over nineteen thousand.

Q Entire tract, 4.087 acres, \$84,394.37? A That is about \$21,000 an acre.

40 Q And how much have you put on this land per acre? A \$25,000.

Thomas A. Ryer, cross.

Q But you have excluded a lot? A Yes, sir.

Q This property you have just been figuring on is the Lehigh Valley Railroad Company to the Standard Oil Company—that is not improved property? A It is not.

Q You have not excluded anything there? A I haven't done anything to it at all. I am merely taking the figures that you say that it sold for. 10

Q That \$25,000 an acre is the average price of the whole tract? A It is as it is today.

Q Taking the exclusions you have made to get it down to \$617,000 over the forty-five acres, what is the acreage price you have fixed? A About \$13,700 per acre.

Q That compares with the Standard Oil property next door? A I should say so.

Q Bought from the Lehigh Valley Railroad Company? A I should say so. 20

Q Mr. Ryer, just one further question. Of course you took into consideration in arriving at the figure \$13,700 per acre the fact that the land next door had been sold for between nineteen and twenty thousand dollars an acre? A I did not.

Q You did take the International Nickel sale into consideration? A I did.

Q What consideration did you give that? A It is a different class of property entirely. Take the land on deep water in Kill von Kull, in my judgment it is a different class of property from land under water here in the bay. 30

Q This property has access to deep water? A Through the channel, yes, sir.

Q And the channel was there in 1919? A It was, but the access through the channel would not be the same as through the Kill von Kull channel to the pierhead line.

Q What difference in value of water front property would you make by reason of that difference in access? 40

Thomas A. Ryer, re-direct.

A I should say the property on Kill von Kull was considerably more valuable than property on the bay.

Q They both can get out? A They can in a way; one comes through the channel, the other comes through a 200-foot channel.

10 Q And this comparable Lehigh Valley Railroad Company lease that we have been talking about where the consideration was nineteen or twenty thousand dollars an acre, just north of the Andrus property, that has no access to deep water? A None other than through the Andrus channel.

The Court. Did you give a rental value?

The Witness. I did not, yet.

Re-direct examination.

20 Q Mr. Hardin referred to sales of property on Kill von Kull, two in 1916, one by the Standard Oil Company to the International Nickel Company, one by Delano to the International Nickel Company, one in 1918 by Delano to the Standard Oil Company; one in 1920 by Finnely & Desbo to the Standard Oil Company. In your opinion is the Andrus property comparable in value with the land involved in those sales? A I do not think so.

30 Q Why not? A I think the Andrus property is less valuable. One is a water front—concentrated water front property on the Kull—

Q Which one is that? A That is the sale you have mentioned from Delano to the Standard Oil and Finnely & Desbo. The property of Andrus is a piece of property which you have to channel to through shallow water to get out to deep water.

Q What other differences are there?

The Court. You take that in the direct line you mentioned—take the line of the present channel—

The Witness. Yes, sir.

Thomas A. Ryer, re-direct.

The Court. Can't you reach deep water by going directly south?

The Witness. Why, I don't know how far you would have to go south from the Andrus property to get to deep water.

The Court. It says here thirty feet.

The Witness. It is true. 10

The Court. Eighteen to thirty.

The Witness. It is close to thirty. It might not be favorable to go in front of all these piers of the Standard Oil to get to your channel. The Standard Oil have piers right down there.

The Court. Not beyond the pier line.

The Witness. No; they can't go beyond the pier line, but—I don't know why the Lehigh Valley Railroad Company went out to the mouth of the channel if they could have gone directly up here to the channel. There must be some reason for it. I don't know what that reason is, though. 20

The Court. They wouldn't go to the expense of digging—

The Witness. I do not think so. There must be some engineering reason there that I don't know about.

The Court. Where does this take you to?

The Witness. Takes you out to the mouth of the channel—comes out to the bay—New York Bay. This is all New York Bay (indicating) and Ellis Island is down here. Staten Island over there and Ellis Island down here (indicating). 30

Q This map shows the whole neighborhood? A Yes, sir; that Government map shows it clearly.

Q Are there any other differences between the Andrus property and the property which was sold on the Kill von Kull—sales which have been mentioned? A I do not think so, other than the shape. 40

Thomas A. Ryer, re-direct.

Q Does that make any material difference in the value? A I think it would have some effect on the value.

Q Mr. Ryer, is there any actual access by street to the Andrus property at the present time? A There is not.

10 Q By road? A There is not.

Q Any way? A No possible way of getting down there unless you stop at the end of the Hook road and walk over the track. There is no road running into the Andrus property at the present time.

Q And was it for that reason—

The Court. Is there a road available?

The Witness. Not that I know of.

20 *Mr. Bain.* I can explain that. There was a road running down to the Andrus property originally and that road was vacated on application of Mr. Andrus and the Standard Oil Company.

The Court. There is land there available for a road?

30 *Mr. Bain.* Yes. The Standard Oil Company entered into an agreement with Mr. Andrus to give him a private right of way. That is the reason we are stating a value with street access, but there is no street access at the present time. That is our contention.

Mr. Hardin. You concede there is a right of way from the public street to the Andrus property, do you not?

Mr. Bain. I concede under agreement between the Standard Oil Company and Mr. Andrus—Mr. Andrus asked the company to provide him a private right of way to give him access to this property from the public street in Bayonne.

40 *Mr. Hardin.* And there is actually a road laid out across the Andrus property.

Thomas A. Ryer, re-direct.

Mr. Bain. That I do not admit.

Q Mr. Ryer, when were you last down on the Andrus property? A I think about a year ago.

Q How did you get on to the property at that time. Did you go down any road or street? A I drove down to the end of the Hook road and then walked over to the Andrus property, over the railroad track. 10

Q How far is the end of the Hook road from the Andrus property? A I should say a thousand feet. Maybe two thousand.

Q Is there any road or street leading down into the Andrus property? A None that I could find.

Q You stated in the trial in New York a value without street access? A I did.

Q For what reason? A Why, at the time I was appointed arbitrator, I made a search to find out the position of the Hook road with relation to this property so I could value it and I discovered that the Hook road had been vacated, but there was no record whatever of any other road to go into the property and consequently I took the matter as though there were no road in there. 20

Q When did you first learn of any arrangement whereby Mr. Andrus might obtain a private right of way on this property? A When an agreement was brought out at the trial in White Plains. The Standard Oil Company informed me and the Lehigh Valley Railroad Company, that there was no roadway there and no right for a roadway and I took it as they gave it to me, because the record showed no roadway, and I made a very careful search. 30

Q Are you familiar with the sale of the Packard property in Bayonne? A I am.

Q Will you kindly locate on the map, Exhibit C. 1, the location of the Packard property?

Mr. Hardin. I have not gone into that.

The Court. You may. 40

Thomas A. Ryer, re-direct.

Q Mark the Packard property with an "X." A (Witness complied.)

Q Who was the purchaser of the Packard property?
A Standard Oil Company.

Q How far is that property from the Andrus property?
A About 3,400 feet.

10 Q And in what direction? A Along the Lehigh Valley Railroad.

Q North of the Andrus property? A North of the Andrus property.

Q What is the character of the Packard property? A That contains about 39 acres upland and a hundred acres of land under water.

Q When was that property sold? A On June 23, 1916.

Q What was the price paid? A \$650,000.

20 Q How much is that an acre? A \$47,047 per acre.

Q That was purchased by the Standard Oil Company?
A It was.

Q These sales of property on Kill von Kull mentioned by Mr. Hardin were wartime sales, were they not? A They were.

Q That is they were during the war in Europe, but before the United States entered the war, except one which was in 1920? A Yes, sir.

30 Q And one was in 1918 and during the war? A Yes, sir.

Q And those sales were to only two parties, the International Nickel Company and the Standard Oil Company? A They were.

Q Do you know in what business the International Nickel company was engaged during the war? A I don't know the exact character.

Q They produced nickel? A They produced some war material.

40 Q Do you know that the company was extremely active during the war? A It was.

Thomas A. Ryer, re-direct.

Q Do you know whether the plant of the Nickel Company is in operation now? A It is.

Q Still in operation? A It is.

Q You don't know whether it is operating now as it was during the war? A I do not.

Q How does the Andrus property compare in value with the Packard property? A I think the Andrus property as it was in 1899, was comparable with the Packard property, but today it is worth considerably more money. 10

Q You say 1899, you mean 1889? A In 1889.

Q When the lease was made? A Yes, sir.

Q You say that as the Andrus property was in 1889, it compared with the Packard property, but at the present time the Andrus property is more valuable than the Packard property? A I do.

Q In making your appraisals of the Andrus property have you allowed for that increase in value? A I have. 20

Q Now, you stated that your methods of appraising the Andrus property without the channel differs from your method of appraising the property with the channel. You stated in appraising the property with the channel you valued the land under water at \$3,000 an acre and the upland at \$12,000 and added the cost of the channel? A I did.

Q What was your method of appraisal of the property without the channel? A Same method exactly, leaving out the value of the channel, taking the land as it is today. 30

Q Yes. So that you value the land as it is today at \$3,000 under water and \$12,000 for the upland? A I do.

Q How does that compare with the price paid for the Packard property? A The Packards sold for \$3,000 under water and \$7,500 an acre for the upland.

Q You put the land under water at the same price as was paid for the Packard property? A Yes, sir.

Q But you did increase the upland? A Yes, sir; due to the fill, the bulkhead. 40

Thomas A. Ryer, re-direct.

Q In your opinion can the value of the Andrus property be based alone on what has been said to be a sale by the Lehigh Valley Railroad Company or the United Real Estate Company to the Standard Oil Company? A I do not think so.

10 Q Why not? A I do not think you can take any one sale and base your valuation on another piece of similar land. I think you have got to take all the sales and the history of the section into consideration, because if you haven't done that you would take the Packard sale—you would take the price paid for the Packard in 1916, which was about a third or a fifth of what the Standard Oil Company paid to the Lehigh Valley Company in a period of four years.

20 Q What has been your experience as to whether the price paid by the owners of a large plant for a single piece of property to extend the plant is in excess of the ordinary value of that same property?

Mr. Hardin. I object as immaterial.

The Court. You asked him what his experience was.

Mr. Bain. Perhaps I can reframe it.

30 Q What can you say as to whether in purchasing property adjoining a large plant and the owner of the plant pays more than the ordinary value of the property— A I should say so—

Q You would say it does pay more? A Usually.

Q Has that been your experience? A It has.

The Court. Isn't that common experience?

Mr. Bain. I think it is.

Q What is, in your opinion, a fair rental return on property such as the Andrus property? A Five per cent. net.

Thomas A. Ryer, re-direct.

Q And in your opinion would that rate be a fair and proper rate in the present case? A It would, in my judgment.

Q It would in your judgment? A It would.

Q Have you calculated—

The Court. Does the rate vary?

10

The Witness. It varies in so far as experts are concerned.

The Court. Does it vary?

The Witness. I do not think it does on vacant land.

The Court. Does it vary in localities?

The Witness. I do not think so. Five per cent. on vacant land is plenty. On improved property it is different.

20

The Court. It is all right if you can get it.

The Witness. It is unusual to get anybody to rent vacant land unless he improves it or uses it for some purpose.

Q Have you calculated the annual rental value of these properties based on the figures? A I have.

Q Will you kindly state those rental valuations? A On the \$617,331 valuation capitalized at five per cent. I make \$30,866 yearly; on the \$333,612 valuation capitalized at five per cent. I make \$16,680 yearly; on the \$189,670 valuation capitalized at five per cent. I make \$9,483 yearly.

30

Q Is there any present demand for water front property such as the Andrus property? A I do not think there is.

The Court. You mean in this depression?

The Witness. Yes, under this depression, there is no demand for it.

40

Thomas A. Ryer, re-cross.

Q What can you say as to whether or not prices paid for water front property during the years 1918, 1919 and 1920 were abnormal? A My impression is that they were abnormal.

Q To what year would you have to go back in order to get normal sales? A I should say 1915 or 1916, at
10 least.

The Court. The Government says 1913.

Mr. Bain. Interstate commerce takes it from 1910 to 1914.

Q In your opinion are conditions with regard to water front property normal at the present time? A They are not.

Q Why, are they still suffering from the effects of the war? A I think they are suffering from the effects of the shipping conditions.
20

Q Would you say the conditions were subnormal? A I should say so.

Q Subnormal as compared with war prices? A As compared to war prices, not as to 1913. I do not think you will ever see the conditions of 1913.

Q In your opinion are prices paid for water front properties between 1917 and 1919 to be fairly considered to indicate real valuation of property? A I think they were high in most cases.
30

The Court. You are not finding the Standard Oil Company selling any of their purchases, are you?

The Witness. No, sir; they do not have to.

Re-cross examination.

Q Don't you think, Mr. Ryer, that the demand has anything to do with the value of property? A Oh, yes.

Q And you sometimes represent sellers of property as well as buyers? A Oh, yes.
40

Thomas A. Ryer, re-cross.

Q And the fact that the buyer needs the property has some influence with you as to what the property is worth to the seller, doesn't it? A Absolutely.

Q Isn't the need of the buyer an element in the value as much as the desire to sell? A It has an effect on the price to be paid.

Q All you mean is when a man wants a thing very badly he will pay more for it than somebody who doesn't want it? A Yes, sir. 10

Q That is human nature? A Absolutely.

Q As to the Packard property, how far did you say that was from the Andrus property? A I said it was about 3,600 feet from the Andrus property.

Q North? A North, along the Lehigh Valley Railroad.

Q How far is it along the pierhead? A On the pierhead it is only 2,400 feet. 20

Q How far is it from the upland to deep water from the Packard property? A I should say about 7,000 feet.

Q Frontage? A No, from the land to the pierhead line.

Q And the frontage? A The pierhead line is 341½ feet.

Q What is the general shape of this Packard tract? A It is a large piece of upland and it is larger on the shore line than it is on the bulkhead or pierhead line and varies as it gets to the pierhead line. 30

Q That doesn't describe the shape. What is the shape of the tract as a whole? A It is difficult to describe it. It is irregular.

Q Well, is it a compact piece? A No, it is a straggling piece, as far as the upland is concerned. When you start from the water's edge it is compact in so far as it has a width and narrows out as it goes to the rear and doesn't go directly to the rear—it goes in different directions.

Q It has no great width at any point? A No. 40

Thomas A. Ryer, re-cross.

Q Do you know anything about the riparian rights?

The Court. Semi-circular.

Mr. Hardin. With bends in it.

The Court. Several bends.

Q Is it shown in red? A On this map.

10 Q Does it appear on the Vice-Chancellor's map? A Yes, sir.

Q Do you know anything about the riparian rights? A I do not.

Q You don't know whether— A I understand that Packard had the grant.

Q What do you know about that? A Nothing more than that was my understanding.

Q From whom did you understand it? A I couldn't even tell you that.

20 Q You may be mistaken about it? A I may be.

Q And if the Packard sale did not include the grant—riparian grant—then you would have to add to the Packard figures whatever expense was to be incurred in securing that grant in the future? A I have to add something to it if they did not own that land under water, whatever the land under water would be worth.

Q Under the present policy of the State of New Jersey it is a difficult thing to get, isn't it? A Very.

30 *The Court.* Only rents them?

The Witness. Yes, sir; they have no desire to sell.

Q Isn't it true, in consideration of water front property, the fact of an absolute riparian right to the pier-head line incident to the property is an element of very great value? A Great value.

Q You don't know whether that was included in the Packard sale? A I think it is. I am quite positive it is.

40 Q My information is to the contrary? A That may be, but I say I am quite positive it is.

Thomas A. Ryer, re-cross.

Q You spoke about the greater value of the property on the Kill von Kull to the south because of its immediate access to deep water. What is the length of the pier that is available on this more valuable property to the south that you have been telling us about? A Probably 200 feet.

Q That is a pretty short pier, isn't it? A Yes, sir. 10

Q A pier 200 feet long is— A More than that.

Q What is the length? A They are 400; I think the shortest is about 250.

Q As you go south on the Kill von Kull does the property become more valuable or otherwise? A I do not think it is any more valuable as you go south.

Q And the available pier at the point where the greater value ceases—the pier length is what? A 400 feet.

Q Than the property—the Standard Oil property is worth more than the property south with 200-foot piers? A Not necessarily. 20

Q What is your view about that? A As you look at the map you will find it has a varied shore line. When I say 200 feet, it may be only that at one point. It runs from 200 to 400 feet along the shore.

Q Is it frequently advantageous otherwise to have considerable water—expanse of water in front of the property? A Depending entirely upon the use you want to put it to. If you want long steamers, yes; if you do not require long steamers for commercial use, no. 30

Q For a use that involves steamship use you want long piers? A Not exactly. All depends entirely on the length of your steamer. I said it depended entirely on the length of the vessel required to be berthed.

Q What is the purpose of deep water, the advantage of deep water? A For larger vessels.

Q And larger vessels call for longer piers, don't they? A They do.

Q It is an advantage to have property located so you can get longer piers? A Provided you have use for longer vessels. 40

Thomas A. Ryer, re-cross.

Q Doesn't it add to the value to have depth of piers?

A Depends entirely whether there is demand for the class of business that would require that depth.

Q What is your idea of the value of property with reference to its use? Isn't the most valuable use it can have an element to be considered? A Yes, sir; if used
10 for that purpose.

Q And water front property with access to deep water is more valuable than water front property that hasn't?

A Yes, sir.

Q And one of the reasons is that they can have piers for deep water vessels? A Yes, sir.

Q If this Andrus property can have 800 feet or 1,000 feet piers rather than two or more hundreds, isn't that an element of value? A I don't think so.

Q And going up to the Packard property, the fact
20 that you have to fill out—how many—over 7,000 feet?

A About 7,000 feet.

Q Wouldn't that affect the value of the property? A It would, of course.

Q Do you think the value of a small tract like that, which, if you used it, has got to be filled for 7,000 feet, is comparable with the value of a tract of the shape of the Andrus tract which can be made available without so much expense? A The manner in which I took the
30 Andrus property was about 2,400 feet of that had to be filled.

Q That is less than 7,000? A Oh, yes, of course.

Q Isn't the condition of the property then an element of its value? A It is.

Q Is a strip 7,000 feet to deep water, over a shallow shore front, such as applies to this Packard property—is that comparable with a tract like the Andrus tract? A As it was in 1889, fairly comparable.

Q Not comparable at this time? A No.

40 Q Not comparable in June, 1919? A No.

Thomas A. Ryer, re-cross.

Q Absolutely incomparable? A Absolutely different class of property in 1919 than it was originally.

Q That is true, isn't it, with reference to today, is it not? I do not mean what is on the Andrus property itself, but the conditions have changed in the neighborhood and the Andrus property has become more valuable by reason of its location as compared with earlier times? 10

A Depends on what you call "neighborhood." I do not think there are changes there other than the Andrus property—very little, to the south, until you get to the Kill von Kull.

Q No changes at all in the neighborhood? A Very little.

Q No change in access? Does that relate to railroads and facilities that extend business in New York harbor?

A Very little.

Q Just the same now as it was in 1889? A No; I don't say so, 1889 it was different. 20

Q Compared with what date? A 1919.

Q I am asking you—my question intended to ask you to compare 1919— A With what?

Q I am talking about 1919 myself. A There has been no change since 1919 to any extent to date?

Q There were changes in 1919 as compared with earlier dates? A No; in 1916, there was changes made to the Andrus property. That was vacant land. That was filled and bulkheaded and a channel made to it. 30

Q Possibly we misunderstand each other. The neighborhood has greatly changed, has it not, during the period which we will carry down to June 1, 1919? A From what?

Q From any earlier period of time you want to take. A From 1889, yes.

Q And from 1899? A Yes.

Q And from 1909? A Very little change.

Q Now, did the same condition prevail with reference to this property, and demand for property in that neigh- 40

Thomas A. Ryer, re-cross.

borhood in 1919— A That is different, the demand is different.

Q What makes the demand? A Necessity of the buyer.

10 Q What does the buyer want to go there for if there has been no change in condition of the neighborhood? A Just the same as he would want—in Broadway there are no changes—because there is business there and he desires to locate there. It might not change in fifteen years, but that is where he wants to go to.

Q This property, in your judgment, was more valuable in 1919 than in 1909 and earlier times? A Yes, sir.

Q Why? A Simply because of the increase of all property.

Q Not because of what was on the ground itself by way of piers or buildings, but also because of its location? A Absolutely.

20 Q And demand for property in that location for specific interests which are developing in that location? A Absolutely. What I meant to say there are no great developments there outside of the Andrus property—that is the only great development that has happened.

30 Q Hasn't that demand reached higher proportions and greater use of the property by those who wanted it in the neighborhood of the Andrus property and the property immediately adjoining to the south that the Standard Oil has lastly acquired than it has further north? A I wouldn't say so.

Q Just the same demand for the property? A There has been land sold further up—more land sold.

Q Is there just the same demand for property—like properties—north? A Very little demand for any of that property, only for the local concerns for extension.

Q In 1919? A No demand at all.

40 Q There was a demand in the neighborhood of the Andrus property? A Simply due to the fact of the Standard Oil being located there.

Thomas A. Ryer, re-cross.

Q None at all further north? A None whatever.

Q As you are familiar with it— A That is, when you say further north you are talking about New York Bay, you are not talking about Hudson River?

Q I am talking about the same property north, along the Bayonne front? A There was no demand in 1919 there for that class of property. 10

RECESS.

Q I asked you, Mr. Ryer, how far it was on the Packard tract from fast land to the pierhead line. I think you told me about 7,000 feet? A I did.

Q That takes into consideration the various curves? A I have only simply taken the rule and taken it as I go—not accurately at all.

Q And have you intended to travel along the bend of the tract? A Along the bend, as it bent. 20

Q How much further would you have to go beyond that 7,000 feet to reach 30 feet of water? A I should judge about 2,000 feet.

Q More? A Yes, sir.

Q How far then from fast land to what you call deep water? A You said 22 feet. That is where I have gone to. You asked me 22.

Q You told us this morning what you thought was deep water? A Thirty-foot channel. 30

Q How far is it from fast land on the Packard tract to deep water? A I should say 4,000 feet from the pierhead line straight out, but you cannot go straight out because Robbins Reef is in the way, 22 feet. You would have to go one side or the other of Robbins Reef.

Q Isn't it as a matter of fact about two miles from fast land to deep water? A Yes, sir.

Q Do you mean to tell me that a piece of property located like the Packard property is located, so far from deep water, is comparable in value to a tract of land 40

Thomas A. Ryer, re-cross.

as close to deep water as the Andrus tract? A As it was originally; yes, sir.

Q Was the Andrus tract ever located so far from deep water? A Not quite so far.

10 Q What do you mean, "Not quite so far"? A I mean from the Andrus tract you could reach deep water from the pierhead line at 4,000 or 4,500 feet, to get the pierhead line it was necessary to go back, as you have gone back on the Packard tract, probably another 2,000 feet to fast land; that is about 6,500 feet from fast land out to deep water.

Q From the front of the property? A That is on the Andrus—no, from the rear of the property, taking to fast land. From the fast land on the Packard out to deep water is about two miles.

20 Q How much over two miles? A If you want me to figure it I can figure it out. I would say roughly about two miles.

Q You are very familiar with that neighborhood? A Yes, sir; but distances there mean nothing without scaling the map.

Q Would you be surprised if it was three miles? A I do not think it is three miles.

30 Q It is a great deal further from the pierhead on the Packard? A It is very little further on the pierhead line.

Q To deep water? A Yes, sir; very little further.

Q You better scale that if you think that. A On the pierhead line out to 22 is about the same distance, 4,500 feet, from this point to this point (indicating) would be the same as the channel from the Andrus, the present channel in a straight line.

40 Q If you came through Robbins Reef? A Yes, taking a straight line, if you get 22 feet. This line (indicating) it is nearer. If you go out to the same distance in the Andrus property it is about the same distance.

Thomas A. Ryer, re-cross.

Q Is there any way to deep water from the Packard tract—is there any way to deep water shorter than the figures you have indicated? A I do not think so.

Q There is a shorter way from the Andrus property?
A If it would be the proper way to go.

Q And you do not pretend to dispute for a minute that the Andrus tract is located much nearer to deep water than the Packard tract? A Oh, it is. 10

Q What is the use— A If you had asked me that first I would have answered the same way.

Q You told the Court this morning, or told us this morning, that in the consideration of the Packard tract bought for the Standard Oil Company there was an analysis of upland and lowland with certain acreage applied to the upland and a certain acreage applied to the lowland. All you meant was you made such analysis of the consideration, wasn't it? A I didn't say so. I said that was the way the price was arrived at. 20

Q By whom? A The man who made the sale.

Q Who was he? A Mr. Ruhlman, Bayonne, fixed the price and made the sale.

Q And made it by adding together the elements you have named in it? A He did.

Q Who told you that? A He did. He is present in court and can tell you himself.

Q Your information on that subject is from him? A Yes, sir. 30

Q So far as the deed goes it was a mere flat price?
A Absolutely.

Q Now, you do consider, do you not, that the availability of property for rental uses for any purposes—you have told us this morning the most available use was perhaps the most governing value—or usually governed value—you do believe that the expense attendant upon the preparation of the property for its ultimate use affects value? A Yes, sir. 40

Thomas A. Ryer, re-cross.

Q And isn't it true that the Packard property is incomparable with the Andrus from that point of view?

A No.

Q Wouldn't it cost much more to improve? A No, very little per acre. You have 139 acres to distribute it over; in the Andrus tract you have only got 45 acres.

10 Q What proportion is that? A About one-third.

Q How many acres are there in the Packard tract? A 139.

Q How much upland? A About 39.

Q Thirty-nine out of 139, and the other was 12 out of 45? A Yes, sir. Therefore, by distributing the expense of getting a channel to the Packard as it is spread over the tract in the Andrus—

Q (Interrupting.) How much is the percentage? A I don't know. It would add very little per acre to 139.

20 Q It would relate to the expense dependent upon the preparation of the flooded land, would it not? A If the channel going from deep water to the Packard property— (Interrupted.)

Q Never mind the channel. A I was answering your question.

Q Talking about making this property available for its ultimate use? A Yes, sir.

30 Q The expense attendant upon that. Wouldn't it cost a great deal more to make the Packard tract available than to make the Andrus tract available? A Very little more per acre.

Q Why? A I was trying to demonstrate to you. If the channel reaching from deep water to the Packard property cost, we will say, half as much again as the channel from deep water to the Andrus property, it would be distributed over three times the acreage, consequently make very slight increase in price per acre.

40 Q The percentage would be the same, wouldn't it, applicably? A No, your percentage of \$425,000 or a \$283,000 channel distributed over 45 acres.

Thomas A. Ryer, re-cross.

Q That is true as to the channel? A The filling would be identically the same thing per acre.

Q Wouldn't you have to build a bulkhead along both sides? A No more than you would on the Andrus; you have got to build a bulkhead there.

Q We are talking in 1919 now, and in 1919 there was improved land to the south of the Andrus tract, wasn't there, for some distance? A There was out to the bulkhead line. 10

Q There would have been no occasion, if you were developing the Andrus tract by the proper filling—there would be no occasion to take care of that side at all? A There would not.

The Court. You would have to fill your neighbor's lot?

Mr. Hardin. Yes.

Q Are you able to say—perhaps you can look at this map—whether the land was filled along the southerly boundary of the Andrus tract all the way to the bulkhead line in 1919, when the lease expired? A It was. 20

Q If you want to use all the remaining unfilled low part of the Andrus tract, in order to protect yourself from the necessity of filling your neighbor's lot, as the Court puts it, you would have to crib only a short stretch on the upper side? A Temporary bulkhead, to prevent your filling from going over. 30

Q How long would that have to be in 1919? Do not forget I am talking about 1919. A I understand.

Q Just the shape it was in then. A I should judge about 2,000 feet.

Q Now, if you were going to fill the Packard tract how much bulkhead would you have to put up? A I do not think anyone would attempt to fill the Packard tract unless they owned the side and developed it with it.

Q You think the Packard tract is just as good for development as the Andrus? A Yes, sir. 40

Thomas A. Ryer, re-cross.

Q When? A In 1919.

Q Why? A For the purposes of development in conjunction with other land.

Q Well, you say it never could be developed by filling it in? A I didn't say so. I said I didn't think anyone would develop that narrow strip without developing it in conjunction with other lands on either side of it.

The Court. How wide is it in the widest part?

The Witness. The widest part of the strip is about 800 feet.

Q It would not be practical, would it, to fill it its entire length alone by itself without cribbing both sides of it? A No; you only could fill it up to your bulkhead line. I do not think it would be practical to do that on such a narrow strip.

Q Isn't that an element of value? A Yes, sir.

Q Does that make it less valuable than land that would not need so much expense? A It might.

The Court. You mean it would?

The Witness. It would. My idea is that nobody would buy that unless they owned other property alongside of it, any more than they would buy the Andrus tract, because they couldn't develop that without developing other land.

Q To get back then to your proposition of only one buyer— A That property is all limited—

Q It would have to be sold for more than it is worth? A Not necessarily.

Q But that is your proposition—only one buyer—it always brings more than it is worth? A No, I do not think the Packard property brought more than it was worth.

Q Didn't you tell Mr. Bain it was your experience where there was but one purchaser that property brought more than it was worth? A There wasn't only one

Hermann De Selding, direct.

purchaser for this property. There was 32 acres that could be used for many purposes, consequently the Packards did not have to sell that only to the Standard Oil Company. They were the logical people to buy, but not the only ones that might have. I think they are the only ones that would want it for development purposes for water front, not to say anything about the upland. 10

Q Its availability for development purposes is an element of value? A To some extent, but it had a large acreage of upland and required no development.

Q Is there any kind of a channel at the Packard tract now? A There is.

Q How deep? A About six feet.

Q And how wide? A I don't know how wide.

Q Is it shown on this map? A Only as a channel, dredge channel.

Q And that runs all the way— A Six-foot channel, doesn't say how wide it is. 20

Q And runs how far out? A Runs right out to six or eight feet of water, out to the bulkhead line; using it for running dredges in there.

HERMANN DE SELDING, sworn.

Direct examination by Mr. Bain.

Q What is your business? A Real estate appraiser, broker and agent. 30

Q Dealer in water front properties exclusively? A Last twenty years, more particularly in property around water front.

Q Area of New York? A In, about, around the Harbor of New York.

Q Where is your office? A At present 1133 Broadway, corner of 20th street.

Q New York City? A Yes, sir.

Q Have you bought and sold property in New York harbor? A I have. 40

Hermann De Selding, direct.

Q Been concerned in selling some? A I have.

Q Have you made appraisals of water front properties for various purposes? A I have.

Q Have you testified as an expert on water front property? A Many times.

Q Just state briefly before what courts or boards? A
10 I have appeared before the Inter-State Commerce Commission in behalf of the State of New Jersey, I have appeared in numerous causes in which the trunk line railroads that enter in Jersey, on the Jersey water front, have appeared; I have appeared for the United States Government on behalf of the War Department in property running from the Hoboken line north; I have appraised the Bush Terminal property for the United States Government, and also the site known as the Army base at Bay Ridge; appeared for the Attorney General of the
20 State of New York in reference to the Gowanus Canal improvement when the State bought the site for a barge canal; and for financial institutions.

Q Have you appraised property particularly on the New Jersey side of the New York Bay and the Hudson River? A I have.

Q Are you familiar with the Andrus property in Bayonne, and Constable Hook? A I am.

Q Know the location of the property? A I do.

30 Q Have you been down on the property and examined it? A I have been.

Q And for how long a period have you known that property? A Well, for many years; I should say over twenty years.

Q Have you made an appraisal of the Andrus property? A In connection with the litigation which culminated in the trial at White Plains I made an appraisal of that property and testified on that occasion.

40 Q Have you since made another appraisal? A I have since made another appraisal.

Hermann De Selding, direct.

Q Was your appraisal made in conjunction with Mr. Ryer, the witness who preceded you on the stand? A It was.

Q In your judgment what was the value of the Andrus property as of June 5, 1919, excluding the cribbing, piers and structures or buildings on the piers, but including the channel? A \$617,331.

10

The Court. Why do you include the channel?

Mr. Bain. I take it first, including and then excluding.

The Court. Why do you include the channel; was that built by the railroad company or the Government?

Mr. Bain. It was built by the railroad company. We claim it should be excluded, but we thought it advisable to give the Court the value both with and without.

20

Q Will you please state your judgment as to the value of the Andrus property, as it was on June 5, 1919, excluding the channel, the cribbing, the piers and buildings or structures on the piers, \$333,612.

The Court. Does that include in your estimate or appraisal the benefit of the superstructure?

The Witness. It included—

The Court. The advantages of the superstructure.

30

The Witness. No; it did not; it excluded those. In the figure that I first gave I included them.

The Court. You included the—

The Witness. Channel.

The Court. The value of them. I mean the value of them towards the value of the land.

The Witness. Yes, sir.

The Court. Would they not add a value?

40

Hermann De Selding, direct.

The Witness. They have a value, sir, but if I am asked to give you a definition as to naked land I divorce myself from any influence that might have been made by the improvement.

10 *The Court.* Should your judgment not be influenced by the fact of structures being there, not their intrinsic value?

A Suppose I am asked—

The Court. I am asking you that.

The Witness. If it is a naked land question I try to divorce myself from that entirely.

Q Do you know the physical condition of the Andrus property prior to 1916? A In a general way, yes.

20 Q Have you any accurate knowledge as to what the physical condition was? A No, no accurate knowledge; just in a general way.

The Court. What I meant was, "Do not the superstructures reflect an increased value on naked land?"

The Witness. Undoubtedly, if you take them in that connection, but if your instructions are to divorce them—

The Court. To what extent?

30 *The Witness.* It would depend upon the particular case, sir.

The Court. In this case?

The Witness. I could not answer the question; it is intangible.

40 Q Your first figure of \$617,331, does that include any value that the land might have because of the presence—the cribbing, piers and structures on the land, but excluding the value of the cribbing, piers and structures themselves? A It excluded the value of the cribbing and the piers themselves, and any—

Hermann De Selding, direct.

The Court. Reflected value?

The Witness. Any reflected value.

Q Would it be possible, Mr. De Selding, to make a valuation—to state a naked value of the land—value of the naked land and add to it anything because of the mere presence of the structures which are—the value of which is to be excluded in arriving at the valuation? A It would not unless the elements that were desired in those improvements were made a part of my consideration. What might be improvement to one would not be to another. 10

The Court. If you had a straw hat without a band that would have value, wouldn't it? If you put an appropriate band on it it would increase the value very much.

Mr. Bain. Perhaps I have not got what your Honor meant. Let me express it this way. What your Honor has in mind, I take it, is this: The land has one value, the buildings another value, the two together have some additional value beyond the mere value of the naked land and the value of the structures because of the joining of the two. 20

The Court. And each have an additional value.

Mr. Bain. What I had in mind is that each one has a value, then when you get the two together the whole has an additional value. 30

The Court. Each has increased in value.

Mr. Bain. Because they are tied up with each other. I want to find out whether that is so—whether the witness can state the valuation on that theory.

The Court. He says he could not.

Q Now, what in your judgment is a fair rate to return for rentals from such property as the Andrus property?
A Under the provisions of the present lease? 40

Hermann De Selding, cross.

Q Yes. A Five per cent. net.

The Court. What do you mean by "under the provisions"?

10 *The Witness.* The impregnability of the lessee, the strength of the lessee I have in mind—added assurance of payment of the conditions of the lease—as to ability to carry it on and develop it and operate it in accordance with the lease.

Q In other words, a lessee with a first-class credit should get a better rate than a lessee who hasn't the same credit? A Unquestionably.

Q And what in your opinion would the fair rental value of the Andrus property be based upon the figures that you have just stated? A I would re-affirm to the same figures.

20 Q I think you said you made your valuation in conjunction with Mr. Ryer? A I did.

Q And the figures you have stated are your own judgment. Are you familiar with the sales of water front property which took place around New York Harbor, particularly in the vicinity of the Andrus property? A I am, and have made some of them.

Q Had you those in mind when you made your valuation? A I did.

30 *Cross examination by Mr. Hardin.*

Q Did you know about the sales to the Standard Oil that were discussed this morning when Mr. Ryer was on the stand? A Yes, sir.

Q You had all those sales before you when you were considering the value that was put upon the property? A Yes, sir.

Q You considered them all in your valuation? A I did.

40 Q Did you exclude them from consideration or include them? A I included not only those sales, but the sales

Hermann De Selding, cross.

that were made of the several properties prior to these sales, some of which I had made myself and then carried them on and considered the history of these properties, where I could obtain it, before fixing the value on this property.

Q And did Mr. Ryer agree with your judgment that the responsible lessee ought to pay more or less than an irresponsible one? A I do not think I made any such statement. It was just the reverse. 10

Q What did you mean by the impregnability of the lessee? A I considered that the Lehigh Valley Railroad was absolutely an A-1 tenant and therefore I was going to get my rent, and they were able, with their capital, to develop the property in accordance with its best—

Q Then your theory is that the rent was to be lower to a responsible lessee than to one you are not so sure about? A On the same principle that the Government operated. 20

Q Answer the question. It is your theory— A It is.

Q —that the rental value of property varies with the financial condition of the lessee? A No, that doesn't always follow.

Q You say you take into consideration the financial condition of the lessee in determining what is the fair rental value of this property? A Financial and other ability, I said. The ability to develop and use, properly all enter into the consideration of the rate I would expect them to pay. 30

Q Then in your phrase, "impregnability of the lessee," you consider the fact that the Lehigh Valley Railroad Company is probably able to pay and they had a real use for the property? A True.

Q Is that what you mean by impregnability? A That is one of the definitions.

Q You were not dealing with speculations? A Exactly. 40

Hermann De Selding, cross.

Q Any other elements that would endorse this impregnability— A It was one of the numerous things that we had to do; yes, sir.

Q Any other elements? A I might hunt up some, but nothing comes to my mind at the moment.

10 Q You don't know whether Mr. Ryer agreed with you or not? A As Mr. Ryer is a man of most excellent judgment I should think he would agree with me; yes, sir.

Q You think five per cent. is a fair rental where the lessee has the characteristic of impregnability— A With the conditions imposed by the lease.

Q What conditions have you in mind? A Conditions of development.

20 Q What is there in that lease that requires the lessee to develop anything? A The intention of the company, which was carried out in a measure.

Q What is there in that lease about intention? A I studied the value of the land before I studied the lease, sir.

Q And studied the lease also? A I read the lease.

Q And you had to know about what was in the lease before you could tell what the land was worth? A No.

By the Court.

30 Q What is the rental rate of a high-class building in New York, net? A Five per cent. in normal times. If I may explain it, I was agent for the Singer Building for a period of ten years. During the operation of that time the return was less than three per cent.

Q What are they satisfied with? A They are satisfied with all they can get. At the present moment—these abnormal times, that is, some buildings are returning six and seven and eight per cent., absolutely net, and in some instances even higher.

40

Hermann De Selding, cross.

The Court. I speak of that because they are the opposite of the present kind of land—they are at the extreme of improvements.

The Witness. Exactly.

The Court. They are content with five per cent.? Are building owners content with five per cent.?

The Witness. At the present moment, no. 10

The Court. In normal times?

The Witness. In normal times, sure, five per cent.—they are satisfied with, provided the conditions surrounding them make it necessary. The Singer Company would have been; yes, sir.

Further cross.

Q Did it occur to you that there might have been some element in the Singer Building of advertisement as well as— A Yes, sir; undoubtedly. 20

Q That would make them satisfied with less return than the ordinary investor? A Yes, sir.

Q They would be satisfied with three per cent. where somebody else might not be? A That is true.

Q Does it make any difference to this theory of yours with reference to the five per cent., net, under impregnable conditions—is there any variation in point of years, one time a different per cent., applicable than another? In other words, the value of money at a given time has to do with it? A Value of money might have something to do with it, and money conditions might enter into, I should answer yes, generally, to the proposition. 30

Q Here you are thinking and fixing rent over a period of ten years—the rental value for a period of ten years—you should take into consideration, should you not, the possibility of changes in the value of money during a period of that length of time? A I should think so; yes, sir.

Q Didn't you take that into consideration in determining on this five per cent. figure? A I did. 40

Hermann De Selding, cross.

Q And is it your idea that as a matter of fact for the period of ten years, from June 5, 1919, that the rate of money is to be about five per cent.? A I considered what would be the period of reconstruction, and there were so many elements that entered into it, that if I had naked land I would be willing to be satisfied with a return of five per cent. on it from such a lessee as was here named.

10 Q And you assumed the rate of five per cent. as the probable reasonable anticipation of return of money during the period of time, the period of ten years, that this rent was to cover? A For vacant land; yes, sir.

Q Would the fact that in 1919 the Standard Oil Company sold preferred stock at seven per cent. have any influence on your judgment as to the value of money? A No, sir; Mr. Rockafeller has stated it is dangerous—

20 from the very fact of its being the oil business, increase the rate of interest.

Q Did it depress the value of this land to be neighbor to the Standard Oil Company—the Standard Oil would be a dangerous neighbor? A On the contrary, it added to its value.

Q How much did it add to the present rental value? A The difference largely might be surmised by the difference between my own appraisal of the value of the property and the value per acre at which the Standard Oil Company was obliged to buy other interests in order to acquire added property.

30

Q To what other interests do you now refer? A Well, numerous—myself bought property for Standard Oil Company and they have paid an excess price over the market price.

The Court. Why?

The Witness. Simply, an owner of land who has a neighbor of that kind—I speak of the Standard Oil Company simply as an incident—having a neigh-

40

Hermann De Selding, cross.

bor of that kind whose business is growing and expanding—a man who is able to hold his vacant land for a long time will consider that he is going to get back more than his loss of interest and the accumulation of taxes, and those things that make up the cost to him of carrying that land will be more than covered when, at the psychological time, the big neighbor comes along and says, “I want that property.” Then he gets the result of his long wait. That is the most human thing, your Honor. 10

Q Does the expense of preparing property have anything to do with it—element to go into the value of property? A Yes, sir; I think it does.

Q Why isn't it legitimate to take into consideration the expense of carrying property if you have a chance to carry it? A It is legitimate, if the man is able to carry it. 20

Q If it is legitimate why do you exclude it from a proper estimate of the market value? A I do not exclude it.

Q You think it is all right? A I think it is to be considered.

Q You think it is all right to add that element in? A Largest purchaser of vacant land in the State of New York in recent years told me that he figured on getting from three to five hundred per cent. profit over his original price before he had gotten rid of the property. 30

Q You think that is all right? A That is his actual cost. It is the speculator's profit.

Q Why do you say then it is illegitimate to include that in the value of land? A I do not say it is illegitimate. It is to be considered.

Q You considered it in this instance by determining that full weight given to that element would increase the price of this land as compared with what the Standard Oil Company was willing to pay for it beyond its market 40

Hermann De Selding, cross.

value? A It was an element that I would hesitate on some time and employ or reject as the case might be.

Q And to hesitate was to deny, was it? A Not at all, sir. I deny what I deny and what— (Interrupted.)

Q To hesitate was to leave it out entirely? A In some instances I left it out.

10 Q How many instances were there? A I couldn't tell you.

Q How many instances were there in reference to this particular case, Andrus property? A I cannot tell you.

Q Did you leave it in or out? A I considered it but—

Q Did you leave it in or cut it out? A It is represented in the figures that I reached.

Q Upon the rate you think that the rental value should bear to that? A Yes, sir; that is correct.

20 Q You included it all? A One follows the other; naturally cannot divorce them.

Q You haven't depreciated this property because it sold for a higher price than you think it ought to have brought? A No, I considered the price from the component parts and elements I had before me.

Q You did appraise it for \$617,331, with the channel there previous to the appraisement? A I did.

Q And without the channel your figures are \$333,612?

30 A That is correct.

Q So that the presence of the channel put there in 1916, but there in 1919, when you made your appraisal, makes this property worth in your judgment in June, 1919, \$617,331? A Correct, sir.

Q Now your figures appear to be exactly identical with those of Mr. Ryer? A That is right.

Q You and he worked together and reached the same result? A We did eventually.

40 Q How much of this represents his judgment and how much yours? A It is a hard question to answer, sir,

Hermann De Selding, cross.

but it depends on who had to be the Paul and who the Appollo.

Q He told us this morning he never sold a piece of property in his life or had anything to do with property as far south on New York Bay or Kill von Kull, as this property, so you must have brought the information to the joint conference with reference to the actual sales? 10

A I hope I brought some things to the conference.

Q You did have prior familiarity with the sale and rental of lands in this immediate vicinity? A Yes, sir; I had.

Q And you regard this property as worth more or less than property further north of the Andrus property? A Property further north is worth more than this is, with one exception, that this has an alliance with a strong neighbor, and advantage was taken of the strong neighbor and the price resultant speaks for itself. 20

The Court. And when you speak of property north he means the property referred to this morning.

Mr. Hardin. I had not specialized it. I was trying to get the witness' idea.

The Court. Do you mean all the way up into New York?

Mr. Hardin. Some little distance. I had in mind bay property. 30

The Witness. As you go north, as a general proposition, the values increase to an extent.

Q And that is notwithstanding the fact that deep water is further and further away from the pierhead line—from the line of solid filling established by the State? A Yes, sir.

Q You have in mind the area of mud flats that spread out in front of the property along Bayonne and Jersey City front? A Yes, sir. 40

Hermann De Selding, cross.

Q And increases tremendously in width as it goes north? A Yes, sir.

10 Q And do I understand you to say that property in its naked condition, without any improvements or anything of that kind, is more valuable than property like the Andrus property and property in that immediate neighborhood that has near access to deep water? A It has been in the past, except from the fact that the big neighbor is on the south to buy small property which the railroad would not touch.

Q Then the Andrus property had advantage of location? A In some respects that has a value.

Q That element of location, whatever it was, was an element that raised its value? A Yes, sir.

Q In comparison with property further north? A Yes, sir.

20 Q Any comparison any further north than Packards? A Yes, sir.

Q So that the Andrus property is more valuable than the Packard property? A The Andrus property is the more—nearest comparable to the Packard property than any sale that has been given in my opinion.

Q I am asking you whether the Andrus property in your opinion is more valuable than the Packard property? A Yes, sir; I should say it was.

30 *The Court.* What do you mean, per acre, or what?

The Witness. Per acre, or square foot—reduce it in that way.

Q You have in mind, of course, the depth of water over these mud flats out in front of the property as shown by the survey? A Yes, sir.

40 Q And that property is not available, is it, even after you get out to the line of exterior fill as established by the State—you still got a great distance to go to deep water? A That is correct.

Hermann De Selding, cross.

Q Does that affect the value? A It most decidedly does.

Q Isn't this Andrus property more advantageously located in that respect? A I say it is more advantageously located for many reasons than the Packard property, as a whole.

Q Not merely on account of its neighbor? A Well, 10
without its neighbor you couldn't use it.

Q What has the neighbor got to do with it—has the fact that the Standard Oil Company joins—owns the adjoining property got anything to do with the stretch of mud flats for miles in front of the Packard property? A No, but they can use those mud flats in one way and use the exit by water from another plant in another direction. They are not obliged to go down this particular direction unless they wish to. They are not circumscribed.

Q Then it is your deliberate and honest judgment that 20
the property with a mile of mud flat in front of it is just as valuable water front property on lower New York Bay—is just as valuable as property a few hundred feet from tidewater, or deep water? A No, I wouldn't think so.

Q Then why do you keep saying that there is no advantage to the Andrus property by reason of its location? A Over what?

Q Over the Packard property. A I told you that I 30
considered it more valuable per square foot as a general proposition than the Packard property.

Q And then it has advantages of value in location other than the fact that it has got a neighbor ready to buy? A To which I already alluded and admitted.

Q Will you say yes? A Yes, sir; I said it before.

Q You did not say it before? A I beg pardon, I said it before and I reiterate it.

Q Do you say it now? A Yes, sir.

Q Who used this Andrus property the last two years? A Lehigh Valley Railroad Company. 40

Hermann De Selding, cross.

Q Nobody else occupied it? A To my knowledge—I don't know.

Q Nobody but the Lehigh Valley Company? A Yes; I think during the war there were activities there that might be considered other than the Lehigh Railroad Company.

10 Q How has the use of this property by the Lehigh Valley Railroad Company during the last few years—what has that got to do with the Standard Oil Company next door? A I did not state that it had.

Q Well, you are speaking about the property, that it was so valuable because of the way it was used and the powerful neighbor it had—

The Court. Possible purchase of it, I suppose he has in mind.

20 Q Is that what you meant? A That is one of the things I meant.

Q That this land had added value because it always had next door the Standard Oil and that company might want to buy it? A And the other interests which the Standard Oil Company were associated with, the railroad interests—manufacturing—

Q What other interests? A Lehigh Valley Railroad Company, for instance.

30 Q You do not think the Standard Oil and the Lehigh Valley Railroad Company had to buy together? A I wouldn't have to go far to be able to guess—I am not here to guess.

Q You did not have in mind they were in partnership? A I make no such assertion.

Q Was there any other activity down on this Andrus property that you know of? Don't you know the Bethlehem Steel Corporation is down there with some arrangement with the railroad? A There was war activities—what nature I don't know.

40 Q Do you know it is there yet? A I do not.

Hermann De Selding, cross.

Q When were you last there? A I should think it was a year ago last winter.

Q In your great familiarity with this property and your knowledge of conditions down there, don't you know the pier on this dock was built by the Bethlehem Steel Corporation? A I knew there was a pier built, for whom or why I don't know. I knew there was a pier there. 10

Q You didn't find that out? A I may have done so, but I did not charge my memory with it.

Q Then there is something about this property you do not know? A I admit there is a lot of it I don't know, and other properties.

Q You don't know, do you, whether this property has been disposed of by Mr. Andrus? A I have heard such a statement made; yes, sir.

Q And is your information about that hearsay—same kind of information you have about other properties in the neighborhood? A I don't think it is quite as intimate as some of the information I have stated I know. 20

Q What is the nearest property that this intimate knowledge of yours extends to? A To go back to the beginning, I located the Pacific Coast Borax Company on the Bayonne—

Q How far is that from this property? A How do you go, as the crow flies? 30

Q You can go any way you please; go both ways, on the pierhead line or across country. A By water—if you were going—

Q First give the date? A Twenty years ago—twenty-two or three years ago. I am getting at the beginning.

Q Do not let us bother about that, it is so long ago. Haven't you any more—can't you give us an instance of intimacy that is more recent than that? A Yes, sir; take twelve or fifteen years ago when the Reynolds 151 Company sold to Delano. 40

Hermann De Selding, cross.

Q That is the property we were talking about on the Kill von Kull, a moment ago, adjoining this Andrus property on the south? A No, not immediately adjoining on further west, as you go around the Kill.

Q Do you know about the sales of Delano to the Standard Oil Company? A Yes, sir; I sold that property from Reynolds to Delano and then it took the property they got there and sold some to the International Nickel and some to the Standard Oil Company.

Q You probably know that Delano got more for it than he paid for it? A As Delano took largely in trade and made a dicker with several interests—I am quite familiar with all those things—yes.

Q It was worth more in 1916 when the Standard Oil Company bought it than it was when Delano bought it years earlier? A Very much more.

20 Q Very much more? A Very much more.

Q Twice as much? A Yes, sir; twice as much.

Q More than twice? A Well, I wouldn't go any further than saying it was worth more than twice as much; that may mean anything.

Q Up to ten times? A I wouldn't say ten times nor five times nor three times.

Q There have been a good deal of changes in that neighborhood in that time? A Yes, sir.

30 Q Mr Ryer was under a disadvantage—he depended on you for information about the neighborhood? A I don't believe Mr. Ryer depended on me for a great deal.

Q Didn't you bring to the joint council very much greater knowledge of the neighborhood than Mr. Ryer did? A On the particular property on which I might have been personally interested. Mr. Ryer's acquaintance is a very large one and intimate.

Q You knew yourself that this neighborhood had been changing during the two years immediately preceding 1919, did you? A Yes, sir; I certainly did.

40

Hermann De Selding, cross.

Q And you knew that many manufacturing activities were developing there? A Yes, sir.

Q Both along the Kull and further north? A That is quite right.

Q And the neighborhood values were going up? A Yes, sir; quite right.

Q Now, did you reach a figure on this property independently of Mr. Ryer and agree with him afterwards, or did you have an open mind about it and were persuaded by him? A I joined with Mr. Ryer in any number of conferences. One position would be advanced by one and rejected or accepted by the other, and the conferences continued until we reached a finality. 10

Q Was the final figure the same as you originally thought the property was worth? A As an original thought—too many elements enter into the figures to enable me to answer that as I would like to do. 20

Q You made this first visit to the property for the purposes of this controversy—you are a New Yorker here—about a year ago, you say? A About fifteen or eighteen months ago.

Q And you had not given any special consideration to this particular property before this time? A To that particular property—as a general proposition though I had.

Q Did you go down with Mr. Ryer the first time or did you make an independent visit of your own? A I think I went the first time without Mr. Ryer. 30

Q Then you began to consider the different elements. Had you forced your mind to a conclusion of what you thought the property was worth before you met Mr. Ryer? A I studied the matter very carefully and for a long time after, before I saw Mr. Ryer, after the visit.

Q Did you understand you and Mr. Ryer were expected to agree? A No, sir; not at all. We were expected to come to independent judgments. 40

Hermann De Selding, cross.

Q What was your independent judgment before you and Mr. Ryer got in conference? A Well, there were so many things I didn't know anything about—

Q You did form a figure of your own? A No, except in a very general way and that—

10 Q What was that general figure? A That general figure was established in my own mind in that particular locality by the work that I had done in an appraisal of and effort to buy the property which is here referred to as the Packard property.

Q What was your general figure that you had in mind? A The general figure that I had in mind when I first approached it was that the Packard property—

Q Not the Packard property, the Andrus property? A I am giving you the general proposition.

20 Q I don't care anything about that. I want what was in your mind when you figured on the Andrus property? A On the Andrus property, I approached it with the idea that the upland was worth from seven to eight thousand dollars, and I thought the land under water was worth about twenty-five hundred or three thousand dollars.

Q And then after you came to look the field over you concluded it was worth more than that? A I concluded that the land under water was worth perhaps \$500 more than I had first thought. I guess Mr. Ryer was the 30 bull to that extent and I took hold of the bull's tail and went up with him.

Q Who handled the bull's tail on the upland? A I guess the bull's tail got lost—I guess we cut the tail off and then agreed right then and there it was worth about \$7,500 an acre.

Q That was your original—what was the final judgment? A That was the final judgment.

40 Q And you made it up into ox-tail soup? A And ate it and enjoyed it.

Hermann De Selding, cross.

Q Of course now, you are in entire harmony with Mr. Ryer as to the soundness of the figures you and he have agreed upon? A I am; yes, sir; fully.

Q Were you influenced at all by the knowledge that may or may not have come to you since as to the correctness of your valuation by the sale in May, 1920, of the property immediately adjoining this property to the Standard Oil, for a consideration of \$2,237,153.75 plus \$84,294.37? You know about that transaction? A I heard the exact figures in regard to that sale while in court. 10

Q And that is a very much higher figure per acre than the figure you and Mr. Ryer agreed upon, isn't it? A Yes, sir; I think so.

Q And you think the Lehigh Valley Railroad Company paid more than the land is worth, then? A You mean the Standard Oil Company. 20

Q That the Standard Oil Company paid the Lehigh Valley Company more than the land is worth? A I am afraid they did.

Q That is the only reason you have for differing from the consideration of that transaction as a measure of value of the land sold by the Lehigh Valley Railroad Company to the Standard Oil Company? A No, sir; but my judgment was fixed first and my knowledge came afterwards. 30

Q Do you know what was paid for the Andrus property? A What was paid for it?

Q Yes. Do you know it has been sold or some contract made about it? A Yes, sir; I do, but I do not think I have the figures.

Q Will you look at your map. When I asked you about the sale of the Lehigh Valley Railroad Company to the Standard Oil Company you understood I was referring to the tract of land immediately adjoining on the north the Andrus tract? A Yes, sir. 40

Hermann De Selding, cross.

Q And what was the physical condition of that property in 1919? A Well, except in a very general way I am not able to answer that question except I do know it didn't differ greatly.

Q Weren't you down there? A Yes.

10 Q Did you have your eyes so straight ahead of you that you didn't look at the Andrus tract? A One of the Standard Oil people complimented me by saying I usually kept my eyes in the neighbor's yards.

Q Are you not able to tell us in a general way? A Not intimately. General manufacturing property with so-called water front.

Q Did it have any water towers on it? A I don't know.

Q Did it have any improvement of any kind? A I assume that it did, but I don't know.

20 Q Did you hear Mr. Ryer tell us that it was not improved, this morning? A Mr. Ryer spoke from absolute knowledge. I do not.

Q You don't know whether it is improved or not? A I assume it is to some degree improved.

Q And is your knowledge of the Andrus property of the same indefinite character? A It certainly is not.

30 Q How does it happen you know so much more about the Andrus property immediately adjoining than you do about the other? A Simply because my job was to see what the Andrus property was worth and then tell you about it.

Q Now, don't you know as a matter of fact that that property is not improved—just upland and land under water without improvements? A It is hard to say what is improved and what is not in manufacturing property. The laying down of a foundation that is not above ground may be improvement. I couldn't say.

40 Q Is this map a correct map? A As far as I can see from a casual view of it it is a correct map.

Hermann De Selding, cross.

Q Well, take a little better view of it, that is not casual? A I assume that it is then, because I see the man who made it, his name is down there—I recognize that as a man who would make a correct map—as able to do so.

Q You didn't help Mr. Ryer make that map? A No, sir.

10

Q Was it made before or after your conferences? A It was made during the conferences.

Q Was it present at your final conference? A Mr. Clarkson?

Q No, the map. A Yes, sir; surely.

Q You worked with this map before you? A I worked with much of the date that is now before me.

Q You believed this map to be carefully descriptive of the conditions? A I think that map was correct—I so assumed.

20

Q And it was the basis of measurements and location of tracts on the ground and a sort of working map you and Mr. Ryer used? A I think so.

Q Now, will you look at that tract marked Lehigh Valley Railroad Company there, just to the north of the Andrus tract and see what there is on there that tells you any tale of improvements? A No, that map does not show any tale of improvements at all, but that doesn't say they are not there.

30

Q On the Andrus property it shows, doesn't it? A Yes, sir; it does, shows sign of improvements.

Q If the map is accurate as of the Andrus property what makes you doubt it as of the other tracts? A I do not doubt it.

Q If that map is accurate it is not improved property? A I should say, looking at that map, that it is not improved.

Q Do you think from the location of those two properties that one is worth more than the other, eliminating

40

Hermann De Selding, cross.

the structures on the property? A Which do you refer to as the two?

Q Here (indicating). The Andrus and Lehigh Valley Railroad Company, side by side there. A In order to give you an intelligent answer I think I would have to sit down and think a good deal about that.

10 *The Court.* Cannot you answer it quickly?

The Witness. Why, your Honor, there are so many differences there.

Q Can't you tell us if not in response to my question in response to the question of the Court?

The Court. The difference between the value of the two properties?

20 *The Witness.* It isn't a great deal of difference between the two; there may be points of difference; I cannot point them out to you.

Q It is true, isn't it, that the Lehigh Valley Railroad Company tract, so marked here, adjoining the Andrus tract on the north, is a little further from deep water in front over the average of its front? A Considering all the work that has been done there I do not think that I could consider that as of great weight.

Q It is true it is a little further? A It is true—it may be a little further.

30 Q How much of it is upland, do you know? A The Andrus property?

Q The Lehigh Valley Railroad Company. A I couldn't answer.

Q Did you hear in the course of your investigation, either from Mr. Ryer or from any other source about the lease that was on this tract that I am speaking about, north of the Andrus property from the Lehigh Valley Railroad Company to the Standard? A Yes, sir; I think I heard a statement of that kind.

40

Hermann De Selding, cross.

Q Do you remember what the rental value was? A No.

Q Figured in that lease? A No.

Q Would you consider that there was a difference in the rental value between the two tracts? A I would have to look and contrast them and compare them.

Q There they are, side by side, and you are familiar with the neighborhood. A Not intimately enough to answer the question. 10

Q You are not able to tell us whether the rental value of the property immediately on the north compares with the Andrus tract? A No.

Q Or that they are comparable for rental purposes? A No.

Q You are able to tell us for sales purposes that the Andrus tract and Packard tract are comparable? A No, sir; they are not comparable. They are not comparable in some degrees, but it is the only sale that is at all comparable. I do not say it is comparable. I say it is the nearest to comparable. That is my point. 20

Q Do I understand you to say that these figures you have given us represent your independent judgment? or the judgment of Ryer and yourself? A My independent judgment.

Q Your individual judgment, independently arrived at? A Well—

The Court. In collaboration. 30

The Witness. It was consultations between judge and Court and decision is so and so. I don't know which one of three asserted that decision, but the others agreed.

Q Your independent judgment based on your knowledge as an expert derived from your dealings with reference to property in that neighborhood? A Right.

Q Personal knowledge of values? A Personal knowledge of values. 40

Hermann De Selding, cross.

Q. It is just a coincidence that you and Ryer agreed?
A. Not at all; it is a result of conference and give and take.

Q. Was Mr. Ryer's experience the same as yours?
A. No, sir; it is not. That is where our strength comes in.

10 Q. What do you understand to be the elements to justify an expert in arriving at an opinion—help he gets out of conference with some other expert, or his own judgment? A. The benefit of an expert's opinion is that he, if he is a careful man and student, a man who has had experience and has bought and sold properties and has contact with properties and certain records and has watched the handling of those things—the kind of business they are going to use a certain tract of land for—then as a residuum of that he forms his opinion.

20 Q. Yes, and this opinion is your residuum? A. It is.

Q. And being your residuum it is a pure coincidence that it happens to be— (Interrupted.) A. Not at all; we have agreed.

Q. Then, was Ryer's experience the same as yours?
A. Ryer's judgment was that I was right and I thought that he was right.

Q. You did not use any of Ryer's judgment? A. I guess I used a lot of it. If I was wise, I did.

30 Q. As an expert you justify the use of Mr. Ryer's judgment? A. Yes, sir. An expert will take any information that he thinks is worthy of reception.

Q. Then we get down to this, that this is not—this judgment you have arrived at is not your unaided and unbiased and independent judgment as to the value of this property? A. It is my personal judgment as the result of numerous conferences with those in whom I have confidence.

40 Q. Aided and assisted by another expert? A. Aided and assisted by a thousand different things added to my knowledge.

Hermann De Selding, cross.

Q Aided and assisted by another expert? A Numerous other experts that are qualified to advise.

Q Including Mr. Ryer? A Including, most decidedly.

Q Won't you say yes or no, as to whether it is your independent judgment arrived at without the aid of others, or not? A If you will qualify what you mean by "aid" by others, I will answer the question. 10

Q I have gained the impression that you have used the help of others in arriving at this judgment. A Yes, right; that is right; I have.

Q It is not your independent judgment without bringing in elements that have been brought to you by Mr. Ryer and other people? A It is not my knowledge—

Q Do not argue with me. Answer the question. A Sure.

Q I want to get yes or no. A I cannot define your word "independent." That means absolutely without the result of any conference with anybody. I would be a fool to make such a statement. No, it is not. Taking this with the definition now, the fool included, I tried to give you a fair, honest opinion of what I, independently think of it—my judgment of it carefully and finally— 20

Q (Interrupting.) But including in the making up of your judgment and the making up of the figures information from others?

The Court. I think we know how it comes down. 30

Mr. Hardin. I think he denies his own qualification for the job.

The Court. I do not think so.

Mr. Hardin. It is not my understanding of expert testimony that as an expert he testifies as to value of property by virtue of what some other expert tells him.

The Court. These two men got together and went over the situation and concluded what they 40

Charles A. Ruhlmann, direct.

would testify, each exercising his own individual opinion, but agreeing with each other as to what it was worth.

The Witness. The exact words I wish to make my own.

10 CHARLES A. RUHLMANN, sworn.

Direct examination by Mr. Bain.

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

Q Where? A Bayonne.

Q How long have you been engaged in that business? A About fourteen years.

Q Bought and sold property in Bayonne including water front property? A I have.

20 Q Were you at one time assessor of the city of Bayonne? A I was, from 1914 to 1918.

Q Do you hold any position at the present time in the tax department of Bayonne? A Appraisal expert.

Q How long have you held that position? A About a year and a half or two years.

Q Have you made appraisals of property, particularly water front property in Bayonne? A I have.

30 Q Were you concerned with any sales of property in Bayonne in the vicinity of the Andrus property, and if so what property? A Why, with the Packard property, and I participated in the sale of the Delano to the International Nickel.

Q Were you the broker who effected the sale of the Packard property? A I was.

Q That was the property referred to by the previous witness as the Packard property? A It was.

40 Q Did you fix the price of that property with the owner who sold it to Mr. Packard? A I did.

Charles A. Ruhlmann, direct.

Q What was the price per acre? A Price per acre, land under water was \$3,000, and the upland at the rate of \$7,500.

Q \$3,000 for that under water and \$7,500 for that an acre for upland? A Yes, sir.

Q Are you familiar with the Andrus property in Bayonne involved in this action? A Yes, sir. 10

Q For how long a time have you known that property? A I have known it more or less intimately from 1914, the date of my assessorship—date of the beginning of my assessorship—and more or less before and after that time.

Q Have you examined the Andrus property and made an appraisal of it? A I have.

Q As of June 5, 1919? A I have.

Q Did you know the condition of the Andrus property prior to 1916? A I did. 20

Q That is, did you know prior to that time the portion of the property that was under water and upland? A Approximately, yes, sir.

Q Where did you get that knowledge from? A Well, I got that knowledge through the tax office and also through my connection with this case.

Q In your judgment what was the value of the Andrus property on June 5, 1919, excluding the cribbing, piers, and structures or buildings on the piers, but including the channel? A \$617,331. 30

Q That is the same figure Mr. Ryer and Mr. DeSelding gave? A The same.

Q Did you join with them in the working out of the appraisal of the property? A I did.

Q That is the three of you sat down together and arrived at the valuation of the property? A Yes, sir.

Q And the figure you have given was your judgment as well as that of the other two? A Yes, sir.

Q Will you please state your valuation of the Andrus property excluding the channel, cribbing, piers and structures on the piers? A \$333,612. 40

Charles A. Ruhlmann, direct.

Q Now, assuming that prior to 1916 and 1889, 32.92 acres of the Andrus property was under water and 12.119 was upland, what would your valuation made on June 5, 1919 of that property be as of 1889.

10 *Mr. Hardin.* I object. I cannot see that this witness is qualified as to knowledge in 1889.

Mr. Bain. I am asking him to state his valuation as of June 5, 1919, considering the property—

The Court. As of 1889.

Mr. Bain. In the condition it was prior to 1916, which would remain about the same as it was in 1889.

The Court. Your question does not assume that.

Mr. Bain. I asked him whether he knew of the property—

20 *The Court.* In 1889.

Mr. Hardin. He says he don't know that.

Q Did you know the physical condition of the Andrus property in 1889? A Do I know what it was in 1889?

Q Yes. A I know what it was prior to 1916.

Q How far back do you remember or know the physical condition?

30 *The Court.* Put your proposition. Assuming that it was prior to 1916 as it was in 1889—put it that way.

Q Assuming that in 1889 the physical condition of the Andrus property was the same as it was prior to 1916, what is your valuation of the property—what is your opinion as to the valuation of the property as of June 5, 1919, based upon its condition prior to 1916?

40 *Mr. Hardin.* It seems to me that is asking the question again in a form which calls for an apprai-

Charles A. Ruhlmann, cross.

sal under conditions which did not exist at the time this gentleman made his appraisal.

The Court. Overruled.

A \$189,670.

Adjourned until October 19, 1921.

10

October 19, 1921.

Continuation of examination pursuant to adjournment, at the place and in the presence of the parties as before.

CHARLES A. RUHLMAN, resumed the stand for

Further direct examination by Mr. Bain.

Q Are you familiar with the sales of water front property in Bayonne in the vicinity of the Andrus property? A I am. 20

Q What in your opinion is a fair rate of return for rent of the Andrus property? A In my opinion I think five per cent. would be a fair return.

Cross examination by Mr. Hardin.

Q Mr. Ruhlman, how long have you been in the real estate and insurance business? A Approximately fourteen years. 30

Q Since when? A About fourteen years.

Q And all the time in Bayonne? A All the time in Bayonne.

Q I understood you the other day to say that you had been the broker that made the sale of the Packard tract in 1916? A That is right.

Q Were you acting alone or did you have other brokers with you? A I acted alone.

Q No other broker was associated with you? A Not in the original negotiations. 40

Charles A. Ruhlmann, cross.

Q I am speaking of the transaction involving the sale of the Packard tract? A Why, I do not think that—no, there was no other broker associated with me in the original transaction.

Q Was there more than one transaction? A Yes, sir; there was more than one transaction in that—

10 Q What were they? A Shall I give you the details of my connection with them?

Q You said you were the broker, and I just wanted to know whether you were acting alone or whether you were acting— A Originally I acted alone. I acted on the instructions of George B. Gifford, who was the general manager of the Standard Oil Company of New Jersey and chairman of the manufacturing committee. He phoned to me from his office, Broadway, New York, and stated that the company was ready to buy the Packard property and asked me to do the negotiating. I thereupon went to Mr. Packard, and with him fixed the price of approximately \$3,000 an acre for the land under water and \$7,500 per acre for the upland, which Mr. Gifford said was perfectly satisfactory to the company when I so reported.

20 Q Which Mr. Packard? A Mr. R. G. Packard, president of the company. He then told me to wait until he had reported the matter to the board and several days later summoned me to his home in Bayonne and stated that the company desired to send a confidential man down there to check up the figures and so on and to wait until that had been done.

30 Q Who was that? A That was Mr. J. A. Kalley, I believe, of Brooklyn or New York; I don't know just where.

Q Do you know what business Mr. Kalley was in? A Real estate.

Q How long after the negotiation was opened was this transaction closed? A Why I should say a period—if I remember correctly—within two or three months—that, is, I don't know that title passed in that time but the con-

40

Charles A. Ruhlmann, cross.

tract was signed within a short period after I had submitted the figures.

Q You received commissions as real estate broker?
A I did.

Q Did you share that commission with anybody? A I did.

Q Who was the broker? A Mr. Kalley.

Q Who paid you your commissions? A Mr. Kalley.

Q Do you know who paid Mr. Kalley? A I do not. I think Mr. Packard of the Packard Company paid Mr. Kalley.

Q Do you recognize that check (handing witness paper)? A I do.

Q Is that the check for your commission? A That is the check for part of my commission.

Q How much other commission did you get? A The whole commission was \$10,833.33.

Q You mean that was the total commission on the transaction? A That was not. That was one-third of the commission.

Q Who got the two-thirds of the commission? A That I don't know. Mr. Kalley—I would like to give you a history of that case.

Mr. Bain. If your Honor please, I have allowed this to go on, but I object on the ground that it is immaterial.

The Court. Objection overruled.

Q The commission was split then in some way so that you got a third of it? A Yes, sir; although I had a contract from Mr. Packard for full five per cent., which I surrendered to Mr. Kalley when he paid me the \$10,833.

Q I show you map Exhibit P.1, and ask you if you recognize the location of the Andrus property on this map? A I do.

Q Here is the Kill von Kull, and where on this map, if at all, is shown the Packard tract? A Packard, in here (indicating).

Charles A. Ruhlmann, cross.

Mr. Bain. Pointing to a tract outlined with crosses on the map. Indicate it by crosses on the map.

The Court. Put on there the word "Packard."

The Witness. (Complying with the Court's suggestion.)

10 Q For the purpose of refreshing our recollection after the lapse of time since we were last here, how far north of the Andrus property on the Riparian Commissioners pier line is the Packard property from the Andrus property? A Why, approximately 2,500 feet, on the pier head line.

Q Figures shown on the map, Exhibit P.1, are substantially correct, as you recall it? A Yes, sir; substantially.

20 Q Now, further, for the purpose of refreshing our recollection, although it was explained I think before, there is a large expanse of shallow water in front of the Packard tract, is there not? A There is.

Q Much more—much farther from the pierhead line back to fast land than on the Andrus tract? A I would say so, except that the Andrus had a channel.

Q Being the so-called 35 foot channel shown on—
A Except that the Packards had a channel running into it.

30 Q How deep? A Approximately twelve feet in high tide.

Q What is the tide? A The tide has a rise and fall there of about six feet I should say.

Q They call it a six foot channel? A About a six foot channel, yes, sir.

Q Do you know whether the Packard property at the time of the sale had the riparian rights? A It did.

40 Q All of it? A All of it—that is, the riparian right involved in the acreage which Mr. Packard estimated on the sale at about 100 acres.

Charles A. Ruhlmann, cross.

Q Do you understand the riparian acreage to include all the land under water from the pierhead line back to fast land? A I will say so, yes, sir.

Q Do you know about that? A That is to the best of my knowledge.

Q Well, you say the best of your knowledge, what is your knowledge? A My knowledge is due to the records in the tax office that I gained during my term of assessorship. 10

Q When did that term end? A From 1914 to 1918.

Q During the period of this sale you were in the tax office? A Yes, sir.

Q And your idea is, with reference to the price of this property, that it included riparian rights? A Yes, sir.

Q Were you informed by the Packard people as to the possession of the right or not? A Mr. Packard stated that he owned certain rights in front of his property and that it consisted of an acreage of about 100. 20

Q Will you refresh your recollection as to the upland on this Packard tract, how many acres there were? A The acreage as I recall, was estimated by Mr. Packard at about forty-two to forty-five—he wasn't absolutely sure and the price was fixed at substantially \$7,500 per acre, and whereas they paid him \$650,000 figured on the entire tract, subsequently it developed, I understand, that the acreage as Mr. Packard had estimated, was not exactly correct, although it was substantially correct. 30

Q So he got slightly more per acre than he anticipated? A I think so.

Q How much was that upland, about forty-five acres? A Forty-two to forty-five.

Q How much under water? A One hundred.

Q And there is a shore frontage? A An irregular shore frontage up there, that was not—that I never figured. 40

Charles A. Ruhlmann, cross.

Q What do you call the shore frontage of the Packard tract—it is very odd shape? A Very odd shaped property.

Q What do you call the shore frontage? A I call this part in here the shore frontage (indicating.)

10 Q And what is the pier frontage? A Pier frontage is—I think the pier frontage is a little over 300 feet, if I am not mistaken. The pier frontage is about 341 feet, pierhead line.

Q And what is the distinction in your mind between pier frontage and shore frontage? A Well, shore frontage is a whole lot greater than the pier frontage.

20 Q What is the shore frontage as compared with the pier frontage? The pier is out in the bay and the shore frontage is where, on this map Exhibit C.1? A It is about—somewhat over a mile in back, and perhaps three times—approximately three times as wide as the pier frontage.

Q Can you indicate it in some way?

Mr. Bain. That shows on the map itself; the shore line is shown.

Q Which is the shore line, it is not marked in any way? A It is here (indicating).

30 Q Did the Standard Oil Company at the time the sale was made, own the adjoining property? A They did.

Q On one side or both sides? A They owned on one side.

Q On which side? A On the south side, down here (indicating).

Q The shore front is very irregular? A Very irregular indeed.

40 Q On the Packard tract—and when you talk about 1,200 feet—what did you say the shore frontage was? A I said approximately three times as wide as the pierhead line figured in a straight line.

Charles A. Ruhlmann, cross.

Q And along the line shown on this map, Exhibit C. 1, of the National Docks Railway Company— A Something like that.

Q —that would be substantially, 1,100 feet? A I should say around a thousand or so.

Q Did you ever hear that there were 125 feet of that shore front that had no riparian rights? A I think Mr. Packard stated that he owned—had a channel of about 200 feet, and that he figured that that was his rights— Mr. Packard's information regarding his own property was very indefinite. He simply estimated that and had no real survey. I furnished what little information he had to Mr. Gifford at the time. 10

Q You think Mr. Kalley was posted about the riparian rights there? A I think when Mr. Kalley went into it—they went into it very thoroughly, before the contract was signed, but as Mr. Kalley was sent there to dicker— was sent by the Standard Oil people to dicker with them further than I had done, why he necessarily went into greater details and further investigation than I did, because I was not authorized to sign any contract. 20

Q Do you know whether there was any reservation in the deed of conveyance from the warranty of any portion of the property as granting riparian rights?

Mr. Bain. I object on the ground that the deed is the best evidence. 30

The Court. Objection overruled.

Q Do you know? A I don't know.

Q Now, you did not tell Mr. Bain, as I recall, on direct examination, whether you regarded this Packard tract as comparable with the Andrus tract from the standpoint of value? A I regarded it as more clearly comparable with the Andrus tract of any property that we have any record of in recent sales.

Q You are familiar with the sales of property to the south of the Andrus property on the Kill von Kull? A I am. 40

Charles A. Ruhlmann, cross.

Q Immediately adjoining the Andrus property? A
A If you refer to the Delano, I am.

Q Were you present in Court when we were here
in June? A I was.

10 Q And you recall that I asked the witnesses at that
time about the tract to the south of the Andrus tract
around the Kill von Kull, International Nickel tract and
Finelli and Deseaux? A Yes, sir.

Q Why aren't those tracts more comparable with the
Andrus tract than the Packard tract 2,500 feet to the
north? A For the reason that there is deep water on
the Kill von Kull, and the property on Kill von Kull
is so shaped as to permit of a very intensive concentrated
water front development, with considerable shore front
available in comparison with the depth of the land, where-
as the Andrus property has a minimum amount of water
front land capable of development, considering its shape
20 and depth, and also due to the fact that the water around
the Andrus tract, without the channel, is shallow.

Q The Andrus tract has a much larger water front
comparable to its shape and depth than the Packard
tract, hasn't it? A I would say so, yes, sir.

Q And the water front—the front of the Andrus
property is much nearer to the deep water in the Kill
von Kull or New York Bay than the Packard tract? A
I should say so, yes, sir.

30 Q And access or nearness to deep water is advan-
tageous and adds to value? A I think so.

Q You have no hesitation, I suppose, in saying that
the Andrus land is more valuable than the Packard land?
A As it is today. I would say that the Andrus land is
more valuable than the Packard.

Q Are you familiar with the sale to the Standard Oil
Company immediately adjoining the Andrus property on
the south? A You mean on the north.

Q Yes, on the north. A I am not familiar with it,
40 although I have heard something about it.

Charles A. Ruhlmann, cross.

Q Do you know when it was made? A I understand it was made very recently. I haven't—I could not find anything of record as yet and for that reason haven't any first hand information with regard to it.

Q Do you find any difference in comparable values of the Andrus tract with the Packard tract in June, 1919, and now? A In June, 1919? I do. I think the Andrus property as it is today is more valuable than the Packard property as it is today? 10

Q And wasn't that also true in June, 1919? A I would say so, yes, sir.

Q Did you take into consideration in determining the value of this property as of June 4, 1919—I understand that is the date of your valuation? A Yes, sir.

Q Did you take into consideration the fact or was it known to you at the time that the Lehigh Valley Company had sold the adjoining land to the Standard Oil Company? A It was not known to me at that time. 20

Q And your figures were made up without any reference to or without any knowledge of the actual sale in the early part of 1920 of the land on the north by the Lehigh Valley Railroad Company to the Standard Oil Company? A That is true.

Q When did you find out about it? A I found out within the past few months—some time within the past few months. 30

Q And from whom? A I could not say definitely. I think I was in a group when the matter was being discussed. I don't know that anybody told me personally, except that I overheard it.

Q Isn't it your view that an actual sale ought to be taken into consideration to determine the value of property in the immediate neighborhood? A Yes, sir.

Q And a sale in the early part of 1920, actual sale, under ordinary conditions, would be given consideration by you, wouldn't it? A Should and would. 40

Charles A. Ruhlmann, cross.

Q The figures you have testified to, as I understand it, were made up without any knowledge on your part of a sale by the Lehigh Valley Railroad Company to the Standard Oil Company of the tract adjoining on the north? A That is right.

10 Q Now if you knew that that tract—that the consideration of that sale had been \$2,821,448.12 would that not have influenced you to a larger figure? A I do not think so, for the reason that I figure the sale to the Standard Oil Company as a typical Standard Oil purchase, whereby the Standard Oil Company, with an investment already roughly estimated at over a hundred million dollars, were acquiring certain lands for expansion, would not quibble as to price in acquiring such land, and that I would necessarily have to discount from the fact that the Standard Oil Company—not my opinion, but
20 everybody knows—paid exorbitant prices for land down there. The owners held them up for big prices at all times, which they would not receive from outside concerns.

Q The only reason that you have for discounting the price that the Standard Oil Company paid for land in that neighborhood, is that the Standard Oil Company is generous enough to pay more than the land is worth? A No; I wouldn't say that; I would say because it is essential to them with their already large invested capital, for expansion.

30 Q And aren't you influenced in your consideration of the value of land by the demand that may come to it from the neighbors? A To some extent.

Q And isn't it true that in that neighborhood, with the conditions that you describe as to the Standard Oil Company, that there was an absolute local demand for property adjoining the Standard Oil Company, which should increase its value? A I think that is so.

40 Q Why, then, do you ignore that? Why do you ignore this actual sale of the immediately adjoining property as having no influence in arriving at your figures? A

Charles A. Ruhlmann, cross.

Well, because at the time that I was assessor of Bayonne, and my predecessors to a very great extent, always discounted the Standard Oil sales to some extent, due to the condition I have described and so reflected their judgment in their assessment of values down there.

Q And you were assessor from 1914 to 1918? A I was.

Q Any other reason except your experience as assessor for discounting the prices paid by the Standard Oil Company? A It is generally conceded down there that the Standard Oil Company did pay exorbitant prices for their property—and also due to the fact that a piece of land that I was co-agent for, I might mention, the Delano property—I tried a great many years to sell it to outside concerns and could never stir up any interest at the price which the Standard Oil Company paid.

Q Who was the purchaser of the Packard tract? A The Standard Oil Company.

Q Did you make the same discount there? A I did. I think Mr. Packard thought he got the best of the bargain.

Q When you are making a comparison between the Packard tract and the Andrus tract do you discount the price that the Standard Oil Company paid for the Packard tract because of the larger—because they were willing to pay more than it was worth? A To a reasonable extent I do.

Q You think the Packard tract brought more than it was worth? A Mr. Packard thought so. He thought he got the best of the bargain.

Q What do you think? A I think it brought all it was worth.

Q But you do not think it brought more than it was worth? A Well, perhaps I wouldn't say, but I think it brought all—full value.

Q You know the Packard rate, average over the whole tract, upland and lowland, was about at what acreage

Charles A. Ruhlmann, cross.

rate, do you remember? A Was about—I don't remember offhand, but I think it was around forty-three or forty-five hundred.

Q Forty-six hundred dollars? A About that; yes, sir.

10 Q The average paid on the recent sale of the Lehigh Valley Railroad Company to the Standard Oil Company, assuming the price I gave you a little while ago, was about \$20,000 an acre? A I still think the Standard Oil Company paid too much for the property, in proportion to the real value, that is my judgment.

Q There has been a great deal more activity in the neighborhood of the Andrus tract since 1916, when the Packard sale was made, has there not? A There has.

Q And that activity began when? A When the Standard Oil Company found that they needed more property, and—that is all.

20 Q And do you regard the need of the Standard Oil Company as superior to that of the International Nickel Company, for instance, in seeking land in that neighborhood? A I might state that the International Nickel Company has gone to West Virginia to build a new plant, and that the International Nickel sale from Delano was a wartime sale. The Standard Oil Company, being a very intensive war industry and requiring certain land, bought property for additional production purposes.

30 *Mr. Bain.* You said the Standard Oil. Did you mean the International?

The Witness. I mean the International Nickel; for that reason, it being a wartime sale I discount it to a reasonable extent.

40 Q And isn't it true that in that neighborhood and in the neighborhood of the Andrus tract, along the Kill von Kull, beginning after 1916, there has been a tremendous growth in the direction of location of manufactureries and extension of existing manufacturing plants? A Not new manufacturing, not one.

Charles A. Ruhlmann, cross.

Q Has there been a great growth in the extension of manufacturies already located there? A No, sir; there have not.

Q What improvements, if any, have been made in that neighborhood since 1916, that you can remember? A Only those of the Standard Oil Company and the International Nickel during the war.

10

Q Aren't the improvements made by the Standard Oil Company in expansion of industries located there? A I thought you referred to other than industries already located there.

Q It is true that the interests already located there have been greatly expanded since 1916? A They have.

Q And they are still expanding? A They are. That is, when I say that, I mean the Tidewater Oil Company and Standard Oil Company. The Tidewater really being a subsidiary of the Standard Oil Company.

Q And that neighborhood demand for purposes of expansion was there in June, 1919? A I think so.

20

Q I do not understand you to say that the International Nickel Company has left the location there? A They have not left, but the rumor is current that they are contemplating leaving.

Q Yes. That is rumor? A Yes, sir.

Q They are still there? A Yes, sir.

Q And still manufacturing. Are you familiar with the values merely local in Bayonne, or does your knowledge of water front property extend all over New York harbor? A I wouldn't say all over New York harbor. I have records of some Jersey City sales, and so on.

30

Q You do not regard those properties though comparable with this? A Well, to a considerable extent they are, although they are a little more valuable, being to the north and nearer to the channel and more intensive development.

Q How far north do you regard comparable territory? A Oh, I would say—say two miles or so.

40

Charles A. Ruhlmann, cross.

Q Beyond the municipal line of Bayonne up into Jersey City? A Yes, sir.

Q And as you go north for a considerable distance the shallow water is very, very wide, isn't it? A Why, from the Andrus property do you mean?

Q Yes. A Yes, sir.

10 Q And the extent of channel to deep water would be very much greater. That's an element of value, isn't it?

A That is true.

Q Is it true that in front of the Packard property you have to go indirectly to get to deep water—there is a reef in front of that property? A There is a reef close to it somewhere, known as Robbin's Reef.

Q Is that shown on this map? A I think it is out some distance, and somewhat over in this direction (indicating).

20 Q Is it an advantage to water front property to have room for long piers? A It is.

Q And isn't the Andrus property better located for long piers than property right around on the deep water on Kill von Kull? A Somewhat.

Q There is a much nearer way, is there not, to deep water from the Andrus property than by the route of the present thirty-foot channel? A There is a nearer way; I don't know whether it is a more practical way.

30 Q Assuming common ownership of—assuming that increase of neighborhood demand and union ownership of the Andrus property and the property immediately to the south, there would be no difficulty of getting to deep water by a very short channel, would there? A I do not think so.

Q And the property would be admirably fitted for deep piers for large steamers? A Yes, sir.

Q And the Standard Oil Company's business brings ships of large tonnage to their wharves, as I understand?

40 A They do.

Charles A. Ruhlmann, re-direct.

Re-direct examination.

Q Are you in any way connected with the New Jersey and New York Port Commission? A I am. I was secretary of the New Jersey Commission on Port Development.

Q In answer to a question of Mr. Hardin's, you said that the comparable lands, that is lands comparable to the Andrus property on New York Bay would extend about two miles north of the Jersey City line? 10

The Court. Of the Bayonne line.

Mr. Bain. Jersey City and Bayonne line.

The Witness. I do not mean that. I meant from the Andrus property.

Mr. Hardin. I think that is what he said.

The Court. No, he did not.

The Witness. I did not mean that. I meant the Andrus property. 20

Q Will you kindly indicate on this map, Exhibit C. 1, the limit of the comparable lands in your judgment to the north of the Andrus property?

The Court. He says about two miles.

Mr. Bain. I want to get the practical point on that.

The Witness. About that point (indicating). 30

Q Will you please mark that with the letter "A"? A (Witness complies with request.)

Q What was the Packard property used for at the time it was sold? A Why, it was being used by Mr. Packard to store heavy dredgers and pile drivers and so on, and for the purpose of repairing them when necessary. Mr. Packard had constructed right near the shore line a very deep basin so that divers could go in there and make such repairs as was necessary to these heavy scows and land part of his marine equipment. 40

Charles A. Ruhlmann, re-direct.

Q The R. C. Packard Company, the owner of the property, was a dredging company, wasn't it? A Yes, sir.

Q And do you know whether it brought dredges out and in to that basin over the Packard property? A It did.

10 Q Isn't it true also that the large cement pipe for the Passaic Valley Sewer outlet into New York Bay was constructed on the Packard property? A It is, partly.

Q And the Packard property was used for that purpose for several years, wasn't it? A It was.

Q And was that cement pipe taken from the Packard property where it was constructed on scows and dropped into its place out into New York Bay, do you know? A It was.

20 Q Can you state off-hand, approximately, how large those pipes were—have you ever seen them? A I have seen them, but I don't know that I know what the dimensions were. I have seen them laying on the Packard property.

Q They were the largest cement pipes that you had ever seen? A Yes, sir.

Q Tremendous size? A Tremendous size.

Q Some twelve or fourteen feet? A They were very large.

30 Q And were there a great quantity of those things on the Packard property at any time you saw? A At one time; yes, sir.

Q Many lengths of the pipe? A I think so; yes, sir.

Q For how long a period have you been familiar with the property in the vicinity of the Andrus property? A Well, I have been familiar with it practically all my life, and particularly familiar with it since the period of my assessorship commencing in 1914.

Q Since 1914? A Yes, sir.

40 Q Then you began to have a practical and technical knowledge of it? A Yes, sir.

Charles A. Ruhlmann, further cross.

Q During the last eight years, to your knowledge, has a single new industry located in the vicinity of the Andrus property? A Not one.

Q And during that time have the purchasers of property in that vicinity been confined to a very few purchasers? A They have.

Q Can you state who those purchasers were, that is, 10
what particular purchasers?

The Court. Haven't we had all this?

Mr. Bain. Not from this witness.

The Court. Go on.

Q Have all the purchases been by a very few concerns in that vicinity? A Very few.

Q What concerns were they? A International Nickel Company made a purchase and the Standard Oil the balance of the purchases. 20

Q Those two purchasers bought all the property that was bought in that vicinity in the last eight years? A That is true.

Q Except—let me ask you this. Further around on the Kill, that is around to the south and the west, there has been another purchaser, hasn't there, recently? A There has. I am talking in the particular vicinity of the Andrus tract.

Q You mean to say you knew about the purchase of the Union Sulphur Company? A I do. 30

Q Where was that? A That was a great distance from the Andrus property and in what might be termed the residential section of the town.

Q That was the old Hotel Lotorette property? A That was the Lotorette property, First street and Broadway and Avenue C.

Further cross examination.

Q There has been an increased demand for property inland, I mean by that property inland to the rear of this 40

Charles A. Ruhlmann, further cross.

neighborhood we are talking about, hasn't there? A In recent years?

Q Yes. A You mean where the Union Sulphur located?

10 Q Yes; inland? A Why, very little. There has been very little development down there at all. The property is being held for that purpose, but very few sales have taken place.

Q Why is it being held? A For industrial development.

Q In the belief that that demand will bring better prices? A No, simply because—one reason that that property hasn't been sold—to give the reasons—is because it is outside of the lighterage limit.

20 Q Outside of what? A Outside of the lighterage limit, and the second reason is that the channel at that point goes over to the Staten Island shore.

Q The owners are holding it in the hope of industrial sales, you say? A Yes, sir.

Q That indicates the thought on their part that there is demand of that character? A Yes, sir. They are willing to sell now if they can get a purchaser, because I have some for sale myself.

30 Q As you come north from the Andrus property along the two miles that you have indicated as being in the comparable area, the property from the Andrus property north first decreases in value, doesn't it? A Yes, sir.

Q Where does it begin again to increase? A Why, up around the Pennsylvania development. Has it been marked out on the map here?

Q That is beyond your letter A, isn't it? A No, I wouldn't say so. That is the Pennsylvania (indicating).

Mr. Bain. Indicate the Pennsylvania with the letter "B," if you will.

40 *The Witness.* (Complies with counsel's request.)

Charles A. Ruhlmann, further cross.

Q The Pennsylvania railroad property to which you point, you regard as becoming more valuable? A Yes, sir.

Q Incomparable with the property to the south? A Yes, sir.

Q And the Lehigh Valley property adjoining? A Yes, sir.

Q How about Central, north of your letter "A"? A I would say the further up it goes the more valuable it gets.

Q Because of its being nearer to deep water? A Nearer to deep water and nearer to greater intensive development.

Q And also involved in railroad use? A That is right.

Q You assent to the doctrine that the most profitable use is the use that should govern in determining the value of property? A Yes, sir.

Q And if the most profitable use of the neighborhood of the Andrus tract be by the Standard Oil people, what the Standard Oil people can afford to pay for it should be taken into consideration in determining its value? A To some extent; yes, sir.

Q When were these big cement pipes that you speak of on the Packard tract? A Why, I cannot recall definitely.

Q Was it before or after this sale? A Before or after the Packard sale? I think, either a little before or a little after that; I couldn't say definitely.

Q Do you know how deep down in the ground that sewer channel is? A I don't know how deep it is, but I know it is very deep because they go out to the mouth of the channel.

Q Haven't you heard anything so as to give us a guess of how deep down in the ground these things are? A No, I could not; I haven't heard how deep it is.

Q Seventy-five or a hundred feet? A I couldn't tell you, sir.

Charles A. Ruhlmann, re-direct.

Q Have the pipes disappeared or are they still there on the ground? A To my best recollection they are not there now.

Q Is there any indication on the surface by reason of the passage of this sewer beneath? A I wouldn't say so.

10 Q On the Packard tract I mean, now? A Not that I recall, although there may be.

Q Is the use of the Packard tract interfered with by reason of this sewer that is down underneath? A I wouldn't say so.

Q Do you know whether somebody got paid for the right to pass under the Packard tract? A I do not.

Re-direct examination.

Q You don't know that the Passaic Valley sewer is on
20 the Packard tract, do you? A No, I do not.

Q The pipe was built there? A That is what I said.

Q The pipe was built there and then taken out on scows and dropped into position in the bay, but not on the Packard tract?

The Court. Why was it brought into the case?

30 *Mr. Bain.* I did it to show what the Packard tract was used for. Its usefulness and that it had a use.

The Court. To sustain pipes on the surface?

Mr. Bain. No, this pipe was built on that property, showing it was upland—it was really useful.

Q You did not intend to say that the Passaic Valley sewer was on the Packard tract? A No, I did not.

The Court. I thought you did.

40 *Mr. Bain.* Only the pipe was built there, not that the sewer was laid there. My questions related

Percy A. Gaddis, direct.

to the building of the pipe, not to the laying of the sewer.

Q Did I understand you to say that in valuing property in the vicinity of the Andrus property you took into consideration the price that might be paid by the Standard Oil Company if it wanted to buy? A I did.

Q How do you take that into consideration? A Because a great deal of this property from time to time I have had for sale, and in trying to sell properties for my clients with the prices that were asked, I was unable to interest people—and a great many other agents have had the same property for sale, and apparently could not interest outside interests to go there, and for that reason when the Standard Oil desired expansion they went in and sometimes paid more than its real value. In fact, in my opinion and in the opinion of other men that know values, the Standard Oil Company has always paid extravagant prices for their property.

Q In your opinion is there a difference between general market value and the value that would be paid by a particular owner because of the particular usefulness that the property has to that particular owner? A That is what I have taken into consideration.

Re-cross examination.

Q What other sales have you made along the water front besides the Packard sale? A Why, participated in the sale of the Delano to the International Nickel Company.

Q That is on the Kill von Kull, below? A Yes, sir.

Q No others? A No.

PERCY A. GADDIS, sworn for complainant.

Direct examination by Mr. Bain.

Q What is your business? A Real estate broker.

Percy A. Gaddis, direct.

Q Where? A Jersey City.

Q How long have you been engaged in that business?

A Twenty-nine years past.

Q All in Jersey City? A No, sir.

10 Q What other places? A I have always had my headquarters in Jersey City; I have done business in practically ten or twelve counties of the State and outside of the State in various places; not always selling, but have been in a consulting capacity and for purposes of appraisal.

Q For whom have you made appraisals? A I made appraisals for the various railroad companies, Lackawanna especially, Public Service Corporation, for the State of New Jersey, for the Federal Government, Interstate Commerce Commission—

20 Q Were you at one time senior land appraiser of the Interstate Commerce Commission? A I was, for six years, up to the first of this year.

Q Then you resigned? A Then I resigned.

Q Have you kept a record of the purchases and sales of water front property on the New Jersey side of the New York Bay and of Kill von Kull and on the Hudson River? A I have.

Q For how long a period? A Eight or ten years.

30 Q You are familiar with the sales of such property during that period, are you? A I am.

Q Have you investigated and studied the subject of water front properties on New York Bay, that is on the Bayonne and Jersey City side of New York Bay and Kill von Kull and Hudson River? A I have.

Q And for how long a period have you been giving your attention to that specially? A Probably the past ten years.

40 Q Have been continuously during that time— A The past six years almost exclusively on the water front prop-

Percy A. Gaddis, direct.

erties in that vicinity and in the various cities from Maine to North Carolina—large water front ports.

Q Are you familiar with the Andrus property involved in this proceeding? A I am.

Q Have you inspected the property? A I was over it last week the last time.

Q Do you know its location? A Very well, sir. 10

Q Do you know its condition? A I do.

Q Have you made an appraisal of that property? A I have.

Q Will you please state what, in your judgment, is the value of the Andrus property, excluding the channel—present channel and the cribbing and the piers and structures or buildings on the piers? A \$342,600.

Q And what, in your opinion, is the value of that property including the channel, but excluding the cribbing, piers or structures or buildings on the piers? A \$675,675. 20

Q As of what date are those appraisals made? A As of June, 1919.

Q Do you know the physical condition of the Andrus property prior to 1916? A Yes, sir.

Q And how much of that property prior to 1916 was upland and how much land under water? A About nine acres of upland and 36.45 of land under water.

Q Where did you get that information? A That information I have secured through scaling and computing from maps that I had of it. 30

Q Let me ask you, is that condition shown on any atlas? A It is shown on the Hopkins Atlas, substantially correct, of Volume 2, 1909.

Q What is the Hopkins Atlas? A The Hopkins Atlas is the real estate atlas of Hudson County published in two volumes.

Q Generally accepted by the real estate men? A It is. 40

Percy A. Gaddis, cross.

Q It is a flat book? A It is a flat book compilation of existing surveys and various information brought into one atlas by an impartial source.

Q Speaking as of June 5, 1919, but considering the property in its condition prior to 1916, in your judgment what is the value of the property?

10

Mr. Hardin. I want to renew the objection made before. Your Honor overruled my objection at that time and I assume you will again, but I want to renew it so as to keep the record straight.

The Court. Yes.

Q (Question read.) A In the physical condition that existed prior to the present development, \$198,000.

Q Are you familiar with all the recent sales of property in the vicinity of the Andrus property? A Yes, sir.

20

Q Including the Packard property that has been mentioned, and the various properties on the Kill von Kull? A Yes, sir.

Q What in your judgment is a fair rate of return for rental of the Andrus property? A A net return, five per cent.

Cross examination by Mr. Hardin.

30 Q Mr. Gaddis, how do you get at that figure of five per cent.? Does it have any reference to a ruling rate of interest? A It has always been considered the maximum return on large undeveloped tracts of property, in my experience of the past twenty odd years—twenty-nine years.

Q Considered by whom? A Considered by the various interests who were capable of leasing such property.

40 Q By clients that you represented, is that the idea? Did you have clients heretofore that were satisfied with five per cent.? A Yes, sir.

Percy A. Gaddis, cross.

Q For that reason you now believe that five per cent. is all that should be paid to— A (Interrupting.) Yes, sir.

Q And that five per cent. you consider satisfactory regardless of the price of money? A Yes, sir.

Q Notwithstanding an investment in some other direction might earn eight or ten per cent., an investment in real estate still is entitled to only five? A Yes, sir. 10

Q That is your expert view? A That would be modified by condition, somewhat.

Q You know, do you not, that the price of money in 1919 and since has been more than five per cent.? A Yes, sir; had to pay it myself.

Q And investments in other fields have reasonably produced more than five per cent.? A It is true. That is especially true where there is an increment created by development by the party—or the lessee. 20

Q Have you observed this neighborhood where this Andrus property is during recent years? A I have.

Q What is the character of the neighborhood? A Industrial entirely.

Q Largely occupied for industrial purposes? A Taking the whole Constable Hook in its entirety, the southerly half, is very intensively occupied between the coal docks and this Andrus property. From the Andrus property easterly along the cove, is not nearly so extensively occupied. In fact it is not half occupied. 30

Q Has there been a tendency to consolidate ownership in large concerns in that neighborhood? A Yes, sir.

Q What special interests are located there that are expanding? A The oil interests—Standard Oil Company.

Q Is the Standard Oil the only oil company located there or in that neighborhood? A No, sir; there is the Standard Oil, Tidewater Oil, and—those are the two principal ones and largest interests. 40

Percy A. Gaddis, cross.

Q Other small oil industries also in the neighborhood?

A I believe there are some, yes, sir; some subsidiaries of those companies.

Q And of course there is railroad use of a good deal of property in the neighborhood? A Principally to serve those industries.

10 Q But none the less important railroad use? A Yes, sir.

Q A considerable amount of property in that neighborhood was, until lately, owned by the Lehigh Valley Railroad Company, was it not? A To the north, yes, sir; or northeast, to be exact.

Q Looking at this map, Exhibit C. 1, I think this is, you mean up the bay? A Up the bay, yes, sir.

Q And comparatively close by there is still large holdings of railroad property? A Yes, sir.

20 Q Is the tract on this map, Exhibit P. 1, a little ways up from the Andrus property marked Central Railroad of New Jersey, in any kind of improved occupation? A No, sir.

Q What is the development upon the Andrus tract that you referred to in your answer to Mr. Bain's question?

A Filling, cribbing, railroad tracks, a large extensive pier, some railroad trestles and an enormous crane.

30 Q Do you know when that work was completed? A I should say about two years ago.

Q Prior to June 4, 1919? A Prior or about that time.

Q Well, what was the condition as of June 4, 1919, when you made your appraisal? A As I have described.

Q You now have qualified your description, as I understand you? A No; you misunderstand me, if you so think.

Q These improvements were there prior to June 4, 1919. They were there when you made your appraisal?

40 A Yes, sir; but they were not property—they were not a part of the property.

Percy A. Gaddis, cross.

Q Not a part of the property? A They did not belong to the owner of the land.

Q As you were advised? A As I know.

Q How do you know that? A The records would tell you that. There is a lease in existence with which you are more familiar than I.

Q And of course you carefully examined that lease? A 10
Well, I am not a lawyer, but I have read it.

Q When you gave your figures to Mr. Bain as you did a few minutes ago, were you speaking as of the date before or after these particular things were on the ground?
A About the time.

Q Can't you say before or after? Why do you happen to say about the time? A Why, an improvement of that style is never finished in any period of one, two or three months, or even a year. It is gradually created. I cannot say the tracks that now exist are the very tracks that were there at that time probably better than any other man than the engineer who was in charge. 20

Q How close to June 4, 1919, were you on this property? A I cannot recall, but I should think within six months.

Q Which way? A Before.

Q And from six months before June 4, 1919, when were you next there? A Sometime in the fall of last year.

Q When you were there in the fall of last year the improvements you are speaking about were completed? A 30
As I recall.

Q And when you were there six months before June, 1919, they were in progress? A I cannot remember distinctly that they were.

Q You do not remember whether they were or not, eh?
A Well, they were some of them there and I think all of them.

Q Do you know who was in actual occupation of the property at that time? A I believe the Lehigh Valley Road. 40

Percy A. Gaddis, cross.

Q Do you know whether they had made any sublease or had any tenants of theirs on the property? A No, I do not.

Q You don't know who was in actual occupation? A I say I know the Lehigh Valley Company evidence was there—engines there with their own name on, running
10 back and forth.

Q Was there any other use being made of the property at that time except railroad use? A I cannot distinctly recall, because railroad use is so closely tied up with lots of other things, you could not tell whether they were working for one of the industries or working for themselves.

Q Ever heard anything about it? A No.

Q Never heard about the presence of any large corporate concern being located on that property by arrangement of the Lehigh Valley Railroad Company? A I
20 know that Standard Oil Company had used part of it.

Q Ever hear about any other? A Do not recall any other.

Q Then you don't know whether there were any leases or not? A No, sir; I know there were none of record.

Q Would your judgment as to the rental value of this property be affected if you knew the Lehigh Valley was getting a rental very much larger than the rental you have indicated, of five per cent., based on your valuation? A No, sir.

Q The actual rental that people might be willing to
30 pay the Lehigh Valley Railroad Company would not influence your judgment at all? A Not when I knew that they were paying the Lehigh Valley for improvements that had been constructed by themselves, rendering possible change of conditions.

Q How does the presence of these improvements upon the property tend to improve the property as or by itself, considered apart from the improvement? A They do.

Q And have you taken that into consideration in making
40 your appraisal? A I have.

Percy A. Gaddis, cross.

Q What element—or what allowance do you make on that account? A It cannot be expressed either in dollars and cents or percentages. It is a matter of judgment based on the use and experience of the rest of the property.

Q What is it that leads you to the figures you make? You are a gentleman of large experience and you can readily tell us, I imagine—at least I have heard you on other occasions undertake to do so with some facility—just how do you get at this appraisal? A I make a study primarily of the thing, transactions that have actually taken place—that is almost fundamental—and I try and analyze those either exactly, or in my own mind, generally, and apply my experience to them, and build up my judgment after an examination of the property itself, studying and considering then adjacent and adjoining conditions. 10 20

Q What is the usual source of your information as to transactions that have actually taken place? A That is so varied it would be hard to describe.

Q Well, it isn't all first-hand? You do not participate in all these transactions? A No, sir.

Q You get some of them from the records? A I would be a fool if I didn't get everything there was in the records, and then from that basis—or not necessarily only from that basis—but from that basis find the conditions as far as possible, verify and check up as far as the different things have taken place. 30

Q For instance, you find a very valuable tract of land has been sold for a consideration of \$1. You know that is not the true consideration. How do you go about it to find out what the real transaction was? A I think it would be a breach of confidence to answer that question.

Q You do it somehow? A I make it my business to find out if it is possible to do so, and in most cases I have been very successful in the past ten or twelve years. 40

Percy A. Gaddis, cross.

Q You do not pretend to say that you always get the correct information? You have got to do the best you can, getting yourself posted? A Well, I should think on the average it was 90 per cent. pure, if you want to put it that way. There are times—

Q That is because of your confidence in your method?

10 A No; the care with which I investigate the source.

Q I say, care and confidence in the methods of investigation? A If you wish to put it that way.

Q Then you cannot analyze this price which you put upon this property, for us? A To a reasonable extent. I can take five minutes or five hours on it.

Q I do not want you to take five hours if I can help it. How did this property compare—what nearest sale do you know about—nearest in locality? A Nearest will be high priced—high valued industrial properties
20 along the Kill Von Kull.

Q You think they have some influence in determining what this property was worth? A Undoubtedly have an influence.

Q Now, what is the nearest— A That is sandwiched between the various properties, sales and developments in the past twenty-five years, along the cove. By the cove I mean that section between Cavin Point and Constable Hook.

30 Q You think the activities on the cove, as you call it, are also to be taken into consideration in determining the value of this property? A Most assuredly, because that property in its natural condition, was distinctly a cove property.

Q Just what do you mean by that? A I mean the property in the section I have described, in the shoal waters, mud flats, between Cavin's Point and Constable Hook.

40 Q You have no local name for that cove? A Not that I am aware of.

Percy A. Gaddis, cross.

Q You include in the term "cove" that great body of shallow water? A The portion of New York Bay lying west of the exterior lines of the piers.

Q In behind Robbin's Reef? A Behind Robbin's Reef and Bedloe's Island—Ellis Island.

Q Shallow water from deep water, the shallow flats from deep water back to the upland is quite extensive, isn't it? A It varies from—well, the entire cove is probably a mile and a half to two miles in depth. Now that land— 10

Q Now, at the point where the Andrus property is, it is not so far, is it, from deep water? A It is a little better at the Andrus property than the average in the cove.

Q Andrus property is very close to Constable Point, or Constable Hook? A Constable Hook, but it is located just north of a natural shoal which is shown on the old Government map. 20

The Court. Isn't it really the Hook?

Mr. Bain. Just inside the Hook.

Q This property is right at the Hook? A Just north of it.

Q What did you say was the nearest property up across this stretch of cove to the Andrus property, the sale of which you knew about? A Across this—first the Packard, then the large gathering of the Pennsylvania Railroad Company terminal, then the large and recent gatherings, in the past five years, by the Lehigh Valley. 30

Q Now the gatherings for the Pennsylvania and the Lehigh Valley, are further up the cove than the Packard?

A They are.

Q And they were gathered for railroad use? A Yes, sir.

Q Have they been developed, or are they just acquired? A Pennsylvania has been highly developed so-called Pennsylvania, Greenville line—just north—Jersey 40

Percy A. Gaddis, cross.

City and Bayonne line, and adjoining property of the Lehigh is under development now.

Q What was the date of the assembling these railroad properties, or what date did it begin, before or after the Packard purchase? A The Lehigh was before and after the Packard purchase—no, it was entirely after. The Pennsylvania was completed fifteen years before.

10 Q Now, in considering these sales that you know about—this accurate information you have had—you immediately discounted the Standard Oil purchase because the Standard Oil paid too much for the land ordinarily? A To what purchase do you allude? Sometimes the Standard Oil may buy like private individuals, when they are fortunate enough.

Q The Packard was to the Standard Oil Company? A Yes, sir. I considered that a fair, reasonable sale.

Q You do not consider that was an excessive price? A Didn't seem so to me, full market value, but not a hold-up.

20 Q And these purchases made by the railroad in extending their line, were they fair prices? A Some were and some were not.

Q Railroad companies in that neighborhood were the only purchasers? I suppose when it was learned that they were examining these tracts the owners boosted their prices? A Well, they were the only purchasers for another reason, not for that; because they were the only interests that were large enough to have the millions behind them that were necessary to develop that type of property.

30 Q And why did they want it? A You will have to ask one of the executives that.

Q Must have had a use for the property or they wouldn't have wanted it? A That is pretty evident.

Q Whatever the greater—highest use the property may be, that is the proper use that they take into consideration in considering value, isn't it? A It is the highest use, but not a special use.

40

Percy A. Gaddis, cross.

Q You do not consider that if the railroad—if property is more valuable for railroad use than for other use, and the railroad can make more profitable use of it than anybody else, that therefore the railroads could afford to pay more for it than anybody else? A Not necessarily. There are many things that affect railroad purchases; continuation strip, the end usually of the main stem and the expense can be distributed over the entire system. 10

Q What is the highest use of property immediately in the neighborhood of the Andrus property? A Industrial, manufacturing of oil, various oil companies, and the International Nickel Company's interests.

Q And the demand there— A Chemical and borax.

Q And demand there for property such as the Andrus tract, for the purpose of accommodating the expansion of these industries? A Very little. It has been many, many years held by Andrus before it was sold—or at least I understood it was sold. 20

Q Do you know whether the Standard Oil Company has bought any property there comparatively recently?

A You say "there;" where do you mean?

Q In the immediate neighborhood of the Andrus tract. A I know they acquired the Andrus tract and I believe the adjoining tract.

Q Do you know when they acquired it? A Haven't title to it yet. Depends on what you call acquired. 30

Q When did they acquire the Lehigh Valley tract adjoining the Andrus tract? A Last year, I understand.

Q Do you know the price. A I heard it testified to a few moments ago.

Q Did you take that into consideration when you fixed your valuation? A I did.

Q You knew about it then before a few minutes ago? A Yes, sir; I knew. It was confirmed then.

Q Do you know the acreage rate of the purchase? A Neighborhood of \$20,000 an acre. 40

Percy A. Gaddis, cross.

Q And what is the acreage rate of your valuation of the Andrus tract? A It depends on what condition you take.

Q Well, you gave us several different illustrations? A I gave you illustrations varying from \$4,400, \$7,600 and \$15,000 an acre.

10 Q And what was the fifteen thousand an acre based on with reference to the condition—physical condition of the property for purposes of valuation? A It includes the channel but excludes the cribbing, piers, structures or buildings on the piers.

Q Now do you know what the conditions of the Lehigh Valley tract immediately adjoining the Andrus tract was, at the time of the sale last year to the Standard Oil Company? A Substantially the same as the—oh—Andrus tract previous to development, a little more filling
20 —upon the Andrus—some filling and cribbing.

Q Give us the acreage. You did not give us the acreage. Give us the acreage rate for the figure you gave Mr. Bain, as applicable to the Andrus tract before the development just mentioned? A \$4,400.

Q An acre? A Yes, sir.

Q Now, the condition that that Andrus tract was in, for the purpose of those figures, was exactly like the condition the Lehigh tract was in when it was sold last
30 year? A Very similar.

Q And your figure is \$4,400 an acre and the price of the Lehigh Valley to the Standard Oil Company was \$20,000? A Yes, sir.

Q And you took into consideration that—this \$20,000 an acre in the early part of 1920, when you were figuring your rate at \$4,400 an acre? A As of June, 1919, that was; a year previous to the consummation of that sale.

Q How far apart was the Packard sale and June 4,
40 1919? A Several years.

Percy A. Gaddis, cross.

Q You always quit on June 4, 1919, if you are asked the value at that time—never consider a sale about that time? A Of course I do.

Q Two months or a year either way? A I do consider them.

Q Always do, don't you? A And I always consider the conditions, circumstances, the parties to the transactions and the various elements. 10

Q And you do not hesitate to say however, that this sale in the early part of 1920 ought to be considered by anybody who is asked to appraise the value of the Andrus tract— A Must give it, yes; certainly.

Q He ought to take it into consideration? A Yes, sir; and I do.

Q Now, will you tell us why there is so much difference between the Andrus tract and the immediately adjoining Lehigh Valley tract, physical conditions being the same? A Yes, sir. 20

Q Difference of five to one? A It is not five to one.

Q Forty-four hundred against twenty thousand? A All right. The reason was this—

Mr. Bain. I think Mr. Hardin misunderstood the witness. Forty-four hundred is without the channel.

The Witness. It is not five to one; it is seventy-five to one hundred, because of the conditions. When I considered the same with the channel, which I know existed, I had it fifteen thousand an acre. The sale was twenty thousand. The sale was to a party who owned and had already acquired or about to acquire that tract—the Andrus tract—and would merge the interests and take advantage of the existing channel which had been made to the other one, which goes right to the line of that property. 30
40

Percy A. Gaddis, cross.

Q When you refer to a channel, do you mean the thirty-five foot channel leading to the Andrus tract? A I do.

Q And you considered that that was an advantage to the Lehigh Valley purchase or the Lehigh Valley sale to the Standard Oil Company, in valuing the land sold by the Lehigh Valley Railroad Company to the Standard Oil
10 Company? A It became so when the interest merged and became one tract.

Q But Andrus still owned the Andrus property, didn't he? A No, an agreement was there—had been made to purchase it, I assume.

Q You are telling me something now? A Yes, sir.

Q The Andrus property was sold to the Standard Oil Company at the same time the Lehigh Valley tract was sold to the Standard Oil Company? A I wouldn't say that positively. I will say this, that on October 8, 1920,
20 there was an agreement recorded bearing that date regarding property lines which reflects that and shows agreements between the Standard Oil Company and the Lehigh Valley Company and the United Real Estate Company—in fact they state they are buying the Andrus property.

Q Then, from these accurate sources of information open to you, by which you confidently inform yourself about everything that goes on in the New York Bay, you happen to know that contemporaneously the Lehigh Valley Railroad Company got—the Standard Oil Company got the
30 Lehigh Valley property adjoining the Andrus property, and the Andrus property? A That is right.

Q Why then is the Lehigh Valley property worth so much more than the Andrus property, if contemporaneously the Standard Oil Company bought both? A It isn't worth so much more. It was worth more to their interests—they could get it because they got other things on the merger of interests—some things they could not otherwise get.

Q If contemporaneously— A And then I considered
40 it twenty-five per cent. more.

Percy A. Gaddis, cross.

Q If contemporaneously the Standard Oil Company got both, why do you find all the great value in the Lehigh Valley tract sold to the Standard Oil Company and none in the Andrus? A I do not find any great value. It is a fact—an acknowledged fact—that that consideration was paid. I did not say I considered that was the normal market value. If you had asked me that question I would have frankly told you I think it was twenty-five or thirty per cent. more than the normal market value, which they could afford to pay, due to their opportunity to acquire the two properties, and merge that valuable channel. 10

Q This sale in the early part of 1920 of the Lehigh Valley tract to the Standard Oil Company, at the approximate rate of \$20,000 an acre, was about twenty-five per cent. too high, you say? A I should say twenty-five per cent. over normal market value.

Q Then that property in the same physical condition that the Andrus property was in prior to 1916, was worth \$15,000 an acre in your judgment? A Prior to 1916, no. It would be worth— 20

Q No—in the same physical condition as the property sold by the Lehigh Valley Company (previous question read)? A Yes, sir; considering it having advantage of proximity to the channel.

Q And right alongside of it was the Andrus property in the same physical condition and it was only worth \$4,400 an acre, in your judgment? A No, sir. 30

Q What was the Andrus property worth? A I testified in the physical condition as it existed prior to the present development—my answer to that is \$4,400, prior to the present development. It is a different thing altogether. There was no channel there then, nothing but a virgin water front property.

Q Were you not assuming in your figure of \$4,400 an acre that the Andrus property was in the condition that it was prior to the improvements you have described as 40

Percy A. Gaddis, cross.

having been made after 1916? A I considered it in its substantially virgin state.

Q Now also the Lehigh Valley tract, also sold to the Standard Oil Company alongside of it was in its virgin state, wasn't it? A It was in its virgin state, but it had the advantage of conditions that the others did not have, the increment coming later.

10 Q What condition? A Had the advantage of that channel, merger of the interest, continuity of property.

Q Channel leading to another ownership? A No, in that ownership, because the interest merged then—contemporaneously.

Q Did the interests merge before the price was fixed? A Yes, sir.

Q It did? A Yes, sir.

Q Do you know about the considerations of these sales down the Kill von Kull to the Nickel people and others?

20 A Yes, sir.

Q What acreage rates prevailed down there in those sales? A Well, I haven't drawn up a list of them, seventy-seven hundred; twenty-nine thousand; ten thousand; thirty-five thousand; fifty-one thousand five hundred; fifty-six thousand three hundred and eighty; fifty-five thousand; forty-seven thousand three hundred and forty-eight; forty-three thousand; thirty thousand; thirteen thousand five hundred.

30 Q What dates are you covering now? A Earliest, 1916; latest, 1921.

Q What location? A On the Kull, between the foot of Broadway or the ferry to Port Richmond and Constable Hook, or the Andrus property.

Q How far is it from Constable Hook to the foot of Broadway? A About a mile and a half—a mile and three quarters.

Q All these properties are within that mile and a half? A All within that mile and a half. One of them is the furthest end of it and runs down the Kull east.

40

Percy A. Gaddis, cross.

Q Many of them within a few hundred feet? A Yes, sir.

Q Take some of those close by, can you give us the—take the sale, for instance, what do you call it, Finelli and Desbeaux; what acreage rate was there? A Fifty-five thousand, if I remember rightly—fifty-five thousand.

Q Per acre? A Per acre.

10

Q And when did the Standard Oil buy this tract immediately adjoining the Andrus tract? A Oh, that is very old—that is away back.

Q How long ago? A It is on the map, over twenty years ago.

Q Then the Standard Oil began to assemble this property that they are now extensively using, as long ago as twenty years ago? A No, sir.

Q When did they locate there first? A I don't know, more than thirty years ago I remember their having a plant there and their extension has been in the last five years, is when they bought the large extension, during the war—wartime excitement.

20

Q Now, they own the Packard tract, as you have described, up here to the north. Do they own any land in between the Packard tract and the Lehigh Valley purchase made in the early part of 1920? A They do.

Q What other property have they bought there? A The only one that they have bought—you are now speaking of between the Packard tract and the Andrus tract?

30

Q Yes. A The only tract that they bought there is this from the Lehigh Valley last year.

Q Now, they own a strip adjoining? A Yes, sir.

Q Adjoining the Lehigh Valley on the north? A Yes, they have this and that, and this in between (indicating).

Q Then the State of New Jersey owns everything from there up to the Packard tract? A Yes, sir. I am not sure whether the Standard Oil Company has got the riparian rights of that or not (indicating). I don't know. They have the upland and front right clear up to the Packard tract (indicating).

40

Percy A. Gaddis, cross.

Q In your investigation of the neighborhood didn't you find out about that? A I did not.

Q How did you come to overlook that? A Well, I am not infallible.

Q Would you mind looking at this sketch I show you? Would you mind identifying this little sketch that I hand
10 you as a description of some of the property on the south of the Kull, the Nickel property? A I can only identify it as a picture of—it apparently represents the property—or does represent property on the Kill von Kull, in that intensive development, between the high water and the right of way of the National Docks Branch or at least—

Q By reason of your familiarity with the neighborhood, you are able to tell us whether this seems to be an actual picture? A Apparently correct picture. It
20 agrees with everything I have.

Q Have you got it recorded in your records, a deed from the Standard Oil Company to the International Nickel Company, dated August 4, 1916? A Yes, sir.

Q What was the acreage rate of that purchase? A \$47,348. Gross area—

Q And have you got another deed from Delano to the International Nickel Company, dated June 29, 1916? A I have.

Q What was the acreage rate? A Acreage rate of
30 that was \$43,000. Gross area I speak of in every instance.

Q I think you have already told us the acreage rate of Finelli and Desbeaux, of December 14, 1919? A That was \$55,000.

Q And the deed March 21, 1918, from Delano to the Standard Oil Company, can you give us the acreage rate of that? A Yes, sir; that was seventy-six thousand, which took more or less improved property, bulkhead and old pier on it—various things; that is on gross area—
40 absorbing those at nominal value, makes that rate.

Percy A. Gaddis, cross.

Mr. Hardin. Is there any objection to my having this marked for identification?

Mr. Bain. So far as the lines are concerned, disregarding the printing. Subject to verification, I will admit it.

Paper marked Exhibit D. 1.

Q Now, these sales you have been describing and indicating by this little sketch which we have just put in evidence, Exhibit D. 1, these sales are the sales of property nearer in location to the Andrus tract that you know anything about, aren't they, during the period from 1916 to 1919? A Nearest, but not by any ways most comparable.

10

Q But they happen to be the sales that are nearest by? A Nearest by, but on natural high ground, most all of them, as shown by the Government map thirty years ago when the development first took place.

20

Q Going the other way there is no sale nearer than the Packard sale except the sale of the Lehigh Valley Railroad Company to the Standard Oil Company in 1920? A Right.

Q And also, perhaps, of this very property, that you tell us, at the same time? A Yes, sir.

Q You don't know what the price was paid for this property, I don't suppose. You haven't got that information? A I would rather not testify to that.

30

The Court. Have you?

The Witness. I understood it to be \$25,000 an acre. I have no reason to doubt it.

The Court. Do you know that to be so?

The Witness. I don't know, but I believe that is so, but of course I know it was the improved property with the pier on and all the improvements such as there are now, which does not make it comparable with the condition that existed at the date of the valuation.

40

Percy A. Gaddis, cross.

Q Did you know—of course you imagine, when you are talking about twenty-five thousand an acre—you understand that was being paid for what Andrus owned—didn't include this property that Andrus did not own?

The Court. Meaning by that what?

10 *Mr. Hardin.* In its virgin state, so to speak; did not include the cribbing or improvement on the property, piers or structures.

Mr. Bain. The witness hasn't said any such thing.

The Court. He is asking him.

Q That is the price paid for the Andrus interest? A I wouldn't say that.

20 Q Well, don't you know it was sold subject to the lease? A No, I do not, because there had been some agreement made to cancel that lease, previous to it. Facts that I am not familiar with.

Q Well, you do know that as a matter—your idea of this \$25,000 an acre has to do purely with the Andrus interest and not anybody else's interest in the property?

A I did not so consider it. I considered it full maximum market value of that same property as it exists.

30 Q You think \$25,000 is a maximum value of the property free from pierheads—free from piers? A Not free from piers; no, sir; with a fine pier there and bulkhead, with no construction above. I do consider it full maximum value and having of course channel, such conditions that existed there—that I know existed.

40 Q Did you know about the sale price when you made your estimate of the value? A I don't know whether it came to me just prior or just after. After I investigated it through a lead—that recorded agreement, which mentioned it, but it is in escrow, and of course I was unable to see that.

Percy A. Gaddis, re-direct.

Q You didn't take it into consideration then? A I couldn't have if I didn't know. If I didn't know of it until just after, but I am not sure.

Q And if such a sale did take place in the early part of 1920, and the Andrus interest was sold for the price of \$25,000 an acre, subject to the lease, would that influence your judgment? A I don't know that to be the fact. 10

Q Assume those conditions, would they influence your judgment? A I would not assume those conditions.

Q I am asking you to, you are an expert? A Would I consider it the value of the property—what is the question, again?

Q (Question read.) A Very little, if any.

Re-direct examination.

Q Mr. Gaddis, have you made an appraisal—(interrupted.) 20

The Court. Why, very little? You appraised the property at \$4,000.

The Witness. No, sir. They are getting confused, your Honor, in the way they take it.

The Court. That is what I want to avoid.

The Witness. I made three distinct appraisals of it, as to conditions. I hope your Honor will get those clearly. May I repeat them to you? 30

The Court. I think I will let the witness continue. He says that the things are confused. All right, straighten them out.

The Witness. I will take the three in progressive order, as testified, and run them right down. First, the valuation that I now give is of the Andrus property as of June 5, 1919, first in the physical condition as it existed prior to the present development.

The Court. Virgin condition, that would be? 40

Percy A. Gaddis, re-direct.

10 *The Witness.* Yes, sir; that is the hypothetical appraisal condition, \$198,000, or an average of \$4,400 an acre; second, the excluding of channel, piers and structures or buildings on piers, \$342,600 per acre or an average value of \$7,600; third, including the channel, but excluding the cribbing, piers and structures or buildings on piers, \$675,000, or an average of \$15,000 an acre.

Q Now, have you made a fourth appraisal? A I have.

Q What was that? A That is excluding only railroad tracks, trestle and structures on piers.

Q How much? A \$25,000 per acre, or \$1,126,125.

20 Q Assuming that the Standard Oil Company paid \$20,000 an acre for the land immediately north of the Andrus property how do you reconcile your figure of \$15,000 an acre for the Andrus property including the channel, but excluding the cribbing, piers or structures or buildings on piers with that \$20,000 per acre? A From the fact that the purchaser might have—that there was a merger of interest by the purchaser, who at the time owned or controlled water front properties at both sides of the tract—the \$20,000 tract—and that they both then should have the advantage of the existing deep channel to the Narrows.

30 Q Let me ask you, does the channel leading into the Andrus property add anything to the value of the Lehigh Valley property to the north that was purchased by the Standard Oil Company? A It does.

Q Why? A Because it would not be necessary for them to dredge the same thing for a distance of three-quarters of a mile outside of the pierhead line if they wanted to have the same facilities—in other words could take deep water vessels from the Narrows directly to the outer line of the property.

40 Q It is a fact, isn't it, that much of the thirty-five foot channel on that Andrus property is outside of the

Percy A. Gaddis, re-direct.

pierhead line and thereby subject to common use? A Three quarters of it is outside, but it runs as directly as it can to both the properties; it just turns going into the Andrus property. It is more directly in front of the Lehigh Valley purchase.

Q And that channel, being largely outside of the pierhead line, is subject to use by anyone who wants to navigate it, isn't it? A Yes, sir. 10

Q It is a common public channel? A Most assuredly.

The Court. It seems to be altogether outside of the pierhead line by this map.

Mr. Bain. The channel is all outside. There is a slip inside.

The Witness. It would be of no use to anyone excepting Andrus property and adjoining owner—absolutely none—because it would not lead to them at all. 20

Q I think you said the channel does add a value to the Lehigh Valley property to the north of the Andrus property that was purchased by the Standard Oil Company?

A It does.

Q And in your opinion is the value given by the channel reflected in the price paid by the Standard Oil Company for the Lehigh Valley property? A Unquestionably that is reflected in it, as well as the merger of the interest. 30

Q What do you mean by merger of interest? How does that add any value to the Lehigh Valley property?

A There is continuity of ownership, commonly known as plottage in ordinary verbiage around the city, but it is the gathering together of the various interests rendering it possible to develop it to almost any use you want. The Andrus property was not capable of being developed as the Lehigh Valley purchase was, for that reason. There is only 500 feet on the pierhead line, or thereabouts— 40

Percy A. Gaddis, re-direct.

621 feet, if I remember rightly, but only a little over 200 of that is there a channel to, and it is developed with one long pier. It is not practical, without tremendous expense and filling to put another pier there; the channel isn't wide enough.

10 Q On the Andrus property? A On the Andrus property. So when you then merge the interest you could put a number of piers along there and take advantage of the same channel, which, of course, must have been in the minds of the purchaser when they acquired it.

Q The present pier on the Andrus property is what might be called a one-sided pier? A One-sided. Only used as such and very shoal on the other side—shoal between that and the Standard Oil Company piers running around on the Kill Von Kull.

20 Q What difference, if any, is there between the pier on the Andrus property and the piers on the property on the Kill von Kull, sales of which have been mentioned, so far as usefulness of the pier is concerned? A In the present condition it is only a one-sided pier, the others use both—the others could be approached more readily from either direction and turn in ample, natural turning basins, you might say, room for handling the vessels. The vessels—large vessels coming in through the channel there thirty-five foot channel, would have to come in directly and be backed out and
30 turned, so it is practically limited in use. Then the relation of the property through its size and shape, extreme depth and lower value backland behind it is much less—or depreciates the average value of the entire area as compared with that on the Kill Von Kull.

40 Q Let me ask you, does the position of the thirty-five foot channel leading into the Andrus property, assuming that that channel can also be used by the owner of the property—of the Lehigh Valley property to the north, permit a better development of the Lehigh Valley property than of the Andrus property? A It does.

Percy A. Gaddis, re-direct.

Q And why? A Because it approaches more directly the Lehigh Valley without any turning and the Lehigh Valley purchase—this \$20,000 we are talking about, has some 1,200 feet—nearly 1,300 feet—more than twice the frontage on the riparian line and also has nearly twice the depth from the solid fill line to—I said riparian lines—I meant pierhead lines—nearly twice the average depth from the pierhead lines to the line of solid fill or bulk-head line. 10

Q Isn't it a fact, Mr. Gaddis, that the contour of the Lehigh Valley property to the north of the Andrus property makes that property more valuable than the Andrus property? A I should say there was very little preference that way.

Q You think they are about the same, so far as contour is concerned? A As far as contour and average depth in normal conditions. 20

Q What about the size of the respective properties? A The size, much larger.

Q That is the Lehigh Valley? A The Lehigh Valley purchase, and its frontage on the pierhead line is much larger—more than twice.

Q Do those two matters, favorable to the Lehigh Valley tract, give that property some value over and above the value of the Andrus property? A They certainly would. 30

The Court. But the Andrus property makes for the value of the Lehigh Valley property?

The Witness. Yes, it does.

The Court. Very materially?

The Witness. Very materially.

Q Mr. Gaddis, have you been familiar with the demand for water front property on New York Bay and Hudson River during the last four or five years? A Yes, sir. 40

Percy A. Gaddis, re-direct.

Q In your judgment has the peak of that demand occurred during the past few years?

Mr. Hardin. I object. That is not information.

The Court. Objection overruled.

Q (Question read.) A It has.

10 Q And why? A Due primarily to the wartime conditions which are now past.

Q Was there ever in your experience— (interrupted).

By the Court.

Q Had the wartime conditions passed when the Standard Oil Company bought from the Lehigh Valley Company and Andrus? A Yes, sir; it was not a wartime condition, necessarily, their purchasing there. I think the start of it was, but I do not think the finish was.

20 *Re-direct examination.*

Q In your experience, was there ever a more intensive use of water front property than there was during the years 1917 and 1918? A No, sir. There was never a time—that condition was reflected all along the Atlantic coast.

30 Q Speaking particularly of the New Jersey side of the New York harbor? A There never was. That applies all the way up the Hudson River as far as the development goes—extends.

Q And was there at any time a greater demand for water front property along the Jersey side of New York Bay and Hudson River than there was during the years 1917 and 1918? A Not in my thirty years' experience.

Q Much of that property is used for shipping purposes, isn't it? A Yes, sir.

Q Do you know what the condition as to shipping is now, as compared with what it was during the year 1918, so far as the use of the water front property is concerned?

40 A It is in far worse condition, if what we hear of the thousands of boats tied up and unused— (interrupted).

Percy A. Gaddis, re-direct.

Q That is a matter of common knowledge? A Matter of common knowledge.

Q You can see hundreds of idle vessels lying in New York Bay? A When I was in Norfolk I saw at least 500 as I flew over the harbor there.

Q Now during the year 1918 many of those vessels— I do not mean the inadequate vessels but vessels of some moment, were using the water front in New York harbor, weren't they? A They were. 10

Q What does the present condition of shipping indicate in respect to demand for water front property? A Why, it indicates serious lack of demand or recession in the condition which existed a few years ago.

Q Is there any present indication that there ever will be—or that there will be within a reasonable time, say within ten years, as great a demand for water front property on the New Jersey side of New York Bay and the Hudson River as there was during the year 1918? A Not that I can see. 20

Q Mr. Gaddis, what is your judgment as to whether the value of such property as the Andrus property will increase or decrease in value? Is it possible for you to express a judgment based upon pre-war conditions? A There would be a natural increase, but the value of the dollar that is now used somewhat discounts the future. A lower price would be substantially the same price under the conditions that then existed or now exists. 30

Q In other words, in expressing judgment about that subject you have got to take into consideration the value of money? A Most assuredly.

Q And is it possible, Mr. Gaddis, to express a judgment as to whether or not there will be an increase or decrease in the value of such property based on pre-war conditions, or hasn't the war so upset things that it is almost impossible to tell? A That is true. 40

Percy A. Gaddis, re-direct.

The Court. Normal times and normal value of dollars it will increase, will it not?

The Witness. Yes, sir; that is very well put.

The Court. In what percentage, in your judgment?

10

The Witness. I couldn't answer that. It would be a guess.

The Court. During the next ten years—not the next ten years, but during the ten years from June, 1919, forward.

The Witness. That will depend upon the business conditions.

The Court. Assuming the business conditions to be normal, what will be the normal increase?

20

The Witness. I couldn't answer that, percentage, without considerable study and make some deductions from past conditions. I would hate to commit myself on that.

Q But if you did attempt to state any such percentage in order to apply your percentage you would have to go back to pre-war prices, wouldn't you? A I would.

Q That would be prices as of what years? Are any particular years recognized generally by the authorities as representing pre-war conditions? A 1913.

30

Q Now, Mr. Gaddis, you have said the return of five per cent. was a fair rental on such property as the Andrus property, and in answer to a question of Mr. Hardin's, you said that such a return would be a fair return even though more could be obtained from investments of money along other lines? A I did.

Q Why do you say a return of five per cent. is a fair return from the Andrus property if more could be obtained from other investments?

40

The Court. Hazard, isn't that the answer?

Percy A. Gaddis, further cross.

Mr. Bain. Yes, one thing.

The Witness. There are many conditions that will go to create that condition. Of course the lack of hazard is substantial and probably would be permanent on the property—on the investment itself, or at least the value of the property itself is likely to increase, therefore increasing your security, and it is a net return and will run for a period of years. 10

Further cross examination.

Q The Standard Oil Company is still refining oil down there in that neighborhood notwithstanding the war is ended? A I don't know enough about their business to say which is refining and which isn't. I will say they are using the property intensively.

Q The other oil companies you have mentioned also? A Apparently nothing was shut down, but things were not going at the speed they were a year or so ago. 20

Q All very busy though the last time you were down there along these oil plants? A Well, no; I shouldn't say that.

Q You haven't heard that the Standard Oil Company has quit selling gasoline or that Ford cars have stopped running, or the demand for gas is less, and that supply is being in part met by the operation down here out in the neighborhood of the Andrus property? A I believe so. 30

Q You haven't heard that the ships of the Standard Oil have been taken from the ocean? A No, sir.

Q They are still operating whatever other idle vessels there may be in Norfolk? A As far as I know.

Q Is this property within the Port of New York treaty? A It is.

Q Do you look for better conditions in New York harbor under the operation of that treaty? A It depends entirely on the manner in which that is carried out.

Q Isn't it a fact that there is a great demand for better development of all water front property available for 40

Percy A. Gaddis, further cross.

use in New York harbor, whether on the Jersey side of the New York side? A I wouldn't say that. Maybe for some small tracts, not for large tracts such as along the cove here—very limited.

10 Q Isn't there increasing development of water front along the harbor? In your study of things for years hasn't there been a constant expansion of the use of water front property? A There has.

Q Isn't it true that New York is in want of piers at this minute? A If you can believe what we hear, it is.

Q Isn't it true that new piers are being built by New York of an improved character which are readily snapped up by the shipping lines?

The Court. Building piers on the part of foreign governments, aren't they?

20 Q Isn't it true that foreign governments are building piers in New York harbor? A I think so; yes, sir.

The Court. Isn't the city of New York building fifty-one new piers?

Mr. Hardin. All of which have been rented.

The Witness. Yes, sir.

30 Q Now, on the Jersey side, up the Hudson, across from New York, there has been within the last twenty years—you have seen greatly increased use of water fronts, haven't you? A Yes, sir.

Q Not merely for terminal purposes for railroads, but for shipping purposes? A Yes, sir.

Q Haven't there been developments on the Brooklyn shore? A Yes, sir.

Q Even on the Staten Island shore? A Under way on Staten Island now.

40 Q Now, under the new treaty between New York and New Jersey, approved by Congress, isn't it to be expected that there will be an improvement in the water front conditions, and that water front property will ad-

Percy A. Gaddis, re-direct.

vance in the future? A There will be natural advance in time through the natural growth of things. Whether that treaty—the treaty cannot change conditions unless the parties that attempt to carry out those conditions are honest and fair to all sides. I have a suspicion in my own mind, as to Jersey getting the full share that belongs to it, and most every Jerseyman has, I presume you have yourself. 10

Q The New York supply will play out and then they will have to come across here. Hasn't that been the tendency to some extent? A No, very little, because there has been no number of steamship lines established on this side.

Q The natural expectation? A Less now than there was twenty-five years ago.

Q Natural expectation of the operation of this port authority, treating the whole water front of New York as applying to one port would look to improve conditions in the harbor, would it not? A We hope so, if they can remove some of the differentials and a variety of other conditions. 20

Re-direct.

Q Mr. Gaddis, notwithstanding the great demand that there has been for water front property on the New Jersey side of New York Bay and the Hudson River, there is a great deal of vacant land in its virgin condition between the Andrus property on the south and the Greenville terminal of the Pennsylvania Railroad on the north, isn't there? A Yes, sir. 30

Q None of that land has ever been used? A No, sir.

Q Do you know whether some of it is for sale? A I have some of it for sale that was filled in over twenty-five years ago, out for a mile, and haven't been able to sell it. 40

John F. Witemeyer, direct.

Q Has there been any demand, so far as you know, for unimproved property, at a rental on the water front? A No, sir; nothing south of Hoboken on that side that I can't recall.

10 Q Hasn't the demand been, whether by way of purchase or by way of rent, for improved property? A It has.

Q Have you had any calls for unimproved property by parties who want to rent such property? A A number, but not to rent properties of the size of these.

Q What are they, just small parcels? A Well, four or five acres, or something like that, on the water.

Re-cross.

Q Did the contractors that were using the Packard tracts for the purpose of building these cement tubes own the property—the Packard property? A I think not.

20 Q He rented it, didn't he?

Mr. Bain. I know he didn't.

Q What did it rent for? A That I cannot answer.

JOHN F. WITEMEYER, sworn for complainant.

Direct examination by Mr. Bain.

30 Q What is your occupation? A Chief clerk to the chief engineer of the Lehigh Valley Railroad.

RECESS.

Q How long have you held your position as chief clerk to the chief engineer of the Lehigh Valley Railroad? A Twenty years.

Q Been chief clerk during all that time? A Yes, sir.

40 Q And have you under your supervision the keeping of certain records in the chief engineer's office? A Yes, sir.

John F. Witemeyer, cross—re-direct.

Q Were the records showing the cost of the construction of the channel into the Andrus property in Bayonne kept in your office? A Yes, sir.

Q Under your supervision? A Yes, sir.

Q Have you those records with you? A I have.

Q Will you please state from your records the cost—
actual cost of the channel? 10

Mr. Hardin. May I suggest to the court that that does not seem to me to have anything to do with the present inquiry?

The Court. I don't know whether it has or not. It may have.

Mr. Hardin. I think I better object.

The Court. Objection overruled.

A \$283,705.15.

Q That is the actual sum that the Lehigh Valley Railroad Company paid for digging the channel? A Yes, sir. 20

Cross examination by Mr. Hardin.

Q I would like to know the period that this expense covers? A From July 1, 1914, to September, 1916.

Re-direct.

Q Did your office also keep a record of all of the improvements that were made on the Andrus property? A Yes, sir. 30

Q When were those improvements made? A From 1914 up to April, 1917.

Q And prior to 1914 do you know whether there were any improvements on that property? A Not to my knowledge.

Charles M. Moore, direct.

CHARLES M. MOORE, sworn for complainant.

Direct examination by Mr. Bain.

Q What is your position? A Superintendent of floating equipment of the Lehigh Valley Railroad Company.

10 Q How long have you held that position? A July 23, 1919.

Q What was your occupation prior to that date? A I was assistant superintendent for twenty-six months and previous to that time, from May 2, 1910, I was master of their tugs.

Q Assistant superintendent of the floating equipment? A Yes, sir.

Q How long were you master of tugs? A From 1919 up to that time with the Lehigh Valley, but previous to that time I was six years.

20 Q With whom? A With outside individual companies.

Q What were you doing? A Master of towing vessels.

Q Have you had experience in navigating the bay—New York Bay? A Yes, sir.

Q How long a period? A I was—I have been master since 1906.

30 Q About fifteen years? A Been master, and before that time served my time.

Q Hold a Master's license? A Yes, sir.

Q Are you familiar with the Andrus property in Bayonne? A No, sir.

Q You know that property, don't you? A No, I don't know anything about the property.

Q You know it from a water standpoint? A I know where the pier is in there, if that is what you call it. We always term it as the ore dock pier.

40 Q You know it as the ore dock pier. You do know the ore dock pier on the Andrus property? A Yes, sir.

Charles M. Moore, direct.

Q For how long have you known that place? A Fifteen years.

Q Have you navigated boats into it? A Not in there, no.

Q Well, across the front of it? A Yes, across the front—across the Jersey flats.

Q Do you recall the conditions immediately in front of that property before the present channel was dug into it? A Yes, sir; it was all flat land in there, that is, shallow water. 10

Q You know that personally, do you? A Yes, sir.

Q How do you know that, captain? A Why, from running across there with small vessels cutting off the deep water here on the outside of Robbin's Reef. We used to go across there and if we got in in here too close (indicating) why we would always fetch up with a boat drawing six or seven or eight feet of water. 20

Q To what extent did the shallow water extend in front of the property, how far out? A Well, it is considered shallow water all the way out to Robbin's Reef Lighthouse.

Q And how far is that from the shore? A It is all of a half mile.

Q Do you recall the conditions immediately to the south of the property with regard to the depth of water? A Well, after you pass the oil works the water deepens towards the south. 30

Q Where is the oil works with reference to the ore-dock property? A South of the ore dock property.

Q How far south? A Well, I guess the first pier must be—I judge—I don't know—about four hundred feet—I am not certain—to the end of the pier.

Q About 400 feet from the ore dock property? A I imagine so, from the end of Constable Hook pier—the Standard Oil pier—I imagine there is a space there of about 400 feet—I am not sure—I am not accurate on that. 40

Charles M. Moore, direct.

Q You do recall the shoal in front of the property? A Oh, yes. It was all shoal there.

10 Q What can you say as to whether, as a practical matter, so far as navigation is concerned, a channel could have been dug from the deep water to the south of the ore dock pier up to the ore dock pier instead of the present channel? A Well, you would have to dredge it all out around there if you wanted to use it.

Q Now, if that channel was dug in that way what would have to be done so far as the ore dock property is concerned? That is, if a channel was dug from the deep water to the south of the property up to the property, what dredging would be necessary, or digging would be necessary immediately in front of the ore dock? Would you have to put a basin there? A Why, you would have to dredge out far enough from your piers to have access to your piers under all conditions.

20 *The Court.* So that the boat could turn?

Mr. Bain. Yes.

Q Have to have a basin there, wouldn't you? A Yes, sir.

Q As a practical matter, from a navigation standpoint, would that be as good as the present channel?

Mr. Hardin. Hasn't he told us he didn't know about the present channel?

30 Q You know all about the present channel, don't you?

A Yes, sir.

Q Naturally familiar with it, aren't you? A Yes, sir.

Q Now, what can you say from a practical standpoint as to whether—

Mr. Hardin. Perhaps I misunderstood him, but I took it down and he said he never navigated in that channel?

40 *The Court.* No.

Charles M. Moore, direct.

The Witness. I did navigate boats in front of it, but I do not recollect being asked that question.

Q Did you navigate boats in the channel? A Yes, sir.

The Court. But not up along the pier, I understood him. 10

The Witness. Couldn't navigate there before the channel was dredged.

Q Now, what can you say as to whether the present channel is more practical from a navigation standpoint—navigating standpoint, than would be a channel from deep water to the south with a basin in front of the Andrus property? A Why, the present channel, I think, and am quite certain, is safe, and more adapted for use because it is quite in line with the sets of the tides across the flats. 20

Q What are the sets of the tide, captain? A Well, they vary, according to the different stages of the tide.

Q Would the set of the tide have any effect on the ability to navigate from deep water just south of the Andrus property by a shorter channel than the present channel? A Well, of course that could be overcome. According to what you are handling, the power of the vessel, or if you didn't have power enough you could use more power. 30

Q Isn't it more practical to take boats in through the present channel than it would be to take them in through a somewhat shorter channel through the deep water south of the ore dock property and then turn them into the basin? A Now you can go straight in.

Q Isn't that a practical advantage? A Why, yes; it is better than the other way, of course. You are not always situated—the straight channel is best.

Q The present channel is better than the channel would be from the deep water to the south? A Yes, sir. 40

Charles M. Moore, direct.

Q Now, do you know how many tugs it takes to take a vessel in to the ore dock property at the present time through the present channel? A I have used from two—

The Court. Depends on the size of the vessel.

Q What kind of vessels use that property, captain?

10 A During the war I piloted every ship that went in there loading for the Allied governments and they all varied—according to the size—some of them run from 275 feet to 435 or 40 feet in length, and it all depended on the draft of water and condition of the water, and the elements in general, just how many tugs you had to use. Some ships had to have four and five tugs on, other ships only two.

Q Did you take any 8,000 ton boats in there? A I don't recollect just what the tonnage of the two largest ships I have taken in were. They were—I think one of
20 them was the Manchester Castle and the other was the Irish Monarch; they are the two largest ships that were in there that I know of, but I think—

Q Do you know their length? A They were over 400 feet, but since that time the United States Government took their big in there, and they are 600 feet long and sixty-five feet beam.

Q Now let me ask you, taking a 400 foot boat under normal conditions without any unusual wind, without any unusual tide, how many tugs would it take to get such a
30 vessel in to the ore dock on the Andrus property through the present channel? A Why, not more than two good tugs would do it, with their own power.

Q If that boat was to be taken partially up into the Kill and then in to the ore dock through a shorter channel, from the deep water to the south and turned in a basin in front of the Andrus property, and then brought in to the ore docks, how many tugs would it take to handle it? A Well, you would have to have a tug ahead of your ship and one on each side—probably have a tug
40 behind the ship with a hawser to stop your ship so you

Charles M. Moore, direct.

could get her stationary pretty near—as near as you could, so as to turn her.

Q So it would take four tugs to do that? A At least, a big ship that is, any sized ship.

Q That shows it is easier to navigate in to the property through the present channel than it would be through some shorter channel from the deep water to the south and through a basin in front of the property? A Yes, sir. I have had one small ship that I took in there with only one tug, don't just recollect the name. 10

Q What other practical advantages are there on the present channel, if you can state them? A Why, you can pull your ship right out straight. You don't have to do any turning or twisting. You can go right in or out again. If you are going out with a ship why put a tug behind her to pull her out on a hawser and have one tug ahead of her. 20

Q Couldn't you do that with the channel dug to the south? A Well, you would have to have a tug or two tugs alongside of your ship to hold her in a pivoted position. 20

The Court. From the channel to the deep water can't you run in and out the same as you can from the present channel?

The Witness. No. You have to bring the ship up to the face of the dock and turn her around. The straight channel goes in a direct line and go right out straight. If you had the basin you would have to turn her around. 30

The Court. I see. You have got to turn it.

Q Do you know about the tides in that vicinity? A Yes, sir.

Q What can you say as to the practicability of working a ship out through the present channel and a channel running south from the ore docks, with respect to the tide? A Well, the last half of your flood tide—or the 40

Charles M. Moore, cross.

first of your flood tide, rather, sets around in towards the oil works. It comes up and sort of makes a circle down by that dock, and then sets on up the Kill, so if you bring a ship out of there on the first of the tide, you would have to be quite careful. As it is at present the alinement of the present channel is quite similar to the curve of the tide.

10 Q Taking all things into consideration the present channel is in the most fitting place? A I think so, in my judgment.

Cross examination by Mr. Hardin.

Q Do you recognize this map, Exhibit P. 2, as an official map? A Yes, sir.

Q Used by navigators of New York harbor? A Government chart.

20 Q And the depth of water shown by the figures in the shallow waters indicated here are the depths accustomed to be accepted as accurate by navigators in the bay? A Right.

Q You accept those figures in your work as navigator? A Yes, sir.

Q I notice you call this the Constable Point wharf? A Yes, sir.

Q That is the same as the ore docks, in your mind? A Why, yes, sir; I should say it was the same.

30 Q And I notice on this map—what is the depth of water right off the wharf as shown here? A Whereabouts?

Q Right off the wharf. Assume this red line is— A Here (indicating)?

Q Yes. A Right in there (indicating)?

Q Yes. A Take a boat drawing nine or ten feet you fetch up right on the end of that dock, the last time I was up there; there has been no other dredging done there.

40 Q You mean go aground there? A Yes, sir; no water.

Charles M. Moore, cross.

Q That is where the 35-foot channel comes before it gets to the wharf? A No, it does not. It extends up to the north side of the dock—the channel extends to the north side of that opening of the dock there. Below, the south side of the north corner of that dock there is no water there at all.

The Court. I cannot hear you. 10

The Witness. I say south of the north corner of the dock there is no water across the face of the dock at all, only about twelve—well not that much—about nine or ten feet.

The Court. The channel only extends to the face of the pier?

The Witness. To the face of this pier and up in the slip.

The Court. It does run on the north side of the pier? 20

The Witness. Yes, sir.

The Court. From here in?

The Witness. Right into the bulkhead here. For instance, this was your pier, here is your channel comes right in on the north side and starts right out and goes out, but here there is no water (indicating).

The Court. How far along the north side of the pier does the channel extend in towards the land? 30

The Witness. Right to the bulkhead.

The Court. How far?

The Witness. Near a thousand feet, I guess that pier is, isn't it?

The Court. Is that the length?

The Witness. Well, the channel goes to the bulkhead, because we take ships right to the bulkhead.

Q When you bring the ships into the 35-foot channel up to this wharf you bring them in bow first? A Yes, sir. 40

Charles M. Moore, cross.

Q And when they go out they go out stern first? A Stern first.

Q The turning you are talking about, if the channel were turned to the south, is only the room necessary to warp the vessel around to get it out; you do not mean enough to turn the vessel around? A Yes, sir; you have
10 got to have room enough to turn a vessel.

Q If you had a channel going out to the south you would still take your vessel out stern first? A According to the tide and wind conditions and weather conditions.

Q Why would it be necessary to turn your vessel around to go out of the channel if the channel pointed towards the south any more than it is to take it out—to turn it around now?

The Court. You are on the north side of the dock.
20

Mr. Hardin. I understand that, but they do not have to turn the vessel all the way around; only have to have room enough to enable you to swing around.

The Witness. Yes; you got to have room enough to clear the end of the pier and swing.

Q What sized vessels are the vessels ordinarily that go in there? A Well, I haven't taken any—the Government took charge of the pier. I broke that pilot in—the
30 Government took care of their own steamers, and I don't know really what size steamers are running in there at the present time.

Q You have known this ore dock for a good many years. What was the customary use of it? A Prior to the Government taking over the pier as a naval station we took ordinary tramp ships in there to load general cargoes, flour and steel, and whatever—

Q How long has there been a pier there—how long has that ore wharf been there? A About five years—
40

Charles M. Moore, cross.

a little more than that; I am not quite positive of the date.

Q There was nothing at all there in the way of a wharf until the 35-foot channel was dredged to allow access to it? A Not that I know of.

Q Do they use tugs, do you know, in connection with the piers to the south, along Kill von Kull? A Yes, sir. 10

Q And is there any difficulty anywhere along there because of inability to turn the steamers? A They have plenty of room out through the Kill von Kull, anywhere, practically, to turn.

By the Court.

Q The channel extends from the bulkhead in a straight line along the northerly side of the pier out into the ocean? A It extends out—yes, it goes out there quite a distance. 20

Q Straight line from the bulkhead along the north side of the pier? A Along the north side of the pier; yes, sir. There is a turn after you get out.

Q I mean at the pier? A No; no turn at the pier.

Further cross.

Q Did you have anything to do with locating that 35-foot channel? A No, sir.

Q You don't undertake to say it wouldn't be possible to make a usable channel that would go to deep water by a shorter course than that present 35-foot channel? A Not 35 feet. 30

Q You do not understand me. You do not undertake to tell us it would not be possible to have a shorter channel from the face of this Andrus channel to deep water than the present course of the now 35-foot channel? A Shorter?

Q Isn't there a shorter path to deep water from the ore dock or Constable wharf or whatever you call it— 40

Thomas A. Ryer, direct.

Constable Hook wharf—than by the 35-foot channel? A I do not imagine so.

Q I do not ask you to imagine. A I do not think so. In fact, I cannot see, according to your Government survey, that there is a channel going in there. Where would you get your thirty-five feet in a shorter way.
10 You got Baxler's Ledge here. Here is your deep water point, forty-five feet. You come up here—show me how you would get thirty-five feet past that 24-foot shoal (indicating)?

Q Here is the Kill von Kull (indicating)? A Yes, sir.

Q There is deep water there, isn't there? A Yes, sir; but it shoals up out here (indicating).

Q Here is the thirty-five feet shown on this map? A Yes, sir.

20 Q Not very far from the end of the pier on the Standard Oil property to the south? A Yes, sir.

Q Now do you find the line of—the 35-foot line there? A I see thirty-five feet marked there.

Q That indicates a depth of thirty-five feet, doesn't it? A Thirty-five feet will not go out here (indicating). There is only twenty-six feet—that is the deepest Standard Oil ship that they had.

30 Q I am asking you if there is not a shorter path from deep water to the depth of thirty-five feet shown on this map to the Andrus pier than the path that the 35-foot channel now goes? A No, sir; there isn't, because of the 22-foot shoal there.

THOMAS A. RYER, recalled for complainant.

Direct examination by Mr. Bain.

Q Mr. Ryer, were you the arbitrator appointed by the complainant in this case under the lease dated June 5, 1889, between John E. Andrus and the complainant?

40 A I was.

Thomas A. Ryer, direct.

Q When were you appointed? A I couldn't tell the exact date just now unless I look at my records.

Q It was some time prior to June 5, 1919, wasn't it?
A It was.

Q You were appointed some time in September, 1918, weren't you? A I believe that was about the date.

Q Do you know who Mr. Andrus appointed as arbitrator? A Mr. Greve—Mr. William Greve. 10

Q Will you please state what you and Mr. Greve did with regard to agreeing upon a rental for the property for the ten-year period beginning June 5, 1919? A I supplied Mr. Greve with my estimate of the value of the property and my estimate of the value of the lease for the ten-year period. Mr. Greve supplied me with the estimated value of the property and the amount of per cent. per year. We were unable to come together on any figures whatever, his figures and my figures being very far apart. 20

Q Did you make an effort several times to agree upon figures? A We had several conferences and I tried my best to come to an agreement with him.

Q Did Mr. Greve ever give you any other than one figure? A He never gave me that, only by word of mouth. I asked him to give it to me in writing so I could have a record of it. He promised to do that but failed to do it. Whether he forgot it or not I don't know. He promised, when he left my office the last time, that he would immediately upon his arrival at his office mail that to me, but I did not get it. 30

Q Did Mr. Greve at any time sit down with you and agree to thresh the matter out or try to thresh the matter out and agree upon something? A We sat down, with Mr. Fox present in each case, and talked the matter over, but we never got anywhere.

Q Could you agree upon any figure for the rental?
A We could not. 40

Thomas A. Ryer, cross.

Q Now what was done with regard to selecting an umpire? A I then submitted a number of names for Mr. Greve to consider and he submitted a number of names for me to consider, and we could not agree upon anyone.

10 Q Why not? A Because I would not accept the ones he submitted and he would not accept the ones I submitted.

Q Did the complainant in any way prevent you from agreeing upon a rental or from agreeing upon an umpire? A In no possible way. I was told to do that if I could and I tried my best to do that, but was unable to do it.

Cross examination by Mr. Hardin.

20 Q Mr. Ryer, did you ever give any figures to Mr. Greve except figures which accorded with your own conception of the lease? A I did not.

Q And what was the construction of the lease that you put upon it? A I—my valuation I made as the land was in its condition prior to the improvement made by the Lehigh Company.

Q And prior to the establishment of the channel? A Yes, sir.

Q And prior to the filling? A Correct.

30 Q And you never submitted any figure or showed any willingness to submit any other figures except on that basis? A Other than Mr. Greve asked me what in my judgment the property was worth as it had been improved and I gave him an estimate of that.

Q The improvements at that time were what? A You mean all the improvements made by the Lehigh Company?

40 Q The improvements you included in that figure? A You mean the final figure I gave him? I gave him two figures, one the land as it was before any improvements

Thomas A. Ryer, cross.

had been made and one as it is today. Do you mean what I included as it is today?

Q The one as it was then. A As it was then. I gave him a figure just simply as the land was, in the condition it was leased.

Q Including? A Simply land, upland and land under water, not including the channel or pier or filling or anything. 10

Q Do you remember what that figure was per acre? A I think the total figure was \$189,000—\$182,500. I testified I think to that figure before.

Q On which you proffered your usual five per cent.? A I did.

Q Now, what did you take into consideration in your appraisal that—you say you gave another figure to Mr Greve? A The property just as it is today with all the improvements on it. 20

Q Including buildings—everything? A There are no buildings there; that is, without any structures, that is, including piers, channel and fill.

Q Cribbing? A Yes, sir; including the cribbing and bulkheads and breakwater.

Q Do you recall what that figure was? A \$25,000 an acre or \$20,000 an acre, because I did not consider at that time that it had street access from the rear. I was under the opinion it did not have street access from the rear. 30

Q You added— A \$5,000 an acre for the street access, after I discovered there was street access.

Q When did you discover that? A When the case was tried at White Plains.

Q So far as you and Mr. Greve went the only difference between you—acute difference that developed—was as to what should be included in the value of the land, was it not? A Yes, sir. Mr. Greve wanted to include the pier and some of the structures that were on the property and I did not agree with him—I am wrong—I 40

Frederick Dunham, direct.

do not mean that. I mean the channel and fill, not the pier, the pier was excluded. His interpretation of that clause in the lease was different from mine.

Q That was the difference between you, inability to agree on the construction of the lease? A That was part of the dispute; yes, sir—in fact, a large part of it. I
10 did not consider Mr. Andrus was entitled to any lease rental upon the improvements made by the Lehigh under that lease, and he thought they did.

Q You, of course, took the view of the Lehigh Valley as to the construction of the lease as indicated to you?

A I took my own view and also legal opinion.

Mr. Bain. I offer the original lease dated June 5, 1889, between John E. Andrus and F. Joseph Sheehan.

20 Paper marked Exhibit P. 1 of this date.

Mr. Bain. I also offer assignment of the lease from F. Joseph Sheehan to Albert H. Sayre.

Paper marked Exhibit P. 2 of this date.

Mr. Bain. I also offer assignment of the lease by Albert H. Sayre to the Lehigh Valley Railroad Company.

Paper marked Exhibit P. 3 of this date.

30 *Mr. Bain.* I also offer agreement dated March 22, 1909, between John E. Andrus and the Lehigh Valley Railroad Company, modifying the lease.

Paper marked Exhibit P. 4 of this date.

COMPLAINANT RESTS.

FREDERICK DUNHAM, sworn for defendant.

Direct examination by Mr. Hardin.

Q Where do you reside? A Jersey City.

40 Q And how long have you resided in Jersey City? A Since 1880.

Frederick Dunham, direct.

Q What is your occupation? A Civil engineer.

Q With whom were you originally associated? A Mr. Edlow W. Harrison.

Q Mr. Harrison, while you were with him—associated with him—did he have any official connection with the State of New Jersey? A Mr. Harrison was the engineer of the State Board of Assessors. 10

Q And did you co-operate and work with him? A Yes, sir.

Q For how long and in what line of work? A In the general practice of engineering and also in the valuation of all railroad property in the State of New Jersey, including the terminal properties on the Hudson River and New York Bay.

Q When did you separate from Mr. Harrison? A 1914, I think it was, that Mr. Harrison retired. 20

Q You continued the business? A Yes, sir.

Q What have you been doing since that with reference to water front property? A Since 1912 I have been—I have been retained by the City of Jersey City as appraiser of water front properties and I am also retained by the City of Hoboken and by the City of Bayonne as appraiser of water front property.

Q And have you any official position at the present time? A My title in the City of Jersey City is harbor engineer. I have charge of all that city's water front property and development. 30

Q Have you frequently acted as an expert witness in the valuation of water front property? A For many years.

Q And within what localities? A In Hudson County.

Q Do you know the Andrus property at Constable Hook? A I know it very well.

Q How long have you known it? A Since along in the eighties, eighty-eight—eighty-nine—I think about eighty-eight was my first time down there. I was there 40

Frederick Dunham, direct.

in 1909 with Mr. Harrison, who acted as arbitrator in this same matter at the time, representing Mr. Andrus.

Q Have you been frequently there since in that neighborhood? A Yes, sir.

Q How recently have you seen this property? A Within the past month.

10 Q How about the period in the neighborhood of June, 1919; did you see the property about that time? A Yes, sir.

Q What were the conditions in June, 1919, as compared with the conditions in 1920 in that neighborhood, with reference to the valuation of the property? A About the same.

Q What dimensions do you find for the Andrus property? A The Andrus property contains 45.045 acres.

20 Q And what valuation do you put upon it? A As of June 1, 1919, \$27,500 per acre. That is for the Andrus equity in the property.

Q As what? A Andrus equity in the property. In other words, his interest. That is, excluding pier and bulkhead.

Q Cribbing? A Cribbing. There are two classes there, what we call bulkhead and cribbing, and the pier and the structures on the pier.

30 Q What are the structures on the pier, warehouse? A No. On the pier there is a very large coal handling scheme and some tracks. Outside of that nothing.

Q Is that a picture of the pierhead (showing witness paper)? A Yes, sir; that represents the pier and large coal-handling plant.

Q That shows what is on the pier? A On the pier.

The Court. There is a building shown on this picture. Is that on the pier?

The Witness. That building is on the adjoining property of the Standard Oil Company.

Frederick Dunham, direct.

Q Is this another accurate picture of the condition of the pier? A Yes, sir. I think that building is on the Andrus property, right behind the bulkhead line.

Q Is this another pier over here? A Yes, sir; another pier over there and the adjoining land of the Standard Oil Company.

Q Do you recognize these pictures I now show you as having been taken in the neighborhood and can you locate the neighborhood? A Yes, sir; these pictures are marked with a letter on the back and on the blueprint, the letter indicating the position in which the camera was placed and the direction in which the picture was taken. 10

Q Are you able to locate on the blueprint you have in your hand the place where all four of these pictures were taken that you produced? A Yes, sir.

Q You were there when they were taken? A Yes, sir. 20

Q And they are accurate pictures of what can be seen from the point where they were taken? A Yes, sir.

The Court. And they are identified by the letters on the back of each picture corresponding to the same letter on the map?

The Witness. Yes.

Mr. Hardin. I offer the pictures and the blueprint in evidence. 30

Mr. Bain. No objection.

(The pictures were not marked because they could be identified by the letters on the backs.)

Q There has been some question asked about the length of the pier on the Andrus property. Can you tell us what it is? Can you tell us from this blueprint which has just been marked in evidence? A Yes, sir; the dimension is shown on the print. The pier structure itself is 400 feet in length and at the rear of the pier 40

Frederick Dunham, direct.

along the north side there is a bulkhead 660 feet in length which permits a berthing space on the north side of a thousand and sixty feet.

Q Is the water deep—uniform depth along the pier and the bulkhead? A Yes, sir; deep water there.

10 Q On the north side? A The channel comes into the north side of the pier. There is a channel on the south side.

Q Did you make this blueprint or have it made? A Yes, sir.

Q And are the figures, distances and so forth on it accurate? A Yes, sir.

Q It purports to be a map of this tract, does it? A It is a survey of this particular tract.

Q The whole Andrus tract? A Yes, sir.

20 Q What are the wavy lines appearing—the one farthest to the rear—the one nearest to the Lehigh Valley Railroad line? A There is a line which is marked center of former old Hook road, and another line to the east of that marked, original high water mark—shows the limits of the old upland.

Q I show you another map marked—where is the name of it? A There isn't any name on the map. It shows the property—

30 Q What does this map show? A It shows the property on the Bayonne shore of New York Bay extending from the Kill von Kull north to Cavin Point.

Q How is the Andrus property marked on this map, in what color? A The Andrus property on this map is hatched in in red.

Q I notice some other properties on the extreme edge of the map, also hatched in in red; what properties are those? A That is the property purchased by the International Nickel Company and the Standard Oil Company.

40

Mr. Hardin. I offer this map in evidence also.

Frederick Dunham, cross.

Mr. Bain. Did you make that map?

The Witness. Made in my office, under my direction.

Mr. Bain. Under your survey?

The Witness. Yes, sir.

Mr. Bain. No objection.

Map marked Exhibit D. 7.

10

Q Going back to the question of value, what in your opinion was the value of this property on June 4, 1919, excluding the cribbing, piers or structures or buildings on the piers? A \$1,238,737.50.

Q Are you also familiar with the rental of the water front property? A Yes, sir; I have the rental—leasing of the city's water front properties.

Q What in your opinion is a fair rental value of this property on June 4, 1919, taking the premises as including piers and structures or buildings on the piers? A Per year? 20

Q Yes. A I used seven per cent., which would make \$86,711.63 per year, or \$21,677.91 a quarter.

Q Have you any knowledge about the conditions under which the State of New Jersey makes leases of riparian properties? A They lease at seven per cent.

Q Have you followed the sales and transfers of water front property to the north and south of this Andrus property during recent years? A Yes, sir; for the past 30 twenty years.

Q And do you know about the sale—or have you taken into consideration your knowledge of these sales in reaching the figures you have? A Yes, sir.

Cross examination by Mr. Bain.

Q Did you take into consideration in appraising the Andrus property the sales of property on Kill von Kull to the south by Delano to the International Nickel Com- 40

Frederick Dunham, cross.

pany, by Delano to Standard Oil Company and the sale of the Finelli and Desbeaux properties? A Yes, sir.

Q And the prices paid for those properties ranged from \$48,000 an acre to \$56,000 an acre, did they not? A About that.

Q You valued the Andrus property at \$27,500 an acre?
10 A Yes, sir.

Q Why did you put a lower value on the Andrus property than the price paid for property on the Kill von Kull? A Different location.

Q I beg pardon? A Different location and different acreage.

Q So it is because of location that the Andrus property is worth less than the property involved in those sales on the Kill von Kull? A Yes, sir.

Q What particular differences are there because of
20 location of that property as compared with property on the Kill? A Difference of access—difference in plottage—size.

Q Difference in the shape of the property? A Shape, size, access, location.

Q How do you arrive at the difference in value between the prices paid for the properties on the Kill von Kull, and the price you put on the Andrus property? A Why, I have to take into consideration the location of the
30 property, its adjacency to that property, take into consideration all the sales that affect that class of property. The properties of this class are all competing properties, whether on Kill von Kull, New York Bay or Hudson River, and it is rather a matter of judgment as to just what their value is, but you have to take into consideration all of those elements.

Q You are familiar with the sale of the Packard, are you not? A Yes, sir.

Q Which has been testified to here. Did you consider that sale in making your appraisal? A Yes, sir.
40

Frederick Dunham, cross.

Q Well, what did you do, take the sales on the Kill and work downward or take the Packard sale and work upward, in order to make your appraisal? A I didn't do either one.

Q Did you attempt to strike any balance between the two? A Take the relative values between the properties as they are.

10

Q Did you attempt to use the sale of the Packard property and the sales down on the Kill and strike any balance in between the two? A You cannot do it that way.

Q That would not be a proper method of making an appraisement? A No, you cannot—properties on the Kill von Kull are smaller properties that were sold—less acreage and more frontage. The property of John E. Andrus is a larger tract and involves more property and not the same intensive value as the smaller tract would have, but, located as it was, fairly adjacent to the Kill von Kull and the deep waters of the Kill von Kull. The Packard property is a piece of virgin land, you might call it, with not the same possibilities of development in any way that the Andrus piece has.

20

Q In appraising the Andrus property at \$27,500 an acre, would you regard the property as commercial water front property? A Yes, sir.

Q Ready for use? A No, usable.

Q Having a channel leading in to it? A I considered the channel; yes, sir.

30

Q In other words, you valued the property with access to deep water through that channel? A Access to deep water.

Q You concede, don't you, that if this channel was not there—without the channel—the value of the property would be much less? A The value of the property without the channel—without the present channel—I appraised it for Mr. Andrus in 1918 at \$25,000 an acre.

Q In 1918? A Yes, sir.

40

Frederick Dunham, cross.

Q Without the channel? A Yes, sir.

Q How did you come to make any such appraisal as that? A Why, Mr. Andrus asked me for it.

Q You make only a difference of only \$2,700 an acre because of the channel? A \$2,500 an acre.

The Court. How do you reason that?

10

The Witness. Why, I reason that the present channel—the present channel is thirty-five feet in depth, is not such a channel as would be put there by an ordinary commercial or industrial concern; it was a special channel put there for a special use, for an ore dock, for deep draft vessels, and I figured that a channel could be put from the property into the Kill von Kull which would answer every use that this property has, as a commercial proposition, for an amount that would not add more than \$2,500 per acre to the property.

20

Q In other words, what you mean to say is that the best method of developing the Andrus property would be to put the shorter channel down to the Kill von Kull with a basin in front of the Andrus property with which to turn boats? A No, I do not say that. I say for the ordinary, commercial or industrial use, that no such channel as is there would be required. In other words, the 35-foot channel extending maybe three-quarters of a mile or half a mile out, the extreme length of that channel was made necessary because it was made—35-foot channel—for a specific use, that is not required for the ordinary commercial use at all.

30

Q The length of the channel would be required? A No, not for the ordinary commercial use, because in order to get thirty-five feet they have to go out so much further. This large channel which was put there was put there for a special use. The ordinary commercial use, 25-foot water is enough and that could be had within a very short distance of the property. Do you get my idea?

40

Frederick Dunham, cross.

Q On the same location? A On the same location or possibly—

Q I mean the one you had in mind would be on the same location? A Yes, sir.

Q Depth of twenty-five feet? A Yes, sir.

Q And width of what? A Same width, 200 feet.

Q That could be produced for what, in your judgment? 10
A Add a cost of—amount to about \$2,500 per acre on the forty-five acres.

Mr. Hardin. Did you understand the Court's question about "the same location"?

The Witness. Approximately the same location. There is twenty-five feet of water there in a very short distance of the present pier.

Q What do you mean by approximately, Mr. Dunham?
A About \$112,500.

Q What length did you estimate? A Out to 25-foot water in the Kill von Kull. 20

Q That is the depth, what length? A I will have to get the map.

Q Did you estimate it? A I have those figures here, 1,000 feet.

Q And the present channel is what, as you understand it? A The present channel?

Q Thirty-five-foot depth. A At 35-foot depth is about 4,000 feet, as I recall it. 30

Q Mr. Dunham, you cannot estimate the cost of dredging the channel that you have just suggested unless you know the condition of the land under the water where you are going to dredge? A I do know. I am doing that work all the time, estimating those things.

Q Yes, but you haven't made any borings or soundings in that vicinity? A No; I know what the material is, though.

Q That is, you think you do. A I made borings all across the bay there for the Passaic Valley sewer; I know what the bottom is. 40

Frederick Dunham, cross.

Q That is some distance north? A Not so far.

Q How far? A On Robbins Reef Light.

Q I know, but how far? A Perhaps a thousand or twenty-five hundred feet.

Q Do I understand you to say that the Andrus property would be just as valuable with a 25-foot channel as it is with a 35-foot channel? A No, I do not say that.

Q Wasn't that the effect of your former statement? A No.

Q Didn't you say that the property could be just as well used with a 25-foot channel as it can be with a 35-foot channel? A For ordinary industrial use twenty-five is enough.

Q You do not think the property is developed to its best use now? A Not at the present time, no.

Q What do you mean by ordinary industrial use? A Why, such as the use on the Hudson River, steamship or manufacture.

Q Even for ordinary use isn't the depth of water in a channel and in front of the piers an advantage? A That is all they have in the Hudson River, only for special use, where they want to get very large steamers in.

Q Thirty-five feet of water will float a vessel having a 20-foot draft, wouldn't it? A Yes, sir.

Q A 35-foot channel will float a vessel having a 30-foot draft? A As long as you maintain the thirty-five feet.

Q If you only want to use vessels having a 30-foot draft and yet your property will accommodate vessels having a 35-foot draft, your property is more valuable than if it only accommodated twenty-five foot—you say that is not so? A That is not so. There is a place for 35-foot ships, they are not at the end of a 4,000-foot channel, not on the Hudson River.

Q What about the channel that goes up through New York Bay, main ship channel, practically all the water front property today above the Battery is at the end of

Frederick Dunham, cross.

a long channel? A That is a different proposition. That is common docking space and that is a passageway back and forth up the Hudson River.

Q This channel into the Andrus property is nothing but a— A This supplies one particular pier and you got to maintain thirty-five feet of water there if you never want to use it; that is a costly proposition. 10

Q Do you know whether that channel has ever been dredged since it was built? A I don't know. I don't know that there is thirty-five feet of water there now. I do not think there is, if it has not been dredged.

Q Why do you say you do not think so. You do not know? A No.

Q That is mere surmise? A That is my experience.

Q They do have to be dredged, do they not? A Yes, sir; frequently.

Q You don't know whether there is any necessity of re-dredging in that immediate vicinity? A I don't know about this particular channel, but I know in other channels that they have to re-dredge. They have to re-dredge in the slips in the Hudson River. 20

Q As a matter of fact there is a strong scour there through the Kill von Kull channel, isn't there? A Through the Kill von Kull channel; yes, sir; but this is a dead end channel.

Q There is a strong tide through the Kill von Kull—very strong tide? A Yes, sir. 30

Q Has a tendency to keep any channel in that vicinity open? A It doesn't get in to this channel.

Q Doesn't the tide swing across it? A Across it; yes, sir; apt to fill it.

Q As the tide runs in it runs in very rapidly through this channel and as it goes out it runs through in the opposite direction? A No.

Q It doesn't? A It crosses this channel and this channel deadens up to the pier. The Kill von Kull tide don't affect that. 40

Frederick Dunham, cross.

Q You cannot say that that channel has been dredged in five years? A I don't know. I have no personal knowledge.

Q Now, if that channel was not into the Andrus property and the Andrus property was not filled out—no improvements on it—it would be very similar to the Packard property, wouldn't it? A No.

Q Why not? A Why, the Packard property is located about 1,500 feet or so further north and is that much further away from deep water.

Q How much? A And besides, the shape of the Packard property and size would not permit of any such development as there is on the Andrus property.

Q What is the depth of the Packard property on the pierhead line? A About 341.5 feet on the pierhead line.

Q And if the Packard property had a 200-foot channel running into it—channel 200 feet wide and 35 feet deep, as the Andrus property has, there would be room for a pier of a hundred feet wide, wouldn't there? A One side; yes, sir.

Q Yes, and anywhere from a thousand feet up in length for the pier? A Up to—they could make it three thousand or four thousand long if they wanted to.

Q So that you could have just as good a pier—channel and pier into the Packard as you could into the Andrus' couldn't you? A Yes, sir; on the same theory you could build just as good a house on a back alley as you can on Broad street.

Q We are talking about water front properties at the present time. You could get just as good a channel and pier into the Packard as you have on the Andrus? A No question about that. Piers can be built anywhere and channels can be dredged anywhere, at some cost.

Q We are speaking about this particular place. You say there can be no doubt the same kind of channel and the same kind of piers as are now upon the Andrus prop-

Frederick Dunham, cross.

erty could be put upon the Packard property? A Yes, sir; I do.

Q As a matter of fact you could get much longer piers on the Packard than on the Andrus? A Yes, sir.

Q Because of the peculiar angle on the northerly side of the Andrus property; is that right? A No, because of the conditions. The Packard property is all under water. You can build a pier there a mile long if you want to—nothing to stop you. 10

Q Where you got a piece of water front property that is long and narrow, the value of the property, if it has any, is in the length of the pier that can be built upon it? A No.

Q Why not? A Because a pier over a thousand feet long is no particular advantage in that class of property.

Q If you cannot put two piers in front of the property so that they will be usable on both sides of the pier and you are limited to one pier on the property, then the best development of the property calls for a long pier, and the longer the pier the better; isn't that so? A It all depends on the kind of back lands and the use to which it is to be put. A pier 2,500 or 3,000 or 4,000 feet long stuck out on the end of a narrow strip of land containing small acreage may be entirely too much pier for that piece of property. 20

Q Let me ask you, suppose you got a big long narrow piece of water front property— A We have plenty of them right here on New York Bay. 30

Q Would you say that it would be better, so far as the use of that property is concerned, to put a 400 foot pier at the end of the property than it would be to put a thousand foot pier there? A It might be in some cases; yes, sir. The property on the Kill von Kull which was sold for \$60,000 an acre, only has got two hundred foot piers on it; that is all they want. 40

Frederick Dunham, cross.

Q You think the Lehigh Valley made a mistake in putting that length of pier on the Andrus property, do you?

A No.

Q How long is that pier? A That pier was put there for a special use, it was an ore pier.

10 Q Don't you think that is a good use? A They require that sort of pier—that length of pier and depth of channel in the operations of that business. Now evidently that business is going away from there and they are selling it to somebody else—couldn't have been a profitable business there on that piece of property.

Q That piece of property was so peculiar that it could be best used for an ore dock? A No; there are lots of other places where ore docks could be built.

20 Q Wasn't that property peculiarly adapted for ore dock purposes? A Not necessarily—not any more peculiarly adapted for it than half a dozen other pieces of property.

Q That property is more adaptable for an ore dock than would be a piece of water front property having the depth only of, a thousand feet, we will say? A Oh, yes.

Q An ore dock requires a long pier, doesn't it? A I presume so.

30 Q And the Packard property would be just as good so far as length of pier is concerned, for ore dock purposes, as the Andrus property is? A No.

Q Why not? A It would cost more to put it there and your channel access wouldn't be as good.

Q You would have to have a channel—deep channel into it? A You could dig a channel by going out much further than they did on the Andrus property. It would cost fifty or a hundred per cent. more, I should judge, to get a channel into the Packard property than it did in to the ore dock.

40

Frederick Dunham, cross.

Q What are the substantial differences between the Andrus property and the Packard property, if there are any, considering the Andrus property without any improvements and without a channel? A Substantial difference?

Q Yes, if there are any. A The substantial difference is in the value of the property and what it could be sold for. 10

Q That is the only substantial difference? A And the accessibility and capability of use and improvements. The Packard property is a long, narrow strip of property and could not possibly be put to the same intensive use or practical use as the Andrus because of its shape and size, its location, accessibility.

Q The Packard property has better street access than the Andrus property, hasn't it? A No.

Q Do you mean that, Mr. Dunham? A Way back at the rear end of it you can get to it, but you cannot get to it much easier than you can to the Andrus property. 20

Q One of the public streets is opened right down to the Packard, isn't it? A Yes, sir; but you have to go down the same street practically pretty nearly all the way down to get to it—

Q Yes. A But that isn't any element of value in that class of property.

Q It isn't? A Not the back access; it doesn't amount to much. 30

Q Access by street in your opinion does not add anything to the value? A Not very much to this class of property.

Q You think water front property is just as valuable if it has no street access as if it has? A It must have access, whether by public streets or by water is immaterial, so long as they have sufficient access to do business on the property.

Q It is a fact that the Packard property line lies right at the end of one of the public streets of Bayonne? 40

Frederick Dunham, cross.

A There is a—let me see what street it is—it runs down to East Twenty-Second street.

Q And it is a fact, isn't it, that there is no actual street running into the Andrus property? A Yes; you can get there.

10 Q What? A Yes; there is a road running right into it.

Q What road is that? A The old Hook road part of the way and the other is a road through the Standard Oil.

Q Mr. Dunham, the only way by which you can get by the public streets now on to the Andrus property is over a great many railroad tracks, isn't it? A Two crossings that I can recall.

Q And there are no planks over those crossings. A No what?

20 Q No planks, no driveway. A Yes, they drive in and out with wagons and trucks and automobiles every day, hundreds of them.

Q Do you mean to say that there is a road now open from one of the public streets of Bayonne to the Andrus property? A Yes, sir; I drove right in there, by automobile, right on to the property.

Q That is a private road, is it? A No, it isn't a private road because it is opened by agreement with Andrus.

30 *The Court.* Point it out on this map for me, will you?

The Witness. Here it is (indicating).

Q Will you point out to the Court the street access to the Packard property on this map? A (Complying with request.)

The Court. From the street to the Packard property you must cross tracks?

40 *The Witness.* Yes, sir; have to cross the Central and Lehigh main tracks.

Frederick Dunham, cross.

Q Do you mean to say Mr. Dunham, that the street access of the Packard property is no better than the street access of the Andrus property? A No, I wouldn't say it is any better.

Q Do you think it is not as good? A It may be wider.

Q Don't you think the Packard property has some advantages over the Andrus property so far as the access by street is concerned? A Absolutely not. That part of the Packard property which lies behind the shore has no relevancy at all to the Andrus property; in no sense is it water front property. 10

Q The back part of the Packard property? A Of the Packard property is in no sense water front property.

Q You have been regarding the Andrus property as best adaptable for commercial purposes? A Yes, sir; water front property; yes, sir. 20

Q Is the rear part of the Packard property adaptable for industrial purposes? A Yes, sir; but not for water front use.

Q That is the way you regarded the Andrus property, for industrial purposes? A Absolutely I did, with access to water.

Q Now the Packard property stands in the same category? A Absolutely not. The rear part of the Packard property is a mile and a half from the pier line. 30

Q Is the Andrus property an industrial property? A Yes, sir.

Q Is the Packard property an industrial property? A Yes, sir.

Q They are both industrial? A That is part of the Packard property, forty acres back of the shore line is, the other portion of it is not.

Q Some part of the Packard property is industrial property and the Andrus property is industrial property? A The Andrus property is all good industrial property. 40

Frederick Dunham, cross.

Q Therefore, so far as its adaptability is concerned, the Andrus compares with the Packard? A No; there is no comparison at all of the two properties as to availability or use.

10 Q If they are both adaptable, why not? A The very location and accessibility and shape and all precludes a comparison of the two properties for the same use. In others words, there is the Andrus property adjacent to the great oil plant of the Standard Oil Company; it is right at the Hook, it has some original upland with it and in the very nature of the thing the Andrus property is the more marketable property in every way than the Packard property.

Q Have you valued the Andrus property because of its proximity to the Standard Oil plant? A Absolutely; yes, sir.

20 Q With the idea that the Standard Oil Company might want it? A No.

Q What peculiar advantage is there so far as the use for industrial purposes is concerned, in having the property close to the Standard Oil Company? A The character of the property is fixed—the development is fixed. It applies to any property, anywhere, where the character and development of the property is fixed and adjacent to it—it adds to the value of the property, whether it is 30 water front property or any other property. It either increases or decreases the value of the property.

Q Do you mean to say when an oil company establishes itself somewhere, industries of all kinds flock around it? A Absolutely. That is just what happened to the Standard Oil.

Q That is exactly what happened? A That is what happened to Bayway; they built up all—

Q How many industries flocked around the Standard Oil Company in the last six or eight years? A Lot of oil 40 companies.

Frederick Dunham, cross.

Q What other industries? A Nothing outside of the oil trade can or would locate next to it.

Q Now you are limiting the industries that flock around the oil plant to other oil companies? A Other oil companies, yes, sir; everything that goes together.

Q Why not, why wouldn't others— (interrupted). A It would be a nice place for a linen factory or embroidery, wouldn't it; everything covered with the gas and soot and oil. 10

Q So that general industries do not locate near oil plants? A Only those particular kinds of industries or other industries where there would be no objections. You take a sulphur works or something of that kind, where they have objectionable odors and dust and things of that kind, they might locate there; yes, sir.

Q Let us put it this way— A These oil industries are a nuisance. 20

Q They are a nuisance? A Yes, sir; they are a nuisance.

Q And ordinary industries will not locate near an oil plant? A Not as a general proposition, no.

Q You valued the Andrus property for ordinary industrial purposes? A Yes, sir.

Q And you valued it because of its proximity to the Standard Oil Company's plant? A Not because it was the Standard Oil Company, but because it was a fixed development, the character of the property was fixed—it was suitable for the Standard Oil Company or any other oil company. 30

Q But it took value out of the Andrus property for ordinary industrial purposes, if they could not locate there because of the proximity of the property to the oil works? A It would be valuable to any industry to which oil works was not objectionable.

Q That is a limited kind of industry, isn't it? A Yes. 40

Frederick Dunham, cross.

Q That wouldn't be an ordinary industry? A No.

Q So that because of the proximity of the Andrus property to the Standard Oil Company you cannot value it for ordinary industrial purposes? A You can, yes, sir; might be steamships or might be railroad companies or some other uses where the oil company
10 would not be objectionable or a nuisance. In other words, it is like any other development. You have got it there. You have got the essentials. In the first place, it is there like any business or dwelling or apartment house or a hundred and one different things, the character of the property gets fixed and you get the value because of that character.

Q You wouldn't think of putting an apartment house on this property, would you? A No.

Q At the time you made your appraisal of \$27,500 an
20 acre for this property did you know of this alleged sale by the Lehigh Valley to the Standard Oil Company of the adjoining property on the north? A There wasn't any such sale.

Q There never has been any such sale? A There wasn't any such sale when I made my appraisal.

Q What is that? A There wasn't any such sale when I made my appraisal.

Q Do you know about it, I mean? A Yes, sir.

30 Q Know all about that? A I have heard—I don't know whether I know all about it or not—I have heard a great deal about it.

Q You have heard about as much as the average real estate man has heard, haven't you? A I have heard the lease—you mean the Lehigh Valley sale to the Standard Oil Company, just north?

Q Yes. A I heard the lease read in court and the sworn testimony.

40 Q You were a witness in the case in the Supreme Court in Westchester County, New York, where the parties

Frederick Dunham, cross.

for whom you were a witness subpoenaed the contract of sale of that property, were you not? A Yes, sir.

Q And you heard that contract read? A Yes, sir.

Q So that you knew the price that was paid for it? A Yes, sir.

Q That was much less than \$27,500 an acre, wasn't it? A It was \$20,626 an acre for the land behind the bulkhead line back to the shore, and \$10,625 an acre for the land outside of the bulkhead line. 10

Q What did that make an average per acre? A About nineteen thousand, some odd dollars; I do not recall.

Q \$19,070.41? A Something like that.

Q So that before you stated your appraisal of the Andrus property today you knew of that sale? A No; my appraisal of the Andrus property was made before that sale or before I knew anything of the sale. 20

Q Yes, but after you stated your first appraisal and before you appeared in court today you knew of that sale? A I testified long before that. I know about the sale, but my appraisement was made before any of those sales took place.

Q But having knowledge of that sale you stated today a valuation of the property as \$27,500 an acre? A I add \$2,500 an acre because of the channel, as I told you before, in 1918 I appraised the property for Mr. Andrus at \$25,000 per acre, and then increased that to \$27,500 per acre because of the channel. Now those are my figures. 30

Q Mr. Dunham, how do you reconcile, assuming that the price paid for the Lehigh Valley property immediately north of the Andrus property was \$19,000 an acre—how do you reconcile your valuation at \$27,500 with the price paid for that property? A Reconcile it in this way, that one was an entirely unimproved piece of property, without any channel access. You cannot reconcile it any other way because when I take into consideration the sale of 40

Frederick Dunham, cross.

\$26,500 per acre back of the bulkhead line, for the Lehigh Valley property, I realize that I am too low on my valuation of the Andrus property. They do not jibe up at all.

Q You think that the price of \$19,000 an acre for that property justifies a valuation of more than \$27,500 for the adjoining property? A Why, if the Lehigh Valley property sold for \$26,500 an acre—

Q We are taking the average price, \$19,000. A Well, take the average price, nineteen thousand; you add to that your cost of bulkheading, cost of filling and to get the same channel access that the Andrus property has, why it is worth in my estimation at least thirty to thirty-five thousand dollars per acre.

Q You were supposed to include the cost of that in your appraisal of the Andrus property? A I did.

Q If the Lehigh Valley property was cribbed then it would have some additional value and bring it up to near what you put on the Andrus property? A I say it would be worth about \$35,000 an acre.

The Court. Is bulkheading the same as cribbing? I understood by the previous witness there was cribbing and bulkheading.

The Witness. There is a little distinction as between different classes of bulkhead.

Q *The Court.* It was indicated to me that there was a difference; that there was bulkheading and cribbing. That is not so?

The Witness. Bulkheading is not always a cribbing; a cribbing may be a bulkhead.

Mr. Bain. A bulkhead ordinarily is across the front of the property as I understand it.

Q The Lehigh Valley property immediately north of the Andrus property had access or could have access by very, very little dredging to the channel in to the

Frederick Dunham, cross.

Andrus property, couldn't it? A Not very, very little dredging, no; by considerable dredging.

Q The channel into the Andrus property touches at the pierhead line, the southerly line of the Lehigh Valley property, doesn't it? A Pretty nearly, but then the present channel would be of no use to the Lehigh Valley property inside of the pierhead line. 10

Q I beg pardon. A The channel into the Andrus property is of no use to the Lehigh Valley property inside of the pierhead line, in other words, you would have to dredge a new access from the main channel to a point somewhere beyond the pierhead line.

Q Do you mean to say that the Lehigh Valley Railroad property to the north of the Andrus property cannot use the channel into the Andrus property? A Not that portion of the channel inside of the pierhead line, no.

Q You mean to say that the channel into the Andrus property gives no value to the Lehigh Valley property immediately to the north? A Not at all. 20

Q Assuming that the Lehigh Valley property and the Andrus property were purchased by one purchaser, the channel into the Andrus would be of great benefit to the Lehigh Valley property, wouldn't it? A Benefit to it if they could use it; yes, sir.

Q If you extended the channel in a direct line it would run right into the Lehigh Valley property, wouldn't it? A Yes, but that would cost a lot of money. 30

Q Have the additional advantage of four or five thousand feet of channel already dug? A That is an advantage which anybody would have. That is public property.

Q The Packard property wouldn't have that advantage. Why do you say that? A They could get it. In other words, if they wanted to dredge to it they could use it. It would be a question—

Q The railroads in Jersey City could use it, too? A I do not think you get the exact location. They would dredge straight out into the main channel of the bay. 40

Frederick Dunham, cross.

Q I think you said there wasn't any change in the condition of this property as between 1919 and 1920? A No.

Q You mean the valuation is about the same both years? A I wouldn't say the valuation was the same.

10 Q What do you mean by saying there was no change in condition? A Change in physical condition of the property. I think it had a higher value in 1920 than it had in 1919.

Q When did you make this appraisal, as of what year?

A Appraisal as to June 1, 1919.

Q When did you make the appraisal for the first time?

A 1918.

Q In 1918? A Yes, sir.

20 Q And that figure has lasted in your mind ever since, \$27,500 an acre; is that right? A That \$27,500 is the value as of June 1, 1919.

Q That value has been in your mind for the past three years? A No.

Q Never been changed in any way, has it? A Oh, yes.

Q So that it has been in your mind for the last three years? A Not that particular value. What do you mean, in 1918?

30 Q You have never changed that figure in three years, have you? A I am not supposed to change it. I am supposed to give you the value as of June 1, 1919, as I understand it.

Q You are not supposed to change that figure? A If you want me to give you the value in 1920 I will give you that.

40 Q As a matter of fact you made that appraisal before you knew of this sale of the Lehigh Valley property to the north and that sale did not cause you to change your mind in any manner? A I could not know of it because it was not in existence.

Frederick Dunham, cross.

Q After you knew it you did not change your mind at all? A I have changed my mind; yes, sir.

Q You have changed your mind? A Yes, sir.

Q Advanced it upwards, I suppose? A Yes, sir. You will find that out when you get your next tax bill.

Q What is that? A You will find that out when you get your next tax bill. 10

Q You think that a price of \$19,000 an acre will justify a tax value of \$30,000 an acre? A No.

Q Well, do you think it will justify a value of \$26,000? A On the Andrus; yes, sir.

Q You think it will justify—as a matter of fact you paid no attention whatever to the sale of the Lehigh Valley property just north of the Andrus property? A No.

Q Now you say that in your judgment a return of seven per cent. is about right for the Andrus property? A Yes. 20

Q Did you mean gross or net? A Net.

Q Does that take into consideration the fact that the lessee pays the taxes? A Yes, sir.

Q How much would that be gross? A I suppose about ten.

Q If only the taxes were paid. In normal times, Mr. Dunham, the gross returns of improved property was ten per cent., wasn't it? A Well, the State always charged seven per cent. 30

Q Never mind what the State charged. I am talking about property ordinarily the ordinary returns on improved property under normal conditions was ten per cent., wasn't it? A Yes, sir.

Q And of that, in this vicinity, about three per cent. was taken for taxes? A Not in normal times; no, sir.

Q What? A Not in ordinary times three per cent. wasn't taken for taxes. 40

Frederick Dunham, cross.

Q Don't you know that back of 1914 the tax rate in this vicinity was very close to three per cent.? A No.

Q You don't know that? A In pre-war times, 1912, they were nearer two.

Q Was Jersey City rated—taxation—two per cent. in 1912? A I do not remember what it was; it was down
10 below two there, \$1.67.

Q That was a great many years ago, Mr. Dunham? A Not so very long.

Q Mr. Dunham, the rate of unimproved property—the rate of return—net rate of return is ordinarily less than it is upon improved property, isn't it? A Not always.

Q Well, generally?

The Court. Ordinarily.

20 A Ordinarily; on large properties I should say yes.

Q And the rate is lower on long term leases than it is on short term leases? A Ordinarily; yes, sir.

Q And if there is a reasonable assumption that the tenant will improve the property, a still better rate is made, is it not? A As a rule; yes, sir.

Q Now, taking into consideration those three things, a five per cent. rate would be about fair, wouldn't it, on unimproved property? A I shouldn't say so in these times.

30 Q Do you say it would not be fair? A I do not think so, no.

Q Don't you think that seven per cent. is too high? A I do not think so.

Q Why not? Is it ordinarily asked and obtained? A The reason I do not think so is because this is the very class of property which the people have paid and are paying seven per cent. on.

Q Five per cent. net on unimproved property is pretty fair discount, is it not? A As a general proposition it is;
40 yes, sir.

Frederick Dunham, cross.

Q Six per cent. mortgage usually pays the taxes, does it not, in this vicinity? A A question now whether it will or not.

Q An investment on first mortgage will yield the mortgagee not more than three per cent.; isn't that so, where he pays the taxes? A We are figuring now on the present day conditions on apartment houses, in the profiteering cases, that the landlord is entitled to about seven and a half per cent. 10

Q Net or gross? A Net.

The Court. Does that take in depreciation?

The Witness. That is net.

The Court. Or must he account for the depreciation in that net—he must discharge the depreciation in the net.

The Witness. He must discharge that; yes, sir. 20

The Court. That would reduce it.

The Witness. That would be much or little.

The Court. It reduces the income to less than seven per cent.

The Witness. To about seven, it may be, or around there.

Q And this seven per cent. net that the owners of apartment houses are allowed is because of the unusual housing situation at the present time? A I suppose that has something to do with it. 30

Q Ordinarily they wouldn't get that, would they? A Probably not.

The Court. Improved property ten per cent. gross, I believe, has been the rule for years.

The Witness. That has been the rule for years. It doesn't seem to be the rule now.

Q Mr. Dunham, when the owners of vacant property rent their property they consider the safety of the re- 40

Frederick Dunham, re-direct.

turns, do they not—certainty of the return? A Oh, yes; all of those things are taken into consideration.

Q All those things go to drive the rental down, to make the rental low? A Yes; where you fix the rental for a term of years in these times you do not know what is going to happen. You do not know where your tax rate is going to be.

10 Q During the past two years the return on money has been about as great as it ever will be, don't you think?

A In the past two years?

Q Yes. A It may be; can't tell.

Q Already there has been a falling off, hasn't there?

The Court. In rental?

Mr. Bain. No; return on money; investment.

A I have noticed considerable falling off myself.

20 Q As a matter of fact it is common knowledge that the return of investments has been falling off for the last three or four months? A Not only last three or four months, last six months.

Q It is reasonable to suppose that that return will fall off, isn't it? A Until things become more normal.

Re-direct examination.

30 Q I meant to ask you, Mr. Dunham, about your opinion as to the prospective advance in real estate in water front property in the locality of the Andrus property. This term lease that we are talking about is to cover a period of ten years from June, 1919. What in your opinion would be the expectation as to advance in the value of property during that ten-year period?

The Court. Based on peace-time basis, an increase or decrease?

The Witness. From peace-time basis to present time.

40 *The Court.* No, from June, 1919, on for ten years.

Frederick Dunham, re-cross.

The Witness. On for ten years.

The Court. Based on peace-time basis—prices.

The Witness. I think that class of property in the next ten years will increase from fifty to a hundred per cent.

Re-cross examination.

Q On what do you base that? A On supply and demand. 10

Q That is, you think the demand is going to be greater within the next ten years than it has been during—than it was from 1910 to 1914? A Yes, sir; for that class of property.

Q You think the demand is going to be greater during the next ten years than it was in 1913? A I think the demand of the next ten years will be greater than it has been for the last twenty-five years. 20

Q Is there anything on which you can predict that—anything tangible? A Anything tangible? Yes, sir. In the first place, on present inquiries and demands.

Q Present what? A Inquiries and demands and for the increased shipping that will be done by this country, increased business in the port of New York.

Q If the price of such property as the Andrus property becomes so high that the ordinary industrial concerns cannot buy it, such concerns will go elsewhere, won't they? A May or may not. 30

Q It would be natural to say that they would? A If they can't buy it, yes, sir.

Q And the price is so high today that the ordinary industrial concerns are going elsewhere? A No, that is not so.

Q They are going up the Passaic River, aren't they? A Some of them are, but there has been more property sold on the Hudson River in the last year than ten years previous. 40

Frederick Dunham, re-cross.

Q More property has been sold in the vicinity of the Port of Newark, or rented, and along the Hackensack River, of recent years, notwithstanding war demands, than was sold on New York Bay side—on New York Bay in Jersey City and Bayonne and upon the Hudson River, from 1910 to 1914? A No; that is not so.

10 Q No? A No.

Q The Port of Newark has been actually built up in that period? A There has been more frontage sold on the Hudson River than there has been in the Hackensack or Passaic or the Bay.

Q In the last year? A Yes, sir; in the last year.

Q In the last year? A Yes, sir.

20 Q My question was whether more water front for industrial purposes had not been sold during the past three or four years on the Newark Bay and on the Hackensack River and Passaic River, than was sold in 1913 on New York Bay in Jersey City and Bayonne and on the Hudson River—

The Court. Why confine it to 1913?

Mr. Bain. I am taking one year—take from 1910 to 1914.

A From 1910 to 1914. You mean from 1914 on?

30 Q No, I mean that more property has been sold during the last three or four years on Newark Bay, Hackensack River and Passaic River, than was sold during the years 1910 to 1914 on New York Bay in Bayonne, in Jersey City and on the Hudson River—in Jersey City and Hoboken? A I don't know as there was any sales on the Hudson River between those two years.

Q I ask you whether you can't answer. You know all about this subject, don't you? A I know; yes, sir.

Q You are fully acquainted with the sales at the Port of Newark? A I am acquainted with them for thirty years.

40 Q You are acquainted with sales along the Passaic and Hudson rivers? A There has only been—

Frederick Dunham, re-cross.

Q You are fully acquainted with them? A It has narrowed down to a very few propositions. You limit me to certain years and I cannot testify exactly without having the records before me.

Q The Port of Newark and the Hackensack River for two miles before the river enters Newark Bay, and the Passaic River for two miles before that river enters Newark Bay have all been developed within the past four years, haven't they? A No. 10

Q Well, how far back of that did they start? A Ahead of that. Port Newark was ahead of that.

Q How much? A Port Newark was 1912, I think.

Q That was when the city first began laying it out? A They had the land there when the war opened.

Q Put your mind on this— A To make the submarine boats.

Q Put your mind on this. I think you can answer the question. You know how much development there has been on the Newark Bay and along the Hackensack and Passaic rivers during the last two or three years, don't you? A Very little. 20

Q What? A Very little, outside of the shipbuilding companies.

Q Haven't there been numerous concerns that have located along the Passaic River in the last few years just opposite the Pennsylvania Railroad tracks? A Might have been some. 30

Q Is that going to help any? A Might be on the Passaic, not on the Hackensack; no.

Q How many concerns—industrial concerns have located on New York Bay shore in Jersey City and Bayonne during the past six or eight or ten years? Now, industrial, I am speaking of? A On New York Bay?

Q Yes. A You confine it to New York Bay?

Q Yes. A Outside of the railroad companies, I only know of one, American Rubber Company.

Q That was at least ten years ago? A I am not sure as to just exactly what year that was. 40

Frederick Dunham, re-cross.

Q Was it in 1893? A It might have been.

Q So that in six or eight years there hasn't been a single industrial concern located on that New York Bay shore, has there? A American Rubber Company, about in 1911.

10 Q That is ground they got from the State? A No; they bought from Van Buskirk in 1911.

Q One small piece to widen— A They got the plant in 1912. I would say it was erected around 1914.

Q We will say there was one concern on all that stretch of water? A Outside of the railroads; yes, sir.

Q Now, there is a lot of vacant land on that New York Bay shore that has been held for development, isn't there, and some of it for sale? A In Bayonne; none in Jersey City.

20 Q Before the Lehigh Valley purchased its yards there was some of it in Jersey City? A Must have been.

Q That yard was purchased in 1917? A 1916.

Q 1917, I think. A 1916.

Q There have been, however, a great many purchases of land on the Newark Bay, some of it in Bayonne, some of it in Elizabethport, some of it in Port Newark, and there have been a great many purchases by industrial concerns on the Passaic River and on the Hackensack River during that same period of six or eight years? A
30 I do not think you are right when you say a great many. I think there have been very few—very limited.

Q There have been more than ten? A I wouldn't say that it had been more than ten.

Q Do you know how many there have been, approximately? A On the Bayonne side, maybe three.

Q That is on Newark Bay? A I do not think there is more than three.

Q On Newark Bay? A On Newark Bay; on the Hackensack River on the Jersey City side, none; on the Kearny side, one that I know of.
40

Frederick Dunham, re-cross.

Q That is shipbuilding? A Shipping and Sea Board By-Products.

Q What about the Box Company? A They were there before that.

Q They came in the last six or eight years? A No; came longer than that.

Q Been a few others north of the Pennsylvania Railroad on the Hackensack River? A I don't think so. 10

Q What about the Passaic River? A I am not familiar with the Passaic River.

Q Don't you know anything about the development on the Passaic River? A I don't know much about that, except in Kearny on the Hudson County side, shipbuilding, and one plant south of the railroad and one plant north—just how long they have been there I don't know.

Q Doesn't the development on the New Jersey side of the harbor, on New York Bay shore—Newark Bay shore Hackensack and Passaic Rivers, indicate that the industrial concerns did not seek the New York Bay shore property, but sought the property on Newark Bay and on the Hackensack and Passaic Rivers? A In preference to New York Bay; yes, sir. 20

Q And the reason for that was because they could get the other property at a better price? A No; the reason is that the development of the New York Bay property is prohibitive to the ordinary industrial concerns.

Q That is one reason? A That is the principal reason. 30

Q Sure; the price was cheaper? A No; the price didn't affect it.

Q Mr. Dunham, you know, don't you, that Jersey City—the price at which Jersey City sold the Droyer's Point property? A Yes, \$5,000 an acre.

Q And property over on the Hackensack River in the vicinity of Droyer's Point, was purchased as low as \$1,800 an acre, wasn't it? A When?

Q During the past four or five years. Vicinity of Droyer's Point? A Vicinity of Droyer's Point. 40

Frederick Dunham, further direct.

Q Yes. A I think not.

Q Droyer's Point is on Newark Bay? A Yes, sir.

Q Right at the entrance of the Hackensack River? A Yes, sir.

Q Are you sure the Droyer's Point property was not sold by Jersey City for \$2,500 an acre, not \$5,000? A \$2,500 an acre—that was a great many years ago.

Q How long ago? A Ten years—twelve years.

Mr. Hardin. I offer the agreement as to right of way over Standard Oil property to the Andrus property.

THOMAS P. GRAHAM, sworn for defendant.

Direct examination by Mr. Hardin.

Q Where do you reside? A 260 Durham avenue, Paterson, New Jersey; my office is at 150 Broadway, New York.

Q What is your business? A Real estate, specializing in commercial water front.

Adjourned until 10:15 tomorrow morning.

October 20, 1921.

Transcript of shorthand notes of testimony, &c., taken in the above-stated case, pursuant to adjournment, at the Chancery Chambers, Newark, N. J., before his Honor John H. Backes, Vice-Chancellor, and in the presence of counsel as before stated.

FREDERICK DUNHAM, a witness already sworn on the part of the defendants, recalled for

Further direct examination by Mr. Hardin.

Q I show you a map labelled "Bayonne Plate 39, Copyright 1919, by the G. M. Hopkins Company, Phila-

Frederick Dunham, further direct.

delphia, Pennsylvania." Can you tell us what that map covers? A This map is taken from the so-called Hopkins Atlas, Hudson County, Volume No. 1.

Q What is it in character? A Plate 39, showing the property and the improvements at Constable Hook, Bayonne.

Q Is it recognized as an official map in Hudson County by real estate men and others? A It is used very extensively. It is not really official. 10

Q As of what date? A 1919 is the date it was published.

Q Are you able to tell us from your familiarity with the neighborhood, whether it seems to be an accurate picture of the conditions there? A Yes, sir; I think it is.

Q I show you also a map labelled "Jersey City-Bayonne, Plate 33, Copyright, 1919, by G. M. Hopkins Company, Philadelphia, Pennsylvania." I ask you whether that is another sheet from the same atlas? A Yes; that is plate 33 taken from the same atlas. 20

Q Does it show the property adjoining the Andrus property? A Yes, sir; that shows New York Bay property, up the bay from the Andrus property, as far as Gavin Point property.

Q Are you able to tell us from your personal knowledge of the conditions there as to whether the conditions as shown on this plate 33 in the Cove property above the Andrus property are accurately shown on this map? A That is, as I recall it, as it existed in 1919. 30

Q Is the water in the cove in the different parcels as it appears on this map, still water, not filled in? A That property was all flooded by tide water as indicated here at the date the map was made. Since that time there has been some filling.

Q As of June, 1919? A As of June, 1919, I think it shows about the condition as it then existed. 40

Frederick Dunham, further direct.

Q Is the tract which has been referred to as having been sold by the Lehigh Valley Company to the Standard Oil Company in the early part of 1920, shown on this plate 33? A Lehigh Valley Railroad Company to Standard Oil Company is shown here, outlined by a yellow tint.

Q And marked Lehigh Valley Company? A It is
10 marked Lehigh Valley Railroad Company.

Q Bounded how? A Bounded on the north by a strip marked Central Railroad Company and on the south by the Andrus tract which is here designated "Lehigh Valley Railroad Company," who are the lessees.

Q Does it appear on this map, as to the condition, as land and water as of June, 1919, with reference to this Lehigh Valley Railroad tract sold to Standard Oil Company? A Yes; this is about right.

Q On plate 39 there is a picture, is there not, of the
20 Andrus tract? A Yes.

Q And as to the water and land, as of June 4, 1919, with reference to the Andrus tract, taking this plate 39? A That is just about as it existed at that time.

Q And that compares with your survey made just a little before June, 1919? A Yes, sir; I made a survey in 1918 and another one in 1920.

Q These maps are made to scale? A Yes.

Q Is the Packard tract, so-called, marked on plate 33?
30 A Yes, sir; I have marked "Formerly Packard" in pencil.

Mr. Hardin. I offer these two maps in evidence.

Mr. Bain. May I ask the witness a few questions regarding the maps?

The Court. Yes, you may.

By Mr. Bain.

Q Do these maps show the conditions as they existed
40 in 1919? A Yes.

Frederick Dunham, further direct.

Q And they accurately show the conditions? A Approximately, as near as I can recall.

Q There was an earlier Hopkins Atlas, was there not? A Yes.

Q What was the date of that, the last one before these were taken? A I do not recall that. I think it was about 1919. 10

Q Was it not 1918? A Possibly it was; I do not recall the date.

Q The earlier Hopkins Atlas shows the Andrus property in its original condition, does it not? A That I don't know. I would have to look at it.

Q You do not know what the fact is; is that right? A I do not recall that.

Q You do know that there was an earlier atlas which showed a different condition with reference to the Andrus property than that shown on the plates produced? A I know there was an earlier atlas, but what it showed I could not tell you without looking at it. 20

Q You would not attempt to say that the conditions as shown on this plate existed in 1908 and 1909? A No.

By Mr. Hardin.

Q This shows also the Nickel property and the others down the cove? A Yes; this shows the International Nickel property. 30

Q Do you know what these circles represent? A The oil tanks.

Q These are the oil tanks shown on the photographs you produced—some of them? A Some of them; yes.

Q These circles are Standard Oil property? A Yes.

Q Will you kindly point out to the Vice-Chancellor on the map, plate 33, the Andrus property? A I indicate, on plate 33, by placing circles at the corners, the outline of the Andrus property. 40

Frederick Dunham, further direct.

Q Will you also point out to the Vice-Chancellor the tract sold by the Lehigh Valley Railroad to the Standard Oil Company in 1920? A That tract adjoins the Andrus property on the north and is outlined by a yellow tint.

10 Q And does this map correctly state as of the time of June, 1919, or as of the time of the sale, the water coverage of the Lehigh Valley tract so sold and the upland, if any? A That substantially is correct, as the conditions were in 1919, as I recall.

Q Some filling has been done since? A There has been some filling done since—quite a large amount.

Q The only upland in 1919 of the tract sold by the Lehigh Valley to the Standard Oil Company is within the yellow lines as you have stated, as shown on plate 33? A Yes.

20 *By Mr. Bain.*

Q You do not know how much of the Lehigh Valley property which was sold to the Standard Oil Company immediately north of the Andrus property, was filled at the time of the sale? A I could not tell you exactly, but as I recall it, there was about fourteen acres.

30 Q So that at the time of the sale there was much more solid land in that Lehigh Valley property than is shown in this plate 33? A I don't know just what the fill was. I could not tell you that exactly.

Q There was, at the time of the sale, more solid land than shown on plate 33? A Possibly there was. There were building operations going on there at the time.

Q You know as a fact that there was? A I don't know exactly; no, I could not tell you that.

Thomas P. Graham, direct.

THOMAS P. GRAHAM, already sworn as a witness, recalled.

Direct examination by Mr. Hardin.

Q Where do you reside? A 260 Durham avenue, Paterson, New Jersey.

Q What is your business? A My business is real estate, specializing in commercial water front. 10

Q Where is your office? A My office is at 150 Broadway, Manhattan.

Q How long have you been engaged in that business? A About twenty-five years.

Q Does your specializing in water front property include New York Bay generally and extending as far down as the location of the Andrus property? A All around New York Harbor.

Q You are familiar with the Andrus property at Constable Hook? A I am. 20

Q And with the water front property north and south from that property? A I am.

Q And have been for a good while? A I have.

Q Have you had actual transactions in that neighborhood in real estate? A I have.

Q By the way, what is your experience generally, without reference to this property, in handling real estate? A I am chairman of the Committee on Water Fronts & Terminals, New York Real Estate Board, and have been for over ten years, ever since the committee was formed. I have bought and sold properties all around New York Harbor; I have acted as expert for the City of Jersey City, City of Hoboken, State of New Jersey, Pennsylvania Railroad, Baltimore & Ohio Railroad, Central Railroad; for the New York Dock Company, for the American Sugar Refining Company, Consolidated Gas Company, for the Langley Estate and numerous others I do not just recall. 30

Thomas P. Graham, direct.

Q Have you recently sold any property within the immediate neighborhood of this Andrus property? A I have.

Q North or south? A This particular property I had and property to the north and south of it.

10 Q Did you have anything to do with the so-called Packard sale which has been discussed in this case? A Yes; our office was interested in that negotiation.

Q What do you mean by "our office"? A Mr. Kalley was associated and carried on actively in consultation with me.

Q Was the transaction that you had in mind the transaction that resulted in the Packard sale so-called, to the Standard Oil? A It was.

20 Q Who were the brokers in that sale? A The brokers were three, Mr. Annette, Mr. Kalley and I think Mr. Robbins figured originally in the transaction, although I did not meet him in it.

Q Do you happen to know how the riparian rights of that tract were represented at the time of the sale? A Yes.

Q What was the representation as to the riparian rights at the time of the sale?

Mr. Bain. I object to that. The question of riparian rights is a matter of record.

30

The Court. Objection overruled.

A The property had a shore frontage at the shore, the upland shore of 1,250 feet, of which there was 1,125 feet carrying a grant; for the other 125 there was no grant; that fact was communicated to the purchaser at the time.

40 Q That grant was a grant as to the 1,125 feet running how far, if you know? If you don't know, don't try to tell us. A Why, I presume, to the pierhead line that time. I don't know exactly.

Thomas P. Graham, direct.

Q The then pierhead line? A Yes, sir.

Q Will you look at this map, plate 33? Do you find this Packard property indicated on that map? A I do.

Q Marked as such? A Marked as such. All of the Packard property is not there. There was some property on this other side that was included in the sale.

Q It does not show the upland of the Packard tract? A 10
It shows only a portion.

Q Does it show the shore front of the upland? A It shows the shore front of the upland.

By the Court.

Q Where is the Packard indicated? A (Indicating.) This.

Q It is not indicated on the map as "Packard," it is indicated as "Standard Oil"? A "Formerly Packard." 20

Q In pencil? A In pencil—no—I know that that is the location and that that is the property.

By Mr. Hardin.

Q You said that you had to do with a real estate transaction recently with reference to this particular Andrus property. When was that? A That was in 1916.

Q The Andrus property I am talking about now—not the Packard property. A Oh! I have the exact date here somewhere—1920. 30

Q What part of 1920? A In the early part of 1920.

Q What was that transaction? A That transaction was; an agreement was made, an agreement and lease was made for the sale of that property.

Q Which property? A The Andrus property.

Q To whom? A To the Standard Oil property.

Q And the Andrus property as shown on this map, plate 39? A Yes, sir.

Q Do you know what the purchase price was? A I do. 40

Thomas P. Graham, direct.

Q What was it? A \$1,126,125 and rental at six per cent. on the lease until the culmination of this agreement, of \$70,317.50—six per cent. net.

Q On the purchase price? A On the purchase price.

By the Court.

10 Q Culmination of which agreement? A This agreement made for the sale of the property.

By Mr. Hardin.

Q Do you know what the sale included, whether it was subject to anything else or not? A It was subject to the lease.

Q Which lease? A The lease to the Lehigh Valley Railroad.

Q The Andrus lease you referred to? A Yes, sir; having twenty-nine years to run.

20 Q Do you know anything about any contemporaneous arrangement with reference to any other land at the same time? A Well, I understood during these negotiations—

Q How did that come to you? A In the course of these negotiations.

Q What did you learn? A I learned that they were negotiating for the purpose of an adjoining piece from the Lehigh Valley Railroad Company, either at or about that time.

30 Q Does that adjoining piece appear on this plate No. 33? A No; on 39.

Q Does it appear on 33? A Yes.

Q Do you refer, when you speak of an adjoining piece, to the tract shaded, within its outside boundaries, in yellow, on plate 33? A I do.

Q Did you learn, while you were engaged in these negotiations, the price to be paid by the Standard Oil Company for that property? A I heard it testified to by Mr. Van Duzer.

40 Q What was that price? A Approximately \$20,000 an acre.

Thomas P. Graham, direct.

By the Court.

Q Who were the parties to that? A Mr. Roberts and the Standard Oil Company.

Q Was the Lehigh Valley a party? A No.

Q Did the Lehigh Valley participate in the negotiations? A Not that particular negotiation, not as far as I was concerned. Mr. Andrus sold it subject to the lease the Lehigh Valley had on the property. 10

By Mr. Hardin.

Q How do you know about these other negotiations for the adjoining property? A Why, it was discussed during the course of these negotiations.

Q Were they related in any way, as far as you know? A Well, from actual knowledge—they would not purchase one unless they got the other.

Q What was the source of your information? A That is what I gathered from the general talk in connection with the negotiations. 20

Q Do you recall the discussions or arrangements for fixing boundaries? A Yes; I visited Mr. Dunham's office with the engineer of the Lehigh Valley Railroad and another official of the Standard Oil Company, where the question of boundaries were discussed and maps were shown. I also was in Mr. Van Duzer's office with a Standard Oil Company official, where the same matter was discussed. 30

Q What boundaries now have you in mind? A The boundaries that were finally agreed upon as the final boundaries of the Andrus property.

Q As related to what other properties? A As related to the Lehigh Valley property.

Q Adjoining— A Adjoining, and I think the Standard Oil properties to the south.

By the Court.

Q Why was the six per cent. rental included in the contract of sale? A Because the contract was not to be, as 40

Thomas P. Graham, direct.

10 I understood, not to be immediately delivered; the property was to go out of possession of Mr. Andrus into possession of the Standard Oil Company, subject to the Lehigh Valley lease, and until the title actually passed they were to pay six per cent. net on the purchase price until that title passed. The contract was made for a long period.

By Mr. Hardin.

Q Do you know whether the matter relating to the boundary was put in any kind of map form at that time?

A I think that was determined between Mr. Clarkson, who was the engineer from Bayonne, and the Lehigh Valley Railroad Company engineer, Mr. Dunham, and then Mr. Dunham made a map.

Q Have you ever seen that map? A I have.

Q Do you know whether or not that is a copy of it?

20 A I am quite sure it is.

Q And do you know which was the boundary line that was under discussion? A (Indicating.) This one here.

Q The one running from the solid filling line, approved 1883, to the exterior line for piers adopted October 27, 1888? A Yes, sir; to the best of my recollection that was the line in dispute.

Q The line that is indicated on this map as south sixty degrees, 13.52 minutes East 1,270.67 feet? A Yes, sir.

30 *Mr. Hardin.* This map is in evidence already, is it not?

Mr. Stanley. I don't think so.

Mr. Hardin. I offer it.

Mr. Bain. The map appears to have been made by Mr. Dunham.

Mr. Hardin. It is already in evidence. It is Exhibit D. 7.

40 Q Do you remember whether or not the discussion of this boundary matter and this decision as to that dispute

Thomas P. Graham, direct.

took place before or after the contract of Andrus and the Standard Oil, to which you have referred? A Before.

Q Do you happen to know whether it was before or after the sale by the Lehigh Valley to the Standard Oil? A I don't know. I imagine—if that line was the boundary line between the two properties, why it was probable before. 10

The Court. Is the contract of sale, Andrus to the Standard Oil, to be put in evidence?

Mr. Hardin. It can be put in; yes, sir.

Q Now, Mr. Graham, what in your opinion, was the value of the Andrus property, excluding the cribbing and piers and structures or buildings on the piers on June 4, 1919? A \$1,351,350.

Q Do you include in that the benefit, whatever it may be, of the channel? A Whatever benefit—I did not pay very much attention to the channel—I knew the channel was there. 20

Q But you did not exclude it? A I did not exclude it.

Q What, in your opinion, is a fair rental value for the premises? A Six per cent. or \$81,081 per annum—six per cent. on \$1,351,350 is \$81,081 per year or \$20,270.25 for the quarter from June to September, 1919.

Q Is that rental value based on six per cent. net? A Net on my figures of the value of the property? 30

Q What is your judgment as to whether that property is likely to increase or diminish during a ten-year period from June 4, 1919? A I am quite sure it will not decrease, and in all probability will increase in value.

Q In considering the rental value that you have told us, have you given any consideration to the rent being fixed for a term of ten years and the possible future of the property? A Well, not particularly. That was my value on the property on that date, June, 1919. 40

Thomas P. Graham, cross.

Cross examination by Mr. Bain.

Q When did you begin to specialize in the matter of water front property? A About twenty years ago. I sold water front over twenty-five years ago.

Q Where? A Over in Brooklyn, at that time.

10 Q How many pieces? A Oh, I cannot say. I have been selling more or less around the harbor for a good many years.

Q During your whole experience how many pieces of water front property in New York Harbor had you ever bought or sold—you yourself? A Maybe a hundred—not as principal.

Q Maybe less? A Well, not very much less, I should say.

20 Q Can you state the particular properties that go to constitute one-half of that list of one hundred? A I could not, without referring to my books.

Q You have no books here? A No.

Q Will you state generally where the properties were located? A Yes; I could state generally where they were located: On the Brooklyn shore, some on the Manhattan shore and some on the Jersey shore.

Q Will you please state any particular properties, water front properties that you have bought or sold? A Yes. I sold a piece for the American Suger Refinery.

30 Q Where? A On the East River at Newtown Creek, over 1,000 feet of water front.

Q You need not go into a description. Just give the location. A I sold a water front property on 49th street, on the North River.

Q How long ago were those sales? A One was about ten years ago; the other was about seven years ago. I sold one over on the Kill von Kull about four or five years ago.

40 Q What property was that? A Property of George Sterling Crude By-Products Company.

Thomas P. Graham, cross.

Q What part of the Kill—Staten Island? A Staten Island. I sold property at Carteret.

Q That is on Staten Island Sound? A Kill von Kull.

Q How long ago were those two sales made? A Well, the first sale, the Crude sale, I suppose was about six or seven years ago. 10

Q Possibly longer? A Not any longer. The Carteret first sale was probably about ten or twelve years ago, and we sold within the last three or four years, for the treasury of the company that owned that property. I sold property at the foot of North street on the East River. I sold property at the foot of Grand street on the East River.

Q Were you the actual broker who made those sales? A I was the actual broker who made those sales and got the commission. 20

Q Speaking of the last five years, what properties, if any, have you bought or sold anywhere in the harbor?

A I sold this Andrus property, which is one of them, and I was one of the brokers in the sale of the Packard property.

Q You say that your connection with that sale was because of your association with Mr. Kalley? A He is a partner of mine.

Q Is that a regular partnership? A On water front properties. 30

Q Did Kalley bring you in or did you bring him in? A Kalley brought me in.

Q What did you have to do when you came in it? A I discussed with him all the phases of negotiation.

Q With Mr. Kalley? A With Mr. Kalley and Mr. Annette.

Q You did not discuss it with either of the principals? A No; from what I know of the transaction, I know everything— 40

Thomas P. Graham, cross.

Q But you got no commission from the principals? A No more than Mr. Ruhlman did.

Q Who paid your commission? A Mr. Kalley paid me; I got my percentage on it.

Q Did that sum paid you by Mr. Kalley include anything from the commission on the Packard property? A
10 No; not at that time.

Q Where did you get your information as to the riparian grant? A In a letter written by my office to Mr. Bedford.

Q Who wrote the letter. A Mr. Kalley.

Q Well, so your information came from Mr. Kalley? A I have the letter book here and he discussed the letter with me.

Q Your information in that regard came from Mr. Kalley? A Yes.

20 Q Anybody else? A No, but that was the condition under which the property was bought.

Q Your entire information came from that letter of Mr. Kalley's? A No, sir; my discussion with him.

Q Did you discuss that before or after the sale of the Packard property? A Why, before.

Q Now, you say that the Packard property had a grant of land under water in front of 1,125 feet of shore line and did not have a grant in front of 125 shore line; is that right? A That is my recollection.
30

Q Of course, the length of the shore line of that property is much greater than the length of the pier line? A Very much.

Q What was the width of the Packard property on the pier line for which there was no grant? A I don't know. There was only, I should think, about ten per cent. of it.

Q That is what you think? A Well, for 1,250 and for 1,125.

40 Q You do not know what the fact is? A No.

Thomas P. Graham, cross.

Q You do not know whether according to the lines of the grant, when the grant got out to the pierhead line, it might have included the entire width of the pierhead line? A I don't know that it did not. I know there was some land under water—some portion of it for which no grant had been obtained.

Q You know, don't you, that all of these grants are made by descriptions according to metes and bounds? A Usually. 10

Q It is quite possible that in that instance, described by metes and bounds, it would show that the grant included the entire width of the pierhead line? A It might.

Q You have never taken the trouble to investigate that subject? A No.

Q You don't know anything about it? A No. I know that some of the property, part of the property, did not have a grant, which had to be obtained subsequently. 20

Q But the effect of the lack of the grant upon the value of the property, you do not know? A I know that they would have to pay the State Riparian Commission some more money to get that grant. How much I do not know.

Q The price of the Packard property was fixed at a time when it was assumed Mr. Packard had a full grant, was it not? A No. 30

Q Didn't you say that the fact that there was not a full grant was only known to you— A (Interrupting.) No, I said when the property was offered from our office we had obtained the knowledge that there was 125 feet for which there was no grant.

Q Mr. Kalley came into the matter after Mr. Ruhlman? A Not from what I know.

Q You don't know anything about the early history of that sale at all, do you? A Not up to the time we participated in it, no. 40

Thomas P. Graham, cross.

Q Mr. Kalley never enlightened you as to that? A No; he did not.

Q So that there were some things about that transaction that Mr. Kalley did not tell you about? A I don't know whether Mr. Kalley knew about Mr. Ruhlman until some time afterwards.

10 Q Don't you know that Mr. Ruhlman was authorized to purchase that property or to sell that property long before you knew anything about it? A No. We knew that Mr. Annette had it in writing on the back of an envelope authorizing him to offer that property at a certain price to my knowledge. Mr. Ruhlman came in—

Q (Interrupting.) When did you first know that Ruhlman had anything to do with it? A I learned subsequently about Mr. Ruhlman. He came into the office and saw Mr. Kalley and wanted a check.

20 Q You never knew that Mr. Ruhlman was in it until after the matter you described? A Practically, no.

Q That is another thing Mr. Kalley did not tell you? A I don't know whether Mr. Kalley knew.

Q Mr. Kalley was the broker in charge of it? A Mr. Kalley offered the property. I have the letter in which we offered the property directly to the company.

Q You cannot say that that was before Mr. Ruhlman was in it, can you? A I cannot fix a date I don't know anything about.

30 Q Mr. Graham, won't you please state, as near as you can recall it, the date of your first connection with the sale of the Packard property? A About May, 1916.

Q When was the property sold and the date of delivery of the contract for purchase made? A I have a letter in which we speak of the contract to the principals here. The contract was spoken of on the 25th of May. Our original letter was on the 16th of May.

Q Your first connection with the matter was on the 16th of May? A No; a little previous to that.

40 Q How long previous? A Maybe a few days.

Thomas P. Graham, cross.

Q At any rate you came into the matter along about two weeks before the contract was actually made? A I think that is the fact.

Q After Mr. Kalley wrote this letter tendering a contract, was the contract immediately made? A Practically about that time. The contract was made a week after.

10

Q Don't you know that the contract was all agreed upon when that letter was written? A No, I don't know anything of the kind. This letter?

Q Yes. A No.

Q You don't know? A No.

Q In other words, Mr. Kalley did not tell you? A I think Mr. Kalley, if he knew, would have told me.

Q Mr. Kalley did not enlighten you fully as to that, as to the entire transaction? A I do not think Mr. Kalley told me every time he crossed a "t" or dotted an "i" in the course of the general transaction, but we did have transactions of this kind between myself and my associates in business.

20

The Court. Let me have the lease.

Mr. Bain. Here is a copy of the printed book.

Q What did you have to do with the sale of the Andrus property? A Mr. Greve and I were the brokers. We got the commission and we divided it.

Q Are you a partner with him the same as with Mr. Kalley? A No, sir; just in this particular transaction.

30

Q Who brought you into the Andrus matter, the matter of the sale of the Andrus property? A Why, I don't know particularly. I was in the transaction.

Q Who first interested you in the matter? A Probably Mr. Greve.

Q You say "probably," do you know? A He did, yes.

Q In what manner? A In connection with asking the value of this property down here.

40

Thomas P. Graham, cross.

Q That was the way you came into the Andrus matter? A Yes.

Q And that was before the sale of the Andrus property? A It was before the arbitration Mr. Greve consulted—

10 Q (Interrupting.) It was before the sale of the Andrus property? A Yes, of course.

Q So that your first connection with the Andrus property was when you were retained as an expert for the purposes of this case? A Oh, no. Mr. Greve and Mr. Fox consulted me as to the value of that property before they attempted to arbitrate.

Q Mr. Greve was the arbitrator appointed by Mr. Andrus? A Yes, sir.

Q Before any attempt at arbitration was made he consulted you, did he? A I presume it was.

Q You set an appraisal on the property? A Yes.

20 Q And gave it to Mr. Greve? A Yes.

Q Do you recall what that was? A Approximately what I set, approximately about \$30,000 an acre.

Q Your present value is somewhat less than that? A \$30,000 an acre.

Q That was your first connection with the Andrus property when you were retained to make an appraisal? A The first connection with the Andrus property, yes.

30 Q What actual connection did you have with the sale of the Andrus property and when did that occur? A Right after the arbitration I knew it. He consulted me as to different phases of the property. I suggested we ought to sell that property to the Standard Oil.

Q You suggested the property ought to be sold? A Yes.

Q When was that? A Sometime in 1919 I suggested it, after the arbitration failed.

Q And after this suit was started? A I don't know. It may be. I think it was after the suit was started.

40 Q Then you suggested the property ought to be sold? A Yes.

Thomas P. Graham, cross.

Q To whom did you make that suggestion? A To Mr. Andrus—no, to Mr. Greve, first.

Q Then, what was done so far as Mr. Andrus and Mr. Greve were concerned? A I took up the matter with Mr. Perry, of the Standard Oil Company, the matter of the probably purchase of this property.

Q You discussed probable purchase— A (Interrupting.) With Mr. Perry, yes. 10

Q Were you authorized to represent Mr. Andrus in that transaction with the Standard Oil? A I was authorized to represent Mr. Andrus. He said: "Offer it to them if you think you can sell it."

Q Was that in writing? A No. We do not have to have it in writing in New York.

Q This property was in New Jersey? A Yes, but the contract was made in New York. At any rate they did not question my authority and paid my commission. 20

Q Just when did that occur, that is, when did Mr. Andrus authorize you to offer the property for sale? A Well, I cannot exactly tell. I saw Mr. Andrus maybe a dozen times.

Q Then you went to Mr. Perry? A Yes.

Q Of the Standard Oil Company? A Yes.

Q You told Mr. Perry what? A I said if he would buy that property I could deliver it for Mr. Andrus.

Q Then you passed out of it? A No, I did not. I saw Mr. Perry not once but maybe twenty times, and Mr. Andrus and Mr. Greve and Mr. Fox, and we negotiated back and forth. 30

Q Mr. Fox is an associate of Mr. Greve's, is he not? A Yes. We negotiated I guess for three or four months.

Q You call that negotiation, do you? You simply talked about a probable sale? A No, because it was a case where were wanted \$30,000 for the property. They said if they had a twenty-nine year lease it was not worth \$30,000.

Q You recognized that it was not worth \$30,000? A With the twenty-nine year lease on it. Without the lease 40

Thomas P. Graham, cross.

it was worth \$30,000, and then they made offers below that and finally we compromised on the price.

Q Was the price as paid the price you fixed at any time? A The price that was paid was less than the price we fixed.

10 Q So that the price you put on the property was not paid? A It was, because the price we put on the property without the lease was what was paid. With the lease on it it was only worth what they paid. Without the lease it was worth what I said.

Q In fact, the price paid was less than the value you put on the property? A I said the property was worth \$30,000. That was without the lease.

Q What did you say the price was per acre? A \$1,126,125.

By the Court.

20 Q Per acre? A No, \$25,000 an acre.

By Mr. Bain.

Q You said something about there being in connection with that transaction a rental of six per cent. until the culmination of the agreement, amounting to \$70,317.50; is that right? A Yes, that is right.

Q That was not a rental at all, was it? A Why wasn't it?

30 Q I am asking you. Don't you know? A I consider it as rental. They are in possession of the property.

Q Was not this what occurred: A price was fixed, the deed was not to be delivered for some time and that during the interval between the making of the contract and the delivery of the deed, six per cent. was to be paid upon the money? A That is the fact.

Q That was not a rental? A Well, I think—

The Court. Interest on the principal.

40 Q That was not by way of rental? A Well, you can say it either one way or the other.

Thomas P. Graham, cross.

By the Court.

Q It was not so stipulated, was it? A Well, the agreement will speak for itself. I don't remember that particular clause in it. I rather think the rental proposition was talked of at the time.

By Mr. Bain.

10

Q Do I understand you to say that Mr. Andrus was to get rent from two sources after he made this agreement—rent from the Lehigh Valley and also rent from the Stanadrd Oil? A How could he? They took it subject to the lease. The Standard was the new tenant.

Q Don't you know that the lease was terminated? A Well, I have not heard so.

Q What? A I have not heard so.

Q Don't you know that another lease was made by the Standard Oil to the Lehigh Valley of the Andrus property? A I heard about that.

20

Q So that you know that after that contract of sale was made, so far as any lease was concerned, the Lehigh Valley was not to pay any rent to Mr. Andrus? A I did not say the Lehigh Valley. The Standard Oil Company was to pay Mr. Andrus.

Q What you do is to construe this agreement to pay six per cent. on the principal of the purchase price as an agreement to pay rent? A Well, I am quite positive the question was discussed as rent during the negotiations. Now, whether it is in the contract or not, the contract will speak for itself.

30

Q As a matter of fact, you don't know about it? A I saw the contract. I was present when it was signed. I heard it discussed.

Q But you don't know about that? A Well, I cannot say positively. My recollection is not entirely clear on it. I know the word "rental" was used many, many times.

40

Thomas P. Graham, cross.

Q This six per cent. was payment by the Standard Oil Company to Mr. Andrus? A Yes.

Q Don't you know that a lease was made by the Standard Oil Company to the Lehigh Valley of the Andrus property? A Why, I understood so.

10 Q Don't you know that the rental that the Lehigh Valley paid the Standard Oil Company, under that lease, is \$10,000 a year? A Why, I understood so.

Q Don't you know that the rental that the Lehigh Valley paid the Standard Oil Company, under that lease, is \$10,000 a year? A No; I do not.

Q That is one feature of the transaction you do not know? A That happened subsequently to me.

Q Mr. Graham, you do know that, don't you? A No.

Q You never heard it? A No.

20 Q You do not know what rental the Lehigh Valley had agreed to pay? A No; not until you mentioned that sum this moment.

Q The first time you heard it? A Yes.

Q You do know there was a lease? A Yes; I know they went in possession under a lease—I understood that.

Q A new lease? A I understood they cancelled the old one and made a new one.

30 Q You have made no attempt to ascertain the rental paid under that lease? A I do not think I have.

Q It did not interest you at all? A I do not think it did.

Q Don't you think that that would be of interest to you, the fair rental to be paid on that lease? A No. That is merely a business deal between the two parties—the lease as I understood, to allow them to use the property until they had their new terminal at Gavin Point.

40 Q Didn't you know that this lease, even if it was a business matter between the parties? A (Interrupting.) I know that the Lehigh Valley was developing a terminal

Thomas P. Graham, cross.

at Gavin's Point, and were negotiating to get out of Bayonne and locate at Gavin's Point, and until they could transfer their activity to Gavin's Point, the Standard Oil agreed to let them stay there.

Q Have you not made a miscalculation in some of the figures you gave us. You said that the price was \$1,126,125 and that six per cent. of that was to be paid as rent. That is your statement? You say that six per cent. on that sum amounts to \$70,317? A Yes. There was \$2,750 additional to be paid for some reason to Mr. Andrus. 10

Q That you do not know? A I know that \$2,750 was to be paid for some reason.

Q So that when you said \$70,317 was six per cent. you made a mistake. A I made a mistake. There is that \$2,750 paid for some other reason in addition to this six per cent., for six per cent. on the purchase price \$67,567.50. 20

Q That is something more you do not know about this transaction? A Well, I don't know very much about that.

Q There is a whole lot that you do not know about the transaction? A Not so very much, no.

Q You think you know all about it? A I know a great deal about it.

Q You said that the price paid by the Standard Oil Company to the Lehigh Valley Railroad Company for the property immediately adjoining the Andrus property on the north was approximately \$20,000 an acre? A Yes. I took your statement yesterday of something over \$10,000 for under the water and somewhere around \$20,000 for the— 30

Q (Interrupting.) You base your estimate as to the price upon the testimony here yesterday? A No. I heard Mr. Van Duzer, what he paid for the property, and I know my figure of \$20,635 and a little over \$10,000 for the land under water. I know that. 40

Thomas P. Graham, cross.

Q Don't you know that the testimony you have heard of the price paid for the Lehigh Valley property was about \$19,000 an acre? A It was something over \$19,000.

Q \$19,040 and some cents—was that right? A That is approximately \$20,000.

10 Q \$19,040 you say is approximately \$20,000? A Speaking off-hand.

Q Speaking off-hand? A Yes.

Q A mere detail of \$1,000 in a transaction of forty-five acres or more does not mean anything in your mind? A I think it does. I am merely repeating to you—

Q If it meant much, you were justified in advancing the suggestion that the price paid by the Lehigh Valley was \$30,000 an acre? A I merely did that on your statement; I had in mind the two prices for it.

20 Q Don't you recollect that when the figure of \$20,000, the approximate figure of \$20,000 was mentioned yesterday, I was careful to ask Mr. Dunham what the exact price was? A I may have skipped that.

Q What is that? A I may have skipped that, but Mr. Van Duzer told us what the price was.

Q You do not think, in valuing that class of property, that a difference of \$1,000 an acre, cuts much figure? A Yes, sir; I will say \$19,000 an acre, to be accurate.

30 Q You say in valuing the Andrus property you did not pay much attention to the channel. Would you place the same value on the Andrus property without the channel as you place on it with the channel? A I know, in addition to the purchase price paid to Mr. Andrus, the Standard Oil were going to pay for the channel and every other improvement put on that property, and for that reason I gave the value which I did and said I knew the channel was there.

40 Q So that the price included the value of the channel and the improvement? A No; it did not.

Thomas P. Graham, cross.

Q Did it include the channel? A No; my understanding is that the Standard Oil Company paid in addition for that.

Q For the channel? A For the improvements, for the structures and cribbing.

Q Where did you ever get that notion? A Because they took it subject to the lease and in the discussion following the purchase the matter was stated in my hearing. 10

Q That is a mere surmise on your part without any foundation? A It is not a mere surmise without any foundation.

Q They bought the property with the channel? A Yes.

Q They paid for the property with the channel leading to it? A They paid for the property subject to the lease. 20

Q They paid for the property with the channel leading into it? A The channel was leading into it.

Q The price that was paid for the property was with the channel leading into it? A It was the price, yes; but that does not say they bought the channel.

Q The price they paid included the value given to the land with the channel? A What is that?

Q The price that was paid for the Andrus property included the value given to that property by the channel? A It was sold subject to the terms of the lease and under the lease Mr. Andrus would have to be paid for that channel at the end of the lease. 30

Q That is your construction of the lease? A Yes.

Q Cannot you answer my question yes or no? The price paid for the Andrus property included the value given to the property by the channel? A No; not in my opinion, because they pay for the channel afterwards; they are to pay for the channel in addition to that.

Q When and how? A The contract with the Lehigh Valley Railroad will tell you. 40

Thomas P. Graham, cross.

Q To your knowledge? A To my knowledge it is subject to that, that they are to pay the Lehigh Valley Railroad Company for all improvements put on that property.

Q Including the channel? A Yes; everything.

10 Q Whoever made that statement? A It was made in the course of the negotiations.

Q Who made it? A Mr. Perry.

Q Anybody else? A I don't know who else was in the discussion.

Q How much money altogether is Mr. Andrus's purchase price, \$1,126,125? A Yes.

Q That is what Mr. Andrus gets? A Yes.

Q You valued the Andrus property at \$30,000 an acre? A I did.

20 Q When did you first put that valuation on the property? A When Mr. Greve first asked me what I thought of the value of that property.

Q How long ago is that? A Sometime previous to the arbitration.

Q How long ago in years—two years? A No; in 1919 some time, latter part of it.

Q Two years ago? A Pretty nearly two years ago.

Q Nothing that has happened in two years has changed your mind on that subject? A No; not at all.

30 Q You are still of the same opinion today as you were two years ago? A I am.

Q You put a price on the property before the property was sold? A Yes.

Q Before you knew of the sale of the Lehigh Valley property to the north? A Yes.

Q Those two sales have not changed your mind in the least? A Not in the least.

Q How do you reconcile your figures at \$30,000 an acre for the Andrus property with \$19,000 per acre paid for the Lehigh Valley property immediately to the north?

40 A Because I consider the Andrus property worth at

Thomas P. Graham, cross.

least 33 1-3 per cent. more than the Lehigh Valley property.

Q 33 1-3 per cent. more? A At least.

Q Well, is that at least or at most? A I would say it was worth that much more.

Q About a third more? A Yes, a third or more—the difference between \$19,000 and \$30,000, that is the difference in my opinion in the value of these two properties. 10

Q Why? A Well, in the first place, the Andrus property is on the Kill von Kull; the Lehigh Valley property is faced more on what you call the Bayonne cove, further away from deep water, further away from the natural channel.

Q Go ahead. A It is further away—at that time—well, those are the two principal reasons.

Q The only reason in your mind for the any difference in the value between the Andrus property and the Lehigh Valley property immediately to the north is because the Andrus property fronts on the Kill von Kull, you say? A Nearer the natural channel. 20

Q Where the Lehigh Valley property—(Interrupting.) Lies to the north. Q (Continuing.) And because the Andrus property is nearer to the deep water off Kill von Kull than the Lehigh property? A Yes.

Q Are not both of these matters offset by the deep water channel running into the Andrus property? A I don't quite get the drift of that question. 30

Q The whole point of your differentiation between the values of the two properties is because of the access to deep water? A I say nearer the natural channel, not the artificial channel.

Q What value is that, if it is just as difficult to reach the natural channel as it is from the Andrus property? A It is not just as difficult. It is much nearer at that point of the Andrus property.

Q These two properties adjoin? A Yes, sir. 40

Thomas P. Graham, cross.

Q So that as far as approximation in value is concerned, there is not much difference? A There is considerable difference.

10 Q Don't you think that because of the deep water channel leading into the Andrus property, that both the Lehigh Valley property and the Andrus property have access to deep water? A No; I do not.

Q Why not? A I don't see how the Lehigh Valley property could connect with this deep water channel outside of the pierhead line without having the consent of Mr. Andrus, but they could without his consent inside the pierhead line.

20 Q You mean to say that in your opinion the owner of the Lehigh Valley property could not use that channel outside of the pierhead without the consent of Mr. Andrus? A I just said that they could outside but not inside.

Q They could? A Yes, but not inside. There is a public channel.

Q The channel outside of the pierhead line is a public channel? A Yes.

Q And just as available to the Lehigh Valley property as to the owners of the Andrus property? A When he gets there, yes.

30 Q It is perfectly feasible for the owner of the Lehigh Valley property to get to that deep water channel from the Lehigh Valley property? A Yes, but it is a much longer distance than it is from the Andrus property.

Q Well, how much longer? A Well, I would say five or six hundred feet; maybe a thousand feet.

Q You say that off-hand? A I am just looking at the map. Well, that is a very small scale.

Q As a matter of fact, that channel enters the Andrus property at the northerly side of that property? A Yes.

40 Q And the southerly side of the Lehigh Valley property? A No.

Thomas P. Graham, cross.

Q Approximately. A I think the southerly side of the Lehigh Valley is considerably north of the channel.

Q Of the pierhead line how much north? A Well, not so far at the pierhead line.

Q How far? A Well, I cannot tell here from this map. 10

Q A few feet? A Well, maybe a few hundred feet.

Q Oh, no; a few feet; measure it? A I cannot. This map is about 500 feet to the inch.

Q Take any map you have got there and tell us. A On the scale here, it would be two or three hundred feet.

Q The Andrus property is only six hundred and some odd feet? A 621 feet.

Q How wide is the pier of the Andrus property? A 100 feet I think.

Q 100 feet? A Yes.

Q That leaves 500 feet. Don't you know that it is 200 feet? A Well, it is a very wide pier. I can tell you in a minute. The pier itself, according to this map, is only 78 feet. 20

Q Mr. Graham, there is not any reason why the owner of the Lehigh Valley property cannot use the channel running into the Andrus property? A Outside of the pierhead line.

Q And it is perfectly feasible to use that property, that is, for the owner of the Lehigh Valley property to use that channel? A It is a physical possibility to dredge a channel beyond the point already dredged, entering the deep water channel outside the pierhead line. 30

Q You say the channel leading to the Andrus property gives no value to the Lehigh Valley property to the north? A Well, it would probably give a little.

Q It does some? A Yes; not as much as if it ran right up to the property.

Q Why does it give any value? A Because of the possibility of dredging a channel to connect with the deep water channel outside of the pierhead line. 40

Thomas P. Graham, cross.

Q Mr. Graham, the value of both of these properties depends largely upon their having access to deep water, is not that so? A Yes, and the better the access the more value it has.

Q The better the access— A (Interrupting.) The more value it has.

10 Q Do you think there would be better access to deep water, if the channel was continued from the Andrus property in a southerly direction to the Kill von Kull?

A I presume that the people who dug that channel knew what they were doing, if they wanted thirty-five feet for some purpose. I understood this channel was dug by the Bethlehem Steel Company to use deep draft ore vessels coming from Cuba.

Q A deep channel is an advantage to water front property? A Yes.

20 Q And of greater advantage than a shallow channel?

A Yes, as a general proposition.

Q You fixed a rental of six per cent. on the Andrus property? A Yes.

30 *The Court.* Is it a fact that the lease, the basis of this suit, has been abrogated or terminated and that a new lease has been made between the Standard Oil Company and the Lehigh Valley Railroad Company and that the beneficial ownership at least is in the Standard Oil Company and not in Andrus?

40 *Mr. Bain.* The lease involved in this suit, I am informed, was assigned to the Standard Oil Company. It appears that a contract has been made between Mr. Andrus and the Standard Oil for the sale of this property. Of course that contract, according to my information, has not yet been carried out. We cannot say that the lease has been cancelled. We assigned it to the Standard Oil Company.

Thomas P. Graham, cross.

By Mr. Hardin.

Q Who is Mr. Van Duzer? A Mr. Van Duzer is a real estate and tax agent of the Lehigh Valley Railroad.

Q And did you meet him in connection with this matter? A Yes; I met him in connection with this matter when a question of settlement of these questions of rent came up, and also in connection with the lines when they were fixed by Mr. Clarkson and Mr. Dunham and I do not remember the name of the Lehigh Valley engineer. 10

Q You knew while this negotiation was going on, that there was a dispute between Mr. Andrus and the Lehigh Valley as to the construction of the lease? A I did.

Q You never undertook to construe the lease for yourself? A No.

Q In the appraisals that you have made, have you undertaken to do anything more than give us the value of the property, excluding the cribbing and piers and buildings or structures of the piers? A That is right. 20

Q You have included in your figures whatever value the channel may lend, whether it is little or large? A Well, I say that I knew that the channel was there.

Q You have not excluded any benefit to the property that there is in the channel? A No.

Q Did I understand you to say that Mr. Perry claimed that under the lease the cost of the channel had to be paid? A I understand that they were to pay for all the improvements on the property, including the channel. 30

Q That is what Mr. Perry claimed? A That is what was stated in these negotiations.

Q That was not your construction of the lease, was it? A No.

Q Who was Mr. Bedford, that you mentioned? A President of the Standard Oil Company of New Jersey. 40

Thomas P. Graham, cross.

Q What was the date of that letter that you mentioned, or that communication from your office to Mr. Bedford in the Packard matter—the first letter? A 16th of May, 1916.

Q Is that the letter which you referred to as the offer having been presented with reservation of the riparian right? A Yes, it was.

Q Do you think the Packard property is comparable, for the purpose of valuation, with this Andrus property? A I do not.

Q Why not? A Well, in the first place, the Andrus property is on the Kill von Kull, surrounded by developed property. The Packard property is on what we call the Bayonne cove—it might be called the Bayonne cove—with no development on either side. It had an area of practically 145 acres, of which 100 or more was mud flats, pretty nearly three miles from the upland to the pierhead line; it had, with a short frontage of 1,250 feet only 341 feet of width at the pierhead line, or about an average of two and a half feet to the acre, compared with the area of the Andrus property, over fourteen feet to the acre. It was much closer, practically within a thousand feet, of twenty-foot water in a natural channel right up against the development of the Standard Oil Company and other manufacturing properties. Constable Hook is the nearest point between Communipaw three or four miles to the south and Constable Hook, to the natural channel, while the Packard property was at least three miles from the natural channel—mud flats—shaped like a wedge 1,250 feet on the upland and coming out in a narrow point to 341 feet on the outside—an entirely different kind of property, in my opinion, and not comparable in any way.

Q Was there an increase in value of property in this neighborhood between 1915 and 1919, in the neighborhood of the Packard property and in the neighborhood of the Andrus property? A Oh, there was a general increase in all water front properties during that period.

Thomas P. Graham, cross.

Q Do you know of any demand for property in this neighborhood, in the general neighborhood of the Andrus property? A Yes.

Q Other than from the Standard Oil? A Yes.

Q What is your knowledge? A Did I state about obtaining an option on the property known as American Cottonseed Oil property?

10

Q Where is that property? A In Bayonne, on the Kill von Kull to the south of this property.

Q When? A About 1919, and paid \$25,000 for the option. The price was fixed in the option. They bored and found, to get the necessary water, the cost was absolutely prohibitive, and the option was not exercised and the \$25,000 was forfeited. The Sulphur Company bought the property at the foot of the Boulevard in the last year or so.

Q Is the American Cottonseed Oil property that you refer to shown on any of these maps? A I do not think it goes down to that point. It is just below here—I can show it on this map, I think. No; it does not.

20

Q Opposite the Standard Oil? A Well, it is this side of Bayonne Point, north of Bayonne Point.

Q There is rock along there so that they could not channel out? A We bored there and we found ledge rock, maybe twenty or thirty feet below there.

Q For that reason these people did not locate there? A Did not locate there.

30

Q You mentioned the Sulphur Company—where did they locate? A They bought property practically at the foot of the Boulevard.

Q When was that? A Within a few months. I understand the City of Bayonne is going to condemn that for park purposes and is not going to allow them to locate there.

Q In your opinion, are the values of the property along the Kill von Kull below the Andrus property, more comparable or less comparable with the Andrus prop-

40

Thomas P. Graham, cross.

erty for the purpose of valuation than the Packard property? A More comparable.

Q Why? A Because of their location.

Q You think that the Andrus property is somewhat more valuable than the Packard property and somewhat less valuable than the property on the Kill von Kull, the sales of which have been mentioned, don't you? A Well, they average some there from \$50,000, and I put \$30,000 on this property.

Q My question is this: Do you consider the Andrus property somewhat more valuable than the Packard property and somewhat less valuable than the property on the Kill von Kull, the sales of which have been mentioned, don't you? A I consider it more valuable than the property to the north and somewhat less valuable than the property to the south.

Q How much less valuable the property is, is largely a matter of judgment? A Largely a matter of judgment.

Q The Union Sulphur Company, about which you spoke, is the old Hotel Loterette? A Known as that.

Q It was the site of the old Hotel Loterette? A Yes; the site was the old Hotel Loterette.

Q That is at the foot of Broadway, Bayonne? A Approximately at the foot of Broadway.

Q The price per foot on that was about \$27,000 an acre, was it not? A I think it was.

Q That is on the deep water of the Kill von Kull? A Yes; it is a long, narrow strip that had a very narrow upland, with an intervening street that would have to be closed if the property could be used to any great advantage. It was not suitable for any pier. The pier-heads and bulkheads were coincident. It was practically a bulkheaded proposition. For that reason it has not much of the advantages that some of the other properties have.

Q How many acres were included in the sale of the hotel property to the Union Sulphur Company? A

Thomas P. Graham, cross.

Something about ten acres, I think, upland and land under water.

Q Do you know? A That is my information.

Q Don't you know it was over twenty-seven acres? A No, I do not.

Q You do not know how many acres were involved in that sale? A I know there was considerable upland back of that street, but I do not think there was any twenty-seven acres. I was spoken to, only the other day, by a party who said something about ten acres. 10

Q Was not that ten acres between First street and the pierhead line? A I don't know. He said that is what they paid for. I am sure the property was not bought for \$27,000 an acre for twenty-seven acres.

Q In your study of water front values you have not obtained that information as yet? A Well, my information on that is ten acres, and I so consider it.

Q This Cottonseed Oil property, that was on the Newark Bay side? A It was not. 20

Q Along on First street? A No, the Cottonseed Oil property is only four blocks south of this Loterette property, not over four or five blocks south. It is this side of Bayonne Point. It is only three or four blocks to the south of the Loterette property.

Q In answer to a question of Mr. Hardin's, you said in placing a value of \$30,000 an acre on the Andrus property, you did not exclude the benefit because of the channel. Just what did you mean? A I meant that I knew the channel was there. There was a benefit there. 30

Q My point is this: I think you can readily answer the question. Does your value of \$30,000 an acre for the Andrus property include whatever value that property had because of the channel leading into it and the access that the channel gives the property to deep water? A Practically.

Mr. Hardin. Your Honor asked about the agreement with Andrus and the Standard Oil with ref- 40

Thomas P. Graham, cross.

erence to the sale of this property. I now offer in evidence copy of that agreement, in lieu of the original, with the consent of Mr. Bain, dated May 24, 1920.

(Marked Exhibit D. 11.)

10 *Mr. Hardin.* There was an accompanying letter from Mr. Perry to Mr. Andrus which should be offered with it.

Mr. Bain. I object to the letter on the ground that we are not bound by this letter.

Mr. Hardin. I offer it as part of the agreement. It is a letter from Mr. Perry to Mr. Andrus.

Mr. Bain. I do not see how Mr. Perry, by a letter, could vary the terms of the written document.

20 *The Court.* He could if Mr. Andrus accepted it.

Mr. Hardin. It is not objected to upon the ground that it is not the original?

Mr. Bain. No. I objected to it upon other grounds.

The Court. It appearing that it was sent by Mr. Perry to Mr. Andrus, accompanying the agreement and was accepted by Mr. Andrus?

30 *Mr. Davidson.* Yes.

Mr. Bain. There is no proof of that. Counsel said so.

The Court. Do you still object?

Mr. Bain. No; not under those circumstances.

Marked Exhibit D. 12.

The Court. Have you any more testimony, Mr. Hardin?

Mr. Hardin. No; I do not think we have any more testimony.

William C. Koehler, direct.

WILLIAM C. KOEHLER, sworn for complainant in rebuttal.

Direct examination by Mr. Bain.

Q Are you connected with the Standard Oil Company of New Jersey? A Yes, sir.

Q What is your business? A I am general manager of the Bayonne Refinery. 10

Q How long have you held that position? A Four and a half years. I have been at Bayonne two years as manager and two years as superintendent, or two and a half years as superintendent.

Q You have general charge of the refinery at Bayonne? A Yes.

Q Are you familiar with conditions there and with the property of the Lehigh Valley Railroad Company to the north of the Andrus property that was purchased by your company? A I am. 20

Q Do you know when those properties were purchased by you? A Yes.

Q For what purposes were they purchased? A Incidental to business enterprises negotiations were carried on during the war period to meet business requirements at that time.

Q Was it to meet those business requirements that the property was purchased by your company? A That is the idea. 30

Q What can you say as to whether those business requirements continue? A Well, they do not continue. They have dropped off fifty-five to sixty per cent. since 1918, since the Armistice was signed. For a time after the Armistice was signed, up until the latter part of the summer of 1919 business continued nearly at the same ratio as during the war. Then it dropped off quickly and it is now approximately fifty-five to sixty per cent. of what it was during the war period.

Q Did you buy these properties for any particular purpose? A The demand for lubricating oil during the 40

William C. Koehler, cross.

war period was excessive. We were forced to look for more ground to extend our lubricating departments and we figure these departments would need that ground and we naturally purchased the property.

10 Q Have these departments been extended on that property? A They have not been extended. We can make more lubricating oil with that department as it then existed than we can expect to be able to sell for some years to come.

Q Has your company given up its plan to extend its plant on this newly acquired property? A All improvement of the new property that has been purchased from the Lehigh Valley Railroad and the Andrus section has been absolutely abandoned.

20 Q Is the property purchased at Bayonne Point under your recommendation? A Recommendation of the manufacturing committee.

Q Are you a member of that committee? A I am now, yes, and have been for the last few years.

Q At the present time, assuming that your company did not own these two properties, would your company consider purchasing them?

Mr. Hardin. I object. They have bought them.

The Court. I will allow the question.

A No.

30 Q Would they pay anything for these properties like the prices actually paid for them, at this time?

Mr. Hardin. Objected to.

The Court. Objection sustained.

Cross examination by Mr. Hardin.

Q What is your position? A I am manager of the works.

40 Q Are you a director of the Standard Oil Company of New Jersey? A No, sir; I am not.

William C. Koehler, cross.

Q There are other members of the company occupying positions like your own? A Yes.

Q How many? A Seven, now.

Q Situated where? A At Eagle Works, Jersey City; Bay View Works, Elizabeth; Baltimore Works, Maryland; Charlestown, South Carolina; Baton Rouge, Louisiana.

Q Do the duties of your position include the purchase of real estate? A No; it includes the recommendation to purchase property when it is needed. 10

Q At the time this property was bought you recommended its purchase at this price? A The Manufacturing Committee, consisting of the managers, recommended it.

Q You joined in that recommendation? A Yes.

Q You thought it was a good price to pay in 1919 and 1920 for this property? A No; I did not.

Q Well, you approved the purchase? A I approved the purchase for the reason that we thought we needed the property. 20

Q The Standard Oil enterprise is world-wide, is it not? A Nearly so.

Q And they have long had a refining plant at Constable Hook? A Well, they have been there since '76.

Q What property did they own in 1876? A Well, they bought the original plant. That was there at that time. I do not know just who it was bought from. That was before my time. 30

Q Is that the property that immediately adjoined the Andrus property on Constable Hook? A Part of it.

Q That is the original plant? A That is the original plant.

Q Since that time they have acquired a great deal other real estate in the neighborhood? A They have acquired some, yes.

Q And have greatly enlarged the original works? A They have. 40

William C. Koehler, cross.

Q And the original works now extend over land that has been purchased within recent years? A Tank storage, yes.

Q These negotiations, you say, for this property, occurred when? A Latter part of 1918, as I remember it.

10 Q The negotiations continued through 1918? A Well, the Lehigh Valley property, the negotiations were practically completed November, 1919, when the first agreement was entered into and the property practically bought.

Q The first agreement, was the agreement of November 1, 1919? A That is the time the first agreement was signed.

Q And that agreement related to the property within the Hook just north— A Yes, the Lehigh Valley tract,
20 144 acres.

Q North of the Andrus property? A Yes.

Q Still leaving the Andrus property in between the Lehigh Valley tract and the one then purchased and your own plant? A Part of it.

Q Was the agreement signed November 1, 1919? A Well, it was on November 1st; I think it was November 21.

Q Why do you call it the first agreement? A Well, that was the time the negotiations ended for that prop-
30 erty. The negotiations had gone along for quite some time.

Q Was the price agreed on in November, 1919? A Yes.

Q Was the agreement made in writing in reference to it? A Yes, sir; the agreement was made in writing.

Q You have not that agreement with you? A No; I have not.

Q The price was agreed on? A Yes; the price for the upland property was \$20,626, but there was a lot of property that was under water, which was bought for a
40

William C. Koehler, cross.

lower price and the average was \$19,000 per acre for all of the Lehigh Valley property, as I remember it.

Q You called this agreement in November the first agreement; was there another agreement? A No; not with the Lehigh Valley property, except as I understand an extension of a lease, when some of the titles or some of the parcels—

Q (Interrupting.) Did the negotiation include in any way any relationship to the Andrus property? A I do not think at that time. 10

Q What do you mean by the first agreement? Was there another agreement that you had in mind with somebody else? A No; that was the agreement—

By the Court.

Q Was the second agreement the Andrus agreement? A The Andrus agreement was the second agreement, but there was one we had for the Lehigh Valley property. 20

By Mr. Hardin.

Q The other agreement you referred to was the Andrus agreement? A Yes; that was May 24, 1920, as I remember.

Q When did the negotiations begin? A Well, that I could not say exactly. That was carried on for quite some time prior to May, 1920.

Q Did you participate in those negotiations with the Lehigh Valley? A No; we had a real estate department that handles all these things. All we do is make recommendations. They look after details. 30

Q It was submitted to the Board of Managers, of which you were a member, before it was closed, however?

A Only the approval of the price and consummation of the sale.

By the Court.

Q And the desirability—does that mean the desirability? A The desirability, yes. 40

William C. Koehler, cross.

By Mr. Hardin.

Q You approved it before November, 1919? A We approved the purchase of the property, yes.

Q How long had the negotiations been running, do you know? A Since 1918.

10 Q When did the negotiations for the Andrus property begin? A That I do not know.

Q Was your Board of Managers consulted about that too? A I think Mr. Perry could tell you, our real estate lawyer.

Q Was your Board of Managers consulted about that acquisition of the Andrus property? A They were, but I am not sure about the dates.

Q You approved of that also? A I did approve of it, yes.

20 Q And the managers approved of the price and the desirability in acquiring the Andrus property as well as the Lehigh Valley property? A Yes, but after the Board of Managers approved the Board of Directors had to approve.

Q And they did approve because the deal was closed? A Yes, it was approved.

Q For the Andrus property as well as the Lehigh Valley? A Yes.

30 Q Do you know whether the Andrus negotiations were under way at the time in November, 1919, when the first agreement was made? A I don't know.

Q In the Board of Managers was there any discussion of the desirability of acquiring the Andrus property as well as the Lehigh Valley property? A Not at that time.

Q That came later? A That came later.

Q Do you remember what the price of the Andrus property was as submitted to your Board of Managers? A I do not. I know the purchase price.

40 Q The purchase price of the Andrus property? A Yes.

William C. Koehler, cross.

Q What was that? A \$25,000 an acre.

Q Do you know what that included, or did you then know that was the price? A Well, it was so many acres of ground.

Q You do not know? A No specific stipulation.

Q You have never seen the contract? A No.

Q You have never seen the deed, if there be a deed? 10
A No.

Q Who was in actual possession of the Andrus property in November, 1919, when you were negotiating for the adjoining property with the Lehigh Valley? A The Lehigh Valley Railroad Company.

Q Any particular enterprise located there—what use was being made of the Andrus property? A Railroad tracks running to the piers.

Q Any warehouses or anything of that kind? A 20
No.

Q Nothing but a bare railroad? A Oh, yes; the Navy commandeered part of that property for storage during the war and they had some temporary buildings there.

Q The Government put them there? A Yes.

Q And the Government removed them? A The Government removed them.

Q What is the property now? A The same as left at that time.

Q Is it the same now as it was on June 4, 1919? A 30
Practically.

Q And prior thereto? A Yes.

Q The fall in trade that you have spoken of is quite recent? A No; it had been since the Fall of 1919.

Q Since the fall of 1919? A Oh, about the latter part of the summer.

By the Court.

Q The latter part of what? A Latter part of summer, 1919. 40

William C. Koehler, re-direct.

By Mr. Hardin.

Q Had it begun before you concluded these negotiations for the purchase of the Lehigh Valley property?

A Oh, no, it had not; the negotiations for the purchase of the Lehigh Valley property were started in 1918, when we were at war.

10 Q They were started you say in 1918, and the first contract was made in November, 1919? A It took about ten months to go through the negotiations.

Q And the negotiations were concluded and your company took the property in November, 1919? A That is right.

Q The slump in trade was evident before that? A Well, even if the trade had all gone we would have been compelled to take the property; we agreed to take it; the negotiations were completed.

20 Q When were the agreements signed up? A November, 1919.

Re-direct examination by Mr. Bain.

Q Did I understand you to say that the agreement for the purchase of the Lehigh Valley property was made in May, 1919? A November 21st.

Q That was when the agreement was made? A Yes.

30 Q When was the deed actually delivered? A That I do not know.

Mr. Bain. I want to ask another question which I think will be open to criticism from the other side.

Q Assuming that your company had not purchased the Lehigh Valley Company property and the Andrus property, would you at this time recommend the purchase of this property?

The Court. You asked that and I permitted it.

William C. Koehler, re-direct.

Q Would you recommend the purchase of those properties at the prices paid?

Mr. Hardin. Objected to.

The Court. Objection sustained.

CASE CLOSED.

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Exhibits.

EXHIBITS.

EXHIBIT C. 1.

10 Map of Bayonne water front on New York Bay, by Walter M. Clarkson.

EXHIBIT C. 2.

20 United States Government chart of New York harbor (on page 9 it appears that complainant's counsel produced a map marked "Pierhead and Bulkhead lines for the westerly shore of the upper bay, New York harbor, Clifton, Staten Island, to Hudson River, including the northeast shore of Staten Island, N. Y., Jersey front and Ellis Island included, prepared by the New York Harbor Line Board," but the government chart seems to have been substituted for this).

EXHIBIT P. 1.

October 19, 1921.

30 Original lease, dated June 5, 1889, between John E. Andrus and F. Joseph Sheehan.

(Printed as Schedule "A" in Bill of Complaint, at p. 7.)

EXHIBIT P. 2.

October 19, 1921.

40 Assignment of lease from F. Joseph Sheehan to Robert H. Sayre.

(Printed as Schedule "B" in Bill of Complaint, at p. 10.)

*Exhibits.***EXHIBIT P. 3.****October 19, 1921.**

Assignment of lease from Robert H. Sayre to Lehigh Valley Railway.

(Printed as Schedule "C" in Bill of Complaint, at p. 11.) 10

EXHIBIT P. 4.**October 19, 1921.**

Agreement dated March 22, 1909, between John E. Andrus and Lehigh Valley Railway.

(Printed as Schedule "D" in Bill of Complaint, at p. 13.) 20

EXHIBIT D. 1.

Map showing sales of property in neighborhood of Andrus property.

EXHIBITS D. 2, 3, 4 AND 5.

Photographs "A", "B", "D" and "E", respectively. 30

EXHIBIT D. 6.

Blueprint map showing points where photographs were taken.

EXHIBIT D. 7.

Map made under direction of Frederick Dunham. 40

Exhibit D. 11.

EXHIBIT D. 8.

Agreement between Standard Oil Company and John E. Andrus as to right of way.

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EXHIBIT D. 9.

Bayonne, Plate 39, extract from Hopkins' Atlas Hudson County, Volume 1, showing property and improvements at Constable Hook, Bayonne.

EXHIBIT D. 10.

20 Jersey City-Bayonne, Plate 33, extract from Hopkins' Atlas, showing New York Bay property as far as Gavin Point.

EXHIBIT D. 11.

30 THIS AGREEMENT, made this 24th day of May, Nineteen hundred and twenty, by and between JOHN E. ANDRUS (widower), of the City of Yonkers, County of Westchester and State of New York (hereinafter called the "Seller"), and STANDARD OIL COMPANY, a corporation organized and existing under and by virtue of the Laws of the State of New Jersey, residing at and having its principal place of business at Bayonne, New Jersey, and having an office at 26 Broadway, Borough of Manhattan, City and State of New York (hereinafter called the "Purchaser"),

WITNESSETH: That the Seller agrees to sell and convey, and the Purchaser agrees to buy:

40 ALL that lot of upland, without the improvements thereon, situate, lying and being at Constable Point

Exhibit D. 11.

in the City of Bayonne, County of Hudson and State of New Jersey, which was conveyed by Peter C. Cornell, Andrew E. Douglas and Alexander H. Bullock, as Trustees, to the Seller by deed dated the 1st day of November, 1881, and recorded in the Hudson County Register's Office on the 27th day of January, 1883, in Liber 375 of Deeds, page 354, together with all the right, title and interest of the Seller in and to the lands under water lying in front of the said premises, excepting, however, all improvements made by the present tenant and any sub-tenant. 10

SUBJECT, however, to the following:

1. A certain indenture of lease made by the Seller to F. Joseph Sheehan, dated the 5th day of June, 1889, and recorded in the Hudson County Register's Office on the 12th day of September, 1890, in Liber 514 of Deeds, page 90, which lease was assigned by the said F. Joseph Sheehan to Robert H. Sayre, by assignment dated September 8th, 1890, and recorded in the Hudson County Register's Office on the 12th day of September, 1890, in Liber 514 of Deeds, page 93, and further assigned by the said Robert H. Sayre to the Lehigh Valley Railroad Company by assignment dated September 8th, 1890, and recorded in the Hudson County Register's Office on the 31st day of August, 1900, in Liber 755 of Deeds, page 394, and as the said lease was modified by an agreement made the 22nd day of March, 1909, between the Seller and the Lehigh Valley Railroad Company, and recorded in the Hudson County Register's Office on the 14th day of April, 1909, in Liber 1037 of Deeds, page 184, and also on the 22nd day of April, 1909, in Liber 1025 of Deeds, page 621, which said lease and all obligations thereunder on the part of the Seller to be performed, the Purchaser shall and does hereby assume, and agrees to perform. 20 30

The Purchaser further agrees that if it acquires the lease last above mentioned, it will thereupon execute and deliver to the Seller, his executors, administrators or assigns, a cancellation and surrender thereof. 40

Exhibit D. 11.

2. An agreement modifying the Seller's rights to land under water above mentioned, made by and between the Seller and Andrew E. Douglas, as Trustee &c., dated June 4th, 1889, and recorded in the Hudson County Register's Office on the 12th day of June, 1889, in Liber 482 of Deeds, page 268.

10 3. All taxes, assessments and other governmental liens now or which may hereafter be a lien upon or chargeable to the above described property, which said taxes, assessments and governmental liens the Purchaser assumes and agrees to pay.

4. Any and all rights of way which the Lehigh Valley Railroad Company may have across or over the above described premises.

20 5. Any easement or right of way over and across the said premises by the old road leading to what was formerly known as Terhune's Mill, and any easement or right of way through and across said premises by the road formerly known as Old Hook Road.

6. An agreement dated November 29th, 1901, between Standard Oil Company, a New Jersey corporation, and John E. Andrus.

30 7. Any question which may arise under or in connection with the mortgage made by Thomas E. Davis and wife to Joseph D. Beers, President of North American Trust & Banking Company, in trust, &c., dated November 14th, 1838 and recorded March 2nd, 1839 in 3 Transcript of Mortgages, page 36; and any question which may arise under or in connection with the foreclosure thereof; and any question which may arise under or in connection with the deed given on such foreclosure by Henry W. Newkirk, Sheriff, to Henry Yates and others, dated August 21st, 1843 and recorded September 27th, 1843 in Book 4, page 516.

8. Any state of facts which a survey may show. on the following terms and conditions:

40 FIRST: The Purchase price is ONE MILLION, ONE HUNDRED TWENTY-SIX THOUSAND, ONE HUNDRED TWENTY-FIVE DOLLARS (\$1,126,125.) to which

Exhibit D. 11.

shall be added a further sum computed at the rate of Twenty-seven hundred and fifty Dollars (\$2,750) per annum from the date hereof to the date of the delivery of the deed to the Purchaser, as herein provided, all of which the Purchaser shall pay to the Seller at the office of Central Union Trust Company of New York at the time fixed for the delivery of the deed to the Purchaser by the Central Union Trust Company of New York, as hereinafter provided. 10

SECOND: The deed shall be a bargain and sale deed, subject as aforesaid. Said deed, dated May 24th, 1920, has been executed by the Seller and deposited in Escrow with the Central Union Trust Company of New York (hereinafter called the Trust Company) for delivery to the Purchaser, its successors or assigns, upon the payment to said Central Union Trust Company of New York, for the account of the Seller, his executors, administrators or assigns, of the purchase price herein stipulated (viz: \$1,126,125., plus the sum computed at the rate of \$2,750. per annum, as above provided), on the 1st day of May, 1930, or at such earlier date as shall be fixed by the Seller, his executors, administrators or assigns, by ninety days' notice in writing, delivered to an officer of the Purchaser, except that in case the Seller or his agent is unable to find any officer of the Purchaser in the Borough of Manhattan, City and State of New York, such notice, addressed to the Purchaser, may be delivered to an officer of The Guaranty Trust Company of New York, in the City of New York. No assignment of this agreement or of any rights hereunder shall be made without the consent in writing of the Seller, his executors, administrators or assigns. The deposit with the Central Union Trust Company of New York, of an affidavit by the Seller, his executor, administrator or assignee, or by the agent of any thereof, of the delivery of such written notice to an officer of the Purchaser or to an officer of The Guaranty Trust Company of New York, or any successor or assignee, 20 30 40

Exhibit D. 11.

of the Purchaser, or any successor of said Guaranty Trust Company of New York, shall be conclusive evidence of the giving of such notice, and the fixing of the date, prior to May 1st, 1930, when said purchase price shall be paid.

The Purchaser shall remain liable for the payment of the purchase price hereinabove mentioned, notwithstanding any assignment or transfer of its rights hereunder.

10 THIRD: (a) Pending the payment of such purchase price, and the delivery of the deed to the Purchaser hereunder by the Trust Company, the Purchaser shall, on May 24th, 1920, be let into possession of said property, subject to the lease to the Lehigh Valley Railroad Company, and the other agreements, encumbrances and matters aforesaid, as tenant hereunder, and the Seller does hereby lease
20 said premises subject as aforesaid, to the Purchaser for a term beginning on May 24th, 1920, and ending on the date of the delivery of the deed to the Purchaser hereunder by the Trust Company, at and for the annual rental of Sixty-seven thousand, five hundred sixty-seven and 50/100 Dollars (\$67,-567.50), which said sum of Sixty-seven thousand, five hundred sixty-seven and 50/100 Dollars (\$67,-567.50) the Purchaser hereby agrees to pay to the
30 Seller in equal quarterly instalments in advance, at Central Union Trust Company of New York, for the account of the Seller, or at such other place in New York City as the Seller may in writing designate, on the 24th days of May, August, November and February in each year until the delivery of the deed to the Purchaser by the Trust Company, and receipt is hereby acknowledged of the quarterly instalment of \$16,891.87, due May 24th, 1920.

40 And in addition to the said rents hereinabove mentioned, and as a part of said rent, the Purchaser shall, within thirty days after the same become due, pay, and, (on demand of the Seller) exhibit to the

Exhibit D. 11.

Seller receipt showing the proper payment of, all charges for water and water meter, both regular and extra, imposed or assessed upon the above described premises, until the delivery of the deed to the Purchaser, by the Trust Company; and further, in addition to the said rent above mentioned, and as a part of said rent, the Purchaser shall, within sixty days after the same become due, pay, and (on demand of the Seller) exhibit to the Seller receipts showing the payment of, all taxes, assessments and governmental charges which shall, at any time until the delivery of the deed to the Purchaser by the Trust Company, become a lien upon the above described premises; and further, in addition to the said rent, and as a part of said rent, the Purchaser shall, until the delivery of the deed to the Purchaser by the Trust Company, at its own cost and expense, comply with, conform to, fulfill and perform all present and future requirements of the law, and all present and future ordinances, rules, orders, regulations and requirements of Federal, State, Municipal and other legal and public authorities, now or hereafter existing in relation to and in connection with the said above described premises and any part thereof, notwithstanding that any such present or future laws, ordinances, rules, orders, regulations or requirements require structural changes or result from a change of policy; and further, in addition to said rent hereinabove mentioned, and as a part of the rent, the Purchaser shall pay any expense in connection with the above described property, including loss or damage to persons or property belonging to third parties, while in, about or near the above described premises, provided the Seller shall be liable therefor, and in the event of any suit being instituted at law or in equity, against the Seller, his executors, administrators or assigns, in connection therewith, the

Exhibit D. 11.

Purchaser agrees to pay the entire expense of defending the same on behalf of the Seller, his executors, administrators or assigns, and further agrees to pay whatever damages are awarded, if any.

10 (b) In case the Purchaser shall make default in the payment of rentals under the terms of the said lease, this lease may at the option of the Seller, be terminated by eviction according to law, or by re-entry by the Seller, which re-entry is hereby permitted. In case of any such termination of the lease, the rights of the Purchaser hereunder shall, at the option of the Seller, his executors, administrators or assigns, forthwith cease and said Central Union Trust Company of New York shall, upon notice in writing from the Seller, his executors, administrators or assigns, that this lease and the tenancy thereunder has terminated, and that the Purchaser's rights hereunder have ceased, return the said deed to the Seller, his executors, administrators or assigns, on demand. Upon any proceeding to recover possession of said premises by the Seller, a demand of the rent reserved is waived, and no objection can be taken, because of the failure of the Seller to have demanded any specific sum of money, or the performance of any covenants, 20 (it is agreed that any notice delivered in the same manner as hereinabove provided for the delivery of the ninety days' notice in subdivision marked "Second" hereof, shall be deemed personal notice), but judgment of dispossession shall be given if it shall appear that any sum is due and unpaid under the provisions hereof, or if it shall appear that any covenant herein has not been performed. The remedies above mentioned are not intended to be exclusive, and the Purchaser shall always remain 30 liable for the payment to the Seller, his executors, 40

Exhibit D. 11.

administrators and assigns, of the amount of rent herein provided for, and also (unless the deed shall have been returned as above provided) for the payment to the Seller, his executors, administrators and assigns, of the purchase price hereinabove stipulated, notwithstanding any eviction or re-entry and notwithstanding any assignment of this lease.

(c) The Purchaser shall, within five days, pay, discharge and remove any liens (including conditional bills of sale) or encumbrances of whatever kind and nature, which may be filed against the above described premises, or any part thereof, or fixtures or property therein or against the interest of the Purchaser or Seller, in the said premises, under contracts made by or by reason of, acts done by the Purchaser or anyone claiming under it. 10

(d) No default hereunder shall accrue or be declared against the Purchaser with respect to this agreement until after five days' notice in writing given to the Purchaser in the same manner as herein provided in subdivision marked "Second" for the giving of the ninety days' notice. 20

FOURTH: Upon the delivery of the deed to the Purchaser as herein provided, accrued rentals from the last payment to the date of transfer shall be forthwith adjusted between the parties, but the Central Union Trust Company shall not be concerned in such adjustment, the sole payment to be received by it on the delivery of the deed being the amount of the purchase price herein stipulated, plus the sum computed at the rate of \$2,750 per annum, as above provided. 30

FIFTH: The title to the property to be conveyed herein shall be a marketable title, except the title to land now or formerly under tide water, subject to the lease to the Lehigh Valley Railroad Company and the other agreements and encumbrances and matters aforesaid, provided, 40

Exhibit D. 11.

10 however, that any objection to the marketability of the title to the above described property shall be deemed to have been waived unless communicated in writing to the Seller, his executors, administrators or assigns, within two months from the date hereof; and in the absence of any such objection so made, the said deed in the custody of Central Union Trust Company of New York shall be deemed to convey a good and marketable title to the above described property.

20 SIXTH: There shall be no further liability of any kind whatever on the part of the Seller for future taxes of any kind with respect to the above described property, whether now levied or levied retroactively, and there shall be no further liability on the part of the Seller for payments of any kind in connection with the above described property, all to the end that the net amount of money to be received by the Seller for the purchase price of said property, in addition to the rent as hereinabove provided, shall be the same net sum plus the sum computed at the rate of \$2,750 per annum as above provided, which the Seller would have received, provided the deed had been delivered to the Purchaser pursuant hereto, at the date of this agreement; provided, however, that nothing herein contained shall be construed to impose on the Purchaser any obligation to pay any income, profit or transfer tax imposed on the Seller, his heirs, executors, administrators, 30 personal representatives or assigns, whether with reference to his ownership or disposition of the above described property or otherwise.

IN WITNESS WHEREOF, the Seller has hereunto set his hand and seal, and the Purchaser has caused this agreement to be subscribed in its corporate name, by its and its corporate seal to be hereto affixed and attested by its Secretary, all the day and year first above written.

40 JOHN E. ANDRUS (L. S.)
STANDARD OIL COMPANY

By F. W. WELLER

President.

Exhibit D. 11.

In presence of:

ALFRED T. DAVISON
as to John E. Andrus

Attest:

C. T. WHITE,
Secretary.

10

(Seal of Standard Oil Company
a New Jersey corporation)

STATE OF NEW YORK)
CITY OF NEW YORK.)
COUNTY OF NEW YORK.) ss.

On this 24 day of May, in the year Nineteen hundred
and twenty, before me personally came JOHN E. ANDRUS,
to me known and known to me to be the individual de-
scribed in and who executed the foregoing instrument,
and thereupon duly acknowledged to me that he executed
the same. 20

(Seal of
Notary)

E. A. MANNING
Notary Public Bronx County
Certificate filed in New York County No. 61.

30

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Exhibit D. 11.

STATE OF NEW YORK }
 CITY OF NEW YORK } ss.
 COUNTY OF NEW YORK. }

10 On this 24 day of May, in the year One thousand nine hundred and twenty, before me a Notary Public personally appeared JOHN E. ANDRUS, who I am satisfied, is the Seller in the foregoing Contract named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

(Seal of Notary) E. A. MANNING
Notary Public of Bronx County
 Certificate filed in New York County No. 61.

20

STATE OF NEW YORK }
 CITY OF NEW YORK } ss.
 COUNTY OF NEW YORK. }

30 On this 24 day of May, in the year One thousand nine hundred and twenty, before me personally came F. W. WELLER, to me known, who, being by me duly sworn, did depose and say that he resided in New York, N. Y., that he is the Vice-President of STANDARD OIL COMPANY, the corporation described in, and which executed the foregoing instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

E. A. MANNING
Notary Public Bronx County
 Certificate filed in New York County No. 61.

40

Exhibit D. 11.

STATE OF NEW YORK }
 COUNTY OF NEW YORK } ss.

Be it remembered, That on this 24 day of May, in the year of our Lord One thousand nine hundred and twenty, before me, the subscriber, a Notary Public personally appeared C. T. WHITE, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the common seal of STANDARD OIL COMPANY, the Purchaser named in the foregoing Contract; that the seal thereto affixed is the proper Common seal of the said corporation, and that the same was so affixed thereto, and the said Contract signed and delivered by F. W. WELLER who was at the date and execution thereof Vice President of said corporation, as the voluntary act and deed of the said corporation, and by authority of said corporation in the presence of said deponent, and that the said deponent subscribed the same as witness to the execution thereof. 10 20

E. A. MANNING

Notary Public Bronx County

Certificate filed in New York County No. 61.

30

40

Exhibit D. 12.

EXHIBIT D. 12.

Copy.

STANDARD OIL COMPANY

etc.

10

26 Broadway

New York, May 24th, 1920.

Mr. John E. Andrus
4 Hudson st.,
Yonkers, N. Y.

Dear Sir:—

20 Referring to the agreement bearing even date herewith, which refers to certain property at Constable Hook, in the City of Bayonne, N. J. on which property the Lehigh Valley Railroad Company now has a lease, we make the following statements to you, as representations upon which you have entered into said agreement:

30 1. The Standard Oil Company, a New Jersey corporation, has been negotiating for the purchase from the Lehigh Valley Railroad Company of the property adjoining on the East the property which you have agreed to convey to this Company, and has also been negotiating for the purchase of the lease on the property which you have agreed to sell to this Company. These negotiations have reached the state wherein this Company and the Lehigh Valley Railroad Company have agreed upon the terms under which said property is to be acquired by this Company and under which the above mentioned lease on your property is to be acquired by this Company. We have every reason to believe that such negotiations will be concluded and that we will, within a short time, become the owner of the property of the Lehigh Valley Railroad Company as

40

Exhibit C. 1, January 23, 1922.

well as become the owner of the lease now held by the Lehigh on your property.

2. As soon as we acquire title to the property of the Lehigh Valley Railroad Company immediately adjoining your property on the East, we will procure and deliver to you, your executors, administrators or assigns, a cancellation and surrender of the lease now held by the Lehigh Valley Railroad Company on your property. 10

This letter shall be construed as an agreement to be a part of, and one of the conditions to be performed under the said agreement between you and this Company, bearing even date herewith. This agreement shall be binding upon any subsidiary of this Company and also upon any company affiliated with this Company.

Very truly yours,

R

F. S. PERRY.

20

EXHIBIT C. 1.

January 23, 1922.

THIS INDENTURE made in duplicate this twenty first day of May One thousand nine hundred and twenty, (1920) between LEHIGH VALLEY RAILROAD COMPANY, a corporation of Pennsylvania, (hereinafter called the Railroad Company) of the first part, and STANDARD OIL COMPANY, a corporation of New Jersey, (hereinafter called the Oil Company) of the second part, 30

WITNESSETH:

WHEREAS by indenture of lease dated June 5th, 1889, recorded in the office of the Register of Hudson County, New Jersey, in Book 514 of Deeds, on page 90, John E. Andrus, of Yonkers, Westchester County, New York, did 40

Exhibit C. 1, January 23, 1922.

grant, demise and to farm let to F. JOSEPH SHEEHAN, for the term of sixty (60) years from said date, certain land, land under water and rights with all appurtenances, situate, lying and being at Constable Hook, Bayonne, Hudson County, New Jersey, as by reference to said indenture of lease will more fully appear, and

10 WHEREAS F. Joseph Sheehan, by deed of assignment dated September 8th, 1890, recorded in the office of the Register of Hudson County, New Jersey, in Book 514 of Deeds on page 93, duly assigned the aforesaid lease of June 5th, 1889 unto Robert H. Sayre, his executors, administrators and assigns, and

20 WHEREAS Robert H. Sayre by deed of assignment dated September 8th, 1890, recorded in the office of the Register of Hudson County, New Jersey, in Book 755 of Deeds, on page 394, duly assigned said lease of June 5th, 1889, unto Lehigh Valley Railroad Company, its successors and assigns, and

WHEREAS by agreements between John E. Andrus and Lehigh Valley Railroad Company, dated November 19th, 1908 and March 22nd, 1909, the said indenture of lease of June 5th, 1889, was modified as by reference to said agreements will more fully appear, and

WHEREAS the Railroad Company now desires to assign and the Oil Company to acquire the said lease of June 5th, 1889, as modified,

30 Now THEREFORE, in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States paid by the Oil Company to the Railroad Company, the receipt whereof is hereby acknowledged, and of the assumption by the Oil Company of all the obligations and liabilities of the Railroad Company arising under said lease as modified, the Railroad Company has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over, unto the Oil Company, its successors and assigns, the aforesaid indenture of lease dated
40 June 5th, 1889, made by John E. Andrus, as landlord, to

Exhibit C. 1, January 23, 1922.

F. Joseph Sheehan, as tenant, and recorded, modified and assigned as hereinabove set forth, together with all and singular the premises and appurtenances therein mentioned and described.

To HAVE AND TO HOLD the same unto the Oil Company, its successors and assigns from the day and year first above written, for and during all the rest, residue and remainder yet to come of and in the term of sixty (60) years mentioned in the said indenture of lease, subject, nevertheless, to the rents, covenants, conditions, and provisions mentioned therein and in the aforesaid agreements of modification. 10

It is understood and agreed that all the buildings and other improvements now on the aforesaid leased lands, have been constructed since the date of the aforesaid assignment by Robert H. Sayre to Lehigh Valley Railroad Company and that title to said buildings and improvements is not transferred to the Oil Company or otherwise affected by this instrument. 20

The Oil Company hereby agrees to assume the rent and to perform and keep all the covenants of the original lessee and the Railroad Company contained in said lease and its modifications as aforesaid and to indemnify and save the Railroad Company harmless from liability for all rents, taxes, assessments, claims, demands, or causes of action whatsoever which shall arise out of or in connection with the said lease of June 5th, 1889, and modifications, or the property covered thereby, subsequent to the effective date of this assignment. 30

The Railroad Company hereby covenants and agrees that it has good title to the aforesaid lease and the right to assign the same as herein set forth and that it has not done or suffered anything whereby said lease and premises thereby covered have been encumbered. In the event of the eviction of the Oil Company from the premises covered by the said Andrus lease by reason of the breach of any of the covenants of the Railroad Company in this 40

Exhibit C. 1, January 23, 1922.

paragraph contained, the Railroad Company agrees to pay and the Oil Company to accept in full satisfaction and discharge of all damages arising therefrom, a sum computed at the rate of \$1000.00 for each year of the term of said Andrus lease remaining unexpired at the date of such eviction, together with interest on said sum from the date of this instrument to the date of eviction.

This indenture shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

LEHIGH VALLEY RAILROAD COMPANY,

By

E. E. LOOMIS,
President.

20

(SEAL)

Attest:

D. G. BAIRD,
Secretary.

STANDARD OIL COMPANY,

By

S. B. HUNT,
Vice-President.

30

(SEAL)

Attest:

C. T. WHITE,
Secretary.

Lehigh Valley

Form Approved
E. H. B.

40

Description Approved
G. T. H.

Exhibit C. 1, January 23, 1922.

Terms and Conditions Approved

R. D. VD.

A. R.

J. F. M.

F. L. B.-F,

G. L. M.

G. W.

10

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } ss.

BE IT REMEMBERED, That on this 18th day of June, A. D. 1920, before me, the subscriber, a Foreign Commissioner of Deeds for New Jersey in Pennsylvania, personally appeared D. G. BAIRD who, being by me duly sworn, does depose and make proof to my satisfaction, that he is the Secretary of LEHIGH VALLEY R. R. Co. party to the foregoing Indenture; that he well knows the corporate seal of the said Company, that the seal thereto affixed is the proper corporate seal of the said Company; that the same was so affixed thereto, and the said Indenture signed and delivered by E. E. Loomis who was, at the date and execution thereof, the President of the said Company, in the presence of deponent, as the voluntary act and deed of the said Company, and that deponent thereupon signed the same as subscribing and attesting witness.

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D. G. BAIRD.

Subscribed and sworn to before me, the day
and year last above written.

(SEAL)

J. WM. ROBBINS,
*A Foreign Commissioner of Deeds
for New Jersey in Pennsylvania.*

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Exhibit C. 1, January 23, 1922.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. } ss.

BE IT REMEMBERED, That on this Twenty-ninth day of June A. D. 1920, before me, the subscriber, a Notary Public, personally appeared C. T. White who, being by me duly sworn, does depose and make proof to my satisfaction, that he is the Secretary of STANDARD OIL Co. (NEW JERSEY,) party to the foregoing Indenture; that he well knows the corporate seal of the said Company, that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said signed and delivered by S. B. Hunt who was, at the date and execution thereof, the Vice-President of the said Company, in the presence of deponent, as the voluntary act and deed of the said Company, and that deponent thereupon signed the same as subscribing and attesting witness.

C. T. WHITE.

Subscribed and sworn to before me, the day
 and year last above written.

(SEAL)

E. A. MANNING,
Notary Public, Bronx County.
 Certificate Filed in New York County No. 61.

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A true copy.

D. G. BAIRD,
 Secretary.

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Conclusions of Vice-Chancellor.

CONCLUSIONS.

Filed March 21, 1922.

ON FINAL HEARING.

For complainant, Messrs. Collins & Corbin.

For defendant, Messrs. Pitney, Hardin & Skinner.

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BACKES, V. C.

On June 5, 1889, John E. Andrus, the defendant, leased to the mediate assignor of the Lehigh Valley Railroad Company, the complainant, his forty-five acre tract of water front and tide-water land on New York Harbor, at Constable Hook, Bayonne, for the term of sixty years. The rent reserved for the first twenty years was \$4,250 per annum, payable quarter yearly in advance. The rent for each twenty-year period thereafter was to be fixed by arbitrators to be selected in manner provided by the lease. In 1909 the periods were reduced to ten years. In 1919 the arbitration failed, and the complainant filed this bill to have the rent determined for the ten-year period beginning June 5, 1919. The jurisdiction of the Court to settle the rent, in substitution of the arbitration, has been decided. *Lehigh Valley Railroad Co. v. Andrus*, 112 Atl. Rep. 307. The premises were waste lands at the time the lease was made and the intent of the parties was that the rent, to be fixed by arbitration, from time to time, was to be on that basis. It is agreed that the measure of rentals of unimproved land is a percentage on the valuation of the land. It was contemplated that the Railroad Company would erect piers and cribbings, and it has; and it was therefore provided in the lease that "in fixing said rentals the arbitrators shall consider the rental value of the premises excluding the cribbing, piers, and structures or buildings on the piers." Much expert testimony, as to the value of the land, was given by gentlemen well qualified to testify, who, as usual, differed widely in their opinions, and stood loyally by their cause. I find little comfort

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Conclusions of Vice-Chancellor.

in what they have said—they are so far apart. One side says the value was not more than \$617,331, while the other is just as confident that the value is not less than \$1,238,737. Their divergent opinions unbalance the scales woefully. If the verdict were confined to their irreconcilable views, it would be a mere guess of an amount somewhere
10 between the two extremes. Happily I am not put to that, for, pending this litigation, the defendant Andrus, the owner, sold the demised premises to the Standard Oil Company for \$1,126,125, at the rate of \$25,000 per acre—subject to the complainant's lease, and I infer, from the testimony and statements of counsel, that the Railroad Company was an interested party in the negotiations, as it, at the same time, sold its lease to the Standard Oil Company, and re-leased the land from it for a term of years, and contemporaneous with the negotiations it sold
20 its 145-acre tract, adjoining the demised premises, to the Standard Oil Company for \$2,821,448—approximately \$19,000 per acre. Here, then, there was a sale to a willing purchaser by willing sellers—an ideal test of value. *Budd v. Van Orden*, 33 N. J. Eq. 143; *Butler Rubber Co. v. Newark*. The tract of the Railroad Company adjoining the demised premises is in its virgin state. The demised premises has the advantage in location, in that it is nearer to deep water—an important factor in the relative values of shore lands—and this to some extent accounts for the difference in price per acre for the two
30 tracts. I adopt the price paid for the demised premises as the value of the land, and as the basis for my calculation of the rental. The improvements referred to in the lease, and which were not to be considered by the arbitrators in their determination, did not enter into the purchase price. The sale was subject to the lease, and the lease provided that upon its expiration the landlord was to take over the piers and cribbing at a price to be fixed by arbitrators. There were, however, two other improvements which figured in the price, and which the
40 experts on both sides included in their estimates. The

Conclusions of Vice-Chancellor.

Railroad Company, during its tenancy, extended the upland into the water by filling with earth, and dredged a thirty-foot deep channel from the docks on the premises to deep water, permitting direct ocean travel. The extent to which these improvements contributed towards raising the sales price must be considered. The fill amounted to within a fraction of ten acres, at a cost of approximately \$9,000 per acre. The complainant's experts estimate the value of the upland and filled land at \$12,000 per acre, and the land under water at \$3,000 per acre, and I take it that the cost of the fill is the difference. It is not denied that the premises were enhanced in value to the extent of this outlay. The channel was dug at an expense of \$283,705.15, and I assume that the enhancement in the value of the demised premises equaled the cost. That was, also, not disputed on the argument. However, in arriving at the price for the Andrus tract, the channel was not looked upon by the Standard Oil Company as alone beneficial to the demised premises. The Andrus property and the Lehigh tract adjoining were bought by it as a unit—the channel would give an outlet to the sea to both. The purchasers were interdependent, and the higher price was given for the Andrus property because of the increased utility of the channel to the common ownership of the two tracts. The value of the channel figured as an item in the gross outlay, and consequently the cost must be apportioned to the two tracts per acre (Andrus tract 45 acres, Lehigh Valley tract 145 acres), and thus, dividing the cost of \$283,705.15 by the total acreage results in a fraction less than \$1,500 per acre, and the total applicable to the Andrus tract of \$67,500. This, and the \$90,000 cost of the fill, deducted from the purchase price of \$1,126,125, leaves \$968,625, and this sum divided by 45 (the Andrus tract acreage), gives the price per acre \$21,525. I think five per cent. of the valuation of unimproved realty a fair, if not a generous, return. Counsel will make the exact calculation.

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Conclusions of Vice-Chancellor.

10 Counsel for the Railroad Company urged that the prices paid by the Standard Oil Company were higher than the market value because of the special availability of the tracts to its adjoining plant, and that this element should figure in the reckoning. The Standard Oil Company was undoubtedly the most likely, but by no means the only possible or probable purchaser. Each tract was, of and in itself, ample in area to invite industries commonly carried on in the locality. The negotiations were initiated at a time when the Standard Oil Company's business called for an expansion of its plant, but the emergency has passed and the scheme of enlargement had been dropped before the purchases were made. There was no pressing necessity for then acquiring either tract. The Standard Oil Company simply took time by the forelock, and, in my opinion, paid no more than any other corporation, having use for and desiring the lands, would have given.

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SUPPLEMENTAL MEMORANDUM.

I decline to grant interest on the award. The defendant is not entitled to it as a matter of law. His conduct does not appeal to my discretion. The complainant was forced to take measures to determine what it owed the defendant. The defendant resisted as the record will show. Had he joined with the complainant to obtain the Court's judgment his position now would be more favorable. The complainant is entitled to costs.

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Final Decree.

FINAL DECREE.

Filed October 11, 1922.

This cause coming on to be heard in the presence of Robert J. Bain, of counsel with the complainant, and John R. Hardin, of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments; and it appearing that the defendant brought a suit against the complainant in the Supreme Court of the State of New York for the County of Westchester, to recover from the complainant for use and occupation of the premises demised by the lease mentioned in the bill of complaint in said cause, for the quarter year beginning on June 5, 1919, and recovered a judgment in said suit against the complainant for a certain sum; and it also appearing that subsequently to the filing of said bill, and on May 24, 1920, the defendant entered into a contract in writing with the Standard Oil Company, a corporation of the State of New Jersey, wherein and whereby the defendant agreed to sell and convey said demised premises to said Standard Oil Company subject, among other things, to said lease, and said Standard Oil Company agreed that if it acquired said lease it would execute and deliver to the defendant, his executors, administrators or assigns, a cancellation or surrender thereof; and it also appearing that on May 21, 1920, the complainant, by instrument in writing, sold, assigned, transferred and set over said lease to said Standard Oil Company, its successors and assigns.

It is, on this 11th day of October, 1922, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby ORDERED, ADJUDGED AND DECREE that the rental to be paid by the complainant to the defendant for the prem-

Final Decree.

ises demised by the lease mentioned in the bill of complaint in this cause, under said lease, for so much of the period of ten years beginning on June 5, 1919, as the complainant was in possession of said premises under said lease, *to wit.*, from June 5, 1919, to May 24, 1920, be and it hereby is fixed and determined at the rate of \$48,431.25 per annum, or \$46,843.34.

10 And it is further ORDERED, ADJUDGED AND DECREED that the complainant shall be credited on said sum of \$46,843.34 fixed and determined as the rental for said demised premises as aforesaid, with any and all sums recovered by the defendant from the complainant in the defendant's suit against the complainant in the Supreme Court of the State of New York for the County of Westchester, for use and occupation of said demised premises for the quarter year beginning on June 5, 1919.

20 And it is further ORDERED, ADJUDGED AND DECREED that the defendant is not entitled to interest on the rental fixed and determined as aforesaid, or on any part thereof, except from the date of this decree.

And it is further ORDERED AND DECREED that the defendant pay the complainant the costs of this suit to be taxed.

E. R. WALKER,

C.

30 Respectfully advised,

JOHN H. BACKES,
V. C.

Notice of Appeal (John E. Andrus).

NOTICE OF APPEAL.

Filed April 10, 1923.

The defendant, John E. Andrus, hereby appeals from the final decree in this cause made on the 11th day of October, 1922, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes. 10

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Defendant.

I conceive there is good cause for appeal in the above-stated cause.

EDWARD O. STANLEY, JR.,
Of Counsel with Defendant-Appellant.

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Petition of Appeal (John E. Andrus).

PETITION OF APPEAL.

Filed April 10, 1923.

New Jersey Court of Errors and Appeals

10	<p><i>Between</i></p> <p style="text-align: center;">LEHIGH VALLEY RAILROAD COMPANY, <i>Complainant-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JOHN E. ANDRUS, <i>Defendant-Appellant.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>On Appeal from</i> <i>Chancery.</i></p> <p><i>Petition of</i> <i>Appeal.</i></p>
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20 *To the Honorable the Court of Errors and Appeals in
the last resort in all causes:*

The petition of John E. Andrus, the appellant in the above-entitled cause, respectfully shows:

30 That your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the eleventh day of October, 1922, in a cause wherein the Lehigh Valley Railroad Company was complainant and John E. Andrus was defendant, in this respect, to wit:

That the said decree adjudges and decrees that the rental to be paid by the complainant to the defendant for the premises demised by the lease mentioned in the bill of complaint in said cause for so much of the period of ten years beginning on June 5, 1919, as the complainant was in possession of said premises under said lease, to wit, from June 5, 1919 to May 24, 1920, be and it was thereby fixed and determined at the rate of \$48,431.25 per annum, or \$46,843.34; and

40 That the said decree adjudges that the complainant shall be credited on said sum of \$46,843.34, fixed and

Petition of Appeal (John E. Andrus).

determined as the rental for said demised premises as aforesaid, with any and all sums recovered by the defendant from the complainant in the defendant's suit against the complainant in the Supreme Court of the State of New York for the County of Westchester, for use and occupation of said demised premises for the quarter year beginning on June 5, 1919; and 10

That the said decree adjudged that the defendant was not entitled to interest on the rental fixed and determined as aforesaid, or on any part thereof, except from the date of said decree; and

That the said decree adjudged that defendant pay complainant costs of said suit to be taxed.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous for that there should have been no such order but that the rental to be paid by the complainant to the defendant should have been fixed and determined at a much higher sum, and that the said complainant should not have been credited with the sums mentioned in said decree, or with any part thereof, and that said defendant should have been allowed interest on any rental fixed and determined in said decree, and that complainant should have been ordered to pay the costs of said suit. 20

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet. 30

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel
with Defendant-Appellant.

Notice of Appeal (Lehigh Valley Railroad Company).

Service of a copy of the within petition is hereby acknowledged this 10th day of April, 1923.

COLLINS & CORBIN,
Solicitors of Complainant-Respondent.

Formal answer filed April 20, 1923.

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NOTICE OF APPEAL.

Filed April , 1923.

The complainant hereby appeals from so much of the final decree made in this court, in the above-stated cause, on October 11, 1922, as fixes and determines the rental to be paid by the complainant to the defendant for the premises demised by the lease mentioned in the bill of complaint in said cause, under said lease, for so much of the period of ten years beginning on June 5, 1919 as the complainant was in possession of said premises under said lease, *to wit.*, from June 5, 1919, to May 24, 1920, at the rate of \$48,431.25 per annum or \$46,843.34 to the Court of Errors and Appeals in the last resort in all causes.

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COLLINS & CORBIN,

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Solicitors for and of Counsel with Complainant.

Dated, April 9, 1923.

I conceive there is good cause for appeal in the above-stated cause.

ROBERT J. BAIN,
Of Counsel with Complainant.

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Petition of Appeal (Lehigh Valley Railroad Company).

PETITION OF APPEAL.

Filed April 20, 1923.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LEHIGH VALLEY RAILROAD COMPANY,
a corporation,

Complainant-Appellant,

and

JOHN E. ANDRUS,

Defendant-Respondent.

*On Appeal from
Chancery.*

*Petition of
Appeal.*

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*To the Honorable the Court of Errors and Appeals in
the last resort in all causes:*

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The petition of Lehigh Valley Railroad Company, a corporation, the appellant in the above-stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the eleventh day of October, 1922, in a cause wherein the said Lehigh Valley Railroad Company was complainant and the said John E. Andrus was defendant, in the following respect: that the said decree adjudges and decrees that the rental to be paid by said complainant to said defendant for the premises demised by the lease mentioned in the bill of complaint in said cause, under said lease, for so much of the period of ten years beginning on June 5, 1919, as said complainant was in possession of said premises under said lease, to wit: from June 5, 1919, to May 24, 1920, be fixed and determined at the rate of \$48,431.25 per annum, or \$46,843.34. And your petitioner humbly appeals from that part of the decree of the

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Petition of Appeal (Lehigh Valley Railroad Company).

Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that such rental should have been fixed and determined at a lower rate and sum.

10 Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

COLLINS & CORBIN,
Solicitors for and of Counsel,
with Appellant.

Service of a copy of the within Petition of Appeal acknowledged this 18th day of April, 1923.

20 PITNEY, HARDIN & SKINNER,
Solicitors of Defendants.

Formal answer filed April 20, 1923.

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NEW JERSEY
Court of Errors and Appeals.

BETWEEN

LEHIGH VALLEY RAILROAD
COMPANY,
Complainant-Respondent,

AND

JOHN E. ANDRUS,
Defendant-Appellant.

} On Appeal and
Cross Appeal
from Chancery.

**Brief for Lehigh Valley Railroad Company,
Respondent and Appellant.**

The Lehigh Valley Railroad Company, complainant in the Court of Chancery, and John E. Andrus, defendant in that Court, have each appealed from the decree of the Chancellor in this case, the appeal of defendant being first in order.

(1)

STATEMENT OF THE CASE.

The statement of the case in the brief for defendant includes much of the argument in his behalf. Briefly the facts are as follows:

The bill was filed for the purpose of having the Chancellor determine and fix the annual rental to be paid by complainant to defendant for certain premises in the City of Bayonne, for a period of ten years beginning on June 5, 1919, under the terms of a written lease. (Case, p. 1.)

The lease, for a term of sixty years, was made on June 5, 1889, by defendant to F. Joseph Sheehan, who assigned it to Robert H. Sayre on September 8, 1890. The latter assigned the lease to complainant on the last-mentioned date and complainant then entered into possession of the premises and continued in possession thereafter.

The lease provides that the rental for the first twenty years of the term should be \$4,250 per year, payable quarterly in advance, and that the rental for the residue of the term should be fixed by arbitrators for twenty-year periods, each party to appoint one arbitrator, and the two arbitrators to select an umpire in case they could not agree upon the rental. On March 22, 1909, the lease was modified by agreement in writing between complainant and defendant so that the rental subsequent to June 5, 1909, should be fixed for periods of ten years each instead of twenty years as provided by the lease, and the rental for the ten-year period beginning on June 5, 1909, having been determined by arbitrators at \$7,500 per year, the modifying agreement so fixed the rental for that period. (Case, p. 7.)

Arbitrators were appointed to determine the rental for the ten-year period beginning on June 5, 1919, but they could agree neither upon the rental nor an umpire. The undisputed testimony on that subject by Mr. Thomas A. Ryer, the arbitrator appointed by complainant, shows that the failure of the arbitrators to agree upon a rental and to select an umpire was not due to any fault on the part of complainant or of the arbitrator appointed by it. (Case, pp. 174-178.)

The jurisdiction of the Chancellor to fix the rental, arbitration having failed, was disputed by defendant

and sustained in the Court below and by this Court (91 *N. J. Eq.* 225; affirmed, 112 *Atl.* 307.

After the filing of the bill, defendant brought suit against complainant in the Supreme Court of New York to recover for complainant's use and occupation of the premises for the quarter year beginning on June 5, 1919, under a clause of the lease which provides as follows:

"If for any cause a valid award fixing rentals shall not be made and delivered at or within the times above limited then the landlord may recover by action from time to time at law or in equity a fair quarterly compensation for the use and occupation of the demised premises."

Complainant sought in this case to restrain the prosecution of the suit in New York, but was unsuccessful. The suit was tried and a verdict rendered for plaintiff (the defendant herein) for \$13,139.28. (Case, p. 20.)

Complainant assigned the lease to the Standard Oil Company, a corporation of New Jersey, on May 21, 1920, and the last named company assumed the obligations of the lease from that date. On May 24, 1920, defendant agreed in writing with the Standard Oil Company to sell and convey the demised premises to that company, which agreement provided, among other things, that the lease should be cancelled when it was acquired by the Standard Oil Company. The question, therefore, was as to the rental to be paid by complainant to defendant from June 5, 1919, to May 21, 1920, considered as part of the rental for a period of ten years beginning on the date first mentioned. (Case, pp. 260-278.)

The case was referred to Vice-Chancellor Backes, who, after hearing, advised a decree fixing the rental for the ten-year period beginning on June 5, 1919, at the rate of \$48,431.25 per annum, or \$46,843.34. (Case, p. 279.) The decree provides that complainant shall be credited on the rental so fixed with any sum recovered by defendant in his suit in New York. Interest on the rent was allowed only from the date of the decree. (Case, p. 283.)

(2)

GROUNDS OF DEFENDANT'S APPEAL.

Defendant appealed on the grounds that the rental should have been fixed at a higher sum; that complainant should not have been credited on the rental with any sum recovered by defendant in his suit in New York; that interest should have been allowed to defendant; and that he should not have been ordered to pay costs. (Case, p. 286.)

GROUND OF COMPLAINANT'S APPEAL.

Complainant appealed on the ground that the rental is excessive. (Case, p. 289.)

BRIEF OF THE ARGUMENT.

I.

THE RENTAL FIXED BY THE DECREE IS NOT TOO LOW BUT IS EXCESSIVE.

The demised premises consist of a plot of land containing 45.045 acres partially under water, on the shore of New York Bay, at what is called Constable Hook, in Bayonne. At the time the lease was made and for many years thereafter, the plot was in its natural condition, almost three-fourths of its area being under water and slightly more than one-fourth upland. There was then a mud flat in front of it overflowed by shallow water, which prevented the use of the plot for deep-draft shipping purposes. Between the years 1914 and 1917, complainant filled in much of the plot which was under water, constructed a pier upon it and dug a channel thirty-five feet deep between it and the deep water of the bay.

It is customary to base rent upon the value of the property rented, and, in this instance, complainant and defendant each produced expert testimony as to the value of the demised premises.

The witnesses for complainant were Mr. Thomas A. Ryer who has been in the real estate business in Jersey City for the past twenty years, has kept a record of the purchases and sales of water-front property along the New Jersey side of the Hudson River, New York Bay and Kill-von-Kull, and has made many appraisals of such property; Mr. Hermann deSelding, a real estate broker and agent having an office in New York City, who has specialized in water-front property in the harbor of New York for the last twenty years; Mr. Charles A. Ruhlmann who has been engaged in the real estate business in Bayonne for about fourteen years, was an assessor of that city from the year 1914 to the year 1918 and is now an expert appraiser for the city; and Mr. Percy A. Gaddis who has been in the real estate business in Jersey City for the past twenty-nine years, was senior land appraiser of the Federal Interstate Commerce Commission for six years prior to the year 1921, has kept a record of the purchases and sales of water-front property along the New Jersey side of the Hudson River, New York Bay and Kill-von-Kull, has made a study of the value of such property, and has made many appraisals thereof.

The witnesses for defendant were Mr. Frederick Dunham, a civil engineer, who, for several years past, has been Harbor Engineer of Jersey City, prior to the year 1914 was associated with Mr. Edlow W. Harrison, at one time engineer of the State Board of Assessors of this State, and since the year 1912 has appraised water-front property for the cities of Jersey City, Hoboken and Bayonne; and Mr. Thomas P. Graham, a real estate broker in New York City for the past twenty-five years, who has dealt in water-front property chiefly in that city.

The testimony of the expert witnesses disclosed that in the year 1916 there were two sales of water-front property on the Kill-von-Kull in Bayonne, a short distance south of the demised premises, at rates of about \$47,000 per acre and \$48,000 per acre, respectively; there was one sale of water-front property on that stream and in that city in the year 1918 at the rate of about \$75,000 per acre; there was one sale of water-front property on the same stream and in the same city in the year 1919 at the rate of about \$56,000 per acre; that in the year 1916 there was a sale of water-front property on the shore of New York Bay in Bayonne (referred to as the Packard property) a short distance north of the demised premises at a price of \$7,500 per acre for upland and \$3,000 per acre for land under water, or an average rate of about \$4,600 per acre; that complainant sold the property immediately north of the demised premises in the year 1919 at a price of \$19,046 per acre; and that defendant, in the year 1920, entered into an agreement to sell the demised premises at a price of \$25,000 per acre. The two sales in the year 1916 of water-front property on the Kill-von-Kull were to the International Nickel Company and all of the other sales, as well as the defendant's agreement to sell, were to the Standard Oil Company, whose great Bayonne refinery adjoins the property it purchased.

According to the prices paid for the demised premises and for other water-front lands on the Kill-von-Kull to the south and on New York Bay to the north, the demised premises *with access to deep water through the channel dug by complainant* are worth less than the lands on the Kill and more than those on the Bay, and such was the unanimous conclusion of all of the witnesses. How much less valuable the demised premises are than the lands on the Kill to the south and more valuable than the lands on the Bay to the north were questions upon which the witnesses differed.

The witnesses for complainant, Messrs. Ryer, deSelding and Ruhlmann valued the demised premises with

access to deep water by the channel dug by complainant and exclusive only of the cribbing, pier and structures and buildings on the pier at \$13,700 per acre or \$617,331, and Mr. Gaddis, the other witness for complainant, valued them at \$15,000 per acre, or \$675,675. Mr. Dunham, one of the witnesses for defendant, valued the premises with access to deep water at \$27,500 per acre, or \$1,238,737.50, and Mr. Graham, the other witness for defendant, at \$30,000 per acre, or \$1,351,350. (Case, pp. 31, 81, 107, 152, 180, 223.)

The reason for the wide difference of opinion of the expert witnesses as to the value of the demised premises is that the witnesses for complainant thought them more nearly comparable to the lands on the Bay, while the witnesses for defendant thought them more nearly comparable to the lands on the Kill. The demised premises are at the end of Constable Hook and *on the Bay side*. The lands on the Kill front on deep water, while the demised premises have a mud flat in front of them, as have other lands on the Bay. Plainly, the demised premises more nearly resemble the lands on the Bay than they do those on the Kill.

Vice-Chancellor Backes, being unable to reconcile the conflicting views of the witnesses, based his conclusion as to the value of the demised premises solely on the price paid by the Standard Oil Company for them.

Mr. Koehler, general manager of the Bayonne refinery of the Standard Oil Company and a witness for complainant, testified that during the war in Europe the demand for lubricating oil produced by that company was excessive; that the company was forced to extend its plant for producing such oil, and needed the demised premises and those immediately to the north owned by the complainant, for that reason. Such demand continued after the armistice was signed and until the latter part of the summer of 1919. Negotiations for the purchase of both properties were begun while the demand existed. Mr. Graham, one of the witnesses for defendant, who acted for defendant in the negotiations

for the sale of his property, testified that negotiations for the purchase of both properties were carried on at the same time. After the negotiations for the purchase of both properties were completed, the business of the Standard Oil Company fell off and the urgent necessity for extending its plant ended, but the company felt obligated to purchase both properties. The agreement to purchase complainant's property was made in November, 1919, and to purchase the demised premises in May, 1920. Aside from the condition of the negotiations for the purchase of the demised premises at the time complainant's property was purchased, it is evident that having purchased complainant's property, and paid dearly for it, the Standard Oil Company was compelled to purchase the demised premises for the usefulness of the property purchased from complainant depends largely upon uniting it with the demised premises for the purpose of continuity and the use of the deep-water channel leading to the latter. Mr. Koehler testified that his company gave up its plan to extend its plant on the demised premises and the property to the north of them, purchased from complainant, and would not now purchase those properties at any price if it did not own them. The purchases by the Standard Oil Company were the direct result of conditions produced by the war, and not purchases under normal conditions.

It is common knowledge that the year 1920 was most abnormal from an economic viewpoint. The buoyant effect of the war in Europe reached its climax in that year. Business had begun to fall off, but extravagant expenditures continued. The prices of that year are unsafe guides as to value.

Mr. Ruhlmann testified that no new industries have located at Constable Hook in the last eight years and his testimony in that regard was not contradicted. Indeed it is supported by the sales mentioned by the witnesses for they were all either to the Standard Oil Company or the International Nickel Company both of which had established plants at the time of their purchases.

Mr. Dunham testified that ordinary industries would not be located near an oil plant, the only industries which would be located in the vicinity of such a plant being sulphur plants or those of a similar character. It is plain that the market for the property under consideration, and that formerly owned by the complainant to the north of it, is limited, and it is doubtful if anyone other than the Standard Oil Company would purchase them, even if the present depressed business conditions did not exist.

The two properties purchased by the Standard Oil Company adjoin its great plant. Mr. Ryer testified that the owners of large plants usually pay more than the ordinary value of adjoining property for the purpose of adding it to such plants, which is a matter of common knowledge. Mr. Ruhlmann, who has been and is fully conversant with local conditions in Bayonne, testified it is common knowledge that the Standard Oil Company pays exorbitant prices for property adjoining its plant and that fact is recognized by the local assessors. Mr. deSelding and Mr. Gaddis testified that the prices paid by that company in these instances were excessive. The prices so paid do not represent ordinary value under all circumstances to any person, *quanti omnibus valet*; nor what the properties can be sold for, *quanti venire potest*; nor what the owner can sell them for, *quanti vendere potest*; but their value to the purchaser for its use, *utilitas*. The distinction between ordinary market value and value to a purchaser for a particular use was recognized by the Supreme Court in the case of *Erie Railroad Company v. The State Board of Taxes and Assessment and Borough of East Rutherford* (opinion filed June 7, 1921, and not yet reported). In that case the company purchased a large tract of land on the Hackensack meadows for the purpose of diverting a creek and eliminating a drawbridge. It paid at the rate of \$200 per acre for the land. The borough assessed the land for taxes at that value, but the Court reduced the value for taxation to \$75 per acre on proof

that such was the ordinary value, saying that the purposes for which the land was purchased were special conditions. For convenience a copy of the opinion in that case is attached hereto.

If the property of complainant which the Standard Oil Company has purchased and the demised premises which it has agreed to purchase, were offered for sale by it at this time, assuming that present conditions were normal, they would not bring prices equal to those paid by that company, for they would not have as great a value to an ordinary purchaser for separate use as they would have for use by the company as a part of its large and long-established plant.

The price the Standard Oil Company has agreed to pay for the demised premises and that which it paid for the complainant's property to the north of them indicate only the value the company supposed the properties would have to it for a special purpose under abnormal conditions. They do not prove ordinary value to any person nor what they can be sold for under normal conditions, *i. e.*, their market value. The defendant could not have asked such prices at any time and obtained them from any other purchaser in the market, and the Standard Oil Company could not do so to-day even if conditions were normal. In view of the evidence that there are no purchasers for property in the vicinity except that company, it is probable that if the company desired to sell the property it purchased, a purchaser or purchasers at any price would be hard to find. The value of the demised premises for the purpose of fixing a rental for them is their market value and that value should not be determined according to some special value they and the property adjoining them on the north may have had or may have to a particular purchaser for a special purpose. The learned Vice-Chancellor erred in concluding that the Standard Oil Company paid no more than the general market value of the demised premises. Under normal conditions and in a general market, the demised premises with access to

deep water would not have a value in excess of that stated by complainant's witnesses.

But defendant is not entitled to a rental based upon the value of the premises as filled by complainant and with access to deep water by the channel dug by complainant.

The lease provides as follows:

"In fixing said rentals the arbitrators shall consider the rental value of the premises excluding the cribbing, piers and structures or buildings on the piers."

By express provision of the lease, defendant is not entitled to a rental based upon the value of the premises with the pier and the structures or buildings on the pier constructed by complainant.

The value given to the premises by the other improvements made by complainant, including the deep-water channel, should also be excluded in determining the rental, as the Vice-Chancellor held.

The general rule is that a written lease is to be construed according to the intention of the parties thereto, and that such intention is to be gathered from the whole instrument rather than from a single clause thereof. There is also a familiar canon of construction that all contracts, including leases of every description, shall be most strongly construed against the grantor, and that if there be any doubt and uncertainty as to the meaning of any such lease, it shall be construed most strongly in favor of the grantee. Leases are not necessarily to be construed according to their strict letter, and this is especially so when such construction would defeat the manifest intent of the parties as gathered from the whole instrument. See 24 *Cyc.*, pp. 914, 915.

The only improvements to be made by the tenant which are mentioned in the lease are cribbing, piers and structures and buildings on the piers. There is no express covenant in the lease as to any improvements by the tenant other than those expressly mentioned therein, and no covenant by defendant to pay for any other im-

provements at the expiration of the term. It must, therefore, have been intended that all other improvements would belong to the tenant, would be for his benefit alone, and the defendant would have no interest therein either during the term or at the expiration of it, following the rule of law. Such intention, so far as defendant is concerned, appears from his agreement to sell the demised premises to the Standard Oil Company. By that agreement he agreed to sell:

“All that lot of upland, without the improvements thereon, situate, lying and being at Constable Point in the City of Bayonne, County of Hudson and State of New Jersey, which was conveyed by Peter C. Cornell, Andrew E. Douglas and Alexander H. Bullock, as Trustees, to the seller by deed dated the 1st day of November, 1881, and recorded in the Hudson County Register's Office, on the 27th day of January, 1883, in Liber 375 of Deeds, page 354, together with all the right, title and interest of the seller in and to the lands under water lying in front of the said premises, excepting, however, all improvements made by the present tenant and any sub-tenant.”

It will be observed that defendant excepted not only improvements *on the premises* for which the tenant is entitled to compensation at the expiration of the term by express provision of the lease, but also *all improvements made by the present tenant and any sub-tenant*, in which the defendant has no interest.

In the absence of express covenant for improvements, other than those mentioned in the lease, and for the payment by defendant to the tenant of compensation for such other improvements at the expiration of the term, defendant would not be entitled to any benefit from such other improvements either during the term or at its expiration, and if he is given the advantage of them in fixing rentals during the term or outright at the end of the term, it would be without consideration to the tenant. It cannot be assumed that the tenant intended to make

improvements for the benefit of the defendant without consideration.

The manifest intention of the parties to the lease was that all improvements made by the tenant should be excluded in fixing rentals; certain improvements by express provision because of the interest defendant had in them under his covenant to pay therefor at the expiration of the term, and all other improvements because he would not be entitled to any benefit from them as a matter of law.

Vice-Chancellor Backes properly concluded that defendant is not entitled to a rental based upon the value given to the demised premises by the fill and the channel dug by complainant, but he failed to make sufficient allowance for the channel. It cost complainant \$283,705.15, which, if apportioned to the forty-five acres in the premises, equals \$6,300 per acre. Only \$1,500 per acre was allowed for it on the theory that it enhanced the value of the premises to the north, containing one hundred and forty-five acres, formerly owned by complainant, as well as the demised premises, and that its cost should be spread over both parcels. That was erroneous.

The demised premises should be considered separately and not as part of a large parcel consisting of them and the adjoining property to the north. Separately considered, the demised premises enjoy the benefit of the full cost of the channel. If it ~~is~~ was not in existence, the owner of the demised premises would have to bear the full cost of getting it.

The theory by which the cost of the channel was spread over the demised premises and the adjoining parcel because of benefit to both through their continuity in a single ownership, requires that the prices paid for both parcels should be averaged to determine the value of the demised premises. The price paid for the demised premises was \$25,000 per acre, while the price paid for the adjoining parcel was at the rate of \$19,000 per acre, an average of \$22,000 per acre for

both. The value of the demised premises at such average rate would be \$990,000. If the proportionate cost of the channel and the cost of the fill placed by complainant on the demised premises as determined by the Vice-Chancellor are deducted therefrom, the value of the demised premises for present purposes would be \$833,000 in round figures.

On the other hand, if the full cost of the channel and the cost of the fill are deducted from the full price paid for the demised premises, the value thereof would be \$752,420. The matter is about as broad as it is long.

But the theory of allocating part of the cost of the channel to the property adjoining the demised premises is erroneous. Its full cost as well as that of the fill should be deducted from the value of the demised premises with access to deep water by the channel, as stated by complainant's witnesses.

As to the value of the fill, the undisputed testimony of complainant's witnesses was that the unfilled portion of the demised premises is worth \$3,000 per acre and the filled portion \$12,000 per acre, and, therefore, the Vice-Chancellor was justified in concluding that the fill was worth \$9,000 per acre.

Counsel for defendant refers to the testimony of Mr. Ryer, complainant's witness, to the effect that the price paid for the Packard property on the Bay, north of the demised premises, was \$7,500 per acre for upland and \$3,000 per acre for land under water, and that he valued the land under water in the demised premises at the rate of \$3,000 per acre but increased the value of the upland to \$12,000 per acre because of the fill, as indicating that the difference between the value of filled and unfilled land is \$4,500 per acre and not \$9,000 per acre. But counsel fails to distinguish between natural upland needing no filling and filled land.

Mr. Dunham, defendant's witness, testified that the unfilled land immediately north of the demised premises without access to deep water sold for \$19,000 per acre, while it would be worth from \$30,000 to \$35,000 per

acre if it was filled and had access to deep water. He estimated the cost of a channel at \$2,500 per acre (pp. 186, 199, 200). According to his estimate the difference between the value of filled and unfilled land is about \$9,000 per acre as Mr. Ryer testified and the Vice-Chancellor found.

The witnesses for complainant testified that a return of five per cent. on the value of the demised premises is fair and Mr. Dunham, defendant's witness, admitted that it is (p. 204). It is not only fair, but liberal, considering that the rental is net and the lease was of unimproved property, for a long term, and contemplated improvements by the tenant.

II.

DEFENDANT IS ENTITLED TO INTEREST ONLY FROM THE DATE OF THE DECREE.

If a contract does not provide for interest it can only be awarded as damages for the wrongful withholding of money.

Hills v. Aetna Life Insurance Co., 39 N. J. L. J. 132.

The lease in this case does not provide for interest and there has been no wrongful withholding of money by complainant for which interest can be allowed as damages.

The rental to be paid by complainant for the period involved was determined for the first time by the decree in this case. It was unliquidated and complainant cannot be charged with default in the payment of an unliquidated debt. It is stated in 22 *Cyc.*, p. 1497, that

“Before interest as damages will be allowed for the breach of a contract to pay money there must in general be a default in the payment of the principal debt, but interest is usually allowed from the time of such default. Obviously, a party cannot be in default in the payment of a

debt until the debt is ascertained in amount, or capable of ascertainment, and hence default, so as to render a party liable for interest, cannot occur unless the sum due is certain. There must also be certainty as to the time of payment before there can be a default in payment for which interest as damages will be allowed; but the time of payment is sufficiently certain if it is capable of being fixed by implication or by the nature of the transaction."

The following cases are cited in *Cyc.* in support of the principle above stated:

Cox v. McLaughlin, 76 *Cal.* 60; 18 *Pac.* 100; 9 *Am. St. Rep.* 164.

Black v. Reybold, 3 *Harr. (Dell.)* 528.

Ditch v. Vollhardt, 82 *Ill.* 134.

Adams Express Co. v. Milton, 11 *Bush (Ky.)* 49.

Burnham v. Best, 10 *B. Mon.* 227.

Needham v. Wellesley, 139 *Mass.* 372; 31 *N. E.* 732.

Gray v. New Jersey Cent. R. Co., 89 *Hun.* 477; 35 *N. Y. Suppl.* 378.

Holmes v. Rankin, 17 *Barb.* 454.

Still v. Hall, 20 *Wen.* 51.

Richards v. Citizens Natural Gas Co., 130 *Pa. St.* 37; 18 *Atl.* 600.

Kelsey v. Murphy, 30 *Pa. St.* 340.

In re Sugar Notch Borough, 18 *Kulp.* 429.

Durfee v. O'Brien, 16 *R. I.* 213; 14 *Atl.* 857.

Spencer v. Pierce, 5 *R. I.* 63.

Greer v. Latimer, 47 *S. C.* 176; 25 *S. E.* 136.

Waggoner v. Gray, 2 *Hen. & M. (Vir.)* 603.

Caledonian R. Co. v. Carmichael (Eng.) *L. R.* 2 *H. L. Sc.* 56.

In the case of *North Hudson Railroad Co. v. Booraem*, 28 *N. J. Eq.* 593, a mortgagor conveyed part of the mortgaged premises to a railroad company for its track, and, pending foreclosure of the mortgage, the

company condemned the land conveyed to it, making the mortgagee a party to the proceedings, the obligation of the company to pay any part of the award in satisfaction of the mortgage being contingent upon the residue of the mortgaged premises being inadequate to satisfy the mortgage. Justice Depue, who wrote the opinion of the Court of Errors and Appeals in that case, said:

“But the company entered into possession under a conveyance by Wood, the mortgagor, for an adequate consideration. So far as he is concerned, the company is not liable for the payment of any portion of the mortgage debt. Its liability is solely to the mortgagee and is contingent upon the residue of the mortgaged premises primarily liable being inadequate to pay the mortgage debt. The liability of the company is not only in itself dependent upon a contingency, but, until the happening of that contingency, the amount of its contribution is also unliquidated. It will not be in default until the contingency happens, and the sum it is bound to pay is ascertained. This cannot be done until sale is made of the residue of the mortgaged premises. A tender or readiness to pay before the sum payable is ascertained would be superfluous. Interest, therefore, cannot be allowed on the ground of any default of the company heretofore incurred.”

When the demand has been liquidated by the report of a master or a decree of the court it is the usual course to allow interest from that time.

Ryckman v. Parkins, 5 Paige (N. Y.) 543.

Complainant cannot be charged with interest as damages because of the delay in fixing the rental. The lease provided for determination of the rental by arbitration. Complainant appointed an arbitrator and he endeavored to agree upon the rental with the arbitrator appointed by defendant. Failing in that, he sought to

agree upon an umpire, but was unsuccessful. It being impossible to fix the rental by arbitration, complainant filed its bill in this cause on May 31, 1919, praying for the fixing of the rental by the Chancellor. Its course in that regard has been sustained by this Court. Complainant did all that it could to have the rental determined. It is not responsible for the ordinary delays of the litigation. On the other hand, the fixing of the rental by the Court has been delayed by the action of defendant. He endeavored to set aside the service upon him of process in this cause, and attacked the jurisdiction of Court of Chancery. Being unsuccessful in his motion to dismiss the bill for lack of jurisdiction, he appealed from the decision on that motion to this Court, thus causing much delay.

Complainant had the use of the demised premises during the period for which the rental is to be fixed, but defendant will be compensated for such use by the rent he will receive. Interest cannot be allowed as part of the rent. The mere fact that complainant has had the use of the money it would have had to pay for rent at the time stated in the lease, if the rental had been promptly determined, does not entitle the defendant to interest. Chief Justice Ewing said in the case of *Le Branthwait v. Halsey*, 9 N. J. L. 3:

“In these cases, it will be observed, the money remained in the hands of the debtor—he used, or might have used it. The trite adage that money is worth its interest, which is sometimes true and at other times not, depending always on circumstances, did not fix the charge. The principle of these cases is that when payment is prevented by the interposition of the law, or the act of the creditor, interest is not recoverable.”

It might be thought that defendant is entitled to interest because complainant has had the use of the money it would have had to pay for rent if the rent had been determined in time to permit payment thereof as provided by the lease, but that fact is of no importance in

view of the well-settled principles of law that interest cannot be allowed as damages for a default in paying in unliquidated debt during the time the debt remains unliquidated; nor where the delay in paying the debt has not been caused by the debtor but by the interposition of law, nor where the delay has been caused in whole or in part by the creditor.

The question of the allowance or disallowance of interest is one resting in the discretion of the Court of Chancery and therefore not appealable. The line of demarcation between cases appealable and those not appealable has never been clearly drawn and in the nature of things it is not possible to adopt a universal criterion. A line of authorities adopted by this Court from an early day hold that to warrant a reversal, upon appeal from Chancery, some definite rule of law or equity must appear to have been violated, and that an appeal which does not present such a question is irregular. *Garr v. Hill*, 5 N. J. Eq. 639, at p. 641. The subject is interestingly discussed in the opinion of Chief Justice Beasley in *Camden & Amboy R. R. Co. v. Stewart*, 21 N. J. Eq. 484.

III.

ANY SUM RECOVERED BY DEFENDANT IN HIS SUIT IN THE SUPREME COURT OF NEW YORK SHOULD BE CREDITED UPON THE ANNUAL RENTAL FIXED BY THE DECREE.

It was said in the opinion of the Vice-Chancellor on complainant's application in this case to enjoin defendant from prosecuting his suit at law against complainant in the Supreme Court of New York that:

"The breaking down of the arbitration scheme in no wise impairs the overriding contract of rental at a ten-year term rate, and a recovery at law, upon a miscarriage of arbitration, would simply be taken into account as a credit, upon

the appraisal when made, as it is to be made, in this suit."

In the opinion on the motion to dismiss the bill, it was said:

"The former motion involved only the single suit commenced before this bill was filed, and it was held to have been properly brought. But what was then said plainly indicated the view that the right of action at law ceased upon the institution of an equitable suit in substitution of the arbitration; and further, that upon an award in equity there would be an adjustment of the recovery and award in the final decree by crediting the amount on the sum of the award, either as a whole or proportionately, depending upon the true construction of the contract."

At the opening of the hearing of the case, the learned Vice-Chancellor said he had held that the recovery in the suit in New York would be in the nature of an advancement and that the view intended to be expressed was that such recovery would be allowed by way of credit on the total annual rental fixed by the decree in this case. There can be no doubt as to the propriety of that course, if defendant is allowed any advantage of his recovery in New York. It was the *annual* rental that was to be fixed by arbitration and it is the *annual* rental that was determined by the decree. Defendant, for the year beginning on June 5, 1919, or some part thereof, is entitled to an *annual* rental only at the rate fixed by our Court. If the sum for which judgment was obtained by defendant in his suit in New York is credited only on the rent for the first quarter year beginning on June 5, 1919, and he is permitted to have a rental for the balance of that year during which the complainant was in possession of the demised premises under the lease, at the rate fixed by our Court, the total rent he will receive for the entire period will be in excess of that fixed by our Court, thus

rendering ineffectual the finding of our Court as to the *annual* rental.

There is no proof as to the issues in the suit in New York nor of the facts submitted to the jury in that suit, and, obviously, the value of use and occupation of the demised premises for a few months differs materially from their annual rental value for a long period of years.

The plea of *res judicata* must show that the point at issue in the present suit was at issue in the former suit and that the title to relief was the same on the second bill as the first bill or suit. 1 *Dan. Ch. Pr.*; 6th Ed.; *661, cited in *Schneider v. Schmidt*, 84 *N. J. Eq.* 18, affirmed 85 *N. J. Eq.* 207. The present case does not meet either test of the rule. The cases cited for the defendant did not involve a situation like that at bar. In all of them there was identity of parties, identity of cause of action and identity of relief.

IV.

COSTS WERE PROPERLY ALLOWED AGAINST DEFENDANT.

Defendant sought in several ways to prevent complainant from getting the relief for which it filed its bill. He moved to set aside the service of subpœna upon him, and, failing on that motion, attacked the jurisdiction of the Court of Chancery in that Court and on appeal to this Court. Complainant, having obtained the relief for which it prayed, against opposition of defendant, is entitled to costs.

CONCLUSION.

We respectfully submit that the demised premises are worth not more than \$675,675 exclusive only of the cribbing, pier and structures and buildings on the pier; and that deducting therefrom \$283,705.15 for the cost

of the channel and \$90,000 for the cost of the fill, leaves \$301,970 as their value upon which the rental should be based; and that the rental at five per cent. should be \$15,060 per annum. The decree should be modified to that extent and affirmed in all other respects.

ROBERT J. BAIN,

*Of Counsel with Lehigh Valley Railroad
Company, Respondent and Appellant.*

COLLINS & CORBIN,

Solicitors.

NEW JERSEY SUPREME COURT
FEBRUARY TERM, 1921.

ERIE RAILROAD COMPANY,
Prosecutor,

vs.

STATE BOARD OF TAXES AND ASSESSMENTS,
AND BOROUGH OF EAST RUTHERFORD.

ERIE LAND & IMPROVEMENT CO.,

vs.

SAME.

ERIE TERMINALS RAILROAD CO.,

vs.

SAME.

Submitted March 17, 1921. Decided June 1, 1921.

Before Justices Swayze, Parker and Black.

For the prosecutor, Robert J. Bain.

For the defendants, Wendell J. Wright.

PER CURIAM :

The prosecutors by these three writs challenge the valuation for taxes of 1920 of some six parcels of land in the Borough of East Rutherford. The several tracts are, for the most part, similarly situated, and the three appeals were heard together before the State Board of Taxes and Assessment, which affirmed the valuations brought up. Prosecutors claim these valuations are excessive. With the exception of one challenged ruling on the admission of testimony, the controversy is purely one of fact. Under the statute, our duty is to re-examine the evidence, and if it appears that the valuation is too great, then to amend it and reduce it to the proper and just amount, and reverse as to the excess only. *P. L.* 1918, *p.* 870, *Sec.* 512, a re-enactment of *C. S.*

5122, Sec. 38. See *Royal Manufacturing Co. v. Rahway*, 75 N. J. L. 416.

We find that with two exceptions the valuations are too high. The bulk of the property is tidal marsh, remote from the Hackensack River, remote from the Paterson Plank Road, the only common road in the vicinity and substantially inaccessible from the upland. It is not improved and is of a piece with the many square miles of Hackensack meadow familiar to residents of Hudson and Bergen Counties. The only witness to the valuation generally of \$200 per acre was the local assessor, who is not a specialist in real estate matters. On the other side were two real estate men in business close by one of whom said \$75 per acre for this class of property was a very high figure, and the other gave \$50 per acre as a fair value in his judgment. One tract of 149 acres was part of a larger one which the railroad company had paid about \$200 an acre for some years ago when it wished to get rid of certain rights of navigation and abolish a drawbridge, but these were special conditions, and apparently the right of eminent domain was at least very doubtful.

The tract of 2.42 acres was abandoned on the hearing, so that value stands at \$750. It is improved property fronting on the Plank Road.

The tract of 37/100 acre, valued at \$55, if not worth that, is worth nothing, and may stand at that figure.

The other tracts should be reduced to \$75 per acre, and the taxes affirmed so far as based on that valuation; but set aside as to any excess.

Prosecutors are entitled to costs.

New Jersey Court of Errors and Appeals

Between

LEHIGH VALLEY RAILROAD COMPANY,
Complainant-Respondent,

and

JOHN E. ANDRUS,

*Defendant-Appellant.**On Appeal from
Chancery.***BRIEF OF DEFENDANT-APPELLANT.**

This is a continuation of litigation which has previously been before this Court. *Lehigh Valley v. Andrus*, 92 N. J. Eq. 238, affirming, *per curiam*, an opinion of Vice-Chancellor Backes (Case, p. 16). Subsequent to the opinion of the Court of Errors and Appeals last referred to, sustaining the jurisdiction of the Court of Chancery, answer was filed and the case tried before Vice-Chancellor Backes on the question of the rental value of the land covered by the lease mentioned in the bill of complaint. The Court of Chancery, in an opinion filed March 21, 1922 (Case, p. 279), fixed the value of the land at \$21,525 per acre, on which it allowed a rental return of five per cent. The decree advised October 11, 1922, fixed the rental to be paid by the complainant at the rate of \$48,431.25 per annum or the sum of \$46,843.34 for the period from June 5, 1919, to May 24, 1920. It allowed complainant as credit on said sum "any and all sums recovered by the defendant from the complainant in the defendant's suit in the Supreme Court of the State of New York, for use and occupation of said demised premises for the quarter year beginning on June 5, 1919." Interest was denied defendant on this rental and defendant was charged with costs.

This case comes up on appeal by defendant and cross-appeal by complainant.

Statement of Facts.

On June 5, 1889, John E. Andrus, the defendant, executed and delivered an indenture of lease to F. Joseph Sheehan, covering premises then described in the lease, as "All that certain piece or parcel of land, land under water and rights, situate, lying and being at Constable's Hook, Bayonne, New Jersey, being the same land, lands under water and rights conveyed to the party hereto of the first part by Peter C. Cornell and others, trustees, by deed dated November 1, 1881, and recorded in Hudson County Register's Office, January 27, 1883, in Liber 375 of Deeds, p. 354, etc., with all the appurtenances," for the term of sixty years from June 5, 1889, at a rental to be payable in equal quarterly payments in advance, the amount for the first twenty years to be \$4,250 per year, the first payment of \$1,062.50 to be made on the execution and delivery of the lease (Case, p. 7).

It was expressly agreed in the indenture of lease that "the rental for the next twenty years shall be determined by arbitration as hereinafter provided, and for the remaining twenty years in like manner" (Case, p. 7, ll. 29-31).

The lessee covenanted to pay the rent as in the lease specified in equal quarterly payments in advance during the first twenty years of the term, and thereafter to pay in like manner the rentals fixed by arbitration as in the lease provided, "and also as part of the consideration of this lease annually hereafter to pay all taxes, assessments, water rents and other municipal, state or governmental charges and impositions whatsoever charges upon said premises" (Case, p. 8).

The lease provided that during the first half of the twentieth year of the term the parties to the lease should each appoint one arbitrator, and the two arbitrators so appointed should fix the annual rental to be paid by the tenant during the succeeding twenty years, and, in case the arbitrators could not agree, then they were to select an

umpire to act with them, and the award of any two of them signed and delivered to the parties on or before the expiration of the first half of the twentieth year of the term was to be binding upon both parties, and the rentals so fixed should be payable in equal quarterly payments (Case, p. 8).

And further provided that during the first half of the fortieth year of the term a like arbitration should be had with like effect for the determination of the rentals for the last twenty years of the term.

The only language found in the lease governing the arbitrators in the determination of the rentals is the following (Case, p. 8, ll. 29-32):

“In fixing said rentals the arbitrators shall consider the rental value of the premises excluding the cribbing, piers and structures or buildings on the pier.”

The lease also provided, if for any cause a valid award fixing rentals should not be made and delivered at or within the times limited, the landlord might recover by an action from time to time at law or in equity a fair quarterly compensation for the use and occupation of the demised premises (Case, p. 9, ll. 29-35).

The lease contemplated that at the end of the term the landlord should acquire the improvements placed upon the lands by the tenant, the value of such improvements to be ascertained by arbitrators selected in the same manner provided as to the determination of the rental, that such arbitration should be binding upon both parties, and that at the expiration of the term the landlord, in retaking the premises, should repay to the tenant the value of the improvements so ascertained. Said improvements were, according to the lease, to be construed “to include only cribbing, piers and structures and buildings on the piers to the height of one story only,” and if any buildings thereon had a greater height than one story they were to be valued as if they were one story in height (Case, p. 9, ll. 9-13).

(These provisions as to the valuation of the improvements upon expiration of the final term of the lease are not in controversy on the present inquiry and do not need to be considered except insofar as they may be helpful to the Court in determining the construction of the contract as to rentals.)

September 8, 1890, F. Joseph Sheehan, the tenant named in the lease, assigned the same to Robert H. Sayre, and on the same day Robert H. Sayre assigned the lease to the Lehigh Valley Railroad Company (Exhibits P. 2, P. 3).

March 22, 1909, an agreement was made between John E. Andrus, the landlord (defendant in this case), and the Lehigh Valley Railroad Company, the then tenant by reason of the assignments (and the complainant in this case), reciting the lease and its assignments and the appointment of arbitrators for the purpose of fixing the annual rent to be paid during ten years of the term from June 5, 1909, to June 5, 1919, and the determination of the arbitrators that the cash rentals to be paid during said ten years should be at the rate of \$7,500 per annum, and, after such recital, expressly modifying the original lease so that the rental so fixed by the arbitrators should be payable for ten years from June 5, 1909, until June 5, 1919, all other terms, covenants and conditions of the lease to remain unchanged. This agreement further provided that the rate to be paid as rental from June 5, 1919, to June 5, 1929, should be fixed and determined by arbitrators appointed in the last half of the year 1918, in the manner provided in the original lease, and that thereafter the rental should be in like manner so fixed from time to time for ten-year periods instead of twenty-year periods (Exhibit P. 4; Case, p. 14).

In the last half of 1918 the landlord, defendant in this case, appointed William M. Greve, arbitrator, and the Lehigh Valley Railroad Company, the complainant in this case, appointed Thomas A. Ryer arbitrator. The arbitrators did not agree as to the rental and failed to agree upon an umpire (Case, pp. 175, 176).

Thereupon the Lehigh Valley Railroad Company filed the present bill, the second prayer of which asks the Court of Chancery by reference to a master or in such other way as the Court may deem equitable and just, to fix and determine the amount of annual rental which the complainant should pay for the period of ten years beginning June 5, 1919, of the term demised by the lease (Case, p. 6).

The bill was filed on May 31, 1919, and after the bill was filed, but before process had been served, and on June 6, 1919, the defendant here sued the complainant here in the Supreme Court of New York for use and occupation for the first quarter year, June 5th to September 5th, 1919. Application was thereupon made to the Court of Chancery in this action to enjoin the New York suit. The application was denied after argument, followed by an opinion by Vice-Chancellor Backes, *91 N. J. Eq. 225*. The New York suit has since proceeded to trial and judgment in the amount of \$14,297.53 and costs. This judgment was based on a verdict of three months' rental, \$13,139.28, and interest, or at the rate of \$52,517.12 per annum.

Motion was also made in this case by the defendant to dismiss the bill, which motion was denied by Vice-Chancellor Backes, and his order to that effect was affirmed by the Court of Appeals, *92 N. J. Eq. 238*.

In a short opinion on the motion to dismiss Vice-Chancellor Backes said (Case, p. 16):

“Mr. Stanley's conception of the contract, as presently stated, is that, arbitration having failed, the substitute for the recovery of rent for the current ten-year period is, ‘by action from time to time at law or in equity for a fair quarterly compensation for the use and occupancy of the demised premises;’ and that this is exclusive—but that arbitration is again to be resorted to for the ensuing ten-year term, at the time fixed in the lease.

“The former motion involved only the single suit commenced before this bill was filed, and it was held to have been properly brought. But what was there said plainly indicated the view that the right of

action at law ceased upon the institution of an equitable suit in substitution of the arbitration; and further, that upon an award in equity there would be an adjustment of the recovery and award in the final decree by crediting the amount on the sum of the award, either as a whole or proportionately depending upon the true construction of the contract."

In the course of the opinion of this Court it was said (92 N. J. Eq. at 239):

"The purpose of the bill is to have the Court of Chancery fix the rental for this ten-year period. The contention on the part of the defendant that the Court of Chancery is without jurisdiction to grant the relief sought is rested largely upon the fact that the lease contained a provision that—

'If for any cause a valid award fixing rentals shall not be made and delivered at or within the times above limited, then the landlord may recover by action from time to time at law or in equity, a fair quarterly compensation for the use and occupation of the demised premises.'

"The argument is that this provision of the lease furnishes the only method by which the amount of rental, payable under the lease, in the event of the failure of the arbitration scheme, can be determined. The learned Vice-Chancellor reached the conclusion that, on the facts recited, a cause for equitable relief was exhibited, and that the provision of the lease appealed to by the defendant was no bar to the exercise of that relief. We concur in the conclusion reached by him, and adopt his opinion on the question of jurisdiction."

The Court of Appeals does not refer to the subject, mentioned in the Vice-Chancellor's opinion, of the treatment of the recovery in the action at law in relation to the award in the final decree in this cause. The Court of Chancery, however, on final hearing determined, in accordance with the purpose of the bill as declared by the Court of Appeals to "fix the rental for this ten-year period" without regard to the New York recovery. The judgment in the New York case has not been satisfied.

It appeared, however, in the trial of this case that the complainant, as tenant, will only be required to pay and the defendant, as owner, will only be entitled to receive the rent from June 5, 1919, to May 24, 1920, because the premises have been sold by the defendant Andrus to the Standard Oil Company, upon the terms and for the price agreed upon and set forth in an agreement dated May 24, 1920 (Exhibit D. 11; Case, p. 260), as supplemented by a letter from the agent of the Standard Oil Company to Andrus dated the same date (Exhibit D. 12; Case, p. 272). The price of this sale was \$1,126,125 (or at the rate of \$25,000 per acre), plus an arbitrary sum of \$2,750 per annum from May 24, 1920, until delivery of the deed. The deed, dated May 24, 1920, has been executed and deposited in escrow with the Central Union Trust Company of New York for delivery to the purchaser on the payment to the Trust Company, for account of the seller, of the purchase price \$1,126,125 (plus the additional sum of \$2,750 per annum), on May 1, 1930, or such earlier date as shall be fixed by the seller by ninety days' notice in writing. Pending the payment of the purchase price and delivery of the deed the purchaser was to be admitted into possession of the property, subject to the lease to the Lehigh Valley Railroad Company, and the seller in the meantime let the said premises for a term beginning on May 24, 1920, ending on the date of delivery of the deed, at and for the annual rental of \$67,567.50, payable in equal quarterly instalments in advance, the first payment of \$16,891.87 being paid at the time of the execution of the agreement and payment acknowledged in the agreement. This rental was at the rate of six per centum on the purchase price. In addition to the rental pending delivery of the deed, the purchaser is required to pay all charges for water and water meter, regular and extra, imposed or assessed upon the premises, and all taxes, assessments and governmental charges, and is required, at its own cost and expense, to comply with, conform to, fulfill and perform all present and future requirements of the law and all present and

future ordinances, rules, orders, regulations and requirements of Federal, State, municipal and other public and legal authorities, now or hereafter existing, in relation to and in connection with said premises, notwithstanding that any such present or future laws, ordinances, rules, orders, regulations or requirements may require structural changes or result from a change of policy; and, in addition thereto, the purchaser is further to pay, pending delivery of the deed, any expense in connection with the property, including loss or damage to persons or property belonging to third parties while in or about or near the described premises for which the seller might be liable (Case, p. 265). The agreement expressly provided that there should be no further liability of any kind whatever on the seller for future taxes of any kind in respect to the property, whether then levied or levied retroactively, and that there should be no further liability on the part of the seller for payments of any kind in connection with the property (Case, p. 268).

The letter, Exhibit D. 12, accompanying this agreement, bears the date of the agreement, May 24, 1920, and is addressed to Mr. Andrus and signed by F. S. Perry, who was, it appears in the testimony, the representative of the Standard Oil Company (Case, p. 231). This letter opens with reference to the agreement of May 24, 1920, concerning the Constable's Hook property, on which the Lehigh Valley Railroad Company then had a lease, and sets forth statements made to Mr. Andrus as representations upon which he had entered into said agreement:

(1) That the Standard Oil Company, a New Jersey corporation, had been negotiating for the purchase from the Lehigh Valley Railroad Company of the property adjoining the Andrus property on the east, and had also been negotiating for the purchase of the lease on the property which Andrus had agreed to sell to the Standard Oil Company. That these negotiations had reached the state wherein the Standard Oil Company and the Lehigh Valley Railroad Company had agreed upon the terms under

which the Standard Oil Company was to acquire from the Lehigh Valley Railroad Company the property adjoining the Andrus property on the east, and also the lease of the Andrus property; and that the Standard Oil Company had every reason to believe that such negotiations would be concluded and that that Company would within a short time become the owner of the property of the Lehigh Valley Railroad Company on the east of the Andrus property, as well as become the owner of the Lehigh Valley Railroad Company lease of the Andrus property.

(2) That as soon as the Standard Oil acquired title to the property of the Lehigh Valley Railroad Company adjoining the Andrus property on the east, the Standard Oil Company would procure and deliver a cancellation and surrender of the lease.

This letter was to be construed as an agreement and to be part of and one of the conditions to be performed under the agreement between Andrus and the Standard Oil Company dated May 24, 1920, and to be binding upon any subsidiary of the Standard Oil Company or on any company affiliated with the Standard Oil.

On the trial counsel for the complainant called as a witness Mr. William G. Koehler (Case, p. 249), who described himself as general manager of the Bayonne refinery. Mr. Koehler testified to the purchase by the Standard Oil Company from the Lehigh Valley Railroad Company of the property of that company to the east of the Andrus property, and also of the purchase by the Standard Oil Company of the Andrus property. He was familiar with these purchases because, as a member of the Manufacturing Committee, consisting of the managers, he had joined in the recommendation for these purchases. The negotiations, he said, began in the latter part of 1918, and were complete as to the Lehigh Valley property adjoining the Andrus property in November, 1919, when the agreement was entered into with reference to that property (Case, p. 252). This agreement the witness referred to as the "first agreement," the second agreement

being the Andrus agreement already described dated May 24, 1920 (Case, p. 253). The recommendation of the managers to the Standard Oil Company covered in both cases approval of price and consummation of sale, including desirability. The witness endeavored to convey the impression that the need for the properties on the part of the Standard Oil had passed, that the business conditions which demanded the additional property for extension had dropped off since the summer of 1919 (Case, p. 249). The date he fixed, however, when business conditions had changed being, it will be noticed, prior to November, 1919, when what he called the "first agreement" was consummated.

Other witnesses in the case claiming to be familiar with these transactions state that the two matters of the purchase of the Lehigh Valley Railroad Company property to the east of the Andrus tract and of the Andrus lease from the Lehigh Valley, and of the Andrus property, were negotiated contemporaneously and depended on each other, and such is the inference of the agreement of May 24, 1920, and the accompanying letter which plainly shows that one of the purposes of the Standard Oil Company was to get complete control of both properties and eliminate entirely the Lehigh Valley lease.

Counsel for complainant, on the hearing of this case (Case, p. 242), stated that the lease of Andrus to the Lehigh Valley Railroad Company, under which the rental in this case is to be determined, had been assigned by the Lehigh Valley Railroad Company to the Standard Oil Company, that company also holding a contract for the purchase of the leased premises.

The maps in evidence show the boundaries of the Andrus property and of the Lehigh Valley Railroad Company immediately adjoining, which have thus passed to the Standard Oil Company under negotiations which began in 1918, and were carried into contract form, as to the Lehigh Valley Railroad Company tract in November, 1919, and as to the Andrus tract, in May, 1920.

While counsel for complainant did not see fit to put in the figures of the Lehigh Valley contract, no contradiction was offered of the figures, used by witnesses of both parties in this case, given by Mr. Van Duzer, the real estate agent of the railroad at the New York trial, knowledge of which seemed also to be possessed from other sources by Mr. Gaddis (Case, p. 141) and Mr. Graham (Case, pp. 235, 236). These figures as given by Mr. Ryer (Case, p. 43) were \$2,737,153.75 plus \$84,294.37, in all \$2,821,448.12 for 148 acres, just above \$19,000 per acre.

The Andrus tract was sold under the contract in evidence (Exhibit D. 11 and D. 12) for \$25,000 per acre, the acreage being 45.045, and the price \$1,126,125 (plus \$2,750 per annum) as already explained.

The evidence is uncontradicted that the physical conditions on the Lehigh Valley tract to the northeast of the Andrus tract, at the time of the sale, were substantially the same as the Andrus tract before development, being, as the witness Gaddis put it, "in its substantially virgin state" (Case, pp. 142, 145, 146), differing only from its "virgin" Andrus neighbor in the direct touch of the latter to the thirty-five foot channel hereinafter described, an admitted advantage to the latter.

The evidence on the whole as to these two neighboring tracts, one owned by the complainant and the other by the defendant, shows a contemporaneous negotiation with a common purchaser, finally resulting in the purchase from the Lehigh Valley Railroad Company of its fee in the larger tract and the leasehold in the smaller, and from Andrus of his fee in the smaller tract subject to the Lehigh Valley lease, which, however, was to come to an end as a natural consequence of the merger of fee and leasehold.

The experts called by complainant freely admitted that these sales should be taken into consideration in fixing values of the Andrus tract, and were only able to explain their own very much smaller appraisals by claiming that the prices were extravagantly above true value because of

the necessity of the Standard Oil Company to extend its holdings. Mr. Gaddis (Case, p. 145) said that the Standard Oil price was 25% or 30% above normal market value, but the Standard Oil could afford to pay it, due to their opportunity to combine the two properties. This statement forced him to an admitted value of \$15,000 per acre for the Lehigh Valley tract immediately adjoining Andrus on the northeast, notwithstanding that the Lehigh Valley tract was in the same physical condition at the time of the sale to the Standard Oil Company as the Andrus property was assumed to be in when the witness gave it a value of only \$4,400 (Case, p. 145).

All the witnesses for both complainant and defendant used the same theory to reach rental value, viz., a percentage on the valuation. No evidence of rental value as such, independent of an assumed rate of return on money value, was introduced. Complainant's witnesses used 5% as a proper rental. Defendant's witness Graham used 6% and defendant's witness Dunham used 7%.

Complainant's witnesses, Ryer, DeSelding and Ruhlman, fixed a value of \$617,331 which at the 5% rate gave a rental of \$30,866 per annum or \$7,716.50 quarterly. Complainant's witness Gaddis conceded a valuation of \$15,000 per acre, or a total value of \$675,675, giving a rental at 5% of \$33,783.75 per annum, or \$8,445.94 quarterly (Case, p. 131).

These figures are based on the valuations of these witnesses, excluding "the cribbing, piers and structures or buildings on the pier," but including the presence of the thirty-five foot channel from the bulkhead line to deep water dredged in 1916.

Defendant's witness Graham, on the like assumptions, valued the property at \$1,351,550, giving at 6% a rental of \$81,081 per annum, or \$20,270.25 quarterly (Case, p. 223).

Defendant's witness Dunham, on the like assumptions, valued the property at \$1,238,737.50, giving at 7% a rental of \$86,711.63 per annum, or \$21,677.91 quarterly (Case, p. 183).

The Court has the reasons given by the experts in support of their appraisals and of the interest rate assumed by each. The disproportion in results is very wide, and the Court must decide as to the true figure. It is submitted that the comparable sales, if aid can be had from sales in evidence, are the sales on the Kill von Kull, many of which are within a few hundred feet of the Andrus property, rather than the so-called Packard sale to the Standard Oil Company made in 1916, of a totally dissimilar tract far to the north, much less advantageously situated with reference to deep water access. Indeed the complainant's witnesses themselves conceded that this sale was not comparable (DeSelding, Case, p. 103; Ryer, Case, p. 70). The nearby Kill von Kull sales were at a much higher acreage rate, and seemingly more helpful because closer by, in comparable use and accessible to deep water.

It is submitted that the valuations of Messrs. Dunham and Graham are supported by these actual sales and also by the actual figures involved in the sales of the property involved and that adjoining on the northeast to the Standard Oil.

But the Court does not need to waste its time weighing the views of experts at all, and the Vice-Chancellor so decided. The sales to the Standard Oil Company and the negotiations leading thereto, in which the complainant and defendant participated, are practically contemporaneous with the date of June, 1919, which is the relative date when the rental to be fixed by the Court begins, and afford first-hand information as to the then value of these properties, with the assent of both parties to this litigation.

All the experts concede that the highest productive use is the true standard of value, and the fact that the railroad has sold to the Standard Oil Company is indication that the highest productive use of the property in question is not the railroad use. Under the law of this State availability for a particular use is to be given weight in the ascertainment of value. This doctrine has been ap-

plied in condemnation cases (*Currie v. Waverley & New York Bay Railroad Co.*, 52 N. J. L. 381) and in taxation cases (*Long Dock Co. v. State Board of Assessors*, 78 N. J. L. 44; *Long Dock Co. v. State Board of Assessors*, 82 N. J. L. 21 (aff'd 84 N. J. L. 762), with reference to property available for railroad terminals.

These cases are not overruled or diminished in authority by the case cited by counsel for complainant.

The doctrine of special availability, stated in the *Currie* case as entitling the land owner to receive the "fair price for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the near future" has recently been specifically upheld by this Court in the case of *In re Morris & Cummings Dredging Co.*, 96 N. J. L. 248.

The fact that the Standard Oil Company has been for years assembling property at Constable's Point indicates that this property is particularly available for the commercial requirements of accessibility to tide water, convenience of land transportation, and large areas essential to a world-wide enterprise such as that of the Standard Oil Company. That company is not noted for philanthropy and it is not to be assumed that it is expending for the expansion of its tide water plant at Bayonne, money on which it does not expect to be able to reap a return. The desirability of this property for its needs is supported by the evidence in this case. The purchase was recommended and approved by a committee of managers authorized to pass upon both desirability and price. The circumstances do not indicate a holdup. They show the deliberate purchase at prices reached by negotiation in the usual way between vendor and vendee of more than 193 acres of real estate consisting of two adjacent parcels in independent proprietorship. What better proof of value could be adduced?

In quoting the valuations of the experts we have only taken their figures assuming the existence of the thirty-

five foot channel to deep water dredged in 1916. Complainant's witnesses also gave figures, much lower of course, without this channel, and counsel for complainant seems to seriously contend that a proper construction of the provisions of the lease as to the determination of the rental requires the exclusion of the channel from consideration; and also of the value of the fill, so far as made by the tenant prior to June, 1919.

As to the fill, it cannot be excluded without doing violence to every established principle of landlord and tenant law. It is incapable of removal once made, and an inseparable part of the land on which it is deposited. A Court of Equity would enjoin its removal, if attempted by the tenant, as waste. *Fortescue v. Bowler*, 55 N. J. Eq. 741.

As to the channel, it is in the waters of New York Bay, outside the pier line, and open to use by all the world entitled to navigate the waters of the Bay. It could not be deliberately filled up by the tenant without violation of both National and State laws, as to dumping in the harbor. As well say that a street dedicated to public use, giving additional access to a leased parcel of real estate beyond that in existence when the lease was made, would be excluded from consideration in revaluing the parcel for a new term after the street was permanently established. And the fact that the tenant might have been the dedicator could not deprive the parcel of the added value due to the new street frontage.

But apart from these considerations, there is no room for the exclusion, under this lease, of anything except what the lease provides shall be excluded. The lease is perfectly plain. There is no room for construction. No doubt or ambiguity is present. The maxim "*Expressio unius est exclusio alterius*" applies. The lease requires the arbitrators—that is, in this case, the Court—"in fixing said rentals" "to consider the rental value of the premises, excluding the cribbing, piers and structures, or buildings on

the pier." All other elements of value are to be considered.

That the only exclusions to be made were the "cribbing, piers and structures or buildings on the piers," is also apparent from the further provisions of the lease itself. Immediately following the above-quoted provision concerning what exclusions are to be made in fixing rentals, it is provided in the lease that as the end of the term approaches "the value of the improvements placed upon said lands by the tenant shall be ascertained by arbitration," and then it is provided that the defendant, as landlord, "shall pay to the tenant the value of said improvements so ascertained." The lease then provides—and this is the important part—

"Said improvements shall be considered to include *only* cribbing, piers and structures and buildings on the piers to the height of one story only; * * *"

The insertion of the word "only" before the familiar phrase "cribbing, piers and structures and buildings on the piers," conclusively shows that the parties intended that all other improvements save only cribbing, piers and structures and buildings on the piers, were not only at the end of the lease but during the period of the lease, to accrue to the benefit of the defendant as landlord and owner.

The lease was for a very long term. It was plainly contemplated that the tenant might improve the property. It was equally plainly contemplated that the improvements were not to be removed. Certain of them specifically named were to be excluded in fixing the rental at recurring periods, and to be paid for by the landlord at the end of the term.

The lease arrangement, contained in the agreement for the sale of the Andrus tract to the Standard Oil, which sale was *subject to the Lehigh Valley lease*, pending its cancellation after assignment to the Standard Oil Company, was on a basis of 6%—as the rental on the sales

price of \$1,126,125—or \$67,567.50 per annum, \$16,891.87 per quarter.

We submit that under the evidence before the Court, the Court of Chancery should have fixed rental value at not less than \$67,567.50 per annum, for the period under arbitration, it appearing that the value of the Andrus property is likely to substantially increase during the period.

The Court of Chancery, however, found the valuation of the Andrus tract to be \$21,525 per acre and allowed a 5% return on this valuation so that the decree, as above mentioned, allowed an annual return of \$48,431.25 or \$46,843.84 for the period from June 5, 1919, to May 24, 1920. The method by which Vice-Chancellor Backes arrived at these figures is set forth in his opinion. He says (Case, p. 280, l. 30):

“I adopt the price paid for the demised premises as the value of the land and as the basis for my calculation of the rental.”

To this statement defendant-appellant takes no exception and thinks that it is an inescapable conclusion from the facts brought out in the case. But the Vice-Chancellor goes on to say (Case, p. 280, l. 38):

“There were, however, two other improvements which figured in the price, and which the experts on both sides included in their estimates. The Railroad Company, during its tenancy, extended the upland into the water by filling with earth, and dredged a thirty-foot deep channel from the docks on the premises to deep water, permitting direct ocean travel. The extent to which these improvements contributed towards raising the sales price must be considered. The fill amounted to within a fraction of ten acres, at a cost of approximately \$9,000 per acre. The complainant's experts estimate the value of the upland and filled land at \$12,000 per acre, and the land under water at \$3,000 per acre, and I take it that the cost of the fill is the difference. It is not denied that the premises were enhanced in value to the extent of this

outlay. The channel was dug at the expense of \$283,705.15, and I assume that the enhancement in the value of the demised premises equaled the cost."

He accordingly allocated the cost of the channel, which he found to be valuable to both the Andrus tract and the Lehigh tract adjoining and responsible for an enhancement of their values, to the two tracts in the proportion of their respective areas, charging \$67,500 of the cost of the channel to the Andrus tract. He therefore deducts that cost and the estimated cost of the fill which he places at \$90,000 from the purchase price of the Andrus tract and divided the balance so found to ascertain the price per acre. This method is unsatisfactory to the appellant.

In the first place there was no testimony in the case as to the cost of the fill and the Vice-Chancellor's estimate thereof is based merely on the difference between the value of the upland and the land under water. It is not established by any testimony that the difference represents the cost of filling. That part of the Vice-Chancellor's opinion just quoted obviously refers to Ryer's testimony (Case, p. 49, l. 45). But the Vice-Chancellor's assumption that the difference represented the cost of the fill, or even the value of the fill is erroneous and arbitrary, in the absence of any testimony thereon. For when the same witness is speaking of the Packard tract, to the north of the Andrus tract to which he assimilates the Andrus tract in character and value, in its condition prior to the improvements of 1916, he says, the upland of the Packard tract sold at \$7,500 per acre, instead of \$12,000 per acre for which he appraises the Andrus tract—while the land under water is the same \$3,000 per acre (Case, p. 63). To the question "But you did increase the upland?" he says, "Yes, sir; *due to the fill, the bulk-head.*" Obviously the difference of \$4,500 per acre between his valuation of the Andrus upland and the price of the Packard upland, is the correct figure to be estimated as the cost or value of the fill per acre. For the Packard upland had no fill on it, it was substantially in its virgin

state when sold, in the same state that the Andrus tract was in before any improvements were made (Case, p. 63).

He makes this point clear later (Case, p. 77) when comparing the Andrus & Packard tracts, by saying:

“The filling would be identically the same thing per acre.”

We deny that the cost of the fill should be excluded as it was not listed among the elements mentioned in the lease to be excluded by the arbitrators. But if the complainant and the Vice-Chancellor are right—there is no support in the case for excluding more than \$45,000—10 acres at \$4,500 per acre—instead of \$90,000, as stated in the opinion of the Vice-Chancellor. Moreover as we have pointed out there is no occasion for excluding the value of this improvement in ascertaining the value of the lands. In *Manda against Delaware, Lackawanna & Western Railroad Company*, 89 N. J. L. 327, this Court held that trees and top soil on the premises in question could not be valued separate from the tract but must be considered as a part thereof.

The same reasoning applies to the channel. Considering the lease it will be seen that it provided for a revaluation of the demised premises, originally every twenty years, which in 1909 was changed to a revaluation every ten years. Obviously one of the objects to be attained by this revaluation was a consideration of the elements of value present and worthy of consideration by the arbitrators, or in this case by the Court, at the time they came to make their appraisal. The lease expressly emphasizes what elements shall be excluded from such valuation. All other elements that might be new and present upon a revaluation in 1919 that were not present in 1909 should be considered by the arbitrators or in this case by the Court. It could not be seriously contended that if the character of the locality had greatly changed by reason of the nature of the development of surrounding property such character should not be considered by the arbitrators, where its effect was to enhance or diminish the pre-

ceding appraisal of the property. What had been swamp land ten years before might prove to be the center of a huge railway terminal. It appeared by testimony that the development of the port of New York under the treaty between New Jersey and New York, might have a very comprehensive effect on the property under consideration. The chief witness for the complainant, Mr. Ryer, himself changed his estimate of the valuation of the demised premises from that given in the fall of 1919, by reason of a street access to the premises in question adding to his former estimate 25% an acre (Case, pp. 48-49). All the experts admitted that the channel gave increased value to the property. The reason being that it gave water access to the whole of lower New York Bay for deep draft vessels. It was public property open to anyone who desired to navigate it. Experts for both sides concede that, Mr. Gaddis at p. 153, l. 10, and Mr. Dunham at p. 201, l. 31. If the channel had been dredged or dug by Governmental authority and without charge upon either the complainant or defendant it could not be seriously contended that the increase of value thereby given to the Andrus tract should not be considered in any attempt to fix the rental value thereof.

There was no contract between the parties to the effect that because complainant constructed and paid for the channel its value should be excluded from consideration in appraising the value of the property. The lease does not require the landlord to pay the tenant for the channel upon the termination of the lease. The tenant knew when digging it, that it could not either remove the channel or be reimbursed for the cost thereof upon the termination of the lease. It knew that the cost must be amortized in the value of the lease to it for the balance of the term. There is no reason in fact or in equity why this increase of value, of which it had the advantage for the period for which it was in possession of the premises after construction of the channel and which, it may be assumed, was considered in fixing the price for which it disposed of

its leasehold to the Standard Oil Company, although there is no evidence in the case as to what price it received for that leasehold should be excluded. The tenant has been fully and fairly recompensed in one way or another for the money spent both in the channel and in the fill and that the presence of the channel has greatly enhanced the value of the property can not be denied.

Defendant contends that the price agreed to be paid by the Standard Oil Company should be considered the value of the land, and the basis for calculation of the rental without any deduction therefrom of the cost of the channel. This would be \$1,126,125, instead of the figure of \$968,625, adopted by the Vice-Chancellor. A return of five per centum per annum on this sum would be \$56,306.25, which we contend should be the annual rental return allowed on the property in question, unless the actual rent, paid by the Standard Oil Company to the defendant until title is passed, is adopted.

The decree should cover only the period from September 5, 1919, to May 24, 1920.

The judgment obtained by the defendant here, plaintiff in the New York action against his tenant was for use and occupation of the demised premises for one-quarter year from June 5, 1919, to September 5, 1919, see decree, Case, p. 283. This action for use and occupation was expressly sanctioned by the language of the lease—previously quoted (Case, p. 9, l. 25). It was begun before this suit in Chancery by complainant was commenced—and on this ground, among others, the Court of Chancery refused to enjoin that action. *Lehigh Valley v. Andrus*, 91 N. J. Eq. 225. Unless the effect of that decision is to be wholly nullified, the judgment in the New York action must be held to have been conclusive upon the parties as to the amount of rental for the period there litigated.

The mandate of the Federal Constitution, Art. 4, Section 1, is that "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of

every other state." But full faith and credit will not be given to the New York judgment, if as indicated by Vice-Chancellor Backes at the opening of the final hearing and as ordered in the decree the rental rate fixed by the Court of Chancery of New Jersey is to be controlling throughout the whole of the term of ten years from June 5, 1919, or at least until May, 1920. If the decree in this case allows a credit on the sum of \$46,843.34, the amount fixed by the Court of Chancery as the rental for the entire period from June 5, 1919, to May 24, 1920, of any and all sums recovered in the New York action, a credit in gross, without apportionment as to time—the New Jersey decree at once becomes the sole basis of recovery. Defendant has lost any benefit of his New York judgment. The only way to give full faith and credit to the New York judgment is to hold that the rental for the period from June 5, 1919, to September 5, 1919, is *res adjudicata* between the parties to this suit, that the Court of Chancery may fix a rental value for the ten years ensuing June 5, but that it can only make a decree for the payment thereof from September 5, 1919, to May 24, 1920.

To this effect are the decisions.

Chief Justice Beasley said in *Barnes & Drake v. Gibbs*, 31 N. J. L. 317, in passing upon the effect of a judgment of the New York Supreme Court in this state:

"If, then, the judgment of a state Court, having a jurisdiction legitimately conferred upon it, has, in another state, the same effect, in all respects, which it would possess in the state in which the action was brought, it seems necessarily to result, that in the absence of all allegation of the existence of a different rule of law in the state where the judgment was rendered, the inference must be that the original cause of action is merged. The effect of a judgment at common law is practically to destroy, so long as it exists, the ground upon which it rests. This is one of its essential qualities, as much as is its capacity to conclude with regard to the fact which it adjudges. To deny it this efficacy, is to deny that it is a judgment in any sense which will

accord with legal principles. And in fact the doctrine of merger arises out of the quality of a judgment, which renders it conclusive upon the parties as to the questions which it involves. Theoretically, the original matter, which was open to controversy, is considered merged, because it is definitely settled by the judgment. Regarding, then, the judgment of the extra territorial Court as final, it is a necessary consequence to regard the original cause of action as merged, because if the plaintiff sue on the original cause of action, it is treating it, although judicially settled, as open to controversy."

So this Court in *Bennett v. Bennett*, 63 N. J. Eq. 306, after quoting the "full faith and credit" clause says p. 308 (this provision) " * * * only provides that the facts found in the foreign court upon which the judgment or decree was entered cannot be inquired into by the courts of the sister states." And later "The effect of a judgment recovered in one state * * * is to furnish an indisputable proof of the amount due" upon the cause of action litigated, we may add.

In *Bullock v. Bullock*, 52 N. J. Eq. 561, although this Court held that it would not specifically enforce an equitable lien alleged to arise on land in New Jersey from the effect of a New York judgment directing the conveyance thereof as security for payment of alimony, both the majority and minority opinions of the Court conceded that the judgment of the New York Supreme Court fixing the amount of alimony payable per month from June 1, 1892, was *res adjudicata*, that the defendant had had his day in court on that point and that the judgment was conclusive.

In *Bennett v. Piatt*, 85 N. J. Eq. 436, at 443, the Court of Chancery held that the decree of a foreign court was entitled to full faith and credit and was *res adjudicata* on the same issues.

Interest should be allowed on the amount of the award.

The defendant claims that the decree should provide for the payment of simple interest upon the quarterly payments due from his tenant.

It has been held in recent years that the allowance of interest must rest upon the circumstances of each particular case and be determined upon equitable principles.

In *Williams v. American Bank*, 4 Metc. 317, 320 (Mass.), Chief Justice Shaw said:

“Interest is allowed not only on strict legal grounds where there is a contract for the payment of interest, or by way of legal damages where there is a tortious detention of a debt, *but upon considerations of equity and natural justice when a party is entitled to the payment of money which, owing to various causes, he cannot obtain.* * * * And in our own practice interest is, in many cases, allowed upon considerations of equity not only where the payment of a debt has been prevented by the debtor, *but where judgment has necessarily been delayed to await the action of the law.*”

In *Woerz v. Schumacher*, 161 N. Y. 530, the Court of Appeals of New York, said (O'Brien, J.):

“In this country interest is the natural growth or incident of money and bears the same relation to it that rent does to land.”

Vice-Chancellor Stevenson said in the case of *Agnew against Paterson Board of Education*, 83 N. J. Eq. 49, at p. 67:

“It should be borne in mind that the whole tendency of Courts of law and Courts of equity for a considerable period of time has been to break away from hard and fast rules and charge and allow interest in accordance with principles of equity in order to accomplish justice in each particular case.”

He quotes the American and English Encyclopedia to the effect that:

“There is no subject in the law with reference to which there is greater conflict and confusion in the cases than that of interest.”

And goes on to say:

“Unless a case be found which is a conclusive authority establishing a precedent, the safest way for a Court of law or equity is to decide all questions pertaining to interest according to the plainest and simplest considerations of justice and fair dealing.”

This case was affirmed by this Court for the reasons stated by Vice-Chancellor Stevenson, see p. 339 of the same volume. It is also quoted with approval by Vice-Chancellor Lane in *Hoover Steel Ball Company v. Schaefer Ballbearing Company*, 90 N. J. Eq. 515, at 517.

The application of the simplest and plainest considerations of justice and fair dealing call for the allowance of interest in this case as requested by the defendant. The original lease between the parties fixed the rental payable for the first twenty years and expressly provided that it should be payable in advance in equal quarterly payments, and it further provided that the rental fixed by arbitration should be payable in equal quarterly payments in advance. The agreement entered into between Mr. Andrus and the Railroad Company in 1909 modifying the original agreement and fixing the term for which rental should be fixed by arbitration at ten years left all the other terms, covenants and conditions of the said lease as to payment in advance unchanged.

In the action brought in the New York Supreme Court by Mr. Andrus at the beginning of the first quarter after the expiration of the term for which the last existing arbitration had fixed the rent, the judgment was for a sum found by the jury to be due for use and occupation with interest on that sum from the first day of the quarter to the day of the judgment.

It is obvious, therefore, that if the rental in this case had been fixed by arbitration the tenant would have had to pay the sum so fixed in equal quarterly payments in advance on the first day of each quarter and non-payment of the said sum would naturally carry interest from the day of such default. This Court has throughout acted in sub-

stitution of arbitration and the findings of the Court, although made after the period is past, relate to the quarterly payments as before.

The prosecution of further suits for the recovery of use and occupation in each quarter by suit at law or in equity by the landlord against the tenant, while not actually enjoined by this Court, was rendered practically impossible by the clear expression of opinion by the Court of Chancery in its statement that (Case, p. 16, l. 32):

“The right of action at law ceased upon the institution of an equitable suit in substitution of the arbitration.”

The practical situation was the same is if this Court had enjoined the defendant from bringing any action at law to recover the quarterly compensation in advance, and thus the defendant was deprived of the possibility of collecting the sum due it at the time when due, namely, the beginning of each quarter. If Andrus, the owner of the property, and the landlord had been free to commence an action for use and occupation for each quarter, interest would have followed as a matter of law.

Moreover it is a fact beyond dispute that for the whole of the period from June 6, 1919, to the present time the complainant has been in possession of the premises in question without the payment of any money whatever. It has had possession of the land and enjoyment of the money, a situation which is repugnant to every sense of equity and fair dealing and which has been especially dealt with in eminent domain cases in this State. So in the case of *Watson against the Mayor, etc., of Jersey City*, ~~86~~ 84 N.J.L.422 Atl. Rep. 402, the Court of Errors affirmed a judgment of the Hudson County Circuit Court on the opinion of Judge Speer in which interest was allowed on the amount of an award made upon condemnation. The reasoning there used is applicable in this case and the quotation from the case of *Phillips v. South Park Commissioners*, 119 Ill. 626, 645; 10 N. E. 230, 238 is pertinent.

“It is neither equitable nor right that they should have the use of the land and the money but as they

have had the land and withheld payment of the money they should be required to pay interest thereon."

What has been already said makes it unnecessary to rely upon any narrow statement that interest is only a matter of damages or a matter of contract as it appears from the authorities quoted that its allowance has been based in many cases upon broader principles. But it can not be disputed in this case that even by contract the tenant agreed to pay his rental in advance on the first day of each quarter and that defendant should have interest on the sum due on the first day of each quarter in consideration of being kept out of such money. The fund has not been *in custodia legis* during any part of that time, but complainant has had possession of the money and has not been insolvent or in the hands of receivers.

The decree should be modified.

We submit, therefore, that the decree in this suit should be modified:

(1) So that the value of the fill and channel should not be excluded in determining the rental value of the Andrus tract, but that the rental value should be based upon the sum of \$1,126,125;

(2) So as to provide that the decree should direct payment of the rental value found by the Court only from September 5, 1919, to May 24, 1920;

(3) So as to provide for interest upon the amount of the award from September 5, 1919.

Respectfully submitted,

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