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Notice of Appeal and Grounds.

(Filed May 27, 1927.)

BERGEN COUNTY CIRCUIT COURT

OVERPECK LAND CORPORATION and JOHN J. CHELLO, Appellants,

v.

VILLAGE OF RIDGEFIELD PARK, in the County of Bergen, Respondent.

On Appeal from Award.

To Messrs. WINNE & BANTA,
Attorneys for Respondent.

PLEASE TAKE NOTICE that the appellants, Overpeck Land Corporation and John J. Chello appeal to the Court of Errors and Appeals in the last resort in all causes from the whole of the judgment entered in this cause, on the following grounds:

1. Because the trial court erroneously refused to charge the appellants' fifth request to charge, which reads as follows:

> "There is no evidence in this case from which the jury can find that the sale by Brewster to the appellants of the property taken by the municipality was not a bona fide transfer of that property."

2. Because the trial court erroneously charged the jury in the following respect:

> "There has been some testimony in this case with respect to the zoning ordinance of the Village of Ridgefield Park, and it appears from the ordinance known as the zoning ordinance that this particular piece of land can only, under the terms of that ordinance, be used for certain uses. That was put in on the theory that that excluded the use of this property for any use except those that were mentioned in the ordinance, and that would be true if the ordinance was enforceable as written. But the Court of Errors & Appeals, our highest court, has in many cases, beginning with what is known as the Nutley case, which was decided in 1924, held many of these ordinances invalid if they attempted to deprive the owner of the property of his property by restricting its use, unless it was necessary to do that for the promotion of the public health, the safety and the general welfare of the community. In other words, if the ordinance prevented the building of a store in a certain district which was put down in the zoning ordinance as a purely residential district, our Court of Errors & Appeals would set aside or hold invalid that provision of the ordinance with respect to a certain piece of property in that zone where a store or an apartment house might be sought to be built, unless it could be shown that the building of a business property or an apartment was in fact against the public health, the safety or the general welfare of the people. So when you consider the evidential value of the ordinance which was introduced, you must

> keep in mind what I have said with respect to the law of the State as enunciated by our Court of Errors & Appeals with respect to the extent to which property may be restricted by the governing bodies of the various municipalities."

3. Because the trial court erroneously permitted the witness, J. E. Nabus, over objection of appellant, to answer the following question:

> "Q. The Court: Now the question is what did you offer it for sale at that time"?

4. Because the trial court erroneously permitted the witness, J. E. Nabus, over objection of appellant, to answer the following question:

> "When was it that you first knew that the town was considering the acquisition of this property for station purposes"?

5. Because the trial court erroneously permitted the witness, Elwood G. Hoyt, over objection of appellant, to answer the following question:

> "August, 1922. And has been in operation continuously"?

6. Because the trial court erroneously permitted the witness Elwood G. Hoyt, over objection of appellant, to answer the following question:

> "Has it been repealed or amended by action of the governing body of the Village of Ridgefield Park."

7. Because the trial court erroneously admitted into evidence over objection of appellant, the ordi-

nance relating to the establishment of zones or erection of buildings in Ridgefield Park.

8. Because the trial court erroneously refused to strike from the record the answer of the witness Elwood G. Hoyt to the question:

> "Q. Can you indicate from this what portion of the ordinance refers to lots one, two, three and four and five in Block 85 on the Tax and Assessment Map"?

although duly requested thus to strike out said answer by appellant, and allowed said answer to stand, over the objection of appellant.

9. Because the trial court erroneously permitted the witness Elwood G. Hoyt, over objection of appellant, to answer the following question:

> "And is that a facsimile of what is in this large book in connection with zoning in Ridgefield Park"?

10. Because the trial court erroneously permitted the witness Howard A. Mix, over objection of appellant, to answer the following question:

> "Did you make any revisions in your plans on account of the surface of the ground"?

11. Because the trial court erroneously permitted the witness Edwin Hogerman, over objection of appellant, to answer the following question:

> "Can you tell us what the drains that Mr. Boswell testified to cost the Village of Ridgefield Park"?

12. Because the trial court erroneously permitted the witness Edwin Hogerman, over objection of appellant, to answer the following question:

> "Did you have anything to do with any work on Herbert Street since November, 1926"?

13. Because the trial court erroneously permitted the witness James E. Davenport, over objection of appellant, to answer the following question:

> "Now, Mr. Davenport, with this information that there is a passenger cinder platform 780 feet north of Mount Vernon Avenue, I will ask you if, in your opinion, a face-one switch would be granted to an applicant, if such an application was made by someone owning this property in question"?

J. EMIL WALSCHEID,
Attorney for Appellants.

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8. Because the trial court erroneously refused to strike from the record the answer of the witness Elwood G. Hoyt to the question:

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13. Because the trial court erroneously permitted the witness James E. Davenport, over objection of appellant, to answer the following question:

> "Now, Mr. Davenport, with this information that there is a passenger cinder platform 780 feet north of Mount Vernon Avenue, I will ask you if, in your opinion, a face-one switch would be granted to an applicant, if such an application was made by someone owning this property in question"?

J. EMIL WALSCHEID,
Attorney for Appellants.

Notice of Appeal.

(Filed November 22, 1926.)

BERGEN COUNTY CIRCUIT COURT.

In the Matter of The Award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station and for safe and convenient access thereto," adopted July 6th, 1926.	On Appeal from Award.

To Hugh McGowan, Jr., Mayor and Chief Executive of the Village of Ridgefield Park, in the County of Bergen; Elwood L. Hoyt, Village Clerk of the Village of Ridgefield Park, in the County of Bergen:

PLEASE TAKE NOTICE that we, the undersigned, Overpeck Land Corporation and John J. Chello, do appeal to the Bergen County Circuit Court from the award made by the General Board of Assessment of the Village of Ridgefield Park, in the County of Bergen, and confirmed by the governing body of said Village on the 3rd day of November, 1926, amounting to the sum of Seventy-five hundred ($7,500.00) Dollars, for lands to be taken by the said Village pursuant to the provisions of an ordinance entitled, "An ordinance to

acquire lands for a site for a new railroad station and for safe and convenient access thereto," adopted July 6th, 1926, and which award was made for land and premises located in said Village and known as lots numbers eight (8), nine (9), ten (10), eleven (11) and twelve (12) "Map of Mehrhof Park, Ridgefield Park, New Jersey," also known as lots numbers one (1), two (2), three (3), four (4) and five (5), Block No. 85, "Tax Map of Ridgefield Park, New Jersey."

Dated, November 12th, 1926.

OVERPECK LAND CORPORATION (L. S.)
By CHAS. A. PEARD, President,
Mt. Vernon Street,
Ridgefield Park, N. J.

(Seal)

JOHN J. CHELLO (L. S.)
Mt. Vernon Street,
Ridgefield Park, N. J.

Attest:

GEORGE T. BEHRMAN,
Secretary.

Affidavit of Service of Notice of Appeal.

(Filed Nov. 22, 1926.)

BERGEN COUNTY CIRCUIT COURT.

In the Matter
of
The Award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station and for safe and convenient access thereto," adopted July 6th, 1926.

State of New Jersey, }
County of Hudson, } ss.:

Charles A. Peard, of full age, being first duly sworn, on his oath deposes and says:

I am personally acquainted with Hugh McGowan, Jr., Mayor and Chief Executive of the Village of Ridgefield Park, in the County of Bergen, and with Elwood L. Hoyt, Village Clerk of the Village of Ridgefield Park, in the County of Bergen.

On November 16th, 1926, I served a true and duplicate copy of the annexed notice of appeal upon the said Hugh McGowan, Jr., and upon the said Elwood L. Hoyt, by handing to each of them a true, correct and duplicate copy of said notice

of appeal; such service was made at the Village of Ridgefield Park, in the County of Bergen.

CHAS. A. PEARD.

Sworn and subscribed to before me,
this 18th day of November, A. D., 1926.

HENRY VOGLER,
Master in Chancery of N. J.

Notice.

BERGEN COUNTY CIRCUIT COURT.

In the Matter
of
The Award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station and for safe and convenient access thereto," adopted July 6th, 1926.

On Appeal
from Award.

Sir:

PLEASE TAKE NOTICE that on Thursday, the 16th day of December, A. D., 1926, at the hour of nine o'clock in the forenoon, or as soon thereafter as counsel may be heard in the premises, I will apply to his Honor Newton H. Porter, Judge of the Bergen County Circuit Court, at the Court House, in the City of Paterson, in the County of

Bergen, to frame an issue for the trial of the above entitled appeal and for an order directing the trial of the same by a struck jury of the County of Bergen, and providing for such struck jury.

Dated, December 13th, 1926.

Yours very truly,

J. EMIL WALSCHEID,
Attorney for Appellants.

To

Messrs. MORRISON, LLOYD & MORRISON,
Attorneys for Village of Ridgefield Park.

Rule for Struck Jury.

(Filed February 28, 1927.)

BERGEN COUNTY CIRCUIT COURT.

In the Matter of The Award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station and for safe and convenient access thereto," adopted July 6th, 1926.	On Appeal from Award.

The statute, pursuant to which the above entitled cause is to be heard, providing for the trial of the issues framed therein by a struck jury;

IT IS, on this 18th day of February, 1927, at the instance of the attorney for the appellants, ORDERED that the Sheriff of the County of Bergen do, according to the form of statute in such case made and provided, attend before such Justice of the Supreme Court or such Judges of the Circuit Court as shall then there be present, at the Court House, in the City of Hackensack, on the 28th day of February, 1927, at the hour of four o'clock in the afternoon, with the book or list of persons qualified to serve on juries in the County of Bergen, and that such Justice or Judge do, in the presence of the attorneys or agents of the respective parties, name forty-eight of those persons out of which each party may strike twelve, and the Sheriff of the County of Bergen shall impanel the remaining twenty-four to try the issues between the said parties.

NEWTON H. PORTER,
Judge of the Bergen
County Circuit Court.

On motion of

J. EMIL WALSCHEID,
Attorney for Appellants.

Order.

(Filed February 28, 1927.)

BERGEN COUNTY CIRCUIT COURT.

In the Matter of The Award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a sit for a new railroad station, and safe and convenient access thereto," adopted July 6th, 1926.	On Appeal From Award.

An order having heretofore been made providing for a struck jury and for the striking of the same in the presence of attorneys or agents of the respective parties, at the hour of four o'clock in the afternoon of the 28th day of February, 1927, and the respective parties having attended before Honorable Newton H. Porter, Judge of the Circuit Court of the County of Bergen, at the Court House, in the City of Hackensack, on the said 28th day of February, 1927, through their respective attorneys, namely: the appellants through J. Emil Walscheid, Esq., their attorney, and the defendant, through Horace F. Banta, its attorney, and the said judge in the presence of said attorneys having named forty-eight of the persons qualified to serve on juries in the County of Bergen, and each of

said parties having, through their respective attorneys, struck twelve of said names, and the names of said persons thus qualified to serve on juries in the County of Bergen remaining after such striking being the following:

Name	Occupation	Residence
Ackerman, Albert I.,	Farmer	Ridgewood Twp.
Albinson, William,	Cashier	Ramsey Boro.
Barrett, Lewis S.,	Executive	Westwood Boro.
Carroll, John H.,	Accountant	Teaneck Twp.
DeMott, Melvin,	Insurance	Hackensack City.
Frahn, Adolf,	Retired	Park Ridge Boro.
Gannon, Walter L.,	Clerk	Glen Rock Boro.
Goodman, Arthur J.	Foreman	North Arlt. Boro.
Greer, John E.,	Banker	Edgewater Boro.
Haaker, Edwin A.,	Automobile Tires	Englewood Clfs.
Herbert, Walter H.,	Printer	Hillsdale Twp.
McCain, Walter L.,	Editor	Closter Boro.
Miller, Henry T.,	Manager	Bogota Boro.
Moller, Charles F.,	Architect	Oradell Boro.
Nadler, August,	Exporter	Hackensack City.
Romaine, Theodore,	Hardware Dealer	Hackensack City.
Schryner, Alburtis E.,	Insurance	Westwood Boro.
Sibley, Ernest	Architect	Fort Lee Boro.
Sisley, Edward J.,	Insurance	Wood. Lk. Boro.
Stillwell, Frederick,	Secretary	Hackensack City.
Sturge, John H.,	Superintendent	Hackensack City.
Tatham, Thomas H.,	Retired	Hohokus Twp.
Tiedeman, Irvin B.,	Executive	Hohokus Twp.
Zimmerman, Karl A.,	Manufacturer	East Ruth. Boro.

IT IS NOW, on this 28th day of February, A. D. 1927, ORDERED that the said list of twenty-four names, thus remaining, be delivered to the Sheriff of the County of Bergen, so that he may impanel

the same pursuant to law to try the issues between the said parties by the court.

NEWTON H. PORTER,
Judge of Bergen County
Circuit Court.

On motion of

J. EMIL WALSCHEID,
Attorney for Appellants.

Order Framing Issue to be Tried and Providing for Trial by a Struck Jury.

(Filed Feb. 28, 1927.)

BERGEN COUNTY CIRCUIT COURT.

In the Matter of The Award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provision of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station, and safe and convenient access thereto," adopted July 6th, 1926.	On Appeal from Award.

Application having been made for an order for the trial upon an issue to be framed under the

direction of or by this court, of the appeal taken in the above entitled matter, by a struck jury for the purpose of assessing the damages and benefits, therein heretofore fixed, anew;

IT IS NOW, on this 18th day of February, A. D. 1927, ORDERED that the 10th day of March, 1927, be and the same hereby is fixed as the day, and the Court House, at Hackensack, in the County of Bergen, be and the same hereby is fixed as the place, for the trial of said appeal by this court; that a struck jury be drawn and struck, according to law, for the trial of said appeal and that the issue to be tried upon the trial of said appeal shall be the ascertainment and determination of the true market value, as of the third day of November, A. D. 1926, of the land and premises located in the Village of Ridgefield Park, in the County of Bergen, known as lots numbers eight (8), nine (9), ten (10), eleven (11) and twelve (12), "Map of Mehrhof Park, Ridgefield Park, New Jersey," also known as lots numbers one (1), two (2), three (3), four (4), and five (5), Block No. 85, "Tax Map of Ridgefield Park, New Jersey."

NEWTON H. PORTER,
Judge.

We consent to the making and entry of the above order.

MORRISON, LLOYD & MORRISON,
Attorneys for Village of Ridgefield Park.

J. EMIL WALSCHEID,
Attorney for Appellants.

Testimony.

BERGEN COUNTY CIRCUIT COURT.

OVERPECK LAND CORPORATION and
JOHN J. CHELLO,
Appellants,
v.
VILLAGE OF RIDGEFIELD PARK,
Respondent.

Hackensack, New Jersey,
March 10th, 1927.

Before—Honorable NEWTON H. PORTER,
Judge, and a Jury.

APPEARANCES:

For the Appellants, J. EMIL WALSCHEID, Esq.
For the Respondent, Messrs. WINNE & BANTA.

(The Undersheriff draws eleven men from a struck jury panel.)

The Undersheriff: The jury is exhausted, your Honor.

The Court: What is your pleasure, gentlemen? Do you wish to go to the general panel?

Mr. Winne: Satisfactory to me.

(One juror selected from the general panel.)
(The jury was accepted and sworn.)

Mr. Walscheid: We have agreed, if your Honor please, that the map which is now upon the board

may go into evidence, and I will accordingly use it in opening this case.

The Court: Very well.

Mr. Walscheid opens the case to the jury on behalf of the appellants.

Mr. Winne opens the case to the jury on behalf of the respondent.

The Court: Have you gentlemen designated or have in mind any showers?

Mr. Winne: Well, I asked the engineer of the Village to come here, because he is one person that knows the exact location on the land of this tract, and Mr. Walscheid suggested we might go down, he and I, and show the property. I think that we could be trusted to go along.

The Court: I have no objection, and if the engineer is needed, I have no objection to his going.

Mr. Winne: I thought I ought to have him to indicate the exact delineation of the property on the ground.

The Court: He will be a witness, and I do not like to have a witness do that. I think it is unwise to have anyone go who is going to be a witness in the case; but if it is imperative to have the engineer, we might make an exception.

Mr. Winne: The only thing is, on the ground, I do not know anybody who can tell just where this property is, where it begins and where it ends.

Mr. Walscheid: If we take a small map, there will be no trouble at all.

Mr. Winne: I was down there with a map, and I must say I cannot find it. You can say it is 100 feet from the street, but how can you tell where 100 feet is?

Mr. Walscheid: It is staked there now, isn't it?

Mr. Winne: I take it it has a stake that he can indicate.

Mr. Walscheid: I would not care to have the engineer act as a shower. I have no objection to Mr. Winne going as a shower to point out the locality, or any locality, and I doing the same. I do not think anybody who is a witness, or who will become a witness, ought to go as a shower. Are you going to have him present? I suppose what really ought to happen is that the jury and the two showers ought to be on the job.

The Court: Strictly speaking, I think the jury and two showers is all that should go. Now, I have no objection to counsel going as showers, and in fact, I can see good reasons why they might, and they can be sure that there has no impropriety been committed by anybody. I tried that Ringwood Company appeal for five long weeks, and everytime the jury went, I went too with the showers, because it was a matter that involved several million dollars, and I did not want to have any question about an impropriety having been committed; I do not mean deliberate, but unintentional; and I think it is rather important that the jury get an unbiased picture of this thing, and I think it is poor practice to ever have anyone who is a party, even, to be a shower, and if there is anyone else that you could suggest who knows the situs who is not going to be a witness, I would not have any objection to having him present. My only point is, I think it is rather unwise to have a witness.

Mr. Winne: I will go with Mr. Walscheid.

The Court: Now, if you two go, there is no necessity to have a representative of the court, is there? I should like to send someone representing the court, but I do not see any necessity of it as long as you two are going. I did not know that you had planned that. Very well.

Mr. Walscheid: Then we are to not only show that property; we are also to show the general locality?

The Court: This statute does not provide for the showing of comparable property; the statute does not provide that any property other than the property itself should be viewed and, strictly speaking, the jury should go and set foot on the property under condemnation. Now, if you gentlemen are agreed, I haven't the slightest objection to taking them around the neighborhood and showing them property that is going to be testified to as comparable property, if you both agree on that. I simply point out that the statute does not provide it. I have no objection to it; I think it might be helpful.

Mr. Winne: We will do nothing except what we agree on.

Mr. Walscheid: What do you say?

Mr. Winne: I do not want to spend too much time.

Mr. Walscheid: No. Property right in the immediate neighborhood.

The Court: If you do that, just say to the jury, "This is a piece of property which we call the Smith piece, which will be referred to in the testimony as comparable property." Do not testify and do not tell them that the price that this was sold for was so much. Do not tell them anything except let them see it, if you think that is going to help any; I haven't any objection to your showing them such properties as may be referred to in the testimony as comparable properties.

Mr. Winne: If Mr. Walscheid will state what he wants to show—

Mr. Walscheid: All I wanted to show was what I talked about.

Mr. Winne: I certainly do not want to walk to this piece of property.

Mr. Walscheid: Well, you do not have to walk there. You can see it.

The Court: Of course, they cannot help but see the frontage on that $38,000.00 piece.

Mr. Winne: We have to go in that way.

The Court: And that is right there adjacent, isn't it?

Mr. Walscheid: Yes.

Mr. Winne: That is the only way you can get to this property.

The Court: My own view is, it is going to be helpful to the jury if they see the properties that are going to be referred to in the testimony, as well as the property under condemnation. I think it will be helpful to them; that is, if you do not go too far afield.

Mr. Walscheid: Well, we will not go far afield at all.

The Court: All right. Let the jury retire. The jury in this case, of course, will report back here tomorrow morning at ten o'clock promptly.

(Whereupon, the jury retired to view the property.)

Hackensack, N. J., March 11, 1927,
10:00 o'clock A. M.

Trial Resumed.

JACOB E. MABUS, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Mabus? A. Ridgefield Park.

Q. And what is your business, sir? A. Lumber, coal and building material.

Q. And by whom are you employed? A. I am a member of the firm of Brewster & Sons.

Q. And are you acquainted with the land on the south side of Mount Vernon Avenue in the Village of Ridgefield Park? A. Mount Vernon Street; yes, sir.

Q. Mount Vernon Street? A. Yes, sir.

Q. Was that property owned at any time by any member of the firm of Brewster & Company? A. Yes, sir; by Mr. Morton T. Brewster.

Q. And did you have any connection with the selling or handling of any of this property? A. Why, yes. Mr. Brewster owned practically all of the property from, I think it is Spruce Avenue, to the railroad.

Q. Now, let us see. Where is Spruce Avenue? Will you indicate here? This is Spruce Avenue (indicating)? A. Yes, sir.

Q. From Spruce Avenue? A. Down to the railroad.

Q. Down to the railroad? A. Yes, sir.

Q. On the south side of Mount Vernon Street? A. Yes, sir.

Q. And that is between blocks 87, 86 and 85? A. Yes, sir.

Q. I suppose that is with the exception of the park? A. Yes, sir.

Q. With the exception of the little park? A. Yes, sir.

Q. Yes. A. Frank White Park.

Q. The Frank White Park. Now, while Mr. Brewster owned this property, were there any buldings erected at all by Mr. Brewster on the property in question? A. No, sir.

Q. So that he held it as unimproved land? A. Yes, sir.

Q. Do you know whether or not Spruce Street is a town street? A. I cannot say.

Q. You cannot say? A. No, sir.

Q. Now, you say you had charge of the sale of this property, did you? A. Yes, sir.

Q. By having charge, I mean actually take charge of the negotiations and of the execution of papers? A. No.

Q. Superintended the matter? A. No. I had no power to execute—

Q. I do not mean that you executed it; but I mean you took charge of the superintending of the execution of papers? A. Yes.

Q. And controlled the matter insofar as Mr. Brewster's interests were concerned? A. I would not say that I controlled the matter; no, sir.

Q. Well, tell us. I want the jury to understand just what your relation to this property was? A. Well, Mr. Brewster owned all that property, and as the prospective buyers came around, I would set a price on it, and I would do—and I would get the thing all ready for Mr. Brewster's yes or no.

Q. Do the negotiating? A. Yes, sir.

Q. And then, if he said yes or no, you would approve? A. I would abide by his decision.

Q. Yes. And the papers were, accordingly, executed? A. Yes, sir.

Q. Under your supervision? A. Yes, sir.

Q. Moneys received? A. I received all the moneys.

Q. You received the moneys, and the papers were handed out by you? A. Yes, sir.

Q. The deeds, and so forth? A. Yes, sir.

Q. Now, did you have anything to do with the sale of lots one, two, three, four and five in Block 85? A. Yes, sir; I did.

Q. And did you conduct those negotiations? A. I did.

Q. Will you tell us about those negotiations in your own way? A. Why, we had owned, as I said before, all the property from Spruce Avenue down to the railroad, and I had sold it all with the exception of those five lots. There is more than those lots, but with the exception of those six lots on the map. Mr. Peard came to me one day and wanted to know were they for sale. I told him yes. He told me to name a price on them, which I did.

Q. What price did you name? A. $15,000. He took his check book out of his pocket, and wanted to pay a deposit on them, which I would not accept.

Q. Why not? A. Well,—

Q. Tell us what happened. A. I felt that—

Mr. Winne: I object.

The Court: Objection sustained.

Q. Tell us what happened; not what you felt. We do not want your feelings in the premises. A. I told Mr. Peard that I would not accept a deposit, and I gave as my reason that I was under the impression that some day the railroad or the Village would require that property for a railroad depot. I told him before I accepted his deposit, I wanted to give the people of Ridgefield Park the option to buy that property at the price that I was ready to sell it to him for. Well, he—he agreed; so I agreed with him to give him his answer the next day at ten o'clock. That night I called on the —one of the commissioners in Ridgefield Park and put the proposition to him.

Q. What did you put to him? A. I told him that it had come to me in a roundabout way that the Village would sometime want that particular property, and as I had a bona fide offer for it, and

as I have sold all the other, we wanted to get rid of that too. And I told him I didn't want to sell it to anybody if the Village would ever want it for a station, or if the Village felt that they would want it at some future time. I did not sell it to them.

Q. Well, what did you offer it to them for? A. I offered it for that amount.

Q. Was it refused? A. It was refused.

Q. And at what price did you offer it to him? A. $15,000.

Q. And who was the man to whom you offered it for $15,000? A. Mayor McGowan.

Q. He was then the mayor of the Village? A. Yes, sir.

Q. Now, having offered the property to Mayor McGowan, for $15,000, and he having refused it, what next did you do in relation to it?

The Court: Did he state the date that that offer was made?

Q. Can you tell us the date on which that offer was made? A. Why, it was about a year ago.

Q. Perhaps I can help you. Will you look at this paper and tell me whether that will refresh your recollection as to the time when this offer was made to Mr. McGowan, the Mayor of Ridgefield Park? A. (Referring) The fore part of April, 1926.

Q. And immediately after having made that offer and having received this refusal, what next did you do in connection with the property? A. I kept an appointment I had with Mr. Peard the next day at ten o'clock.

Q. And at that time, did you tell Mr. McGowan who the purchaser was to be? A. No, sir.

Q. You did not. And then, the next day, you kept an appointment with Mr. Peard. And what then did you do on that day? A. I accepted his check for $15,000. I accepted his check for a deposit on the sale of that property for $15,000.00.

The Court: Mr. Peer, was it?

The Witness: Peard.

Mr. Walscheid: P-e-a-r-d was the individual.

The Witness: He was the agent.

Q. And pursuant to that deposit, was a contract of sale drawn and executed? A. Yes.

Q. Will you look at this paper and tell me whether or not this is one of the originals of the contract of sale, one of the duplicates that was then drawn and executed? A. (Referring) Yes, sir; it is.

Mr. Walscheid: I offer it in evidence.

The Court: Has Mr. Winne seen it?

Mr. Winne: No. I have not seen it yet (referring to paper). No objection.

The Court: Let it be received and marked.

(Paper marked Exhibit A-1 in evidence.)

Mr. Walscheid: Agreement made and dated April 24, 1926, between Morton T. Brewster, hereinafter described as the seller, and Overpeck Land Corporation and John J. Chello, hereinafter described as the purchaser, witnesseth, that the sellers agree to sell and convey the said property in the Township of Ridgefield Park known as lots eight, nine, ten, eleven and twelve of the Meyerhof plot, also known as lots one, two, three, four and five, Block 85, Tax Map of

Ridgefield Park, New Jersey. The price if $15,000.00, payable as follows: $250.00 on the signing of this contract, receipt whereof is acknowledged; $1,250.00 on April 26th, 1926; $3,500.00 on delivery of the deed on June 26th, 1926; by delivery of a bond and mortgage in the amount of $3,250.00 on lots eight and nine, and by delivery of a bond and mortgage in the amount of $3,250.00 on lots ten and eleven; by delivery of bond and mortgage in the amount of $3,500.00 on lot number twelve.

There seem to be, your Honor please, two maps here, and they convey by the old land map, and these lots are the tax numbers.

The deed shall be delivered upon the receipt of said payments at the office of Charles K. Peard, on June 26, 1926. Signed Morton T. Brewster, Overpeck Land Corporation, Charles A. Peard, President, and Treasurer, John J. Chello.

The Court: When was the title to pass under that contract?

Mr. Walscheid: The title was to pass on June 26, 1926.

Q. Now, was the title passed on that day? A. Yes, sir.

Q. And you closed the negotiation at that time? A. Yes, sir.

Q. And handed out the deed which had been signed by Mr. Brewster? A. Yes, sir.

Q. And that is the deed (handing paper)? A. Yes, sir.

Mr. Walscheid: Mr. Winne? (Handing paper to counsel.) I offer it in evidence.

Mr. Winne: No objection.

The Court: Let it be received and marked.

(Paper marked Exhibit A-2 in evidence.)

Q. And at that time, did you take back from the Overpeck Land Company and Mr. Chello the mortgages described in the contract offered in evidence as Exhibit A-1? A. Yes, sir.

Q. And, by the way, how much did those mortgages amount to? A. In the aggregate, $10,000.00.

Q. So that these parties at that time paid $5,000.00 cash, and allowed $10,000.00 to remain on bond and mortgage? A. Yes, sir.

Q. And are those bonds and mortgages still outstanding obligations against this property? A. Yes, sir.

Q. So that Mr. Brewster has a lien on the property to the extent of $10,000.00 by way of bond and mortgage? A. Yes, sir.

Q. Now, did you also sell the lots known as lots number six, seven, eight and nine in Block 85, and known as the Baldwin property? A. Yes, sir.

Q. By selling, I mean you sold them for Mr. Brewster. A. I understand.

The Court: The deed that you have already introduced did not cover all of the property that we are concerned with?

Mr. Walscheid: Yes, sir.

The Court: Did it?

Mr. Walscheid: It did, Sir. It covers lots one, two, three, four and five.

The Court: And those are all that are in this proceeding?

Mr. Walscheid: Yes.

The Court: All right.

Mr. Walscheid: Now, your Honor will note I now ask about lots six, seven, eight

and nine in Block 85, which is the Baldwin property, and for which $38,000, $38,500.00, was paid.

Q. You sold that. Did you sell it at one sale or two sales? A. Two sales.

Q. And about when was the first of those sales made to Mr. Baldwin? A. The first actual sale was made—the title was passed in 1919.

Q. 1919? A. Yes, sir.

Q. Which two lots were then sold? A. I have got to acknowledge my ignorance. I do not know whether it was the pair near Herbert Street or the pair nearer the railroad.

Q. Do you remember what the—

Mr. Winne: I know, if you want to know.

Mr. Walscheid: Well, I would like to know. Mr. Winne is kind enough to say it is lots eight and nine, which would be the corner property; six and seven, was it?

Mr. Winne: Yes.

A. That is what I thought it was.

Q. That is not the corner, but the inside property? A. Lots six and seven; yes, sir.

Q. Can you tell us what the price was for those two lots? A. $1,250.00 a lot.

Q. $1,250.00 a lot? A. Yes, sir.

Mr. Walscheid: By the way, we handed over to the jury yesterday a set of maps such as your Honor has, and I wonder if they still have them with them?

The Court: Any objection to them referring to them?

Mr. Winne: No; not at all, your Honor.

The Court: Very well.

Q. Lots six and seven, Block 85, is what we are talking about. $1,250.00 apiece? A. Yes, sir.

Q. In 1919. Now, at that time, did you make any arrangement with Mr. Baldwin about giving him the outside two lots? A. Yes, sir.

Q. And what was the arrangement you then made with him? A. Why, it was sort of a gentleman's agreement. At the time of selling those two, I was anxious for him to take the four; but Mr. Baldwin felt that he could not handle it at that time, and I agreed with him that if in the near future he would want, or got in a position, to take those other two lots that he could have them at the same price, plus the carrying charges; and it seems to me it was about a year or perhaps a little longer, later, that Mr. Baldwin took title to the other two lots on the corner.

Q. And that would make it sometime in 1920? A. Either that or 1921, sir; I am not positive.

Q. And that is lots eight and nine in Block eighty-five? A. Yes, sir.

Q. Now, what was the price paid for those two lots at that time? A. $1,350.00.

Q. $1,350.00? A. A lot.

Q. A lot? A. Yes, sir.

Q. That is $2,700.00 for the two lots; and the other was $2,500.00? A. Yes, sir.

Q. A little more than—my mental arithmetic is bad—a little over $5,000.00; is that right? A. $5,200.00.

Q. $5,200.00. And was that property in the same condition then physically as it is now excepting for the tearing down— A. The Baldwin property?

Q. Yes. In other words, was that little shack on it that is on it now? A. Yes.

Mr. Winne: I object to that characterization of the building.

Q. Oh, a little building on it?

Mr. Walscheid: I beg your pardon.

A. Why, yes. To go back a few years, in 1919—

Q. I mean that particular little building that is on the Baldwin tract now. A. It was on there, but we did not own the building.

Q. I see. So you did not sell the building? A. We did not sell the building. If I might say so, in 1914 or 1915, we rented the office site to Mr. Baldwin, and he paid rent on it from 1914 until either 1919—and 1920; that is, within a year.

Q. Then he built that office building himself? A. He built it at the time he began paying us rent for it.

Q. Now, in addition to that, you sold other property in those blocks, did you not? A. Yes, sir. All from Herbert Street up to Spruce.

Q. From Herbert Street up to Spruce. Can you tell us in the order in which you sold them what you were paid for these properties? A. No, sir.

Q. Well, can you give us any record at all as to what was paid? A. I can say that the price of those Baldwin lots started in 1919 at $1,250.00, and the last ones—well, the last three lots on the street sold for $3,000 a lot, which was about two years ago.

Q. Well, do you know where those three lots are? A. Yes, sir. They are between Herbert and Watts Court, I think they call it.

Q. Herbert and Watts Court? A. Yes, sir.

Q. They sold for $3,000.00 apiece? A. Yes, sir.

Q. And that is the best price that you have received? A. Yes, sir.

Q. For any of this property? A. Yes, sir.

Q. And do you know what lots they are? A.

Why, in the middle of the block. I cannot call the—recall the numbers now.

Q. Do you know to whom they were sold? A. They were sold through a Mr. Jacobson to the Kenilworth Homes.

Q. Well, was there a transfer from Brewster to Lipschitz? A. There was such a transfer; yes, sir.

Q. Do you know where that is located? A. No, I cannot; it is between those two streets. I do not know which one each particular person bought, any particular lot.

The Court: Between Watts Court and Spruce Street, on Mount Vernon Street?

Mr. Walscheid: Mount Vernon Street.

The Court: All right.

Q. Well, was there a transfer in June, 1925, Brewster to Lipschitz, at $9,000.00 for three lots? A. Yes.

Q. That was— A. That was the same three lots.

Q. That is the three lots. A. Mr. Jacobson was the agent, and I did not know whether—I do not remember whether he transferred them to Kenilworth Homes or to Lipschitz.

Q. But that would make it lots— A. There were three lots in the center of the block.

Q. Would it be lots fifteen, sixteen and seventeen? A. Yes, sir. I am almost positive it was.

Q. In Block 86, at $3,000.00 apiece? A. Yes, sir.

Q. Did you sell the corner lot in September, 1922, the corner of lot fourteen in that same Block 86 in September 1922, for $1,700.00? A. Yes, sir.

Q. Do you remember to whom you sold it? A. Mr. Paden.

Q. Mr. Paden? A. P-a-d-e-n, yes, sir.

Q. Now, did you sell lots eighteen and nineteen in Block 86 in September 1922, the corner lot, for $2,000.00?

Mr. Winne: That is nineteen alone; that is nineteen by itself; that is lot nineteen by itself?

A. I sold it all by itself.

Q. Oh, nineteen by itself, the corner, all for $2,000.00? A. We sold that to Mr. De Leon, and I think the price was $2,000.00.

Q. And did you sell, in February 1925, lot eighteen, the one next to the corner, for $2,500.00? A. Yes, sir.

Q. And do you remember to whom you sold that lot for $2,500.00? A. Why, Mr. Kramer bought one, and Mr. Lande the other. Now, which particular lot that is, I do not know.

The Court: Have you the date you sold number nineteen for $2,000.00?

Mr. Winne: September, 1920.

Mr. Walscheid: September, 1920?

The Court: 1920.

Mr. Walscheid: No, no, no. September 1922.

Mr. Winne: And that is the De Leon.

Mr. Walscheid: And the other was February, 1925.

Mr. Winne: That is the Kramer.

Q. Now, going into Block 87, did you sell lots—oh, in Block 87, at the corner of Spruce and Mount Vernon Street, you have a lot marked number nineteen which has a frontal width of 50 feet, plus; and it is 50 feet plus by 100; did you sell that lot? A. Yes, sir.

Q. In June, 1922, for $2,500.00 for that plot? A. No, sir.

Q. What did you sell it for? A. I sold it for $4,000.00 for the 50 feet.

Q. The 50 feet for $4,000.00? A. Yes, sir. Now, wait a minute. If that is on the corner, I am wrong.

Q. Well, that is where it is. A. Well, I cannot see. The light shines on that map, and I cannot look around the corners.

Q. Would it be better if you come down here? A. I will if you let me.

Q. Oh, certainly. No reason why you shouldn't. A. (The witness stands before the map.)

Q. I suggest that you stand about there so that you can see the map and not stand in front of the jury. I was speaking about lot number nineteen in Block 87. A. I do not remember that sale.

Q. You do not remember that sale at all? A. Not at all.

Q. What about lots 17 and 18? A. I sold those to the Ridgefield Park Auto Company.

Q. And do you remember when? A. No, sir; three or four years ago.

Mr. Winne: That is April, 1923?

Q. April, 1923? A. That is about right.

Q. Do you remember the price? A. Yes, sir; $4,000.00.

Q. That is $2,000.00 apiece? A. Yes, sir.

Q. Now, lots thirteen, fourteen, fifteen and sixteen in Block 87; do you remember selling those? A. Why, lot thirteen was sold to Doctor Hamilton, and—

Q. When? A. That was around 1919 or 1920.

Q. 1919, was it?

Mr. Winne: 1919.

Q. What was the price obtained? A. I will have to guess at that at $1,500; I do not know.

Q. $1,500.00. And lot fourteen, fifteen and sixteen, what do you know about that, about those lots? A. Those were sold, oh, it seems to me, about between—about three years ago, and my recollection is that I either got $2,250.00 or $2,500.00 apiece for them.

Q. Well, what was it? You have the record.

Mr. Winne: They were fourteen and fifteen, sold to Van Realty Company, November, 1924, and for $4,500.00.

A. $2,250.00 apiece; yes, sir.

Mr. Winne: Sixteen was sold to Joseph Lande, January, 1925, for $2,500.00.

Q. Is that right, sir? A. Yes, sir.

Q. What other properties did you sell on that map? It is all sold now? A. That cleaned up the Brewster estate, with the exception of the property in question.

Q. That is all that the Brewster estate had excepting the lots which you sold to Overpeck Land Company and Chello? A. Yes, sir.

Q. For $15,000.00? A. Yes, sir.

The Court: Except lot number nineteen in Block 87.

Mr. Winne: They do not own that. Mr. Walscheid assumed that they owned it.

The Court: Very well. And I do not know whether he testified with respect to lot 14 in Block 86 on the corner of Herbert Street.

Mr. Walscheid: Block 14, 86; yes, he testified that went to Mr.—

The Witness: Paden, $1,700.00.

Mr. Winne: September, 1922.

The Court: Is that correct, Mr. —

The Witness: Yes, sir.

The Court: All right.

Q. Now, at that time, Mr. Mabus—will you please take the stand again? A. (The witness resumes the stand.)

Q. At that time there were no buildings at all on that property? A. No, sir.

Q. That you yourself sold? A. No, sir.

Q. Have buildings been erected on it since? A. They have started a depot there, I understand.

Q. No, no; not on the Chello property; but on the property fronting on Mount Vernon Street. A. Yes; there are buildings.

Q. And can you give us a general description of the improvements that have been made upon the lots that you then sold? A. Why, my interest in the property ceased when I sold it; but passing there day after day, I noticed that there is a post-office on one of them.

Q. Where is the post-office? A. The post-office is at the corner of Watts Court and Mount Vernon Street.

Q. On the east or the west side of the court? A. It is on the east side.

Q. That would be lot number 13 in Block 87? A. Yes, sir.

Q. Now, go ahead and give us— A. And between Watts Court and Herbert Street, at the corner of—at the corner of Watts Court, opposite the post-office, Mr. DeLeon built a store with apartments upstairs, and next to it I think is Mr. Lande, or Mr. Kramer, they built a building there; and on the next three lots is stores and apartments up-

stairs, and on the next corner is Mr. Paden's real estate office.

Q. That is at the corner of Herbert Street and Mount Vernon? A. Yes, sir; on the east side of Herbert Street.

Q. Yes. And that is the construction, as you remember it? A. Yes, sir.

Q. Now, at the time when you made these sales, what was the condition of Mount Vernon Street? Was it then in an improved condition? A. Well, it was—when the first sale was made, it was a macadam road, nothing to brag about, but it was what I would call a pretty good road. It had not been improved the way it is today.

Q. And as it is today, will you describe it? A. In what way?

Q. I mean, what kind of an improvement has been made on it today? A. It is a concrete road today.

Q. It takes the place of the macadam that used to be there? A. Yes, sir; with cobble stones in the gutter.

Q. There is concrete road in the center, with cobble on either side, and it is now a county road? A. Yes, sir.

Q. And how long has it been a county road? A. Four or five years.

Q. Did you also, Mr. Mabus, have anything to do with the sale of any properties in connection with Block number 96? A. Yes, sir; I had all to do with the sale of that.

Q. There is indicated on this map a strip 30 feet wide at the northerly end and 25 feet at the southerly end, and approximately 280 feet long running parallel with the right of way of the West Shore Railroad, shown upon that map. Did you buy and sell that parcel? A. Yes, sir. I bought all the property contained in Block 96.

Q. And you bought all that property contained in the whole Block 96? A. Yes, sir.

Q. For how much money? A. $14,000.00.

Q. And then you sold this little strip running parallel to the railway to whom? A. To the New York State Realty & Terminal Company is my recollection of the name, or, in other words, the New York Central Railroad.

Q. Yes. And when you sold that property, what did you ask them for it, for that strip? A. What did I ask them, or what did they give me?

Q. Yes. What did you ask, first? A. I asked $5,000.00.

Q. And what price did you finally receive for it? A. Why, they came back to me with a counter offer of $3,500.00, which I accepted.

Q. So that they paid you $3,500.00 for that strip? A. Yes, sir.

Q. And how long ago was that transfer made? A. I bought that in November, 1911, and sold it to the railroad in March, I think, nineteen—I bought that in November, 1925, and sold it to the railroad in March, 1926.

Q. By that, you mean you bought the whole block in March, 1925? A. No, sir; in November, 1925.

Q. November, 1925. And sold them the strip in— A. March.

Q. —1926? A. Yes, sir. Three or four months later. I do not know just when it was.

Q. Three or four months later. Now, will you give me a general description of the topography of this strip that you sold. Is it high land, is it low land, wet land or dry land? A. It was very low land. It was utterly useless for building purposes, or it couldn't be built on unless you spent considerable money to fill it in, and I would say, while it wasn't marshy, it was just one of those banks that ordinarily run down to a railroad.

Q. It was on the edge of the railroad embankment? A. Yes, sir; it adjoined the New York Central or West Shore Railroad's right of way to the east.

Q. And can you tell us what the square footage in that parcel is, approximately? A. Yes. There is about between five thousand and fifty-three hundred feet in the small piece.

Q. In the small piece? A. Yes, sir.

Q. That is about the size of a city lot? A. No. It is about the size of one and a half city lots.

Q. One and a half. Well, a city lot has about twenty-five hundred feet, hasn't it? A. Yes, sir.

Q. And how much is in this? A. About—well, it would be about two city lots.

Q. That is what I thought. About five thousand square feet.

Mr. Walscheid: That is all.

Cross Examination by Mr. Winne:

Q. Mr. Mabus, do you know how long the Brewster estate owned this property that you have been talking about? A. I do, sir. They bought it, they took title, on March 7th, 1907.

Q. And ever since that time, you have been familiar with the property? A. Very much so.

Q. And you are in the employ of Brewster & Company, or a member of the corporation? A. A member of the corporation.

Q. What office do you hold? A. Secretary.

Q. And Mr. Peard who negotiated this purchase is related, I understand, to Mr. Morton Brewster? A. He is a brother-in-law.

Q. Do you know anything about the Overpeck Land Company, Mr. Mabus? A. Why, I understand that it is composed of—

Mr. Walscheid: Oh, I object to that. I desire at this time to object to the question. It is immaterial, incompetent and irrelevant.

The Court: The point is to show interest between the buyer and the seller. If that is the purpose, as I assume it is, why isn't that competent?

Mr. Walscheid: Well, I suppose that might be competent, but not through this witness who knows nothing about it.

The Court: If he knows, it is competent. Do not guess at it.

Mr. Winne: He, of course, is the seller's representative in this transaction.

The Court: If he knows, it is competent.

A. Well, I do not know who composed the Overpeck Realty Company.

Q. Do you know when the company was organized? A. No, sir.

Q. And you do not know who the officers are? A. No. Outside of the fact, being I had that contract, that I signed, that I witnessed, I could tell you who the officer was who signed that contract.

Mr. Walscheid: At that time?
The Witness: At that time.

Q. Look at the contract, Mr. Mabus (handing paper to the witness). A. Charles A. Peard, President and Treasurer.

Q. And the negotiations were carried on by you and Mr. Peard? A. Yes, sir.

Q. Referring to the purchase by Mr. Baldwin, you say that he rented that property from you about 1914? A. Yes, sir.

Q. Didn't he have an understanding in 1914 as to what the purchase price would be when he got ready to buy it? A. No, sir.

Q. Isn't it a fact that the prices that he paid later were agreed upon in 1914 as a price at which he could have the property? A. Why, during the course of this—during the period of time he was there as a tenant, I was trying to sell him the property, and he was trying to buy; and during the five years of his occupancy, we then agreed on a price of $1,250.00 a lot for the first two lots; there was no price specified when he took the renting of them.

Q. How soon after 1914 was the price agreed on? A. I cannot tell, sir. Sometime between 1914 and when he took title.

Q. Then it was not just before he took title, but sometime in the middle part of that period? A. I do not know, sir; it may have been two days before he took title. I do not know.

Q. Well, you are the person who made the agreement, aren't you? A. Yes, sir.

Q. Can't you tell us whether that agreement was made in 1914 or in 1919? A. Why, I say that the agreement to rent was made in 1914.

Q. Yes. But the— A. And the title was passed in 1919.

Q. And can you tell us when the price was fixed? A. No, sir.

Q. Between you and Mr. Baldwin? A. No, sir; I cannot.

Q. All right. Now, did anyone ever try to buy these lots that the Overpeck Land Company bought before they negotiated with you?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

The Court: I think it might be competent to show what price might have been fixed by the seller at a time that was reasonably close to the date of the Overpeck purchase. I do not think we ought to go back too far into ancient history.

Mr. Walscheid: Your Honor will allow an exception?

The Court: You may have an exception.

A. Yes.

Q. When was that? A. Perhaps between two and three years ago.

Q. All right. Now, at what price were you holding the lots then?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

The Court: On the theory that it is too remote?

Mr. Walscheid: No, sir. On the theory that mere offers of sale and mere negotiations are not evidential of value, and I am trying to think of the case in which that was explicitly decided, as I remember it.

The Court: I am inclined to think—

Mr. Walscheid: And especially between parties who are not related to the suit.

The Court: Yes. I recall that there has been such decision. I cannot cite it either, but I think that is correct. To establish values, you must show sales and not offers. That is the law.

Mr. Winne: Of course, the purpose of this inquiry is to establish the bona fides of the sale in question, that is, the sale from this man to the Overpeck Land Company,

and whether or not they had had an offer of anything like that amount within a reasonable length of time I think is material as to whether or not this was a bona fide sale. That is the purpose of the inquiry.

The Court: Rather than to establish values?

Mr. Winne: Yes, your Honor.

The Court: Well, it may be competent on that theory. It is not competent to establish price.

Mr. Walscheid: Your Honor please, allow me to be heard on this question. We are here under an order made by your Honor to establish the value of this property as of a certain day. That is the issue. And the value of this property does not in the slightest depend upon the ownership of it. The value of this property is something absolutely separate and apart from the ownership of this property. That is the first thing that I desire to call your Honor's attention to.

The second thing is that this question of bona fides is a collateral matter, and opens the door to issues that we are not here to meet, is not part of the issue in this case and, therefore, this testimony is irrelevant and immaterial.

Thirdly, the only issue being the question of value, a question of offers made to this vendor is immaterial and hearsay, and not only on the question of value, but is also hearsay on the question which Mr. Winne is pressing, that is, the purpose for which he tries to introduce the evidence, and I, therefore, urge that the matter is immaterial and incompetent and irrelevant.

The Court: I think you are right that it is immaterial and incompetent as to the value of the land, perhaps, because it was not a sale but just an offer; but Mr. Winne is offering it on the theory that the price that this witness has testified to as a sale of this property at a given date was not a bona fide price and was not a price that, standing by itself, is a fair criterion of the value of this land, and in order to attack the evidence that has been introduced to establish the value as of that time by a sale, he is seeking to introduce this to attack the credibility of that testimony, not to establish the price at a previous time, and I think on that theory it is competent.

Mr. Walscheid: May I call your Honor's attention to this fact, that even though such an offer were made, even though an offer of only a few hundred dollars was made, without having the man here to testify as to what he based his notion of value upon, and whether he saw the value, whether he realized all the uses to which that property might be put, shows how futile this very evidence is. Here we are entitled to recover the value of this property when its value is put to its best uses.

The Court: That is true.

Mr. Walscheid: And I do not know what the answer will be to this question; but supposing that the answer were that an offer was made of $2,000.00; it was not accepted. The first thing we have, well, here is a man who wanted to buy something cheap. The next question is, was he able really himself to appreciate the value of this property?

did he know what it was worth? Did he know of its peculiar location and the peculiar fitness which it had for particular uses? Now, under all of those circumstances, I say that this question and the possible answer which may come to it is altogether too remote and of no probative value whatsoever and does not in any way assail the bona fides of this transaction. It can have no evidential value on that score.

The Court: Well, of course, the evidential value is for the jury after they have heard the answer. I do not think, necessarily, it is too remote, when it was only two years before this transaction. It may have no value at all and, of course, if somebody realized that the land was worth $15,000, and thought that the owner did not know it, and offered $5,000, that won't deceive this jury at all. It won't have very much evidential value, and if the owner was offered a ridiculously low price and instantly rejected it, of course, it cannot hurt you.

Mr. Winne: Maybe I can reframe the question so that it won't be objectionable to Mr. Walscheid.

Q. Mr. Mabus, let me ask you: At the time this offer was made, at what price did you hold the property?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

The Court: No. I think that is competent. I will allow it, and grant you an exception.

A. I will have to ask you to repeat the question.

The Court: You say there was an offer made two years before this sale to the Overpeck Land Company?

The Witness: No, sir.

The Court: I understood you to say so.

The Witness: No, sir.

The Court: Read the question, Mr. Stenographer.

(Question read.)

Mr. Walscheid: He now says there was no offer made. Let us get the record straight as to whether an offer was made.

The Court: That question was asked, and the previous answer that was given, as I understood, was that there had been a previous offer made some two years before the sale to the Overpeck; that is my recollection. Isn't that what you said?

The Witness: What I tried to say—I beg your Honor's pardon—is that I did offer it for sale about two years prior to the—

The Court: Now, the question is, what did you offer it for sale at that time?

Mr. Walscheid: Now, I object to that as immaterial, incompetent and irrelevant.

The Court: That is your question, is it, Mr. Winne?

Mr. Winne: That is the question.

The Court: I will allow it and grant you an exception.

A. $10,000.00.

Q. That was in the market generally at that price, or was that a particular offer to a particular purchaser? A. No. The property has not been in the market until about two weeks before Mr. Peard bought it.

Q. Well then, what was this offer that you referred to prior to that time? A. Why, the former Mayor Hunter of Ridgefield Park asked me for a price on those particular lots, and at that time we made him a price of $10,000.

Q. I see. Now, there never was any building or business of any kind on this property at any time, Mr. Mabus? A. No. We were not allowed to put any business on it.

Q. What do you mean by that? A. What I mean by that is that I have had several offers of taxicab stands and stuff like that, and owing to the several taxicab owners failing to get a permit from our town, I could not lease the property.

Q. Because of the peculiar use that someone wanted to put it to? A. Well, they put the same taxi office across the street.

Q. Well, there never was any reason why you could not put a building up on this property if you wanted to, was there? A. Well, there was.

Q. What was the reason? A. The permit was refused by our mayor.

Q. What kind of a building did you try to put up? A. A frame building.

Q. Do you mean to say you were forbidden to use this property for any purpose at all? A. For the particular purpose that they wanted to use it, yes.

Q. That is the answer, then? A. That is the answer.

Q. There was no reason why, if you desired to put up a store building on that property, you could not have done it?

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

The Court: Objection sustained.

Q. As a matter of fact, there never was any business conducted of any kind on this land? A. No,

there never was; but through no fault of ours; we wanted to.

Q. Well, what did you want to do with it, Mr. Mabus? A. Why, there was a building on Paulison Avenue on which there was a taxicab office. There was a fire, and after it was afire, it was torn down. And the fellow who owned that taxi office wanted permission from me at a rent of $15.00 a month to rent a space on that particular property to put his taxicab office, and I told him that I would grant it to him.

Q. So that you could have gotten $15.00 a month rent if you could have put that deal through? A. If he were able to get a permit from the town authorities to put that office there; he had already had the office built.

Q. Now, how would the character of this land compare with the character of the land that you sold personally in lot 96? A. Why, as to the condition of the property, or—

Q. Yes. The physical condition of the two properties. A. Why, I would say there was not much difference between the two.

Q. Well, this property that we are talking about, the Overpeck Land Company, is decidedly low, Mr. Mabus? A. Yes, it is.

Mr. Walscheid: Lower than what?

The Court: Decidedly low, Mr. Mabus. Lower than nothing. The question was, decidedly low? Isn't that the question?

Mr. Winne: That is the question and the question, I understand, was answered.

Mr. Walscheid: You mean low in price?

Mr. Winne: I am talking about the physical contour of the property.

Mr. Walscheid: Then I suggest there ought to be some comparison. Low as to what?

The Court: He just had answered that with respect to some other piece.

Q. And it is wet after rains? A. Oh, no. I have never been on it, sir.

Q. I beg your pardon? A. I do not know.

Q. Oh, you do not know whether rainfall lies on this property after a rain? A. I imagine the rain does fall on it.

The Court: No. He did not ask you that. When it rains, it rains all over, you know.

The Witness: Yes; I hope so.

The Court: He asked you whether the rain collected there.

The Witness: Why,—

The Court: Or words to that effect.

The Witness: No one could tell that, your Honor, unless they went through a lot of trees at that time, and bushes and stuff and, as a rule, I don't go around in any puddles.

Q. When is the last time you have walked on this property? A. I have never walked on it.

Q. When is the last time you looked at it? A. This morning.

Q. And what condition was it in today as compared to its condition in November, 1926? A. What little I saw of it, they were putting up a foundation, and sort of a building on it; that is all I know.

Q. Could you observe that there had been any fill in there between November, 1926 and the present time? A. Yes. There has been fill in there.

Q. And so far as that is concerned, how much higher would you say the surface was than in November, 1926? A. As I have never seen how deep it was before the fill, I cannot tell.

Q. Well, in comparison as to whether it is more moist today or in November, 1926, what can you say? A. I cannot tell. I haven't seen the property close enough by to tell whether it is muddy or water standing on it, or what.

Q. Yes. Now, would you say that this property is lower or higher than the Baldwin property, lots six, seven, eight and nine? A. I would say it was lower, sir.

Q. How much lower? A. I do not know. I know there was a hole there.

Q. And has Herbert Street ever been a passable street? A. No, sir.

Q. And is it so today? A. I do not think so.

Q. Is there anything to indicate a street where Herbert Street is indicated on the map? A. Not to my knowledge.

Q. So that there never was any street frontage to this property except as it appears on the map?

Mr. Walscheid: I object to that.

The Court: All right.

A. No.

The Court: The objection is withdrawn, I take it.

Q. What frontage has the property for any business purpose? A. Why, it has no frontage outside of the street being marked on the map.

Q. This offer that you say you made to Mayor McGowan, I understand you made that personally? A. Yes, sir.

Q. And was that to his face, or was it over the telephone? A. No, sir; it was to his face.

Q. Where did that take place? A. At his home.

Q. And the date you fix as prior to the making of this contract that is in evidence? A. Yes, sir.

Q. Now, at that time, you knew that this property was desired for railroad purposes? A. No, sir.

Q. By the town? A. No, sir.

Q. You knew that was under discussion? A. Why, I had heard it as town gossip, yes.

Q. And do you know whether or not the owner of the property knew that? A. No. I do not know anything about that.

Q. Did you discuss with Mr. Brewster, the owner of the property, the fact that the town might desire it for station purposes?

Mr. Walscheid: I object to that as immaterial, irrelevant and hearsay.

The Court: Well, if he discussed it with Mr. Brewster, it would not be hearsay.

Mr. Walscheid: I did not get that, sir.

The Court: The question was whether he knew whether Mr. Brewster knew that the—

Mr. Walscheid: I understand this is conversation between Mr. Mabus and Mr. Brewster.

The Court: No. I think he has left that, and is now asking what Mr. Brewster knew about the contemplated station; isn't that your question?

Mr. Winne: I am not sure, now.

The Court: Repeat it, Mr. Stenographer.

(Question read.)

Mr. Walscheid: That I object to as immaterial, incompetent and irrelevant, and

as hearsay. I do not care about any of these discussions between Brewster and others. I think the jury will care nothing about these discussions between Brewster and Mabus.

The Court: The question that preceded it was whether this witness knew at the time that he was negotiating with the mayor about the plans to build a railroad station there, and he said he had heard town gossip to that effect. Now, the question is whether Mr. Brewster knew it, and he says that he does not know. Now, the question following that is, did you discuss that with Mr. Brewster, and if Mr. Brewster was the principal this man was his agent and representing him. I think it is competent to show what prompted the offer of $10,000, whether it was with knowledge on the part of the principal as to what the plans for the property might be or not.

Mr. Walscheid: That was two years ago.

The Court: I understand. It is only for what it may be worth. As to the time, I do not think it is too remote to be lacking in evidential value.

Mr. Walscheid: Your Honor will allow me an exception?

The Court: You may have it. You may answer it now, whether you discussed the plans for the property as to its possible uses with Mr. Brewster.

The Witness: Does this refer to two years ago, or when I was speaking to Mayor McGowan?

The Court: It refers to the time when you say that you offered it to Mayor McGowan for $10,000.00.

Mr. Walscheid: No. He offered it to Mayor McGowan for $15,000.00; he offered it to Mayor Hunter two years ago for $10,000.00.

The Court: That is the time I think Mr. Winne is talking about.

Q. The time the offer was made for $10,000.00. A. No, sir; I did not.

Q. When was it that you first knew that the town was considering the acquisition of this property for station purposes?

Mr. Walscheid: I object to that. There isn't any evidence that he ever knew that this particular piece of property was desired by the town.

The Court: Except what he has said, that it was town gossip. He did not say what the gossip was, Mr. Walscheid. I assumed from his answer that he was talking about this piece of property with respect to the gossip.

Mr. Walscheid: I object to that question on the ground it is incompetent, hearsay and immaterial.

The Court: I will allow it—

Mr. Walscheid: Exception.

The Court: —because it may have some evidential value as to the price that was offered.

A. What is the question?

The Court: The question is, when did you first—repeat the question, Mr. Stenographer.

(Question read.) A. I do not know. I never knew until they started to build a building there

that the town really needed it for the station. I was never positive of it.

Q. Yet at the time this agreement was made, you say that it was town gossip? A. Yes, sir.

Q. To that effect. Now, did you attend the closing of this contract, the execution of this contract? A. Yes, sir.

Q. And where was that done? A. That was done at my office, at the office of Brewster & Son, Bergen Turnpike, Ridgefield Park.

Q. And you witnessed— A. I witnessed the signature of Mr. Chello and Peard.

Q. Whose signature was it you witnessed? A. Mr. Peard and Chello. That was the name signed to that contract.

Q. Where is your signature on the contract? A. Right there (indicating).

Q. Do you still stand by that answer? A. Do I stand by that answer? Yes, sir; I do.

Q. You say that you witnessed the signature of Chello and Overpeck Land Company? A. Jacob E. Mabus as to Morton T. Brewster; I witnessed it as to that.

Q. Then your answer should be that you witnessed as to the signature of Mr. Brewster? A. Yes, sir.

Q. Who is it witnessed the signature of the Overpeck Land Company and John J. Chello? A. I do not know, sir.

Q. Were you there? A. I was. Yes. Mercier.

Mr. Walscheid: What is the name?

The Witness: Mercier, M-e-r-c-i-e-r. I wasn't there when he witnessed that. I witnessed Mr. Morton Brewster's signature; that is all.

Q. So that you do not know really when the

signature of the Overpeck Land Company was affixed to that document? A. No, sir; I do not.

Q. And do you know when the deposit referred to was paid, the $250.00, or whatever the deposit is? A. Why, yes. The day of the—the day after I visited the Mayor, and whatever this contract says; that is all I can go by.

Q. Well, now, apparently, Mr. Brewster signed the contract and you witnessed it? A. Yes, sir.

Q. And then what happened to it? A. My recollection of it is that Mr. Peard brought his check and said that he would have Mr. Chello sign it in his office and give me my copy and keep his own.

Q. Your recollection is that Mr. Peard took the contract, two contracts, away? A. Yes, sir.

Q. And did Mr. Peard sign it at the same time that Mr. Brewster did? A. No, sir.

Q. He took it away unsigned by anyone except Mr. Brewster? A. Yes, sir.

Q. And Mrs. Brewster never signed? A. No.

Q. Now, can you say of your own knowledge when it was signed by either Mr. Peard or the Overpeck Land Company? A. No.

Q. Can you say, of your own knowledge, when the first deposit was made on account of that contract? A. Yes. Whatever date it says here (referring to contract). April 26th. No. I am wrong.

Q. In what form was that deposit?

The Court: He is withdrawing that.

A. I withdraw that. Yes. April 26th, I would say, that deposit.

Q. So, without looking at the contract, you have no recollection of the dates at all? A. No; not in my head.

Q. And how was that payment made? A. By check.

Q. And how much was it? A. $250.00.

Q. Whose check was it? A. Why, I imagine it was the Overpeck Land Company. I do not know.

Q. And your recollection is that Mr. Peard gave you somebody's check for $250.00? A. Yes, sir.

Q. When did the contracts come back signed by the Overpeck Land Company? A. Oh, it was within a month. It may have been the next day. I do not remember.

Q. And do you remember when the title closed? A. It closed according to the contract.

Q. Well, can you remember, without referring to the contract? A. No, I cannot.

Q. And can you remember how much was paid when the title closed? A. $3,500.00, is my recollection.

Q. And how was that paid, if you remember? A. That was in a check.

Q. And to whose order were those checks? A. Morton T. Brewster.

Q. Would you make deposits for Mr. Brewster? A. No. I turned it over to a clerk in the office.

Q. You would not turn it directly over to Mr. Brewster? A. No. He never saw it, the chances are.

Q. And you say that was how this $3,500.00 check was handled? A. Yes, sir.

Q. And to whose account was that check deposited? A. Mr. Brewster's.

Q. Now, can you remember anything at all about the closing, Mr. Mabus; who was there? A. I cannot remember a thing about it.

Q. Can you remember where it took place? A. No.

Q. Can you remember the check being paid to you without referring to the contract? A. No. I remember that I got the check, and that is all I do remember about it.

Q. And except by referring to this paper, you do not remember how much it was? A. I do not know a thing about it; no, sir.

Mr. Walscheid: Do you remember the amount?

The Witness: Yes. $3,500.00. I said that.

Q. You could not have told that without referring to the contract? A. I know they had paid two hundred and fifty at one time, and twelve hundred and fifty at another. And that would certainly leave thirty-five hundred dollars to be paid at the time of the delivery of the deed, according to the contract.

Q. Is that the way you have to reason it out? A. Yes.

Q. And you cannot tell us surely whose check it was? A. No.

Q. Except what you think? A. No.

Q. Who attended to the recording of the papers? A. Why, I didn't.

Q. You do not know who did? A. Why, no. That was business of the Overpeck Land Company. I do not know who recorded their mortgage or their deed.

Q. You think the Overpeck Land Company would attend to the recording of the mortgage?

Mr. Walscheid: I object to that. We are not interested in his conclusion. I withdraw my objection.

A. Yes. We have all our mortgages put on record.

Q. I beg your pardon A. I attend to having all our mortgages put on record.

Q. I asked you if you attended to the recording of any of these papers, and you said no? A. I didn't file the Overpeck Land Company's papers.

Q. There was a mortgage given, was there? A. Yes, sir.

Q. Did you attend to the recording of that mortgage? A. The chances are I did. I generally take care of all that.

Q. Aside from the fact that you generally do, you have no recollection of recording this mortgage? A. No. I did not make a memorandum of it, without I took it out or sent it out.

Q. Did you say where this closing took place? A. Yes. At the office of Brewster & Son, Ridgefield Park.

Q. The same place that the contract was signed? A. Yes.

Q. Can you tell us whether or not Mr. Brewster was there? A. I did not get that.

Q. Can you tell us whether or not Mr. Brewster was there? A. I do not think that he was.

Q. Where did you get the deed from, Mr. Mabus?

Mr. Walscheid: The paper, the instrument?

Q. Well, there was a deed delivered, wasn't there? A. Why, yes.

Q. You had it, and delivered it to Mr.— A. Yes, there was a deed.

Q. Where did you get it from? A. Mr. Brewster gave it to me.

Q. And do you have charge of the collection of mortgages due Mr. Brewster in his real estate transactions? A. Yes.

Q. Can you tell us how the interest on this mortgage was payable? A. Every six months. 6 per cent., payable every six months.

Q. And did you collect interest on this mortgage since it has been executed? A. Yes, sir.

Q. And when was that? A. Why, on or about the date it was dated.

Q. You cannot tell us when that was? A. No, I cannot.

Q. And that also would be deposited to the account of Mr. Brewster? A. Yes, sir.

Mr. Winne: I think that is all.

Re-direct Examination by Mr. Walscheid:

Q. Do you have many real estate transactions to handle, Mr. Mabus? A. Considerable; yes, sir.

Q. And you make no notes of the places of closing of title? A. No. I just close them and forget them.

Q. And make no notes as to how the installments are paid? A. No, I do not.

Q. Now, you said that there was general gossip of a station, in your cross examination by Mr. Winne. Did you ever know, prior to the time that you made this transfer for Mr. Brewster, that the property which you were transferring for Mr. Brewster through this transaction would be required for actual station purposes? A. No, sir.

Q. The general gossip of a station located a station some place at the foot of Mount Vernon Avenue, didn't it? A. Yes.

Q. Without indicating where that station was to go? A. Yes.

Q. Now, you also said that this property had frontage only on Herbert Street; is that quite correct? A. Herbert Street, and also the railroad.

Q. Also the railroad. And how much frontage has it on the railroad? A. Why, I imagine it has about over two hundred feet.

Q. Over two hundred feet? A. Yes, sir.

Q. That is directly on the right of way of the West Shore Railroad? A. Yes, sir.

Q. And do you know of any other piece located in the Village of Ridgefield Park which has such a frontage directly on the railroad, any private ownership? A. Not in the center of the town; no, sir.

Q. Not in the center of the town.

Mr. Walscheid: That is all.

Re-cross Examination by Mr. Winne:

Q. Mr. Mabus, you say you have a great many real estate transactions. How many did you have in the year 1926, would you say? How many titles did you close in 1926?

Mr. Walscheid: I object. He has not said he closed a title.

The Court: Objection sustained.

Q. Well, you told your counsel that you attended to a great many real estate closings; is that correct?

The Court: Transactions, I think he said, Mr. Winne.

Q. How many real estate transactions did you attend to in the year 1926? A. Oh, twelve or fifteen, perhaps.

Q. And how many of them were purchases or sales of real estate? A. Purchases and sales of real estate?

Q. Yes. A. All of them.

Q. About twelve or fifteen in 1926? A. Yes. I imagine that is—

Mr. Winne: That is all.

By Mr. Walscheid:

Q. And besides that, what other business had you in the office? What other work do you do? A. Why, I am in the retail lumber business.

Q. What do you do in the retail lumber business? A. Why—

Q. I mean, you personally, what work you do? A. I don't know. I think the boss don't do anything, I guess; but I am just down there day after day and whatever comes up I do. I have been there for thirty years with Brewster & Son, and when Mr. T. M. Brewster died, he left considerable real estate and my job for the last four or five years has been to dispose of the real estate, and I think I have done more in disposing of the real estate for Mr. T. M. Brewster than I did for Brewster & Son.

Q. All right.

Mr. Walscheid: That is all.

IRENE I. GILMORE, sworn as a witness on behalf of the Appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mrs. Gilmore, where do you live? A. Dumont

Q. And are you in business? A. I am.

Q. And what business are you in? A. Real estate broker and operator.

Q. And have you operated in the Village of Ridgefield Park? A. Have I what?

Q. Operated in the Village of Ridgefield Park? A. Yes.

Q. Have you bought any property in the Village of Ridgefield Park? A. Yes.

Q. Bought any on Mount Vernon Avenue? A. Yes.

Q. And how recently? A. Last October.

Q. And do you know where—what the property is that you bought? A. Why,—

Mr. Walscheid: Strike that question out.

Q. On which side of Mount Vernon Street is it, north or south? A. North.

Q. North. And between what blocks is it? Between Lincoln Avenue and—

Mr. Winne: Let the witness tell.

A. Why, yes.

Q. Now, can you describe where that property is located that you bought? Can you find it on the map? A. May I leave the chair?

Q. Yes, certainly. A. (The witness stands before the map.) I am not sure whether I can or not, but I will try. This (indicating).

Q. Indicating lot 11-A? A. Yes.

Q. In block 64? A. Yes.

Q. And how much did you pay for that in October, last year? A. Fifteen thousand.

Q. $15,000.00. Have you since disposed of it? A. Yes.

Q. And how long after you purchased it did you dispose of it? A. Well, we signed our contract to purchase it in October, and we took title in January, and we sold it, I am not quite sure of the date; I think it was the 24th of February, about three weeks ago.

Q. You sold it? A. Yes.

The Court: 1927?

The Witness: Yes. That is right.

Q. And how much did you then receive for it?

Mr. Winne: I object to that, if your Honor please. I do not think testimony of a sale subsequent to the date fixed by the inquiry as to the value of this property is material.

The Court: What do you say as to that, Mr. Walscheid?

Mr. Walscheid: Why, while the inquiry is as of that date, under the cases we have a right to investigate not only as of that date, but as of dates subsequent thereto within a reasonable period of time. In other words, even the expectation of increase of value is part of the value of this property. I will give your Honor a line on that, I think. What I am trying to establish here is evidence of general values in that neighborhood of comparable property and within a reasonable length of time before the sale and within a reasonable length of time after the sale; I think actual transactions are permissible as a basis for the purpose of comparing the actual price offered.

The Court: There isn't any question about the materiality of the prices of comparable property before the sale, and Mr. Winne objects because this is after the sale; and shouldn't we stop on the date of the sale? What evidential value could any material increase, or decrease, for that matter, have in the values of comparable property after the date of this taking?

Mr. Walscheid: My answer to that, sir, is that entering into the value of this property as of the date of its actual sale which,

in this case, is November 30th, is the right to anticipate within a reasonable length of time thereafter an increase in that value of property, an increase in the value of it by reason of change of use, by reason of additional use, by reason of a general land boom that is in existence, and I think that that is the point that I have covered by this memorandum, although at the present moment I cannot—I will look through it, if your Honor will allow me.

The Court: Yes. If you can show me an authority, I will be glad to see it.

Mr. Walscheid: Perhaps it is not directly in this memorandum.

The Court: The New Jersey cases you cite here, of course, the Perry case is the particular landmark for what it decided. Morrison Cummings case is a more recent case. Then there is Ross v. Palisade Park Commissioners, still a more recent case, in 90 Law. But I cannot recall offhand, nor is there any memorandum that you have given me that covers this particular point, and I do not think that question has ever been decided here. I would say offhand, in the absence of your citing any particular authority, that it ought not to be allowed, and if for no other reason, for this reason: I presume it is true that the moment this land was acquired for the particular improvement to which it is put, it had a tremendous effect on values in that locality and that, therefore, could not possibly be a basis for our inquiry as to what it was worth at that time. Now, perhaps this witness is interested in this particular piece, or

was at the time that she bought it, which was subsequent to the taking, and the values that it thus had.

Mr. Walscheid: I am going to withdraw the witness, if your Honor please.

The Court: Very well.

Mr. Walscheid: While my motion is that under the cases as I have read them in the Corpus Juris and in R. C. L., that anything which a land-owner may reasonably anticipate in the immediate future by way of increment in the value of his property, constitutes part of present value, that was the theory on which I was offering it.

The Court: Yes. But, you see,—

Mr. Walscheid: I am going to withdraw the witness in view of the fact of what your Honor said, that the placing of that station there would, in itself, constitute a changed condition.

The Court: Oh, yes. Very well, Mrs. Gilmore, if that is the only purpose you had called this witness.

Mr. Walscheid: Yes.

The Court: You had nothing else you wished to bring out?

Mr. Walscheid: No.

The Court: All right.

WILLIAM P. TERHUNE, sworn as a witness on behalf of the appellants, testified as follows:

Mr. Winne: May I ask, your Honor please, whether the testimony of the last witness stood for any purpose?

Mr. Walscheid: No. You did not cross examine her. I agree that the testimony be stricken from the record.

Mr. Winne: I see.

The Court: Very well.

Direct Examination by Mr. Walscheid:

Q. Mr. Terhune, what is your full name, sir? A. William P.

Q. Do you own any property at the junction of Railroad Avenue and Paulison Avenue in the Village of Ridgefield Park? A. That triangle?

Q. Yes. A. I did own it.

Q. Will you step down here a moment? A. (The witness stands before the map.)

Q. Is it this triangular piece marked 6 in Block 63 which you owned? A. The triangular piece.

Q. That is the piece; all right. Now, go back A. (The witness resumes the stand.)

Q. No buildings on that? A. No.

Q. And when did you purchase it? A. Sometime in 1925. I do not know whether it was in April or May.

Q. April or May of 1925. And how much did you purchase it for? A. Five thousand.

Mr. Winne: I did not get the answer.

The Witness: Five thousand.

Q. And did you sell it? A. Yes, sir.

Q. When did you sell it? A. About just a year later, in 1926.

Q. April or May, 1926? A. Yes. I think it was eleven, twelve or thirteen months; something like that.

Q. And how much did you get for it then? A. Twelve.

Q. $12,000.00? And to whom did you sell it? A. Why, my cousin is in the real estate business, and he sold it to a party by the name of Planten from Paterson.

Q. Well, you got the $12,000.00? A. Yes.

Q. Out of this transaction? A. Yes. Less his commission; that is all. I got twelve.

Q. You got twelve? A. Yes.

Q. Well now, when you purchased that property, was Paulison Avenue an improved Street? Paulison Avenue an improved street? A. It was just the same as it is now.

Q. What is the condition now, a dirt road? A. It is a macadam road.

Q. Ordinary country macadam? A. Yes.

Q. And was Railroad Avenue an improved street when you purchased it? A. Yes, sir.

Q. Just as it is now? A. What is that?

Q. Just as it is now? A. Just as it is now, yes.

Q. And it is a County Road? A. A County Road.

Mr. Walscheid: That is all.
Mr. Winne: No questions.
The Court: That is all, Mr. Terhune.

EDWARD H. GREEN, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mr. Green, where do you live? A. Englewood, New Jersey.

Q. And what is your business? A. Real estate and insurance.

Q. And how long have you been in the real estate business? A. Since November of 1925.

Q. And prior to that time, what did you do? A. Transportation. For a number of years, I was with the New York Central Lines, and the Erie Railroad, in various capacities.

Q. And did you, in the course of that employment, have any chance to acquire knowledge of the value of real estate for industrial purposes? A. I did.

Q. And particularly in relation to property having railroad sidings? A. I did.

Q. And where have you operated in the real estate business? A. Englewood and vicinity; that is, up through the northern valley of New Jersey.

Q. Have you operated all over the northern valley? A. Yes, sir.

Q. Operated in Ridgefield Park? A. No, sir.

Q. Made any actual sales in Ridgefield Park? A. No, sir.

Q. What have been your experience in relation to industrial properties with sidings? A. In order to locate an industrial property on a railroad, one of the essentials has been that it be close to transportation.

Mr. Winne: I object. I do not know what the witness is going to testify to. It is not responsive to the question.
The Court: That is not responsive.

Q. What experience have you had? A. Why, I have assisted in picking sites for the location of railroad—of industries on railroad sidings.

Q. And taken part in the fixing of prices for that purpose? A. No, sir.

Q. Have you had knowledge of the prices that were paid? A. Yes, sir.

Q. On those occasions? A. Yes, sir.

Q. And that experience extended over what period of time? A. Well, from a period of 1906 to 1912, six years; and then from 1921 to 1925.

Q. 1925? A. About ten years.

Q. About ten years. And during all of that time, during those periods, you were actually employed in transportation— A. Yes, sir.

Q. —work? In connection with and employed by the railroads? A. Yes, sir.

Q. Which railroad? A. With the New York Central Lines, the Big Four Division, and in Cincinnati, Ohio, and Chicago, Illinois, with the Erie Railroad in New York.

Q. Now, have you visited the Village of Ridgefield Park and lots one, two, three, four and five in Block 85, as shown on this map, for the purpose of examining into the value of that tract for industrial purposes? A. I have.

Q. And when did you make that visit? A. This morning.

Q. And have you examined the rest of the property in the vicinity? A. I have.

Q. As to whether or not there is other industrial property in that vicinity? A. I have.

Q. Is there any other property fit for industrial purposes on the east side of the West Shore Railroad track in that vicinity? A. I did not see any; no, sir.

Q. Will you now tell us what are the requisites of a good piece of real estate, of a piece of real estate for industrial purposes with sidings on the railroad, and for use in connection with the railroad, that is, the land?

Mr. Winne: I would like to ask the witness something about his qualifications.

The Court: He is still being examined with respect to his qualifications.

Mr. Winne: No. He is now asked, what are the requisites.

Mr. Walscheid: The general requisites.

The Court: That all goes to the qualifications, I think, Mr. Winne.

Mr. Winne: Well, if he is not qualified, he cannot answer that question. I object to it.

The Court: You may examine him if you think this is the proper time.

Mr. Winne: I think, before he answers this question, I would like to know what his experience has been in railroad work.

By Mr. Winne:

Q. What was your employment, Mr. Green? A. I was in the traffic department, and looked after the freight rates, which was the basis for the location of industries. In order to obtain an industry, we first had to have a freight rate market that was satisfactory and would permit the industry to locate on the line. Next, we had to have a piece of property that the industry could afford to purchase and come onto the line. Next, we had to have a location to the labor market and transportation, so that if the industry came to the line, that they would have no trouble securing labor.

Q. Now, won't you please answer my question?

Mr. Walscheid: Well, I think he has.

Mr. Winne: I submit the witness did not answer my question at all. It is a dissertation on a lot of things. He did not answer at all. I asked him what his employment was.

Q. What was your employment in the railroad in 1925? A. In 1925?

Mr. Walscheid: I understood the witness to say he was investigating in doing those things.

The Court: I understood it his job was to get industries along the lines of his railroad, and then he went on to tell what was not responsive as to what elements he had to take into consideration in order to carry that work.

Mr. Winne: I do not know yet what his position was, your Honor.

The Court: Well, you may ask him again.

Q. What was your position with the railroads in 1925? A. I was with the traffic department.

Q. And can't you tell us any more specifically what your position was more than that? A. I had no specific duties. I looked first after freight rates, after the location of industries, rates; I looked after the sales.

Q. Did you have any title to the position you held? A. Well, titles were forbidden by Mr. Underwood of the Erie Railroad in 1925.

Q. Well, you were working, then, for the Erie Railroad? A. Yes, sir.

Q. And where were you stationed? A. In Mr. T. C. Powell's office, Vice-president, in charge of traffic in his office.

Q. What city was that in? A. New York.

Q. Was your position in charge of all the Erie Railroad traffic department? A. Mr. Powell's office was in charge of all the Erie Railroad traffic department. I worked for Mr. Powell.

Q. And how long were you in that position? A. One year.

Q. Prior to that, what did you do, Mr. Green? A. I was in charge of the—managing clerk in charge of the freight traffic manager's office.

Q. For what railroad? A. The Erie Railroad.

Q. And where were you stationed then? A. New York.

Q. And in that connection, did you have occasion to visit properties in this county? A. Yes, sir.

Q. And would you determine whether or not the railroad would permit a siding on a particular piece of property when an application was made? A. We would not be the final determination. First, the operating department would have to qualify as to whether the land was physically capable of having a siding. Then, we—the question of whether the industry was a desirable one or not would be determined by our office.

Q. And your work was to determine whether a specific application was a desirable one, from the railroad's point of view? A. My particular work, I did not pass finally on it; that was done by the Vice-president.

Q. And your work was to collect, as I take it— A. The data.

Q. —the information and submit it to someone who would pass on it? A. Correct.

Q. And so your knowledge would not be first-hand knowledge as to what the policy of the road would be, but merely the collecting of information so that your superior might pass upon it? A. Yes.

Mr. Walscheid: I object to the form of the question as leading.

The Court: It is cross-examination.

Mr. Walscheid: Yes.

Mr. Winne: I submit that the witness is not qualified as an expert on industrial locations, your Honor.

The Court: I think he is. I will allow it.
Mr. Winne: Exception.
The Court: Yes.

By Mr. Walscheid:

Q. Will you tell us what, in your opinion, are the essentials of a good—of a piece of property which may be used to advantage as an industrial site with a siding along the railroad? Now, I do not have reference to this specific piece of property, but I want you to tell us— A. Generally.

Q. —in a general way. A. First, its accessibility to a labor market. Second, its location as to ability to reach a market for the output of the industry. Third, the contour of the land as to whether or not switches can be placed upon the property; and whether or not the industry, if its business increases, may grow.

Q. Now, you did examine this piece of property? A. Just a minute. There is one other question—

Q. I beg your pardon. All right. A. —that used to be given consideration, and that was whether the industry was accessible to transportation for the employees.

The Court: You have covered that.

Q. You mean transportation out of the railroad? A. Outside of the railroad.

Q. Transportation to the site? A. Right.

Q. From the community? A. Right.

Q. Any other thing? A. That is all I can recall.

Q. That is all. Now, did you examine the site in question? A. I did.

Q. And tell us now what you found in relation to this particular site insofar as its use as an industrial site with railroad siding is concerned?

Mr. Winne: I object to the question on the ground the witness has not qualified.
The Court: Objection overruled. Exception allowed.

A. I checked and found that there was approximately eight thousand feet of railroad siding in the Village, that is eight thousand feet of railroad in the Village of Ridgefield Park.

Mr. Winne: I did not get that.
(Answer read.)

Q. All right. A. I found that directly south of this site, there was—about a distance of six hundred feet, there was a very sharp curve to the road, which would make the property on that curve and directly south of it inaccessible for railroad sidings. North—after passing over Mount Vernon Street and the corner of Paulison Avenue until we came to the turn in the road coming into Hackensack, there was no railroad land or private land between the highway and the railroad tracks.

Q. On which side of the street? A. On the east side of the railroad.

Q. Yes. A. I did not investigate the west side at all.

Q. Go ahead. A. I found that of the thousand feet or more south of Mount Vernon Street that there was at least six hundred feet disqualified by the turn in the road, which would not permit a switch to be made from, and that this one hundred and ninety or two hundred feet was the only available piece close to transportation that might be used.

Q. And when you speak about the piece that might be used, you are speaking about lots one, two, three, four and five in Block 85? A. I am.

Q. All right. Go ahead. A. I found that the piece was very close to Mount Vernon Street, which had a bus line and which carried people from and to their work. It was close to labor markets, the total population of which was approximately fifty-six thousand. That was based on a population in Hackensack of twenty thousand; Ridgefield Park, approximately ten thousand, and the balance of that which has slipped my memory. I found that from the street map filed with the city that the property would be available for a street and for trucking on Herbert Street, with a private siding into the plant, if one were located there. I found at the present time that there is no team track in Ridgefield Park.

Q. There is no what? A. Team track.

Q. Team track? A. That is what is known as a public delivery track.

Q. Yes. A. That the automobile industry today either goes to Little Ferry to take delivery, or to other parts. The Ford Company, I learned, went to Kearny; they drive their cars in. Some of the other companies—

Mr. Winne: I object, your Honor please, to this witness stating hearsay.

Mr. Walscheid: This is not hearsay.

The Court: This man is qualified as an expert, and an expert may testify with respect to what is from his own knowledge, and what he may learn from others in his line.

Mr. Winne: I object particularly to the witness being permitted to state what he learned about some company, that is, in relation to trucking.

The Court: I think it is one of the exceptions, Mr. Winne, to the hearsay rule, this

man being an expert and testifying in his particular line of business of which he is an expert, just as the rule is relaxed with respect to experts with respect to value of real estate. They are not restricted to just the sales that they themselves have made, but they may testify to others that they have actual knowledge of, even though they know it through a hearsay channel.

Mr. Winne: I understand, of course, that this witness can give his opinion, but I object to his testifying as to that which he was told, and ask it be stricken out.

The Court: No. I think there is one of the exceptions to the hearsay rule.

Mr. Winne: Exception.

The Court: You may have it.

Q. Go ahead, Mr. Witness. A. I found that the automobile companies are now, due to the lack of due team tracks, taking deliveries in villages or towns outside of Ridgefield Park.

Q. And that no such deliveries are made in Ridgefield Park? A. In Ridgefield Park?

Q. Yes. A. I have found that there are approximately eleven industries that have private sidings in Ridgefield Park, either on the Susquehanna Railroad or on the West Shore Railroad.

Q. And on which side of the track system are those sidings? A. The west, the west side.

Q. On the river side? A. Correct.

Q. Did you also find that there is practically no means of communication between the west and east side of those system of tracks by means of road? A. Right.

Mr. Winne: I object to the question as leading.

The Court: The question is leading. Objection sustained.

Q. Well, will you describe what you found as to the means of traversing from one side of this double set of tracks to the other within the Village of Ridgefield Park, as to road conditions? A. I attempted to reach the west side of the Susquehanna or the west side of the West Shore tracks and the Susquehanna tracks, but was unable to find any street cut through by which a vehicle or a pedestrian could reach the tracks without crossing the tracks themselves.

By the Court:

Q. How about Mount Vernon Street; doesn't that cross the track? A. No, sir.

Q. All right.

By Mr. Walscheid:

Q. What else? Have you enumerated now the things that you found in relation to this property which made it adaptable for industrial purposes with a siding? A. I have.

Q. All of the things that you can remember? A. I have.

Q. In your opinion, is this tract consisting of lots one, two, three, four and five in Block 85 peculiarly adapted to use as an industrial site with siding on the West Shore Railroad? A. I would say that it is, as it is the only available tract close to transportation for employes that is available in the Borough of Ridgefield Park.

Q. And now, giving you the fact that this property, lots six, seven, eight and nine in Block 85, were recently acquired for the sum of $38,000.00,

and that this plot six, the triangular plot in Block 63, was recently sold for the sum of $12,000.00, taking those values and your experience as to values of siding property into consideration, can you tell us, can you give us an opinion, as to what this property under investigation, namely, lots one, two, three, four and five in Block 85, was reasonably worth as of the 30th day of November, 1926, for industrial purposes with siding on the railroad?

Mr. Winne: I object on the ground that this witness is qualified as an expert on transportation; he is not qualified at all as an expert on values.

The Court: Objection sustained.

Q. I understand you did take part in the fixing of price in connection with these properties? A. No, other than to say whether or not the prices that had been fixed were reasonable prices.

Q. Yes. You have done that? A. Yes.

Q. During the course of your business? A. Yes.

Q. And as a result of that fixation of the reasonableness of price by you, was action taken? A. Usually, yes.

Q. And your judgment was relied upon? A. It was, yes.

Q. And that was part of your work? A. It was.

Mr. Walscheid: I submit that the witness is qualified.

The Court: I will let Mr. Winne cross examine on his qualifications as to realty values.

By Mr. Winne:

Q. Now Mr. Green, do you know of any sale that has taken place in Ridgefield Park of any kind during the last year? A. No, sir.

Q. You do not know the price of any piece of property in the entire township of Ridgefield Park, either railroad property or any other property? A. No, sir.

Q. During the last year? A. No, sir.

Q. Go back further than that. Do you know the sale price of any piece of property in the Village of Ridgefield Park at any time? A. No, sir.

Q. Now, fixing this piece of property as a central point, within what distance have you knowledge of sale values in any direction? A. I base it on the present railroad siding property that I have in other localities.

Q. What is the nearest? A. The nearest that I have to it is Englewood, New Jersey.

Q. And how far is that in miles? A. Approximately seven miles or eight miles.

Q. Can you tell us of your own knowledge of an actual sale, or are you merely telling us of prices which are asked? A. I can tell of an actual sale.

Q. And that is only one sale within five miles? A. That is all.

Q. Now, have you any other sale nearer than that? A. No.

Mr. Winne: I submit the witness is not qualified.

Q. Let me ask you when this sale was, Mr. Green? A. Why, it was last year sometime.

Q. Sometime in 1926? A. Right.

Q. And going back before that, what sale have you as near as within five miles? A. Well, there was considerable that I had, but the actual prices and things of that kind has all passed out of my mind. I wouldn't know anything at all about them, because I didn't know what the property was to be purchased for.

Q. So that at this time the only sale that you can fix in your mind and compare this to is one sale sometime in 1926, of a piece of property five miles from this property? A. Well, it is further than that.

The Court: Well, you are depending on your railroad experience more than you are your real estate experience, are you not?

The Witness: No, your Honor; I am not.

The Court: But the qualifications that you gave were with respect to your experience with Mr. Powell while working for a year under his direction. Isn't that with respect to locating industries along the line of the Erie Railroad? Is that not so?

The Witness: That is correct as to the prices on railroad industrial sidings and what was necessary to locate a siding.

The Court: Yes. But you say in that connection that you had not the final say as to anything in connection with your work there, but simply was a gatherer of data for Mr. Powell to pass upon; is that correct?

The Witness: Correct.

The Court: And—

The Witness: Usually my recommendations, they were adopted. Mr. Powell was a pretty busy man, and we would write memorandums recommending that certain things—sometimes the letters would be written and he would sign them as they were written up.

The Court: Yes. I know Mr. Powell and I know his standing in the railroad world, and I know him personally. You could not have been under a better man, in my judgment.

By Mr. Walscheid:

Q. Do I understand you gathered the data and made the recommendations as to price? A. Yes, sir.

Q. And as to the desirability? A. Correct.

Q. And then Mr. Powell would take them and stamp his approval on it? A. Right.

Mr. Winne: Or not?

Q. Or not? A. Yes.

Q. Well, how often did it occur that Mr. Powell did not approve it? A. Well, as I say, in the—

Q. Just answer the question. A. I could not tell you that.

Q. Can you remember any one instance where he did not approve? A. No.

Q. And if there was such an instance, would it be any great difference in the price? A. No. It would be more because of the industry was not desirable from a traffic point of view.

Q. Now, let me ask you this question: Does the location of the property in any particular community by name in any way affect your judgment as to the adaptability or price of an industrial site with railroad sidings? A. No.

Q. So far as you are concerned, you, in determining the price that siding, and in determining the desirability of that siding, and of that industrial site, look merely at the adaptability of the property and the use of the property in connection with the railroad, isn't that right? A. Correct. And the physical value of surrounding property.

By the Court:

Q. In other words, the job that you had, and that Mr. Powell had, was to bring money into the pockets of the Erie Railroad? A. Correct.

Q. You were more interested in the traffic that you could bring to this place than you were with respect to the value of the land? A. Correct.

Q. The value of the land was incidental and a very small part of the work? A. Right.

Q. And you depended entirely upon what you were told by the industry that wished to locate there? A. Correct.

Q. And very often they had the site themselves or had an option on it, and you had very little to do with that? A. Correct.

Q. The topography of the land? A. Correct.

Q. The physical conditions, as to whether a switch could be put there; and the railroad company were more interested in all of them before they were willing to put a switch in? A. Right.

Q. Than they were in the value that the industry was about to pay for the land, isn't that so? A. That is correct.

By Mr. Walscheid:

Q. Well, did you take part in the price fixing of it? A. No. They had a separate department that used to fix the price of the land.

Q. Well, that came to you afterwards, didn't it? A. Sometimes before, yes.

Q. And before? A. Right.

Mr. Walscheid: I submit that this witness is qualified.

The Witness: I will cite one case that comes to my mind, the location of the Shipley Company in Buffalo. That was a plant that would bring approximately two million dollars worth of business a year, and the price that the Erie Railroad permitted them

to take the land for up there was practically less than a rental charge.

By the Court:

Q. Yes. The Erie Railroad could afford to give them the land because of the revenues that they were going to derive from the freight? A. Right.

Q. You are being now asked to qualify as a man who has special knowledge of the value of private property along the right of way of a railroad, and you are qualified as an expert, in my judgment, undoubtedly, with respect to availability of sites for that purpose, and I have allowed it. Now, objection is made to your qualification as an expert as to land value of private property, not property owned by the railroad, but private property adjacent to a railroad track for use for industry or a siding, and I must sustain the objection of Mr. Winne, that this man is not qualified by reason of his railroad experience on his examination nor on his expereince since as a real estate broker, because of the fact that he has only instanced one transaction which might be competent. And another thing, I cannot agree with the witness, if I understood him correctly, that the precise location of a tract of land was not a controlling factor in the value of the land.

Mr. Walscheid: I do not think he said that. I thought that was a controlling factor.

The Court: Perhaps I misunderstood him.

Mr. Walscheid: But whether it was in one municipality or another, was not the controlling factor.

The Court: Yes. But it seems to me perfectly apparent that a piece of land in an industrial center like Newark or Buffalo,

where industrial sidings are worth their weight in gold, would be an entirely different situation of a piece of property available for a railroad siding in a community like Ridgefield Park. I do not think, Mr. Walscheid, that his judgment of the value of this property is evidential, because it is not based on expert knowledge as to value of real estate, and I do not think that we want opinion evidence, of course, and it is not proper to have opinion evidence unless it is based on something more than this witness has qualified on. I grant you that he is qualified, as I have allowed him to testify, with respect to the availability of this land for railroad property, for a railroad siding, but he has not shown an experience with respect to knowledge of values of property.

Mr. Walscheid: I thought he had. May I find out? May I pursue it a little further?

The Court: Yes.

By Mr. Walscheid:

Q. Have you had any experience at all, either alone or in conjunction with others, in determining, either by way of purchase and sale or appraisement for business purposes, of property for railroad siding purposes? A. I have, in the City of Englewood, yes.

Q. You have in the City of Englewood? A. Yes.

Q. And what did your experience there consist of? A. I was asked to locate a siding or a property that would be available for a siding for a plumbing supply company.

Q. Did you take part in the fixing of price? A. I did.

Q. Was the siding established? A. It was not.

Q. Any other instances? A. No. Other than that I have listed with me several pieces of property that are available for industrial sites.

Q. And where are those properties? A. Englewood, Demarest, New Jersey.

Q. And have you in that manner acquired knowledge of the value at which these sites are being held for sale? A. I have.

Q. And have you attempted to sell them? A. I have.

Q. Have you had any negotiations in relation to them? A. I have.

Q. Have you had any offers? A. Yes.

Q. But none of them were accepted? A. No, sir.

Q. Any other experience? A. That's all.

Mr. Walscheid: I submit, if your Honor please, that with this man's general knowledge, that I think that that would qualify him, and that the question of how much credence shall be given to his testimony is one for the jury.

The Court: Well, of course, that is true if he is allowed to testify.

Mr. Walscheid: Yes.

The Court: What was generally the situation, Mr. Green, with respect to the lands on which you were interested in locating industry adjacent to the Erie Railroad? Is it not true that in most cases that land was owned by the railroad company?

The Witness: In quite a number of cases, it was, yes, those were.

The Court: Generally, it was?

The Witness: Yes.

The Court: That is what I thought.

Q. Did you have any dealings where it was not owned? A. Yes, we had; there were cases. I could not pick any specific case out.

Q. All right. If you could not pick any specific cases out, how many of such cases would you say you had approximately where the land was not owned by the railroad company? A. Well, I would not want to attempt to put any figure on it at all, because these applications for sidings and for the location of industries came through my hands every day.

The Court: But that was only for the period of a year.

Mr. Walscheid: But his experience goes back with the other railroad to 1912.

The Witness: It goes back previous to that, your Honor.

Q. 1906?

The Court: What other railroad company?

The Witness: Well, I was with the Big Four division of the New York Central Lines.

The Court: And you did the same character of work there?

The Witness: Yes. For a certain period. Of course, my services extended over a long period, and I went from one position to another.

The Court: Well, I understood you to say that your experience with respect to sidings under Mr. Powell and the Erie lasted about a year?

The Witness: About a year. Yes.

The Court: What similar experience have you had with the other roads, and for how long a period?

The Witness: From 1913; from about 1912 to 1913.

The Court: There is another year.

The Witness: Yes. I had experience with the Big Four.

Mr. Winne: That is quite remote, if your Honor please.

The Court: Well, it is rather remote, but maybe he has not forgotten the expert knowledge that he dealt in.

(Further argument.)

Mr. Walscheid: My notion was that the name of the municipality had nothing to do with it; it was the location of the property. As your Honor indicated, Newark is a very desirable location because it has this large area and these large industries there. And as the business basis,—in other words, the business where the site affords is the final basis of the location of the business. That is what I was trying to get at before.

The Court: Let me ask him another question or two.

By the Court: Q. It was in addition to the experience that you have gained since you have been in business as a real estate broker and in locating industries or trying to sell lands along the railroad in Englewood and Demarest which you have spoken of, which has resulted in but one sale, as I take it? A. Not performed by me, your Honor; that sale did not go through me.

Q. But you know of it? A. Yes.

Q. Now, do you know of any other sales of such property during the time that you have been in business for yourself? A. Yes.

Q. And where was that? A. In the City of Englewood.

Q. That makes two? A. Two, yes.

Q. And are both of those sales comparable property to the property at Ridgefield Park that we are now concerned with? A. Yes.

Q. Are there any other sales that you have knowledge of? A. That is all.

Q. By having gained it from others? A. That is all I can think of at the time, your Honor.

By Mr. Walscheid:

Q. By having gained it from others, do you know of any other sales or transactions by gaining the knowledge from others similarly employed as you are? A. I paid no particular attention to the reports of sales that went for industrial sidings. As I had previously testified, I confined my efforts to the northern valley and the northern valley of the Erie Railroad, that is, the Northern Division of the Erie Railroad, has practically no industry on it at all.

The Court: I am sorry, Mr. Walscheid. I do not think he is qualified to give his opinion of values based on any expert knowledge, and it would be just his opinion, and I think it would be of so little weight to the jury that it is not competent. I am rather inclined to hold a rather liberal view. The courts have held that the discretionary power that vests in the court will be more or less final, and if there was any basis on which the judge could have ruled a man to be an expert, they will not upset his judgment, and for that reason I think that it is rather important that the trial judge should

not, in view of what the Supreme Court has said, that they would not disturb it if there was any basis for it, permit testimony of an expert witness unless it was based on real, expert knowledge.

Mr. Walscheid: Well, your Honor will bear with me a moment. My motion of this witness's testimony is that he has sufficient qualification to go to the jury, and it is for them to determine as to the value of his testimony, and I think that that arises out of the peculiar nature of his employment in the past, wherein he came in contact, he necessarily came in contact, with these thousands of applications for sidings which came before him, with the value of that property, of the several pieces of property involved in those applications. In other words, that he could not determine upon the desirability of a piece of property without determining upon the value of the property from a monetary standpoint, that that must necessarily come in through that experience. In addition to that, he has testified that he has taken part in the fixing of prices of property for siding purposes which did not belong to the Erie Railroad. Now, undoubtedly, it may be that most of that applied not only to the Erie Railroad, but to the other railroads too. But in fixing those siding values of Erie Railroad property, he necessarily acquires expert knowledge of other property not belonging to the Erie Railroad, and in fixing the value of property belonging to others, of which he undoubtedly had many, although he cannot enumerate them. It is perfectly natural for

a man to acquire and absorb knowledge as to the value of the property that is being offered for industrial purposes with siding. On top of that, we now have him engaged in the general real estate business and acquiring knowledge generally of values which a man naturally must acquire who buys and sells real estate every day, as I imagine he has, although I did not attempt to qualify him on that.

The Court: His answer to that quetsion was that he paid no attention to other sales, and his answer to my question was he paid no attention.

Mr. Walscheid: Paid no attention to reports.

The Court: To the reports, yes. Now, he has no knowledge; he cannot tell us. I asked him whether he had any knowledge that he had gained from others with respect to other sales of comparable property along railroads, and he said no, he paid no attention to it.

Mr. Walscheid: Well, taking into consideration that this is a special use, if he gains knowledge of the general value of property generally for general use, that will furnish a basis for addition to it of such additional value as the special use gives that property, and while your Honor did ask about these special properties or these properties for a special use, I do not think that this witness intended to say that he had no knowledge of real estate values generally.

The Court: No. I did not ask him that. I asked him comparable property, property similarly situated as this.

Mr. Walscheid: Well, he gave you a sufficient number of instances for that. Now, on top of that, this man is a real estate man, and if he has the value of real estate knowledge generally—I do not know whether he has, I did not ask him that question.

The Court: You might ask him with respect to that. Now, there is another thing that impresses me in this connection, and that is that the experience with a railroad had to do more with the railroad side.

Mr. Walscheid: Right, sir.

The Court: The railroad question, and that the price of the land adjacent to the railroad was an insignificant or collateral matter.

Mr. Walscheid: It was.

The Court: And was one of the least of the factors that were taken into consideration. That is as I understand the situation, and as I understand it also from this witness, plus the fact that in probably a large percentage of the cases that this gentleman was interested in that case under his observation while employed by both roads, the lands were owned by the railroad company, because it is a part of the business of a railroad to have land available for locating industries. It is just as much a part of their business as it is to have a roadbed.

Mr. Walscheid: Now, may I follow out your Honor's thought there. Here is this man taking into consideration now the question of whether the railroad shall devote a piece of its own property for industrial purposes with a siding. The very thing that this man has to determine in order to determine that question is the value of that property in the real estate market. Because, in order to determine whether or not the railroad wishes to give it away for that purpose, or in order to determine whether or not they desire to let it go at a nominal rental, or whether they desire to let it go at a certain price, he must determine what that value is, and he must determine for how much that property may be allowed to go in order that it may turn in the revenue which they anticipate outside. In other words, in order to complete the whole job, the question of the value of the property and the finding of the value of that property is an absolutely essential feature. Now, take it, for instance, as I know, many of these railroads, in turning their properties like this, turn it over upon the basis of six per cent.

The Witness: Right.

Mr. Walscheid: Plus the taxes, the carrying cost. I know that the New York Central does that; I have done the same work with them, doing it now in relation to some property. Now, in order to determine that six per cent, if that is the case, they must have the principal sum upon which they calculate that six per cent.

The Court: Yes. And I think in that event they call in their real estate department rather than their traffic department.

Mr. Walscheid: But he takes part in it; that is what he says.

The Court: As small, incidental part, I think.

Mr. Winne: I understood his testimony to be the real estate department furnished him with those figures.

By Mr. Walscheid:

Q. What part did you take in that, having heard this argument, can you tell us whether or not you took part? A. In the railroading, the real estate department fix the value of the property. The traffic department and we determine whether or not the particular site that the real estate department and the industrial department suggested for the location of this industry should be given up to that particular industry. If it netted us sufficient revenue, why, we had to turn it over; if it did not, we would not do it.

By the Court:

Q. So that the knowledge that you gained in the railroad business came from your—of the real estate business, came from the real estate department largely, did it not? A. Absolutely. The knowledge that I am testifying to here is—

By Mr. Walscheid:

Q. And did you gain that knowledge that way throughout the years of your experience? A. Yes.

Q. And did you in that way gain knowledge as to the value of the property? A. I did.

The Court: Now, examine him, Mr. Walscheid, if you please, on his knowledge of real estate values aside from—

Q. Generally speaking, Mr. Green—is that your name? A. Correct.

Q. You are now in the real estate business generally? A. I am.

Q. And in the real estate business generally,

have you taken and observed the value of parcels of real estate generally? A. I have.

Q. And have you made sales? A. I have.

Q. And made purchases? A. I have.

Q. And how long have you been doing that? A. Since November, 1925.

Q. And you have drifted out of the railroad employ into this business? A. I did.

Q. And has your activity been confined to any part of Bergen County so far as real estate is concerned, or has it been general over Bergen County? A. It has been general over the northern valley of Bergen County. Now, we formed a real estate board.

Q. I do not care about the real estate board. I want to know about your activities. A. Well, I am going to tell you my activity.

Q. Yes. A. We formed a real estate board which takes in all of the northern valley, the boroughs of Tenefly, Englewood. We went up the line to Closter, Demarest, have gone up as far as Rockland County. So that I have a knowledge of real estate values throughout the northern valley.

Q. And do you know Ridgefield Park? A. No.

Q. Have you been over through Ridgefield Park? A. Yes.

Q. Well, do you know it in that way? A. Yes.

Q. Is there any difference in the general layout or topography or make-up of Ridgefield Park from these other municipalities? A. No. There is not as much railroad siding in Ridgefield Park.

The Court: Now, we are talking about generally.

The Witness: No.

Q. Would you feel qualified to come into Ridgefield Park and buy or sell a piece of land?

Mr. Winne: I object to that.

The Court: His answer would be obviously "yes" to that, without asking him.

Mr. Winne: I do not think he should be permitted to ask him.

The Court: No.

Mr. Winne: I think this witness is not qualified. I would like to ask him in relation to his railroad experience, if the practice would be for you to see the property, or if you would merely take the figures given you by the real estate department? For instance, you are determining whether or not a siding would be allowed upon a certain piece of property, or whether the railroad would use a certain piece of property. Would you take the value of that property solely from the information furnished you by the real estate department?

The Witness: Yes.

Mr. Winne: And you would not even go and look at the property?

The Witness: Not ordinarily. Once in a while out of personal curiosity I might go.

Mr. Winne: But the practice would be not to even see the property?

The Witness: No.

Mr. Winne: So that you could not apply the knowledge that you gained from the real estate department to the property as it lay and was located in the municipality?

The Witness: Yes.

Mr. Winne: Of course, you would not know whether there was a public school a few blocks away, whether there was a building across the street, or what the physical surroundings of the neighborhood were?

The Witness: Oh yes. That was usually all detailed in the file.

Mr. Winne: And the conclusion was also detailed in the file?

The Witness: Correct.

Mr. Winne: And you accepted the value as it was fixed by somebody else?

The Witness: Correct.

Mr. Winne: In the usual course, without seeing the property on the ground at all?

The Witness: Correct.

Mr. Winne: And you haven't any knowledge of any sale at any time in Ridgefield Park, or nearer than 5 miles from Ridgefield Park?

The Witness: Correct.

Mr. Winne: It seems to me the witness is not at all qualified under the cases to testify to the value of this piece of real estate. In the first place, the only sale comparable, to which he testifies of his own knowledge, is one sale 5 miles away, and one other that he heard about. Now, from the experience, it seems to me, that he has gained prior to going into the real estate business while he was a traffic expert which would permit him to testify as to the general conditions of traffic regulations and under what conditions the railroad might permit a siding, that information he got not by knowing the value of a piece of real estate, but accepting somebody else's value of a piece of real estate, and he had no experience in actual values. He had someone else fix the value which he passed along, and someone else accepted it or not; and before him during this course of months there were a lot of

papers; but how could he know whether or not this piece of property in comparison to one of those properties which he passed on was comparable, worth more, or worth less, without ever having seen the property, but merely having seen a picture of it on a map and read something about the general description? And I certainly take it that everything he learned in 1912 and 1913 is too remote to be taken into consideration as of the present time. If he were to fix the value of the property as of that time, everybody knows the property would be infinitesimal in comparison with the value of the property at this time.

(Further argument.)

The Court: I do not think the 5 miles makes much difference in view of his testimony that the conditions are practically the same, where he had recent knowledge, and the conditions that prevailed here. That would make it comparable property. Of course, that would be the subject of cross examination as to whether it was comparable property. I agree with counsel who offers this man that he is an expert with respect to the desirability of a piece of property for a special use, and the only doubt I have in my mind is whether he is qualified as a real estate expert to give the value of this land, either with railroad facilities, or without railroad facilities because, if he were qualified as an expert, he would be obliged to testify with respect to what the value of this property would be if the rail-

road was not there, for instance; and then his opinion as to the value of the property located as it is adjacent to the railroad with the facilities which he says are present for using it for a railroad siding. The difficulty that I have in these cases oftentimes is that it requires, generally speaking, no particular expertness to go into the real estate business.

Mr. Walscheid: No. But it does require expertness to do what this man has been doing.

The Court: If a man cannot make a living at anything else, a man opens a real estate and insurance office oftentimes, sometimes; I have seen such people. Now, just because they are in the real estate and insurance business does not qualify them as experts in that line, and they can only be experts as to values of real estate after a course of experience, and that experience must be based upon their actual sales of comparable property, and it takes time in order to acquire a sufficient experience for them to appraise property. This witness has never been engaged in appraising properties of any kind, according to his qualification, and he has been in the real estate business but a short time; and even granting that the experience that he had in the railroad company, and granting for the moment that the experience that he gained in 1912 was a part of his qualification, that was only two years, one year then, and one year later, and the nature—

Mr. Walscheid: I do not understand it is all of his experience. Those are the two that he enumerated.

The Court: I understood he had been in the railroad—

By Mr. Walscheid:

Q. Is that all your experience? A. Along that particular line, yes.

The Court: He was a chief clerk in the office, and he was engaged in the railroad business generally, and his main line of work was railroading, but for two years, one year or thereabouts, with the Big Four, dating back a number of years, he had an experience that was similar to the year's experience that he had with Mr. Powell, and the main object of which was, from the railroad point of view, the location of industries, the incidental work was with respect to values, a large part of the properties were owned by the railroad company, which did not fit him, it seems to me, to go out and appraise independently other properties. It is some experience, of course, and it is rather a close question, I admit.

Mr. Walscheid: If your Honor please, I think we are going astray on the question that this man is coming in here as a general real estate expert. He is coming in here as an expert on property for a specific use. That is what he is coming in here for.

The Court: Yes.

Mr. Walscheid: And the question of whether or not he gains the knowledge of a real estate value as an incident, or whether that is the main purpose of his investigations during the course of his experience,

seems to me to be immaterial. It seems to me it would be impossible for your Honor, as a matter of law, to say that this man, passing on these thousands of railroad sidings which he passes upon, gaining the knowledge of what the land was held at, seeing the applications, reading their desirability, and what constituted their desirability, did not fit himself to testify as to the value of a piece of land under investigation for the particular use for which he had been making the investigation. I think it is absolute that even though he never left his office, even though he never saw one of these pieces of property, the mere topography of a piece of land makes no difference for a special use. The mere fact that it is in Ridgefield Village makes no difference, I mean, by the name. What makes the difference are the various things that he has testified to. That is straight, direct and approachable, and other industries and other things, all of which passed through him, and he finally puts his O. K. on it and hands it up to his superior. Now, in doing that, he must drink in and obtain the value of each one of these parcels of land as he sees them come by him, and he says, "That is a fine proposition" and it goes through, and he knows in the traffic department, his experience afterwards is whether it is a fine proposition, and whether it does go through and whether the judgment of the railroad company was right. I think that this is not a question of an ordinary real estate expert. I think that the very statement that your Honor makes that you doubt, and that it is a close ques-

tion, makes it a question for the jury to decide upon the desirability of this man's testimony, and whether or not he really has the qualifications which he says he has. If I were going to the Erie Railroad Company, or while he was there, with an application such as this is, I would certainly think a great deal of his opinion in submitting my property to the railroad for the particular use, because—well, he did not handle one, he undoubtedly handled thousands of them.

Mr. Winne: Regardless of how many he handled, if Mr. Walscheid put in his application to the Erie Railroad, it would go to a real estate expert before this gentleman saw it.

I take it there is not a case that your Honor can quote, or counsel can quote, where a man was permitted to be an expert except that his knowledge was gained in actual sales. Having gained that knowledge in actual sales as an expert, he can testify to his conclusions, his opinion, to what he hears or what he knows in the trade; but his knowledge, to make him an expert, must be gained from sales. Now, this gentleman has not qualified on any experience at all. His quality as an expert is in this experience in the railroad, because his general experience has been remote and very casual in relation to Ridgefield Park. His experience in the railroad department has been in the traffic department; and so far as I understand his testimony, he cannot say whether the price that would be submitted by the real estate department, the real estate expert, in any one case, would be the price at which

it would be closed, whether it would be closed on another basis, or what would happen. He was not interested in that. He was interested in seeing whether or not a certain revenue would be produced by a certain industry doing a certain amount of business. I do not understand the witness has testified that he has any knowledge, of his own personal knowledge, of any piece of property he ever saw until he went in the real estate business about a year ago, and then his knowledge is limited to Englewood and north of Englewood, nothing nearer than 5 miles of this property.

Q. If this property came before you while connected with the Erie Railroad, you would pass upon it? A. No.

Q. For a siding purpose? A. No.

Q. Would you pass upon the papers? A. I would eventually if the siding was proposed for which—

Q. That is what I mean, if the siding was proposed. And what would come to you in connection with that? A. The recommendation of the engineer's department.

Q. The recommendation of the engineer's department. What would that show? A. That would show whether the topography of the land was O K for a siding.

Q. Did you say the topography of the land? A. Yes.

Q. And by the topography of the land, what do you mean? A. I mean whether the land is a flat piece of ground, or whether a cut ought to be necessary, or whether a trestle would have to be built in order to permit the siding to go into the land.

Q. What did you say, a flat piece of land? A. I did.

Q. All right. What else would come to you? A. The question of the availability by the Superintendent as to whether or not in the operation there was any switch that was close to this piece of land where the—in switching the cars in, the switch engines might come in contact with any through trains, whether it would be dangerous for the operation of the railroad by permitting that particular siding to locate at that point.

Q. Now, is there anything in this particular location which would prevent you from making that development? A. No.

Q. What else would come to you? A. The question of the form of industry, what the industry would be, and where they would get their raw material, what quantity of raw material they would receive, what their outbound product would be, where it would be marketed, the estimate of the number of cars that they would ship out, the estimate of the number of cars that they would get in, and then the revenue, and an estimate of the revenue would be made.

Q. Now, from your examination of the locality here, are you able to pass or form a judgment as to that? A. I am.

Q. What else would come to you? A. The question of whether or not the rates in and to the town would be comparable with a competitive industry located perhaps in some other town or perhaps in some other section of the country.

Q. That would furnish no trouble here? A. No.

Q. What else would come to you? What would come to you from the real estate department? A. The recommendation, if the railroad company owned the land, the real estate department would put a value on there.

Q. It would put a value on there? A. Correct.

Q. Go ahead. A. That value would show what the property had to earn.

Q. What? A. What the property had to earn.

Q. How would that property be analyzed? A. It would be analyzed, first, on the physical value of the land.

Q. Based on the physical value of the land independent of a special use? A. Right.

Q. And that is as to the railroad property? A. Correct.

Q. If owned by the railroad? A. Correct.

Q. Now, if not owned by the railroad, what would come to you? A. There would be no recommendation of the real estate department because it would have no voice in determining the value of the land.

Q. Well, would you consider the value of the land under those circumstances? A. No.

Q. Under those circumstances, you would not consider the value of the land? A. No.

Q. And the most of your applications were for property owned by the railroad? A. Correct. Those that I paid particular attention to.

Q. Yes. A. Yes.

Q. And these applications would involve the appraisal of the use of that property to some private industry? A. Right.

Q. And it would involve the question of what rent, if any, would be chargeable to the private user? A. Right.

Q. And how would that rent be fixed? A. Well, it would all depend upon the industry itself.

Q. Upon the desirability of it? A. The desirability of it.

Q. Was there a basic method of starting out? A. Yes. In the first place, the general policy was not to locate any industry within twenty miles of New York.

Q. I am not interested in that. I am interested in the question of value. A. All right.

Q. Assuming now you are located, what rental would you charge,—would be charged in the calculation? A. It would be a percentage of the value placed by the real estate department; the usual—

Q. A percentage of the value placed by the real estate department? A. Correct.

Q. And I suppose that was never less than six per cent.? A. Never, to my knowledge.

Q. Never, to your knowledge? A. Right.

Q. So that, in order to determine that six per cent., it would be necessary to have the principal upon which that six per cent. would be calculated? A. Correct.

Q. And those values thus found passed through your hands? A. Correct.

Q. And you made recommendations on them? A. As to the location of the industry, yes.

Q. Based upon that value? A. Right.

Q. Based upon the whole situation? A. The whole situation, no particular part.

Q. Then the head of the department accepted them? A. Yes.

Q. Ordinarily? A. Right.

Q. I suppose there were one or two instances where it was refused, or haven't you any knowledge? A. I do not recall of any.

Q. You do not recall of any? A. There might have been a case where a waste paper plant attempted to locate, and it is running through my mind that we did decline a waste paper plant, but I would not want to testify—

Q. But that had nothing to do with the value of the property? A. It was the traffic itself that barred that plant.

Q. Now, how many of these transactions passed

through your hands during the time that you were with the Erie Railroad? A. Well, I would estimate that there was a minimum of ten a day.

Q. Ten a day? A. Correct.

Q. And how long were you with the Erie in that connection? A. One year.

Q. That would be three thousand, six hundred and fifty, at least? A. Right.

The Court: That is, if you worked Sundays.

Q. Well, they passed ten a day, passed through your hands? A. Yes.

Q. Did you take up all these papers and read them? A. Yes.

Q. And pass on them? A. Yes.

Q. Passed them through? A. Yes.

Mr. Walscheid: I submit that this man is qualified to testify on that testimony as a man experienced to determine the desirability and the value of this property for the particular use in connection with which he has been testifying.

Mr. Winne: May I ask two questions, your Honor?

By Mr. Winne:

Q. In any of these instances that you have related to us, was there ever a sale of the real estate consummated? A. Not to my knowledge.

Q. In every case that you have referred to, there was a definite industry proposed, was there not? A. Correct.

Mr. Winne: Now, I submit, your Honor, that this is all hypothetical. What he is tes-

tifying to is an arbitrary value which was not a sale at all; it was not a sale; there was not a single bona fide sale that this witness can testify to. In all these transactions, somebody else fixed the value. Now, it is true that he could testify now as to what the custom of that road might be if the road owned this property and were fixing a value; but that is not the situation. He is attempting to testify to the value in the open market, and everything he has said about these railroad transactions refers to something different than to a sale in the open market. It was a fixing by the railroad of a price upon their own property, which they would permit a definite industry named in the application to operate a plant, and that price, of course, was fixed by a great many things, the size of the industry, whether they were going to improve the property, whether they were going to have a certain number of freight cars a day, a week or a month, and what the tonnage was going to be. In my opinion, your Honor will not find a case where a man has been permitted to testify as an expert when his knowledge is not gained on sales. I do not care how great a student he may be of conditions, how much he may know about railroading, unless his knowledge is based on sales in the market, he is not permitted to testify as an expert.

By Mr. Walscheid:

Q. Can you, from your experience and from your knowledge of this locality, tell us what a railroad company would appraise this land at if it owned it,

and if it were to be used for an industrial purpose, and if the papers came through to you in the manner in which they usually did come through to you, with a survey showing the topography, and with your knowledge of the values fixed by the department handing you the papers, and fixing the six per cent. or other rental value in the manner in which you have indicated? I do not mean an exact figure, but can you give us an approximate value of that property for that purpose?

Mr. Winne: I take it the answer is he either can or cannot.

The Court: You may answer it.

A. I can.

Q. Now, the question is, will you give us that price?

Mr. Winne: Now, your Honor please,—

Q. Will you give us an appraisement of that valuation?

Mr. Winne: Now, I object to the question on the ground that the issue before this jury is the sale value, the reasonable market value, of this property at a definite time, and what this man's opinion is if he is an expert as to what the railroad would appraise it at, is immaterial, and I object on the ground he is not qualified as an expert.

The Court: Objection sustained.

Mr. Walscheid: Exception.

The Court: You may have an exception

Mr. Walscheid: I did not put in the date in the question. May I change it by adding the date?

The Court: Certainly.

(Question read.)

Q. Will you give us that appraisal or a valuation as of the 30th day of November, 1925?

Mr. Winne: I object to that on the same ground.

The Court: Yes.

Mr. Walscheid: I pray an exception.

The Court: You may have it. In the notice of appeal, the date is here.

Mr. Walscheid: The 3rd day of November is the date. Fix it as of the 3rd day of November, 1926.

The Court: Yes. That is included in your question?

Mr. Walscheid: Yes.

The Court: Very well.

Mr. Walscheid: Will you change that from the 30th to the 3rd, Mr. Stenographer. And then the ruling is as your Honor has indicated. That is all.

The Court: This witness has whispered something to me since I made the ruling, which he can repeat to you when he gets through. I do not know whether it will have any bearing on it at all.

Cross Examination by Mr. Winne:

Q. When did you first go to see this property? A. This morning.

Q. And never before this morning? A. No.

Q. Had you ever been at this point at any time before today? A. Yes.

Q. And did you frequently go through Ridgefield Park? A. Not very frequently.

Q. But you do have occasion sometimes to pass this point in traveling through the county? A. I do.

Q. Don't you know, as a matter of fact, that Mount Vernon Street extends across the railroad? A. No, I do not.

Q. Aren't there gates there? A. I couldn't find any that would take me over to the waterfront. I specifically looked for that this morning.

Q. So you say Mount Vernon Street does not extend across the railroad? A. Not for vehicular traffic; no, sir.

Q. Did you travel the length of the eight thousand feet that you testify there is available for railroad purposes in Ridgefield Park? A. I did.

Q. When did you do that? A. This morning.

Q. When you say you traveled it, do you mean on foot, or— A. No.

Q. —how? A. Automobile.

Q. That is, you rode along Railroad Avenue from this point to the northerly limit of the Borough? A. Right.

Q. And looked at the railroad from Railroad Avenue? A. Right.

Q. And how did you go south from this point to the limit of the Borough? A. I want to qualify that answer. I came down Railroad Avenue, and then we got to the turn in the road. I did not go beyond the turn in the road. So that there was practically, to the end of the Borough, there was practically about fifteen hundred feet that I did not pass over.

Q. So of this eight thousand, there is about three thousand feet that you did not look at? A. I said fifteen hundred.

Q. Well, fifteen hundred on either side?

Mr. Walscheid: He did not say he did not look at it. He said he did not pass over it.

Q. Am I correct, there is fifteen hundred feet

on each side of the railroad that you did not walk over? A. That is my estimation.

Q. And your opinion about that land is given from what you could see of it from where you stood? A. Correct.

Q. Do I understand you to say there is no other land in Ridgefield Park available for industrial purposes with a siding except this tract? A. Not on the east side of the railroad.

Q. Well, what would be the matter with this tract adjacent to the plot that has been indicated on the map as in Block 96? A. I cannot see.

The Court: Go down there, Mr. Green, where you can see, please.

The Witness (stands before the map): Do you mean this (indicating)?

Q. This (indicating); what was the matter with that?

Mr. Walscheid: A strip 25 feet wide at one end and 30 feet wide at the other, immediately abutting on the easterly side of the right of way of the railroad in Block 96; is that what you have reference to?

Mr. Winne: Yes.

A. You are coming around the curve which, if a siding is taken off from that curve, makes it dangerous for the operation of through trains around that curve.

Q. And you think that this point in Block 96 is dangerous, whereas this point in Block 85 is not dangerous? A. Correct. Because you have completed the curve when you get around here (indicating).

Q. You have said that there were no team switches, I think? A. Team tracks.

Q. Team tracks. Now, is that limited to the easterly side of the railroad? A. Yes. My observation is limited to the easterly side.

Q. You know there are team tracks on the westerly side of the railroad? A. I do not know of any.

Q. But you certainly do not know that there are not? A. Well, I have not confirmed that, but I knew they have no way to get over to the westerly side of the tracks, and therefore assumed there were not.

Q. You do not know, whether or not, for instance, Carr has a team track? A. That would be a private siding.

Q. What do you refer to as a team track? A. A team track is a track for the public delivery that anybody in general may have a car consigned to them and have a car taken from that track.

Q. Such a track would be owned by the municipality? A. No. Owned by the railroad.

Q. For the convenience of the public? A. For the convenience of the public.

Q. Where is such a track around here? A. The nearest that I can recall is Little Ferry.

Q. Now, as an expert on traffic, do you think that the railroad would be interested in buying this for a team track? A. It is customary to have team tracks adjacent to railroad stations, and I was rather surprised to find that there was not one here.

Q. As a matter of fact, the industry adjacent to this railroad track, or adjacent to this railroad station, is on the west, isn't it? A. Correct.

Q. There are several industries there? A. Yes.

Q. Would it be according to good traffic regulation to have the team track you refer to where the industries are or away from them? A. Away from them.

Q. Away from them? A. Nearer to the public highway.

Q. Are you familiar with where the railroad station was in November 1926? A. No.

Q. Assuming that the platform for passengers was about opposite Block 5, Block 2, Lot 2 in Block 85—do you know to what I refer? A. Yes.

Q. Would you say that it would be good railroading from your experience as an expert to run a spur on that lot, Block 85? A. May I look at that?

Q. Down here, in between these two tracks (indicating).

Mr. Winne (to an engineer): Will you indicate please, where the station platform is in relation to this map, as it was?

The Engineer: I believe it came down to about here (indicating).

Mr. Walscheid: You better frame your question.

Q. Assuming that the passenger platform of the West Shore railroad extended in a southerly direction, an easterly direction to a point about opposite —you call this north? A. Yes; that is north.

Q. Then in a southerly direction to a point about opposite lot 2 in Block 85, as an expert on railroad traffic conditions, would you say it was good railroading to extend this spur into Block 85? A. I could not see any objection to it; it would not in any way interfere with the track going into the siding.

Q. Now, can you tell us, as a railroad expert on traffic conditions, how many freight cars a day or a month would have to be delivered to the railroad from a place like that to make it worth while putting in an industry and an industrial siding?

A. The actual number of cars would not have any bearing on it. It would be where the cars originated, and the amount of traffic that each car went.

Q. Yes. Well, can you give us a figure in dollars and cents as to traffic over a period of months or years? A. For that particular siding, based on the value that I place on the property?

Q. No. I do not mean based on the value of the property. On the value to the railroad of a spur in there, because the property would naturally be privately owned.

Mr. Walscheid: I object to that. We must take into consideration the value which he places on that property.

The Court: If that is an element that he must take into consideration, of course, he is not required to answer.

Mr. Winne: I do not understand that it is, if your Honor please. If this property were owned by the Overpeck Land Company, and they asked the railroad to put a siding in there.

Mr. Walscheid: No. They sold it to the railroad.

Mr. Winne: I beg your pardon.

Mr. Walscheid: If they sold it to the railroad.

The Court: No. But this witness is qualified with respect to not only properties owned by the railroad company, but privately owned properties. Now, the question is, if this property, a privately owned property, were used as a railroad siding, what was its feasibility?

Mr. Winne: Certainly. How much would the railroad have to receive in

revenue in order to warrant putting a spur in there?

The Witness: Mr. Winne, that is a general question. It would be very hard to determine that without knowing first, the character of the industry. Second, the market to which the industry wants to reach.

Q. Well, would it—

Mr. Walscheid: Wait a minute. Any more?

A. (Continuing) Third, the general traffic of the industry that was going in there.

Q. Well, I want to have some idea about this, how much traffic would they have to have? A. Name some specific industry, and I might be able to qualify an answer for you.

Q. Will you tell us anything about the revenue that the railroad would have to receive from any industry in order to warrant putting a spur in there? A. I wouldn't want to answer that question. It is too broad. It is too broad. If you can confine it to a particular type of traffic coming in and out of an industry, why—

Q. What kind of traffic would this property be adaptable for? A. Well, hastily glancing at it today, I would say machinery would be one good industry to put in there; a warehouse would be another one. I find that Ridgefield has no warehouse.

Q. Now, if you had such an industry located there, can you tell us how much the railroad would have to receive in gross over receipts in order to warrant putting a spur in there? A. Well, they would have to net a minimum of $15 a car, and

I would estimate that they would have to have at least 200 cars a year.

Q. Now, from your knowledge of traffic conditions, would, under those conditions, the West Shore Railroad consider it good railroading to put a spur in that particular piece of property, having in mind the normal carriage of passengers that that railroad takes? A. I do not see any objections to it. It would mean that much additional revenue to them.

Q. But you would say that in order to get such a spur an industry would have to guarantee or be so the railroad would have to consider that an industry would use about 200 cars at a minimum rate of $15.00 freight on each car? A. Correct.

Q. How long is a freight car? A. They vary in length from 36 foot, 6 inches, to 50 foot, 6 inches.

Q. And how long a siding would this piece of property require in feet from the railroad right of way? A. You have 192 feet on the railroad. It would cut in from the extreme end.

Q. You refer to this railroad street here? A. I refer to in here (indicating). You have got 162, and you have got at least 30 feet here (indicating), which gives you 192 feet. If you cut your siding in there, you can put in the full 192 feet.

Q. Well, 192 feet would bring you to the southern boundary of lot 2, wouldn't it? A. Or you could bring it in this way along here (indicating). That is a physical matter that can be worked out.

Q. Now, I would like to ask you as an expert how far from the point of entry your siding would have to come onto this property before you can begin to use it for building purposes? A. It is a matter of convenience. They have fixed sidings so that they run right into the buildings themselves, and build over the top of them.

Q. In that event, then, you could build your building reasonably close to the railroad right of way? A. Absolutely.

Q. About how much of this property would you say would be adaptable for siding purposes? A. Well, that is an engineering matter, though I would say the whole 192 feet.

Q. So you would say that the entire property could be so used, that it would be all adaptable to an industry which would require a siding? A. Right. That is, from my hasty perusal of it.

The Court: We will take a recess now until two o'clock.

(Recess.)

After recess. 2:00 o'clock P. M.

EDWARD H. GREEN, recalled for further cross examination, testified as follows:

By Mr. Winne:

Q. Mr. Green, you know what a head-on switch is in railroad parlance, don't you? A. Yes.

Q. And this switch that we are discussing that might be put in this property would be a head on switch, wouldn't it? A. I do not know.

Q. Well, what do you understand a head-on switch to be? A. Well, that is more in the operating line, and I would not want to qualify as an expert in testifying as to what a head-on switch was.

Q. Now, if a switch or spur were put into this property under the railroad regulations as you understand them as an expert, who would pay the expense of that?

Mr. Walscheid: I object to that as immaterial.

The Court: What is the materiality of it, Mr. Winne?

Mr. Winne: Well, if your Honor please, the witness has testified it required revenue of $3,000.00 a year, which he says would support the introduction of a switch into this particular piece of property, if it were adaptable for a certain kind of industrial use. Now, I think it is material to know whether or not such a switch, for instance, would cost $5,000.00, and, if so, who would pay it.

The Court: Well, of course, that would all depend on the deal that might have been made.

Mr. Winne: That is right.

The Court: The only thing that this witness has been permitted to testify to, really, is the availability of this property for this particular use, and if it is material in cross-examination on that point to go into the building of this switch, I suppose it is permissible and proper.

Mr. Winne: Does your Honor think it is not material to test the knowledge of this witness as an expert? He is offered as an expert.

The Court: He is an expert, and you can attack his credibility, if that is your point, as to his expertness, with respect to what he has been permitted to testify to.

Mr. Winne: He has been permitted to testify that this is available, and that in his

opinion a railroad would put a spur in; under those conditions, I would like to know in his opinion whether the spur would be paid by the property owner or the railroad.

The Court: In other words, whether such a proposition is practicable?

Mr. Winne: Yes, sir.

Mr. Walscheid: On the question of practicability, he is perfectly right; but that does not involve the question of cost, except the question of reasonableness of cost.

The Court: It might have some relevancy in that connection. If, for instance, it could be shown that because of engineering difficulties, or what not, in this particular piece, it would not be practicable to use it for railroad purposes, he can show it by this witness by cross-examination, or bring it out.

Mr. Walscheid: I will withdraw the objection.

The Court: Very well.

A. It is customary for the people having the sidings put in to pay for the siding. Then, if the traffic warrants it, and in some instances, a refund of $2 per car is made, depending upon the total amount of business that the industry brings to the railroad.

Mr. Winne: That is all.

The Court: Anything more?

Re-direct Examination by Mr. Walscheid:

Q. Mr. Green, have you any actual experience in sales since you have become a real estate dealer? A. I have closed over three hundred and forty thou-

sand dollars worth of sales, and have under negotiation about a half a million right now.

Q. And where do they run, what territories do they cover; Bergen County? A. I closed one sale—yes, Bergen County, Bogota, Englewood, and other places in Bergen County.

Q. And those sales are all within the last year? A. Yes, sir. Some of them are under negotiation now.

Q. And you are, I understand, connected with the Englewood Real Estate Exchange? A. I am Secretary of the Englewood Real Estate Board.

Q. And the real estate board, the Englewood Real Estate Board, does that exchange prices of property with other boards? A. It does.

Mr. Winne: This is not re-direct. I object to it.

The Court: No. I suppose this is another attempt to qualify this witness as a real estate expert.

Mr. Winne: I object to this line of questioning on the ground it is not re-direct.

The Court: Well, it is not re-direct, but if I am correct, if it is for the purpose of again offering him as a real estate expert,—

Mr. Walscheid: Yes, sir.

The Court: —I will permit it. In other words, he was not qualified before under the ruling of the court because he had not proven himself qualified by his answers. Now, if counsel wishes to again submit him as an expert, I will allow him to qualify him.

Mr. Walscheid: And it is the direct result, as I understand it, of what the witness attempted to offer to the court, and which the court indicated might be told the counsel.

The Court: The witness, during the colloquy this morning, whispered something to me which I only heard part of, but I advised you that he had some information so that you could take advantage of it if you wished. I do not consider it proper for a witness to tell me anything privately, nor for me to bring it out.

Mr. Walscheid: I wish to say to the court at this time that, while it is usually my practice to see witnesses before I put them on the stand, I was forced to forego that advantage with this particular witness and, therefore, perhaps I was not able to ask those questions. Now, what is the last question? (Question read.)

Q. And do you get personal knowledge of those exchanges as Secretary? A. I do.

Q. Do they pass through your hands? A. They do.

Q. And to what district does Ridgefield Park belong? A. It belongs to the Bogota-Teaneck district.

Q. District. And has the Bogota-Teaneck district such a board? A. It has.

Q. And what other boards are there? A. There is boards located in Palisades, Jersey City, or rather the Hudson County Board, which takes in Jersey City and Newark.

Q. I am particularly interested in Bergen County. A. In Bergen County?

Q. Yes. A. Palisades. There is in formation one at Fort Lee, Hackensack.

Q. Is that in formation, Hackensack, or in existence? A. No. That is in existence.

Q. In existence? A. In existence. And Palisades Park, Morsemere.

Q. And do you exchange with those boards, too? A. The Palisades Park, Morsemere is in the process of formation. We will exchange with them; but the others, we do.

Q. The others, you do? A. The other boards in existence, we do, yes.

Q. And in that way, do you acquire a knowledge of the real estate values of the properties within the territories governed or controlled by these boards? A. We do.

Mr. Walscheid: I now again desire to offer this witness as an expert on real estate values.

The Court: You may examine him, Mr. Winne.

By Mr. Winne:

Q. Now, these sales that you are familiar with, Mr. Green, are they closer to this property in question than the sales you testified to this morning? A. They are.

Q. What is the nearest sale from point of distance to this property that you have actual personal knowledge of? A. The Bogota boat club property, on the Fort Lee Road, which is in Hackensack.

Q. In Hackensack? A. Yes. I do not know whether it is in the Borough of Hackensack or—I believe it is Hackensack, yes.

Q. Is it on the east side of the Hackensack River? A. No. It is on the south side of Fort Lee Road leading into the—it has nothing but water frontage and the Fort Lee Road frontage.

Q. Yes. But is it on the east or the west side of the Hackensack River? A. It is on the west—on the east side of the Hackensack River.

Q. And you are not sure whether that is in Hackensack or not? A. Well, I do not know just where the boundary line commences.

Q. Still you think you are an expert in the real estate— A. I claim to be.

Q. Well, it is in Bogota, if it is on the east side of the Hackensack River, Mr. Green. A. My geography was just mixed.

Q. I beg pardon? A. My geography was just mixed.

Q. How near is that to this property in question? A. It is about two miles.

Q. And that property has no railroad facilities, of course? A. Not at this time.

Q. What other property have you within two miles, or between two and five miles of this property, which you can tell us of your own knowledge as to sales?

Mr. Walscheid: I object to this question, that that is not at all necessary, that he must have knowledge of a sale of his own knowledge.

The Court: That is correct.

Mr. Walscheid: He must merely have knowledge of values, as it may come to him in any way.

Mr. Winne: Assuming, in the first instance, that he is an expert; but in order that he may be an expert—

Mr. Walscheid: That makes him an expert.

Mr. Winne: In order that he may be qualified as an expert, his knowledge in the first instance must be of his own knowledge.

The Court: Yes.

Mr. Winne: The man cannot become an

expert by hearing a lot of things. He must know them.

The Court: He has told of the total values of the sales he has made, and also of the totals of those that he has under negotiation at the present time.

Mr. Winne: Those are the ones I would like to know about, how close they are to this property.

The Court: I did not understand you were directing your inquiry to that in particular.

Mr. Winne: I take it that is the only way he would know of his own knowledge by having either purchased or sold as principal or broker.

Mr. Walscheid: Or by getting the information through the exchange.

The Court: What Mr. Winne is now directing his attention to is those sales he has personally made, I take it.

Mr. Winne: Exactly. And I take it those are the only ones that can qualify him as an expert.

The Witness: Queen Anne Road, Bogota.

Q. How near is that to this property? A. About two miles.

Q. And what is the nature of that property? A. It is general commercial property, stores; it is taxpayers, as we term it.

Q. Stores erected on it? A. Yes.

Q. And not near any railroad? A. No.

Q. Now, what is the next nearest property that you have either sold for yourself or as broker? A. Under negotiation, the sale of 150 feet on the Northern Railroad, with 70 feet on Palisades Avenue, Englewood.

Q. Is that one of the sales to which you testified this morning, in Englewood? A. I just mentioned that. No, that is not one that has been consummated. This is what I have under negotiation, waiting for the owner of the property to return from Sweden.

Q. Can you give us the date of the Bogota sale? A. Yes.

Q. Was it before or after November 3rd? A. It was after.

Q. And can you give us the date of the sale on Queen Anne Road? Was that before or after November 3rd, 1926? A. The Bogota sale on Queen Anne Road was before November 3rd, 1926.

Q. Of course, this sale in Englewood is subsequent to November 3rd, 1926? A. Yes.

Q. Because it is not yet consummated? A. Right.

Q. Have you any other properties nearer than Englewood that you have personal knowledge of the sale price prior to November 3rd, 1926? A. Yes.

Q. Where are they? A. On the meadows in Leonia.

Q. What property is that, Mr. Green? A. There is an approximately 14 acres that—that was purchased at $600 an acre.

Q. And has that any road frontage? A. No; but it has railroad frontage.

Q. Now, is there anything else? A. Yes, there is considerable, if you are talking of general property, or confining me to just railroad sidings.

Q. Any general property, and the nearest property to this property in question. A. In Englewood, the leasehold of 100 and 25 feet on Palisade Avenue, with the gross rental of $300,000.

Q. Well now, let me ask you if you have any properties nearer than Englewood properties to

which you can testify of your own knowledge as to sale values? A. Outside of the ones testified to, no. That is, I personally had nothing to do with them. I have knowledge of other sales that other brokers have consummated, yes.

Mr. Winne: Now, if your Honor please, I object to this witness as an expert to testify to the value of this property. His sales are all remote, not in the municipality where this property is located, and the nearest sales are at least two miles away, and only one or two of those, the rest being in Englewood which, as your Honor knows, is a considerable distance, I take it, 5 miles from this property.

The Court: The reason that we did not permit him to qualify this morning was because he had not shown any experience as a broker or a dealer or an operator in real estate and, therefore, had no knowledge on which he could qualify as an expert. Now, it develops that he has had considerable dealings in property in the County of Bergen, some of which, although not much, is within a short distance of this property in question, only a few isolated pieces; both of his transactions are at a distant point; but in view of the fact that he has also testified that the conditions throughout the various municipalities in Bergen County where he has been operating and where he has acquired this experience are more or less similar, and that the conditions generally are about the same, I think that qualifies him, and then if it does, of course, he can testify from the knowledge that he has gained from others. I think he is qualified now.

Mr. Winne: Well, I will not except to your Honor's ruling, because I think it is purely discretionary with the court as to the qualifications, and it is such a standard which I take it applies to other experts who are offered.

The Court: Oh yes; it will apply to all of the experts that are offered.

By Mr. Walscheid:

Q. Now Mr. Green, will you tell us what, in your opinion, is the value, or was the value of this property known as lots one, two, three, four, five, in Block 85, for industrial purposes with a siding on the West Shore Railroad, as of November 3rd, 1926?

Mr. Winne: I object to the question that way, your Honor please. The question is what the value of that property was as it existed on November 3rd, 1926, not with the siding, or for any particular purpose.

Mr. Walscheid: For use for that purpose.

The Court: I think the objection is well taken, and if you amend it by saying—

Mr. Walscheid: Perhaps my question was poorly framed.

(Question read.)

Q. To be used for industrial purposes in connection with the West Shore Railroad?

Mr. Winne: I object to that. It is only one question that I see is proper, and that is the value of this property as it existed on November 3rd, 1926.

The Court: Yes. For a certain purpose.

Mr. Winne: For what purpose it may be used, if it may be in the mind of the witness, but I do not believe the witness should be permitted to testify to this value for a particular purpose.

The Court: Oh, yes. The Kuehnle case holds it can be shown what the best use of a property may be and its value for the greatest use to which it could be put is the criterion that governs in condemnation cases. The mere fact that the then owner did not use it for that purpose is not the test, but what is the availability of the property, what is its greatest use and, therefore, it is perfectly competent to use a witness who is competent to testify to the value of the property for the particular use. In other words, you could show by this witness or any other witness what it was valued at in his opinion for a store property, for a residence property, for a railroad siding property, or industrial property, and then the jury could determine what its greatest use might be. This witness has said that it is available for an industrial site with a railroad siding. He has said that it is feasible from an engineering railroad standpoint to put a siding in there, and it is competent to ask him, if such a siding is put there, he already having said it is feasible, what its value would be for such use.

Mr. Winne: Just so the record may show my objection, I wish to object to the question in the present form because it limits the answer of the witness to the value of the property for a particular use and supposes the possibility of something that does not

exist and did not exist on the 3rd of November, 1926.

The Court: The possibilities existed. You may have an exception.

A. $31,000.00.

Q. And, in your opinion, was this particular use to which I have adverted in my last question, the best possible use to which that property could be put? A. It was.

Q. How do you arrive at the sum of $31,000.00? A. Assuming that the value placed on the property directly in front of this property of $3.00 a square foot is a fair value, I calculated the number of square feet, as in most every instance industrial property is purchased on a square foot basis. I calculated that a $2.00 per square foot rate would be a proper charge for that property.

The Court: What was the basis of your assumption that the property adjacent had—

The Witness: Directly in front of it, the so-called Baldwin property.

The Court: On Mount Vernon Street?

The Witness: On Mount Vernon Street.

The Court: And assuming that was worth how much?

The Witness: $3.00 a square foot.

Q. Now, do you know what the property to which you refer actually brought? A. I am told it brought $38,000.00.

Q. That is your information? A. Right.

Q. And, in your opinion, is that a fair and reasonable market value for that so-called Baldwin tract? A. It is.

Mr. Walscheid: Cross examine.

Re-cross Examination by Mr. Winne:

Q. You estimate the value of the Baldwin tract by the square foot basis solely as industrial property, Mr. Green? A. No. It has other values, as it is on the County Road, and is available for store purposes, as well as industrial purposes.

Q. So that it has a greater value in your opinion than the property in question because of that fact? A. I made allowances for that.

Q. Your allowance being the difference in the square foot value of the property at $3.00 as against $2.00? A. Correct.

Q. How many square feet are there in the property in question? A. I have the exact figures, but I calculated around fifteen—fifteen thousand square feet.

Q. And your basis of $31,000.00 is multiplying fifteen thousand five hundred square feet by $2.00 a square foot? A. Whatever it is, yes.

Q. And your sole reason for placing that valuation on this property is this comparison with the Baldwin property? A. Correct.

Q. And at least, in this instance, you are testifying to the value of the property only as industrial property on a square foot basis?

Mr. Walscheid: Which property?

Mr. Winne: The property of the Overpeck Land Company.

A. As an industrial property, yes.

Q. Do you know the condition this property was in in November, 1926? A. Why, in November, either in October or November, 1926, I passed through Ridgefield—Ridgefield Park, looking for an available siding in the vicinity of Hackensack

for the location of a printing plant, and I had a recollection of looking at that property, but I cannot say that I remember just how it was. I know that the site was—was one that was called to my attention as being available.

Q. Well, are you making your estimate today on the condition the property is in now? A. I am basing my estimate today on the value of the property in the front and its availability to the railroad siding. The railroad siding was the same then as it is—in 1926, as it is today.

Q. Well Mr. Green, it would make a difference if the property were drained or filled today and that it wasn't drained or filled in November, 1926, wouldn't it? A. Not very much.

Q. You think that wouldn't make any difference? A. No.

Q. Wouldn't it make at least the difference of the cost of that work? A. Yes.

Q. But no more? A. That is all.

Q. So that, in your opinion, in the open market, the only difference in value between the drained and filled property and one not so drained and filled is the cost of the work? A. That is all.

Q. In making your estimate in the value of this property in November, 1926, did you take into consideration at all its accessibility through Herbert Street? A. No, I did not.

Q. You disregarded that entirely? A. I did.

Q. And fixed your valuation on its value with its accessibility to the railroad alone? A. Right.

Q. So that if it were not possible to have a railroad spur into that property, then your estimate of valuation would have to be disregarded? A. Yes; it could not be used for industrial purposes.

Mr. Winne: That is all.

By the Court:

Q. And, therefore, your estimate would not be the same? A. No; it would not.

Q. And I understand you to say that you did not take into consideration the presence of Herbert Street?

Mr. Walscheid: The present condition, I think he said.

A. The condition, that is what I understood him to say.

Mr. Winne: The question was its access through Herbert Street, access to the property through Herbert Street.

Mr. Walscheid: I understood him to say the condition of Herbert Street.

The Court: I did not. I understood the witness said it did not make any difference whether Herbert Street was there or not. Is that what you meant to say?

The Witness: Oh, no. Because how can you get in there if it were not for Herbert Street? What makes the property desirable is the fact that it has a siding, and in addition thereto its availability for transportation, to get traffic out of the factory by motor truck, and to get the employes into the factory without using the railroad facilities.

Q. So that it is essential— A. To have the street.

Q. —to the property to have Herbert Street there, is it not? A. Right; absolutely.

By Mr. Winne:

Q. And its value at the price that you estimate

would depend on Herbert Street being an accepted and approved street? A. Right.

Mr. Walscheid: Oh, I object to that.

The Court: He has already said so. The question is whether Herbert Street is available. I do not think it is important whether it was opened or whether it was accepted or not. That is not the question.

Mr. Walscheid: That is what I was objecting to.

The Court: I think it is objectionable.

Mr. Walscheid: The existence of a street is the—

Mr. Winne: The question is, if your Honor please, whether or not this price is fixed, having in mind Herbert Street as it exists, or having in mind Herbert Street as an accepted and approved street. I would like to know whether, when the witness fixes this price, he does so with the physical condition of Herbert Street in his mind as it is now. I think the question is proper.

Mr. Walscheid: That is perfectly proper. The improved condition of Herbert Street may be a factor, but the accepted and approved condition is not.

The Court: I think you are right. I do not think the question should be based on the technicality of whether or not Herbert Street is actually accepted or dedicated or not. I think that the witness's answer is on the assumption that Herbert Street is there, actually there, and makes the property accessible as a public street.

Mr. Winne: I will ask the witness this:

Q. Is your estimate of $31,000.00 as the value for

this property, did you have in mind Herbert Street as it now exists, or as an improved street? A. As it now exists.

Q. I see.

Mr. Winne: That is all.

By Mr. Walscheid:

Q. And by the street as it now exists, you mean the possibility of getting in and out to Mount Vernon Avenue, or Mount Vernon Street, by use of motor trucks, and for pedestrians? A. Correct.

By the Court:

Q. Well, why would it make a difference whether it were as it is now, or whether it were an improved street? A. For the simple reason, it is available as it is now. If it was an improved street, the condition would not be any different. The trucks could still get in there. It would make it, perhaps, a little easier in dry weather.

Q. It might be a difference of whether they could get in or whether they couldn't get in, mightn't it? A. I do not think so.

Q. Well, I have not seen it; I do not know. A. Right.

By Mr. Walscheid:

Q. And even if the improved street were necessary, that would mean merely the difference of the cost of improving the street? A. That is all; that is all.

Mr. Walscheid: That is all.

JOHN KELLEY, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Kelley? A. Teaneck.

Q. And what is your business? A. Real estate and insurance.

Q. And how long have you been in the real estate business? A. About four years.

Q. Are you connected with any real estate organizations in Bergen County? A. I belong to the Teaneck-Bogota real estate board.

Q. And in that board do you hold any office? A. I am one of the trustees, and on the appraisal board.

Q. And as a member of the appraisal board, what do you do? A. Appraise property from time to time.

Q. And the Teaneck-Bogota Real Estate Board, is that it? A. Yes.

Q. Does that include the Village of Ridgefield Park? A. Yes. That was taken in the last year or so.

Q. And have you made any sales of real estate? A. Where? In Teaneck?

Q. No. Generally? A. I have made them in Ridgefield Park, I have made them in Bogota, I have made them in Teaneck, Harrington Park, Englewood, Leonia, Fort Lee.

Q. And what would you say your experience amounted to in the making of sales in dollars and cents for a period of four years? A. Gross, well, about a million and a half or two million dollars.

Q. And have you been specializing in any particular kind of real estate? A. Well, I have catered mostly to commercial property, that is to

say, business sites and railroad frontages, manufacturing possibilities.

Q. And by the way, are you in business alone? A. Yes. With my three sons; two sons, at least.

Q. They are working for you, I suppose? A. Yes.

Q. How many offices do you maintain? A. I got two.

Q. Where are they? A. One in Teaneck and one in New Milford.

Q. And tell us what your experience has been in the commercial line in the purchase and sale of commercial property? A. Well, on—for business property, we figure on a front foot basis, or on the square foot basis.

Q. I mean, have you made any sales or purchases for commercial purposes? A. Yes. I sold— I sold the piece of property that the coal yard is now on at New Bridge, that is the New Bridge Road, which is part of—it is in Teaneck, and part of it is in Bergenfields. I sold the siding in Harrington Park. I sold commercial property on Cedar Lane. Most of the property that is sold on Cedar Lane went through my office.

Q. What is Cedar Lane? A. Cedar Lane is the main artery, or it is a County road, and it is the main road from Hackensack to Teaneck, or to Englewood, or it is the artery that leads to the various townships or municipalities.

The Court: Where is it, in what municipality?

The Witness: Well, it runs to Teaneck, and part of it runs—well, entirely in Teaneck now.

Q. Have you had any experience in regard to sales in the Village of Ridgefield Park? A. Yes.

I own some property there now myself that I bought, and I have other property that I bought and sold in Ridgefield Park.

Q. And do you keep in touch with the sale price of property in the Village of Ridgefield Park? A. You have to, or we do.

Q. Not whether you have to; but do you? A. Yes, sir; we do. I do.

Q. You do. And how do you do that? A. Well, as a matter of fact, I—that is brought about by going into the various real estate offices in the—in Ridgefield Park, and asking what they have to offer for sale this morning, and you get their quotation on it, and the prices changed, and you have to keep in touch with it, or I have to keep in touch with it right along.

Q. And do you do that? A. I do.

Q. Do you know anything about sales on Mount Vernon Street? A. Well, I know of quite a few sales that have been made there. I did not make them.

Q. But you know of them? A. Yes. I know of them.

Q. Tell us some of them that you know of? A. I know the Lipschitz sale, and—

Q. What Lipschitz sale? A. That was the property that Mr. Lipschitz bought and put up those stores there.

Q. Yes. A. And Mrs. Gilmore, the piece that she bought , and I know of some other sites that have been there or that have been sold, parcels that I wouldn't know who brought them; but we know what they brought. Wynant Street was one piece, I remember.

Q. And do you know of any siding properties that have been bought or sold recently? A. In Ridgefield Park?

Q. In Ridgefield Park, if there are any. A. Well, not railroad sidings in Ridgefield Park, but I have bought commercial property in Ridgefield Park. I bought some yesterday.

Q. Where is that located? A. I bought it on Bergen Turnpike.

Q. And in relation to this property, where is it, north or south? A. It is about—oh, I would say it is about a half mile away. No. It is more than that. It is about three-quarters of a mile.

Q. And has that siding possibilities? A. Not siding possibilities, but warehouse and commercial proposition.

Q. Warehouse and commercial property. Have you examined the property known as Block 85 on this map between Mount Vernon Street and Herbert Street, the triangular piece of property? A. Yes, sir. I offered to buy it last year.

Q. The whole tract? A. The—that triangle that the Overpeck bought. They had it about a week, and in going from office to office, as I do two or three times a week, I went into Peard's office, and he said, "I have a piece of property I bought," and I had a client at that time who was somewhat interested in a sash and blind factory, or at least, told me to look up a siding for him, and I told him—naturally, as you go from office to office, you say, "What have you got for a siding?" And Peard said,—Peard was in his office, and he said, "I have a piece down here on the West Shore," he said, "I will take you down and show it to you." So he took me down and showed it to me; and I went—

The Court: Do not give any figures, please.

The Witness: All right, Sir.

Q. You saw it at that time? A. I saw it, yes.

Q. Did you at that time make up your mind as to the value of that property for commercial purposes with siding? A. I did. I made an offer.

Q. Did you at that time make up your mind as to the value of that property for any other purpose, for purposes generally? A. Well, I made it up for commercial purposes only.

Q. For commercial purposes only? A. Yes, sir.

Q. And in your opinion, is a commercial purpose with siding on the railroad? A. Yes.

Q. Is that what you mean? In your opinion, is that the best possible use to which that particular piece of property can be put? A. That is one of the best.

Q. One of the best? A. One of the best.

Q. And what other use— A. It—

Q. —could you— A. —has a good possibility as a warehouse.

Q. Without siding? A. Without siding.

Q. And any others? A. Well, I never have suggested it as any other.

Q. That is the particular use you were interested in— A. Yes.

Q. —at that time? And at that time, when you were there, what was the condition of that property, lots one, two, three, four and five, the physical condition? A. Well, it—it needed, perhaps, a little fill.

Q. Was it wet property or was it— A. Well, I was there in the dry weather.

Q. And it was not wet at that time? A. No.

Q. As to the level of the property, the height of it in comparison with the height of the railroad right of way, was it higher, lower, or approximately at the same level? A. It is approximately at the same level.

Q. Approximately at the same level? A. Yes.

Q. And can you, Mr. Kelley, give us an idea, an opinion, as to what that property, lots one, two, three, four and five in Block 85, would be reasonably and fairly worth for industrial purposes with siding on the railroad as of November 3, 1926?

The Court: Yes or no?

A. Yes.

The Court: Do you question this man's qualifications?

Mr. Winne: I take it under your Honor's ruling that he is qualified.

The Court: Yes.

Mr. Winne: The way your Honor ruled in the other case, there is no use of my objecting to his qualifications.

The Court: I think he is qualified.

Q. What, in your opinion, is the value, or was the value of that property as of that date for that purpose? A. I offered—do you mean what I offered at that time?

The Court: No. What is your value?

The Witness: At that date?

The Court: As of November 3, 1926.

The Witness: It was before that that I had offered the money.

The Court: Well, you are asked the value as of November 3, 1926.

The Witness: I would say about $28,000.00; 27 or $28,000.00.

Mr. Walscheid: Cross examine.

Mr. Winne: No questions.

The Court: That is all, Mr. Kelley.

By Mr. Walscheid:

Q. Mr. Kelley, will you tell us how you arrive at that 27 or $28,000.00? A. I figured about $1.90 a square foot, or $2.00 a square foot. There is about 15,500 or 15,300 square feet in the parcel.

Q. You did not get the exact— A. No.

Q. —footage in it? A. No.

Mr. Winne: Now, I want to examine the witness.

By Mr. Winne:

Q. Aside from figuring $1.50 a square foot, did you take anything else into consideration?

Mr. Walscheid: $1.90.

Q. $1.90 a square foot. Did you take anything else into consideration when fixing the value of this property? A. Why, as to its location and qualifications for industrial work, yes.

Q. Would you say that any piece of real estate in Ridgefield Park located on the railroad right of way had a value of $1.90 a square foot for industrial purposes located as that piece is? A. Yes, sir.

Q. Because there is no other piece located as that piece is, is there? A. That is the one I refer to.

Q. Would you consider that other piece of property in Ridgefield Park located on the railroad having the same value for industrial purposes? A. Yes, if they had the possibilities of that has for siding, and also for traffic conditions to the warehouse, that is Herbert Street, you can get to and fro from the warehouse, and you have your siding for your incoming goods.

Q. So that you took into consideration Herbert Street in fixing your valuation of this property? A. I took into consideration the possibilities for transportation to the warehouse, carrying the goods away after they come in by rail.

Q. When was it you looked at the property, Mr. Kelley? A. Oh, I—the first time?

Q. When was it you have testified that you looked at it and made this offer? A. That was—

Mr. Walscheid: He did not mention an offer.

Mr. Winne: If he hasn't mentioned an offer, I don't know how I hear things.

The Court: He said he made an offer.

The Witness: I made an offer; yes, sir. I think—I won't be positive, but I think it was the early part of August.

The Court: Of what year?

The Witness: 1926.

Q. Do you consider that the property is more or less—was more or less valuable in November than it was in August? A. More.

Q. Did you have an authorization to purchase this particular piece of property when you made the offer? A. I had an authorization to submit three parcels, that I had three parcels, and I took my man down and this looked the best to him, and he said to me, "Go and get me the best price you can on that."

Q. So that when you testified that you made an offer to Mr. Peard for this property, you had a principal then in mind who had agreed to take it at a price? A. And if he didn't, I would have.

Q. Well, I would be much obliged if you would answer the question, Mr. Kelley? A. I did.

Q. And you did make the offer, subsequent to seeing it, to your— A. Yes.

Q. —principal? So that all this did not happen the same day that Mr. Peard told you he had bought the property and had it for sale? A. The same day?

Q. Yes. A. No, I did not say it was the same day, sir.

Q. At any rate, it did not happen the same day? A. No.

Q. The day you saw Mr. Peard, the first time you saw him and he told you he had purchased this property, you did not make him an offer for the property? A. No. I told him I had a prospect that I thought would be interested.

Q. How much time elapsed between the date that you talked with Mr. Peard and you made the offer? A. Maybe four days, maybe a week, maybe ten days.

Q. How do you consider the value of the Mount Vernon Street frontage known as the Baldwin property in comparison to this property? A. I think the Baldwin piece of property is—was sold at a bargain price.

Q. Well, will you please answer the question. How do you compare the value of the Baldwin property as of this date? A. I think the Baldwin piece of property is worth $3.50 a square foot.

Q. So that you think—

Mr. Walscheid: How much does that make the plot?

Q. Making it $3.50 a square foot would make it exactly $35,000.00, if it is 10 by 100? A. No.

Q. $3.50 a square foot is your price? A. Yes.

Q. And $1.90 a square foot is your price on this? A. Yes.

Q. Then you would say that this property was worth, in proportion, a little more than half, applying the square foot basis, as much as the Baldwin property? A. The difference between $1.90 and $3.50.

Q. Now, can you give us any idea as to the acreage value that this would constitute, Mr. Kelley? A. I couldn't figure it on the acreage basis.

Q. As a matter of fact, it would make it about over $80,000.00 an acre, wouldn't it?

Mr. Walscheid: I object to that as immaterial.

The Court: It is a matter of calculation for the jury.

A. We don't figure on that.

Mr. Winne: It is a matter of calculation, your Honor.

The Witness: We wouldn't figure on the general acreage basis.

Q. Did I understand you to say that you thought Baldwin's price was low? A. Yes.

Q. Do you want to change your figure, $3.50? A. What do you mean? I say it is low.

Q. How much on November 3, 1926, do you figure Baldwin's property was worth? A. Why, I myself, personally, if I had known that Baldwin's was in the market, would have paid forty-five thousand for it.

Q. Please answer the question. How much do you estimate that property was worth on November 3, 1926? A. On a square foot basis?

The Court: On any basis.

A. $45,000.00.

Q. Now, is that $3.50 per square foot? A. I haven't figured it out, sir.

Mr. Winne: All right. That is all.

Re-direct Examination by Mr. Walscheid:

Q. Do you stop to figure out a piece of property like that on the square foot when you go in to buy it? A. Not Baldwin's property.
Q. No.

Re-cross Examination by Mr. White:

Q. You certainly figure it out when you come here to testify, don't you, Mr. Kelley? A. The property Baldwin sold?
Q. And the property we sold. A. One is for industrial purposes; and the other is for commercial purposes, or business property, in other words.
Q. You volunteered the price of $3.50 a square foot, didn't you? A. Well, I figured it was 100 by 150. To be perfectly frank with you, I wasn't—
Q. So when you fixed the price of the Baldwin property, you didn't know whether it was 100 feet deep or 150 feet? A. Yes, I did. It is 150. I didn't know whether it was 150 or 100 on the side street; I wasn't sure of it. And I didn't want to make an error.
Q. And you are sure of it now? A. Yes; because you said so.
Q. The only reason you are sure of it now, is because I said so? A. Yes.

Mr. Winne: That is all.

JOHN A. BALDWIN, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Baldwin? A. Ridgefield Park.
Q. And what business are you in? A. Real estate.
Q. How long have you been in the real estate business? A. About 20 years.
Q. And in Ridgefield Park? A. Since 1913 in Ridgefield Park.
Q. In the real estate business since 1913. And have you bought and sold property in Ridgefield Park? A. I have.
Q. I suppose, considerable of it? A. Considerable.
Q. And do you keep acquainted with the values of transfers of property in Ridgefield Park? A. I try to.
Q. And what do you do in your efforts? A. Why, if I have a piece of property, it is usually recorded in the paper. I usually make it my business to find out what a piece of property brought. Oftentimes, it is listed, and if we have it listed, we then try to find out who sold it, and if possible find out the price that was paid for it.
Q. Are you a member of any of the exchanges? A. I am.
Q. Which exchange do you belong to? A. Of the Teaneck and Bogota Real Estate Board.
Q. And in that exchange, do you get exchanges of real estate values from other sections of Bergen County? A. I haven't so far, because I haven't an office in Teaneck as yet. I expect to.
Q. You have not availed yourself of that? A. No. I have not. No, sir.

Q. Have you had any experience in commercial properties, the sale of commercial properties? A. Yes.

Q. And where? A. In Ridgefield Park.

Q. Any place else? A. Oh, I have sold different properties, yes, all around.

Q. And your real estate operations as a real estate dealer extended over what territory? A. Why, Ridgefield Park, Bogota, Teaneck, West Englewood, just part of it, Teaneck, River Edge, North Hackensack.

Q. All through Bergen County?

The Court: Hackensack?

The Witness: North Hackensack, yes.

The Court: I mean, in Hackensack?

The Witness: In Hackensack personally?

The Court: Yes.

The Witness: Why, I have had some dealings—

The Court: All right.

The Witness: —in real estate in Hackensack.

Q. And I suppose your experience in the sale and purchase of property over that territory covers both residential and commercial properties? A. Both; but principally residential, I specialize in.

Q. Principally residential. You accepted an award from the municipality of Ridgefield Park for the four lots known as lots six, seven, eight and nine, Block 85, recently, did you not? A. I did.

Q. And what was the amount of that award? A. $38,500.

Q. And has it been paid you? A. It has.

Q. You are also the owner of property in Block

86, are you not? A. Well, the company of which I am president.

Q. The company of which you are president. What is the name of that company? A. Corner Realty Company.

The Court: Corner?

The Witness: Corner; yes, sir.

The Court: All right.

Q. What property do you hold in that company? A. Some 42 lots back in through there, if I may show it.

Q. Yes. Beginning with lot 13? A. Beginning with lot 13, and running up, all of this block (indicating).

Q. All of this block with the exception of the frontal lots? A. The frontage, yes.

Q. That means lots one to thirteen inclusive, and twenty to thirty-two inclusive? A. Yes.

Q. You own all of that, or your company does? A. Yes.

Q. In Block 87? A. In Block 87, from one to twelve, and twenty-eight, twenty-nine, thirty and thirty-one.

Q. All right. Now, Cedar Street, what kind of a street is that now? Is it an improved street? A. It is an unimproved street.

Q. And by that you mean? A. A dirt—just a dirt road.

Q. Just a dirt road? A. A dirt street.

Q. No macadam on it? A. No macadam.

Q. Now, you are also acquainted with lots one, two, three, four and five in Block 85, weren't you? A. I am.

Q. Do you know of its location? A. I do.

Q. And its condition? A. Yes.

Q. Prior to the time when the municipality actually took that property,—I am referring now to the property last adverted to—what was the level of that land in relation to the railroad tracks? A. Why, I think it was approximately level there. It might have been a foot or two lower than the railroad tracks, if my memory serves me; it was covered with brush.

Q. Then as you came forward over this property, or rather, north over this property to your property, the four lots facing on Mount Vernon Street, lots six, seven, eight and nine, your property rose to a higher level, didn't it? A. Oh yes, yes.

Q. Sort of a hillock there? A. Yes. Mine was on the level of Mount Vernon Street.

Q. Yes. A. But I filled it up to make it level.

Q. Oh, you filled it up to make it level? A. Partially.

Q. And then it pitched off at the rear end to the level of the railroad tracks? A. Yes.

Q. And what was the general condition of the property at the rear end of your lots, namely, lots one, two, three, four and five in Block 85 as to wetness or dryness prior to the commencement of these present improvements? A. Why, in rainy weather, I imagine—I never examined it—it was pretty well covered up with brush and it had never been cleared away. It was naturally low; it was a little lower than the tracks, and naturally the fall from my property went there, and from the hills, probably water and everything, I do not think to any considerable amount, yet it was a little low land, yes.

Q. Well, how much lower than the level of the railroad right of way would you say it was, if at all? A. I never—possibly a foot, I would say, just offhand.

Q. A foot, and covered with brush? A. With brush.

Q. And usually dry, or was there water in it? A. I never particularly paid very much attention to it. There wasn't enough water there to make it noticeable that it was any objection to my property or anything.

Q. Do you consider that this land, lots, one, two, three, four and five, Block 85, have a value for commercial purposes? A. They have.

Q. And in what connection would they have a value for commercial purposes? A. Why,—

Q. How used? A. Why, it could be used for light manufacturing, for a factory there, for storage purposes, for any number of mercantile purposes it could be used for.

Q. And in your opinion, is it available for use in connection with a siding on the railroad? A. Why, I haven't gone into that matter, whether a siding—it could be if the railroad would put a siding in there; but aside from the siding, it could be used for commercial purposes.

Q. Assuming that it could be used for commercial purposes in connection with a siding from the railroad, can you give us the value of that property as of November 3, 1926, for that particular use? A. Without a siding, you mean?

Q. With a siding? A. With a siding.

Q. Can you? A. I can.

Q. Please do so. What is it? A. I would figure that property with a siding would bring $30,000.00.

Q. And would you consider that the most advantageous and best use to which that property could be put from a real estate standpoint? A. I believe so, yes.

Q. And if it were used for any other purpose, if the siding weren't there, what would you consider

its commercial value? A. About half of that; about fifteen thousand.

Q. About half of that. But that would not be putting the property to its best use? A. What is that?

Q. That would not be putting the property to its best use? A. It would be the best use with the siding. If the siding was put in there, it would greatly add to the value of the property.

The Court: It would double it?

The Witness: Yes. It would double it in value.

Q. I notice upon this map that Herbert Street comes to a dead end at the railroad right of way? A. It does.

Q. And you are the owner of lots one, two, three and four in Block 86? A. I am.

Q. In your opinion, would the creation of a road from Herbert Street to Cedar Street over the lots that I have just mentioned, or over any portion of the same, increase the value of the property under investigation here, lots one, two, three, four and five?

Mr. Winne: I object to that. I do not see how it is possibly competent for this witness to testify to what a piece of property might be worth in the event of some extension of a road that is neither in existence or in contemplation.

(Question read.)

Mr. Walscheid: Not the value. Strike that out. The use of the property; increase the use of the property.

The Court: If the street were cut through from where?

Mr. Walscheid: From Herbert Street to Cedar Street, right over that alongside of the railroad track, remove that dead-end, in other words.

Mr. Winne: I want to also object on the ground that the inquiry is to fix the valuation as of November 3, 1926, and that the conjecture that something might happen subsequent to now makes it incompetent to testify to the condition that is different from the condition that existed in November.

The Court: I am inclined to think that is too speculative. Of course, it is speculative too, with respect to a railroad, but nevertheless, if it can be shown that it is feasible and practical to put a railroad siding in a piece of property, and it is testified to by experts that that is the best use to which the property could be put, that is one thing; but, of course, when you begin to take a piece of property and ask with respect to its value if the street is cut through or that street is cut through, things that are entirely outside of the category of the possibility of a railroad or of a railroad siding, where the property is immediately adjacent to the railroad, I think there is a distinction there.

Mr. Walscheid: May I withdraw the question for the moment?

The Court: Yes.

Q. Prior to November 3, 1926, had there been any negotiations with you or your company for the connection of Herbert Street with Cedar Street by the municipality? A. No.

Q. Had you contemplated the opening of that—

Mr. Winne: I object. How can what this man contemplated affect the value of this property?

Mr. Walscheid: If it became public property, that would be a thing.

A. There was not any.

Q. There wasn't any; all right. Then it is out of it. Have you, Mr. Baldwin, these lots one to thirteen which you say your company owns and which immediately face the property now under investigation, upon the market for sale? A. No. I have not placed them on the market.

Q. Have you kept them off the market? A. I have.

Q. Why? A. Because I wish to—

Mr. Winne: I object.

The Court: Objection sustained.

Q. Can you, as a dealer in real estate, as an expert in real estate, fix a valuation on these lots one to thirteen immediately opposite the property in question? A. I have not put the property on the market.

Q. I know you haven't. A. I am waiting.

Q. But I am just asking you whether you can? A. I can, but I won't. I am waiting until the station was completed before I put it on the market, until the—until all that plaza is improved.

Q. In other words, you don't want to give a value? A. I don't, no.

Q. Were you satisfied with the award that you received? A. No, I was not.

Q. What did you consider your property worth at the time the award was made?

Mr. Winne: I object to that.

Mr. Walscheid: That is comparable property.

Mr. Winne: What he considered his property worth unless, of course, he is testifying as an expert as to the value of that property.

The Court: Well, I think that is competent as a real estate expert, an expert as distinguished from the actual owner.

Mr. Winne: I think his testimony should be as an expert, and not as an individual owning property which might have some special use for his own individual purpose.

Mr. Walscheid: I am asking, as an expert, what is the value of that property.

The Witness: Yes.

Mr. Winne: I do not think that is a proper question. I object to it.

Mr. Walscheid: Will you read what the question really was?

(Question read.)

A. I considered it worth to me, $60,000.00.

The Court: You did not appeal from the award of $38,000.00, yes or no?

The Witness: Yes; but not as far as the court. I refused to accept it in the beginning.

The Court: Yes. But you have not appealed to the court?

The Witness: No, I haven't.

The Court: And have accepted it?

The Witness: I have. There was a reason for it, your Honor.

The Court: Yes. I suppose there is a reason. You are public spirited?

The Witness: No. It wasn't that.

Q. Well Mr. Baldwin, does the fact that you own this other property, did that influence you in accepting the award of $38,000.00?

Mr. Winne: I object to that.

The Court: Objection sustained.

Mr. Walscheid: Well, your Honor inquired into his mental reactions.

The Court: You did not object.

Mr. Walscheid: Therefore, it is in the case.

The Court: I would have withdrawn the question if there had been any objection to it.

Mr. Walscheid: I thought that put it into the case.

The Court: Well, perhaps it did, but I think we have gone far enough.

Mr. Walscheid: In other words, the door had been opened by the court.

The Court: The only point I wished to bring out was, he had accepted or he hadn't accepted the award; he already had testified that he had. I just wondered whether he had appealed. He said he had not.

Mr. Walscheid: That is all. Cross examine.

Cross Examination by Mr. Winne:

Q. Mr. Baldwin, you have been in the possession of lots six, seven, eight and nine from what time? A. Why, since practically 1914.

Q. And had you constructed some structure on the lots? A. I had.

Q. What was that? A. It was an office building.

Q. And did you occupy that yourself? A. I did.

Q. And what business did you carry on there? A. A real estate and insurance business.

Q. And do I understand you had continued from 1914 until recently to carry on an insurance business there? A. (The witness nods head in the affirmative).

Q. Can you give us an estimate of the value of the building that was on that land on the 3rd of November, 1926? A. I had one estimate from a builder for to replace that building for five thousand—about $5,000.00, which cost me more. Well, I built it in piecemeal and made it as it is today.

Q. You estimate that the cost to you was something in excess of $5,000.00? A. It was.

Q. In placing a value on your property, Mr. Baldwin, how would you proceed to justify any estimate you put, would you place it on a square foot basis or on a front foot basis? A. Why, I placed it as a parcel of property, a particular piece of property right on the county road and at the station, and on which I had been engaged in business for since 1914. That was my own personal value that I placed on it, what it was worth to me.

Q. But in your opinion the estimate of your value of your property was that it was worth to you more than it would be to anyone else? A. It was.

Q. If you can for the moment disassociate yourself from the owner and testify as an expert, will you tell us in estimating the value of those four lots, how you would go about arriving at the valuation? In other words, would you put it on the front foot basis, on the frontage on Mount Vernon Street, or what? A. I would place it on the frontage on Mount Vernon Street plus a frontage on

Herbert Street of 100 feet, and also the fact that the other side faced the railroad and park property, so that I had light on three sides, and the fact that I had also made sewer connections and improvements in there, and I had had plans out to build and was stopped by the town from building, by the Mayor. He requested me not to build on it for the reason that the property might be required for station purposes, approaches, and to hold off on it, which I did.

Q. Yes. Now, in the same way, in estimating the value of the property of the Overpeck Land Company, you must disregard the Mount Vernon Street frontage because there is no Mount Vernon Street frontage; you must disregard the fact that, as you say, it is on a county road, because it is on a county road, because it is not.

Mr. Walscheid: What do you mean, it is not?

Mr. Winne: Is the property of the Overpeck Land Company on a county road?

Mr. Walscheid: No. But the frontage is there, and the street is there, isn't it?

The Witness: Not on the county road.

Mr. Walscheid: Oh, not facing on the county road.

Q. So that what would be the elements that you would consider in placing a valuation on the Overpeck Land Company property that you have valued, aside from the railroad siding, at $15,000.00? A. For the reason that it could be used for manufacturing purposes; the fact that it was just a short distance from the main county road, that connected already with Route Ten there, or to 128th Street, or to Weehawken, with a con-

crete road all the way to the ferry; the fact that it was right near the railroad, even without a siding; that there is a siding just north of Mount Vernon Street that they could get their material in; and also the fact of the other railroad; there is also a siding on the west side for the Susquehanna to get freight in on that side.

Q. Mr. Baldwin, did you fix this price of $15,000 by any method of applying a rule, either front foot or square foot, or is it just an arbitrary cost? A. Why, no. There are approximately five lots, as I understand it, there. I haven't examined this property to make an appraisal. I have been subpoenaed here. That is the reason I am here. I get 50 cents for coming here all day. There are approximately five lots, and I figure that at $3,000.00 a lot there as cheap for property, for commercial property.

Q. You never made any effort to buy this property? A. No. I am not interested in commercial property.

Q. Or as a speculation, you never made any— A. Well, I would have bought it if I had somebody in mind that I could sell it for commercial purposes.

Q. Yes. You are interested in it, personally, in the ownership of a considerable property in the immediate neighborhood now? A. (The witness nods head in the affirmative).

The Court: And that is commercial, isn't it?

The Witness: What?

The Court: Or will be, Herbert Street?

The Witness: Yes. Well, that will be business property, I presume, later on.

Mr. Walscheid: Business property?

The Witness: Yes.

Mr. Walscheid: Stores?
The Witness: Stores.

Q. Well, there wouldn't be any difference in the use of the property on the west side of Herbert Street from the use of the property on the east side of the property on Herbert Street, would there, Mr. Baldwin, forgetting for the moment this business of a spur from the railroad?

Mr. Walscheid: When?

Q. At the time of November 3, 1926? A. Why, yes, because there you are right against the railroad; you join the railroad there on the one side of Herbert Street; the rear of the property runs right to the railroad property; whereas, on the other side you would have to cross a street.

Q. And do you think that the property on the west side has a greater value than the corresponding amount of property on the east side of Herbert Street? A. Just for commercial purposes, but not—now, at the present time, no. At the present time, with the new station, why, conditions have changed entirely.

Q. Well, your estimate that you have given us here of price is predicated on the erection of the new station? A. No. This was at—this was without the station in consideration; fifteen thousand with the fact of its location near the railroad and near the existing station and near to the county roads. It has an advertising value as well, because that property, in coming down south along Railroad Avenue, or if you came along east and west on Mount Vernon Street—

Q. When did you acquire the 32 lots in Block 86, and the 12 lots in Block 87? A. Why, I do not

just remember the date, but I believe it was about a year ago, or something like that. A year and a half. I am not quite certain.

Q. Were they all acquired at one time? A. No.

Q. One purchase? A. No. Two purchases.

Q. Now, will you tell us what those two purchases were, separate them?

Mr. Walscheid: I object to that as immaterial. That is that property across the street?

The Court: Do you mean to go into the details?

Mr. Winne: I want to know the price that was paid at that time for this property, and in the vicinity.

Mr. Walscheid: I object to that unless we are going into the present holding, the price at which he held it. The value of that property as of the date fixed in our proceedings would be comparable.

The Court: Yes. And with the date fixed, if it were within a reasonable time of that; and a year ago is within a reasonable time of that.

A. I prefer, unless I am compelled to,—as a matter of fact, I couldn't tell you exactly what I did pay for the property, but inasmuch as I intend to sell the property, I do not care about advertising what I paid for it.

The Court: Do you ask the question?
Mr. Winne: Yes, sir.
The Court: You will have to answer, Mr.—
The Witness: I will have to answer?
The Court: Yes, sir.

The Witness: How much I paid for the—
The Court: Yes.
The Witness: I couldn't tell you exactly without consulting the books; I couldn't; it might be an approximate figure is all I could give.

Q. Well, will you give your approximate figure? A. The approximate figure, I think, was for one parcel $28,000.00; and for the other of four lots, I think we paid between four and five thousand dollars.

Q. Can you tell us which were the four lots, Mr. Baldwin? A. The four lots? Those four lots were lots 27, or at least, 28, 29, 30 and 31.

The Court: On block—
The Witness: In Block 87.

Q. And the other purchased for— A. Lots one to twelve in Block 87, inclusive, and one to thirteen, inclusive, and twenty-one to thirty-two, inclusive, in Block 86.

The Court: All vacant land, was it,—
The Witness: It was.
The Court: —Mr. Baldwin, when you bought it?
The Witness: Yes.
The Court: It still is, I take it?
The Witness: Yes.

Q. Mr. Baldwin, were you in court when Mr. Mabus testified this morning? A. I heard some of it.

Q. Can you tell me whether or not you had an agreement in 1914 to buy these four lots that you sold, that was taken by the Village of Ridgefield Park?

Mr. Walscheid: I object as immaterial.
Mr. Winne: The testimony, if your Honor please, was introduced on the part of Mr. Walscheid that Mr. Baldwin acquired the property at a certain date, 1919, and I wish to show the price that was paid in 1919 was fixed by contract five years before.
The Court: Yes. I think it is proper.

A. There was a gentleman's agreement, I believe. I do not remember whether it was in a contract or not, but there was an agreement, and Mr. Brewster held up to that agreement, and before he sold any of the property on Mount Vernon Street, he submitted me—gave me the opportunity first.

Q. And that agreement was made in 1914? A. Well, I won't say it was 1914; whether it was 1914 or 1915 or 1916; sometime while I was there on the property.

The Court: And the market value of the property at the time you actually bought it was considerably in excess of that that you paid for it, was it not?
The Witness: Pardon me?
The Court: You were there for a number of years?
The Witness: Yes.
The Court: As a tenant. And during the time that you were there, they agreed, the owner agreed, to sell it to you on a gentleman's agreement at a certain fixed price?
The Witness: Yes.
The Court: And some years later you bought it—
The Witness: Yes.
The Court: —at this price that had been fixed and agreed to?

The Witness: Yes.

The Court: Now, at the time you actually acquired it, it was worth considerable more than the price you paid for it?

The Witness: It was.

Mr. Winne: That is all.

Re-direct Examination by Mr. Walscheid:

Q. Mr. Baldwin, speaking about sidings, you have said something about sidings: Is there any other siding in the Village of Ridgefield Park which has the availability for siding on the West Shore Railroad that this parcel, lots one, two, three, four and five in Block 85 has? A. Well, I was listening to the gentleman there testifying, Mr. Green. I am not familiar with what the railroads will do for a siding. I do not think there is any—there isn't any siding between Mount Vernon Street and Little Ferry there, or that is Bergen Pike on the east side of the West Shore track, and north of it in Ridgefield Park, the property there, there is a small strip I believe is owned by the West Shore Railroad acquired through the relocation of Railroad Avenue.

Q. And how far north is that? A. How?

Q. That little strip upon which there is a siding owned by the railroad? A. That is just north of Mount Vernon Street; I believe there is a siding right in here (indicating), just north of—

Q. And that belongs to the railroad? A. I believe it does, yes.

Q. Now, as a matter of fact, as these two railroad rights of way parallel each other there, the only possibility of obtaining a siding on the West Shore Railroad would be on the east side of the railroad, wouldn't it? A. Yes.

Q. In other words, so far as the West Shore Railroad sidings are concerned, they are precluded on the west side of the road because the right of way of the New York, Susquehanna & Western abuts on the right of way of the West Shore while running through Ridgefield Park? A. That is correct.

Q. That is correct? A. Yes, sir.

Q. And the only other siding in the Village of Ridgefield Park now in existence, or which was in existence prior to November 3, 1926, is the small siding that you have referred to, in so far as the West Shore Railroad is concerned? A. Well, I am not certain. I believe—I am not certain whether there is a siding on the West Shore at Little Ferry.

Q. That is at Little Ferry? A. I do not think it is. Well, that is part of Little Ferry station, part of Ridgefield Park.

Q. That is how many miles down? A. Oh, that is only about a mile.

Q. About a mile down? A. Something like.

Q. So that the next siding, if there is one there, is down at the Little Ferry junction? A. Right. Bergen Pike.

Q. And you do not know whether there is one there or not? A. I do not believe there is.

Q. You do not think there is. Now, as a matter of fact, it is also true, isn't it, that in so far as residential property is concerned, it is all in the Village of Ridgefield Park, it is all to the east of the West Shore Railroad? A. The residential part?

Q. Yes. A. Yes.

Q. In other words, the Village is east of the West Shore Railroad? A. Yes.

Q. And the only thing that you have on the west side of the New York, Susquehanna right of way

are some few industrial plants with river frontage? A. Yes; that is correct.

Q. And they mostly operate by means of the river, do they not? A. No. There is railroad sidings on them.

Q. And they have railroad sidings on the— A. They have.

Q. Now, the only outlet which those sidings have, or these industrial plants to the west of the New York, Susquehanna & Western Railroad have, is by means of a road crossing both tracks into Mount Vernon Street? A. That is correct.

Q. That is correct; that is the only outlet? A. Yes.

Q. And that is a grade crossing outlet? A. That is.

Q. And what is the condition of the roadway in that outlet? Is it a macadamized or improved roadway, or is it an ordinary dirt road over the— A. I believe it is an unimproved roadway at the present time.

Q. An unimproved roadway at the present time. How long is it open? A. That has been open approximately less than a year, I guess, or about a year.

Q. Isn't it a fact that it was not opened until after November 3rd of last year? A. I cannot just remember the date when it was opened.

Q. All right.

Mr. Walscheid: I think that is all.

Re-cross Examination by Mr. Winne:

Q. Directing your attention to the property on the east of the West Shore Railroad and south of the Overpeck Land Company property, Mr. Baldwin, are there properties that are available for in-

dustrial sites? A. South of Mount Vernon Street, you mean, this property along 86 here?

Q. Yes. Any property along the West Shore Railroad toward Little Ferry, on the east side of the West Shore tracks? A. Well, south of Cedar Street, I do not know whether there would be any way of exit unless through Mount Vernon, unless it be through Main Street, if the property went all the way through to Main.

Q. I mean south of here? A. That is not available now, because that is not a street.

Q. No. But if you could get a spur from the West Shore Railroad to any of the property lying between here and Little Ferry? A. There must be property which could be acquired that could be used for industrial purposes to get out trucks, I presume, if the map covers some of this property.

Q. Are you familiar enough with that property south of Cedar Street to say whether or not there are such properties? A. I do not think—I would not consider it available though, for mercantile property south of that along the railroad.

Q. What is built up along there? A. Why, it is a bank; a high bank, to begin with, as it goes to the south of Mount Vernon Street, and then— and on the east of the tracks the railroad level there, the land is high ground; it runs probably ten, in some places, I imagine it must be fifteen or twenty feet higher.

Mr. Walscheid: The side of a hill, isn't it?
The Witness: The side of a hill.

Q. And not built up, not built up along the railroad right of way at all? A. No.

Q. Plenty of vacant land that could be applied? A. There is land there, yes.

Q. Yes. The only thing in the way of making

an industrial construction then would be getting down so as to get to the railroad, is that correct? A. And also of having streets so that they get out.

Q. Well, there are streets, of course, that parallel the railroad south of Mount Vernon Street? A. South of Cedar Street, the property runs—Mr. Brewster owns the property, if I am not mistaken, south of Cedar Street here, and the property runs residence property up on Main Street, and this is the rear of the property right here, I think. Where is Cedar Street? This is the Elks' property (indicating). There are some houses. This here is residential property built in through here (indicating). I do not just recall now right offhand whether this has been built on or not, but there is some property here that probably might be wanted.

Q. How would you compare the property that Mr. Terhune testified to, Mr. Baldwin, with the Overpeck Land Company property? That is, lot six in Block 63.

Mr. Walscheid: What was that?

(Question read.) A. Why, that property there, on account of its shape, is—it would require a different improvement. It would not be practical for the same purposes that the Overpeck Land property would be, because it comes to a—practically a point there. It is not very large to begin with, and it runs right to a point, and to get any size building, you would have to sacrifice quite a little of it. That would be more likely to be used for store property, or such time when the residential property was warranted.

Q. Now, referring to November 3, 1926, would you say it was less or more than the property of the Overpeck Land Company? A. I would prefer

to—I believe that the Overpeck land was worth more than the other property. If I could buy either one at the same price, I would prefer the Overpeck. I consider the Overpeck property is worth more.

By the Court:

Q. You mean because it is bigger? A. It is larger, and it can be put to more use than the other property.

Q. Well, there isn't any comparison as to its size, is there? A. I haven't looked at the map there. I know it is—from memory, I know that Terhune's property is much smaller; Terhune's here runs to a point, and it is 116 feet and 13/20ths, and its widest point there of 78-05, whereas the Overpeck there—I haven't figured it out there—is—on averaging it up, it is over 125 feet available there, available land, land that would be useful.

Mr. Winne: I think that is all.

Q. Don't you think that the Terhune property, because of its having two street frontages, Railroad Avenue and Paulison Avenue, would, because of those frontages, be worth more money but for the fact that it was smaller in area than the other property? A. No, I do not, for those purposes.

Q. All right.

By Mr. Walscheid:

Q. And that is due to the fact that you can use the Overpeck property to better advantage? A. Yes.

Mr. Walscheid: I think that is all.

CHARLES PEARD, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Mr. Peard, where do you reside? A. Ridgefield Park.

Q. And what is your business? A. Real estate.

Q. And how long have you been in the real estate business? A. Two years last November.

Q. And are you connected with the Overpeck Land Company? A. As president and treasurer.

Q. And who are the principal stockholders of that company? A. The officers; others—men of Ridgefield Park.

Q. What? A. Men of Ridgefield Park. There is five principal stockholders.

Q. And during your time in the real estate business, have you bought and sold property in Ridgefield Park? A. I have.

Q. And in other parts of Bergen County? A. I have.

Q. And what other parts of Bergen County? A. Harrington Park, Teaneck; Harrington Park and Teaneck; I sold several parcels in Teaneck.

Q. And are you generally acquainted with the real estate values in the Village of Ridgefield Park? A. Yes. Not as an expert, but I am, pretty good value.

Q. You mean in buying and selling? A. In buying and selling.

Q. And you bought this property in question, did you not? A. I did.

Q. Did you buy it alone, or in conjunction with anybody else? A. Why, I had Mr. Chello buy it with us; but do you mean, did I?

Q. That is just what I mean. A. To confer with any of the other members?

Q. No. I mean the ownership. A. Yes. I bought it in conjunction with a Mr. Chello.

Q. Is Mr. Chello a half owner? A. A half owner.

Q. Is he a half owner of that property? A. Yes.

Q. And the Overpeck Land Company was the other half? A. The other half.

Q. And did Mr. Chello contribute his share of the purchase price? A. He did.

Q. Now, when did you first begin to negotiate for this property, approximately? A. In April, 1926, the early part. I do not know just what date it was.

Q. And did you conduct those negotiations? A. I did.

Q. With whom did you conduct them? A. I started with Mr. Brewster, but Mr. Brewster turns all his real estate over to Mr. Mabus, and he sent me to him, so I had to finish up with him.

Q. Did you deal at all with Mr. Brewster, or did he refer you to Mr. Mabus immediately? A. He referred me to Mr. Mabus.

Q. And your dealings in the matter were with Mr. Mabus? A. Yes.

Q. And at the time when you started to negotiate for this property, did you know that the railroad company, the West Shore Railroad Company or the New York Central Railroad Company, desired the property in question or any portion of it for a railroad station? A. I did not.

Q. You did not? A. No.

Q. Did you know anything about the then proposed location of or re-location of the West Shore Railroad station? A. No. No more than the agitation and the talk that had been going on for several years in the town.

Q. And how long had such an agitation been going on? A. As long as I lived there.

Q. How long was that? A. 25 years.

Q. Twenty? A. 25 years.

Q. Oh, they had been working on that station for 25 years? A. Yes.

Q. And where was the old West Shore station located? A. Between the tracks, just south of Mount Vernon.

Q. Was it between the tracks? A. Yes, sir.

Q. You are sure of that? A. Yes.

Q. Will you indicate with this pencil just where the old station was located? Draw it right in there (referring to map).

Mr. Winne: If you can.

A. Of course, at that time—here is Mount Vernon (indicating), as near as I can say, right across here, right in here, some place.

Q. Well, put a mark in there. Between these two crosses? A. The marks I have placed on the map; yes, sir.

Q. And did it serve both railroads? A. Yes, sir.

Q. Did it? A. Yes, sir.

Q. It served both the West Shore and the New York,— A. The West Shore and the Susquehanna.

Q. And was located between the two sets of tracks? A. Yes, sir.

Q. Now, what, if anything, had you heard as to where this proposed re-location of the railroad station was to go?

Mr. Winne: I do not think that is material. I object to it, your Honor please.

Mr. Walscheid: I am just trying to show—there has been an opening here as to the bona fides of this transaction and the

knowledge which this man had of the contemplated improvement, and I think it does become material under the cases, of which I have handed your Honor a number,—

The Court: I will allow it.

Mr. Walscheid: —to show just what his knowledge was.

The Court: I will allow it.

Mr. Winne: Exception.

The Court: You may have an exception.

Mr. Walscheid: What is the question?

(Question read).

A. That the last agitation, and that was about three years previous, two or three years, they were to put the station, if I remember, on the Baldwin plot and across Frank White Park.

Q. And across Frank White Park? A. Then, at another time, they had spoken of the Terhune plot.

Q. That is this plot down here (indicating)? A. On Paulison Avenue, yes.

Q. That triangular piece? A. Yes.

Q. Any other locations mentioned? A. And not previous to this; they had—nobody ever knew where the station was going; they had it all over that section.

Q. What is that? A. They had it all over, everybody had had the station located a little differently, because there was never any real place excepting on that Baldwin plot where it was to be placed.

Q. Did you at any time know that the Village of Ridgefield Park was to take part in the acquisition of this property for the railroad? A. No, sir.

Q. Did you at any time know that the Village of Ridgefield Park was to be substituted for the railroad in the acquisition of this property for rail-

road purposes? A. I did not. I had no idea of that.

Q. You had no idea of that? A. No, sir.

Q. Now, when you purchased this property, did you pay out any money by checks? A. It was all paid by check. I believe the first check before—
10 I gave a check down there and waited for the deposit—for the contract to be drawn up, and I believe I gave the full deposit there of $250.00, and then got one hundred and twenty-five back from Mr. Chello.

Q. Is that the check which you at that time gave to— A. Yes.

Q. —Mr. Mabus? A. Yes.

Q. And when you gave that check to Mr. Mabus, you gave him that as a deposit on this property,
20 did you? A. As a deposit until we could have the contract drawn up, which was to be within a couple of days.

Q. And then, after that, was a contract drawn? A. There was.

Q. And was this check applied to the payment on that contract? A. Yes.

Mr. Walscheid: I offer it in evidence.

Mr. Winne (referring to check): No ob-
30 jection.

The Court: Let it be marked.

(Check marked Exhibit A-3 in evidence.)

Q. Now, that check was given, was made up by you and issued by you before the actual contract was signed by Mr. Brewster? A. Yes.

Q. And delivered to you by Mr. Mabus? A. Yes.

Q. Do you remember the date upon which Mr. Mabus delivered the contract to you, or don't you?
40 A. I think it was about the 24th. I know I called up and said that I had the money all ready to take

down the balance of the fifteen hundred, and he was busy or something, and I held it off for a day longer. I had the contract ready at that time, but Mr. Mabus was busy, and it may have been a day later, or—when I took it down to him.

Q. This contract, is that the contract? A. (Referring) That is the contract. 10

Q. Showing you Exhibit A-1? A. A-1.

Q. This contract reads that the price is $15,000.00, payable as follows: $250.00 on the signing of this contract, the receipt of which is acknowledged? A. Yes.

Q. And the contract seems to bear no date, excepting on the endorsement, which is April 24th? A. The date is in here.

Q. Where is it? Oh, yes, up there (indicating)? A. Dated April 24th. 20

Q. Dated April 24th. So that Mr. Brewster—can you read that perforation in that check? A. Paid 4-22-26.

Q. That means that Mr. Brewster cashed that check on the 22nd day of April, 1926? A. Yes, sir; the bank's perforation.

Q. That is the bank's perforation? A. Yes.

Q. In other words, before you actually had your contract? A. Yes.

Q. Now, in order to make that deposit of 30 $250.00, did you receive that check from Mr. Chello? A. (Referring) I did.

Q. Covering his one-half? A. His half.

Q. Of the deposit in question? A. Of the half of that two hundred and fifty that I—

Mr. Walscheid: I offer it in evidence.

Mr. Winne: No objection.

The Court: Let it be marked.

(Check marked Exhibit A-4 in evidence.) 40

Q. That check is dated April 26, 1926, and is perforated, paid 4-26-26; so that you cashed it on the 26th of— A. Yes, sir; on the 26th.

Q. The 26th of April, 1926. And thereafter did Mr. Chello contribute the remaining half of the cash purchase price? A. The $1,250.00 that was paid, I believe was paid by two separate checks, one by Chello for six hundred and twenty-five, and one by the Overpeck Land, I am positive of the— just how that was, but I am quite positive that our check was $625.00, that was half of the twelve hundred and fifty balance.

Q. Well, the rest of the $5,000.00 in cash was paid by Chello and Overpeck Land Company? A. Yes.

Q. Half and half? A. Yes.

Q. Each contributing one-half? A. Yes.

Q. And the mortgage? A. The mortgage made a joint mortgage of the Overpeck Land Company and John J. Chello.

Q. John J. Chello joining in it as a maker? A. Yes.

Q. To Morton T. Brewster? A. They are mortgages.

Q. There are more than one? A. Yes.

Q. But they amount to $10,000.00? A. Yes. They were drawn that way for a purpose.

Q. Were they drawn that way for the purpose of enabling you to pay off in installments? A. No. They were drawn that way so I could sell some of the lots without affecting the blanket mortgage on the whole thing; and at first, we were to put on a mortgage with release clauses, but Mr. Mabus has had a great deal of experience in real estate, and he suggested putting these separate mortgages on.

Q. Now, when you purchased this property, did you have in mind the availability and uses to which the property might be put?

Mr. Winne: I object to that. I do not see how it is material or competent for this witness to testify what his state of mind was when this purchase was made.

Mr. Walscheid: I think that is proper. If he, for instance, knew it was available for a specific use, he had a right to buy it for that specific purpose, and had a right to take that into consideration.

The Court: Yes, I think that is proper. Of course, you do not want him to tell what he now knows, but what he knew then when he bought it.

Mr. Walscheid: I think I have already shown that he did not know what Mr. Winne thought he knew at that time, so far as his testimony goes.

The Court: Yes. That is true. And you have shown also—the only deduction that I draw from his testimony is that he bought it to re-sell lot by lot, as evidenced by the fact that he, at Mr. Mabus' suggestion, took separate mortgages on each piece.

Mr. Walscheid: That may be one of the purposes.

The Court: That is the inference I drew.

Mr. Walscheid: Yes, from that.

Q. Now, did you at the time when you bought that property take into consideration its availability for any particular uses? A. Why, I bought it more because of its location, that is—

Q. Location for what purpose? A. Well, first, it was being a perfect siding on the railroad; second was, it was within 100 feet of a county road; and third was, that Herbert Street, as soon as it was cut through—it was a map street—would be undoubtedly the main artery to that part of the

town lying south of Mount Vernon Street for the commuters that use the two stations at that street.

The Court: From what?

The Witness: South of Mount Vernon Street.

The Court: What did you say about the commuters?

The Witness: It would be used by the commuters using the station at the foot of Mount Vernon Street, by all those that live south of Mount Vernon Street; that is, it looked so to me.

The Court: How would they get onto Herbert Street, those that lived south of Mount Vernon Street?

The Witness: With Herbert Street cut through, they would go through there.

Mr. Walscheid: He says, cut through.

The Court: Oh, Herbert Street, from the railroad?

The Witness: Yes.

The Court: Using the railroad to walk on?

The Witness: Yes. And, of course, there was a possibility that Frank White Park, why, would be a good site, or the railroad station, if they ever did agitate and put a big one there, it would draw more people, and I couldn't see where it could go wrong. As a rule, I buy property with the idea of selling at a profit.

The Court: Yes. I imagine so.

Q. What did you say about opening of a street here, opening of Herbert Street? A. Herbert Street was on the map, but there was no street through there at that time.

Q. Through where? A. Herbert Street was not through.

Q. You mean it was not laid out as a street? A. It wasn't cut through as a street.

Q. Was it cut through into Cedar Street? A. No, if I remember rightly, Cedar Street was not down there either; it was on the map, but not as a road.

Q. And subsequent to your purchase of the property, did you have any offers for the property?

Mr. Winne: I object.

Mr. Walscheid: Wait a minute.

Q. I do not want you to state any prices. A. Yes, sir.

Q. But did you have any offers for the property for any specific uses from anybody?

Mr. Winne: I object to that, your Honor please.

Q. And prior to November 3, 1926?

Mr. Winne: I object to that, his method of proving the value of this property.

The Court: Objection sustained. It has nothing to do with the valuation, what he might have been offered.

Mr. Walscheid: All right. Cross examine.

Cross Examination by Mr. Winne:

Q. When was the Overpeck Land Corporation formed, Mr. Peard? A. Why, I cannot give the exact date. You mean prior to this, or about how long prior?

Q. Well, if you cannot give the exact date, how long was it before a contract was entered into with Mr. Brewster? A. If I remember rightly, it was about six months, but I can get that information in about two minutes, if you wish it.

Q. Is it in the court room? A. Yes. That is, the secretary of the corporation is here in the court room, and I can find out from him.

Mr. Walscheid: Mr. Winne says the certificate was filed on March 15, 1926.

Q. Acknowledged on March 15th and filed on March 15th, 1926. A. That is when it was recorded. The corporation had to wait considerable time to get the papers through. They had bought property prior to this.

Q. You mean they had bought property in the corporate name before they put the certificate of incorporation on record? A. No. They bought it in my name. The corporation was formed and the money paid in, and they trusted me enough to have me buy it in my name, and after this went through, I merely transferred the property I had purchased up to that time to the corporation.

Q. So that your testimony is that the company began to do business about six months before this contract was made? A. Yes.

Q. But actually was not a corporation? A. It was not.

Q. Until the middle of March, 1926? A. That is right.

Q. How many transactions did you have before this one purchase? A. I am not positive. I think I can enumerate.

Q. Well, one or two, or three or four, or what was it? A. I think there was three different transactions.

Q. And have you the checks for the balance of the purchase price that was paid to Mr. Brewster? A. The treasurer would—the secretary would probably have them in his file. I am not sure whether they are in court or not.

Q. Now, will you tell us just why you had these mortgages drawn separately at the time you made your contract? You provided that there should be separate mortgages, did you not? A. Whenever you buy a piece of property of over 50 feet, there is a possibility that some day you will want to sell part of it without selling the whole parcel, and you have to provide, if there is a mortgage on there, about either having a release clause for part of it or as we did in this case of having separate mortgages.

Q. So that, as a matter of convenience, if you should sell lots eight or nine as one piece, or lots ten and eleven as one piece, or lot twelve as one piece, you had three separate mortgages on those three separate parcels so that you would not need to go to the mortgagee to have a release, but you pay off the mortgage? A. That is it.

Q. Or sell subject to one mortgage? A. Yes.

Q. So that you had in contemplation a sale of this property in parcels? A. No.

Q. Well, if you did not have it in contemplation, why did you do it that way? A. That was merely a protection if I did later on want to sell it in separate parcels. I had the idea of selling it in one parcel the same as it was bought.

Q. Then you did it, if you had that idea later, the mortgages would be that way? A. I did it with the possibility of it ever being split up, I would be protected.

Q. Didn't you have in mind the thought that the town or the railroad might take less than all of your property? A. No. I did not think they

were going on there. I did not see why they should go on there. There is plenty of other ground there that they had talked about.

Q. And do you mean to say that when you made this contract with Mr. Brewster you did not contemplate either the railroad or the village wanting this property for public use? A. No.

The Court: What was the answer?
The Witness: No.
The Court: Keep your voice up, please.

Q. And did Mr. Chello, as well as the Overpeck Land Company, join in each of these bonds and mortgages? A. Yes, sir.

Q. And he and the Overpeck Land Company are equally interested in this property? A. In that particular piece, yes.

Q. I beg your pardon? A. In that particular piece.

Q. And were from the time the contract was made? A. Yes.

Q. The interest on these mortgages paid on the due date, Mr. Peard? A. I do not know. If they were not, they were paid shortly afterwards.

Q. Well, I mean on the due date— A. As—

Q. —or within a short time thereafter? A. As near as I can remember.

Q. Have you a check for that? A. I have not. It may be in court, but I did not come prepared with that.

Q. What is your interest in the corporation? Is it a majority interest, or just what is it?

Mr. Walscheid: I object to that as immaterial.

The Court: What is the materiality of that, Mr. Winne? He says he is an officer

and he, with five or six other Ridgefield Park men, are the owners of the corporation.

Mr. Winne: It might be material, if your Honor please, if he were a large majority stockholder. For the moment, I will withdraw that question, and ask one question which I think will show the materiality.

Q. You are related to Mr. Brewster, Mr. Peard? A. By marriage.

Q. You married his sister? A. Yes.

Q. Is that correct? A. Correct.

Mr. Winne: I do not press the question about the portions of interest except as it might be of interest to know whether he was a majority stockholder.

The Court: I think that might be important—

Mr. Walscheid: I object to it.

The Court: —in view of the relationship, to show interest and bias.

Mr. Walscheid: How can that show interest or bias? This man has a right to sell to his brother-in-law, and it does not affect the value of the property.

The Court: No. But it affects his credibility, perhaps, or it may affect his interest, or it may affect the bona fides of the proposition.

Mr. Walscheid: Supposing he says, "Yes, I own 90 per cent. of it"? I do not know what he does own.

Mr. Winne: I won't press the question. I withdraw the question.

The Court: The question is withdrawn.

Q. When did you first know that this property was wanted for public purposes? A. June.

Q. What called it to your attention then? A. At that time, why, the—there was a first publication or the first inference that the town and the railroad had come together and had agreed on the site.

Q. As a matter of fact, a contract was entered into on June first between the town and the railroad providing for building at the point where the station now is built, was it not? A. I believe a copy of that contract was in the paper.

Q. I did not get the answer. A. I believe there was a copy of that contract in the paper. That was the first—

Mr. Walscheid: In the newspaper?

A. (Continuing)—I really knew.

The Witness: Yes, in the newspaper.

Q. And prior to that time, you knew, of course, that there were negotiations between the town and the railroad about the building of the station? A. There had been for years.

Q. Well, did you know that the Board of Public Utility Commissioners had directed the railroad to build a new station on or before January 1st, 1926? A. Why, yes, if—and I think I did. I remember reading it in the paper, that they—

Q. And you knew that after January 1st, 1926, the negotiations were fast coming to a head? A. Yes.

Mr. Walscheid: I object to that as calling for a conclusion. That means absolutely nothing, as coming to a head.

The Court: Well, he has answered it "Yes." I think I will let it stand for what it may be worth.

Mr. Walscheid: I ask it be stricken out. He answered so hastily I did not get a chance to interpose my objection.

The Court: I think the jury know what is meant by it. I think he knew what was meant by it. That is the point of your objection, because it is unintelligible?

Mr. Walscheid: No. Because, while it may be intelligible, it leaves each man to draw his own conclusion as to what was meant by it.

The Court: Then re-examine him on it.

Mr. Walscheid: Well, that is not the proper way.

The Court: I think it is competent.

Mr. Walscheid: Exception.

The Court: You may have it.

Q. You knew that the village and the railroads were in negotiation after January, 1926, looking toward the purchase of a site and the construction of a station in Ridgefield Park, didn't you? A. The purchase of a site, no, I did not. I knew that they were talking of constructing a station.

Q. Were you around this property very much after the contract was made, and before June, 1926? A. Around between what dates do you mean, after we had taken it over?

Q. Between April 24th and June 1st. A. Yes. I was down there considerable.

Q. And before April 24th, were you at the property very much? A. No, not very much. I had looked it over from the street as—but I had not gone in to examine it much.

Q. Did you know before April 24th, 1926, that the property had been surveyed and mapped by the railroad? A. No.

Q. Or by the borough? A. No.

Mr. Walscheid: Louder; I cannot hear you.

The Court: You answered "No" to both questions?

Mr. Walscheid: What is the answer, "No"?

The Court: Do you want to change it?

The Witness: I did not intend to say no. I intended to get the question a little clearer there, just what—

The Court: Read it, please.

(Question read.)

The Court: Do you want to change your answers?

The Witness: Why, I didn't know that it had been mapped by the railroad and by the borough. Do you mean the borough of Ridgefield Park?

Q. I mean by the Village of Ridgefield Park, not for a tax map, but for the purpose of this station improvement. A. I only knew it as the tax map. I had one of them in my office at the time.

Q. Did you attend to the purchase of this property for the corporation and for Mr. Chello? A. No. It was joint.

Q. Was Mr. Chello present? A. Yes, sir.

Q. Any other relationship between you and Mr. Chello than partners in this venture? A. We bought other property together.

Q. You have in other instances? A. Yes.

Q. Was Mr. Chello present when the contract was executed? A. Yes.

Q. And who else was present, Mr. Peard, at the time it was executed by the land company? A. That I do not remember.

Q. You were not present, or were you present, when the contract was executed by Mr. Brewster?

A. I was—I do not remember that, whether I was there when he executed it, or whether he executed it and left it with Mr. Mabus. I do not remember that.

Q. At any rate, you got it from Mr. Mabus after Mr. Brewster had signed it; is that correct? A. I did not get that.

Q. Did you get this contract from Mr. Mabus after Mr. Brewster had signed it? A. To the best of my recollection, it was.

Q. It was not executed on the part of both parties at the same time? A. You mean that we did not—Mr. Brewster and the Overpeck Land were not together when it was signed? Is that what you mean?

Q. Is that correct? A. No.

Q. Who was present?

Mr. Walscheid: What does that mean, that "No"?

The Court: No, they were not present, is that it?

The Witness: We weren't together.

The Court: All right.

A. One party signed, and then the other party.

The Court: You see, I cannot hear you if counsel cannot hear you, and that means probably that the jury cannot hear you, so please keep in mind that they are to hear whether we do or not.

Mr. Winne: I think that is all.

Mr. Walscheid: That is all.

The Court: We will take a recess until Monday morning.

(Whereupon, an adjournment was taken until Monday, March 14th, 1927, at 10:00 o'clock A. M.)

Hackensack, N. J., March 14th, 1927.
10:00 A. M.

Trial resumed.

Mr. Walscheid: May we proceed, sir?
The Court: Yes.
Mr. Walscheid: I wish to recall Mr. Peard a moment.

CHARLES PEARD, recalled as a witness on behalf of the appellants, testified as follows:

Re-direct Examination by Mr. Walscheid:

Q. Mr. Peard, when you were here on Friday, you produced certain checks which I have already offered in evidence. There were other checks involved in this transaction with Mr. Brewster, were there not? A. There were.

Q. I show you a batch of checks. The check for $250, A-3, has already been offered in evidence. I now show you a check dated April 27th, 1926, for the sum of $625 drawn by the Overpeck Land Company to the order of Morton T. Brewster; what did that represent? A. That was the balance of the $1,500 as the price paid on the contract.

The Court: A little louder, please.
The Witness: A balance of the $1,500 paid on the contract that—

Q. That was half of the $1,500? A. Yes.

Q. Less the two hundred and fifty which had already been paid? A. Yes.

Q. And at that time, was there a companion

check from Mr. Chello for a like amount? A. Yes, sir; there was.

Q. And is that the companion check? A. (Referring) Yes.

Q. For $625? A. Yes.

Mr. Walscheid: I now offer in evidence the check of the Overpeck Land Company.
The Court: No objection?
Mr. Winne: No. I have not seen the checks, your Honor. No objection.
The Court: Very well. Let it be received and marked.
(Check marked Exhibit A-5 in evidence.)
Mr. Walscheid: And I now offer the check of John J. Chello to Morton T. Brewster for the sum of $625.
(Check marked in evidence, Exhibit A-6.)
Mr. Walscheid: Check A-4 has already been offered in evidence. That is for $125, which was one-half of—which was Mr. Chello's contribution towards the initial payment of $250.

Q. Now, the next payments were made in cash, and were made when? A. That was when we took title.

Q. When you took title. And at that time, did the Overpeck Land Company issue that check? A. (Referring) They did.

Q. For a thousand dollars? A. $1,000.

Q. What does that thousand dollars represent? A. A thousand dollars is the part of the final payment from the Overpeck Land, minus my commission of $750.

Q. So that your share of that final payment was $1,750 less $750, your personal commission? A. Right.

Q. As the share of the Overpeck Land Company? A. Yes.

Q. That was $1,750.

Mr. Walscheid: I offer that in evidence.
Mr. Winne: What is the date of that?
Mr. Walscheid: That is June 30th, 1926.
Mr. Winne: All right.
The Court: Let it be marked.
(Check marked Exhibit A-7 in evidence.)

Q. And at the same time, on June 30th, did Mr. Chello contribute his check for $1,750.00? A. He did.

Q. Is that the check? A. (Referring) That is the check.

Mr. Walscheid: I offer it in evidence.
The Court: Let it be marked.
(Check marked Exhibit A-8 in evidence.)
Mr. Winne: Yes. To Mr. Brewster's order?
Mr. Walscheid: Made to Brewster's order, yes.

Q. I now show you a check under date of June 30th, drawn by Overpeck Land Corporation, June 30, 1926, drawn by Overpeck Land Corporation to the order of John J. Chello for $375.00; what does that $375.00 represent? A. His half of the commission of seven hundred and fifty.

Q. So that you paid him out one-half of that commission which you earned? A. Yes.

Q. And the other half remained in the company? A. The other half I—remained in the Overpeck Land Company.

Q. The Overpeck Land Company.

Mr. Walscheid: I offer it in evidence.
The Court: Let it be received and marked.
(Check marked Exhibit A-9 in evidence.)

Q. I now show you a check under date of January 8th, 1927, to the order of Morton T. Brewster for the sum of $300.00, drawn by the Overpeck Land Corporation, and what was that check given for? A. That was interest on the mortgage of $10,000.00 held by Mr. Brewster.

Q. Interest on the three mortgages? A. On the three mortgages.

Q. Three mortgages? A. That amounted to $10,000.00.

Q. And I show you a paper which looks like a receipt dated December 29th signed by Morton T. Brewster, is it? A. That was a bill sent to us and then receipted when I paid it.

Q. What is the bill for? A. Interest of $300.00 on mortgage of ten thousand.

Q. And this check for $300.00 constitutes the payment of that bill; is that right? A. Yes, sir.

Mr. Walscheid: I offer in evidence the receipt.
The Court: Let it be received and marked.
(Paper marked Exhibit A-10 in evidence.)
Mr. Walscheid: And I offer in evidence the check for $300.00 to which I have just referred.
The Court: Let it be marked.
(Check marked Exhibit A-11 in evidence.)

Q. Now, Mr. Peard, on April 24th, 25th and 26th, and from thence forward until November 3rd, 1926, who were the stockholders of Overpeck Land Corporation, and how many shares of stock

did each one of these men hold in the company? Will you enumerate them? A. At the time of purchase, I can figure it out that way better.

Q. By purchase, you mean what? A. When we purchased this property.

Q. Do you mean at the time of the signing of the contract? A. Yes.

Q. At the time of the signing of the contract. A. There was A. P. Moran had ten shares.

Q. What is his name? A. A. P. Moran.

Q. Had ten shares. A. Garrett Lynch had ten shares; I had ten shares: Louise Dorsey had ten shares. No. Louise Dorsey had five shares. George Behsman had five shares.

Q. That amounts to forty shares altogether? A. That was all that was in it at that time.

Q. And was that all that were issued at that time? A. That was all that was issued at that time.

Q. And did Mr. Morton T. Brewster have any shares in this company? A. He did not.

Q. Did he ever have any interest in this company? A. He did not.

Q. And subsequent to that time, and prior to December 4, 1926, were there any additional shares of stock issued by the company in that period of time? A. Yes. There was ten shares.

Q. To whom? A. One was issued—five shares were issued to—I cannot think of his first name—Mara of Ridgefield Park, M-a-r-a.

Q. Yes. A. And then I sold my wife five shares.

Q. Your wife received five shares? A. Yes.

Q. What is her full name? A. Eva.

Q. Eva Peard? A. Eva Peard. I do not think she has got a middle initial.

Q. And is that the present list of stockholders in the corporation? A. Those are all the stockholders.

Q. All the stockholders? A. At the present time.

Q. Who were the incorporators of the company? A. Moran, Lynch, Behsman and Peard.

Q. That is yourself? A. Yes.

Mr. Walscheid: That is all.

Re-cross Examination by Mr. Winne:

Q. Mr. Peard, these five shares that were issued to Mrs. Peard were paid for in cash? A. They were, and it was a hard job getting it, too.

Q. And all the shares, I take it, that were issued, were paid for in cash? A. All but my own.

Q. Yours were not paid for? A. Mine were not paid for. When the organization was formed, I was to be paid ten shares of stock, I to do all the work, the purchasing, and so forth.

Q. So that the ten shares that were issued to you were for services? A. For services.

Q. And all the other shares were paid for in cash now, beside your wife and yourself. Are any of these other stockholders related by blood or marriage to Mr. Morton T. Brewster? A. Miss Dorsey; yes, sir.

Q. Dorsey? A. Yes.

Q. What is her first name, please? A. Louise Dorsey.

Q. How is she related to Mr. Brewster? A. Mr. Brewster's niece.

Q. She is Mr. Brewster's niece? A. Yes.

Q. Are any others beside the three that you have mentioned? A. No.

Mr. Winne: That is all.

Mr. Walscheid: That is all.

CHARLES ROSENBERG, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Rosenberg? A. Hackensack.

Q. And what is your business? A. Real estate and insurance.

Q. And how long have you been in the real estate business? A. 15 years.

Q. A real estate broker? A. Yes, sir.

Q. And are you acquainted with land values in the Village of Ridgefield Park? A. Yes, sir.

Q. And where else? A. Throughout Bergen County, Passaic County, Hudson County.

Q. During your 15 years of activity as a real estate broker or dealer in real estate, have you sold any considerable amount of property? A. Yes, sir.

Q. Can you tell us about what your experience in sales and purchases amounts to? A. A little over five million dollars.

Q. And any portion of that been commercial property? A. Yes, sir.

Q. Any portion of it been industrial property? A. Yes, sir.

Q. Any portion of it been residential property? A. Yes, sir.

Q. Any portion of it been in the Village of Ridgefield Park? A. Yes, sir.

Q. To what extent has your dealing been in Ridgefield Park, or what do you know about Ridgefield Park in particular? A. I have sold considerable property in Ridgefield Park, and quite familiar with all of the sales that have taken place over there.

Q. And are you connected with any real estate boards or exchanges? A. Yes, sir.

Q. In what way? A. I am a member of the Hackensack Real Estate Board, the State Boards and the National Real Estate Association.

Q. And do you hold any office in these boards? A. I do not, sir. I am a charter member of the Hackensack Board.

Q. Now, are you acquainted with the property known as lots one, two, three, four and five in Block 85, Tax Map of the Village of Ridgefield Park? A. I know the—

The Court: Do you offer him as an expert?

Mr. Walscheid: I do, sir.

The Court: Do you wish to cross examine him?

By Mr. Winne:

Q. How much property in 1926 in Ridgefield Park have you sold through your offices, Mr. Rosenberg? A. No property has been sold through my offices in Ridgefield Park in 1926.

Q. Any in 1925? A. Yes, sir.

Q. How much in 1925? A. About fourteen or fifteen thousand. I am not sure. I cannot tell you offhanded.

Q. What did that consist of? A. Partly mercantile and partly dwelling property.

Q. How many transactions were there? A. I think there were three.

Q. And will you tell us where that property is located? A. One of the pieces of property was on Park Street near the municipal building.

Q. What kind of a property was that? A. I would consider that mercantile property.

Q. A vacant lot? A. Yes, sir.

Q. And what was the other two? A. The other was a series of lots over on Teaneck Road, which might be considered residential property.

Q. Vacant property also? A. Yes, sir. I cannot tell you, Mr. Winne, offhandedly, because there have been several sales, of which I have no record with me.

Q. And prior to 1925, how much property did your office sell in Ridgefield Park? A. Prior to 1925, the values as of that time?

Q. Yes. A. About—

Q. If you can remember it. A. —$10,000.00, I should say offhandedly. One parcel I remember quite clearly.

Q. That would be altogether in 1925, in Ridgefield Park? A. Pardon?

Q. Altogether, prior to 1925, in Ridgefield Park? A. No. I would not say that, Mr. Winne. I thought you said during 1925.

Q. You were talking of 1926, when you said you made three sales? A. Yes.

Q. During 1925? A. I made, I think, one sale aggregating about $10,000.00.

Q. And prior to that, how many sales will you say you made in Ridgefield Park? A. Oh, I made quite a number of sales prior to that, Mr. Winne.

Q. Is any of the property concerning which you have personal knowledge of sales near the property in question? A. Within several blocks.

Q. And what would be the nearest property to it? A. The Park Street property.

Q. That, of course, is of an entirely different character of property from this property? A. I have exclusively listed another piece of property over there upon which I had an offer.

Q. For the time being, at least, answer the question with regard to sales. A. Yes, sir.

Q. So the nearest sale that you have personal knowledge of to this property is this one Park Avenue sale? A. Yes, sir.

Q. As a matter of fact, your activities were more extensive in other parts of the County than Ridgefield Park? A. My activities are scattered pretty much throughout the County.

Q. Isn't it a fact you are more interested in other municipalities than in Ridgefield Park? A. Yes, sir.

Mr. Winne: Your Honor please, I take it, under the ruling of the court on Friday, because of the general knowledge of conditions in other municipalities, the witness will be permitted to testify under your Honor's ruling?

The Court: Yes. I think he is competent and, of course, it is for the jury to say, in view of the experience that a witness has shown he has, what weight the testimony that he might give has to the value of this piece.

In addition to what you have testified to, Mr. Rosenberg, I presume that you have knowledge of other sales that you gained from others?

The Witness: Yes, sir.

The Court: All right.

By Mr. Walscheid:

Q. And that applies to Ridgefield Park, as well as to other communities? A. Yes, sir.

Q. Do you remember what the question was? Are you acquainted with the property known as lots one, two, three, four and five, Block 85, Tax Map or Assessment Map of the Village of Ridgefield Park indicated upon this map? A. I am, sir.

Q. Have you examined the property in this location? A. I have, sir.

Q. And are you generally acquainted with the location of that property? A. I am, sir.

Q. In your opinion, are you able to place a valuation upon that property as of the 3rd day of November, 1926? A. I believe I am.

Q. Will you do so? A. Can I refresh my memory on the figures that I have on my memorandum here?

Q. Yes.

The Court: Well, when did you make the figures?

The Witness: I figured that out last week, the latter part of last week, Friday and Saturday.

Mr. Winne: I object to the witness referring to any memorandum for the purpose of answering this question unless he states he cannot answer it without referring to the memorandum.

The Court: Can't you answer it without referring to the memorandum?

The Witness: Yes, I think I can.

The Court: All right, then. Do not use your memorandum.

The Witness: I—I value that land at $200 per front foot for the full depth lots, and an average of $100 per front foot for the lots that haven't got full depth.

Q. Do you mean the triangular piece? A. Yes, sir. And part of the other property too, one lot of the other four.

Q. Will you come down here?

Mr. Winne: If your Honor please, I would like to have the witness testify without reference to the map for the time being so that we may know if he knows the property and the dimensions of the property.

Mr. Walscheid: I have a right to have him indicate. He has answered it, saying a certain value for a certain portion of the property, and certain other values for other portion of the property. Now, I desire him to indicate the values which he places on the several portions.

The Court: Well, why don't you ask him, preliminarily, the size of the property that he is giving the value on, so that before he goes to the map his recollection may be fully tested that he is testifying about this piece? I think that is fair.

Q. Tell us what the dimensions of this parcel are. A. There are three lots running from—from a point about 100 feet south of the corner of Mount Vernon Street; running from a point 100 feet south of the corner of Mount Vernon Street, there are three full depth lots.

Q. Yes. A. The next lot, in what might be a square, there isn't a full depth lot; it has one corner cut off.

Q. Yes. A. And that is where the angle starts that brings the other parcel, the triangle, to an angle.

Q. Yes. A. Now, with regard to price—

Q. Now then, that is where the triangle starts. Now, where is the triangle? You say that is where the triangle starts. You have described three full lots, and one lot that you said was not full? A. That is right.

Q. Is there any more property? A. Yes. And then there is a triangle that starts from the southerly side of that last lot which is not quite full,

and continues on to the point about 130 some feet on Herbert Street.

Q. And what was that property bounded by on the south, the whole tract? A. On the railroad property.

Q. On the railroad of the West Shore? A. The West Shore Railroad; yes, sir.

Q. What is it bounded on the east? A. On the east, it is bound by Herbert Street.

Q. And on the west what is it bounded by? A. On the west, I said the railroad property.

Q. No. That is part of the railroad property. What are the three full lots bounded by on the west? Can you recollect that? A. There is a park in there.

Q. There is a park in there? A. Yes, sir.

Q. And immediately to the north, what are the three lots bounded by? A. By the corner of Mount Vernon and Herbert Street, a plot approximately 100 by 100.

Q. Do you know who owned that property? A. Yes. That was owned by John A. Baldwin.

Q. Owned by John A. Baldwin. And do you know whether or not that property was taken over by the municipality? A. I understand it was; yes, sir.

Q. And do you know at what price? A. Yes, sir.

Q. What price? A. $38,500.

Q. Will you now come down here and indicate to me the division of your valuations upon this parcel, which you started to make when Mr. Winne made the suggestion that you give us your detail information? A. (The witness stands before the map.) The property starts at this point right here.

Q. Indicating the southeast corner of lot number nine in Block 85? A. That is right.

Q. Yes. A. And continues south, a southerly direction, to the extent of the total of these three figures; that is what I have those totals for, 27.49, on the first lot.

Q. Being lot five? A. Being lot five; 25 feet, the second lot, being lot four; and 25 feet, the third lot, being lot three.

Q. Yes. A. Three full lots.

Q. And what valuation do you put upon those three? A. I put a valuation of $200 per front foot on Herbert Street.

Q. Now then, how about lot two? A. Lot two, that is a bias lot in the rear, irregular there, along with the triangle, having—which is known as lot one, and having a frontage of 132.70, is, in my estimation, valued at $100 per front foot on the average.

Q. Taking it as that triangular piece? A. Yes, sir.

Q. All right.

The Court: That is lots one and two?
Mr. Walscheid: Yes, sir.
The Court: $100 a foot?
The Witness: Yes, sir.

Q. As an average for the triangle. And in striking that average, did you take into consideration that at the most southerly end that front foot runs off to nothing? A. Absolutely.

Q. And for what purposes is that property—for what uses would you say is that property worth these figures? A. I considered it for mercantile purposes.

Q. And by mercantile purposes, what do you mean? A. Business property, for the construction of business buildings, stores and the likes of that, offices.

Q. And in placing this value upon this property, do you take the valuation as the property was prior to the making of this now proposed improvement, prior to the installation of the station work that is now going on there? A. I do, because I do not know much about that station work, Mr. Walscheid.

Q. And you fix that value as taking into consideration Herbert Street in its present condition? A. Yes, sir.

Q. And have you calculated what that foot value that you have given us totals? A. I have it right here.

Q. What does it amount to? A. (Referring to paper) It amounts to $31,268.

The Court: How much?
The Witness: $31,268.

Q. Now, have you ever—

The Court: Just a moment. What do you make the lots five, four and three? Have you separated them?
The Witness: Five, four and three are at the rate of $200 per front foot.
The Court: $200 per front foot?
The Witness: Yes, sir.
The Court: All right. I thought you said $25 a front foot.
Mr. Walscheid: Oh, no.
The Witness: $200 a front foot.
Mr. Walscheid: $200 a front foot, yes.
The Court: And how much does that amount to? Have you divided it?
The Witness: The two sections?
The Court: Yes.
The Witness: I have.

The Court: Five, four and three, what does that come to?
The Witness: That is the $200 frontage.
The Court: Yes.
The Witness: $15,498. And the $100 frontage is $15,770, making a total of $31,268.
The Court: Very well.

Q. Now, have you given this land which is under investigation here any consideration as to value for the uses to which it is now being put by the municipality, namely, for railroad terminal station facilities? A. Yes. I think it will be especially advantageous for mercantile purposes, especially in view of the fact that the construction—

Mr. Winne: I object to that.

Q. No. You do not understand the question. You did not understand the question. Did you ever take into consideration, or did you take into consideration the question of lots one, two, three, four and five in Block 85 in connection with the other property in this large triangular block known as Block 85, was peculiarly and eminently fitted for railroad station purposes? A. Yes. I did give that some thought, Mr. Walscheid.

Q. And taking that into consideration, is there any other property in the Village of Ridgefield Park which could be used for railway station purposes?

Mr. Winne: I object to that.

Q. In the same degree of usefulness, or with the same advantage as this particular property?

Mr. Winne: I object. It does not appear the witness is qualified to answer that question.

The Court: I will allow it.
Mr. Winne: Exception.
The Court: You may have it.

A. May I have the question again, please?

(Question read.) A. It is my belief that this property has a slight advantage over anything else that might be adaptable for railroad station purposes.

Q. Looking at this map, Mr. Rosenberg— A. Yes, sir.

Q. To the south, do you know the right of way of the West Shore Railroad Company to the south of this property, is it on a bend or is it on a straight-away in the village? A. It is on a bend. There is a bend there, and there is very little property between the public highway and the railroad that could be adaptable for station purposes at that point.

Q. South of it? A. Yes, sir.

Q. Now, on the north, looking to the north of this triangle known as Block 85, is there any property available in the village for railroad station property? A. There might be property available. I haven't gone into that, but—

Q. Well, do you know the location of Railroad Avenue to the north? A. Yes, sir.

Q. Where does that run in relation to the right of way? A. The Railroad Avenue runs very close, it runs very close to—

Q. The West Shore right of way? A. I am sorry, Mr. Walscheid; I think I am confused on that, sir, because I thought you asked me about the north before.

Q. No. I asked you about the south. A. Pardon me. I did not know that. Then I think the line of questioning is not quite right.

Q. Well then, I will go over it. Are you acquainted with the right of way of the West Shore Railroad to the south of the property in question, namely, to the south of Block 85, and particularly with the fact as to whether or not it is a straight right of way or a right of way on a curve? A. I am quite familiar with that. It is a right of way on a curve.

Q. And are you acquainted with the property on the east of that right of way, to the south of Block 85, and whether it is high land or low land? A. I am acquainted with it, and it is a high bank.

Q. A high bank. What have you to say as to the practicability of putting in a railroad station in Ridgefield Park, in the Village of Ridgefield Park, to the south of Block 85, to serve the West Shore Railway?

Mr. Winne: I submit this witness is not qualified to testify to that.

Q. From a real estate use value?

Mr. Winne: I submit the witness is not qualified to answer that question which goes to his knowledge of railroad facilities and adaptability of property for railroad station purposes.

The Court: I doubt very much that he is qualified to answer that, Mr. Walscheid.

Mr. Walscheid: I think he is qualified to answer it in uses of property for any particular purpose.

The Court: Well, he has indicated already in his answers that the curve in the railroad has something to do with it. Now, is he qualified to—

Mr. Walscheid: No. I just asked him, that was a physical proposition which I

merely brought in; I did not ask him anything about that, but he has told about the high embankment, which is quite a factor in the construction of any building, not necessarily a railroad station.

The Court: Well, I will let him answer it for what it might be worth, and grant you an exception.

Mr. Winne: Thank you.

A. May I have that question again, please?

(Question read.)

A. The land south of Block 85 being a high bank, and the fact that there is a decided curve in the railroad bed and rails at that point, or directly below that point, in my estimation would make it impractical for railroad station purposes.

Q. Now, looking at the property to the north of Block 85, do you know the location of Railroad Avenue in relation to the right of way of the West Shore Railroad? A. I do, sir.

Q. Is it close, or far from the— A. It is quite close.

Q. Quite close. And now what do you say as to the comparative value of Block 85 for railroad terminal facilities with any property to the north for like purposes, for like uses? A. It is impractical to have a station to the north of Mount Vernon Street and Railroad Avenue, and also Paulison Avenue, because there isn't very much land between the railroad right of way, in my estimation, and the—and Railroad Avenue at the point where the station would be most desirable.

Q. Now, I suppose you are also acquainted with the fact that throughout the whole length of the

village the right of way of the New York, Susquehanna & Western abuts immediately upon the westerly side of the right of way of the West Shore Railroad? A. Yes, sir.

Mr. Walscheid: Cross examine.

Cross Examination by Mr. Winne:

Q. Well, Mr. Rosenberg, the railroad station could be created upon the part of Block 85 marked park on this map, could it not, without touching the property concerning which you have testified? A. May I look at the map?

Q. Look at it, referring to lot ten in Block 85. A. The station might be erected on there; yes, sir.

Q. And it might be erected on the Baldwin property, concerning which you have testified, might it not? A. Oh, it might.

Q. Yes. Now, will you step here for just a moment, Mr. Rosenberg, please? Did you ever see this property before you went there to examine it recently to testify in the case? A. I have been over it for years, Mr. Winne.

Q. This particular piece of property? A. All of that property.

Q. Then you know the condition that Herbert Street was in last November? A. Yes, sir.

Q. And what condition was it in? A. It was in very poor condition, Mr. Winne.

Q. Was it a street at all? A. It was cut, but I do not think it was established.

Q. As a matter of fact, wasn't there a large tree right in the middle of it so that it was not open at all? A. I did not take particular notice of that.

Q. So that if there was a tree there then, you are mistaken in saying it was open but in rough condition? A. I said it was cut.

Q. You think now that last November Herbert Street was cut, so that there was a rough street through? A. Yes, sir.

Q. The answer is yes?

The Court: You must keep your voice up, Mr. Rosenberg.

The Witness: Yes, sir.

Q. Now, are you familiar with Watts Court? A. Not very, Mr. Winne. I have refreshed my memory on this street here in the last few days, but I haven't on the other.

Q. Do you know whether Watts Court is an open court or merely a map street? A. I think it is a map street, Mr. Winne.

Q. Are you familiar with Spruce Avenue? A. Yes. I think that is cut.

Q. A good condition, macadam street, isn't it? A. It is a street. I do not remember just what the condition of the street is.

Q. Do you remember whether or not there are buildings out on the corner here and up Spruce Street? A. There are buildings on Mount Vernon Street at that point.

Q. Will you make a comparison between the value of lots twenty-eight, twenty-nine and thirty in Block 87 as compared to five, four and three in Block 85 as of November, 1926? A. I would have to give that some study, Mr. Winne, because I do not know the exact condition of that street and what they have in there, and what has been put up and what hasn't, and what was in there on last November.

Q. Well, from your expert knowledge, can you give us an idea of whether the Herbert Street lots would be worth more or less? A. The Herbert Street would be worth considerably more.

Q. And can you give us any ratio which, in your opinion, the Herbert Street lots would be worth in relation to the Spruce Street lots? A. I would not like to give that, except at random.

Q. Is there any other way you can give us something which is not at random? A. I could figure the thing out.

Q. Will you do so, please? A. I cannot do that right now. I would have to see the condition of the street, Mr. Winne.

Q. And you do not know the condition of the street at the present time? A. I do not know the condition of the street.

Q. When you fix the value of Herbert Street property, the lots you have referred to, at $200.00 a front foot, did you take into consideration the cost of opening and improving Herbert Street? A. I took into consideration the fact that the street was as it is at that price.

Q. Now, can you tell us as a real estate expert what it would cost a front foot to improve Herbert Street, and curb and gutter? A. Can I do just a little figuring for a minute?

Q. Yes. That means sewers as well as improvements?

Q. No. Just improve it with grading, macadam, curb and gutter. A. Between three fifty and four fifty per front foot.

Q. And if you added sewer to that, what would it be? A. That would run about—

Mr. Walscheid: What do you mean by three fifty?

The Witness: $3.50.

Mr. Walscheid: All right. $3.50.

A. (Continuing) It would cost about $7.00, between seven seventy-five and eight seventy-five per

front foot. Well, maybe $9.00 per front foot for all improvements; and I am talking about simple penetration macadam, and not concrete.

Q. That is, concrete, of course, would run considerably higher? A. Yes, sir.

Q. Now, have you taken into consideration the grade of Herbert Street as it exists? A. Yes.

Q. Do you know that there is a decided drop between the entrance of Herbert Street on Mount Vernon Street and the property we are talking about in Block 85? A. Well, it grades right down there at that point.

Q. And do you think that that could be improved with grading and macadam and sidewalk and curb and gutter for three seventy-five a front foot? A. Well, it would not run over $10, Mr. Winne, for all of it; that means all the improvements, including the grading, in my estimation.

Q. Did you go on this property? Did you walk on this property? A. Yes, sir.

Q. When? A. Last Friday.

Q. When ever before last Friday did you ever put foot on this property, I mean the lots that you have testified about, five, four, three, two and one? A. I do not think I put a foot on that property in years. I have been by it and alongside of it, maybe, I do not know. I do not think—

Q. As a matter of fact, you have been by it on Mount Vernon Street, but you never walked back onto this property before you went there Friday, did you? A. I was over the railroad station maybe a dozen times in the last four or five months showing some industrial property in that location. I wasn't right on the lots, I do not think.

Q. And prior to last November, and prior thereto, the property was in a different condition than it is now, was it not? A. Well, the street was not cut through at that time at all.

Q. How about the fill? Do you think there has been any fill in there, as you remember it, from last November? A. I do not remember.

Q. You cannot tell us whether there has been any difference in that regard between last November and now? A. I do not know whether they filled in or not.

Q. So that your testimony as to the value of the property last November, you are testifying as to the condition it was in Friday, so far as fill is concerned? A. A figure for the land value there, the frontage, as I said before, regardless of fill. There are no holes in the ground, nothing noticeable of any kind that would depreciate the value of that location to an extent below the $200 per front foot for the full lots.

Q. Then you do value it as the property exists today; so far as fill is concerned, you do not estimate the cost of any fill over and above the cost of the price of the property as of last November? A. No. I wouldn't know that. I wouldn't know what fill has taken place.

Q. Directing your attention to November, 1926, what would you say the frontage on Mount Vernon Street on Block 85 was worth? A. On Mount Vernon Street?

Q. Yes. A. Last November, about $400 a front foot.

Q. And you think that when you go back 100 feet on this unimproved Herbert Street, the value only drops off 50 per cent.? A. About that.

Q. What do you think the valuation of a front foot on the south side of Mount Vernon Street in Block 86 is? A. May I just look at Block 86?

Q. That is, between Herbert Street and Watts Court? A. Do you mean the corner frontage or inside?

Q. No. I mean inside lots. A. Inside lots?

Q. Yes. A. I would say about $325 a front foot here, in here (indicating).

Q. That is as of November, 1926? A. Yes, sir.

Q. Now, will you tell us—

Mr. Walscheid: You said "in here." Would you indicate the lot numbers, so we get it on the record?

The Witness: Lots fifteen, sixteen, seventeen and eighteen.

Mr. Walscheid: In Block 86?

The Witness: Provided they were not with the corners.

Mr. Walscheid: Without the corners.

Q. If you are more comfortable, you might take the stand, Mr. Rosenberg. (The witness resumes the stand.) What would be the difference in the valuations of properties in, for instance, November, 1926, as against 1925, say the summer of 1925? A. There has been an increase in valuations from November, 1925, to 1926. I would say about ten per cent.

Q. The large advance, Mr. Rosenberg, in properties generally in this county was in what year? A. I do not know what to say, Mr. Winne. We have had a considerable advance this year. In fact, I think we have had as big an advance this year.

Q. Well, disregarding anything after November, 1926. A. Oh, yes. Well, I would say back in 1924 and 1925.

Q. As a matter of fact, our experience is that the fall of 1924 and the spring of 1925 marked a decided advance, did it not? A. Yes; that is right.

Q. At all events, beyond the spring of 1925, while there was an advance, it was not anywhere near

in the same ratio as in the spring of 1925? A. That is right; that is right.

Q. Now, may I ask you if you will give us your expert judgment on the value of these lots that you have indicated, sixteen, seventeen and eighteen, in Block 86, in the summer of 1925? A. I gave you the figure as of November, a year before, the November of 1926, didn't I?

Q. Yes. A. At about ten per cent. Oh, I do not think there has been any kind of a change in there. I think about 10 per cent. would go for mid-summer of 1925.

Q. Your value in November, 1925, was three hundred and something? A. $325 per front foot.

Q. Would it surprise you to know that property was sold in May, 1925, the property we are talking about, for $120 a front foot? A. May, 1925?

Q. Yes. A. It certainly would.

Mr. Winne: I would like to ask, for the purpose of the record, if your Honor please, is Mr. Mabus in court, Mr. Walscheid?

Mr. Walscheid: No. He is not here; he is not here in court; we excused him.

Mr. Winne: If it is admitted that fifteen, sixteen and seventeen were testified by Mr. Mabus to have been sold by Mr. Brewster to the Kenworthy Homes, Incorporated—

Mr. Walscheid: Whatever the record shows.

The Court: That is my recollection. Three thousand apiece for those three lots, but I do not recall the date.

Mr. Winne: The date is January, 1925, your Honor, please.

Re-direct Examination by Mr. Walscheid:

Q. This Mount Vernon Street, Mr. Rosenberg, is a business street, is it? A. It is.

Q. And is it the leading cross-town business street of the village? A. It is.

Q. And the corner of Mount Vernon Street and Main Street, is that the center of business activity in the village? A. It is.

Mr. Walscheid: I think that is all.

By Mr. Winne:

Q. Of course, there is more—

Mr. Walscheid: One other question.

By Mr. Walscheid:

Q. This price at which the Baldwin property went, $38,500, do you consider that high, low, or a fair valuation? A. I would consider that under value.

Q. Under value? A. Yes, sir.

Mr. Walscheid: That is all.

By Mr. Winne:

Q. Of course, considering that it is in the case that Mr. Baldwin spent over $5,000 for his building, you would consider it very much under value?

Mr. Walscheid: I object.

The Court: Mr. Baldwin testified that the building that was on it had been erected by him and cost over $5,000.

Mr. Walscheid: I see what you mean.

The Court: That is, his building.

Mr. Walscheid: I withdraw the objection.

The Court: He said he could duplicate it for $5,000, but it cost him more because he built it at three different times.

Q. Taking that into consideration, you think the land value is very low? A. Yes.

Q. Now, you know, of course, Main Street is the real business street of Ridgefield Park? A. Yes, sir.

Q. There is no fair comparison between Mount Vernon Street and Main Street as a business street? A. That is right.

Mr. Winne: That is all.

By the Court:

Q. You have said that lots fifteen, sixteen and seventeen in Block 86, in your judgment, would be worth a certain price per front foot? A. Yes, sir.

Q. Now, lot 18 on that block was sold in February of 1925 for $2,500, according to the testimony of Mr. Mabus. What would you say as to that? A. Your Honor, I think my testimony was that this land in here was worth about $325 a foot as of November, 1926.

Q. Yes. Now, that being so, what would you say to the 25-foot lot number eighteen facing on Mount Vernon Street in that block having been sold in February of 1925 for $2,500? A. It was then worth over $5,200.

Q. They got it at half the value? A. Absolutely.

Q. And the corner lot, corner of Watts Court and Mount Vernon Avenue was sold in September, 1922, according to the testimony, for $2,000. A. That is 19?

Q. Nineteen. September of 1922. What would

you say as to the value of that lot at that time? A. September, 1922, for $2,000.

Q. Yes. A. That was about $80 a foot, wasn't it, your Honor?

Q. Well, you are a better mathematician than I am, I guess. About that? A. Yes, I think it is.

Q. Just exactly, I think. A. Yes. That is what it is, $80 a foot, although there is 13/100ths of a foot more in there than 25 feet. That is very nearly right for 1922.

Q. Yes. So that the increase in value that you have talked about which came in the years 1924 and 1925 only increased lot 18, $500 in spite of the fact that—and also the difference because it was not a corner lot? A. Eighteen, $500.

Q. Yes. You said lot number eighteen, in your judgment, on November 1, 1926, was worth about —or in February of 1925, was worth about $5,000? A. Yes.

Q. And that would be about the increase that you would expect, would it, over 1922? A. I should imagine so.

Q. So that if you again state that lot number eighteen in Block 86 sold in February of 1925 for $2,500, it was about half price? A. I have got this 1918 confused. I want to get myself straight on that.

Q. Lot 18 of Block 86. A. Yes. Lot 18 of Block 86.

Q. Sold in February of 1925 for $2,500? A. Yes.

Q. According to the testimony— A. Yes.

Q. —of Mr. Mabus, who sold it? A. Yes. Two thousand, wasn't it?

Q. Twenty-five hundred, that lot 18. A. Yes.

Q. I understood you to say that that was worth at that time double that? A. That is right.

Q. Is that correct? A. That is right.

Q. Somebody got a bargain, didn't they? A. That is right.

Q. All right.

The Court: Anything more?

By Mr. Winne:

Q. While we are talking about bargains, Mr. Rosenberg, will you step down for a moment? What do you think lots one to thirteen, twenty to thirty-two, and one to twelve, in Blocks 86 and 87 respectively, were worth in December, 1925? A. Those were thirteen, twenty-six, in December, 1925? I do not remember just what the condition of these streets were in at that time, Mr. Winne.

Q. Well, they are better than Herbert Street.

Mr. Walscheid: I object to that.

The Court: Do not testify. Objection sustained.

Q. Without knowing what condition they are in, but using your knowledge of Ridgefield Park and your expert real estate knowledge, will you tell us what in your opinion those 38 lots were worth in December, 1925?

Mr. Walscheid: If you can. The witness has just said he could not tell us.

A. If I knew the condition of the streets at that time—

Q. Then you cannot answer that question? A. It is hard to answer it; yes, sir.

Q. What would you think about the value as compared to the testimony of Mr. Baldwin that they were sold—

Mr. Walscheid: I object—

Q. —to him for $28,000.

Mr. Walscheid: —to any comparison of testimony.

The Court: Objection sustained.

Q. Do you think that $28,000 was a high price for those 38 lots in December, 1925, or can't you answer that question? A. It brings us back to the same point, Mr. Winne. I do not know the condition of the streets. I have got to know what was in there, how the streets were fixed and what there was to those lots; they may have been non-front lots; they may have been not cut, except on the map.

Q. Then they would compare to Herbert Street, in that respect, wouldn't they? A. Well, Herbert Street is cut, indicated in the land.

Q. I see. And Spruce Street you do not know about? A. I have not gone into this lately.

Q. Well, take Herbert Street. You do know about Herbert Street? A. Yes, sir.

Q. What would you consider, in December, 1925, the 13 lots on Herbert Street in Block 86 were worth? A. I would say, if the street was in the condition that this was, in November, 1926, those lots up there would be worth about seventy to seventy-five dollars a front foot. No. That is as of December last. About between forty and fifty dollars a front foot.

Mr. Walscheid: As to what time?
The Court: As of November, 1926.

Q. No. As of the time they were sold in December, 1925? A. December, 1925; yes, sir.

Q. About $40 or $50? A. About $40 or $50.

Q. Do you consider that the property on the east side of Herbert Street is worth more than the property on the west side? A. Yes, sir.

Q. What makes that worth more? A. Because there are no plazas right here. The railroad comes right behind it, and business property in here can be seen from the railroad.

Q. Do you think business property on Herbert Street is better backing on the railroad than if it were on the west side of Herbert Street? A. Yes.

Mr. Winne: That is all.
The Witness: Yes, sir.
Mr. Walscheid: That is all.

By the Court:

Q. You say that the amount of $38,500, which you understood was the award to Mr. Baldwin for lots six, seven, eight and nine on Block 85 was inadequate, was less than the market value, as of November 1st, 1926? A. That is right.

Q. What would you say the value of those four lots was as of November 3, 1926? A. I would say they were worth no less than $400 a front foot on Mount Vernon Street.

Q. Well, how much would that amount to? Over forty—how much a front foot? A. $400. A little bit over $40,000, because the lots are 25.13 each.

Q. A little over forty thousand? A. Yes, sir.

Mr. Walscheid: For the land, your Honor.

Q. So it was pretty close to the land value, was it? A. I am not talking about any building. I am talking about land frontage.

Q. Just the land? A. Yes, sir.

The Court: Anything more?
Mr. Walscheid: That is all.

GEORGE B. HITCHCOCK, sworn as a witness on behalf of the appellants, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live, Mr. Hitchcock? A. Teaneck.

Q. And what is your business? A. Real estate.

Q. What do you do in real estate?

Mr. Winne: I will admit—

A. Develop.

Mr. Winne: —under the court's ruling, Mr. Hitchcock is qualified.

The Court: Very well.

Q. How long have you been in the real estate business? A. Eighteen years.

Q. And bought and sold real estate? A. Yes, sir.

Q. During that time? Where? A. All over this section of Bergen County.

Q. Does that include the Village of Ridgefield Park? A. Yes.

Q. Extensive dealings in the Village of Ridgefield Park? A. How?

Q. Extensive dealings in the Village of Ridgefield Park? A. No.

Q. And does your experience cover commercial property? A. Mercantile property, commercial property, yes.

Q. Mercantile property and commercial property? A. Yes.

Q. And are you acquainted with the property known as lots one, two, three, four and five, Block 85, Assessment Map of Ridgefield Park, Village of Ridgefield Park? A. Yes.

Q. Have you examined the property? A. Yes.

Q. Can you tell us for what uses that property is best adapted, or was adapted as of November 1, 1926, November 3, 1926? A. Well, I examined it last fall in connection with the condemnation proceedings on the adjoining tract, Mr. Baldwin's.

Q. Yes. A. And I considered then that I would like to buy that for the purpose of erecting a combination apartment and store building. I thought at that time—

Mr. Winne: I object to what the witness thought.

The Court: Well, I will let him state what he considered at that time its most available use.

Mr. Walscheid: That is what I was trying to get.

The Court: And that is what he is trying to say, I think.

A. That is what I considered it at that time.

Q. And that is what you considered its most available use at that time? A. Yes.

The Court: Apartments and stores?

The Witness: Yes.

Q. A combination of apartments and stores? A. Yes, sir.

Q. And did you at that time take into consideration, or at any other time take into consideration, its use for industrial purposes in connection with a siding on the West Shore Railroad? A. No, sir; I did not.

Q. You did not consider it for that purpose. Did you ever consider it as for its use in connection with the erection of a railroad plaza and station

for the Village of Ridgefield Park? A. I did not.

Q. You did not. Did you form an opinion, or have you formed an opinion, as to the value of the property for the uses for which you did consider it? A. I have formed an opinion now.

Q. Can you give us an opinion now of the value of that property as of November 3, 1926, for the uses that you have indicated? Yes or no, please? A. Yes.

Q. Will you please do so? A. I have. I figured it at an average of $150 a front foot.

Q. Yes. A. If the land had all been 100 feet deep, I would have figured it at $200.00 a front foot.

Q. And because of the triangular effect in there, you reduced it to $150.00 a front foot? A. And I checked that with—

Q. How did you check it? A. I checked that with the tables of valuations set up by various experts, of which I have tables in the office, of course, on the basis that a third of the value of a lot, or two-thirds of the value of a lot, is included in the first third of its depth.

Q. Is that what you call the Hoffman tables? A. Yes, I believe that is the Hoffman tables.

Q. Yes. And on that basis, on $150.00 a front foot, it figures out $36,000.00 and something, and on the Hoffman table it figured out $33,799.00.

Q. $33,799.00? A. I split the difference between those two, because there was some extra triangle that I did not figure in, and I figured $35,000.00 as the value of the plot.

Mr. Walscheid: Cross examine.

Cross Examination by Mr. Winne:

Q. I did not quite understand this Hoffman rule, Mr. Hitchcock. You say that under that rule

the first one—third of the— A. The first two-thirds—or, no. The first one-third—two-thirds of the value is distributed over the first one-third of depth on a 100-foot lot.

Mr. Walscheid: The front two-thirds?

The Witness: Yes. That is, two-thirds per cent. of the value is allocated to the first 33⅓ feet of depth on a 100-foot lot.

Q. What was your estimate as to the value of the Baldwin property in November, 1926? A. I figure $500.00 a front foot.

Q. You got that $50,000.00 without considering the value— A. Without including the land.

Mr. Walscheid: Without including what?

The Witness: Without including the building.

Q. Do you know the condition that Herbert Street was in last November? Of course, you went up there to look at this property? A. Yes, sir.

Q. At that time? A. Yes.

Q. As a matter of fact, when you say you were considering the value of this property for store and apartment house purposes, it was all in process of condemnation? A. I did not know it at that time. I was just interested in the Baldwin piece. I did not make any specific valuation on it, but we discussed the added value to the surrounding property by reason of the Baldwin property.

Q. You knew that the Baldwin property and this property were both in process of condemnation, didn't you? A. I did not know anything but the Baldwin property.

Q. Well, you know now that at the time that they were acquiring the Baldwin property, they

were also acquiring this property in Ridgefield Park? A. No, I do not know it.

Q. You do not know it yet? A. If that is the case, I had not thought about it.

Q. I see. A. I did not know it.

Q. Well, prior to the time you went there for Mr. Baldwin—I assume you went for Mr. Baldwin? A. Yes, I did.

Q. Had you ever viewed this property for the purpose of appraising it, or for any other purpose? A. Well, I had seen it many times during the last fifteen years, always with an eye to its value.

Q. Yes. Although you never purchased it, of course, Mr. Hitchcock? A. I purchased at the two next stations on the West Shore, and the value of this as compared with my operations at Bogota and Teaneck was very interesting, because it gave me a comparison.

Q. Yes. Now, you fixed the value of this property, the lots in question before the court, at an average of $150.00 a front foot? A. Yes, sir.

Q. Now, how do you compare the east side of Herbert Street with the west side of Herbert Street as of the same dates, November, for instance? A. I would not figure it as good.

Q. Which is not as good? A. I would not figure the east side of the street as good as the west side.

Q. Now, do you mean that? A. If I am right, in Herbert Street, no, I would not figure the east side of Herbert Street as good as the west side.

Q. Was there much difference in the value of this property between the first of 1925 and the end of 1925? A. Well, the real jump in value came, I figure, early in 1926.

Q. You think in this County the increase in value ascended more rapidly in 1926 than it did in

1925? A. There was a speculative increase in 1925, a big speculative increase too. It was a solid increase when that bridge bill was signed in 1926. Until that time, they were gambling; that is my thought.

Q. And so far as values, that is, values as established by prices in the open market, you think that the values increased in a greater ratio in 1926 than in 1925? A. They were revolutionized, in my opinion, in 1926.

Q. Well, that doesn't mean much when you say that. Was the ratio of increase greater in 1926 than in 1925? A. Absolutely.

Q. Yes. A. The true value.

Q. You do not agree with Mr. Rosenberg, then, on that? A. No.

Q. Now, what I would like to do is to have you fix a value, in your opinion as an expert, on these lots on the west side—on the east side of Herbert Street, that is, lots one to thirteen in Block 86, as of January, 1925. A. That was before any bridge bills were signed, and before—

Q. Was it? A. 1925. I do not feel qualified to go back to 1925 and say what the value of that stuff was at that particular minute.

Q. Now, how far back can you go and qualify as an expert as to property in this vicinity of Ridgefield Park? A. Well, I can go back—I still maintain I can go back 15 years or 18 years, but the value of that particular plot in 1925, I do not like to say what it was.

Q. Why don't you like to say what it was, Mr. Hitchcock? A. I know what I am talking about on this other now, because I have seen it very recently.

Q. Yes. A. And I am talking about recent values. You are going back two or three years there.

Q. Now, Mr. Hitchcock, you saw this property recently, did you? A. Yes. I saw it last fall, that Baldwin tract.

Q. Then you saw the east side of Herbert Street at the same time? A. Yes.

Q. And you say the east side is worth more than the west side? A. No. I say the west side is worth more than the east side.

Q. Then, why did you go and appraise the west side? And you saw both sides. Can't you appraise the east side? A. I can. You are not asking me an appraisement of the same date.

Q. Well, you know what increase, if any, there was in values between the winter of 1925 and the winter of 1926? A. I think the—I think the east side of Herbert Street, I would consider it worth about 50 per cent. of the value of the west side.

Q. And then we will have to fix a date, the winter of 1925; what do you think the west side of Herbert Street was worth in the winter of 1925, December, 1925? A. Approximately $75.00 a front foot.

Q. Do you think it increased 100 per cent. in value beteen December, 1925 and November, 1926? A. I do.

Q. All right, Mr. Hitchcock. And your testimony would be that the west side in December, 1925 was worth what percentage of the east side? A. 50 per cent.

Q. So that would bring that down to about $40.00 a front foot?

Mr. Walscheid: Thirty-seven fifty.

Q. Thirty-seven fifty? A. Right.

Q. And your testimony is, if I understand it, then, that in December, 1925 the west side of Herbert Street was worth thirty-seven fifty a front

foot, and in November, 1926, the east side was worth $150.00 a front foot? A. Yes.

Q. What do you think the Mount Vernon Street frontage is worth as of November, 1926?

Mr. Walscheid: He has said $500.00.

A. I think it is worth $500.00 a front foot within a thousand feet of the railroad.

Q. The Baldwin property is worth $500 a front foot? A. Yes. Most assuredly.

Q. And going into the next block, block 86, what would you say lots sixteen, seventeen and eighteen were worth? You may come down if it will help you, Mr. Hitchcock. In May, 1925? A. These three inside lots (indicating)?

Mr. Walscheid: What are their numbers?

Mr. Winne: Fifteen, sixteen and seventeen.

Mr. Walscheid: Block what, 86?

The Witness: As of what date?

Q. May, 1925. A. Two hundred and fifty.

Q. $250.00 a front foot? A. Yes.

Q. All right. So that whoever bought that for $3,000.00 for a 25-foot lot got quite a bargain, didn't they? A. They did.

Q. And you think that, notwithstanding the fact that that sold for $120.00 a front foot, that they were worth two hundred and fifty? A. I do. I think events proved it since.

Q. What condition was Herbert Street in last fall when you looked at the property? A. Not much of a street.

Q. Was it any street at all, Mr. Hitchcock? A. I knew where it was. That is about all you could say about it.

Q. As a matter of fact, do you know whether or not there was a large tree right next to Paden's office in the middle of what is now Herbert Street as opened? A. No. I did not think about it. I did not consider it as pertinent. I was looking at the Baldwin property.

Q. You were only interested in the Mount Vernon frontage? A. No. In the side street. I was interested in the side street, and the fact that it wasn't improved was taken into consideration in making the value on the corner.

Q. Well, as a matter of fact, will you tell us now whether last fall there was any street there at all? A. I would not offer it as any street.

Q. And what was the general condition of this property that is in question before this jury last fall when you went there to look at the Baldwin property? A. The same as any other piece of real estate. It wasn't being improved. It was grown up with weeds.

Q. Any different from the condition that it is in today? A. I have not seen it today.

Q. Oh, you haven't seen it since last fall? A. No.

Q. All right.

Mr. Winne: That is all.

Re-direct Examination by Mr. Walscheid:

Q. You said something about bargains. I suppose there have been lots of real estate bargains since the bridge bills have been signed? A. There have.

Q. And I suppose you expect considerable more? A. I hope to.

Q. Yes. Because people do not wake up to the advancing prices.

Mr. Winne: I object to this. I do not think it is pertinent to this issue. I will admit there are a lot of bargains if you know where they are.

Mr. Walscheid: That is all.

Mr. Winne: That is all, Mr. Hitchcock.

The Court: We will take a recess for a few moments.

(A short recess was taken.)

Mr. Walscheid: If your Honor please, Mr. Winne and I have agreed upon certain facts, which I will now state. It is stipulated and agreed that the property involved in this appeal has, in square-foot area, 15,500 square feet.

It is further stipulated and agreed that the defendants have been in the possession and use of this property since prior to November 3rd, 1926, the date as of which the jury is to act.

It is further stipulated and agreed that the Village of Ridgefield Park, under the provisions of the Home Rule Act, appointed commissioners who, in turn, made an award for this property, of $7,500.00, which award was confirmed by the Board of Commissioners of the Village of Ridgefield Park on November 3rd, 1926.

Mr. Winne: That is correct.

The Court: Well, that does not answer a question I have in mind as to when the interest shall run on the judgment that this jury shall render.

Mr. Winne: I think the cases hold, if your Honor please, that the interest runs from the date of the acquisition, the actual

taking which, in this case, is November 3rd, and I take it whatever judgment is rendered will bear interest from November 3rd, 1926.

The Court: I assume so. I think Mr. Walscheid said it was agreed that the property was in possession of the defendants prior to November 3rd, 1926.

Mr. Winne: It was practically that date.

Mr. Walscheid: I was going to suggest to your Honor that all the jury has to do was to fix the damages, the value of the property. Your Honor then fixes or adds the interest.

The Court: Well, that is a matter of calculation. The judgment will carry interest. The only question is from what date, and the verdict can be so much, with interest, and the Clerk will compute it.

Mr. Walscheid: Then I rest, sir.

The Court: Very well.

(The Appellants Rest.)

THE RESPONDENT'S CASE.

Mr. Winne: I call the Borough Clerk to be sworn, if you please.

ELWOOD G. HOYT, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Mr. Hoyt, you are the Clerk of the Village of Ridgefield Park? A. I am.

Q. And you were in June, 1926? A. I was.

Q. I show you a paper purporting to be an agreement between the New York Central Railroad Company and the West Shore Railroad in the Village of Ridgefield Park, dated June 1, 1926, and ask you if you produced that here today? A. I do.

Q. Is that one of the records of the Village? A. It is.

The Court: And the date is what, Mr. Hoyt?

The Witness: June first.

The Court: 1926?

The Witness: 1926.

The Court: Very well.

Q. And has it been executed by the parties named in the agreement? A. It has.

Q. And it is in your custody as Village Clerk of the Village of Ridgefield Park? A. It is.

Mr. Winne: I offer it in evidence.

Mr. Walscheid: No objection.

(Paper marked Exhibit R-1 in evidence.)

Q. Now, have you produced the original ordinance book of the Village of Ridgefield Park? A. I have.

Q. And I call your attention to this volume on the table, particularly to an ordinance entitled "A zoning ordinance, Village of Ridgefield Park, Township of Overpeck, Bergen County, New Jersey, April 1922," and ask you if that is an ordinance of the Village of Ridgefield Park? A. It is.

Q. And was it in effect on the day which appears upon the ordinance, namely, June— Well, do you know when the ordinance was adopted, can you tell from your record? A. The zoning ordinance?

Q. Yes. A. In August, 1922; just the date, I do not remember.

Q. August, 1922. And has been in operation continuously?

Mr. Walscheid: I object to that, to whether it has been in operation or not.

Mr. Winne: I will reframe the question.

Q. Has it been repealed or amended by action of the governing body of the Village of Ridgefield Park?

Mr. Walscheid: I object to that as immaterial.

Q. Since its enactment?

The Court: I will allow it. It may be material.

Mr. Walscheid: Exception.

A. It has been amended, too.

Q. And are the amendments in this book? A. Yes.

Q. And does this ordinance book contain everything relating to the zoning of industries in the Village of Ridgefield Park? A. It does.

Mr. Winne: I wish to offer in evidence the ordinance relating to the establishment of zones or erection of buildings in Ridgefield Park.

Mr. Walscheid: I object to it on the ground it is immaterial, incompetent and irrelevant, and that the municipality is without power under the law, was without power under the law at the time when this property was taken over, to zone the municipality for industrial purposes.

The Court: On the theory of the Nutley case?

Mr. Walscheid: The Nutley case, yes.

The Court: I did not think the Nutley case went so far as to say they were without power.

Mr. Walscheid: That was my recollection. This is novel just at this moment for me, but that is my general recollection.

The Court: No. The Nutley case simply held as I recall it, that—

Mr. Walscheid: They were with power to zone but they were with power to zone only within certain limitations. The limitations were safety and health, as I remember it.

The Court: The Supreme Court and the Court of Errors and Appeals held, and have followed the Nutley case which was the landmark, in one of those decisions, as I recall it, that under the police power, which was the theory on which these ordinances were passed, they would not permit the ordinance to go so far as to deprive a man of the use of his property unless it was deleterious to the public health or the safety of the community and, therefore, whenever an ordinance was attacked and was reviewed, or the action of the building commission in refusing to permit a building to be built, they used that as the test in each individual case. They never set aside the ordinances; they never said that they had not the power to pass ordinances; they simply met each case as it was presented, and if a case that was presented was such that they thought it was beyond the scope of the municipality's police power, they would compel the issuance of a building permit; but that is all.

Now, the effectiveness of this ordinance is not the point. The point is here whether there was a certain ordinance in the Borough of Ridgefield Park, and I think that is material, and I think that is evidential here; this is evidential of what the building ordinance was. Now, it is a matter of rebuttal, perhaps, or it is a matter for you to argue, that this ordinance under the decisions of the courts would have been inoperative for a special purpose, for a special use.

Mr. Walscheid: Well, agreeing with your Honor's line of thought, it is still my opinion that this ordinance is immaterial, incompetent and irrelevant, because the limitations upon use which are contained therein, and to which Mr. Winne referred, bring it squarely within the Nutley case and make it a question of law, as I take it, for your Honor to determine from the reading of the ordinance whether or not the ordinance, while it is in existence generally, the provisions of the ordinance which are attempted to be applied to this property are, in fact, effective under the Nutley case and that line of cases. I think that is a pure question of law, and I think that for that purpose Mr. Winne ought to point out, he ought not to introduce the whole ordinance as an omnibus, but ought to indicate to us what sections he relies upon.

The Court: I suppose he will do that at the proper time.

Mr. Winne: Yes, your Honor please. I think I have to offer the ordinance first.

The Court: He will read into the record the—

Mr. Walscheid: May I reserve my right to object until such time as he attempts to read into the record the sections which he thinks cover?

The Court: You may do that, and I will admit the ordinance. I do not know how you can mark it.

Mr. Winne: I think that the witness has a copy of it that maybe will be admitted in place of the book.

Q. Have you something there that is a facsimile? A. I have a copy here with the amendments.

Q. And is that a facsimile of what is in this large book in connection with zoning in Ridgefield Park? A. It is. I had to bring it so we wouldn't have to leave the ordinance book.

Mr. Walscheid: If he says that is a copy, use the copy.

The Court: Very well. Let the copy be marked, and let it be stated in the record that Mr. Walscheid objects to the introduction of either, but for purposes of convenience, has no objection to the printed copy being used, subject to whatever objection he may wish to make against its introduction at the proper time.

Mr. Walscheid: Your Honor allows me an exception?

The Court: To allowing it at this time?

Mr. Walscheid: Yes.

(Paper marked Exhibit R-2 in evidence.)

Q. Can you indicate from this what portion of the ordinance refers to lots one, two, three and four and five in Block 85, on the Tax and Assessment Map? A. This one here (indicating).

Mr. Walscheid: He evidently does not understand the question.

The Witness: That is a blank space there; that is in One-D. That is the park.

Mr. Walscheid: The ordinance is now in evidence?

Mr. Winne: I want to find the zone.

Mr. Walscheid: Here is the property (indicating).

Mr. Winne: What is the question?

(Question read.)

A. "In all zones designed as B, C or D zone, no building or premises shall be used, erected or altered except for one or more of the following uses:

A. Boarding-house, for not more than fifteen persons.

B. Churches, schools, libraries, amusements.

C. Dwellings.

D. Truck gardens, nurseries, green-houses.

E. Fraternal orders and clubs, excluding bowling alleys therein.

F. Hospitals, sanitariums, philanthropic institutions, for eleemosynary uses other than correctional institutions.

G. Hotels and inns.

H. Office for architect, dentist, physician, nurse, surgeon or other professional persons situated in the same dwelling or apartment used by such person, or as his or her place of residence.

I. Private garages or private stables permitting only one commercial vehicle of not more than two tons capacity.

J. Monuments.

K. Transportation, rights of ways and transportation stations.

L. Accessories used incident to the above.

M. A window display, sign or name-plate shall be allowed as appurtenant to a use as an office for professional persons, or for other occupations as permitted under this section, only when said window display, sign or name-plate does not exceed one square foot in area.

All buildings for accessory use, such as private garages, private stables, and so forth, shall be located in the rear yard. On the corner lot, they shall be set back from the street line for a distance which shall be at least equal to the set-back required for buildings on the adjoining lot."

Mr. Walscheid: Is that all?

The Witness: That is all.

Mr. Winne: Now, I take it, Mr. Walscheid has something to say about it. That is my offer.

The Court: Do I understand that those are the things that are prohibited?

Mr. Winne: Those are the things that are permitted.

Mr. Walscheid: Everything else is prohibited?

The Court: Inferentially, I suppose that is so. In other words, it says only these are permitted in that area.

Mr. Winne: Yes. The theory of the ordinance is that they make a map and color the map in different ways, and in certain zones they permit certain things, and in this zone they permit these things.

Mr. Walscheid: Now, I at this time,—I suppose my motion should be to strike out this answer and this testimony,—strike out this section which has been read in evidence, on the ground that the limitations upon the

uses therein contained are illegal and void and contrary to the constitution and the laws of the State of New Jersey, and constitute an illegal limitation upon the use of the property in question, and a taking of that property to that extent without due process of law.

Mr. Winne: Well, if your Honor please, I think that the court has stated the argument that I desire to make, namely, that the ordinance exists as an ordinance, and except as a proper tribunal and the proper action for that purpose arose, that a particular permit should be granted, the ordinance exists for all intents and purposes just in the wording in which it was passed. It may be that everything in the provision of Zone A in this ordinance might be permitted to stand by the Supreme Court, if an attack were made upon some other zone. I do not believe it is the province of this court in this issue, collaterally, to try the validity and the constitutionality of an existing ordinance of a municipality. If that argument were true, then the court would be compelled to pass on the constitutionality of any statute that collaterally might come before the court like, for instance, a statute as to whether or not it was constitutional to require a person to have a license to drive an automobile in a negligence case. Certainly, the court would not pass upon the constitutionality of such a statute. I would say, as long as the statute exists and the matter was not directly before the court, that the court would take it it exists properly, and the proper court in which it should be attacked is the Supreme Court.

Mr. Walscheid: The ordinance I wish to call your Honor's attention to is brought into court collaterally at this time, and is not being brought into court for the purpose of enforcement. I just wish to add that by way of response to what has been said. It seems to me that the existence of this ordinance, I may add, can have no probative value as to the determination of what the usable value of this property is as of November 3, 1926, that being the question with which this jury has to deal.

The Court: The Nutley case that was referred to held the ordinance there under consideration void, stating that it must designate the promotion of the public health and the safety and the general welfare of the public, and unless it came within those categories, it would not be upheld, and that has been followed in a long, long line of cases. But since that time, the Supreme Court of the United States has said, in the so-called Cleveland, Ohio, zoning ordinance, that that ordinance was good.

Mr. Walscheid: Oh, yes.

The Court: And there have been no Court of Errors opinions in this State that I know of since the pronouncement of the Supreme Court of the United States, which I take it is quite contrary to the philosophy and the theory of the Nutley case.

Mr. Walscheid: It is not, sir.

The Court: Well, I assumed that it was.

Mr. Walscheid: If your Honor please, the first one of these cases that I remember that the United States Supreme Court dealt with came up from Boston, and they at that

time upheld such a zoning proposition, but they at that time upheld it on the theory that they could not go behind the facts as found by the lower court, by the state court, and we in this state are now reaching that same point; and I say that in this Cleveland case the same proposition came before the Supreme Court, namely, that the facts as found below were such as bound the upper court, and the pure question of law, that is, the question of law as it related to a state constitution is not what is dealt with in the United States Court cases because, as I understand the law, the state has the right to adopt any constitution in conformity with republican form of government; but there is that limitation which absolutely throws the Cleveland case askew, takes it off the point decided in the Nutley case, as I understand it. Now, we are reaching that same proposition in this state by the creation through the Legislature of so-called zoning boards which give to that zoning board the right to determine as a question of fact these propositions as to safety, health and general welfare, and the Supreme Court has said that as to those cases where there is a finding of fact and that is based upon some evidence, it will not be reviewed, and your Honor and I, I think, will agree, that the Court of Errors is not going to reverse that finding of the Supreme Court; but as a pure question of law, as this thing stands here now, I say this is squarely within the ruling of the Nutley case, and since it is brought in here collaterally, it is not brought in here for the purpose of enforcing this

ordinance, it is not related to this case, there is no attempt to build anything of the kind upon this property, it is a purely speculative matter, remote and far-fetched, it is an illegal limitation upon the use; and under all those circumstances, I think I am justified in asking your Honor to strike from the record this section.

(Further argument.)

The Court: I will allow it for what it might be worth, and will charge the jury in relation to it.

Mr. Walscheid: I pray an exception.

The Court: You may have it.

Mr. Winne: You may cross examine.

Mr. Walscheid: No examination.

DAVID C. BOSWELL, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. You are the Village Engineer, Mr. Boswell? A. I am.

Q. How long have you been Village Engineer for Ridgefield Park? A. Three years.

Q. Are you familiar with this property that has been the subject of discussion before the jury? A. I am.

Q. And has the Village of Ridgefield Park done anything with relation to the property since November, 1926? A. They have.

Q. Will you tell the jury, if you will, what you know about what has been done?

The Court: It is a borough, isn't it?

Mr. Winne: It is a village, if your Honor please.

Mr. Walscheid: With commission form of government in the village.

The Court: I understood it was a borough. Very well. Answer the question, Mr. Boswell.

A. We have done some grading in there; filling, possibly six inches in some places, up to a foot and a half in others. We haven't graded the entire property. We have just graded enough to make it accessible for the purpose of proceeding with other filling operations. We have constructed drains and removed trees and brush before we started to fill. That is about all of the operations I recall that we have actually done.

Q. You speak of removing trees. Do you know anything about a particular tree that was removed? A. I heard that tree discussed.

Q. Do you know where that tree was? A. About.

Q. Well, will you show us on the map, Exhibit A-1, I guess? A. There was a large tree stood about the—about in here (indicating), about 24-inch diameter, stood right about the center of the road there.

The Court: Of what road?

The Witness: To the center of Herbert Street, near the south property line of Mount Vernon.

The Court: All right.

Q. Now, you may take the stand again, Mr. Boswell. A. (The witness resumes the stand).

Q. When was that tree removed, as near as you

can tell us? A. I would say that was removed sometime between June and November of 1926.

Q. I see. And at that time, was Herbert Street,—what was its general condition? A. Well, Herbert Street was the—it really did not exist as a street; it is only a map street. There were trees and brush; it was inaccessible.

Q. Now, did you produce these plans that I show you? A. I did.

Q. And will you look at them and tell us what they are? I want you to tell us about the drain. A. These are the plans for—

Mr. Walscheid: Wait a minute. They are not offered in evidence.

Mr. Winne: I want to know what they are.

A. (Continuing) These are the plans for sanitary storm sewer, station approach, station improvement, Ridgefield Park.

Q. And do they show drains?

Mr. Walscheid: One moment. I object to that; it is immaterial.

Q. Do they show drains constructed by the village since November 3, 1926, affecting this property?

Mr. Walscheid: I object on the ground it is immaterial, incompetent and irrelevant, and after the time of our award.

Mr. Winne: If your Honor please, it is the purpose of the offer, the award being made as of November 3, 1926, the jury has seen the property as it exists today,—

The Court: The purpose of this is, I take it, to show the necessity for draining so that

we can know from this witness what the contour of the land was, and the conditions that existed on November 3, 1926.

Mr. Winne: Yes, sir.

Mr. Walscheid: I do not think that is necessary from this map.

Mr. Winne: And the added purpose, to show in what way the property differs today from the condition in which it existed in November.

The Court: I think that is competent. We have already had some testimony with respect to the physical condition of the property prior to this improvement, and this is along that same line.

Mr. Walscheid: Well, this evidence, if your Honor will look at this map, these sewers and the drainage was not put in for the land as it then existed; it is put in as part of the subsequent improvement. Now, it is undoubtedly proper to show the elevation of that land as of November 3rd, or since they were in possession prior to that time to show the elevation and condition of that land as it stood when they took it over, but this does not begin to do that; if your Honor will look at the map, it does not begin to show anything of the kind.

The Court: If it shows a lot of things that happened there since, that is not evidential; then I do not know that we want it.

Mr. Walscheid: It shows the proposed sewage system with drainage for that whole plaza, which would never have been done for this particular parcel of land by the owner of it. Can your Honor see it at that distance?

The Court: Yes. I would suppose if there are things there, Mr. Winne, that have been done that are not material to this issue, that the map had better not be put in evidence. This witness can testify, anyway.

Mr. Walscheid: I have no objection to his testifying.

Mr. Winne: All I want to get in evidence is what was done in relation to this property.

The Court: I know; but the difficulty is, if the map goes in, there will be a lot of other things on there that may confuse the jury and are not proper. I will sustain the objection.

Mr. Winne: Exception.

The Court: You may have it.

Q. Will you tell us, and indicate on the Exhibit A-1, what drains if any were constructed on this property subsequent to November 3, 1926?

Mr. Walscheid: I object to that as immaterial.

The Court: I will allow that if it will be connected up with the condition of the property as of November 3, 1926.

Mr. Walscheid: If it was made for the purpose of draining that particular piece of property, it is very material; if it was made as part of the drainage system for the plaza, it is absolutely immaterial.

The Court: Well, we will have to find out.

Mr. Walscheid: We might save a lot of time.

Mr. Winne: I would like to know. If it is not made for the purpose of draining this property, I certainly do not want it.

The Court: I did not suppose you would.

Q. The drains that were constructed, will you tell us why they were constructed? A. They were constructed to take the water off to make the property accessible for filling. The ground was very wet and soggy, and it was impossible to do any hauling or even roll tractors in there until the water had been taken off.

Q. When you say the property, do you refer to this property, lots one, two, three, four and five in Block 85? A. I do.

Q. Now, will you show us on the map just what drains were constructed? A. There was a drain—I can give you the approximate location. I haven't it exactly shown on that plan.

The Court: Show us on that plan, Mr. Boswell, please, as near as you can.

The Witness: Well, in about here (indicating).

Mr. Walscheid: That does not show. That is off down the railroad right of way.

The Witness: Yes. I will get to that.

Q. Indicating a point on the railroad right of way? A. There was no drain under here. That existed for the purpose of draining this area here (indicating); and the Erie Railroad also filled; but this drainage in here was obstructed, and the drain under the railroad was put there for that purpose. We connected that with about 39 feet of pipe to the south, and then we shot across in this direction (indicating) with what is called a French drain for sub-surface water, and about here (indicating), we constructed—

Q. Indicating a point in Herbert Street? A. We constructed a drain to the north, oh, about, I would say 187 feet, and then this ought to come over here (indicating), I guess, and then down in this direction we went 100 and—oh, I don't know, about 150 feet.

The Court: Parallel with Herbert Street?

Mr. Walscheid: Yes. And on the east side of Herbert Street.

The Witness: This is the—along the curb line, proposed curb line of Herbert Street, on the east side.

Mr. Walscheid: The east side.

The Court: All right.

The Witness: In the street. Then we came over here (indicating), and tapped several very wet spots.

Mr. Walscheid: Where, in what property?

The Witness: Well, they were really off in here (indicating).

Mr. Walscheid: In Block 86.

The Court: All right.

The Witness: And then we tapped another spring right in here some place (indicating).

The Court: Indicating—

Mr. Walscheid: That is in lot 4, Block 86.

The Court: Very well.

The Witness: The reason for those drains was that all of that water came down into these low spots on this land in question, that is, where we were trying to fill. We couldn't start our filling operations until we had made it so we could drive on it. And that is as near as I can approximate the location of the drains.

Q. All right, Mr. Boswell. Take your seat again (the witness resumes the stand). You say the purpose of these drains along Herbert Street was to

divert flow of water off this property? A. Yes; of sub-surface water.

Q. I do not understand what a French drain is. A. A French drain is a drain that is laid with tile and filled with broken stone within six inches of the surface, and covered with tar paper; and the balance of the upper six inches is packed, filled, with earth to take care of sub-surface water. The ends of the pipes on the east side of the street were left open to take care of surface water that came down.

Q. Were you on the ground quite regularly after November 3, 1926, in connection with this work? A. Yes.

Q. Can you tell us what the difference, if any, there was in the general condition of these lots comparing November 3, 1926, with the present time? A. Why, before our operations—I surveyed exactly when we finished the drains—but before we finished the drains, it was a low land that was about two, two and a half feet below the track. I went in there to make the survey and the mud was above your shoes and was covered with brush. We cleared the brush, took off the water first, and then proceeded to fill it; and now, where we have filled, it isn't altogether dry because all of the water has not been taken away; the drainage system has not been really completed to take care of all of the water.

Q. Now, have you anything that will show us the topography of this land, and show us the different elevations? A. I put on elevations on the large map here to show the relative elevations.

Q. Referring to the large map, can you tell us, for instance, the difference in elevation between the grade of Mount Vernon Street and lots two, three, four and five? A. I can.

Q. Will you tell us that? A. The low point on

lot two, three, four, five, is 8.5, and the elevation of Mount Vernon Street and Hobart Street is 24.3. The deduction will show the difference in elevation, if I can make it here.

Q. Yes. A. 24.3 minus 8.5; that means that the low point of the lots was 15.8 above the—or below, rather, Mount Vernon Street.

The Court: What do you mean, 15.8?

The Witness: 15 feet, and 8/10ths of a foot.

The Court: All right.

The Witness: Another point which is higher, here is one over here (indicating); 9.2, and 11.4; and another one here at 10.8. Those are the only elevations that we had in that section, which show that the lots themselves were about 14, or rather, 14 feet, on the average, below Mount Vernon Street.

Q. Does it show a difference in elevation between the railroad track? A. Yes. The elevation of the railroad was 10.44 minus 8. I would say that the property was about 2 feet below the track.

Mr. Walscheid: That one point?

The Witness: At that particular point.

Q. Do you know anything about the cost, either of the drain construction or the fill?

Mr. Walscheid: I object to that. It is immaterial, incompetent and irrelevant.

Mr. Winne: I think it is competent to show the jury that, for instance, a thousand or two thousand, or whatever amount of fill has been put on this property since November 3, 1926.

Mr. Walscheid: We are not asking for it.

Mr. Winne: I know you are not asking it. You are asking the jury to take the view of the property and to use their view of the property in helping estimate the value of the property last November, and so in order that they may know intelligently what this fill amounts to, they are entitled to have the cubic yards of fill that has been put in there and what it cost.

Mr. Walscheid: I think the cost is in no way related.

Mr. Winne: Because they will naturally take into consideration how the property looked when they saw it on Friday, and to know what increase in value it has over and above the value as of the time that they shall fix the value.

The Court: The only difficulty with that is that a portion of this cost of drains was to drain adjacent property and now, of course, if you are arguing that this property standing by itself would be more or less valueless because it could not be drained because the water that came to it came from other land, and that the only way the property itself could be drained would be by co-operation with the owner of the land on the east side of Herbert Street, why, perhaps it might be of some value at this point that this was a quagmire or a swamp or a quasi-swamp, and that the value of it ought to be taken into consideration with respect to what it would cost to make it dry land, plus the fill, why, then I think it is competent.

Mr. Winne: Of course, that is what I am going to attempt to show to your Honor and the jury, the nature of this property.

Mr. Walscheid: What has the question of cost of fill to do with that?

The Court: Only if this property was in a certain condition, and there would have to be an expense of a certain amount before it could be utilized for any purpose, then I think that has a direct bearing on the testimony of the appellants' witnesses that the property at a given time was worth so much in the then condition.

Mr. Walscheid: There is no such evidence here, in the first place, for these appellants where they say that the property could not be utilized; and, on the contrary, this witness has testified that the low point on this property was—

The Court: 8 feet below the surface of the street.

Mr. Walscheid: No. Elevation 8.5.

By Mr. Walscheid:

Q. What is your datum line on this map? A. Why, we came off the railroad.

Q. What is your datum line on this map? Does it mean high water, or what? A. It refers to—I really don't know. It was taken off a railroad bench mark which would show the river at high tide about elevation 5.

Q. You don't even know that, what you did? A. Any point on the track.

Q. What you did was to show an elevation there, a certain datum line? A. Yes.

Q. And you do not know what that datum line is? A. Our datum line was taken from the railroad.

Q. And you do not know what that datum line is? A. Only that has one particular point.

Q. What is the datum line? A. We have—

Mr. Walscheid: I did not want to start examining this witness, Mr. Winne.

The Court: Well, let us get this settled now.

Q. You say that is what it means, a certain base datum line; it is elevated 8½ feet above that base datum line; isn't that true? A. That is the object of these elevations.

Q. Do you know what the datum line is that was used? A. Yes, I do.

Q. Was it high water way out at that point? A. The datum line would show the mean high water of the Hackensack River about elevation 5.

Q. That means 5 feet above mean high water? A. No. The elevation of the high water would be elevation 5; elevation of low water, if there was a 5 foot range in tide, would be elevation zero.

Q. All right.

Mr. Walscheid: Now, to complete my argument, your Honor please, he has testified that this land—that he walked into it and got his shoes full of mud. The low point of the land is 8½ feet above the datum line, whatever the datum line may have been, and another point given is 11 feet and 4/10ths, almost a half a foot, and another is ten feet and 83, almost 11 feet. There is practically table land, flat land. The track elevation is given at elevation of 10 feet and a half, practically the same level. Now, how you could build up a guagmire or a hole out of that seems to be absolutely impossible.

The Court: But he has testified that it was necessary to drain it before he could do anything with it, nevertheless.

Mr. Walscheid: And in doing that, he indicates that at this low point, 8-50, 8½ feet, there was a drain which crosses the railroad track; that that was the low drain, the natural drain, for all of that land, and when he indicates his draining points, they are on the east side of Herbert Street.

The Court: Yes.

Mr. Walscheid: And the streams that he gets are in the land to the east of Herbert Street; so that what he is doing, he is draining property to the east of Herbert Street through this property, as he had a right to do, and he has indicated that this property drains off through this drain under the railroad track.

The Court: Yes. And the reason he had to drain it from that place was to keep that water from going onto this land under condemnation.

Mr. Walscheid: And then it would drain out at point 8-50; according to his own testimony, it would flow right out through there.

Mr. Winne: I think it is very plain to everyone what the purpose of this drain was.

The Court: Oh yes. I think it is competent.

Mr. Winne: What was the question?

(Question read.)

A. I did not keep any figures of the cost.

Mr. Winne: I think that is all.

Cross Examination by Mr. Walscheid:

Q. Mr. Engineer, you have testified that there was a drain across the track at the elevation 8 point 50? A. I said about that location.

Q. About that location? A. Yes.

Q. About the lowest point in the land in question? A. There was a map available that showed the location of the drain.

Q. No. Answer the question. About the lowest point of this land, there was a drain running across the track? A. About the location.

Q. And I suppose that was a natural drain, wasn't it? A. No, it was not. It was an artificial drain.

Q. An artificial drain which had been put in by way of substitution for the natural drain? A. Well, I cannot say that.

Q. You cannot say that. And this land naturally drains down by way of rivulets and water courses to this point 8.50, does it not, all of this land in Block 86? A. That is correct.

Q. And 87? A. Yes.

Q. And 88, I suppose? A. Well, no. The water from 88 doesn't come down there.

Q. And the water from 86 does come down there, Block 86? A. Yes, that is right.

Q. Not from 87? A. It all comes down to the Block 85.

Q. Yes. A. The low part of it.

Q. And found its way out at this point indicated as 8 plus 50? A. Well, I guess if the drain had of been in proper condition, it might have found its way out but, as a matter of fact, it didn't all find its way out. Some of it seeped down.

Q. The drain was stopped up? A. I believe it was.

Q. And because the drain was stopped up, the water backed up on the land in question and stood there? A. Yes, I would say that is true.

Q. That is true. And then if you had cleared that drain and started to open up that drain, the

land would have dried up in its natural course, wouldn't it? A. I doubt that.

Q. Well, what would have stopped it? A. Because the nature of the soil,—there was a certain amount of saturation, and the soil was of muddy, thick,—thick, muddy, decayed vegetation.

Q. Naturally? A. Yes. And that absorbed a certain amount of water and held it.

Q. Yes. And just as soon as the sun got on it, if there was no more water coming into it, it would have evaporated, wouldn't it? A. Yes. I guess it would.

Mr. Walscheid: That is all.

Mr. Winne: That is all.

HOWARD A. MIX, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Whom are you employed by, Mr. Mix? A. New York Central Railroad Company.

Q. What is your position? A. I am an assistant engineer in charge of construction.

Q. And where have you been for the last few months in charge of construction? A. I have been in charge of the construction work of the West Shore Railroad.

Q. And does this construction at Ridgefield Park come under your jurisdiction, Mr. Mix? A. It does.

Q. And were you familiar with this property last November, 1926? A. I am.

Q. And have you been in charge of the work that has been done there for the railroad company since 1926? A. I am.

Q. Can you tell us anything about this drain that was referred to as under the track; do you know that drain? A. I do.

Q. What did that drain operate to drain? A. That drain drained the railroad property in that general vicinity, but was connected up to drain the end of Mount Vernon Street between where the road swung around as a parking space to receive passengers coming onto the railroad.

Q. Now, did you have plans under which you started the construction of the station which appears on this property now? A. I did.

Q. And were you on the property for the purpose of putting those plans in execution? A. Yes, sir.

Q. And constructing the work? What did you do there on that property, Mr. Mix, after November? A. We endeavored to find out the condition of the ground for the purpose of determining what kind of a foundation we would put under our station, and for that purpose we dug four test pits which consist of ordinary holes dug in the ground with shovels, and stopping at each successive level to make an examination of it to see the character of the ground. For about three feet, the ground was nothing but swampy, low decayed vegetation, and absolutely unfit for any form of construction. The elevation below three feet, we found—three feet below the general surface of the ground, we found fairly hard material, and at about five feet down we found material hard enough to place a foundation to the station.

Q. Did you make any revisions in your plans on account of the surface of the ground? A. I did.

Mr. Walscheid: I object to that as immaterial.

The Court: The only materiality is to corroborate what he has already said about the condition of the surface.

Mr. Walscheid: That certainly is hearsay.

The Court: It is not hearsay as to what he found.

Mr. Walscheid: No, not as to what he found. He found good soil three feet under, and five feet, he found better soil.

The Court: Whether they had made a plan for their station to sink a foundation two feet and then afterwards changed it to eight because of what they saw is not material. Of course, you would not build a house on the sand or on mud.

Mr. Winne: No, your Honor please. That is the purpose for which the offer is made, to show that they did make plans to build a foundation a certain depth, and your Honor rules that is incompetent?

The Court: I suppose it is perfectly apparent that they would, if they at first had an idea that they would not have to go down very far, and changed it. I do not think it is competent in view of what this witness has already testified.

Mr. Winne: Well, I won't press it.

The Court: Very well.

Q. What else did you find, if anything, in your tests that you made beside this condition of the soil that you describe? A. I found that this particular piece of land was the lowest piece of land in that general vicinity, in fact, every adjoining piece of property lay at a higher elevation, which caused all the drainage from all sides to collect in that—in that parcel of land, and make it a swamp.

Q. Did you have anything to do with the plans for draining this area? A. I had—with regards to the area for draining where the station is going to lie. I had nothing to do with draining the area lying outside the railroad right of way, but I did have to do with draining the area between the railroad right of way and the tracks.

Q. Mr. Mix, do you know anything about the quantity of fill that was put on lots one, two, three, four and five? A. We placed 23 carloads of material on lots three, four and five, so it would enable us to proceed with the construction of the station.

Q. What was that material? A. That was cinders.

Q. And when you say a carload, can you give us anything about the contents of a car? A. The average carload of cinders is 40 cubic yards.

Q. And you put 23 such carloads on this property? A. We did.

Q. Did you construct any drains on this property in addition to the drains Boswell has testified to? A. I did.

Q. And will you describe that drain to the jury and locate it in relation to this property? A. There has been testified to a drain existing on the railroad. That drain, as I said before, was connected up to drain the property lying to the north of this particular property. The outlet of that drain was underneath our station platform, and it was not necessarily, from the railroad standpoint, to drain the property to the east of our platform. However, in order to build the station and connect up any drainage in connection with the station, I arranged to extend this drain from the point where—at the easterly point where it then existed, which was some—forty some feet from the

easterly line of the railroad right of way to the west, and extended over to the side of our new platform, so it would be available for connecting up roof drainage for our station, and also drainage in connection with our subway.

Q. Your platform, the station that you referred to, is right on the property in question, is it not? A. Our station platform?

Q. Yes. The construction that you are speaking of, to which this drain led? A. Yes. The station platform is just immediately adjacent to the property in question to the west. It is not on the property in question.

Mr. Winne: You may examine the witness, Mr. Walscheid.

Cross Examination by Mr. Walscheid:

Q. These 23 carloads,—you say the station is not on the platform, the platform, the station building is not on the— A. The station building is on the property in question, but not the station platform, sir.

Q. But not the station platform? A. No, sir.

Q. And when you say you put on 23 carloads of cinders, you mean you put that over the whole area that is to be used as a plaza, don't you? A. Yes, sir.

Q. And not the building. In other words, you are bringing the whole plaza to a grade, aren't you? A. We just filled these cinders in over this—

Q. Will you answer my question? A. Yes, sir.

Q. You are bringing the plaza to a grade? A. It had nothing to do with bringing the plaza to a grade.

Q. But are you bringing it to a grade? A. We are bringing these cinders to a certain grade, yes.

Q. For the purpose of putting another kind of material on top of it? A. No, sir.

Q. You are not going to have a cinder plaza there, are you? A. We have a—

Q. Yes or no? A. I do not know, sir.

Q. Oh, you do not know? A. No, sir.

Mr. Walscheid: That is all.

Re-direct Examination by Mr. Winne:

Q. Well, do I understand these 23 loads all went on lots one, two, three, four and five, Mr. Mix? A. Yes. They went on the site of where the station stands which is on the—those lots.

Mr. Winne: Yes. That is all.

Re-cross Examination by Mr. Walscheid:

Q. Some of it went on the Frank White Park too, didn't it? A. Not the 23 loads I mention did not go on the Frank White Park.

Q. The additional stuff went on the Frank White Park, then? A. On Frank White Park we placed about five yards of cinders to my knowledge.

Q. Five yards of cinders, to your knowledge? A. That is not included in the amount I gave.

Q. All right.

Mr. Walscheid: That is all.

By the Court:

Q. What happened after you put the 23 carloads; did that bring the lot up to the grade of the surrounding property? A. No. That just brought the ground up so we could work on it and build our

station. It only brought the—it mounded up the station site so that we could have it out of this swamp and continue to build the station.

Q. Well, what will the grade of the station be, the foundation of the station, with respect to the surrounding land, higher or on a level with it? A. I can best answer that by saying that the finished floor of the station, the finished first floor of the station, will be about three foot higher than the general level of the ground,—about four foot higher than the general level of the ground that existed before we did any filling.

Q. My object in asking you that is to know whether it was necessary to put 23 carloads of cinders on this property to bring it up to the grade of surrounding land, or whether you made a mountain of cinders there, and you are setting the railroad station up on the top of the hill; that is all. A. We found that we couldn't—we would have placed the station lower if the conditions on the land had permitted it.

Q. So that you have raised it somewhat? A. We raised the station on account of the conditions we found there.

The Court: Anything more?
Mr. Walscheid: No.
Mr. Winne: Nothing else.
The Court: That is all.

EDWIN HOGERMAN, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. What is your position in the Village of Ridgefield Park, Mr. Hogerman? A. Supervisor of Public Works.

Q. Are you familiar with this property? A. I am familiar in the way that I have done a lot of work around there.

Q. And since November, 1926, have you had charge of the construction of this drain that Mr. Boswell testified about? A. Yes, sir.

Q. Can you tell us what the drains that Mr. Boswell testified to cost the Village of Ridgefield Park?

Mr. Walscheid: I object to that as immaterial.

The Court: I will allow it.

Mr. Walscheid: Exception.

The Court: I will grant you an exception.

Mr. Walscheid: It is not the best evidence.

A. All right to answer?

The Court: Yes, certainly.

A. It cost close on to $900.00, without paying for the 27 loads of 5 yards of dirt each, or without paying for the carload of cinders. That is just for the time and material.

Q. Did you keep that time and check the material yourself, Mr. Hogerman? A. Yes, sir.

Q. And in addition to that, you say there was some dirt purchased? A. There was no dirt purchased. The New York Central Railroad Company gave 27—5-yard loads, approximately, of dirt.

Q. The New York Central Railroad gave 27 loads of dirt. And what was done with that? A. Placed at the back of Herbert Street.

Q. On the property we are talking about? A. Well, right on the back of Baldwin's property.

Q. I want to know, Mr. Hogerman, whether it is on this property or on Baldwin's property, or

where it was placed? A. It was placed right at the foot of that property, as near as I can remember right.

Q. Well, show us on the map where the dirt, the 27 carloads of dirt were placed? A. Right about in here (indicating).

Q. Indicating the lot— A. Lot 5.

Q. All right.

The Court: Lot 5 on Block 86?

Mr. Winne: Yes.

The Witness: 85.

Q. Did you have anything to do with any work on Herbert Street since November, 1926? A. Herbert—

Mr. Walscheid: I object to that.

The Court: I will allow it if it has any—

Mr. Walscheid: Exception.

The Court: —relation to the draining of the land in question.

Mr. Winne: It has to do with the present condition of Herbert Street and the condition of Herbert Street at the time of the taking.

The Court: I think it is competent. You may answer it.

A. I had supervision of having a large tree taken down. I just don't remember the dates when it was taken down. I have a record in the book.

Q. And, in addition to that, was anything else done on Herbert Street? A. We have taken up the sidewalk to make a sort of a driveway so we could get our tractor in there to do some excavating and carry down that bank to fill in the low land.

Q. Has there been any fill of low land beside the 27 carloads you spoke of? A. Grading down from Mount Vernon Street running south down Herbert Street.

Q. So then, I understand you had charge of opening Herbert Street as it is opened today? A. Yes, sir.

Q. Were you ever on this property, lots one, two, three, four and five, before November, 1926? A. Before November?

Q. Yes. A. Yes. I have been in there once or twice, three times.

Q. What was the general condition of the land in comparison to its condition today, Mr. Hogerman? A. Well, there is a lot of brush in there and a lot of water.

Q. Well, was there water there all the time, or how frequently was it there? A. Every time I went to the place, it was there.

Q. When you say water, how much water was there? A. Oh, I should judge about four to six inches, without measuring it.

Mr. Walscheid: How much?
The Witness: Four to six inches.

Q. At the times you went there, was the water generally over the lots, or only over it in spots? A. Over it in spots.

Q. And what proportion of the property in spots would be covered with water? A. Oh, I should say an area of about fifteen or twenty feet, without measuring it, just guessing at it.

Q. Just one area? A. Yes.

Q. Of fifteen by twenty, something of that kind? A. Somewhere in there, of different spots.

Q. Now, after you went in there in November,

did you have anything particular to do with changing the nature of this property? A. I had my orders to connect—to connect up a drain in there and carry it into the railroad drain.

Q. Now, has there been any difference in this condition that you have described since the drain has been constructed? A. There is quite some difference.

Q. What is the difference? A. We can get on around the outsides of it, where there is a small hole in there now that still has water in it.

Q. You think that it is improved, though, considerably, over the condition it was in before? A. Oh, yes.

Mr. Winne: You may examine the witness.
Mr. Walscheid: No examination.
The Court: We will take a recess until two o'clock.

(Recess.)

After recess. 2:00 o'clock P. M.

JAMES E. DAVENPORT, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. What is your occupation, Mr. Davenport? A. Superintendent of the River Division, New York Central Railroad.

Q. And in your department, do you have anything to do with the passage upon application for railroad sidings and spurs? A. Yes. We—we do. We originate them.

Q. And after they are originated, what happens

to them in your department? A. Well, we have to investigate the layouts, the operation of the siding that is proposed, and we take it up with the other departments with regard to traffic, engineering peculiarities. And when the final application comes through, it is necessary for us to approve it before it is accepted by our superior officer.

Q. And when you say it come before you for approval who actually does approve applications in the New York Central Railroad? A. Well, the General Manager is the final approval. The Division Superintendent personally approves each one before they are carried to the General Manager's office.

Q. And before they go to the General Manager's office, do they come before you? A. They come, personally.

Q. And your approval or disapproval accompanies them to the office of the General Manager? A. Yes.

Q. How long have you been engaged in this business, Mr. Davenport? A. Well, I have been railroading since 1909.

Q. How long have you been with the Central? A. Since 1909, the first day of August.

Q. All the time with the New York Central? A. Yes.

Q. And how long have you occupied the position which you now occupy? A. Since the first of January, this year.

Q. And before the first of January, this year, what was your position? A. I was Superintendent of the Adirondack Division at Utica.

Q. And while you were Superintendent of the Adirondack Division, were you doing the same kind of work? A. Yes.

Q. That is, in connection with the construction

of spurs or switches for industrial plants by the railroad? A. Yes. The work is identical. It is just a different territory, with a different size territory is all.

Q. Now, will you tell me how long altogether you have been engaged in that kind of work with the New York Central? A. Yes. I took the Superintendency of the Adirondack Division the first of February 1926.

Q. And before you were Superintendent of the Adirondack Division, were you engaged in the same kind of work for the New York Central? A. No. I was in what might be termed efficiency work. I was Superintendent of Fuel.

Q. I see. Now, did you look at this property in Ridgefield Park, lots one, two, three, four and five in Block 85, for the purpose of testifying here today, Mr. Davenport? A. Yes, sir; I looked at it.

Q. And when did you do that? A. Yesterday.

Q. Now, will you tell us whether, in your opinion, if an application for a railroad siding was made for use in connection with that piece of property, whether or not the New York Central would grant it?

Mr. Walscheid: I object as immaterial, incompetent and irrelevant.

The Court: What was the question?

(Question read.)

The Court: I think that is material because it has been testified by some of the experts produced by the appellants that it had a use as a railroad siding. Now, if the purpose of this testimony is to show that because of some reason or other that this witness will testify, it had no such use, I think that is competent.

Mr. Walscheid: I think he ought to develop that in the first instance before he is allowed to answer that question. In the second place, he was not with the railroad during the period of its availability. He came in there as of January 1, 1927, as I understand it, from the Adirondack Division.

The Court: Yes. That is true. But he is an expert with respect to railroad—

Mr. Walscheid: But he is not testifying to an expert fact. He is testifying to something which he says the railroad would actually do which, by inference, he wants us to infer the railroad would have done last year.

The Court: Well, I do not know how this witness can say what they might have done; but I suppose that is going to be brought out.

Mr. Winne: Of course, if your Honor please, if the witness cannot assign a reason for his answer, I take it, that his answer is valueless.

The Court: Yes. I think, myself, perhaps, it is putting the cart before the horse, but I will allow it, subject to be stricken out if it is not connected up. You may answer the question.

A. Well, what was that question? How was it worded?

The Court: Read it, Mr. Stenographer.

Q. (Question read.) A. That hinges upon the method of applying a side track. There are two ways to get into the property, one from the south off of what we call the westbound main track,

which siding would pass over the station platform. A plan of that kind would not be approved by myself as division engineer, as division superintendent.

Mr. Walscheid: I ask that that answer be stricken out.

A. (Continuing) The—

The Court: Go on.

Mr. Walscheid: I thought it was complete. Go on.

A. (Continuing) No. The other method of getting in would be to extend the team track which leaves the westbound main track north of the property, and if such a track was suggested for a siding into this piece of ground, I would O. K. it.

The Court: I will let the answer stand.

Mr. Walscheid: What I desire to call your Honor's attention to is this: That he is taking into consideration a factor which was then non-existent, namely, the station platform.

The Court: Well, I did not know that. I supposed he was talking about the platform that was there.

Mr. Walscheid: No. There was no such thing as a station platform then.

Mr. Winne: I think you will find there was a platform there.

The Witness: When was the time we are talking about, what date?

The Court: We are talking about the time before the present development.

Mr. Walscheid: Prior to November 3, 1926.

The Witness: There was a platform there.

Q. That is the platform you are talking about? A. Yes.

The Court: I assumed that was true.

The Witness: Yes.

The Court: That he was talking about the old platform.

The Witness: Yes.

Q. Now, let me develop this. Your testimony, then, Mr. Davenport, in both instances, has regard to approaching the property from the north? A. First—my first answer was from the south.

Q. Well now, will you step down here, please, Mr. Davenport? If you approach it from the south, this is the property we are talking about? A. Yes.

Q. Lot number five, about, would it go through the platform? A. The platform extended down across here (indicating).

Mr. Walscheid: I object to that testimony.

A. (Continuing) This is the new layout (indicating).

Q. Oh, that is the old layout without any reference to the new platform? A. Here are the Erie tracks?

Q. Here are the Erie tracks. A. Our prints indicate that there was a platform there approximately extending down from this street here (indicating).

The Court: What do you mean by a platform?

The Witness: The station, passenger station platform. It was a cinder platform, I understand.

The Court: A cinder platform from which the passengers alighted?

The Witness: Alighted from.

The Court: And to?

The Witness: The trains.

Q. Now, may I ask you if you know what a head-on switch is, Mr. Davenport? A. Yes, I think I do.

Q. Will you tell the jury what a head-on switch is? A. A better definition is our regular term, I think, facing point switch. That is, when the train approaches the switch, it faces the point of the switch.

Q. What is the practice in regard to the granting or non-granting of head-on switches? A. Head-on or facing point switches, we are opposed to them. We do not—we do not approve application for a side track with a facing point switch if there is any possible way of getting out of it.

Q. And in this case, a switch approaching in the direction from south to north would be a head-on or point face switch? A. That would be a facing point switch.

Q. A facing point switch. A. There is a team track up on this end of the village; it runs down here parallel with the main line (indicating).

Q. Indicating a point north of Mount Vernon Street on the railroad property? A. Yes. I cannot tell you just where it stops. It is right up in here (indicating). Now, an installation of that track upon that property would meet with our approval.

Q. That would carry you across the park property of the village? A. Yes. Across Mount Vernon Street and the park.

Q. And it would also cross Mount Vernon Street? A. Yes.

By the Court:

Q. You would approve that? A. Yes, sir; I would.

Q. Is there any difference in the attitude of the railroad since you have come with it than it was before, that you know of?

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

The Court: The objection is sustained, and the question is withdrawn.

By Mr. Winne:

Q. Mr. Davenport, who pays for the installation of switches of this kind? A. The railroad company pays from the point of clearance, that is, the point at which a car would be in the clear. The industry pays the remainder of the expense.

The Court: What do you mean by that, in the clear?

The Witness: The point at which a car would be—would not be afoul of the main track on the siding.

Mr. Walscheid: Where it leaves the right of way?

The Witness: No. Where it leaves—I cannot describe it, I do not think, any better. The clearance point is where the two tracks—a car could stand on one track and not foul the next track.

The Court: Yes. But that would be all of the siding then, wouldn't it?

The Witness: No. Oh, no. When you leave the main track with your siding, you veer away from it, and in the point at which a car would be far enough away from the main track not to foul the main track is what we call a clearance point. That is the point to which we carry the expense.

The Court: All right.

Q. And in discussing that point in relation to this team track, did you mean that the applicant would have to pay the cost from the clearance point near the team track to the property in question? A. Well, as that team track is in existence now, he would have to pay the expense from the point where he started to add onto the present track; in other words, it would be an extension of the team track he would be called upon to pay all the expense.

The Court: It was testified here, as I recall it, Mr. Davenport, that there was no team track nearer to this property than Fort Lee.

Mr. Winne: Little Ferry.

The Court: Little Ferry. Now, there is a—

Mr. Winne: That was by Mr. Green, I believe.

The Court: There is a team track there, is there?

The Witness: Yes, sir.

Mr. Walscheid: He thinks there is.

The Court: All right.

Mr. Winne: You may examine the witness.

Cross Examination by Mr. Walscheid:

Q. What do you mean by a team track? A. Why, a team track is this: A better definition would be a public siding.

Q. And when were you on this place? A. Yesterday.

Q. And was that the first time that you were there? A. No, sir.

Q. When were you there before? A. On the ground, or by there?

Q. On the ground. A. On the ground, I do not believe I have been there since about the 3rd day of January, and that was at night.

Q. So you did not see much that night? A. No.

Q. Isn't it a fact that what you have called a team track is on the property of the West Shore Railway? A. I understand it is, yes.

Q. Yes. And isn't it a fact that it is nothing more than a side track running up along the main line and immediately to the east of it? A. All team tracks are side tracks, yes, sir.

Q. On the West Shore Railroad property? A. Yes.

Q. Isn't it a shunting track upon which you shunt the cars and keep them there? A. We deliver cars, too.

Q. You deliver cars there? A. Yes.

Q. But you make no deliveries on that side track from the cars to motor or other vehicles, do you? In other words, there is no wagon way in there? A. I think we do, yes.

Q. Have you ever seen a wagon way in there? A. No.

Q. No. A. I never saw a wagon in there.

Q. And you never saw a wagon in there? A. No.

Q. And how long is this side track upon which you shunt these cars? A. I haven't—

Q. About a mile long, isn't it? A. No.

Q. Well, it is half a mile long, isn't it? A. Why, I say I don't know just how long it is. It appears to me to be about 15 car lengths long.

Q. How long is that? A. That is 40 times 15.

Q. Well, you are better at mathematics— A. That is 600 feet.

Q. Now, that is not the kind of a side track that a private concern would require, is it? A. Some of them require a side track of 600 feet in length, yes.

Q. The ordinary—and then it is on their private property? A. Not necessarily.

Q. Well, if it is on the railroad property,— A. They lease the land it is on.

Q. Oh, they lease the land it is on. This has not been leased, has it, this so-called side track that you talk about? A. No. That is a team track.

Q. That is what? A. A team track.

Q. Well, call it a team track. A. A team track.

Q. And yet you will not say that there was ever a team driven in there, was there? A. There is a wagon way for a team to drive in there. I have never seen a team in there. We call that a team track.

Q. Don't you know there is immediately to the east of the right of way a single track, and then on the other side, there is the fence of the railroad company? A. I do not know just how much distance there is between the fence and the track.

Q. Well, don't you know that it isn't wide enough even to allow a team to go up there and back up against the side of a car? A. I am not sure of that.

Mr. Winne: I object.

Q. You do not know, do you? A. No.

Q. Now, speaking about the platform. Do you know where the old station was located? A. Yes.

Q. It is located in the same spot now, isn't it? A. As I understand it, yes, on the opposite side of the railroad.

Q. On the west side of the railroad? A. Yes.

Q. The railroad right of way. And that is immediately at the foot of Mount Vernon Avenue, Mount Vernon Street, isn't it? A. It is south of it, of Mount Vernon Street.

Q. Well, it isn't more than five or ten feet south? A. There is a small building that is possibly five or ten feet south, but I think—

Q. That is where it begins, isn't it? A. What could be called the station proper is possibly 100 or 150 feet south.

Q. South? And 100 to 150 south of the south side of Mount Vernon Avenue? A. That would be my estimate, yes.

Q. That is your estimate. And the little building is to the north of that, isn't it? A. Yes.

Q. And did you ever measure the cinder path that runs down to the south from that station? A. No. I never did.

Q. Did you ever try to determine the end of that cinder path that you spoke about? A. I—

Q. To the south? A. The path, the platform that I referred to, was on the other side of the track from this station that you are talking about.

Q. Do you mean on the east side of the right of way? A. Yes.

Q. But there is no station there at all, is there? A. There was no building on that side. There is going—there is the makings of a station there today.

Q. I know. We are talking of the time prior— A. There was no building there.

Q. And I suppose, since you have been there, that building has always been there since you have been superintendent, or whatever your position is? A. Well, it is in the course of construction. Do you refer to the new station?

Q. Yes. A. The new building?

Q. Yes. A. Yes.

Q. And you have never seen the condition, you have never made an examination of the condition of the right of way of the West Shore Railroad Company on the east side of the right of way prior to the time that you came here as superintendent in January, 1927, did you? A. I—not being on the ground, I couldn't very well. I made an examination of the platform.

Q. Then you did not, did you? A. Not personally on the ground. I have made an examination of the print—

Q. When? A. —locating where that platform was.

Q. On the print? A. Yes.

Q. Where is that print? A. I do not know whether I have got it, or whether it is in—in my office (producing blueprint). This is a print that shows the location of the former platform; yes.

Q. What is the date of it? A. 1911, 1912; revision, March 1st, and 2nd, 1927.

Q. And revised March 12th, 1927? A. There is a revision on that date.

Q. That is the last revision? A. Yes.

Q. Can you tell me what revision was then made, or can you not? A. I cannot.

Q. You cannot? A. No.

Q. Can you tell me what revision was made in 1912? A. No.

Q. So that you cannot tell how far the old cinder platform that you have spoken about went prior to

the time that you came on the job in January, 1927, can you? A. I can only tell by assuming that that print is correct, that print—

Q. Assuming that that print is correct. You have just testified that you could not tell what the changes were which were made in March, 1927, is that right? A. I say I cannot testify as to what revision was made on that print in March, 1927.

Q. And you cannot tell what changes were made on the ground in March, 1927, either, can you? A. Only from—

Q. Without the aid of the print? A. Yes.

Q. That is right? A. I do not know the existing conditions before without being on the ground, so naturally, I cannot say what was—

Q. All right.

Mr. Walscheid: Now, I ask that this witness's testimony in relation to the existence of a cinder platform prior to January 1, 1927, be stricken from the record. I think he has plainly shown that he has no knowledge of it.

The Court: What do you say to that, Mr. Winne?

Mr. Winne: I think that probably is so. I think that the witness's testimony in regard to the switch approaching from north to south can stand, notwithstanding that.

The Court: Oh, yes.

Mr. Walscheid: All right.

The Court: I am assuming that this witness is testifying from general knowledge of where the cinders are. He knows where the station was and is, and he knows about what the practice is, and while it is true that he has not personally investigated it, he nevertheless comes pretty near knowing where the cinder track in all probability was; but not having been there and not having examined it personally, I think that is correct, and should be stricken out.

Q. Now, eliminating from the consideration of the topic the question of this cinder platform, the only other objection that there would be to placing a switch coming in from the south upon this property is the so-called head-on feature, is that right? Or what do you call it, the other name? A. Facing point.

Q. Facing point feature, is that right? A. That is not, no. That is not the only other objection. That is one objection.

Q. What other objection would there be? A. The other objection is that you could get into the property from a present switch.

Q. Oh, that is more feasible and easier to get in from another point? A. From the standpoint of operation, we do not clutter up the railroad with switches if we can avoid it. There was a question—

Q. Is there any other objection besides that one? A. So far as the operation is concerned, I see no other objection.

Q. All right. Now, you do have on the right of way of the West Shore Railroad Company so-called head-on switches, do you not? A. We do.

Q. And you have them in the County of Bergen, haven't you? A. We have.

Q. And you have them along this very right of way that runs through the Village of Ridgefield Park, haven't you? A. I am not just familiar with the limits of Ridgefield Park. We have.

Q. I did not limit you to Ridgefield Park. A. You said Ridgefield Park.

Q. The right of way which runs through the Village of Ridgefield Park? A. We have facing point switches in the vicinity.

Q. Where is the nearest one? A. Well, I cannot tell you.

Q. Isn't there one down at Little Ferry? A. There is one at Little Ferry.

Q. Yes. And that is within three-quarters of a mile of this point? A. Approximately.

Q. Isn't there another one north at Bogota? A. I am not sure. I have not been—

Q. You are not sure whether that is such a switch? A. There possibly is, yes.

Q. Yes. A. I wouldn't say there is, though.

Q. Isn't there one? A. So far as the location of these particular facing point switches, there are numerous facing point switches on the railroad. We cannot operate the railroad without them.

Q. I see. A. But we do not put them in if we can possibly avoid it.

Q. You do not like to put them in? A. We do not like to throw them in the path of operation.

Q. Do I understand this to be the gist of your testimony, that where it is possible, you prefer to put in the other kind of a switch? A. Absolutely.

Q. That is the gist of it, is it? A. And we go to quite some length to make the possible possible.

Q. All right. Thank you.

Mr. Walscheid: That is all.

Mr. Winne: I would like to recall Mr. Mix for just a moment.

HOWARD A. MIX, recalled as a witness on behalf of the respondent, testified as follows:

Mr. Winne: I did not know this question of a team switch was going to seem so important.

Direct Examination by Mr. Winne:

Q. Do you know where this switch is that Mr. Davenport referred to as a team switch, Mr. Mix? A. Yes.

Q. And do you know whether teams can and do get in to railroad cars on the team switch? A. They do.

Q. Have you seen them yourself? A. I have.

Q. Now, were you on the ground here on November 3, 1926, Mr. Mix? A. I was.

Q. And can you tell us with reference to the map where the cinder station platform of the West Shore track was on the 3rd of November, 1926?

Mr. Walscheid: Where it terminated, the southerly end, put an "X" there at my suggestion.

A. (Marking on map.) Now, that "X" indicates the southerly end of that cinder path. Not knowing the scale of this map, I have indicated it as a certain distance below Mount Vernon Street, 780 feet. I imagine that would take it down,—the scale of this map, one inch equals 40 feet—it would be about 19 to 20 inches down here.

The Court: Do you want a ruler? Let him have a ruler.

Mr. Walscheid: All right. He is giving us two, now.

The Witness: I will remove the first one.

Mr. Walscheid: No. Leave it there; it is on there.

The Witness (measuring with ruler on map): 19 inches, 780 feet.

Q. Do I understand that that is a landing platform that the passengers use alighting from train service? A. It is.

Q. And it extends beyond the entire limit of the property in Block 85 that we are talking about? A. It does.

Mr. Winne: You may take the witness.

Cross Examination by Mr. Walscheid:

Q. How long is a passenger train of ten cars? A. A passenger train of ten cars is about—they figure it at about 780 feet, and that is why the platform is 780 feet.

Q. I see. And you usually stop your passenger cars so that the middle of the train comes opposite the station, do you not? A. What is that, Sir?

Q. (Question read.) A. That is not a general practice.

Q. Well, this particular cinder path ran north of Mount Vernon Street, too, didn't it? A. It did not run north of Mount Vernon Street.

Q. Well, wasn't there any cinder path north of Mount Vernon Street? A. There was not a cinder path—there was not a cinder platform north of Mount Vernon Street.

Q. Was there a cinder path north of Mount Vernon Street? A. There was a cinder path leading to an overhead bridge.

Q. And how long was that cinder path north of Mount Vernon Street on the east side of the railroad right of way? A. That cinder path did not go along the railroad right of way. It directed

passengers from the overhead bridge to Railroad Avenue. I should say it was about 30 feet long, about right angles to the railroad tracks.

Q. All right.

Mr. Walscheid: That is all.

Mr. Winne: I recall Mr. Davenport.

JAMES E. DAVENPORT, recalled as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Now Mr. Davenport, with this information that there is a passenger cinder platform 780 feet north of Mount Vernon Avenue, I will ask you if, in your opinion, a face-on switch would be granted to an applicant, if such an application was made by someone owning this property in question?

Mr. Walscheid: I object to that as calling for a conclusion, and immaterial, incompetent and irrelevant, and of no probative value.

The Court: I will allow it.

Mr. Walscheid: I pray an exception.

The Court: You may have it.

A. No. I would not approve a switch in that location.

Q. Well, and if you disapproved a switch, what would be the result of that on the New York Central Railroad? A. Why, the industry wouldn't get that siding.

Mr. Winne: That is all.

Cross Examination by Mr. Walscheid:

Q. That is your opinion? A. Yes.

Q. Now, you answered that "Yes", that that was

your opinion; is that right, Mr. Davenport? A. Yes.

Q. How many feet below the place to the south, how many feet below the place where such a siding would strike this property, how many feet below to the south of that, if it were located, would that siding leave the main track? A. What is that question? How many—

Q. How many feet below to the south, say, supposing that it entered the property at this point just west of Herbert Street, how many feet down to the south would that switch leave the main track, come out of the main track? A. Well, that depends upon the width of your right of way there. That is an engineering question, I would say, approximately, from the looks of that map, oh, a matter of 150 feet.

Q. From that point the siding could leave the main track and enter the property without undue curvature, and it also could leave it much further south, couldn't it? A. It could leave it, oh yes. It could leave it at Little Ferry, for that matter.

Q. Yes. And it could leave it at Little Ferry, for that matter. And could be on the east of the cinder track or part of the platform, couldn't it? A. Oh yes.

Mr. Walscheid: That is all.
Mr. Winne: That is all.

ALFRED A. RHODES, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Mr. Rhodes, where do you live? A. Ridgefield Park.

Q. How long have you lived in Ridgefield Park? A. 17 years.

Q. And what is your business? A. Real estate broker and insurance.

Q. And has that been your business during your entire residence in Ridgefield Park? A. I have been in that business there for 16 years.

Q. Do you have an office in Ridgefield Park? A. Yes, sir.

Q. In addition to that, do you hold any public position in Ridgefield? A. I am a member of the board of assessors in the village.

Q. How many assessors are there in the village of Ridgefield Park? A. Three.

Q. How long have you been a member of the board of assessors? A. 8 years.

Q. Now, during the 16 years you have been in business, in the real estate business, in Ridgefield Park, Mr. Rhodes, have you acted as broker in the purchase and sale of real estate in that municipality? A. Ridgefield Park and vicinity.

Q. Yes. A. Surrounding towns.

Q. Well now, for the moment, confining your remarks to what you have done in Ridgefield Park, what would you say were the average sales that passed through your office concerning which you have first-hand personal knowledge over that period of time? A. The average sales per year, probably the average would be $70,000.00 to $100,000.00 a year.

Q. What kind of properties would these be, all dwellings, or partly dwellings and partly business property? A. Dwellings and business.

Q. Both, Mr. Rhodes? A. Yes, sir.

Q. In addition to that, you have had experience in the purchase and sale of property out of the village of Ridgefield Park; is that correct? A. Yes. But mostly in Ridgefield Park.

Q. Now, in your position as assessor, do you have occasion to investigate purchases and sales of real estate for the purpose of finding the true consideration— A. I investigate practically all sales.

Q. For what purpose? A. For the purpose of ascertaining the consideration, the purchase price.

Q. And do you have anything to do with other brokers and find out what properties they have listed with them continuously? A. Yes.

Q. Now, do you know this property that is the subject of the inquiry before the jury, Mr. Rhodes? A. I do.

Q. And how long have you been familiar with the property? A. Oh, my office has been within 100 feet of it for 16 years.

Q. Now, directing your attention to the 3rd day of November, 1926, can you tell us what in your opinion was a fair market value for that property on that day?

The Court: Do you wish to examine him as to his qualifications?

Mr. Walscheid: No.

The Court: You may answer it.

A. The fair market value, I figure that property worth $40.00 a running foot.

Q. And speaking of— A. The market value of approximately $7,300.00.

Q. Speaking of a running foot, you mean on what particular street, or— A. Herbert Street.

Q. A running foot on Herbert Street. Now, what in your opinion is that property best adapted to be used for as of November 3, 1926? A. Why, I have yet to find a purpose that the property would be suitable for. It has absolutely no method of approach except Hobart Street.

Q. Herbert Street? A. Herbert Street. Herbert Street at that time was absolutely unimproved. There was a tree in the middle of Herbert Street a few feet from Mount Vernon. It was practically level for 50 feet, and then a sheer drop of ten or 12 feet into a great big mud hole. You couldn't get a horse in there if your life depended on it at that time.

Mr. Winne: You may take the witness. That is all.

Cross Examination by Mr. Walscheid:

Q. You are one of the three gentlemen who made the award, aren't you? A. No, sir.

Q. Who makes the awards in your municipality? A. The assessment commission, which has nothing to do with our board at all.

Q. Doesn't the Board of Assessors, under the law? A. No, sir.

Q. Don't you operate under the Home Rule Act, which provides that the Board of Assessors shall make these awards? A. The assessment commission is an absolutely separate body—

Q. All right. A. —from the Board of Assessors.

Q. And how long have you been assessor? A. About 8 years.

Q. And, of course, as an assessor of the township, it is your business to keep valuations down, isn't it? A. Down to a certain point.

Q. That is it. Down to a certain point? A. Down to the same valuation as the surrounding municipalities.

Q. Are you under subpoena here today? A. No, sir.

Q. Have you any interest in this case? A. None

whatever. The Mayor asked me if I would come over and see Mr. Winne this morning.

Q. Have you any connection with the railroad company? A. None whatever.

Q. And have you made any arrangement to be paid for services here today? A. No, sir.

Q. By the railroad company? A. No, sir.

Q. Are you to receive $50 for appearing here today? A. The consideration for appearing here has never been mentioned by any person. I do not know whether I will get a cent for it.

Q. Did you mention it to anybody? A. No, sir.

Q. Now, you consider this piece of property useless, do you? A. Well, almost useless. It certainly is not worth a cent more than the other side of Herbert Street, and there is not a single front foot 100 feet from Mount Vernon Street except perhaps Paulison Avenue or Railroad Avenue that is worth more than $40 or $50 a running foot.

Q. You are a bear on the market in Ridgefield Park, aren't you? A. Well, I am.

Q. Yes or no? A. A bear in the sense that I haven't any sympathy with some of the opinions that have been expressed here today. I own property directly across the street from Herbert Street, and I learned with amazement this morning how rich I was.

Mr. Walscheid: I object to that. One moment. I guess that is all.

Re-direct Examination by Mr. Winne:

Q. You got rich this morning, Mr. Rhodes? A. I learned how rich I was this morning.

Mr. Winne: Now, I will have Mr. Lewis, please.

WILLIAM H. LEWIS, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Will you tell us your business, Mr. Lewis? A. Land and Tax Agent for the New York Central Railroad.

Q. How long have you been the Land and Tax Agent for the railroad? A. Since 1923.

The Court: I did not get that title.
The Witness: Land and Tax Agent.
The Court: Land and Tax Agent?
The Witness: Yes, sir.
The Court: All right.

Q. And what is your position; that is, what are the duties of your position, Mr. Lewis? A. Why, buying land, adjusting assessed valuations, figuring rental values.

Q. And— A. And such land work.

Q. —since 1923, has the territory in which Ridgefield Park lies been under your supervision? A. No.

Q. Is it now? A. It is now.

Q. When did it become so? A. The latter part of 1924; I think it was in October, 1924.

Q. And as Land and Tax Agent for the New York Central Railroad, do you know the prices that have been paid by the New York Central for property in the vicinity of this property we are talking about? A. I do.

Q. How many such pieces of property can you refer to as having knowledge, of your own personal knowledge, of the sale price? A. Over what period of time, Mr. Winne?

Q. Well, say in the last four years? A. Why, I

personally have bought perhaps five or six since 1925. Prior to that, from 1922 to 19—or to the present date, perhaps, there have been twenty-five or thirty parcels.

Q. And you have personal knowledge of the prices that the railroad has paid for the properties that have been purchased? A. Yes, sir.

Q. Will you tell us, sir, of such properties as you are discussing that the railroad has bought, in comparison with this tract? A. Well, in Ridgefield Park, I should say they range in area perhaps from one-quarter of the size of this piece to perhaps a size about the same, or perhaps a little bit larger. I cannot tell offhand.

Q. Now, do I understand that a great many of these parcels were in the acquisition of railroad property in Ridgefield Park? A. Yes, sir.

Q. How many of them, Mr. Lewis? A. I think I have a record of about fifteen or eighteen such pieces.

Q. And how recently are those transactions? A. Those were mostly all in 1922. Some in 1923.

Q. Did you negotiate the sale of the property from Mabus to the railroad that has been testified to? A. Yes, sir.

Mr. Winne: I offer Mr. Lewis as an expert.

Mr. Walscheid: May I examine him for a moment?

By Mr. Walscheid:

Q. What other properties did you personally negotiate besides that Mabus piece since 1922? A. Why, there was—there were—I think there were three on Railroad Avenue.

Q. Where is Railroad Avenue? A. That is north of the parcel; north of Mount Vernon Street.

Q. And parcels paralleling the railroad? A. Yes, or at right angles. They were parts of lots mostly.

Q. Strips to fill up to straighten out the line? A. They were acquired for the purpose of the relocation of Railroad Avenue through the Village of Ridgefield Park.

Q. How many of those, three, you say? A. I say about twenty; something like that.

Q. All at one time? A. Well, not all on the same day.

Q. No. You know what I mean. A. All the same year.

Q. All the same period of time? A. Yes; about the same.

Q. How long ago was that? A. January 1922 and '23.

Q. And since that time, you had no operations in Ridgefield Park, personally? A. Until the acquisition of the Mabus piece; that was the last parcel that we acquired. I do not recall. I think there was one or two, perhaps, between 1922 and 1926.

Q. But you did not handle them? A. I may have handled one; I am not sure of that,—

Q. Where is it? A. —without referring to my notes. Well, I think the parcel is between Mount Vernon Street and north of that street somewhere.

Q. Well, don't you know where it is? You say you think. Don't you know where it is? A. Well, I will say it is north, yes, it is north of Mount Vernon Street.

Q. Well, the whole world is north of Mount Vernon Street. A. Well, between Mount Vernon Street and a point 500 feet north thereof.

Q. And whereabouts in that section? A. Probably about in the middle somewhere, I think.

Q. Whose property was it? A. I think their name was Hoyt. Agnes Hoyt was the owner.

Q. Agnes Hoyt? A. Yes, sir. I think that was along in 1923 or '24.

Q. And the only purpose for which you have bought property is for the railroad? A. That is all.

Q. And outside of your duties of looking for property for the railroad who require it, what other duties do you perform for the railroad? A. Why, after the properties are acquired, I meet the boards of assessors or the state board over in Jersey, the Hudson County Board, or the Bergen County Board, and adjust the valuations.

Q. Tax matters? A. Yes; for the following year.

Q. For the purpose of taxation? A. That is all.

Q. And any other duties? A. Why, when called upon, I make an estimate as to the value of railroad lands, or take the matter of leasing, or estimate the approximate cost of proposed acquisitions along the railroad.

Q. All for railroad purposes? A. All for railroad purposes.

Q. Have you stated generally what your work is, or is there anything else? A. No. I think I have stated in a general way.

Mr. Walscheid: Now, I submit that this man has not such a general idea of real estate values in that community as to qualify him as a real estate expert.

The Court: I will allow it.

Mr. Walscheid: I pray an exception to the line of questions which is to follow.

The Court: Yes, you may have it.

By Mr. Winne:

Q. Mr. Lewis, will you fix a value of lots one,

two, three, four and five, Block 85, on the Assessment Map of the Village of Ridgefield Park as of November 3, 1926? A. Yes, sir; I will.

Q. Will you tell us what that is? A. 60 cents a square foot.

Q. And inasmuch as we have agreed that averaged 15,500 square feet, that would be $9,300.00? A. I think that will figure it. Whatever that will figure out to be. 15,500 times 60, I think, is about ninety-three. I think that is right.

Q. What do you base that on, Mr. Lewis? A. I base it on my knowledge of prices paid for land from 1922 to the present date, or, well, up to that time, I will say. I do not want to go beyond that date.

Mr. Winne: You may take the witness.

Cross Examination by Mr. Walscheid:

Q. And that is the value as of November 3, 1926? A. Yes, sir.

Q. $9,300.00? A. Well, if that is the correct figure.

Q. Well, what is the exact total?

Mr. Winne: That is right, isn't it?

Mr. Walscheid: $9,300.00, I am assuming that.

Q. Now— A. That is right.

Q. —you bought the Mabus piece, did you? A. Yes, sir.

Q. And how much did you pay for that? A. I paid $3,500.00.

Q. $3,500.00? A. Yes, sir.

Q. And that is this narrow strip here, isn't it? Just come down and look at it (indicating). A. That is right.

Q. And that is on the side of a sort of an embankment, isn't it? A. The upper level is about eight feet above the tracks, I think, seven or eight feet, roughly speaking.

Q. And from that upper level, the land in turn rises higher, doesn't it? A. There is a slight—yes, up.

Q. There is an up grade? A. Yes; from there up to the street.

Q. And this is part of the bank, this strip, that you bought in there? A. Yes, sir. It has now been—

Q. It has now been levelled down? A. Well, it has been scooped out, or—

Q. Brought down to the level of the right of way? A. Yes. Brought down to the level—no, there is a one and a half to one slope on one side; there is now.

Q. There is there, now? A. After the work was done.

Q. And before that, what was the slope? A. Oh, I should say perhaps about one and a half to one, but not quite—the bank wasn't as high as it is now.

Q. And do you know what the approximate square foot area of that tract is? A. Why, something over five thousand. The rate that I paid was—

Q. Never mind. A. Oh.

Q. How much over five thousand? A. Well, I can tell you. I have the figure right here.

Q. All right. A. Our bid shows 5,276 square feet.

Q. That is just a little bit more than two ordinary city lots, 25 feet by 100, isn't it? A. That is right.

Q. And so that, in buying that property, you

bought it at the rate of $1,750.00 per surface area of an ordinary city lot? A. That is about right, yes.

Mr. Walscheid: That is all.

Mr. Winne: That is all.

FRED M. FOUNTAIN, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Where do you live, Mr. Fountain? A. Hackensack.

Q. How long have you lived in Hackensack? A. 37 years.

Q. And what is your business A. Real estate and insurance.

Q. Have you ever had any other business? A. Never.

Q. And before you were in the real estate and insurance business in Hackensack, what educational advantages have you had? A. I graduated from Rutgers College in 1912.

Q. Speak so the jury can hear you? A. I graduated from Rutgers College in 1912.

Q. And have you had an office in Hackensack ever since then? A. I have.

Q. In your experience in the real estate business, have you personal knowledge of sales in municipalities in this County, Mr. Fountain? A. I have.

Q. And during all that period of time? A. Yes.

Q. Will you tell us, first, during the year 1926 the volume of business that you have, or personal knowledge of having consummated the sales of yourself in Bergen County? A. About one million, seven hundred thousand.

Q. And during the year 1925? A. About eight hundred thousand.

Q. About eight hundred thousand? A. Yes.

Q. And as the years go back, would the average be less, Mr. Fountain? A. Surely.

Q. Well, about what woud they average up for a half a dozen years before 1925? A. I suppose they would average up a hundred thousand each year for three or four years.

Q. So that for the last eight years, you have each year done considerable over $100,000.00? A. Oh, yes.

Q. Now, where would these sales be? I direct your attention more particularly to 1925 and 1926. In what municipalities? A. They would be in Hackensack most generally, and Maywood, and Teaneck, Little Ferry, Ridgefield, I mean River Edge, Oradell.

Q. The general character of the towns similar to Ridgefield Park? A. Very similar.

Q. Did you ever hold any position in the real estate associations in this vicinity? A. I was a charter member of the Real Estate Board and president for its first two years.

Q. What Real Estate Board is that? A. Hackensack.

Q. President for two years of the Real Estate Board of Hackensack? A. Yes, sir.

Q. And do you make it your business to keep posted as well as you can on valuations in other municipalities? A. I do.

Q. Do you do any appraising, Mr. Fountain, for any financial institutions? A. I am appraiser for the Hackensack Mutual Building and Loan and the Hackensack Bond and Mortgage Company.

Q. Does that bring you into Ridgefield Park? A. That does.

Q. Have you knowledge of property, the values, in the Village of Ridgefield Park? A. I have.

Mr. Winne: I offer Mr. Fountain as an expert.

Mr. Walscheid: No objection.

Q. Now Mr. Fountain, have you seen this property, lots one, two, three, four and five in Block 85? A. I have.

Q. And when did you see it? A. Saturday morning. Last Saturday morning.

Q. Did you view it for the purpose of testifying? A. I did.

Q. And did you view the neighboring property? A. Yes, sir.

Q. Do you know the condition of the streets in the vicinity of this property? A. I do.

Q. What, in your opinion, was the value of these five lots on the 3rd day of November, 1926? A. $7,500.00.

Q. Now, will you tell us how you fixed that price? A. I value the first four lots at $5,000.00, and the remainder of the property at twenty-five hundred.

Mr. Winne: You may take the witness.

Cross Examination by Mr. Walscheid:

Q. And for what uses did you appraise it? A. For business purposes.

Q. What kind of business purposes? A. Possibly a garage, service station or a warehouse.

Q. And what kind of a warehouse? A. A storage warehouse.

Q. How large? A. How large?

Q. Yes? A. Well, that would cover the ground.

Q. And how many stories high? A. Oh, possibly two or three. They are usually built about three.

Q. Possibly two or three? A. Three or four.

Q. Three or four? A. Yes.

Q. Isn't it a fact that you didn't take that into consideration at all? A. No.

Q. What? A. No. It isn't a fact.

Q. Well then, if you did take it into consideration, why are you so indefinite? Why don't you know whether you took a building one story into consideration, two stories, three stories or four stories? A. I don't think that is of particular importance.

Q. Of no importance, is that it? A. No.

Q. No importance? A. I might build a three or four story.

Q. Did you take any other uses of that property into consideration? A. I did not.

Q. Did you take into consideration the question of whether or not it was particularly available as part of a railroad terminal? A. I did not.

Q. You did not? A. No.

Q. It is particularly available for that purpose, isn't it? A. It is now; yes, sir.

Q. It is now? A. Yes.

Q. And then, of course, it was in November, 1926, wasn't it? A. Yes.

Q. Yes. Did you take into consideration the question of whether or not it was particularly available for industrial purposes with siding? A. I do not think it is available.

Q. Did you take it into consideration? A. Yes.

Q. And you come to the conclusion that it is not available? A. It is not.

Q. Why? A. I do not think it is large enough.

Q. What? A. I do not think it is large enough for industrial purposes.

Q. Not large enough for how many cars? A. For how many cars?

Q. Yes. A. I don't—I don't know what you mean by how many cars.

Q. Well, what would you think the siding would be used for? A. I don't—I didn't think a siding could go in there, to begin with.

Q. I see. You didn't think a siding could go in there? A. No.

Q. Isn't it a fact that you didn't give it any consideration at all? A. No. It is not a fact.

Q. You did give it consideration? A. Yes, sir.

Q. How long is the average car? A. About forty feet.

Q. And how long is the whole length of the property on Herbert Street? A. On Herbert Street?

Q. Yes? A. 235 feet.

Q. And you thought that a forty-foot car couldn't be run in onto a strip of two hundred and forty odd feet?

Mr. Winne: I object. The witness did not say that.

The Court: It is proper cross-examination. Did you so consider it?

The Witness: Repeat that question, please.

(Question read.)

A. I did not think that the property was right for an industrial purpose.

Q. Please answer my question. You said before the property was not long enough? A. Yes. It was not big enough.

Q. Do you still adhere to that proposition? A. I said it wasn't big enough.

Q. Not wide enough? A. Not in that way at all.

Q. Well, it only requires width and length, doesn't it? A. Well, that is just for your siding. I am talking about building.

Q. Well, it is 100 feet wide, isn't it? A. Yes.

Q. How wide is a car? A. It is 100 feet in the rear.

Q. How wide is the ordinary freight car? A. I should say about ten feet.

Q. Ten feet, and forty feet long? A. Yes.

Q. And you mean to say that you couldn't run at least three such freight cars on that track? A. I didn't say that you couldn't.

Q. Well, can you? A. I do not know.

Q. As a mathematical proposition? A. I suppose you can, as a mathematical proposition.

Mr. Walscheid: That is all.

Re-direct Examination by Mr. Winne:

Q. If you had three freight cars on the track, Mr. Fountain, you wouldn't have much room for building, would you? A. I don't think so, no.

Q. Will you tell us why you did not consider this property as available for industrial purposes in comparison with other properties? A. I can submit properties of much larger area in other parts of the Country for less money than that, a good deal less money.

Mr. Winne: That is all.

Re-cross Examination by Mr. Walscheid:

Q. That will serve Ridgefield Park? A. That will serve other towns.

Q. Will it serve Ridgefield Park? A. No.

Q. No. Can you find any other property in

Ridgefield Park that will serve Ridgefield Park with a siding? A. Not to my knowledge.

Q. Not to your knowledge? A. No.

Q. And you say that the property was not large enough. Couldn't you put the buildings over the siding? A. You could possibly do that; but there was only 1500 square feet.

Q. Yes. But it is only 100 feet wide? A. Yes.

Q. And isn't it usual practice to put in a siding and a warehouse and buildings over that? A. Sometimes.

Mr. Walscheid: That is all.
Mr. Winne: That is all.

JOSEPH L. RUSCH, sworn as a witness on behalf of the respondent, testified as follows:

Direct Examination by Mr. Winne:

Q. Where do you live, Mr. Rusch? A. Bogota.

Q. And what is your business? A. Real estate.

Q. How long have you been in the real estate business altogether, Mr. Rusch? A. Well, about two and a half years.

Q. And that is in this County during that length of time? A. Yes, sir; this County.

Q. Before that, did you have any experience in the real estate business? A. Well, I was with outdoor advertising interests for six years.

Q. While you have been in the real estate business in Bergen County, where have you established your office? A. Leonia.

Q. You are a member of the firm, are you, Mr. Rusch? A. Yes, sir.

Q. What is the firm name? A. Rusch & Boyd.

Q. Directing your attention first to the year 1926, what volume of business did you do in which you have personal knowledge, as either a principal or broker, of sale or purchase of real estate in Bergen County? A. About a million, three hundred thousand.

Q. In the year 1925, Mr. Rusch? A. About five hundred thousand.

Q. Where were these properties located?

Mr. Walscheid: What was the last year?

The Witness: Five hundred thousand for 1925.

Q. Where were these properties located? A. All over the County.

Q. Now, will you just name some of the municipalities? A. Well, Alpine, Bogota, Leonia, Hackensack, Maywood, Cresskill, Norwood.

Q. So that you have general information concerning real estate sales during the last two years over the eastern part of the County? A. Yes, sir.

Q. Quite generally. Did you look at this property? Let me ask you, have you had any sales in the Village of Ridgefield Park proper? A. No.

Q. Did you look at this property, lots one, two, three, four and five in Block 85, for the purpose of testifying here, Mr. Rusch? A. Yes, sir.

Q. When did you look at them? A. Last Saturday.

Q. Are you generally familiar with that neighborhood over a period of years. A. I have had property for sale there on that street.

Q. You have known where it was, and the general locality? A. Yes.

Q. Before you went there on Saturday? A. Yes.

Q. Are you competent to give us your opinion as to the value of that property, fixing the date as of November 3, 1926, Mr. Rusch? A. Yes, sir.

Q. Will you tell us what, in your opinion, that property was worth, lots one, two, three, four and five, in Block 85, on the Assessment Map of Village of Ridgefield Park on November 3, 1926? A. $8,000.00.

Q. Now, how do you arrive at that figure, Mr. Rusch? A. Well, I figure it at the rate of $50 a foot for the four lots, and $3,000 for the odd size lot.

Q. What in your opinion, could that property be best used for, fixing the time as of November 3, 1926? A. Well, it is possible business property, mercantile property.

Q. Possible business property? A. Yes, sir.

Q. On November 3, 1926, would you say it was business property? A. Well, I say, possible, meaning that it would be used for that some day, depending upon the trend in Ridgefield Park.

Mr. Winne: You may take the witness.

Cross Examination by Mr. Walscheid:

Q. And you do not think there is a trend in Ridgefield Park? A. Yes, sir; I do.

Q. Is the trend upward? A. The trend as far as growth of business is concerned is not upwards this property. It is where the population is.

Q. What do you know about the business of Ridgefield Park? A. The business center?

Q. No. You spoke about business. A. Yes, sir.

Q. What do you know about the growth of business in Ridgefield Park? A. Well, I know real estate values have gone up there.

Q. Well, you spoke about a growth of business. A. I mean trend, the trend, the direction in which business grows.

Q. What do you know about the growth of busi-

ness itself in Ridgefield Park? A. I know it has been growing up and down Main Street, if that is what you are asking.

Q. What is the volume of the business in Ridgefield Park per year? A. I do not know.

Q. But what you mean to convey is, you know where business has located itself. A. Yes, sir. The trend of—

Q. The trend? A. Yes, sir.

Q. The trend, the location? A. Yes, sir.

Q. How old are you? A. 25.

Q. 25? A. Yes, sir.

Q. And in the real estate business two and a half years? A. Two and a half years.

Mr. Walscheid: That is all, Mr. Rusch.

Mr. Winne: That is all. The respondents rest.

Mr. Walscheid: We rest.

(Testimony closed.)

Mr. Winne sums up the case to the jury on behalf of the respondent.

Mr. Walscheid sums up the case to the jury on behalf of the appellants.

Charge.

PORTER, J.:

Gentlemen of the Jury: On November 3rd, 1926, the Village of Ridgefield Park acquired by right of eminent domain the land that is depicted on that map, and which you have visited and viewed, known as lots one, two, three, four and five of Block 85 on the map of the Village of Ridgefield Park, and that land at that time was owned by

the Overpeck Land Corporation and John J. Chello; they owned it together equally; and under the power that the municipality had to take private property for public use, it acquired it, and it then caused a valuation to be placed upon it in order that the amount of the value should be awarded, and that was done in the method provided by statute, and the assessment commissioners valued it at $7,500.00. And the owners of the property who are the appellants in this issue came to this court and appealed from that award, and under the law they have a right to appeal and to have the value fixed by a jury specially drawn, what is known as a struck jury, and in pursuance with the statute the court has empanelled the requested number of jurors from which you have been selected to try the issue that is presented in this appeal; and the issue that you are to determine is an issue of fact, that issue of fact being, what is the market value of this land as of the date of taking, November 3rd, 1926? And by your verdict you will determine that issue of fact.

It is the function of the court to explain to you the law governing the situation, and you will accept what the court says on that head as being a correct statement of the law. You are the sole judges of the facts, and you will find the facts from the testimony that has been adduced before you, plus your own visit and inspection of the property, and you will weigh the testimony and give it such weight as you think it is entitled to. Largely the testimony in this case is the testimony of experts. It is opinion testimony, testimony given by various witnesses who have been qualified here as experts, and the question of whether or not they are qualified to give opinion testimony is a matter within the sound discretion of the court, and it has

seemed to the court that all of the witnesses that were permitted to testify were properly qualified as men with peculiar knowledge that enabled them to give their opinion; but, nevertheless, you heard the examination by counsel of the various witnesses looking to their experience, looking to their qualification, and you will weigh and consider the testimony of the various experts as you may find it of value according to the experience and judgment that they may possess; because, after all, you are to decide what weight to give to the testimony of the various witnesses.

Private property, under the constitution of this State, shall not be taken for public uses without there being paid to the owner just compensation. Just compensation means the payment of such a sum of money to the owners of the property proposed to be taken as will make them whole, so that upon the receipt by them of the compensation awarded, they will not be any poorer by reason of their property being so taken or damaged. In other words, the issue is not what was the value of this property to the Village of Ridgefield Park, but what was the deprivation of the owners? How much poorer are they by reason of this property having been taken?

In estimating the value of property taken for public use, it is the market value of the property which is to be considered. In this case, your consideration is directed to the market value of the property taken under the right of eminent domain as of November 3rd, 1926. Your verdict will speak from that time, and your verdict will be the amount of money that you consider the fair market value as of that time, with interest, and the Clerk will compute the interest so that all you need do is to find the value as of that time with interest, and

the actual computation of the interest will be done by the Clerk of the court. The market value of this property as of that date was the price which it would have brought had it been offered for sale by one who desired but was not obliged to sell it, and was purchased by one who was under no necessity of having it. That is the rule that must govern you in fixing this value. Let me repeat, that the market value as of that date was the price that it would have brought had it been offered for sale by one who desired but was not obliged to sell it, and was purchased by one who was under no necessity of having it.

The law gives as compensation to the owner of lands taken for a public use its fair price for any use for which it has a commercial value of its own in the immediate present, or in reasonable anticipation in the near future; but it excludes speculative and possible uses if improvements and changes were made. What is meant by that is that if a tract of land were sold without public improvements, it would not be proper nor competent to show what the value of that land would be when improvements were put thereon, when sewers might be built, when streets might be cut through, when all sorts of improvements were made, because the law says that is too speculative. The law says that you cannot know definitely whether after those improvements were made the property could be sold and, if so, how readily, and at what price. And for that reason the rule has been laid down by our higher courts, as I have stated it, and quoting from the opinion of one of the leading cases on that point, let me further say that it is this: The rule limits the proof to the present condition of the land and the uses to which it is naturally adapted, but excludes possible and speculative uses if improvements and changes were made.

"There has been some testimony in this case with respect to the zoning ordinance of the Village of Ridgefield Park, and it appears from the ordinance known as the zoning ordinance that this particular piece of land can only, under the terms of that ordinance, be used for certain uses. That was put in on the theory that that excluded the use of this property for any use except those that were mentioned in the ordinance, and that would be true if the ordinance was enforceable as written. But the Court of Errors & Appeals, our highest court, has in many cases, beginning with what is known as the Nutley case, which was decided in 1924, held many of these ordinances invalid if they attempted to deprive the owner of the property of his property by restricting its use, unless it was necessary to do that for the promotion of the public health, the safety and the general welfare of the community. In other words, if the ordinance prevented the building of a store in a certain district which was put down in the zoning ordinance as a purely residential district, our Court of Errors & Appeals would set aside or hold invalid that provision of the ordinance with respect to a certain piece of property in that zone where a store or an apartment house might be sought to be built, unless it could be shown that the building of a business property or an apartment was in fact against the public health, the safety or the general welfare of the people. So when you consider the evidential value of the ordinance which was introduced, you must keep in mind what I have said with respect to the law of the State as enunciated by our Court of Errors & Appeals with respect to the extent to which property may be restricted by the governing bodies of the various municipalities."

I am asked to charge on behalf of the respondent, the Village of Ridgefield Park, who is brought here by the owners and who comes here to present its side of this controversy, certain requests to charge, and I have also been requested to charge on behalf of the owners of this property certain specific things, and even at the expense of a repetition, because I have already covered some of the matters that have been requested, I will charge as follows on behalf of the respondent, Village of Ridgefield Park:

(1) The rule of law applicable to the condemnation of land for use as in this case is that the owner shall be given by way of compensation a fair price of the land at the time taken for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the future. I so charge.

(2) The advantage to the Village of Ridgefield Park cannot be considered in computing the value of the land to the owner. I so charge.

And (3): The land owner should be compensated for any special value growing out of the best use to which the land was presently adapted on November 3rd, 1926, but this should not include any speculative profits. I so charge.

On behalf of the owners, the appellants in this case, I am requested to charge as follows:

(1) The appellants in this proceeding are entitled to have the fair market value of the property taken by the municipality fixed by the verdict of the jury as of the 3rd day of November, 1926. I so charge.

(2) The appellants are entitled to a verdict for such an amount of money as represents the fair market value of the property taken by the mun-

icipality; such fair market value to be calculated and arrived at by the jury upon the basis of the most advantageous and valuable use or uses to which said land might have been put on the 3rd day of November, 1926. I so charge.

(3) In arriving at the amount of money to be awarded to the appellants for the property taken, it is the duty of the jury to consider all uses to which, in their opinion, under the evidence in the case, or by reason of their view of the land, or by reason of both such evidence and such view, the land taken was adapted or might be put, and to award compensation to the appellants upon the basis of the most advantageous and valuable use to which the land might at that time have been put. I so charge.

(4) The fact that it was known to the appellants, or to some of the officers of the Overpeck Land Corporation, that the construction of a new railroad station or of a new station plaza was in contemplation by the municipality and that such station would probably be located at some point on or near the West Shore Railroad property and at or near the junction of the right of way of such railroad with Mt. Vernon Street and that the property of the appellants might be needed for such public use, must in no way be considered by the jury for the purpose of in any way decreasing the amount of money which the owners of this property would otherwise have the right to recover on the basis of the fair market value of the same as of the 3rd day of November, 1926. I so charge.

Five is refused.

(6) The appellants, by signing the agreement to purchase which they executed with Brewster on or about April 24th, 1926, became at that time the

equitable owner of the property taken by the municipality, entitled, upon the consummation of the agreement with Brewster by the execution and delivery to them of the deed to said premises, to have and receive from the Village, when the Village took their property for public use, the full and fair market value of the same. I so charge.

(7) If the jury, upon consideration of all the evidence and of their view of the land taken by the municipality, should come to the conclusion that the land taken by the municipality was, because of its location, especially adapted and available for the purpose for which it was taken and that the necessity for the use for which the property was taken was so imminent as to add something to the value of the lands taken in the minds of possible buyers, that element should be considered by the jury in determining the fair market value of the property. I so charge.

(8) If the jury as the result of their view of the property taken or as a result of the consideration of all of the evidence adduced before them, or as the result of both such view and of such consideration of all of the evidence, should come to the conclusion that the land taken was especially adapted and available for use for some commercial purpose or purposes in connection with a siding connecting the land with the West Shore Railroad property and that such a use of this land constituted the best and most advantageous use on the 3rd day of November, 1926, then it becomes the duty of the jury to determine the fair market value of said lands for such use as of that day and to render a verdict for the appellants for the amount which represents the fair market value of said lands, based and calculated upon such use as of that date. I so charge.

It is needless, it seems to me, for the court to analyze the testimony and to go over it. Suffice it to say that under the testimony this property was originally owned by Mr. Brewster, and in April of 1926 it was purchased by the Overpeck Land Corporation and John J. Chello from him for a price that has been testified to as $15,000.00, $5,000.00 of which was paid in cash, and $10,000.00 was secured by a purchase money mortgage. That was in April of 1926. The contract between the railroad company and the Village of Ridgefield Park is in evidence with respect to the improvement of the station and the plaza, which made necessary the acquisition of this property for that public purpose. There is also testimony with respect to the Baldwin piece adjacent to this property which was also acquired, and the price or the award that was made in that case. There is also in evidence other lands of Mr. Brewster which Mr. Mabus testified as having sold to various people at various times in the immediate vicinity of this property. Then there was testimony of the various experts who testified with respect to their opinion as to the most available use to which this property could be put as of that time, its proximity to the railroad, and the feasibility of putting in a railroad siding, and to use the property for industrial or commercial purposes with a railroad siding, and they valued the property for that use which they said was the most available use or the highest available use, the use that would bring the most money in the market, the fair market value would be greater, in their judgment, for that use. And they gave you their opinion as to what the property would be worth in the market at the date of the acquisition of the property on November 3rd, 1926, for that use; and then there was testimony, at least, by one of the experts, as I recall it, who said that if the property was available for a railroad siding, I think he valued it at $30,000.00 for that purpose, and who said it would be worth only half of that, or $15,000.00, if it could not be used for a railroad siding, or in connection with a railroad siding. You will recall what the various witnesses said in their opinion the property was worth for the highest use to which in their judgment it could be put. And then, on the other hand, you have the testimony of the witnesses produced by the respondent, the Village of Ridgefield Park who had an entirely different viewpoint and who gave you entirely different ideas of value, and they gave their reasons, as did the witnesses for the appellants; and some of them gave their opinion as to the most available use to which this property could be put, and you have had described the condition of the property. It was unimproved, but you also had described the physical situation that existed there at that time. You know the location; you have seen it. And you must take all of this testimony that has been adduced, plus your own view of the property, and from that you must find the value, the true market value, under the rules of law which I have explained as the value of this property as of that date. That is the question of fact which you have been called upon to decide. You must weigh the evidence and you must be satisfied from the evidence that your verdict is the correct one. Your verdict must be what you find the value to be of the property as of that time under the testimony.

If the court in referring to the testimony has mis-stated it, if anything that the court has said with respect to what the testimony was does not coincide with your recollection, you will disregard what the court has said and rely entirely upon your own recollection, because you must decide this case

upon your own recollection of the testimony and not on what my recollection may be.

You may retire.

(The jury retired at 4:03 P. M.)

Mr. Walscheid: I might suggest that this map, while we have used it all the time, has not received any designation.

Mr. Winne: I kept calling it A-1. I thought it was in.

The Court: Mr. Stenographer, will you mark that exhibit, that map.

(Map marked Exhibit A-12 in evidence.)

Mr. Walscheid: Number 5, your refusal to charge number 5 of my requests, I take an exception to.

The Court: Yes.

Mr. Walscheid: And I also desire to take an exception to your charge in respect to the effect of the zoning ordinance.

The Court: Yes.

Mr. Winne: I want to except to the eighth, to the court charging the eighth request to charge made by the appellant, namely, that the value of this property in connection with the use of a side-track or spur might be considered as the best use to which the property is available, because the court failed at the same time to charge the jury to take into consideration the testimony of the defendant, namely, the inability to obtain the spur at the point; and I would like to except to what the court said with regard to the effect of the zoning ordinance, and permitting the jury to estimate the value of the zoning ordinance, as a matter of law.

The Court: Yes.

Appellants' Requests to Charge.

The appellants' requests to charge as originally submitted to the court are as follows:

1. The appellants in this proceeding are entitled to have the fair market value of the property taken by the municipality fixed by the verdict of the jury as of the 3rd day of November, 1926.

2. The appellants are entitled to a verdict for such an amount of money as represents the fair market value of the property taken by the municipality; such fair market value to be calculated and arrived at by the jury upon the basis of the most advantageous and valuable use or uses to which said land might have been put on the 3rd day of November, 1926.

3. In arriving at the amount of money to be awarded to the appellants for the property taken, it is the duty of the jury to consider all uses to which, in their opinion, under the evidence in the case, or by reason of their view of the land, or by reason of both such evidence and such view, the land taken was adapted or might be put, and to award compensation to the appellants upon the basis of the most advantageous and valuable use to which the land might at that time have been put.

4. The fact that it was known to the appellants, or to some of the officers of the Overpeck Land Corporation, that the construction of a new railroad station or of a new station plaza was in contemplation by the municipality and that such station would probably be located at some point on or near the West Shore Railroad property and at or near the junction of the right of way of such railroad with Mt. Vernon Street and that the property of the appellants might be needed for such public use,

must in no way be considered by the jury for the purpose of in any way decreasing the amount of money which the owners of this property would otherwise have the right to recover on the basis of the fair market value of the same as of the 3rd day of November, 1926.

5. There is no evidence in this case from which the jury can find that the sale by Brewster to the appellants of the property taken by the municipality was not a bona fide transfer of that property.

6. The appellants, by signing the agreement to purchase which they executed with Brewster on or about April 24th, 1926, became at that time the equitable owner of the property taken by the municipality, entitled, upon the consummation of the agreement with Brewster by the execution and delivery to them of the deed to said premises, to have and receive from the Village, when the Village took their property for public use, the full and fair market value of the same.

7. If the jury, upon consideration of all the evidence and of their view of the land taken by the municipality, should come to the conclusion that the land taken by the municipality was, because of its location, especially adapted and available for the purpose for which it was taken and that the necessity for the use for which the property was taken was so imminent as to add something to the value of the lands taken in the minds of possible buyers, that element should be considered by the jury in determining the fair market value of the property.

8. If the jury as the result of their view of the property taken or as a result of the consideration of all of the evidence adduced before them, or as the

result of both such view and of such consideration of all of the evidence, should come to the conclusion that the land taken was especially adapted and available for use for some commercial purpose or purposes in connection with a siding connecting the land with the West Shore Railroad property and that such a use of this land constituted the best and most advantageous use on the 3rd day of November, 1926, then it becomes the duty of the jury to determine the fair market value of said lands for such use as of that day and to render a verdict for the appellants for the amount which represents the fair market value of said lands, based and calculated upon such use as of that date.

Respondent's Requests to Charge.

The respondent's requests to charge as originally submitted to the court are as follows:

1. The rule of law applicable to the condemnation of land for use as in this case is that the owner shall be given by way of compensation a fair price of the land at the time taken for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the future.

2. The advantage to the Village of Ridgefield Park cannot be considered in computing the value of the land to the owner.

3. The land owner should be compensated for any special value growing out of the best use to which the land was presently adapted on November 3rd, 1926, but this should not include any speculative profits (Curry v. Waverly Railroad, 52 N. J. L., 381).

Exhibit "A-1."

ABSTRACT OF

CONTRACT OF SALE

Dated April 24, 1926.

Between Morton T. Brewster and Overpeck Land Corporation and John J. Chello.

Premises: Situate in the Township of Ridgefield Park, County of Bergen, State of New Jersey, described as follows:

Lots 8-9-10-11 and 12 Map of Mehrhof Park, Ridgefield Park, N. J., also known as lots 1-2-3-4 and 5 Block 85, Tax Map of Ridgefield Park, New Jersey.

Price: Fifteen Thousand ($15,000.00) Dollars, payable as follows:

Two Hundred Fifty ($250.00) Dollars on the signing of this contract, the receipt of which is hereby acknowledged.

Twelve Hundred Fifty Dollars ($1250.00) on April 26th, 1926.

Thirty-five Hundred ($3500.00) Dollars on delivery of the deed on June 26th, 1926.

By delivering Bond and Mortgage in the amount of Three Thousand Two Hundred Fifty ($3250) on Lots 8 and 9.

By delivering Bond and Mortgage in the amount of Three Thousand Two Hundred Fifty ($3250) on Lots 10 and 11.

By delivering Bond and Mortgage in the amount of Three Thousand Five Hundred ($3500) on Lot Number 12.

All Mortgages to be dated June 26th, 1926, and to bear interest at rate of 6% per annum, for three years, interest payable semi-annually.

Buyers reserve the right to pay off all or any part of any of the above mentioned mortgages at any time before date of maturity.

MORTON T. BREWSTER.

OVERPECK LAND CORPORATION,
CHAS. A. PEARD,
Pres. and Treas.

JOHN J. CHELLO.

Signed sealed and delivered
in the presence of

J. EMONIS as to
MORTON T. BREWSTER.

HONORE MERCIER as to
OVERPECK LAND CORPORATION
and JOHN J. CHELLO.

Exhibit "A-2."

ABSTRACT OF

DEED

Dated: June thirtieth, 1926.

Between Morton T. Brewster and J. Edith Brewster, his wife, and Overpeck Land Corporation a corporation of the State of New Jersey; and John J. Chello.

Consideration: One Dollar ($1.00) and other valuable consideration.

Grant and convey unto the parties of the second part, its successors and assigns, and his heirs and assigns,

ALL those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgefield Park, in the County of Bergen and State of New Jersey, known and designated as lots numbered Eight (8), Nine (9), Ten (10), Eleven (11) and Twelve (12) on a certain map entitled "Mehrhof Park, Property of G. R. E. Dawson, Ridgefield Park, N. J." filed in the Bergen County Clerk's Office on March 18th, 1907, as Map No. 1065.

Full covenant and warranty deed.

Habendum in fee.

Duly executed and acknowledged.

Signed: MORTON T. BREWSTER,
J. EDITH BREWSTER.

Before ADOLBERT J. KOENIG,
Notary Public of N. J.

Recorded in the Clerk's Office of the County of Bergen, N. J., the 1st day of July, A. D. 1926, at 1:37 o'clock in the afternoon, and Recorded in Book 1419 of Deeds, for said County, on page 463 &c.

Exhibit "A-3."

OVERPECK LAND CORPORATION
51 Mt. Vernon St.

RIDGEFIELD PARK TRUST COMPANY

Ridgefiled Park, N. J., April 19, 1926.

Pay to the order of Morton T. Brewster, $250.00
Two hundred and fifty 00/ Dollars.

No. 3

GEORGE T. BEHSMAN,
Secy.

CHAS. A. PEARD,
Treas.

Endorsed:

MORTON T. BREWSTER

Exhibit "A-4."

No. 303

Ridgefield Park, N. J., April 20, 1926.

Pay to the order of Overpeck Land Corp., $125.00
One hundred twenty-five & 00/100 Dollars.

JOHN J. CHELLO,
Special.

Endorsed:

OVERPECK LAND CORP.,
Geo. T. Behsman,
Sec'y.

Exhibit "A-5."

OVERPECK LAND CORPORATION
51 Mt. Vernon St.

RIDGEFIELD PARK TRUST COMPANY

Ridgefield Park, N. J., April 27, 1926.

Pay to the order of Morton T. Brewster, $625.00
Six hundred and twenty-five 00/100 Dollars.

No. 7

GEORGE T. BEHSMAN,
Secy.

CHAS. A. PEARD,
Treas.

Endorsed:

MORTON T. BREWSTER

Exhibit "A-6."

No. 311

Ridgefield Park, N. J., April 27, 1926.

Pay to the order of Morton T. Brewster, $625.00
Six hundred twenty-five & 00/100 Dollars.

JOHN J. CHELLO,
Special.

Endorsed:

MORTON T. BREWSTER

Exhibit "A-7."

RIDGEFIELD PARK TRUST COMPANY

OVERPECK LAND CORPORATION
51 Mt. Vernon St.

Ridgefield Park, N. J., June 30, 1926.

Pay to the order of Morton T. Brewster $1,000.00
One thousand 00/100 Dollars.

No. 15

GEORGE T. BEHSMAN,
Secy.

CHAS. A. PEARD,
Treas.

Endorsed:

MORTON T. BREWSTER

Exhibit "A-8."

No. 364

Ridgefield Park, N. J., June 30, 1926.

Pay to the order of Morton T. Brewster, $1,750.00
One thousand seven hundred fifty Dollars.

JOHN J. CHELLO,
Special.

Endorsed:

MORTON T. BREWSTER

Exhibit "A-9."

RIDGEFIELD PARK TRUST COMPANY

OVERPECK LAND CORPORATION
51 Mt. Vernon St.

Ridgefield Park, N. J., June 30, 1926.

Pay to the order of John J. Chello, $375.00
Three hundred and seventy-five 00/100 Dollars.

No. 18

GEORGE T. BEHSMAN,
Secy.

CHAS. A. PEARD,
Treas.

Endorsed:

JOHN J. CHELLO

Exhibit "A-10."

Ridgefield Park, N. J.,
December 29th, 1926.

Overpeck Land Corp. and John J. Chello

To Morton T. Brewster Dr.

To interest on $10,000. Mortgage at 6 per cent. from June 30, 1926 to Jan. 1, 1927, $300.00.

Received payment Jun. 11, 1927.

M. T. BREWSTER,
J. M.

Exhibit "A-11."

RIDGEFIELD PARK TRUST COMPANY

Ridgefield Park, N. J., Jan. 8, 1927.

Pay to the order of Morton T. Brewster, $300.00 Three hundred 00/100 Dollars.

No. 43

GEORGE T. BEHSMAN,
Secy.

CHAS. A. PEARD,
Treas.

Endorsed:

MORTON T. BREWSTER

OVERPECK LAND CORPORATION
51 Mt. Vernon St.

Exhibit R-1.

THIS AGREEMENT, made this 1st day of June, 1926, by and between the New York Central Railroad Company, a corporation organized and existing under and by virtue of the Laws of the State of New York, and the West Shore Railroad Company, a corporation organized and existing under and by virtue of the Laws of the State of New York, and the State of New Jersey, hereinafter referred to as the Railroad Companies, and the Village of Ridgefield Park, a municipal corporation of the County of Bergen, State of New Jersey, hereinafter referred to as the Village;

WITNESSETH:

That whereas, by an order made September 15th, 1922, the Board of Public Utility Commissioners of New Jersey required the West Shore Railroad Company to construct and complete on or before the first day of January, 1926, a permanent station at Ridgefield Park, and to file with the Board plans of the proposed station building on or before April 15, 1925, and,

WHEREAS, it was proposed by the Railroad Companies to erect a new passenger station together with the related features, among which was an overhead bridge for passengers, and

WHEREAS, the Village desired a brick and masonry passenger station, together with a pedestrian subway, and

WHEREAS, the location selected by the Village and Railroad Companies makes necessary certain street changes, and

WHEREAS, the Railroad Companies desire additional tracks across Bergen Turnpike, and

WHEREAS, it is proposed by the Railroad Companies to extend the platform at West View Station and said Village desires a pedestrian subway at this point in lieu of an overhead bridge as originally planned, and

WHEREAS, the Railroad Companies and the Village by negotiation and conference have agreed upon plans for the aforesaid changes to be made and improvements to be made at the Ridgefield Park Station, at the West View Station and at Bergen Turnpike;

NOW THEREFORE, in consideration of the premises, it is mutually covenanted and agreed as follows:

1. That the Railroad Companies will, at their own cost and expense, construct a brick and masonry passenger station in accordance with blue prints of plan, sections, elevations and descriptions of materials hereto attached, entitled:

"Proposed Passenger Station
at
Ridgefield Park, N. J.
Engineering Department, New York, April 20, 1926. Issue 'A'."

a copy of which is hereto annexed and marked Exhibit B.

2. That the Railroad Companies will, at their own cost and expense, construct a passenger subway as shown on Exhibit C hereinafter mentioned.

3. That the Village will acquire, at its own cost and expense, and in consideration of the Railroad Companies building a passenger subway, transfer with good and sufficient deeds the land necessary for the proposed station and platforms. Negotiations are now pending between the Railroad Companies hereinbefore named and the New York Susquehanna and Western Railroad, to arrange for the use of the aforesaid new station by said New York Susquehanna and Western Railroad and for the acquisition or use of part of the right of way lands of said New York Susquehanna and Western Railroad for part of the platform adjacent to the east bound West Shore Railroad track, and for the extension of the aforesaid pedestrian subway under the tracks of said New York Susquehanna and Western Railroad for use by east bound passengers on said railroad. If said negotiations be consummated, then the land necessary for the proposed new station and platform is that as outlined in yellow (containing 0.293 acres) on the attached blueprint of plan entitled:

"West Shore Railroad
Leased and Operated by
N. Y. C. R. R. Co.,
Buffalo and East River Division
Land to be acquired from the
Village of Ridgefield Park
0.1 miles south of Ridgefield Park,

Engineering Department — New York April 28, 1926
Scale 1″ — 50′ — Issue No.
J. G. Brennan — J. W. Pfau,
Engineer of Grade Crossings — Engineer of Construction
G. W. Kittredge,
Chief Engineer."

a copy of which is annexed hereto and marked Exhibit A. If said negotiations fail, then the lands necessary for said new station and platforms is that shown in block (Containing 0.331 acres) on said Exhibit A.

4. That the Village, at its own cost and expense, will make the necessary street changes for station approach and plaza; will grade and pave the same with concrete, and thereafter will maintain the plaza and station approach as outlined in brown on the attached blue print, of plan entitled:

"West Shore Railroad
Leased and operated by
New York Central Railroad Company
Buffalo and East River Division
Map to accompany agreement with the
Village of Ridgefield Park."

a copy of which is annexed hereto and marked Exhibit C.

5. That the Village will authorize the relocation of Ridgefield Avenue where it joins Bergen Turnpike as shown in cross-hatched brown, Exhibit C, and will, if necessary, acquire by eminent domain proceedings the lands necessary for same.

6. That the Railroad Companies will at their own cost and expense, grade and pave Ridgefield Avenue, where relocated, as provided for in Article 5, and will reimburse the Village for all moneys expended or to be expended by reason of the aforesaid eminent domain proceedings.

7. That the Village will transfer to the West Shore Railroad Company all its right, title and interest in that part of Ridgefield Avenue outlined in cross-hatched yellow on Exhibit C.

8. That the Village, in so far as it has jurisdiction, will authorize and permit the Railroad Companies to lay two additional tracks across Bergen Turnpike, as indicated in red on Exhibit C, making a total of four West Shore Railroad tracks crossing the highway, and will cooperate with the Railroad Companies in procuring such other authorization as may be required. The Railroad Companies will, at their own cost and expense, repair Bergen Turnpike where crossed by the two proposed tracks in keeping with the existing paving.

9. That the Village will authorize the closing of west ends of Brinkerhoff Street, Christie Street, Hobart Street and Pine Street, as shown in yellow on Exhibit C.

10. That the Village will transfer to the West Shore Railroad Company all its right, title and interest in the west ends of Brinckerhoff Street, Christie Street, Hobart Street and Pine Street, as shown in solid yellow on Exhibit C.

11. The Railroad Companies will, at their own expense, construct a pedestrian subway under their tracks at the West Shore Station in Ridgefield Park, giving safe access to their east bound trains, and will also erect at said West View Station, shelters as shown on the attached blue print marked Exhibit D, entitled:

"Exhibit 'D'
West Shore Railroad
Leased and Operated by
New York Central Railroad Company
Buffalo and East
River Division
Map to Accompany Agreement with
Village of Ridgefield Park
New York, May 25, 1926, Issue No. A."

12. The Village will cooperate with the Railroad Companies in such proceedings as may be necessary to obtain authority or approval by the Board of Public Utility Commissioners of the State of New Jersey for the projects hereinbefore described, and it is understood and agreed that application for such authority or approval may be made for one or more of said projects at one time, and for the others at other times, as may be most desirable so as to facilitate the consummation thereof without delay.

13. The covenants and agreements herein contained shall be binding and inure to the benefit of the successors and assigns of the parties hereto respectively.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument in triplicate, the day and year first above written.

THE NEW YORK CENTRAL RAILROAD COMPANY,
By GEO. W. KITTREDGE,
Chief Engineer.

WEST SHORE RAILROAD COMPANY,
By GEO. W. KITTREDGE,
Chief Engineer.

VILLAGE OF RIDGEFIELD PARK,
By HUGH M. McGOWAN, JR.,
Mayor.

SEAL of

VILLAGE OF RIDGEFIELD PARK,

Attest:

ELWOOD G. HOYT,
Village Clerk.

328 A
Exhibit "A-12"

RAILROAD AVENUE

PAULISON AVENUE

WESTERN RAILROAD

NEW YORK SUSQUEHANNA & WEST SHORE RAILROAD

HERBERT STREET

WATTS COURT

LINCOLN AVENUE

VERNON STREET

MT GROVE STREET

STREET

AVENUE

SPRUCE

PINE STREET

CEDAR STREET

MAIN

63 64 85 86 87 88 95 96

FEB. 1927 SCALE 1" = 40'

PREPARED BY

MYRON HENDEE

CIVIL ENGINEER-SURVEYOR

BANK OF BOGOTA BUILDING, BOGOTA, N.J.

W.M.S.

1288

Rule for Judgment.

(Filed March 21, 1927.)

BERGEN COUNTY CIRCUIT COURT.

In the Matter
of

The award made by the Village of Ridgefield Park, in the County of Bergen, to OVERPECK LAND CORPORATION and JOHN J. CHELLO, for lands to be taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station, and safe and convenient access thereto", adopted July 6th, 1926.

An award having heretofore been made for the damages arising to the owners thereof through the taking for public use of certain lands located in the Village of Ridgefield Park, in the County of Bergen, belonging to the appellants, Overpeck Land Corporation and John J. Chello, pursuant to the provisions of an ordinance adopted by the Village of Ridgefield Park, in the County of Bergen, entitled, "An ordinance to acquire lands for a site for a new railroad station, and safe and convenient access thereto", adopted July 6th, 1926, said proceedings having been initiated and conducted pursuant to the provisions of an act entitled, "An act concerning municipalities", approved March 27, 1917, and the amendments and supplements thereto,—and the said owners of said

land being dissatisfied with said award and having appealed therefrom to the Circuit Court of the County of Bergen, and the said Circuit Court of the County of Bergen having thereupon by order provided for a trial by a struck jury of the County of Bergen of an issue to be framed under the direction of said court for the purpose of assessing such damages anew, and such issue having been duly framed under the direction of said court and the trial of said issue, thus framed, having been duly called on the 10th, 11th and 14th days of March, 1927, and a struck jury to try said issue having been thereupon duly impaneled and sworn, and the jury thus impaneled and sworn having visited and viewed the premises and having heard the evidence adduced in favor of the appellants and in favor of the defendant, and having heard the argument of counsel thereon, and the judge having charged the jury, and the jury having retired to consider of their verdict, and the jury having returned again into court and having said that they find in favor of the appellants, Overpeck Land Corporation and John J. Chello, and against the defendant, the Village of Ridgefield Park, in the County of Bergen, and that they assess the damages sustained by the said appellants, by the taking of said lands as of the 3rd day of November, 1926, at the sum of Nine thousand nine hundred forty-five ($9,945.00) Dollars, with interest thereon from the said 3rd day of November, 1926;

IT IS NOW, on this 21st day of March, 1927, ORDERED that judgment be entered in said proceeding in favor of the appellants, Overpeck Land Corporation and John J. Chello, and against the defendant, the Village of Ridgefield Park, in the County of Bergen, fixing the amount to be recovered by said appellants from said defendant at the sum of Nine thousand nine hundred forty-five ($9,945.00) Dollars damages, besides interest thereon from the 3rd day of November, 1926, and the costs of this proceeding to be taxed.

NEWTON H. PORTER,
Judge.

Rule actually entered
this day of March,
1927, on motion of

J. EMIL WALSCHEID,
Attorney for Appellants.

101

New Jersey Court of Errors and Appeals

OVERPECK LAND CORPORATION and JOHN J. CHELLO, Plaintiffs-Appellants, v. VILLAGE OF RIDGEFIELD PARK, in the County of Bergen, Defendant-Respondent.	On Appeal from the Bergen County Circuit Court.

BRIEF FOR PLAINTIFFS-APPELLANTS.

Statement of Facts.

This is an appeal from the judgment entered in the Bergen County Circuit Court upon the verdict of a jury in condemnation proceedings instituted pursuant to the provisions of the Home Rule Act, Chapter 152 of the Laws of 1917, and the acts amendatory thereof and supplementary thereto.

The lands taken by the municipality are known as lots numbers one (1), two (2), three (3), four (4) and five (5), in Block No. 85 of the Tax Map of the Village of Ridgefield Park. A blue print showing the property in question is attached to the State of the Case as Exhibit A-12; upon this map the property taken is indicated by white shading.

An examination of this map will disclose that the property taken abuts the main line of the West Shore Railroad and that it has a frontage of 192.60 feet upon this right of way.

The land was taken pursuant to the provisions of an ordinance entitled, "An ordinance to acquire lands for a site for a new railroad station, and for safe and convenient access thereto," adopted July 6th, 1926 (p. 7, l. 1). The award of the Commissioners, appointed by the Village pursuant to the provisions of the Home Rule Act, for this land was the sum of $7,500.00.

On April 24th, 1926, Overpeck Land Corporation and John J. Chello entered into contract with the then owner of this property, Morton T. Brewster, for the purchase of the same for the price of $15,000.00 (Ex. A-1, p. 316), title to the property to close on June 26th, 1926, the price to be paid $5,000.00 in cash and $10,000.00 by means of three mortgages upon the land. Pursuant to the terms of this contract for sale, deed for this property was delivered on June 30th, 1926 (Ex. A-2, p. 317); the five thousand dollars was paid as follows:

By check of Overpeck Land Corporation, dated April 19th, 1926 (Ex. A-3, p. 319) ..... (Towards the payment of this check John J. Chello contributed $125.00 by his check, dated April 20th, 1926, Ex. A-4, p. 319.)	$ 250.00
By check of Overpeck Land Corporation, dated April 27, 1926 (Ex. A-5, p. 319)	625.00
By check of John J. Chello, dated April 27th, 1926 (Ex. A-6, p. 320)	625.00
By check of Overpeck Land Corporation, dated June 30th, 1927 (Ex. A-7, p. 320)	1,000.00
By check of John J. Chello, dated June 30th, 1926 (Ex. A-8, p. 321).....	1,750.00
By commission allowed by seller	750.00
Total	$5,000.00

Upon the purchase of this property a commission of $750.00 was allowed to Mr. Peard, president of Overpeck Land Corporation, by the seller. Mr. Peard turned this commission into the treasury of Overpeck Land Corporation which in turn paid one-half of it to John J. Chello by check, dated June 30th, 1926 (Ex. A-9, p. 321).

The net purchase price paid by Overpeck Land Corporation and John J. Chello for this property, therefore, is $14,250.00.

At the closing of the title mortgages for the sum of $10,000.00 were given, as required by the contract (Ex. A-1, p. 316). Interest upon these mortgages amounting to the sum of $10,000.00 was paid by the check of Overpeck Land Corporation to the order of Morton T. Brewster, dated January 8th, 1927, for $300.00 (Ex. A-11, p. 322). An acknowledgment of the payment of this check was made under date of January 11th, 1927, by Morton T. Brewster, through J. Mabus, a witness called in this case (Ex. A-11, p. 322).

Overpeck Land Corporation and John J. Chello, being dissatisfied with the award of $7,500.00 for lands for which they had paid $15,000.00, appealed from this award to the Bergen County Circuit Court, pursuant to the provisions of the amendment to the Home Rule Act, Chapter 71 of the Laws of 1925, page 233, which act, at the bottom of page 234, provides:

> "Any owner or owners of lands or real estate taken for any such improvement may appeal to the Circuit Court of the county wherein such municipality is situate at any time within thirty days after the confirmation by the governing body of the ward complained of. Such appeal shall be taken in the manner prescribed in section twenty-three-a of this article. The

court to which appeal is had shall order a trial by a struck jury *to assess such damages and benefits anew.* Such trial shall be conducted as in other cases of trial by jury in condemnation appeal actions, *upon an issue to be framed under the direction of or by* the court."

The Bergen County Circuit Court, pursuant to the procedure just outlined, framed the issue to be tried upon said appeal as follows:

> "The issue to be tried * * * shall be the ascertainment and determination of the true market value, as of the third day of November, A. D., 1926, of the land and premises located in the Village of Ridgefield Park, in the County of Bergen, known as lots numbers eight (8), nine (9), ten (10), eleven (11) and twelve (12), 'Map of Mehrhof Park, Ridgefield Park, New Jersey,' also known as lots numbers one (1), two (2), three (3), four (4) and five (5), Block No. 85, 'Tax Map of Ridgefield Park, New Jersey' " (p. 15, ll. 17-30).

The jury impanelled to try this issue found for the appellants in the sum of $9,945.00 (p. 330, l. 30); upon this verdict judgment was entered in favor of the appellants for the sum of $9,945.00, with interest thereon from November 3rd, 1926 (p. 331, ll. 1-5) and it is from this judgment that appellants have appealed because of alleged errors prejudicial to them which occurred upon the trial of said cause.

Argument.

Under the provisions of Section 1 of Chapter 71, Laws of 1925, page 233, at page 235 top, it is provided that the Circuit Court shall frame the issue

to be tried. The Bergen County Circuit Court did this and said that the issue to be tried was the ascertainment and determination of the true market value of the premises in question as of the 3rd day of November, 1926.

It is the contention of the present appellants that in the trial of this issue the Circuit Court erred, to the prejudice of these appellants, in admitting evidence in favor of the Village in not charging the jury, as requested by appellants below, and in charging the jury concerning the effect of a zoning ordinance, and that as a direct result of these errors, the jury was permitted to consider upon the question of value evidence which ought not to have been considered by it and was also prevented from considering the value of this property for the best uses to which it was adapted.

The errors thus referred to and which will be argued are three in number and are represented by Assignments of Error numbers one (p. 1, l. 30), two (p. 2, l. 1) and three (p. 3, l. 10).

POINT 1.

The trial court erred in refusing to charge the jury that "there is no evidence in this case from which the jury can find that the sale by Brewster to the appellants of the property taken by the municipality was not a bona fide transfer of that property."

Counsel for appellants at the trial submitted eight specific requests to charge. Of these, number five was refused (p. 308, l. 37).

The request thus refused reads:

> "There is no evidence in this case from which the jury can find that the sale by Brewster to the appellants of the property taken by the municipality was not a bona fide transfer of that property" (p. 314, l. 10).

To the refusal of the court to charge this fifth request, counsel for appellants took exception (p. 312, l. 18).

In opening to the jury counsel for respondent stated that he hoped to prove to them that the transfer from Brewster to Overpeck Land Corporation and John J. Chello was not a bona fide transfer. This opening was not taken and is not found in the trial book, but that the court had its attention called to this alleged issue and acted upon it appears in the very beginning of the case upon the cross examination of appellants' first witness (p. 41, ll. 20-40), where counsel for respondent, in addressing the court, says:

> "Of course, the purpose of this inquiry is to establish the bona fides *of the sale in question,* that is, the sale from this man to the Overpeck Land Company, * * *. That is the purpose of this inquiry" (p. 41, l. 36).

And the court at that time, in dealing with the question then before it and in reply to the statement of counsel for the respondent just set out, said:

> "Well, it may be competent on that theory. It is not competent to establish price" (p. 42, l. 12).

And thereupon permitted counsel for respondent to ask a question which had then been objected to, and to receive an answer thereto.

And the court again, in dealing with the same question, said:

> "* * * Mr. Winne is offering it on the theory that the price that this witness has testified to as a sale of this property at a given date was not a bona fide price" (p. 43, l. 4).

The question of the bona fides of *the transfer* by Brewster to Overpeck Land Corporation and John J. Chello was thus directly imported into the case; in other words, the good faith and *reality* of the sale of the property by Brewster to Overpeck Land Corporation and Chello was attacked.

Since the price at which Overpeck Land Corporation and Chello purchased had evidential value in fixing the true value of the property as of November 3rd, 1926, an inquiry into whether or not there was an *actual* sale or transfer of this property at $15,000.00 (less $750.00 for commission) was pertinent to the issue to be tried. The question of *reality* of the sale was therefore a proper subject of inquiry.

It is my contention, however, that a reading of the trial record will disclose that no inquiry into the *reality* or *actuality* of this sale was made by counsel for respondent, and that the *reality* and *actuality* of the transfer at the price claimed by appellants appears by clear, undisputed, documentary evidence, supported by the witnesses who took part in the transaction, and that there is absolutely no evidence in this case which would have justified the jury in finding that the sale of the land in question from Brewster to Overpeck Land Corporation and John J. Chello was not exactly what it purported to be, namely, a legal and actual sale transferring the legal and equitable title to

this property to the present appellants for the sum or price of $15,000.00, less the commission of $750.00 allowed to appellants.

In order to support the statement just made that there is no evidence in this case which would justify a jury in finding that the transfer from Brewster to Overpeck Land Corporation and Chello was not a bona fide transfer, I have excerpted all of the evidence in the record upon this point.

The evidence is as follows:

Jacob S. Mabus, a witness called for the appellants, testified:

I am employed by the firm of Brewster & Sons (p. 21, l. 3).

Mr. Morton T. Brewster owned the property in question (p. 21, l. 12). It was unimproved land (p. 21, l. 40). I had charge of the sale of the property; Mr. Brewster owned that and surrounding property and as the buyers came around I would fix a price on it and get the thing all ready for Mr. Brewster's "yes" and "no." If his decision was "yes" the papers were accordingly executed under my supervision and I received the money (p. 22, ll. 20-37).

I conducted the negotiations for the sale of the land in question (p. 22, ll. 37-40).

Mr. Peard came to me one day and wanted to know if these lots were for sale. I told him yes. He told me to name a price on them which I did; I named $15,000. He took his check book out of his pocket and wanted to pay a deposit on them, which I would not accept. I told Mr. Peard that I would not accept a deposit and I gave as my reason that I was under the impression that some day the railroad or the village would require that property for a railroad depot. I told him before I accepted his deposit I wanted to give the people of Ridge-

field Park the option to buy that property at the price that I was ready to sell it to him for. Well he—he agreed; so I agreed with him to give him his answer the next day at 10 o'clock; that night I called on one of the Commissioners of Ridgefield Park (the Mayor, p. 24, l. 18), and put the proposition to him, told him it had come to me in a roundabout way that the Village would sometime want that particular property and as I had a bona fide offer for it (p. 23, ll. 22-40) and as I had sold all the others, we wanted to get rid of that too, and that I did not want to sell it to anybody if the Village would ever want it for a station, or if the Village felt that they would want it at some future time, and I offered it to the Village for $15,000.00, but it was refused. This offer was made in the fore part of April, 1926 (p. 24, l. 32). After the offer was refused I kept an appointment I had with Mr. Peard the next day and accepted his check for a deposit on the sale of that property for $15,000.00 and, pursuant to that deposit, a contract of sale was executed, dated April 24, 1926 (p. 25, l. 18), under which purchasers were to pay $15,000 for the property, $5,000.00 cash, $10,000.00 in mortgage, title to pass June 26, 1926 (p. 26, ll. 1-30).

Title was closed on June 30, 1926. The buyers at that time completed their cash payment of $5,000.00 and allowed $10,000.00 to remain on bonds and mortgages, and these bonds and mortgages were still outstanding obligations against the property at the date of trial (March 11, 1927) (p. 27, ll. 15-20).

Mr. Peard, who negotiated this purchase, is Mr. Brewster's brother-in-law (p. 38, l. 38).

I do not know who composed the Overpeck Land Corporation; I know nothing about the officers of that Company outside of the fact that I had that

contract signed, that I witnessed; I could tell you who the officer was who signed that contract. According to the contract Charles A. Peard was president and treasurer. The negotiations were carried on by me and Mr. Peard (p. 39, ll. 20-40).

Perhaps two or three years ago and before Overpeck Land Corporation bought these lots, others negotiated with me trying to buy them (p. 40, l. 36; p. 41, ll. 13-15). At that time no offer was made. What I tried to say is that I did offer it for sale about two years prior to the—at that time I did offer it for sale for $10,000.00. The property was not in the market generally at that price; the property was not in the market until about two weeks before Mr. Peard bought it (p. 45, ll. 1-40). The offer that I referred to as prior to that time was that the former Mayor Hunter, of Ridgefield Park, asked me for a price on those particular lots and at that time we made him a price of $10,000.00 (p. 46, ll. 1-5).

The offer which I say I made to Mayor McGowan I made to him personally (p. 49, ll. 35-40); at his home (p. 50; l. 1); and the date was prior to the making of this contract that is in evidence (p. 50, ll. 2-3).

At that time I did not know that this property was desired for railroad purposes by the Town; I had heard it as town gossip and I do not know whether the owner of the property knew about it. I know nothing about that (p. 50, l. 10). I did not discuss with Mr. Brewster, the owner of the property, the fact that the Town might desire it for station purposes at the time the offer for $10,000.00 was made (p. 50, l. 17). I do not know when I first knew that the Town was considering the acquisition of this property for station purposes. I never knew it until they started to build

a building there that the Town really needed it for the station. I was never positive of it, although it was town gossip when this agreement was made (p. 52, l. 12; p. 53, ll. 1-10).

I attended the execution of this contract (p. 53, l. 10).

Mr. Peard, a witness sworn for the appellants, testified as follows:

I am in the real estate business and have been in the real estate business two years last November (November, 1926). I am connected with Overpeck Land Corporation as president and treasurer (p. 168, ll. 1-15).

There are five principal stockholders of Overpeck Land Corporation (p. 168, l. 18).

I bought this property in conjunction with a Mr. Chello as a half owner and Overpeck Land Corporation is the owner of the other half. Mr. Chello contributed his share to the purchase price. I conducted the negotiations for the property; they began in April, 1926. I started with Mr. Brewster, but Mr. Brewster turns all his real estate over to Mr. Mabus, and he sent me to him, so I had to finish up with him; my dealings in the matter were with Mr. Mabus (p. 169, ll. 1-27).

When we purchased the property it was all paid out by check. I believe the first check before—I gave a check down there and waited for the deposit—for the contract to be drawn up, and I believe I gave the full deposit there of $250.00, and then got one hundred and twenty-five back from Mr. Chello. This is the check I at that time gave to Mr. Mabus as a deposit until we could have the contract drawn up, which was to be within a couple of days (p. 172, ll. 1-20). (Check offered in evidence as Ex. A-3, p. 318.) After that the contract was drawn and this check (Ex. A-3, p.

318) was applied to payment on that contract. The contract, I think, was delivered about the 24th of April (Ex. A-1, p. 316); the contract is dated April 24th. The check for $250.00 was paid by the Bank on April 22, 1926 (p. 173, l. 24), before we actually had our contract. In order to make that deposit I received from Mr. Chello a check covering his half (Ex. A-4, p. 319), dated April 26, 1926 and perforated "PAID 4-26-26." Thereafter the $1,250 that was paid by two separate checks, one by Chello for six hundred and twenty-five, and one by the Overpeck Land for six hundred and twenty-five, and the rest of the $5,000.00 in cash was paid by Chello and Overpeck Land Company half and half, each contributing one-half; while the mortgages made were joint mortgages of Overpeck Land Company and John J. Chello,—John J. Chello joining as a maker,—to Morton T. Brewster. These mortgages amount to $10,000.00 (p. 174, ll. 1-40).

The Certificate of Incorporation of Overpeck Land Corporation was filed March 14th, 1926. The corporation was formed before this and the corporation had bought property before this; they bought it in my name and they trusted me enough to have me buy it in my name and after this went through, I merely transferred the property I had purchased up to that time to the corporation. There were three different transactions before the corporation was incorporated (p. 178, ll. 1-40).

Chello and Overpeck Land Corporation joined in each of the bonds and mortgages, and Mr. Chello and Overpeck Land Corporation are each equally interested in this particular piece of property and were from the time the contract was made (p. 180, ll. 15-30).

I am related to Mr. Brewster by marriage, having married his sister (p. 181, l. 10).

When I attended to the purchase of this property for the corporation and for Mr. Chello, Mr. Chello was present (p. 184, l. 30).

I have bought other properties together with Mr. Chello.

Mr. Chello was present when the contract was executed (p. 184, ll. 30-40). To the best of my recollection I got the contract from Mr. Mabus after Mr. Brewster had signed it; it was not executed by both parties at the same time (p. 185, ll. 10-20).

The check dated April 27, 1926, for the sum of $625.00 drawn by Overpeck Land Corporation to the order of Morton T. Brewster (Ex. A-5, p. 319) was the balance of $1,500.00 to be paid on account of the contract, less the $250.00 which had already been paid (p. 186, ll. 15-40). At that time there was a companion check for like amount made by Mr. Chello (Ex. A-6, p. 320). The next payments were made when we took title; at that time Overpeck Land Corporation issued its check for $1,000.00; this check represents a total of $1,750.00, less my commission on purchase of $750.00 (p. 187, ll. 30-40). The share of Overpeck Land Corporation on account of this payment was $1,750.00 (Ex. A-7, p. 320). At the same time Mr. Chello contributed his check for the sum of $1,750.00 (Ex. A-8, p. 321), and thereafter Overpeck Land Corporation repaid to John J. Chello the sum of $375.00—his half of the commission of $750.00 which I had earned,—the other half remaining in the Overpeck Land Corporation (p. 188, ll. 30-40). This payment was made by check (Ex. A-9, p. 321).

Interest on the three mortgages on the property was paid under date of January 8th, 1927, amounting to the sum of $300.00 (p. 189, l. 10) by check (Ex. A-11, p. 322). A bill had been sent to us for

this interest (p. 189, l. 20). It was receipted when we paid it (Ex. A-10, p. 322).

On April 24, 25 and 26, and from thence forward to November 3rd, 1926, the following were stockholders of Overpeck Land Corporation and their respective holdings; A. P. Moran had ten shares; Garrett Lynch had ten shares; I had ten shares; Louise Dorsey had five shares; George Behsman had five shares; a total of forty shares, being all that was issued at that time. Mr. Morton T. Brewster did not have any shares in this Company; he never had any interest in the Company. Subsequently and prior to December 4, 1926, ten additional shares were issued, five shares were issued to Mara of Ridgefield Park, and then I sold my wife five shares; that is the present list of stockholders in the Company; those are all the stockholders (p. 190, ll. 1-40). The incorporators of the Company were Moran, Lynch, Behsman and Peard. The five shares that were issued to Mrs. Peard were paid for in cash; all the shares were paid for in cash excepting my own. When the organization was formed I was to be paid ten shares of stock—I to do all the work, purchasing, and so forth, so that the ten shares were issued to me for services. Miss Dorsey is a niece of Mr. Brewster (p. 191, ll. 1-40).

The foregoing, I believe, is a fair synopsis of all of the evidence in this record dealing with the bona fides of the transfer from Brewster to Overpeck Land Corporation and Chello.

The issue to be determined before the Bergen County Circuit Court was limited to the ascertainment of the true value of the property in question as of November 3rd, 1926.

As has been heretofore stated, upon this issue the price *paid* by Overpeck Land Corporation and

Chello was relevant, and if it had been shown that the sale from Brewster to Overpeck Land Corporation and Chello was, in fact, no sale or that it was merely a sham or "Washed" sale, such evidence would have been material in that it would have upset the effect of and would have destroyed the value of that testimony,—the evidence that Overpeck Land Corporation and Chello had paid $15,000.00 for the same,—as an element in determining the true value of this property as of November 3rd, 1926.

Beyond the possibility of thus voiding the effect of the testimony of appellants that they had paid $15,000.00 for this property, no other evidence concerning the bona fides of this transfer would be of any materiality or relevancy in affecting the issue to be tried.

Thus, the question whether the vendor or the vendee knew or suspected that the municipality wanted the property for any particular purpose, such as a railroad station, did not in any way affect the bona fides of the transfer.

In fact, the special advantages of the land in question for railroad purposes was one of the elements of value for which the owner of this property was entitled to be compensated—no matter who the owner might be.

The rule, that the special advantages of the land to the party acquiring it by condemnation shall not swell the compensation of the land owner, applies to cases where the taking, which is advantageous to the purchaser, is not *pecuniarily* disadvantageous to the seller. If, however, the advantageous feature is of such a nature that it has a commercial value in the hands of either, then a fair estimate of such value is a proper part of the just

compensation which the owner is entitled to receive.

Currie v. Waverly &c., R. R. Co., 74 N. J. L., 381;
In re Security Land Co., 74 N. J. L., 395, 396.

The situation and surroundings of land sought for railroad purposes may impart to it a special value for such purposes generally; where such a value is shown, the owner may reap the benefit of it when compelled to part with his land by condemnation.

Currie v. Waverly &c., R. R. Co., 74 N. J. L., 381.

It was proper to show in this case any matter to prove that the land taken possessed a special value for railroad purposes generally, irrespective of its individual advantages to the defendant in this cause.

Currie v. Waverly &c., R. R. Co., 74 N. J. L., 381.

Thus, it was permissible to show the situation and surroundings of the land in question, with respect to its adaptability as a railroad approach to an established centre of commerce, because this gives to the land a pecuniary value for this purpose for which the owner is entitled to be paid.

Currie v. Waverly &c., R. R. Co., 74 N. J. L., 381.

That land near a centre of trade increases in value with the growth of commerce and in the

line of its requirements, is not more self-evident than that as the locations for railroad access to such a centre are taken up and occupied, the residue of the lands available for such purposes increases in special value in proportion to the demand thus created and to the scarcity thus produced.

Currie v. Waverly &c., R. R. Co., 74 N. J. L., 381, 395.

Nor does the fact that Mr. Peard, the president and treasurer of Overpeck Land Corporation,—who appears to have been a minority stockholder of that corporation, and which company took title to an undivided one-half interest in this land,—is the brother-in-law of the vendor, in any way affect the *value* of this land as of November 3rd, 1926, *or the bona fides of the transfer of this property.*

I take it that the question of the true value of this property as of November 3rd, 1926, does not in any way depend upon the ownership of the same; nor does it in any way depend upon the reasons which may have actuated the vendors in selling or the vendees in buying this property.

The true market value of this property as of that date is to be determined by its characteristics, its adaptability and desirability for the various uses to which it might be put; and the price which a buyer, not required to buy, would pay to a seller, not required to sell the property,—upon the question of *this* price, which is the true market value of this property, the price *actually* paid for the same, was of evidential value,—beyond this, the price then paid was of no value in determining the issue before the court.

The question raised by counsel for respondent when, at the trial, he injected into the case the bona

fides of this transfer, was therefore necessarily limited to the question of whether a sale had *actually* taken place and whether or not that sale had taken place for the sum or price claimed by the appellants, and, since at the conclusion of the case the uncontradicted evidence showed that a sale had *actually* been made for the sum of $15,000.00, less $750.00 commission, and since the actuality of that sale at that price was not attacked or disputed, the appellants were entitled to have the judge charge the jury that there was no evidence in the case from which the jury could find that the sale was not a bona fide transfer.

The refusal to charge this request allowed the jury to doubt the bona fides of the sale and especially is this so because the court, in permitting certain testimony, did so for the sole reason that it was supposed to be of aid in inquiring into the bona fides of the sale in question (p. 41, ll. 35-40; p. 42, ll. 1-15).

The undisputed evidence in this case is that appellants paid $15,000.00, less a commission of $750.00, for the property in question; the award of the jury for this property was $9,945.00. It seems necessarily to follow that the jury gave credence to the theory advanced by counsel for respondent that the sale in question was not a bona fide sale.

I therefore submit that the trial court erred in refusing to charge the fifth request made by appellants below.

POINT 2.

The trial court erred in asking and in permitting counsel for defendant to ask the following question: "The Court: Now the question is, what did you offer it for sale at that time?"

In order properly to present the objection to this question it is necessary to present a portion of the trial record so as to show the circumstances under which this question was asked.

The question objected to, together with exception, is found at page 45, line 25 of the record.

The question was asked on cross examination of plaintiff's witness, Jacob E. Mabus, after the following questions and answers, and after the following colloquy between court and counsel for the parties:

"Mr. Winne:

Q. All right. Now, did *anyone* ever try to *buy* these lots that the Overpeck Land Company bought before *they* negotiated with you?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

The Court: I think it might be competent to show what price might have been fixed by the seller at a time that was reasonably close to the date of the Overpeck purchase. I do not think we ought to go back too far into ancient history.

Mr. Walscheid: Your Honor will allow me an exception?

The Court: You may have an exception.

A. Yes.

Q. When was that? A. Perhaps between two and three years ago.

Q. All right. Now, at what price were you holding the lots then?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

The Court: On the theory that it is too remote?

Mr. Walscheid: No, sir. On the theory that mere offers of sale and mere negotiations are not evidential of value, and I am trying to think of the case in which that was explicitly decided, as I remember it.

The Court: I am inclined to think—

Mr. Walscheid: And especially between parties who are not related to the suit.

The Court: Yes. I recall that there has been such decision. I cannot cite it either, but I think that is correct. To establish values, you must show sales and not offers. That is the law.

Mr. Winne: *Of course, the purpose of this inquiry is to establish the bona fides of the sale in question, that is, the sale from this man to the Overpeck Land Company,* and whether or not they had had an offer *of anything like that amount within a reasonable length of time* I think is material as to whether or not this was a bona fide sale. That is the purpose of the inquiry.

The Court: Rather than to establish values?

Mr. Winne: Yes, your Honor.

The Court: Well, it may be competent on that theory. It is not competent to establish price.

Mr. Walscheid: Your Honor please, allow me to be heard on this question. We are here

under an order made by your Honor to establish the value of this property as of a certain day. That is the issue. And the value of this property does not in the slightest depend upon the ownership of it. The value of this property is something absolutely separate and apart from the ownership of this property. That is the first thing that I desire to call your Honor's attention to.

The second thing is that this question of bona fides is a collateral matter, and opens the door to issues that we are not here to meet, is not part of the issue in this case and, therefore, this testimony is irrelevant.

Thirdly, the only issue being the question of value, a question of offers made to this vendor is immaterial and hearsay, and not only on the question of value, but is also hearsay on the question which Mr. Winne is pressing, that is, the purpose for which he tries to introduce the evidence, and I, therefore, urge that the matter is immaterial and incompetent and irrelevant.

The Court: I think you are right that it is immaterial and incompetent as to the value of the land, perhaps, because it was not a sale but just an offer; *but Mr. Winne is offering it on the theory that the price that this witness has testified to as a sale of this property at a given date was not a bona fide price and was not a price that, standing by itself, is a fair criterion of the value of this land,* and in order to attack the evidence that has been introduced to establish the value as of that time by a sale, he is seeking to introduce this to attack the credibility of that testimony, not to establish the price at a previous time, and I think on that theory it is competent.

Mr. Walscheid: May I call your Honor's attention to this fact, that even though such an offer were made, even though an offer of only a few hundred dollars was made, without having the man here to testify as to what he based his notion of value upon, and whether he saw the value, whether he realized all the uses to which that property might be put, shows how futile this very evidence is. Here we are entitled to recover the value of this property when its value is put to its best uses.

The Court: That is true.

Mr. Walscheid: And I do not know what the answer will be to this question; but supposing that the answer were that an offer was made of $2,000.00; it was not accepted. The first thing we have, well, here is a man who wanted to buy something cheap. The next question is, was he able really himself to appreciate the value of this property? Did he know what it was worth? Did he know of its peculiar location and the peculiar fitness which it had for particular uses? Now, under all of those circumstances, I say that this question and the possible answer which may come to it is altogether too remote and of no probative value whatsoever and does not in any way assail the bona fides of this transaction. It can have no evidential value on that score.

The Court: Well, of course, the evidential value is for the jury after they have heard the answer. I do not think, necessarily, it is too remote, when it was only two years before this transaction. It may have no value at all and, of course, if somebody realized that the land was worth $15,000, and thought that the owner did not know it, and offered $4,000, that won't

deceive this jury at all. It won't have very much evidential value, and if the owner was offered a ridiculously low price and instantly rejected it, of course, it cannot hurt you.

Mr. Winne: Maybe I can reframe the question so that it won't be objectionable to Mr. Walscheid.

Q. Mr. Mabus, let me ask you: At the time this offer was made, at what price did you hold the property?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

The Court: No. I think that is competent. I will allow it, and grant you an exception (State of Case, pp. 40-44).

A. I will have to ask you to repeat the question.

The Court: You say there was an *offer* made *two years* before this sale to the Overpeck Land Company?

The Witness: No, sir.

The Court: I understood you to say so.

The Witness: No, sir.

The Court: Read the question, Mr. Stenographer.

(Question read.)

Mr. Walscheid: He now says there was no offer made. Let us get the record straight as to whether an offer was made.

The Court: That question was asked, and the previous answer that was given, as I understood, was that there had been a previous offer made some two years before the sale to the Overpeck; that is my recollection. Isn't that what you said?

The Witness: What I tried to say—I beg your Honor's pardon—is that I did offer it for sale about two years prior to the—

The Court: Now, the question is, what did *you* offer it for sale at that time?

Mr. Walscheid: Now, I object to that as immaterial, incompetent and irrelevant.

The Court: That is your question, is it, Mr. Winne?

Mr. Winne: That is the question.

The Court: I will allow it and grant you an exception.

A. $10,000.00.

Q. That was in the market generally at that price, or was that a particular offer to a particular purchaser? A. No. The property has not been in the market until about two weeks before Mr. Peard bought it.

Q. Well then, what was this offer that you referred to prior to that time? A. Why, the former Mayor Hunter of Ridgefield Park asked me for a price on those particular lots, and at that time we made him a price of $10,000.00" (State of Case, pp. 40-46).

The rule is well-settled in this State, in accord with the general rule, that offers to buy or sell *adjoining* property are not admissible *on the question of the value of property in question.*

Currie v. Waverly, &c. R. R. Co., 52 N. J. L., 381, 397 (Errors & Appeals, 1890);
22 Corpus Juris, title "Evidence," Section 124, and cases there cited;
See Mills, Eminent Domain (2nd Ed.), Section 170 and citations.

And it is well-settled that offers *to purchase the very property* in question are inadmissible.

In re Security Land Co., 74 N. J. L., 395, 396;

Sharpe v. United States, 191 U. S., 341, 48 L. ed., 211, affg. 112 Fed., 893, 57 L. R. A., 932;
10 R. C. L. title "EMINENT DOMAIN", Section 188; 10 ibid, title "EVIDENCE", Section 129, and cases there cited;
see, 2 Lewis, Eminent Domain (3d ed., 1909), Section 666 and citations.

The rule is thus stated:

"In order to show the value of property, it is not competent to prove offers for the property itself."
10 R. C. L., title "EVIDENCE", Section 129.

"It is not, however, competent for the owner to introduce evidence of offers he had received for the land and rejected, or of the reasons he gave for declining to sell."
10 R. C. L. title "EMINENT DOMAIN", Section 188.

And it is well-settled that offers *to sell the very* property in question are inadmissible.

22 Corpus Juris, title "EVIDENCE", Section 124 (containing list of citations);
Portland & Oregon Ry. Co. v. Ladd Est. Co., 77 Oregon, 517, 155, Pac., 1192, 1193 (1916);
Chicago, Milwaukee &c. R. R. Co. v. Alexander, 47 Wash., 131, 91 Pac., 626 (1907);
Conant v. Jones, 120 Ga., 568, 572, 48 S. E., 234 (1904);

Town of Vernon v. Edgeworth, 148 Ala., 490, 42 S., 749, 750 (1906).

The rule is thus stated in 22 Corpus Juris, title "EVIDENCE", Section 124:

> "No probative value can be attached to the mere fact ~~that~~ of offers to sell the land in question and a fortiori the same is true as to offers to sell similar or adjoining land. The amount for which an owner would have sold his property is influenced by too many fortuitous circumstances to be relevant on an inquiry as to value."

The question has not been raised in this State but it has been raised in at least fifteen other jurisdictions, and without a single dissent such testimony has been held inadmissible.

The reasons for the rejection of mere offers have been often stated:

> "Oral and not binding offers are so easily made and refused in a mere passing conversation and under circumstances involving no responsibility on either side, as to cast no light upon the question of value, and they are unsatisfactory, easy of fabrication and even dangerous. While all these objections might not apply in every case it is thought best by most courts to reject evidence of offers altogether."
>
> 2 Nichols, Eminent Domain (2nd Ed., 1917), 1194.

The classic judicial expression of the reasons for rejection, even when the offeror is before the court, is found in Keller v. Paine, 34 Hun (N. Y.) 177):

> "It has been intimated in some cases that offers are some evidence of value. But it is a class of evidence which it is much safer to reject than to receive. Its value depends upon too many circumstances. If evidence of offers is to be received it will be important to know whether the offer was made in good faith, by a man of good judgment, acquainted with the value of the article and of sufficient ability to pay; also whether the offer was cash, for credit, in exchange, and whether made with reference to the market value of the article, or to supply a particular need or to gratify a fancy. Private offers can be multiplied to any extent for the purpose of a cause, and the bad faith in which they were made would be difficult to prove. The reception of evidence of private offers to sell or purchase stands upon an entirely different footing from evidence of actual sales between individuals or by public auction and also upon a different footing from bids made at auction sales. Young v. Atwood, 5 Hun (N. Y.), 234. The reception of this class of evidence would multiply the issues upon questions of damages to an extent not to be tolerated by courts aiming to practically administer justice between litigants."

Quoted with approval in—

> Yellowstone Park R. Co. v. Bridger Coal Co., 34 Mont., 545, 87 Pac., 963, 966 (1906);
>
> Hine v. Manhattan Ry. Co., 132 N. Y., 477, 30 N. E., 985 (1892).

In the latter case, Judge Parker, speaking for the Court of Appeals, said at 132 N. Y., 477, 481:

"The reasons thus assigned in support of the decision made we fully approve.

That decision has been followed in Leale v. Met. El. R. R. Co. (61 Hun, 613); Lawrence v. Met. El. R. R. Co. (15 Daly, 502).

The proposition has been asserted in Ross v. Met. El. R. R. Co. (29 St. Rep., 517); Keeh v. Met. El. R. R. Co. (31 id., 406).

It has also been applied to offers relating to personal property. (Young v. Atwood, 5 Hun, 234; Linde v. Republic F. Ins. Co., 18 J. & S., 362; Weld v. Reilly, 16 id., 531.) It is so held in other jurisdictions. (Fowler v. Co. Com. of Middlesex, 6 Allen, 92-96; Whitney v. Thacher, 117 Mass., 523-527; Wood v. Firemens' Ins. Co., 126 id., 316-319; Louisville, N. O. & Texas R. R. Co. v. Ryan, 64 Misc., 399-404; St. Joseph & Denver R. R. Co. v. Orr, 8 Kansas, 419-424.)

In the few cases which may be found holding the other way the question does not seem to have received much consideration from the courts rendering the decisions, and the absence of argument in their support renders unnecessary any special reference to them."

It is true that an offer *by the owner* to sell may be used as an *admission* against the *owner* in a controversy as to the value of *his* land, but, we are concerned here with an offer, *not* of the present owner, but of one who at the time of inquiry *had no interest in the land.*

The admission of one joint owner in the absence of others as to the value of land is incompetent.

> Indianapolis &c., Traction Co. v. Wiles (1910) 174 Ind., 236, 91 N. E., 161 (containing list of citations).

And of course, "an offer by a former owner is not admissible against the present owner".

> 2 Nichols, Eminent Domain (2nd Ed., 1917), 1195;
> In re Simmons, 124 N. Y. Supp., 744 (1910).

From the foregoing citations it would therefore seem plain that the question objected to in this case was improper if offered for the purpose of establishing the value of the property under examination as of the third day of November, 1926.

It may, however, be contended that the question was proper for the purpose of attacking the bona fides of the sale from Brewster to Overpeck Land Company and Chello, on the theory advanced by counsel for respondent (p. 41, l. 35) and acceded to by the court (at p. 42, l. 12 of the record and again at p. 43, l. 4 of the record), where the court said:

> "* * * but Mr. Winne is offering it on the theory that the price that this witness has testified to as a sale of this property at a given date was not a bona fide price and was not a price that, standing by itself, is a fair criterion of the value of this land, and in order to attack the evidence that has been introduced to establish the value as of that time by a sale, he is seeking to introduce this to attack the credibility of that testimony, not to establish the price at a previous time, and I think on that theory it is competent."

This sale under investigation was initiated by contract dated April 24th, 1926 (Ex. A-1, p. 316) and consummated by deed dated June 30th, 1926

(Ex. A-2, p. 317). The question objected to related to a time *two years and three years* before the date of trial—March 11th, 1927—(p. 41, l. 15), at which time the witness did offer this property for sale (p. 45, l. 20) and at which time, as appears by answer to the question objected to, he offered it for $10,000.00 (p. 45, l. 35) to the former Mayor of Ridgefield Park, because the latter asked for a price on those particular lots (p. 46, ll. 1-5).

The issue to be tried was a simple one, i. e., the ascertainment of the true market value of the land as of November 3rd, 1926.

The Circuit Court was bound to confine itself to the question which was properly before the commissioners, i. e., the value of the land as of November 3rd, 1926.

Leeds v. Camden, 53 N. J. L., 229, 231.

If it be conceded,—as I believe it must be,—that the answer to the question objected to can have no possible value in this case unless the answer thereto either directly or indirectly affects the ascertainment of the true value of the property under discussion as of November 3rd, 1926, then it seems necessarily to follow that this question was objectionable because, in my opinion, no such result can be pointed out.

The bona fides of the transfer from Brewster to Overpeck Land Corporation was relevant *only* in so far as it affected the true value of this property as of November 3rd, 1926.

The answer to the question objected to shed no light upon the bona or mala fides of the sale from Brewster to Overpeck Land Company and Chello, which took place some two years later.

The *offer* of the property to Mayor Hunter some

two years before, was in no way *related* to the later *actual* sale.

No attempt was made to show *similarity of value* at the two periods of time or *similarity of conditions* at the time of the offer and the time of the actual sale.

Manda v. Orange, 82 N. J. L., 687, 688.

> "The general logical requirement is, that when a thing's capacity or tendency to produce an effect of a given sort is to be evidenced by instances of the same effect found attending the same thing elsewhere, these other instances have probative value—i. e., are relevant—to show such a tendency or capacity *only if the conditions or circumstances in the other instances are similar to those in the case at hand.*"
>
> 1 Wigmore, Evidence (2d Ed., 1923), Section 442.

So, in Sharpe v. United States, 112 Fed., 893, Gray, Circuit Judge, in upholding the exclusion of offers to buy, said, at page 898:

> "Mere offers to buy, without setting forth the conditions under which they were made and unconnected with the circumstances influencing the same, do not necessarily throw light upon the market value here referred to."

The necessity of satisfying the requirement of relevancy is clearly recognized in New Jersey.

So, in Application of Board of Recreation Com'rs. of West New York, 132 Atl., 244 (N. J. Sup. Ct., 1926), where it was sought to introduce

evidence of the value of similar lands, the court said, at page 245:

> "Where it is sought to gauge the value of lands by alleged similar conditions on other lands, the parallelism should be clear and complete; otherwise the test fails and the admission of such evidence is erroneous. Hepburn v. Water Supply Commission (N. J. Err. & App., 126 A., 421)."

And it is well settled that this requisite is not satisfied if similarity of conditions in view of difference in point of time is not shown.

2 Nichols, op. cit., supra, Sections 454, 457;
Raapke & Katz Co. v. Schmoeller & Mueller Piano Co., 82 N. W., 716, 118 Nev., 652 (1908);
French v. Fitch, 67 Mich., 492, 35 N. W., 258 (1887);
Showman v. Lee, 79 Mich., 653, 44 N. W., 1061 (1890);
Dallas, C. & S. W. Ry. Co. v. Langston, 98 S. W., 425 (Tex., 1906);
McLaren v. Birdson, 24 Ga., 265, 270 (1858);
See Dana v. Fiedler, 12 N. Y., 40, 49 (1854).

In Raapke & Katz Co. v. Schmoeller & Mueller Piano Co., supra, it was held that the amount of rent fixed in a lease made two years prior to the period of the wrongful holding, for which recovery was sought, was too remote on the question of rental value.

In French v. Fitch, supra, the sale price of a stock of goods three years after the time of inquiry was excluded.

In Showman v. Lee, supra, the sale price of goods ten months after seizure was held not admissible to prove market value at the time of seizure.

In Dallas, C. & S. W. Ry. Co. v. Langston, supra, evidence of the value of property in question three years before the time of inquiry was held improperly admitted because irrelevant "in the absence of evidence of conditions surrounding the property three years before."

In McLaren v. Birdsong, supra, evidence of the value of goods some seven months before attachment was held improperly admitted.

The admission of the question under review and the answer thereto constituted error prejudicial to appellants.

POINT 3.

The trial court erred in (1) admitting in evidence the zoning ordinance of the village; and (2) in submitting to the jury the effect of this ordinance upon the possible uses of the premises, the value of which was at issue.

For the convenience of the court I have set out that portion of the trial record which deals with the introduction of this ordinance, and also the portion of the judge's charge submitting to the jury the effect of the zoning ordinance upon the uses of the premises.

The portion of the trial record dealing with the introduction of the ordinance, is as follows:

"Mr. Winne: I wish to offer in evidence the ordinance relating to the establishment of zones or erection of buildings in Ridgefield Park.

Mr. Walscheid: I object to it on the ground it is immaterial, incompetent and irrelevant, and that the municipality is without power under the law, was without power under the law at the time when this property was taken over, to zone the municipality for industrial purposes.

The Court: On the theory of the Nutley case?

Mr. Walscheid: The Nutley case, yes.

The Court: I did not think the Nutley case went so far as to say they were without power.

Mr. Walscheid: That was my recollection. This is novel just at this moment for me, but that is my general recollection.

The Court: No. The Nutley case simply held as I recall it, that—

Mr. Walscheid: They were with power to zone but they were with power to zone only within certain limitations. The limitations were safety and health, as I remember it.

The Court: The Supreme Court and the Court of Errors and Appeals held, and have followed the Nutley case which was the landmark, in one of those decisions, as I recall it, that under the police power, which was the theory on which these ordinances were passed, they would not permit the ordinance to go so far as to deprive a man of the use of his property *unless* it was deleterious to the public health or the safety of the community and, therefore, whenever an ordinance was attacked and was reviewed, or the action of the building

commission in refusing to permit a building to be built, they used *that* as the test in each individual case. They never set aside the ordinances; they never said that they had not the power to pass ordinances; they simply met each case as it was presented, and if a case that was presented was such that they thought it was beyond the scope of the municipality's police power, they would compel the issuance of a building permit; but that is all.

Now, the effectiveness of this ordinance is not the point. The point is here whether there was a certain ordinance in the Borough of Ridgefield Park, and I think that is material, and I think that is evidential here; that is evidential of what the building ordinance was. Now, it is a matter of rebuttal, perhaps, or it is a matter for you to argue, that this ordinance under the decisions of the courts would have been inoperative for a special purpose, for a special use.

Mr. Walscheid: Well, agreeing with your Honor's line of thought, it is still my opinion that this ordinance is immaterial, incompetent and irrelevant, because the limitations upon use which are contained therein, and to which Mr. Winne referred, bring it squarely within the Nutley case and make it a question of law, as I take it, for your Honor to determine from the reading of the ordinance whether or not the ordinance, while it is in existence generally, the provisions of the ordinance which are attempted to be applied to this property are, in fact, effective under the Nutley case and that line of cases. I think that is a pure question of law, and I think that for that purpose Mr. Winne ought to point out, he ought not to in-

troduce the whole ordinance as an omnibus, but ought to indicate to us what sections he relies upon.

The Court: I suppose he will do that at the proper time.

Mr. Winne: Yes, your Honor please. I think I have to offer the ordinance first.

The Court: He will read into the record the—

Mr. Walscheid: May I reserve my right to object until such time as he attempts to read into the record the sections which he thinks cover?

The Court: You may do that, and I will admit the ordinance. I do not know how you can mark it.

Mr. Winne: I think that the witness has a copy of it that maybe will be admitted in place of the book.

Q. Have you something there that is a facsimile? A. I have a copy here with the amendments.

Q. And is that a facsimile of what is in this large book in connection with zoning in Ridgefield Park? A. It is. I had to bring it so we wouldn't have to leave the ordinance book.

Mr. Walscheid: If he says that is a copy, use the copy.

The Court: Very well. Let the copy be marked, and let it be stated in the record that Mr. Walscheid objects to the introduction of either, but for purposes of convenience, has no objection to the printed copy being used, subject to whatever objection he may wish to make against its introduction at the proper time.

Mr. Walscheid: Your Honor allows me an exception?

The Court: To allowing it at this time?

Mr. Walscheid: Yes.

(Paper marked Exhibit R-2 in evidence.)

Q. Can you indicate from this what portion of the ordinance refers to lots one, two, three and four and five in Block 85, on the Tax and Assessment Map? A. This one here (indicating).

Mr. Walscheid: He evidently does not understand the question.

The Witness: That is a blank space there; *that is in One-D.* That is the park.

Mr. Walscheid: The ordinance is now in evidence?

Mr. Winne: I want to find the zone.

Mr. Walscheid: Here is the property (indicating).

Mr. Winne: What is the question?

(Question read.)

A. 'In all zones designated as B, C or D zone, no building or premises shall be used, erected or altered except for one or more of the following uses:

A. Boarding-house, for not more than fifteen persons.
B. Churches, schools, libraries, amusements.
C. Dwellings.
D. Truck gardens, nurseries, green-houses.
E. Fraternal orders and clubs, excluding bowling alleys therein.
F. Hospitals, sanitariums, philanthropic institutions, for eleemosynary uses other than correctional institutions.
G. Hotels and inns.
H. Office for architect, dentist, physician, nurse, surgeon or other professional persons situated in the same dwelling or apart-

ment used by such person, or as his or her place of residence.

I. Private garages or private stables permitting only one commercial vehicle of not more than two tons capacity.

J. Monuments.

K. Transportation, rights of ways and transportation stations.

L. Accessories used incident to the above.

M. A window display, sign or name-plate shall be allowed as appurtenant to a use as an office for professional persons, or for other occupations as permitted under this section, only when said window display, sign or name-plate does not exceed one square foot in area;

All buildings for accessory use, such as private garages, private stables, and so forth, shall be located in the rear yard. On the corner lot, they shall be set back from the street line for a distance which shall be at least equal to the set-back required for buildings on the adjoining lot.'

Mr. Walscheid: Is that all?

The Witness: That is all.

Mr. Winne: Now, I take it, Mr. Walscheid has something to say about it. That is my offer.

The Court: Do I understand that those are the things that are prohibited?

Mr. Winne: Those are the things that are permitted.

Mr. Walscheid: Everything else is prohibited?

The Court: Inferentially, I suppose that is so. In other words, it says only these are permitted in that area.

Mr. Winne: Yes, the theory of the ordinance is that they make a map and color the map in different ways, and in certain zones they permit certain things, and in this zone they permit these things.

Mr. Walscheid: Now, I at this time,—I suppose my motion should be to strike out this answer and this testimony,—strike out this section which has been read in evidence, on the ground that the limitations upon the uses therein contained are illegal and void and contrary to the constitution and the laws of the State of New Jersey, and constitute an illegal limitation upon the use of the property in question, and a taking of that property to that extent without due process of law.

* * * * * * * *

Mr. Walscheid: The ordinance I wish to call your Honor's attention to is brought into court collaterally at this time, and is not being brought into court for the purpose of enforcement. I just wish to add that by way of response to what has been said. It seems to me that the existence of this ordinance, I may add, can have no probative value as to the determination of what the usable value of this property is as of November 3, 1926, that being the question with which this jury has to deal.

The Court: The Nutley case that was referred to held the ordinance there under consideration void, stating that it must designate the promotion of the public health and the general welfare of the public, and unless it came within those categories, it would not be upheld, and that has been followed in a long, long line of cases. But since that time, the Supreme Court of the United States has said, in

the so-called Cleveland, Ohio, zoning ordinance, that that ordinance was good.

Mr. Walscheid: Oh, yes.

The Court: And there have been no Court of Errors opinions in this state that I know of since the pronouncement of the Supreme Court of the United States, which I take it is quite contrary to the philosophy and the theory of the Nutley case.

Mr. Walscheid: It is not, sir.

The Court: Well, I assumed that it was.

Mr. Walscheid: If your Honor please, the first one of these cases that I remember that the United States Supreme Court dealt with came up from Boston, and they at that time upheld such a zoning proposition, but that at that time upheld it on the theory that they could not go behind the facts as found by the lower court, by the state court, and we in this state are now reaching that same point; and I say that in this Cleveland case the same proposition came before the Supreme Court, namely, that the facts as found below were such as bound the upper court, and the pure question of law, that is, the question of law as it related to a state constitution is not what is dealt with in the United States Court cases because, as I understand the law, the state has the right to adopt any constitution in conformity with a republican form of government; but there is that limitation which absolutely throws the Cleveland case askew, takes it off the point decided in the Nutley case, as I understand it. Now, we are reaching that same proposition in this state by the creation through the Legislature of so-called zoning boards which give to that zoning board the

right to determine as a question of fact these propositions as to safety, health and general welfare, and the Supreme Court has said that as to those cases where there is a finding of fact and that is based upon some evidence, it will not be reviewed, and your Honor and I, I think, will agree, that the Court of Errors is not going to reverse that finding of the Supreme Court; but as a pure question of law, as this thing stands here now, I say this is squarely within the ruling of the Nutley case, and since it is brought in here collaterally, it is not brought in here for the purpose of enforcing this ordinance, it is not related to this case, there is no attempt to build anything of the kind upon this property, it is a purely speculative matter, remote and far-fetched, it is an illegal limitation upon the use; and under these circumstances, I think I am justified in asking your Honor to strike from the record this section. (Further argument.)

The Court: I will allow it for what it might be worth, and will charge the jury in relation to it.

Mr. Walscheid: I pray an exception.

The Court: You may have it" (pp. 230-239).

The portion of the judge's charge submitting to the jury the effect of this ordinance upon the uses of the premises, is as follows:

> "There has been some testimony in this case with respect to the zoning ordinance of the Village of Ridgefield Park, and it appears from the ordinance known as the zoning ordinance that this particular piece of land can only, under the terms of that ordinance, be used for

certain uses. That was put in on the theory that that excluded the use of this property for any use except those that were mentioned in the ordinance, and that would be true if the ordinance was enforceable as written. But the Court of Errors and Appeals, our highest court, has in many cases, beginning with what is known as the Nutley case, which was decided in 1924, held many of these ordinances invalid if they attempted to deprive the owner of the property of his property by restricting its use, unless it was necessary to do that for the promotion of the public health, the safety and the general welfare of the community. In other words, if the ordinance prevented the building of a store in a certain district which was put down in the zoning ordinance as a purely residential district, our Court of Errors and Appeals would set aside or hold invalid that provision of the ordinance with respect to a certain piece of property in that zone where a store or an apartment house might be sought to be built, unless it could be shown that the building of a business property or an apartment was in fact against the public health, the safety or the general welfare of the people. So when you consider the evidential value of the ordinance which was introduced, you must keep in mind what I have said with respect to the law of the State as enunciated by our Court of Errors and Appeals with respect to the extent to which property may be restricted by the governing bodies of the various municipalities" (p. 306).

The exception to the judge's charge in relation to the introduction of this ordinance is found at page 312, folio 20 of the trial record.

Edward H. Green, an expert called for appellants, testified that the property under investigation was peculiarly adapted for use as an industrial site with siding along the railroad (p. 76, l. 30) and that as of the date of taking, November 3rd, 1926, the value of the premises in question for industrial purposes with a siding along the railroad (p. 126, l. 12) in his opinion was $31,000.00 (p. 128, l. 9).

John Kelley, an expert called for appellants, testified that the premises in question would, in his opinion, be reasonably and fairly worth, as of November 3rd, 1926, for industrial purposes with siding on the railroad (p. 139, l. 1) about $27,000.00 to $28,000.00 (p. 139, l. 35).

John A. Baldwin, an expert called for appellants, testified that in his opinion the premises had a value of $30,000.00 for uses for commercial purposes with a siding on the railroad (p. 149, l. 25).

Charles Rosenberg, an expert called for appellants considered mercantile purposes (p. 199, l. 33) business property for the construction of business buildings, stores, offices and the like (p. 199, l. 38) and for these purposes valued the land at $31,268.00 as of November 3rd, 1926, the date of taking (p. 200, l. 17).

George B. Hitchcock, an expert called for appellants, considered the property for uses as a combination apartment and store building (p. 219, l. 25) and valued the same at $35,000.00 as of November 3rd, 1926, for these uses (p. 220, l. 35).

The zoning ordinance of the Village of Ridgefield was of course introduced into this case for the purpose of establishing in the case that the premises in question were located in Zone 1-D (p. 234, l. 4) and that under zones designated as D zones no building or premises shall be *used,*

erected or *altered* except for one or more of certain specific uses, which uses are enumerated at page 234, line 20 of the Trial Record.

An examination of the list found at page 234, line 20 of the Trial Record shows that the land taken from appellants was not available, under the provisions of this ordinance, for the uses to which it was best adapted. Appellants were, of course, entitled to have the value of the land taken measured by the uses for which it was best adapted.

Morris v. Cummings Dredging Co., 96 N. J. L., 251; 10 R. C. L., page 130.

Unless the operation of the zoning ordinance *legally* forbade these uses and thus destroyed the adaptability of these lands for these uses, it is my contention that the admission in evidence of this ordinance constituted prejudicial error.

The act under which the zoning ordinance was passed is Chapter 82 of the Laws of 1921. On November 3rd, 1926, the date of the taking of this property, an additional act, namely Chapter 146 of the Laws of 1924, was in effect. Two earlier acts,—Chapter 146, Laws of 1918, and Chapter 274, Laws of 1920,—apply only to first and second class cities.

All of these acts are, however, based upon the principle that a municipality may adopt so-called zoning ordinances *solely* for the purpose of promoting public health, safety and general welfare.

In State v. Nutley, 99 N. J. L., 389, on appeal from the Supreme Court in the case of Ignaciunas v. Town of Nutley and Risley, 98 N. J. L., 712, the Court of Errors and Appeals had before it an ordinance under which the municipality involved was laid out into certain districts or zones, and that

ordinance, as in the instant case, provided that in a zone known as Class B, no stores might be erected. In the Nutley case the building inspector refused a permit for the erection of a combined store and dwelling, *solely* because of the prohibitions contained in the ordinance then before the court. In that case, Mr. Chief Justice Gummere said:

> "The Legislature in its grant of power to the several municipalities of the state to regulate the use to which a property owner may put his property, even to the extent of prohibiting its use for a particular purpose, *limited that power* by the provision of the statute, that such regulation must 'be designed to promote the public health, safety and general welfare'. *If,* therefore, the ordinance, in its application to the property of any particular owner, *does not come within the limitation* of the statute, *to that extent it is without legal justification and void.*

The narrow question, accordingly, which we are called upon to consider in the determination of this case is: Will the erection and user of a combined store and dwelling-house upon the lot of the respondent constitute a menace to the health or the safety of the people of the Town of Nutley, or to the general welfare of the municipality? That the mere erection of this building, regardless of the use to which it may afterwards be put, is likely to be injurious to the health or safety of the residents of the town is asserted, but, practically, not argued by counsel. And, as we see it, no well-grounded argument can be made in support of the assertion. The owner or the occupier of the store, after it is erected, might attempt to

conduct therein a business which threatened public health or public safety; but the right of the municipality to restrain the carrying on of such a business (which may be conceded) is not involved in the present case. The bold assertion of counsel is that the mere presence of a store building in the so-called residence district of Nutley is in itself a menace to the public health and the public safety, *notwithstanding* that the business carried on therein *will not constitute such a menace.* Both common experience and common sense demonstrate the unsoundness of such an assertion. * * *

The ordinary use of property is not authorized by the general welfare clause of the statute to be prohibited, because repugnant to the sentiment or desires of a particular class residing in the immediate neighborhood thereof, *but only because such use is detrimental to the interests of the public at large.* In other words, the restriction authorized by this provision of the statute upon the untrammeled use of property for the promotion welfare of the community must be such as will tend in some degree to prevent harm to the public generally or to promote the common good of the whole of the people of such community. That the prohibition by the town of Nutley against the erection of such a building as is contemplated by the respondent upon the lot owned by him will not have any such effect seems to us to be manifest.

We conclude, therefore, that the ordinance under consideration, so far as it prevents *the use* of the respondent's property for the purpose to which he desires to put, is not authorized by the statute under which it purports to have been adopted, and to that extent is null and void."

It is my contention that the ordinance in question, in its application to the property in this case, does not come within the limitation of the statute, and is therefore to that extent without legal justification and void.

Romar Realty Company v. Board, 96 N. J. L., 117;
State v. Nutley, 99 N. J. L., 389;
Eaton v. South Orange, 130 Atl., 362.

There is nothing in the *uses* to which this property was best adapted, according to the witnesses for the appellants, which is inherently detrimental to the interests of the public at large, or which in any way affects the public health, safety or general welfare of the community and the municipality was therefore without power to restrict the uses of this property in the manner provided by this zoning ordinance.

Levy v. Mravlag, 96 N. J. L., 367.

The only effect of the ordinance is to deprive the owner of his property or the use thereof without compensation.

Levy v. Mravlag, 96 N. J. L., 367.

Necessity alone can justify the exercise of the police power to take private property without compensation.

Cooper Lumber Co. v. Dommers, 2 Misc., 289.

There is nothing in the evidence in this case to warrant a finding that the uses mentioned for the

property in this case would in any way injuriously affect the public health, safety or general welfare of the community, and the court cannot assume that any of the uses referred to in the testimony of appellants' witnesses, if lawfully conducted, would be injurious to health, safety or general welfare.

Sonntag v. Schmidt, 130 Atl., 361, 362.

While the presumption is in favor of the conclusion that the purpose of the governing body was that indicated in the statute, and so far as the ordinance affects the rights of the owner of a given piece of property, the burden rests upon him to show that the ordinance is not justified on any such theory so far as his property is concerned, yet, *if it should appear from the ordinance, plus the admitted facts in a given case* that the ordinance *has no such effect,* its passage cannot be justified under the statute.

Ninth St. Improvement Co. v. Ocean City,
90 N. J. L., 106; affd. 91 N. J. L., 703;
Hench v. East Orange, 130 Atl., 363.

Under the cases above cited it is my contention that it appeared at the trial of this case—from the ordinance plus the facts in the case—that the purpose of the zoning ordinance introduced in evidence was not,—in so far as the property in question and the proposed uses are concerned,—reasonably required for protection of public health, safety or general welfare.

Under the cases above cited the ordinance in question was therefore void in so far as the property in question is concerned and it was prejudicial error to admit this ordinance in evidence.

The trial court, however, not only permitted the ordinance to go into evidence but allowed the jury to determine just what effect should be given to the ordinance in arriving at its conclusion. Thus, the trial court, among other things, said:

> "* * * it appears from the ordinance * * * that this particular piece of land can only, under the terms of that ordinance, be used for certain purposes, * * * and that would be true if the ordinance was enforceable as written. But the Court of Errors and Appeals * * * has in many cases * * * held many of these ordinances invalid, if they attempted to deprive the owner of the property of his property by restricting its use *unless* it was necessary to do that for the promotion of the public health, the safety and the general welfare of the community * * *. So, when you consider the evidential value of the ordinance * * * you must keep in mind what I have said with respect to the law * * * as enunciated by our Court of Errors and Appeals with respect to the extent to which property may be restricted by the governing bodies of the various municipalities."

As I read this portion of the charge, the trial judge left to the jury the question of determining whether the ordinance, as applied to the facts in this case, was a legal exercise of the power delegated to the municipality, i. e., whether it was reasonably necessary for the protection of the public health, safety or general welfare to apply and enforce the ordinance as against the uses claimed for the property under discussion. There was no evidence in the case which would warrant either judge or jury in finding that these uses in any way affected either the public health, safety or general

welfare; neither the court nor the jury had the right, in the absence of such evidence, to assume that such uses would thus affect the public health, safety or general welfare and it was therefore error to submit this question to the jury. In the absence of such evidence, the decision of this question was *one of law* to be decided by the court and if the jury was to be instructed upon the topic, a binding instruction ought to have been given that the ordinance, as applied to the facts in the case, was an unreasonable exercise of the police power, and was void, and that therefore, there were no legal restrictions imposed by the municipality upon the uses claimed for the property in question.

The jury evidently decided,—as they naturally would,—that the ordinance *did* restrict the uses to which this property might be put and made an award of $9,945.00. In this there was error prejudicial to appellants.

Conclusion.

It is therefore respectfully submitted that the judgment of the Bergen County Circuit Court be set aside.

Respectfully submitted,

J. EMIL WALSCHEID,
Of Counsel with Plaintiffs-Appellants.

October Term, 1927.

New Jersey Court of Errors and Appeals

Overpeck Land Corporation and John J. Chello, Appellants, *v.* Village of Ridgefield Park in the County of Bergen, Respondent.	On Appeal from Bergen County Circuit Court.

BRIEF OF RESPONDENT.

The Overpeck Land Corporation and John J. Chello owned as equal tenants in common five lots in Ridgefield Park, adjoining the West Shore Railroad, leased and operated by the New York Central Railroad. The lots had no frontage on any improved street. The Public Utilities Commission of New Jersey, in 1922, ordered the West Shore Railroad to build a station at Ridgefield Park and to complete it by January 1st, 1926 (Exhibit R-1, Case, p. 323). This exhibit is a contract between the village and the railroad, dated June 1st, 1926, by the terms of which the village agreed to acquire certain land, including the premises in question, so that the railroad might construct its station. The blue-print attached to the contract and showing the premises to be acquired is dated April 28th, 1926 (Case, p. 325).

The appellants purchased the property by deed dated June 30, 1926, and it is an easy inference that the purchase was made with the idea of obtaining

a large price from the municipality for these lots. The lots were owned by Morton T. Brewster and had been owned by him since March 7, 1907 (Case, p. 38).

The sale to the appellants was engineered by Charles Peard, a brother-in-law of Morton T. Brewster, and a stockholder in the appellant corporation, Overpeck Land Corporation. He obtained his ten shares of stock in the Overpeck Land Corporation without paying for them (Case, p. 191): "Mine were not paid for. When the organization was formed, I was to be paid ten shares of stock, I to do all the work, the purchasing, and so forth."

Two of the other stockholders, were the sister of Morton T. Brewster, who was Mrs. Charles Peard, and a niece of Morton T. Brewster. Everyone knew that a station was to be constructed in the vicinity of the premises in question.

> "Q. Well, did you know that the Board of Public Utility Commissioners had directed the railroad to build a new station on or before January 1st, 1926? A. Why, yes, if—and I think I did. I remember reading it in the paper, that they—
>
> "Q. And you knew that after January 1st, 1926, the negotiations were fast coming to a head? A. Yes."

> "Q. You knew that the village and the railroads were in negotiation after January, 1926, looking toward the purchase of a site and the construction of a station in Ridgefield Park, didn't you? A. The purchase of a site, no, I did not. I knew that they were talking of constructing a station" (Case, pp. 182 and 183).

This witness, Charles Peard, was the organizer of the Overpeck Land Corporation which was not chartered until March 15, 1926. This property was

the first property that was bought in the name of the corporation. As shown by the map attached to the state of the case, the lots have no frontage on any improved street. "Herbert Street really did not exist as a street; it is only a map street. There were trees and brush; it was inaccessible" (Case, p. 241).

> "There was a large tree stood about the—about in here (indicating), about 24-inch diameter, stood right about the center of the road there.
>
> "The Court: Of what road?
>
> "The Witness: To the center of Herbert Street, near the south property line of Mount Vernon.
>
> "Q. When was that tree removed, as near as you can tell us? A. I would say that was removed sometime between June and November of 1926" (Case, p. 240).

The land was described by a witness, a railroad engineer, who was in charge of construction:

> "I found that this particular piece of land was the lowest piece of land in that general vicinity, in fact, every adjoining piece of property lay at a higher elevation, which caused all the drainage from all sides to collect in that—in that parcel of land, and make it a swamp" (Case, p. 255).

After holding this land for nearly twenty years, Morton T. Brewster sold it to appellants by contract dated April 24, 1926, and received $5,000 in cash at the closing of the title which was on June 26th, 1926, and took back three mortgages, aggregating $10,000. Three separate mortgages were given, although there were only five lots, and this was explained by the witness Peard:

> "Whenever you buy a piece of property of over fifty feet, there is a possibility that some

day you will want to sell part of it without selling the whole parcel, and you have to provide, if there is a mortgage on there, about either having a release clause for part of it or as we did in this case of having separate mortgages."

"Q. So that you have in contemplation a sale of this property in parcels? A. No.

"Q. Well, if you did not have it in contemplation, why did you do it that way? A. That was merely a protection if I did later on want to sell it in separate parcels. I had the idea of selling it in one parcel the same as it was bought" (Case, p. 179).

The Commissioners of Assessment in the Village of Ridgefield Park awarded appellant $7,500.00 for the land and an appeal was taken in the Bergen County Circuit Court to determine the true value of the land as of November 3, 1926. The jury, after three days' trial, viewing the property, and having heard among other witnesses, eight real estate experts, awarded damages in the sum of $9,945 with interest from November 3, 1926, from which judgment the appeal is taken. The real estate experts valued the property between $7,300 and $35,000.

The witness Rhodes, who was the only real estate expert living in Ridgefield Park, and intimately acquainted with the values in Ridgefield Park, gave the market value of $7,300.00, stating:

"I have yet to find a purpose that the property would be suitable for. It has absolutely no method of approach except Herbert Street. Herbert Street at that time was absolutely unimproved. There was a tree in the middle of Herbert Street a few feet from Mount Vernon. It was practically level for 50 feet, and then a sheer drop of ten or 12 feet into a great big mud hole. You couldn't get a horse in there if your life depended on it at that time" (Case, pp. 284 and 285).

On cross examination, this witness said:

"Q. Now, you consider this piece of property useless, do you? A. Well, almost useless. It certainly is not worth a cent more than the other side of Herbert Street, and there is not a single front foot 100 feet from Mount Vernon Street except perhaps Paulison Avenue or Railroad Avenue that is worth more than $40 or $50 a running foot" (Case, p. 286).

Witness William H. Lewis, the real estate expert of the New York Central Railroad, placed a value of $.60 a square foot on the premises, or $9,300.00.

Thirteen assignments of error are relied upon, but appellant has abandoned all except the first three.

ASSIGNMENT No. I.—Because the Trial Court erroneously refused to charge the appellants' fifth request to charge, which reads as follows:

"There is no evidence in this case from which the jury can find that the sale by Brewster to the appellants of the property taken by the municipality was not a *bona fide* transfer of that property."

The price to be paid by the appellants was material only as some evidence of the value of the property. Generally speaking, a price for which a piece of property is sold is not the best evidence of its value.

Chamberlayne, "The Modern Law of Evidence," Volume III, Section 2175 N, says:

"Where the transaction has been conducted, upon strictly commercial principles, between persons at liberty to make such contracts as they please, the price paid for land may fairly be deemed by the court to be distinctly relevant upon the question of its value, especially in connection with circumstances of corrobo-

ration. Such a test could not well, in any case, be conclusive on the point. So far from any such effect being accorded, many courts have been unable to recognize in the amount paid for land any proof whatever of its value. Real estate not being in strictness, fungible, but rather an article of which the supply is limited and special desirability readily possible, the price paid for a particular parcel of land may, in many cases, furnish no real guide to its true worth. The ruling has even been made that the price for it is not admissible as evidence of value, though the good faith of the transaction be not disputed."

In view of the fact that this sale was engineered by a brother-in-law of the seller at a time just when the railroad was contracting to build a station upon the property in question, the fact that three of the six stockholders of the Overpeck Land Corporation were related by blood or marriage to Morton T. Brewster, and that the principal organizer was given his stock for nothing, raises a jury question as to whether or not this was the kind of a sale that is evidence of value or whether the circumstances were not to be considered as making this something besides a free sale in the open market. There is an inference that cannot be avoided, that this sale, largely within the family, was a "wash" sale to place a fictitious value upon the property. It cannot be said that there is no evidence of the failure of good faith. As a matter of fact, the charge would have been material only to the extent of considering the price paid by the appellants as an evidence of the value. Had the Court granted the request, it is obvious that the result would have been to lead the jury to believe that as there was no evidence of bad faith, they should bring in a verdict at least equal to the amount paid by the appellants.

ASSIGNMENT NO. II.—Because the Trial Court erroneously charge the jury in the following respect:

"There has been some testimony in this case with respect to the zoning ordinance of the Village of Ridgefield Park, and it appears from the Ordinance known as the zoning ordinance that this particular piece of land can only, under the terms of that ordinance, be used for certain uses. That was put in on the theory that that excluded the use of this property for any use except those that were mentioned in the ordinance, and that would be true if the ordinance was enforceable as written. But the Court of Errors and Appeals, our highest court, has in many cases, beginning with what is known as the Nutley case, which was decided in 1924, held many of these ordinances invalid if they attempted to deprive the owner of the property of his property by restricting its use, unless it was necessary to do that for the promotion of the public health, the safety and the general welfare of the community. In other words, if the ordinance prevented the building of a store in a certain district which was put down in the zoning ordinance as a purely residential district, our Court of Errors and Appeals would set aside or hold invalid that provision of the ordinance with respect to a certain piece of property in that zone where a store or an apartment house might be sought to be built, unless it could be shown that the building of a business property or an apartment was in fact against the public health, the safety or the general welfare of the people. So when you consider the evidential value of the ordinance which was introduced you must keep in mind what I have said with respect to the law of the State as enunciated by our Court of Errors and Appeals with respect to the extent to which property may be restricted by the governing bodies of the various municipalities."

There was admitted in evidence an ordinance of the Village of Ridgefield Park which was in existence at the time of the taking of the property, and this ordinance was permitted to go to the jury. It limited the use of the premises in question as follows:

> "A. In all zones designated as B. C. or D. zone, no building or premises shall be used, erected or altered except for one or more of the following uses:
>
> A. Boarding-house, for not more than fifteen persons.
> B. Churches, schools, libraries, amusements.
> C. Dwellings.
> D. Truck gardens, nurseries, green-houses.
> E. Fraternal orders and clubs, excluding bowling alleys therein.
> F. Hospitals, sanitariums, philanthropic institutions, for eleemosynary uses other than correctional institutions.
> G. Hotels and inns.
> H. Office for architect, dentist, physician, nurse, surgeon, or other professional persons situated in the same dwelling or apartment used by such person, or as his or her place of residence.
> I. Private garages or private stables permitting only one commercial vehicle of not more than two tons capacity.
> J. Monuments.
> K. Transportation, rights of ways and transportation stations.
> L. Accessories used incident to the above.
> M. A window display, sign or name-plate shall be allowed as appurtenant to a use as an office for professional persons, or for other occupations as permitted under this section, only when said window display, sign or name-plate does not exceed one square foot in area.
>
> "All buildings for accessory use, such as private garages, private stables, and so forth,

> shall be located in the rear yard. On the corner lot, they shall be set back from the street line for a distance which shall be at least equal to the set-back required for buildings on the adjoining lot" (Case, pp. 234 and 235).

The witness Mabus, who was agent for the Morton T. Brewster interests, had testified (Case, p. 46) that the property could not be leased and no building could be erected on it because the town would not authorize a building permit. This was part of the case of the appellant. It is the contention of the respondent that the zoning ordinance was material and properly admitted in evidence and that the charge of the Trial Court, if not correct, was in favor of the appellants and against the interests of respondent, and therefore cannot be complained of by appellants. The Court permitted the jury to give consideration to the zoning ordinance, explaining that the restrictions contained therein were not valid unless designed for the purpose of protecting the health, safety or general welfare of the public. It is submitted that this charge was very favorable to the appellant.

The Supreme Court held, in *Burg* v. *Ackerman*, 135 Atlantic 672, that the terms of a zoning ordinance would be presumed to be reasonable unless shown to the contrary. A writ of mandamus had been sought against a building inspector on the ground that an existing zoning ordinance was an unreasonable exercise of the police power and therefore ineffective. The Court said the presumption is that the requirements and regulations are reasonable unless the contrary be shown. Of course, the Court will not set aside an entire ordinance if an illegal provision in it is separable.

Cliffside Park Realty v. *Cliffside Park*, 96 N. J. Law 278.

In that case an elaborate zoning ordinance was removed on certiorari as unconstitutional because it authorized an improper limit on use of property, and because the ordinance was said to go beyond the authority of the statute. Justice PARKER wrote the opinion below, which was affirmed in the Court of Errors, and said:

> "I do not think the act is unconstitutional in toto— There can be no question about the validity of reasonable regulations touching the public health and safety."

In *Hench* v. *East Orange*, 130 Atlantic 363, the Supreme Court said:

> "The presumption is in favor of the conclusion that the purpose of the governing body was that indicated in the statute, and so far as the ordinance affects the rights of the owner of a given piece of property, the burden rests upon him to show that the ordinance is not justified upon any such theory so far as his property is concerned. * * * It is entirely settled that an ordinance will not be held void as unreasonable unless shown to be unreasonable in toto."

In *Blake* v. *Pleasantville,* 87 N. J. Law 426 (aff'd 89 N. J. Law 358), the Court said:

> "An ordinance will be presumed to be in conformity with the statute from which it derives its vitality, unless the contrary is expressly made to appear."

The case of *Green* v. *Frost,* V Advanced Reports 386, was a suit in Chancery to rescind a contract for the sale of lands, free from encumbrances except as noted. The land was in East Orange and on September 24, 1924, the Supreme Court had set aside the zoning ordinance in that city.

Vice-Chancellor CHURCH said that at the time

the contract was signed, September 27th, 1924, there was no zoning ordinance, the Court having annulled it, and that complainant was presumed to know the law and had the advice of counsel and knew the possibility of zoning ordinances. The inference is plain that if the Supreme Court had not set aside the zoning ordinance in the suit to rescind the contract, it would have been deemed valid.

ASSIGNMENT No. III.—Because the Trial Court erroneously permitted the witness J. E. Mabus, over objection of appellant, to answer the following question:

> "The Court: Now the question is what did you offer it for sale at that time?"

The witness Mabus, who was the agent for Morton T. Brewster, and had charge of the Brewster real estate interests, had testified on direct examination that Morton T. Brewster offered the property to the Mayor of Ridgefield Park for $15,000.00 in 1926 (Case, p. 24). On cross examination he said it had been offered to a former mayor about two years prior. The question objected to was what price was asked at that time, by the owner. On direct examination, Mabus had testified to sales made by Morton T. Brewster from 1922 down to 1926 (Case, pp. 31 to 38).

If the testimony of Mabus as to the price which the property was offered for sale in 1924 was not competent, as evidence of value, it was competent to test the good faith of the sale to the appellants and as an admission against interest. It was the theory of the Village that the sale from Morton T. Brewster to the corporation in which his relatives had a large interest, made just when the Village had to acquire the premises, was a subterfuge. So it certainly was competent to ask Brewster's agent

what was wanted for the property in the open market, as contrasted to the sale to a family corporation.

> "An offer to sell property may be proved against the owner as an admission of its value at or near the time of the offer."
>
> *Springer* v. *Chicago,* 12 L. R. A. 609, 135 Ill. 552.

Counsel in objecting to the question, page 45, characterized it as "immaterial, incompetent and irrelevant." Such an objection is unavailing upon error as it is a general objection and does not state the reasons upon which it is based.

Currie v. *Waverly,* 52 N. J. L. 381.

In the brief of appellant, Point No. III is set up as Point No. II (Typewritten Brief, p. 20). The question and objection as set up on the typewritten brief, page 24:

> "The Court: Now, the question is what did you offer it for sale at that time?
> "Mr. Walscheid: Now, I object to that as immaterial, incompetent and irrelevant.
> "The Court: I will allow it and grant you an exception."

The argument made by counsel preceding this question was directed to a prior question:

> "Did anyone ever try to buy these lots that the Overpeck Land Company bought before they negotiated with you?"

This question was answered:

> "Perhaps between two and three years ago."

And the following question was:

> "Now at what price were you holding the lots then?"

This question was never answered, and the argument was that offers of sale are not evidence of value and that the time referred to was too remote, and the Court said the time necessary was not too remote and then the question was reframed at the witness' suggestion, not to include an offer of purchase but purely to determine the price at which Morton T. Brewster offered it for sale. That question was only objected to as immaterial, incompetent and irrelevant.

Everything in the brief of appellant concerning offers to buy or sell adjoining property has nothing to do with the question.

Everything in the brief concerning offers to purchase the same property, has nothing to do with the question.

The brief of appellant says that it is well settled that offers to sell the very property in question are inadmissible, citing *Corpus Juris* and other cases. This is not the law. Section 124, 22 *Corpus Juris,* title "EVIDENCE" is only quoted in part by brief of appellant. The remaining quotation being:

> "It is to be observed, however, that an offer to sell for a named price involves an estimate of value by the owner, and hence may be competent against him as an admission."

Section 125:

> "The values placed on property by its owner may be shown against him as an admission unless it relates to a time so long before or after the time in which the value is in question, that it cannot reasonably be supposed that the values at the two times are the same."

The brief of appellant quotes many cases in connection with offers of a purchase of property being deemed irrelevant. There is a marked difference between an offer to purchase which is never

consummated, and which possibly never could be consummated, and an offer to sell by an owner. The earliest case in the Court of Errors and Appeals, followed in many subsequent cases dealing with this question, is *Montclair Railroad Co.* v. *Benson,* 36 N. J. L. 557. In that case the Court overruled the question concerning the price at which adjoining property was offered for sale, about a year prior. The Court said:

> "There is no inflexible rule in these cases which limits the period over which this inquiry started, but these questions may be extended. How long anterior or subsequent to the first appraisement the investigation may be carried, must in a great measure be left to the sound discretion of the Court below and unless it appears that that discretion is exercised to the injury of the party whose evidence is rejected, this Court ought not to interfere."

This same argument would make it discretionary with the Court to admit the evidence in question.

Montclair v. *Benson* was followed by *Currie* v. *Waverly,* 52 N. J. L. at page 397, where proof was offered of a price that a stranger to the record had offered to sell another stranger a piece of land belonging to yet a third stranger, but adjoining the tract in question. Even this was not held to be error, although incompetent, because the attention of the Court was not directed to any special ground of objection.

Under question of offers to sell, Chamberlayne, "The Modern Law of Evidence," Volume III, Section 2175-G, says:

> "Such evidence is not infrequently received."

Citing: *City of Tacoma* v. *Bonnell,* 109 Pacific 60;

Auman v. *Philadelphia Railroad Co.,* 133 Penn. St. 93, and many other cases. It is said:

> "To a certain extent, an offer to sell may be said to involve an estimate by the owner as to the value of his property, real or personal. So considered, it may be received for what it is worth, as an admission by conduct."

In the case of *State* against *Duelks,* 97 N. J. L. 43, at page 48, the true rule is expressed:

> "The only absolute test we can have of the value of a merchantable article is what it has been sold for at a fair sale. All other means of ascertaining the value of a merchantable commodity are speculative and must, to a greater or less extent, be uncertain."

As was said in *Goodman* v. *Lehigh Valley R. R. Co.,* 82 N. J. L. 450, by the Court of Errors and Appeals:

> "The evidence as to cost of the farm buildings was clearly admissible on the question of damages. Of course, the cost was not the measure of damages, but such cost is a fact to be considered in ascertaining the fair value of the buildings."

In the *Duelks* case, consideration of furniture bought in 1868 was held evidential on the question of its value in 1875, and the period over which the inquiry might be extended, was said to be in the sound discretion of the Court.

This was also held in *Manda* v. *D. L. & W. R. R.,* 89 N. J. L. 328, when the Court of Errors and Appeals says:

> "Who was entitled to be considered as an expert from the nature of the case, must be left very much to the discretion of the trial judge, and his decision is conclusive unless

clearly shown to be erroneous in matter of law.

"So the admission of evidence as to the amount paid for Cameron Field.

"This was objected to on the ground of dissimilarity between that and the property under consideration. This was under the discretion of the trial judge.

"In this class of cases, there is no inflexible rule which limits the period of time, or the distance, over which the inquiry may be extended, as to the market value of other lands or the situation or use of such lands in the vicinity, whether fairly comparable with the lands taken, and how far such an investigation may be carried, must be left in a great measure to the fair discretion of the Trial Court, and unless it appears that the rulings of the Trial Judge on such matters as are within his discretion works some injury to the appellant they will not be disturbed."

As a matter of fact, the answer to the question objected to did not work an injury to the appellant, because the price of ten thousand dollars ($10,000) in 1924 would easily sustain a value of fifteen thousand dollars ($15,000) in 1926.

Conclusion.

The typewritten copy of brief of appellant was mailed to counsel for the respondent on October 20th, 1927, on which day the Sergeant-at-Arms of the Court of Errors and Appeals advised respondent that the argument would probably be reached on October 24th. Since the rules require briefs to be served fifteen days in advance of the argument by appellant, it is apparent that this was not done in the case at bar. This has been prejudicial to the respondent, both in the preparation of briefs and in the inability to comply with the rule re-

quiring briefs to be filed within ten days of the opening of the term. The appellant's brief was received on Saturday, October 22nd, and counsel for respondent has been required to attempt to answer it on that day so that printed briefs might be filed within the ten days.

It is respectfully submitted that the judgment of the Bergen County Circuit Court should be affirmed both on the merits and because of the failure of appellant to comply with the rules of the Court.

WINNE & BANTA,
Attorneys for Respondent.

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