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Petition of Appeal.

Filed May 7, 1913.

New Jersey Court of Errors and Appeals

HENRY W. DOREMUS, *et als.*,
Appellants,

vs.

CITY OF PATERSON,
Respondent.

To the Honorable, the Court of Errors and Appeals of the last resort in all causes:

The petition of Scotto C. Nash, John H. Mercelis, Edwin Mercelis, John Terhune, Catherine Cadmus, Emma Cadmus Doremus, John D. Cadmus, Cornelia E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien and Margaret Cadmus Andrews, heirs-at-law of Edo Cadmus, deceased; Charlotte Jane Van Riper, individually and as executrix of the last will and testament of Richard H. Van Riper, deceased; Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased; H. Charles Hillman, Catherine Van Riper and Selah Van Riper, individually and as executrix and executor of the last will and testament of George G. Van Riper, deceased; Edo Van Riper, Mary Van Saun, Emma Doremus, individually and as administratrix of Garrett M. Doremus, deceased; Peter H. Doremus, Catherine Doremus and Harvey Doremus, heirs-at-law of the said Garrett M. Doremus, Frederick H. Gelderman, Richard Outwater, Sarah E. Outwater and Richard Outwater, executors; Sarah E.

Outwater, widow of Albert A. Outwater, deceased; Peter W. Outwater, Eliza Boggart, Garrett Outwater, Richard Outwater, trustees for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, devisees under the last will and testament of Albert Outwater, deceased, appellants in the above stated cause, show that your petitioners find themselves aggrieved by a supplemental final decree made in the Court of Chancery by his honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the fifteenth day of February, in the year nineteen hundred and thirteen, wherein the said Henry W. Doremus, and others, as above named were complainants, and the said City of Paterson was defendant, in this respect, to wit, that the said decree adjudges that the diminution in the rental or other value of the respective lands and property rights of the complainants hereinafter named through the said continued pollution of the Passaic River by the said defendant since the twenty-sixth day of March, nineteen hundred and eleven, amounts at the present time upon the basis that the injury resulting therefrom will wholly cease on the twenty-sixth day of March, nineteen hundred and fifteen, to the following sums, respectfully:

To the lands and property rights of the complainant, Scotto C. Nash, two thousand five hundred twenty-nine dollars and thirty-six cents ($2,529.36); to the lands and property rights of the complainants, John H. Mercelis and Edwin Mercelis, nine hundred fifty-nine dollars and seventy-three cents ($959.73); to the lands and property rights of the substituted complainant, John Terhune, nine hundred twenty-five dollars and two cents ($925.02); to the lands and property rights of the substituted complainants, Catherine Cadmus, Emma Cadmus Doremus, John D. Cadmus, Cornelia E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien and Margaret Cadmus Andrews, heirs-at-law of Edo Cadmus, deceased, five hundred

seventy-five dollars and fifty-seven cents ($575.57); to the lands and property rights of the substituted complainant, Charlotte Jane Van Riper, individually and as executrix of the last will and testament of Richard H. Van Riper, deceased, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the substituted complainant, Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the substituted complainant, H. Charles Hillman, four hundred sixty-two dollars and fifty-one cents ($462.51); to the lands and property rights of the substituted complainants, Catherine Van Riper and Selah Van Riper, individually and as executrix and executor of the last will and testament of George G. Van Riper, deceased, one thousand one hundred eighty-one dollars and ninety-seven cents ($1,181.97); to the lands and property rights of the complainant, Edo Van Riper, seven hundred nineteen dollars and forty-six cents ($719.46); to the lands and property rights of the complainant, Mary Van Saun, four hundred thirty-six dollars and eighty-two cents ($436.82); to the lands and property rights of the substituted complainants, Emma Doremus, individually and as administratrix of Garrett M. Doremus, deceased, Peter H. Doremus, Catherine Doremus and Harvey Doremus, heirs-at-law of the said Garrett M. Doremus, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the complainant, Frederick H. Gelderman, six hundred sixty-eight dollars and seven cents ($668.07); to the lands and property rights of the complainant, Richard Outwater, fifty-one dollars and thirty-nine cents ($51.39); to the lands and property rights of the substituted complainants, Sarah E. Outwater and Richard Outwater, executors; Sarah E. Outwater, widow of Albert A. Outwater, deceased;

Peter W. Outwater, Eliza Boggart, Garrett Outwater, Richard Outwater, trustees for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, devisees under the last will and testament of Albert A. Outwater, deceased, four hundred sixty-two dollars and fifty-one cents ($462.51).

And your petitioners humbly appeal from that part of the decree of the Chancellor, which decree as aforesaid, upon the ground that the same is erroneous for that the said Chancellor did not award to the said complainants and each of them a sum of money sufficiently large to compensate the said appellants and each of them for the diminution of the rental and other value of the said respective lands and property rights of the said appellants and each of them through the continued pollution of the Passaic River by the said defendant for the period beginning the twenty-sixth day of March, nineteen hundred and eleven, and ending on the twenty-sixth day of March, nineteen hundred and fifteen, either with respect to the damage to the rental value of the said lands and premises respectively, or to the salable value thereof though arrested development or the damages on account of the interference with the proper development and sale of the said respective lands and property rights belonging to the said appellants and each of them, and

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

LINDABURY, DEPUE & FAULKS,
Solicitors and of Counsel with Appellants.

CHAUNCEY G. PARKER,
Of Counsel.

Answer.

Filed October 18, 1913.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HENRY W. DOREMUS, *et als.*,
Appellants,

vs.

CITY OF PATERSON,
Respondent.

To the Honorable the Court of Errors and Appeals of the last resort in all causes:

The answer of the City of Paterson to the petition of appeal of Scotto C. Nash, John H. Merselis, Edwin Merselis, John Terhune, Catherine Cadmus, Emma Cadmus Doremus, John D. Cadmus, Cornelia E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien and Margaret Cadmus Andrews, heirs-at-law of Edo Cadmus, deceased; Charlotte Jane Van Riper, individually and as executrix of the last will and testament of Richard H. Van Riper, deceased; Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased; H. Charles Hillman, Catherine Van Riper and Selah Van Riper, individually and as executrix and executor of the last will and testament of George C. Van Riper, deceased; Edo Van Riper, Mary Van Saun, Emma Doremus, individually and as administrator of Garret M. Doremus, deceased; Peter H. Doremus, Catherine Doremus and Harvey Doremus, heirs-at-law of said Garret M. Doremus, Frederick H. Gelderman, Richard Outwater, Sarah E. Outwater and Rich-

ard Outwater, executors; Sarah E. Outwater, widow of Albert A. Outwater, deceased; Peter W. Outwater, Eliza Boggart, Garret Outwater, Richard Outwater, trustees for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, devisees under the last will and testament of Albert A. Outwater, deceased, complainants-appellants.

The said respondents not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless said and admit, that a supplemental final decree was made in the Court of Chancery on the date and of the purport mentioned in the said petition, but as to the substance and form thereof the said respondents pray to refer thereto when the same shall be produced. And the said respondents are advised and believe that the said decree appealed from by the said complainants-appellants is just and agreeable to equity except in so far as it has appealed therefrom heretofore and the said respondents pray that the said portions of said decree may be affirmed with costs to be adjudged to the respondents.

EDWARD F. MERREY,
Solicitor for and of Counsel with
City of Paterson, Defendant-Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
HENRY W. DOREMUS *et al.*,
Appellees,

and

MAYOR and ALDERMEN OF THE CITY OF PATERSON,
Appellant.

} *On Bill, etc.*

Brief for Appellant.

STATEMENT OF CASE.

Paterson is now a city of 125,000, situate on the Passaic river. The bulk of the population lies on the right bank. Forty years ago it had a population of a little over 30,000 so grouped that there was a congested center just below the great falls. In this center the nuisance caused by cesspools and outhouses became so pronounced that it was found necessary that a system for disposing of the sewage of the city be devised. Engineers were consulted, and under legislative sanction a system of sewer drains was laid out. These emptied into the Passaic river at various points through-

out the city. No one foresaw at that time that the dumping of this sewage into the Passaic river would in time become a grave nuisance. It was thought that the river was of sufficient volume to take care for all time of all the sewage matter that might be deposited into it without difficulty. No other practical means of disposing of sewage was known. No objection was made by the riparian owners below the City of Paterson that they would be in anywise injured by the plans adopted by the city. The city grew rapidly in population and extended this system at great expense. In time it became apparent that the amount of matter being deposited into the river by the sewerage system and by numerous factories was so great that the river could no longer receive the same without offense.

Complaints were made about this time about this condition, and the cities of Newark and Jersey City, which took their water from points below the City of Paterson, found it was dangerous to continue so doing, not only because of the matter discharged into the river by Paterson, but also because of the contamination that was being poured into it all along the line. The sewage of Newark, it was found, was being carried by the tide up above the intake of its water system at Belleville. These two cities then sought supplies of water from the upper reaches of the river, with the result that the flow during dry periods was diminished to such an extent that at times almost no water went past Paterson. The result was that the Passaic river became very much contaminated, and the riparian proprietors below the City of Paterson became very loud in their complaints. The problem then confronting the city became a very serious one. No one appeared with a remedy. Boards and state commissions were appointed to study the question and solve the

problem of a proper sewage disposal system. One set of experts favored local disposal plants, while others favored a trunk sewer, carrying all the sewage of the entire Passaic valley to tide water.

Investigations of the various systems of local disposal in use throughout Europe and America showed that none of them were suitable for the conditions prevailing along the Passaic. On the other hand, it was realized that the trunk sewer plan was but a temporary expedient and would simply transfer the nuisance from our own doors to those of our neighbors on New York bay.

At last it was agreed that the conditions were so intolerable that it was better to adopt the trunk sewer plan even though it might afford only temporary relief. The expense of this sewer was found to be very great. The cost of construction to the City of Paterson alone will be about two and a half million dollars, which will result in an increase of its bonded debt to the extent of fifty per cent. It is estimated that the necessary interest and sinking fund charges on this sum, together with the charges for the operation of the sewer, will increase the tax levy of the City of Paterson about twenty per cent. every year.

While the citizens of Paterson were trying to solve this most serious problem, the owners of various riparian lands on the river began a series of suits against the City of Paterson. Their claims ran into the millions. The complainants in the present cause originally asked for an injunction against the city to prevent it discharging sewage into the river. The Court of Errors and Appeals held in that case (Simmonds vs. Paterson, 15 Dick., p. 385):

> "By reason of the great injury which would fall upon the city by restraining the continuous use of its sewerage system, and *the acquiescence of these riparian owners*

above where the tide flows, their injury being comparatively small, it would be inequitable to grant them an injunction."

"They may obtain redress by amending their bill, or by filing a new bill for injunction, unless the City of Paterson will consent to make such compensation to them as shall be ascertained to be just; or they may, if they elect, sue at law for their damages."

Simmons elected to sue at law, but the other complainants filed a new bill on the lines laid down by the Court of Errors and Appeals, praying for an injunction against the city emptying its sewerage into the Passaic river "unless and until the said defendant makes such compensation to your orators respectively, for the diminution in value of their said lands and property rights as shall be ascertained to be just."

The defendant answered offering to make such compensation, etc., but alleging "such injury or taking (if any such injury there may be) is to be temporary, and is to continue no longer than five years from the date of the filing hereof." (March 26, 1906, to March 26, 1911.)

The court then proceeded to fix damages, and a final decree was entered June 26th, 1908.

The opinion of the court is reported in 3 Buch., page 474, and is set out in the printed case, 5th volume, page 1. (This case was printed in five volumes, but counsel for the defendant felt that it was only necessary for the purposes of this appeal to furnish the fifth volume to the court; if it should appear that the others are necessary, they are ready and can be delivered at any time.)

The final decree may be found beginning at page 45 of the printed case.

The decree provided (page 50, line 10):

"If notwithstanding the exercise of due diligence the Mayor and Aldermen of the City of Paterson is unable to cease polluting the said river by the time aforesaid, leave is reserved to apply to this court, upon such terms as this court may deem equitable, to postpone the time of issuing said injunction to a day to be fixed by this court."

The city finding itself at the end of the period fixed by it, that is, March 26th, 1911, unable to cease its pollution of the river, applied in February, 1911, for a postponement of the issuance of the injunction until March 26th, 1916, and later amended its petition asking for a postponement only to March 26th, 1915. The petition is found on page 51 of the printed case, and the amendment is found on page 75 of the printed case.

The complainants answered this petition, and their answer is found on page 60 of the printed case.

By the time that this application was made, a number of riparian owners who had been awarded damages by the final decree had made such changes in their property that it was no longer damaged by the pollution of the river; so that at the present time the defendants answering the petition were the owners of twelve separate pieces of property. These defendants at first objected to the postponement of the issuance of the injunction, but Vice-Chancellor Stevens, who heard the matter, in an opinion filed on January 20th, 1911, decided that the injunction should be postponed. His opinion is found on page 77 of the printed case.

An order was taken on January 16th, 1912, ordering that proofs should be taken "as to what would be fair and equitable compensation to the aforesaid complainants severally for the diminu-

tion and the rental value or other value of their said lands which will result to them by reason of the continued pollution of the said river by the discharge of the sewerage of the City of Paterson into the same during the period mentioned in said petition."

This order is found on page 81 of the printed case.

Testimony was then taken on this question, and said testimony is set out in vol. 5, pages 2017 to 2564.

It was understood and agreed that the evidence taken originally, and which is printed in the first four volumes of the printed case, should be considered by the Court in fixing the compensation.

Many other factors contributed to the pollution of the river in addition to that of the sewerage of Paterson, and on the hearing of the original case much testimony was put in as to the proportion for which the city was responsible.

In his original opinion the Vice-Chancellor, in order to arrive at the amount of compensation that the city should pay, fixed the rental or annual values of the various properties. See page 39 of the printed case, line 32, in which the Court says:

> "As a convenient means of reaching a definite result, I have estimated the annual value of such parts of the various properties as are or may be affected by the condition of the river as follows:" (Then follows a table showing the annual value of each property).

The Court said in its opinion (case, vol. 5, p. 30):

> "To sum up, the witnesses all think that the whole volume of polluted water discharged from the factories is slightly in excess of, or at least equal to, the volume of sewage discharged from the sewers. They

all think that the number of pounds of total solids in the household sewage proceeding from the sewers does not exceed, or much exceed, that discharged from the factories."

On page 41, line 32, of the printed case, the Court says:

"Taking the above table as my basis, I have estimated the diminution in rental or annual value caused by the pollution of the river and attributable to Paterson alone, as follows: For the year 1892, five per cent. of the sums above named, and for each succeeding year one per cent. in addition."

The decree entered upon this opinion was not appealed from, and when the time came to determine the question as to what compensation should be awarded to the complainants for the additional four years that the city asked that the injunction be postponed it was agreed by all sides that the rule followed by the court in allowing a percentage of rental values should be continued and increased at the rate of one per cent. per year. This rule would allow the following percentage of rental values:

Year beginning March 26th, 1911, 24 per cent.
Year beginning March 26th, 1912, 25 per cent.
Year beginning March 26th, 1913, 26 per cent.
Year beginning March 26th, 1914, 27 per cent.

This being admitted, the testimony taken on the petition for the postponement of the injunction should have been confined to showing what changes, if any, had taken place in the rental value of the different properties since the last determination of that question by the court.

The principal witnesses produced by the complainants were real estate men, as follows: Benjamin Grunauer, Harrison Van Duyne, Frank R.

Allen, James W. Mercer, James H. Coe and John A. Karl.

The Vice-Chancellor fixed the amount of compensation that should be paid to the complainants, and his opinion is found on page 2565 of the printed case.

On this opinion a supplemental decree was entered. This decree is found on page 2508 of the printed case.

From this decree the City of Paterson has appealed. It feels that the allowances made by the Vice-Chancellor are too great.

In order to arrive at the amount of compensation, a table of rental or annual values was fixed. These are found on page 2575 of the printed case, and as compared with the values as found in 1908, are as follows:

Name of property.	1908 value.	1913 value.
Nash	$850.00	$1200.00
Merselis	350.00	350.00
Terhune	720.00	900.00
Cadmus	450.00	560.00
R. Van Riper	350.00	550.00
H. Doremus	375.00	550.00
Alyea	400.00	450.00
G. Van Riper	1000.00	1150.00
Edo Van Riper	600.00	700.00
Mary Van Saun	350.00	425.00
P. Doremus	500.00	550.00
Gelderman	300.00	650.00
Outwater	450.00	450.00

The claim of the City of Paterson is that all of the above amounts are too high and are not warranted by the testimony.

In addition to the above amounts, the court made two additional allowances in 1913, one to Scotto C. Nash amounting to $324.00 annually, and one to Merselis amounting to $150.00 annu-

ally. The city makes particular objection to these extra allowances, and later on in this brief I will take up these two items particularly. They amount in the four years to Nash the sum of $1,296.00, and to Merselis the sum of $600.00. They are of importance, not so much because of the sum allowed to Nash and Merselis, but because of the precedent fixed. There are a great many other suits pending against the city concerning properties which heretofore were considered not to be damaged by the pollution of the river, but if the rule laid down in regard to these additional allowances is to be followed in the other cases, the amount of damages that the city will have to pay will be a very large item. This extra allowance is what really caused the city to appeal from the order of the Vice-Chancellor.

SPECIFICATION OF ERRORS.

Defendant claims the decree appealed from is erroneous in awarding excessive sums to twelve of the complainants for the diminution in the rental or other value of lands through the pollution of the Passaic river by the defendants.

Decree printed in case, page 2583.

The amounts allowed are as follows:

Scotto C. Nash,	$2529.36
Merselis	959.73
Terhune	925.02
Cadmus	575.57
R. Van Riper	565.29
H. Doremus	565.29
Hilman (Alyea)	462.51
Geo. Van Riper	1181.97
Edo Van Riper	719.46
Mary Van Saun	436.82
P. H. Doremus	565.29
Gelderman	668.07

We consider the allowance to Outwater excessive but our theory of the case precludes our raising objection to it here.

ARGUMENT.

1. *The decree of* 1908 (*case, p.* 45 *of vol.* 5) *fixed the rental values of the respective properties of complainants; it was erroneous to increase the values except upon proof that such rental values have increased since the making of that decree.*

a. *No evidence was offered that there was any change in values.*

b. *The witnesses offered by complainants and permitted to testify by the court as expert were not qualified to speak as to the rental values of the lands nor to the extent they were damaged by the pollution of the river.*

2. *The allowance of* $1296.00 (*opinion, p.* 2574, *l.* 28) *to Scotto C. Nash and* $600 *to Merselis* (*opinion, case, p.* 2575, *l.* 16) *should not have been made at all.*

The Question of Rental Value was Fixed in the Year 1908, and is now Res Judicata.

In the form that this case originally took, the court in lieu of granting an injunction fixed a compensation to which the complainants were entitled. It fixed the annual rental values of the properties, or so much of them, in so far as they were affected by the pollution. It then fixed a table by which the extent of the diminution in the rental or an-

nual values could be measured. That opinion and the decree entered thereon were accepted by both parties to this suit. No appeal was ever taken therefrom.

No evidence was offered upon the last hearing as to the amount of pollution by the city. It was simply shown that the city was increasing in population, and it was assumed from this that the amount of matter discharged into the river by the city would be in direct proportion to the increase in population. (See case, pp. 2221-2223.) This increase for the last four years is about the same as it had been for the twenty years previous; so that it was fair to assume, and in fact it was agreed upon by all parties, that a continuation of the table of percentage of diminution and rental value was fair. The court then should not have increased the amount of the rental values without evidence showing that there was an increase in the value of this property.

No witness produced by the complainants says that there has been a change, and some of them say that there has been no change in the rental value since the former opinion of the court.

Notwithstanding this testimony, the court has raised the rental values of the properties, and in its opinion says (p. 2566, l. 19):

> "On the former hearing, as a convenient means of reaching a definite result, I prepared a table of the annual or rental values of the various properties. It will be found in 3 Buch., on page 506. I then, arbitrarily, for reasons there explained, estimated the diminution in annual value caused by the pollution of the river, attributable to Paterson alone (for I found pollution from other sources), as follows: For the year 1892, five per cent. of the sums named in the table, and for each succeed-

ing year, one per cent. in addition. The amounts computed on this basis were promptly paid. The gradually increasing percentage was given because of the admitted fact that as the city increased in population and built new sewers, the pollution also increased.

"From this table, it would have been possible to have computed the probable injury for the four years period now under consideration, but the complainants, with a view of showing that the compensation thus ascertained would be inadequate, introduced new evidence.

"At the former hearing, although the complainants put in a great deal of evidence on other points, they did not introduce testimony as to annual or rental values. I, necessarily, took as my guide on that subject, evidence of the defendant's experts. On this hearing, the complainants have, themselves, called experts, and as their testimony differs greatly from that of the city's, I am obliged to subject the above mentioned table to revision."

No additional evidence whatever was introduced by the complainants to show that the quantity of pollution was anything other than that resulting from the increase in the city's pollution.

The census shows that Paterson is not increasing as rapidly as it formerly did; (1890, 78,347; 1900, 105,171; 1910, 125,600. See Legislature Manual). The increase from 1890 to 1900 was over 35 per cent., while that from 1900 to 1910 was less than 20 per cent. It would have been fair for the Court to have cut down the one per cent. increase rather than to have followed it. This percentage of increase if followed for a sufficiently

long period, would have awarded to the complainants more than one hundred per cent. of the annual value of their property, and it would have been fair to have provided in making this table that the increase should have proceeded year by year with a substantially lessening amount of increase. However, no serious complaint is made on the part of the city to the increasing of the percentage at the rate of one per cent. per annum for the four years in question.

It will be seen from a perusal of the evidence and from the above quotation of the Court that the only evidence introduced by the complainants was to the effect that the decree of the Court entered in the year 1908 was erroneous. There is no evidence whatever to show that the properties in question have increased in values since that time. The Court, in its opinion, does not say that there is any change in the rental values since 1908; but because the complainants now put in evidence which they neglected to put in originally, he revises his table of rental values. The Court says that in fixing the amounts in 1908, he was guided by the city's experts for the reason that the complainants introduced no evidence on the subject. If the rental values then fixed by the Court were erroneous, there is no redress for the complainants, and while the decree of 1908 stands, the complainants are bound by it as to the amount of rental values, and the evidence that the complainants now put in of expert witnesses who swear to higher values, should not be considered. The rental values have been adjudicated by the Court, as is apparent from its opinion, and cannot be changed unless some change has taken place in these values since the last decree of the Court. That no such change has taken place is shown by the evidence of the complainants' experts.

Harrison Van Duyne, page 2083, line 9:

Q. Now, what change has taken place in the last three years in these properties or in their value?

A. I don't think any change has taken place.

Q. There is no change in the condition at all, you might say, in three years in regard to values?

A. Except just in the lower end, near the dam, where quite a large factory has come, and where the railroad crosses and a little village around, and at the extreme upper end between the two bridges there opposite Paterson. I think in all those places there is a continuous slight change.

Page 2084, line 10.

Q. You then would have testified in this suit three years ago the same as you do now, as to value?

A. I think pretty near the same, yes.

Mr. Allen, on page 2124, line 9:

Q. What change has taken place in the last three or four years in the condition of the value of that property (east side of the river)?

A. Well, there has been no advance in value.

Q. Worth about the same to-day as it was three years ago?

A. I should think so.

There is nowhere to be found in any part of the testimony any statement that the annual values of the properties have increased since the decree of 1908.

Our claim is, that none of the increase in value should have been allowed, so long as the old decree of 1908 remains unchallenged.

The defendant feels that the amounts allowed by the original decree were excessive; that in fact some of the owners suffered no damage; it being tired out by a long litigation and with the expectation that the end had come, did not appeal but paid the amounts awarded by the Court. The defendant felt that it could have appealed from that decree with success.

The total amount awarded, however, was small when compared with the millions demanded by the complainants in the bill originally filed. The city had been compelled to hire special counsel and to secure the services of many expert witnesses, and like many a tired litigant paid rather than continue the fight longer.

Had the complainants been reasonable in the beginning, it is fair to assume that the city would have settled with them rather than enter into this long litigation. They were so avaricious, however, that a settlement was out of the question.

The city not having disputed the award made against it, and having paid the damages, felt that it was bound by the decree, and that the complainants should likewise be bound by the values fixed therein.

The properties in question are located on both sides of the river, three being on the right bank in Passaic County, and nine on the left bank in Bergen County.

The Court, in its opinion in 1908, aptly and precisely states the situation of these properties:

> "The land is, nearly all of it, used for farming or truck gardening. It is not pretended that the odor injuriously affects the land. The houses are all old fashioned and most of them without modern improvements. The means of access are not such as to attract the ordinary commuter. Churches

and schools and places of amusement are distant, and to the north and south, along the river are an increasing number of factories and such a population and such dwellings as factories bring with them. The growth of these factories toward the land in question would seem to be inevitable. There is no evidence that the very rapid growth that has taken place in Passaic up the river and headacre, has been arrested in any degree by the pollution. Besides, I do not find that sickness and disease have attended the fouling of the river to any such extent as one would naturally suppose. The weight of the evidence is that malaria has considerably decreased; the reason being that the anopheles mosquito, which, according to the present medical belief, is the sole cause of malaria, cannot breed in a stream whose surface is covered with a thin film of oil. Some of the complainants say they have suffered from this malady, but there is no reason to suppose that they would not have suffered as much, if not more, if former conditions had prevailed. Undoubtedly, nausea has been produced in some instances, and the discomfort of hot nights, with a breeze blowing off the water, has been very great. The river is no longer a place to boat or fish in, or to cut ice from, or water cattle in. But on the other hand, there is no evidence of depopulation along the river banks, or of inability to rent to farmers or truck gardeners. No doubt the number of persons who might wish to live in that locality has been diminished. In determining on the above sum, I have endeavored to take all these these circumstances into account."

The Expert Evidence Offered on Behalf of the Complainants is Practically Valueless. The Witnesses Offered by Complainants Were Not Qualified.

In order that a man may be expert, it is necessary that he have some knowledge of the matter in hand beyond that possessed by the ordinary man.

The real estate men produced by the complainants were Harrison Van Duyne, Frank R. Allen, James W. Mercer, James A. Coe and John A. Karl. None of these men had any experience in the locality of the property as to enable them to speak about it. It is true that a real estate man or farmer from a distance would have been able to place a value upon this property as a farm. Farm values are very much alike, and this value depends upon the amount of return that would be secured from farming. It differs little in any one particular State, but the claim was made by the complainants that these properties have a value far in excess of the farm value. This being so, this value will differ greatly in nearby localities. Even in one city a real estate man who has had a general business might be unable to give the value of property in a specific section. The true test of value is sales, and before an agent can speak with authority, he must be conversant with sales in the near vicinity of the property about which the inquiry is made. There is a vast difference in the value of property bordering on the City of Newark, which is growing rapidly, and that in the vicinity of Paterson, which has a much slower growth. Neither does suburban growth extend equally in all directions from the center of a city. It will develop quickly in one locality and another equally distant from the city may lie dormant. A stranger, no matter how experienced, would know nothing

about local conditions and would be unable to fix values on properties of this kind. It is only the local man who knows the history of the surrounding property, that can speak with authority on the question.

Every one of these witnesses testified, only over the objection of the defendant, that he was not qualified. We first find that *Mr. Van Duyne* had had considerable experience in selling real estate in the counties of Essex and Hudson and in the vicinity of Newark. He may be a reliable man to appraise properties in the sections of Newark with which he is familiar. He knew of no sale in the vicinity of the property in this suit and has no knowledge of real estate values in the vicinity of the properties in question. He likewise, has no knowledge of rental values. The cross examination of this witness shows that he had no knowledge of property values near Paterson. See particularly pages 2062 to 2076.

Frank R. Allen only had experience in the City of Passaic and some parts of the Township of Acquackanonk. He knew nothing about Bergen County property (case, p. 2101, l. 20), and not very much about the properties on the Passaic County side of the river. He knew of no sale except some in Passaic City and Acquackanonk Township, not near the property in question. See his cross examination, case, page 2101, etc. The experience that Allen had in Passaic very likely caused him to place a high value on properties generally. The rapid growth of the City of Passaic has greatly inflated values there, and a man who has had experience only in that city would be inclined to think other property would advance in price in the same proportion.

James W. Mercer had much experience in the commuting sections of Bergen County. Most of his business, however, was in Hackensack (case, p. 2165). He has had no knowledge, whatever, of farm rentals. He has had no experience as to the value of farms as such; admits that Bergen County real estate men are optimistic and are inclined to be high in price. Within the last few years, Bergen County has developed rapidly as a commuting center, that is, people who desire to get out in the country and work in the city, come there in large numbers. When people leave the crowded streets of New York to find room for their children, they are likely to select such towns and villages as have no manufactories, have good schools and good streets. They abhor the smoke of manufactories. They keep away from a section like the property in this suit surrounded by mills and a horde of the lowest type of foreign laborers. This property is of a character entirely different from that with which Mr. Mercer is familiar. He admits (p. 2251, l. 10) that he has no idea of rental values in this vicinity.

Mr. Coe had the least experience of any of the witnesses called by the complainants. He has sold but one property west of the Hackensack river, that is, none within several miles of the property in question (case, p. 2287, l. 15). He knows the value of this property only by general values throughout the country. He was a member of the County Tax Board and became familiar with this property in his official capacity. His attention was not drawn to it particularly.

John A. Karl, a plumber, is the last expert for the complainants. He was at one time Mayor of Garfield and had been interested in some ventures in the real estate line, but his interest was very

small. His testimony was of little value. He admits he has had little, if any, experience in renting property of the character in question (p. 2379).

Not One Witness Pretends To Know Anything About Rental Values of Property In the Vicinity of That In Question.

This is the only evidence upon which the Vice-Chancellor could base a finding increasing the rental values. He says that it is upon this evidence that he made the increases (opinion, p. 2567, ls. 3 to 13).

It is peculiar that although many of the properties are actually rented no proof was produced to show what was actually received by the owners. This is information which the complainants could have given themselves.

The inference is that the actual rental values are very slightly affected, if at all, by the condition of the river.

The witnesses produced by the city were all men who have had very much experience with the properties in question. The three men produced at the last hearing were *John F. Lee,* who had a large real estate experience in Paterson and owned a tract of land on the Passaic river and adjacent to some of the properties in question. He was familiar with all the sales in the vicinity. This property was located near the Market street bridge, which leads to Paterson, and for that reason the property was marketable while that of the complainants is not. Lee also had a large experience in renting property in the vicinity of Paterson.

Our next expert was *Arthur C. Clement,* who probably had more experience in the selling of real estate in the vicinity of these farms than any other man. His firm has sold the great bulk of all the lots along the river below the properties in question, situate in the Borough of Garfield. His experience has extended over a long period of time. He has had particular experience in the sale of farm properties which were to be cut up into building lots and in the sale of building lots which have lately been set off from farms. Part of this firm's business is to advise speculators as to property which is being developed for sale into building lots and as to the method of so doing.

The last witness at the present hearing, *Mr. Sherman,* has made a specialty of selling farms.

In addition to these three witnesses the Vice Chancellor had before him the evidence of seven other real estate men, who testified before him in 1908 on behalf of the city. Their testimony is not before the court on the present appeal.

These are the men that the Vice Chancellor refers to in the two opinions written by him and on whose testimony he says the original valuations were fixed.

It must be constantly kept in mind that nine of these properties are farm properties, pure and simple. They are now being used for farms and nobody pretends that they can be used for any other purpose at the present time. Many of them are farmed by tenants, and the evidence of Lee and other witnesses is that the farm rentals which are being paid by these tenants are far in excess of any other farm rentals in the vicinity.

It is admitted that these farms have a prospective value for building purposes.

The Borough of Garfield lies just below them, and this community is one of the most rapidly growing boroughs in the state. Its population in 1900 was 3,504 and in 1910 it increased to 10,213. It is located on the Passaic river and suffers from the contamination of that river, not only by the City of Paterson but also by the City of Passaic. Notwithstanding this, it has increased its population almost 300 per cent. in ten years. The City of Passaic on the right bank of the river has had almost as great an increase in population. It has increased from a population of 13,028 in 1890, to 54,773 in 1910.

The development all along the river has been largely one caused by the increase of manufactures. The people who have been attracted to the section of Passaic along the river and to Garfield are laborers who seek work in these mills.

The nuisance caused by the pollution of the river has not hindered this growth. In fact, it may be assumed that the growth would not have been possible without the pollution of the river. If the great factories which are located along the banks of the Passaic river were prohibited from discharging their waste into the river, they would have located elsewhere and the great increase in population would not have occurred.

None of the witnesses for the complainants can point out any property in the vicinity of the farms in question which is used for any other purpose than for farms or homes for working men. Some of the complainants who originally were in this suit and own property which was affected by the river have ceased to be complainants because they sold their property to mill owners and to real estate men who were engaged in cutting up these farms into building lots, which have been sold to

the foreign laborers who operate the mills in Garfield and Passaic.

It is conceded on all sides that if the farms in question in this suit are ever developed and cut up into building lots, the development will be similar to that in Garfield, and all the experience has shown that the persons who buy such lots are not deterred by the nuisance caused by the river (p. 2303, l. 20; 2378, l. 28; 2126, l. 8; and 2131, l. 2).

We argue, therefore, that if the facts show that if the farms which are now being worked as farms, pay rentals equal to or in excess of those in the vicinity, that no damage is done to them by the pollution of the river.

Those who occupy and work farms cannot afford to pay a rental based on the prospective value of the land caused by its nuisance to a growing community. Their rental would be based entirely upon what it was possible to produce upon the land. The owner cannot receive any return for money invested in property of this character beyond that of its value as a farm except what he may receive through the enhancement of its value from year to year.

The most convincing evidence offered in the case goes to prove that it is fair to believe that these farms will remain as farms for ten years to come.

The Vice-Chancellor came to that conclusion (see opinion, p. 2571):

> "My conclusion as to these farm properties is, that they must be dealt with as such. They are farm properties now and they are likely to remain so for an indeterminate time longer."

The acreage involved is large enough to house all the increase in the population of Paterson for the last twenty years.

Why, then, they should be allowed anything in the way of damages, is hard to understand. Where the owners of these properties rent them to tenants, they suffer no inconvenience, and they do not prove that they are receiving any less rentals by reason of the condition of the river.

There are four properties in this suit which are not operated as farms. They are the Gelderman property on the river bank, on the left side, and the Terhune, Merselis and Nash property on the right bank of the river.

No doubt these four properties are damaged by the nuisance.

The Gelderman property is occupied by the owners and is a tract of about sixteen acres and not capable of being farmed. It is located near a trolley road. The house is not a very fine one and the rental value fixed by the court is greatly in excess of its true value.

The Terhune property is located in the City of Paterson, between a road house and a cemetery. The house has been rebuilt and put in good condition. There is no evidence whatever in any part of the case to justify the value put on the same by the court.

The house on Merselis property is an old fashioned farm house and is in very bad condition. The rental placed upon it by the court is entirely too high.

On the Nash property are three houses, one a residence occupied by the owner, which is in very bad condition. The two others are small properties which are rented, and the evidence shows that the rentals are not less than would ordinarily be expected to be paid for the same character of houses located in a similar place, but not affected by the nuisance caused by the river.

The Expert Witnessess Offered by Complainants Were Not Qualified to Speak of Extent of Damage.

All the real estate men called to testify by the complainants testified over the objection of the defendant that they were not qualified.

In order to determine the amount of damage done to these properties by the pollution of the river, we must first ascertain the value of each property. We must then determine the extent to which the property has been damaged by the pollution of the river, and finally fix the proportion of that damage for which the defendant is responsible.

A real estate man, in order to testify in this suit, should show that he has had expert knowledge, first, on the value of the property (that is, rental value); second, on the amount of depreciation caused by the pollution of the river; third, on the proportion of that damage caused by the various parties causing the pollution.

I have shown above that none of the experts called by the complainants were familiar with property in the vicinity of that in question. Not one of them would claim to be experts on that question. But even were they expert real estate men, familiar with the property and its ordinary rental value, none of them were expert on the question of damage caused by the condition. What experience they would have had, that would make them such experts is hard to imagine. Each one of these witnesses fixed the value of each particular property and then pretended to say how much it was damaged by the pollution of the river. The defendant objected to all such evidence from these men. They did not show that they ever had experience in the selling or renting of property similarly located. They knew no more about the extent of the depreciation in value caused by the

pollution of the river than an ordinary citizen who never sold real estate. I do not see what assistance the court could have received from this evidence.

On the third question these men did not pretend to be expert, but decided that the city was the sole source of pollution and that the entire damage done to the properties was caused by the sewage which the city discharged into the river, notwithstanding the fact that the court had formerly found that factories along the river can be well equally guilty with the city in causing the nuisance.

This question as to the expertness of a witness has been passed upon in numerous cases in this state.

In Walch vs. Board of Education of Newark, 44 *Vroom, p.* 643, it appears that a witness produced and sworn had had no opportunity of observation in the locality where the land lay, save in a single instance. It was held that his opinion as to the value of the land at the time of the taking, was rightly rejected. It could not be received in evidence because of his lack of special knowledge. The witness in question had owned the land in question for seven years.

In Riley vs. Camden and Trenton Railroad Company, 41 *Vroom, p.* 289, it is said:

> "Mere observation of a piece of real estate although continued and attentive is not sufficient to qualify one as an expert respecting its value."

In Haulenbech vs. Cronkright, 8 *C. E. Greene, p.* 413, witnesses who resided in Englewood were

not allowed to testify to the value of property in the English Neighborhood in Bergen County, distant six miles. The Court said:

> "The testimony of an agent thoroughly acquainted with the yearly value of houses in the City of New York would be of little value as regards houses in a country village. And the Master may have rightly concluded that the evidence of agents who form their opinions from the flourishing and wealthy town of Englewood was of little value as to houses situated in a more rural and agricultural part of the County of Bergen."

In the following cases the question of experience on special subjects conected with real estate were considered:

In the case of Laing vs. United New Jersey Railroad Company, 25 Vroom, p. 576, the company attempted to condemn a strip of land in the middle of Railroad Avenue in the City of Rahway. It was held,

> "That an ordinary real estate agent was not competent to give his opinion as evidence upon the value of the private title in a strip of land lying in the public highway, nor upon the damages which should be paid to the owner of abutting property on the condemnation of such a strip for railroad purposes."

In Bergen Neck Railroad Company vs. Point Breeze Ferry Company, 28 Vroom, p. 163, a witness, who had been connected with railroad corporations and had a knowledge of the value of lands and had bought properties on the line of New York Bay and was acquainted generally with the value of property in the vicinity of that sought

to be condemned, was not allowed to testify to the value of a curb strip which was sought as the site of a railway, because of special circumstances which gave the strip a special and particular value.

In the case of Pennsylvania Railroad vs. Root, 24 Vroom, p. 255, the Court said:

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

> decreased market value of the property after the laying of the road, for, if we suppose the mischief stated to be represented by the sum of $1,000.00, the selling value of the premises would obviously be diminished in about that measure."

In Riley vs. Camden and Trenton Railroad Company, 41 Vroom, 289, a witness was not allowed to testify to damage done by reason of the destruction of two shade trees because it did not appear that he had any experience in the loss and value arising from the destruction of shade trees.

It would appear from these cases that it is practically impossible to produce witnesses who are qualified as experts to testify to the amount of damage in this case. It is altogether unlikely that any other situation exists like the present one.

A similar situation was considered in P. N. J. & N. Y. Railroad vs. Schwartz, 46 Vroom, p. 801. That was a proceeding to condemn an easement for a tunnel for railroad purposes. I think it must have been the tunnel which the Pennsylvania Railroad put under Bergen Hill to reach its new tunnel at Thirty-third street, New York. The witness, who claimed to be expert, was produced and it appeared that he had had considerable experience with the development of real estate along the line of the West Shore tunnel, a short distance away. The opinion in the Court of Errors and Appeals contains the following:

> "Inasmuch as the witness exhibited no right to the status of an expert other than his single observation with respect to a substantially different tunnel, and his belief as to the existence of a prejudice against conveyances that excepted easements, there was no testimony before the trial court that

> qualified the witness as an expert upon the special question at issue. The discussion of Chief Justice Beasley, in Pennsylvania Railroad vs. Root, already cited, and that of Mr. Justice Dixon, in Laing vs. United New Jersey Railroad and Canal Co., 25 Vroom, p. 576, make it clear that the witness under these circumstances was not entitled to speak with expert authority. In view of the preliminary examination of the witnesses, we think that the trial court erred in its refusal to sustain the objections that were persistently and pertinently presented by the plaintiff, and that the testimony that came in by reason of such refusal was of so prejudicial and injurious a character as to require the reversal of the judgment rendered upon the resulting verdict."

The value added to lands by shade trees is a comparatively simple matter compared with the damage done to property by a polluted river.

I contend, therefore, that all the testimony of expert witnesses should be disregarded by the court, and there being no competent evidence as to the values of the property differing from that already found by the court, that the values fixed in 1908 *should be retained.*

The scheme that these witnesses worked out for finding the rental value of the property in question was a most peculiar one. The Vice-Chancellor in his opinion (p. 2570, l. 6) says:

> "The properties which lie on the east bank of the Passaic have been for two hundred years or more utilized as farms; they were so utilized thirty years ago when con-

ditions were perfect, and they are now so utilized. The witnesses for complainants, notwithstanding, divide each tract into two separate parts. They convert the front parts which include the farm houses and six or seven acres adjoining the river into suburban residences, assigning a rental value to them as such and they give the rear parts embracing much the larger acreage, a price such as it would have if ready for speculative development. Basing their valuations as they do upon assumptions which are so problematical and incapable of verification, I do not feel justified in making them the basis of an assessment."

I cannot understand how the Vice-Chancellor after making this very true estimate of the character of evidence offered by the complainants should yet be influenced by it.

On the following page, he says:

"Notwithstanding all this, I could not be justified in disregarding the testimony of complainants' witnesses altogether."

If these properties are purely farms, and there seems to be no serious question of that fact, they will not rent for anything more than a farm would bring.

A farm which has a prospective value for building lots will not return in rental any income on this prospective value beyond its value as a farm. Some of the witnesses for the complainants admit this fact. *Coe, page* 2293, *line* 30:

"Q. When you are renting property of that class, can you get any return on that speculative value for rent?

A. No.

Q. You have got to rent it as a farm proposition?

A. You have to rent it for what you can

get for it to keep it open."

Page 2295, *line* 1, this witness says:

> "No man can work a farm, buying it with a valuation more than from one hundred to one hundred and twenty-five dollars an acre, and get anything back on it, the way taxes and expenses are."

Mr. Van Duyne's whole testimony showed that his method of arriving at rental values was to first assume a sale value for the whole property if clear; then to find six per cent. of this and add two per cent. for taxes and fix the rental at eight per cent. of the assumed value. He estimates the loss of rental by cutting in half this eight per cent., making the arbitrary estimate that the rental values of the property have been decreased one half by the condition of the river.

All the witnesses for the complainants followed the Van Duyne plan. In fact Mr. Van Duyne made up a typewritten sheet showing these valuations and method of arriving at rental values, and all the witnesses stated that they agreed with it. It was offered in evidence. (Case, p. 2346.)

It was a sort of joint valuation, made up by men, not one of whom knew the rental value of any property in the vicinity. The neighborhood is full of similar properties not affected by the river. Mr. Lee mentioned several. Mr. Sherman told of many on the river above the polluted district and in localities very similar to the ones in question.

EXTRA ALLOWANCES TO NASH AND MERSELIS.

After making the allowances considered above, the Vice-Chancellor makes additional allowances

to the owners of the Nash and Merselis properties. He refers to this in his opinion, page 2567, line 28, as follows:

> "On the former hearing I gave compensation only for loss in annual values. It is now very earnestly argued that the evidence demands an additional award that will compensate the complainants for the injury to be suffered in not being able to sell their respective properties except at greatly depreciated prices."

On page 2572, line 20, the Vice-Chancellor takes up the question as to this particular kind of injury to the Nash property. Part of this property was improved. There is a tract of twelve acres upon which there are no improvements and which is about ready to come into the market for sale as building lots.

There is actually no evidence that Mr. Nash is desirous of selling this property at this time. There is no evidence whatsoever that he has lost a sale of the same.

Mr. Van Duyne testified that to-day this tract is worth $2,000 per acre with the river clean, and that it is worth $1,200 only with the river polluted. But as the Court says in line 30, page 2572: "This $1,200 represents the value, not on the basis of a pollution to cease on March 26, 1915, but on an indefinite continuance of it." The witness admits that if positive assurance were given that the river would be clean by the latter date, the property would be worth a great deal more than the $1,200. (See part quoted in the opinion of the court, p. 2573, l. 18.)

Mr. Lee, a witness for the city, agreed with Mr. Van Duyne that the property would now be worth $2,000 an acre if the river was not polluted,

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but that in its present polluted condition, it is only worth $1,200 an acre.

The Court then put the problem to Mr. Lee as follows:

> "Suppose assurance were given to you that within three years the sewage would cease to flow into the river, what would you consider the present value per acre?"

He answers:

> "Well, then I would get down to figures. I would try to establish what it was going to cost me to hold that property for three years. I would take into consideration the interest and taxes; I would arrive at it in that way, I think."

This was not a complete answer to the question, nor did it show what result Mr. Lee would arrive at. Here is a piece of property that is being held by the owner for speculative purposes; he is holding it in the expectation that it will probably increase in value, and that he will gain such increase by holding the property. This increase in value is coming to this property because it is located half way between the cities of Paterson and Passaic, the boundaries of which are about a mile and a half apart. Property in this vicinity is being rapidly cut up into building lots, and as the growth of the suburbs of these cities increases, this property becomes more valuable until there is a demand for it as building lots. This growth of these two cities is not affected by the condition of the river, and this ~~condition would~~ continue until the time comes for a sale of the property. That may not be for ten years from now. It may happen in three or four years. The longer this land is held, the more valuable it will get. If the river becomes clean at the time specified by the city, and under the pleadings in the case we are bound to assume that it will, this property at that time

should bring its full market value. Vast sums of money are invested in property of this character in the hope that the investor will reap the profit caused by this increased value. Mr. Nash is holding this property for that profit and it is fair to assume that if he holds it until after the pollution ceases on March 26th, 1915, he will obtain its full value.

So far as this tract is concerned, therefore, the pollution of the river at this time does not injure him, because there is no annual return from this class of property.

As a matter of fact, he is the gainer by the condition because the tax assessor will not rate his property at the present time at its value with the river clean, and for the next three or four years he will not have to pay the same amount of taxes as if there was no pollution.

Notwithstanding this condition, the Vice Chancellor has awarded him in damages for this tract, the sum of $324 per year, or twelve hundred and ninety-six dollars for the four-year period.

(Opinion, page 2574, line 26.)

If the city pays him this twelve hundred and ninety-six dollars and he holds the property and gets its increased value caused by the growth of the nearby cities, some time after March 26th, 1915, he will have whatever he may reap from the increase in value, in addition to the damages which the city has paid him.

This opinion by the Vice Chancellor has been the cause of a multitude of other claims by the owners of vacant land in the same position, so that the matter has become a very serious one to the city, because if it has to pay damages on any such theory as this, all the real estate speculators in the neighborhood who are holding lands along the river waiting until the city grows out to them

and makes their property valuable, will come in and insist upon like damages.

The mistake that the court made in putting this problem to the two witnesses was in assuming that the two thousand dollars which they said the property would now be worth per acre, river clean, would represent its price in the future after the cleansing of the river. The court absolutely ignored the increase in value which will accrue to this property from year to year from other sources. Once the river is clean, the property will have its normal value, and the fact that there has been a nuisance in the past will not injure it.

All I have said about the worthlessness of the testimony of these witnesses above, applies in this particular instance. There is nobody who can tell what the value of the property will be three or four years from now. This is a speculative question and nobody can answer it.

The court shows exactly how it arrived at this conclusion. On page 2574, line 4, he refers to Van Duyne's testimony which was as follows:

> "In my judgment if the river were clean, twelve acres would be worth two thousand dollars per acre, or twenty-four thousand dollars; with the present condition of the river, I don't think it is worth over twelve hundred dollars per acre, or fourteen thousand four hundred dollars. Loss in value, nine thousand six hundred dollars; interest on the same at six per cent., five hundred and seventy-six dollars. Multiplying five hundred and seventy-six dollars by four, we have two thousand three hundred and four dollars as Mr. Van Duyne's estimate of Mr. Nash's injury during the four-year period."

The Vice Chancellor continued:

"But it is perfectly apparent that if the nuisance was to cease at the end of the period, the loss would be less. A purchaser who pays twelve hundred dollars for what in four years he will be able to sell for two thousand dollars, and only gets back his interest at six per cent., would amount to two hundred and eighty-eight dollars, but gains in addition over five hundred dollars."

This is the point where the Vice Chancellor deviates from the testimony. Neither Mr. Van Duyne or Mr. Lee testified that the properties would be worth two thousand dollars in four years, but say that two thousand dollars per acre was its present value, river clean.

Making that assumption, the Vice Chancellor continued:

"A purchaser paying fifteen hundred and fifty dollars for the property at the beginning of the four year period, would be fully reimbursed for his outlay at the end of it, if he would realize two thousand dollars. Taking fifteen hundred and fifty dollars and applying Van Duyne's method of computing the injury, we would have the following: subtract eighteen thousand six hundred (i. e. fifteen hundred and fifty multiplied by ~~two~~ ten) from twenty-four thousand dollars, and there is left five thousand four hundred dollars, which multiplied by six gives three hundred and twenty-four dollars as the annual loss. This multiplied by four (twelve hundred and ninety-six), would represent Mr. Nash's compensation for the injury thus estimated."

It must also be remembered that not all of the witnesses agreed with the valuation set by Mr. Van Duyne.

Mr. Sherman, on page 2506, at the top of the page, said that considering the character of the development in the vicinity, cleaning the river of its pollution would only advance the value of this property about ten per cent. Developing properties of this kind has been Mr. Sherman's specialty.

The most competent witness on the character of this twelve acre lot, was Mr. Arthur C. Clement. His experience in this locality was very extensive. He has been in business with his father for twenty years (page 2535, line 30). His firm had sold most all of the property in Garfield and in that section, and in Robertsford, which is just above Garfield and adjoins the premises in this suit. He owns, personally, some property along the river. He and his father developed the Belmont tract, Bogert Heights, and several other properties on the river just below the properties in question. He thinks that this tract we are now considering would be worth about a thousand dollars per acre in the present condition of the river and twelve hundred dollars per acre if the river were clean. (Page 2558, line 6.)

In order to develop this property for building lots, a pond on it must be filled up, which would add greatly to the expense. Mr. Clement says that between this property and Passaic, the development is all of cheap buildings.

MERSELIS PROPERTY.

Following the above allowance on the Nash property, the court made a similar allowance to the Merselis property, saying:

"Upon rental value of the house and land, about twenty-six acres, I gave at the former hearing three hundred and fifty dollars. I am inclined to think that this is a fair rental value for the house considering its character, and for the ground immediately adjoining it. It fails as the evidence now stands, to represent the injury to the remaining property which is, according to the testimony, ripe for development. The tract is somewhat injured by the nuisance, though not to the same extent as the Nash property just considered, for it is back from the river. The sum to be given for the injury is necessarily an arbitrary one. One hundred and fifty dollars per annum, on this account, would not, I think, be too much."

That is an allowance made of six hundred dollars a year for the nineteen or twenty acres of acant land held by the Merselis brothers.

There was in the testimony of Allen, one of complainants' witnesses, a statement that Mercelis lost a sale some years ago because of the pollution of the river. This testimony is very indefinite and was not corroborated by Mr. Merselis.

The complainants in this case have elected their medy. They could have maintained an action law for the trespass if they desired.

The form of remedy selected indicates a desire on their part to retain their property and not to sell it. They asked an injunction or in lieu thereof compensation. This was intended to be compensation for future damage.

The Vice Chancellor in fixing the damages in 908 followed Hatfield vs. Central Railroad Co.,

4 Vroom, 251. See opinion, case, p. 38, line 20.

This was an action by the owner of land, bordering on a public street, against a railroad company, for building their road, without right along such street.

Chief Justice Beasley in his opinion said (top of page 253):

> "It seems, therefore, to me, to be perfectly indisputable that the only damages which the plaintiff can claim is the loss and inconvenience which he has sustained in the prosecution of his lumber business. I cannot see the least pretext for any other ground of claim. * * * * * Nor can it be presumed that because the property, from the fault of defendants, has not been in a salable condition, that the plaintiff has been injured. Such enforced detention of his property may have been a benefit, the question depending, altogether, on the price for which the property could have been sold, and its present value. * * * * * *Mere speculative opinions as to what would have been the case under an altered state of facts, can never afford ground for any legal appraisement of damages.*" * * * * *
>
> "The fact that the railroad track reduced the value of the land one-half, was no injury to the plaintiff unless he desired to sell immediately, because the cause of such reduction is removable. Suppose, instead of this burden, it had been a mortgage illegally placed and kept upon this property, could the plaintiff have claimed, for this wrong, substantial damages, without showing that he had lost a *sale which would have been more advantageous than a retention of the land?*"

The witnesses all agree that the property of Nash and Merselis by reason of its proximity to Paterson and Passaic is rapidly growing in value. The retentio nof these tracts will undoubtedly benefit their owners. There is no claim on their part that they desire to sell. The evidence of Allen (p. 2097) shows that an attempt was made to sell the Merselis property in 1909, but this was before the period in this suit. (March 26, 1911, to March 26, 1915.)

In Simmons vs. Paterson, 15 Dickinson, 385, the Court of Errors and Appeals pointed out to the complainants in this suit, the methods by which they might obtain redress for the injury done by the city.

1. By filing a bill praying for an injunction, unless the city would consent to make compensation to them as should be ascertained to be just.
2. By suing at law for damages.

The complainants followed the first sourse, which amounted to compelling the defendant to commence a suit of condemnation proceedings in the Court of Chancery. It appears from the opinion of 4 Robbins, 296, that these complainants compelled the defendant to elect whether the taking by the city was to be permanent or not.

The Vive-Chancellor in his opinion of 1908 did not confine the compensation to be awarded in lieu of the injunction, to the damages to accrue after the time the injunction would issue, but included the damages that had accrued for a period beginning eighteen years before. The present inquiry was to ascertain what compensation was to be made for the use the city desired to make of the lands for a period four years in the future.

The Court of Errors and Appeals decided in

Simmons vs. Paterson, that the city had legislative authority to use the Passaic River for the disposal of its sewage, 15 Dickinson, at 388. Of course, even if so authorized, it cannot take the property of complainants without making compensation. But its taking is not without warrant of law.

The question then is this: the city being authorized to take the property of complainants, intends to do for a limited period only; at the beginning of that period it applies to a court to determine what compensation should be made for the use which it intends to make of the property. Clearly, the diminution in rental value during that period is the true measure. No allowance should be made upon any speculative basis.

It always should be kept in mind that the existence and growth of both Paterson and Passaic depended upon the use of the river in the past for sewage disposal. Without the existence and growth of those cities, the properties of complainants would be of little value. They have lived near those cities and sold there the products of their farms. Their interests are mainly the same as those of Paterson. Had their prayer for injunction been granted and had there been power enough to enforce it, Paterson would have ceased to exist and they would have been left alone on their farms without customers for their products. The prospective value of their farms for building lots would have been gone. Most of the injury they suffer is one of the incidents of living near a thickly settled community. This has its disadvantages as well as its advantages and a person cannot have one without the other. The Passaic River will never be a pure stream even after Pat-

erson ceases to sewer into it. There are other sources of pollution incident to a congested population which will probably never be eliminated.

The Vice Chancellor erred in making these allowances to Nash and Mercelis and the same should be set aside for that reason.

Respectfully sumbitted,

EDWARD F. MERREY,

Of Counsel with City of Paterson.

New Jersey Court of Errors and Appeals

Between
HENRY W. DOREMUS, *et al.*,
Appellants,
and
CITY OF PATERSON,
Appellee.
Between
HENRY W. DOREMUS, *et al.*,
Appellees,
and
CITY OF PATERSON,
Appellant.

On Appeal from Chancery.

Brief for John H. Merselis and others, Appellants—Appellees.

These are cross appeals from the supplemental decree of the Chancellor advised by Vice-Chancellor Stevens on February 15, 1913.

John H. Merselis and other appellants appeal because the Chancellor did not award to the complainants and each of them sufficiently large compensation for the diminution of the rental and other value of their respective lands and property rights through the continued pollution of the Passaic River by the said defendant from March 26, 1911, to March 26, 1915, either with respect to the damages to the rental value of the said lands and premises respectively, or to the salable value thereof through the arrested development or the damages on account of the probable development and sale of the said respective lands and property rights belonging to the appellants and each of them. (Petition of Appeal, case, p. 4.)

The City of Paterson has appealed from the said decree of the Chancellor because the awards of the Chancellor and the counsel fees allowed were excessive, and from the judgment for costs and expenses and from the order that an injunction should issue on July 15, 1913, in default of payment of the sums awarded by the decree, and from the order that an injunction should issue on and after March 26, 1915, in case the pollution complained of shall not have ceased and further time shall not have been granted.

STATEMENT OF FACTS.

The suit was originally brought in the Court of Chancery after the decision of the Court of Appeals in the case of *Simmons* vs. *Paterson,* 15 Dick., 385. At the conclusion of his opinion Justice Van Syckel said:

> "If these complainants amend their bill, or file a new bill asking for an injunction, unless the city will consent to make such compensation for the diminution in the value of their lands as shall be ascertained to be just, such equitable relief can be given them.
>
> "A court of equity will, to effectuate justice, settle unliquidated damages."

The complainants thereupon amended their bill for an injunction generally, and prayed for an injunction against the pollution of the Passaic River "unless and until the said defendants make such compensation to your orators respectively for the diminution in the value of their said lands and property rights as shall be ascertained by this honorable court to be just.

The history of the case is so fully set forth in the opinion of Vice-Chancellor Stevens (main suit decided January 15, 1908, 3 Buch., 475, case, vol. 5, p. 1), that the appellants will not attempt to abridge that statement of facts at this time.

The trial of the case resulted in a final decree dated June 26, 1908 (case, vol. 5, p. 45) whereby the Court of Chancery adjudged that the City of Paterson was wrongfully and illegally polluting the waters of the Passaic River above the lands of the complainants, by discharging sewage and other polluting matter therein to the injury of the said lands; that this injury began June 1, 1892, and had continued until the time of the decree; that the City of Paterson had declared its purpose and intention to cease the pollution within five years from March 26, 1906, and had elected rather than to submit to an injunction to make compensation to the complainants respectively for the diminution in the value of their lands and property rights as should be ascertained to be just.

The Chancellor thereupon decreed that the diminution in value of the respective lands and property rights of the complainants through the said wrongful and illegal acts by the City of Paterson amounted to the sum set forth in the decree. He further directed that an injunction should issue in case the City of Paterson did not pay the amounts awarded together with costs and counsel fees, and furthermore in any event that an injunction should issue against pollution of the waters of the Passaic River from and after the 26th day of March, 1911, but leave was reserved to the City of Paterson to the effect that if notwithstanding the exercise of due diligence the said city should be unable to cease polluting the said river by the time aforesaid, the city might appeal to the Court of Chancery upon such terms as said court might deem equitable to postpone the time of issuing said injunction to a date to be fixed by the said court. (See Final Decree, vol. 5, p. 4530.)

The sums awarded by this decree were paid by the City of Paterson, and on March 14, 1911, the City of Paterson applied to the Court of Chancery pursuant to the leave reserved in the final decree setting forth

that notwithstanding due diligence the City of Paterson would be unable to cease polluting the river by March 26, 1911; that any injury or taking of any land or property rights was to be temporary and would continue not longer than five years from March 26, 1911; that arrangements had been made by which the City of Paterson would have the opportunity of using the trunk sewer of the Passaic Valley upon its completion; that this sewer would be completed within five years from the time of the filing of the petition, and the City of Paterson therefore prayed that the injunction ordered to be issued should be stayed until March 26, 1916, and offered to make such compensation to the complainants respectively as they were then entitled to for the alleged diminution in value of their said lands and property rights as should be ascertained by the Court of Chancery to be just (vol. 5, pp. 51 to 59; note, p. 52, ll. 22, 23 and following).

Certain of the complainants or their representatives answered this petition, and afterwards the remainder of the appellants were made parties to the proceedings by order of the court (p. 84; answer, p. 60; vol. 5, p. 62). The case then went to hearing on the question of what compensation should be awarded to the complainants for the diminution in rental or other value of the respective lands and property rights of the complainants through the said continued pollution of the Passaic River by the said City of Paterson since the 26th day of March, 1911, and up to March 26, 1916. After the commencement of the hearing the City of Paterson amended its petition claiming that the pollution would cease a year earlier than the time mentioned in its original petition of March 14, 1911. This amendment was granted at the request of the City of Paterson so that the compensation might be limited to the period beginning March 26, 1911, and ending March 26, 1915.

The supplemental decree was made in the cause February 15, 1913, in which this compensation was fixed for the period last aforesaid (p. 2580), and it is from that decree that the appeals above mentioned have been taken.

The pollution of the Passaic River by the City of Paterson is admitted. It has also been proved and adjudged that the complainants, whose lands adjoin Dundee Lake, are all riparian owners (Opinion, Vol. 5, p. 41). Their properties all front upon the Passaic River above the Dundee Dam and above the place where the tide formerly ebbed and flowed; also, it has been proved and adjudged that the pollution by the city is tortious. (Opinion, Vol. 5, p. 1.) It is also admitted by the defendant that the extent to which the city pollutes the river has not diminished since the main hearing in the above entitled cause, but on the contrary, that the city has increased its sewerage system by adding new sewers, which increase has been made to keep pace with the natural growth of the city. The defendant admits that the extent of the pollution of the river by the City of Paterson has increased in proportion to the increase in its population, and as a natural result will continue to do so during the period for which the damages are now being assessed. (Case, pp. 2220-2224.) In 1900, according to the United States census, the population of the City of Paterson was 105,171, and in the year 1910, it had increased to 125,600, which increase amounts during the ten years between 1900 and 1910 to 19 4-10 per cent. (Case, p. 2032.) There is no evidence to show that the city has not continued to increase at the same rate during the years 1911 and 1912, and it must be presumed that at least the same rate of increase will be continued until March, 1915. At the present hearing there was no additional testimony taken as to the percentage of pollution by the city as compared with the pollution from other

sources. This matter, however, was gone into very thoroughly at the main hearing, and we submit that the pollution by the city has amounted since March, 1911, and will amount until March, 1915, to at least *eighty-five per cent.* of the total pollution. The court at the main hearing adjudged the pollution by the city to amount to about two-thirds to three-fourths of the total pollution. There was no evidence produced at the present hearing showing, or tending to show, that the pollution from other sources than the City has increased at all. It must follow, therefore, that the city's percentage of the total pollution has, if anything, increased; certainly it has not decreased.

I.

EXTENT OF POLLUTION FOR WHICH DEFENDANT IS LIABLE.

It is apparent that the pollution by the City of Paterson is in itself sufficient to destroy both the income and the salable value of the complainant's property. It should not, therefore, be allowed to reduce the damages proportionately because there are other wrongdoers.

In the first place, it cannot be known or ascertained that these other sources of pollution will continue; and in the second place, if it is to be assumed that the pollution from these sources will be continued, the City of Paterson admittedly is one of a number of joint *tort feasors* and, therefore, according to the well settled rules governing such cases, is liable to compensate the complainants for the full amount of damages sustained by them, respectively.

But even assuming that the damages must be apportioned between joint *tort feasors,* the damage resulting from the pollution from other sources is not proportional to the amount of that pollution. Assuming

that all pollution of the river other than that by the City of Paterson had been stopped in March, 1911, the continuation of the pollution by the City of Paterson of the complainants' property would decrease the income and salable value of the complainants' land to virtually the same extent as it has been and is being decreased by the pollution from all sources taken together. The city is taking the right to continue to pollute the river for a definite period. In view of this fact it would be useless to stop the pollution from other sources during this period. It is the city's right to pollute the river by sewage, which prevents the river from being cleaned immediately and results in retarding the development and preventing the renting and selling of the complainants' property. The damages to be assessed against the city, therefore, should not be proportionately decreased by reason of the additional pollution from other sources, but on the contrary, since its acts do in fact constitute the primary and sole cause of the damage which will result to the complainants during the period of this continuation, the city should be charged and obliged to pay the full amount of the damages that will be sustained. The court below erroneously refused to adopt this view.

II.

EXTENT OF THE COMPLAINANTS' INJURIES.

It has been proved and adjudged that the pollution of the Passaic River by the City of Paterson affects, and therefore that its continuation will affect, injuriously certain of the property rights of the complainants (*Simmons* v. *Paterson,* 60 N. J. Eq., 385), and we submit that both equity and justice demand that the complainants should be compensated to the fullest extent for all such injuries sustained by them as a natural and direct consequence of the defendant's wrong.

It is admitted that the present condition of the river entirely destroys the valuable privilege of cutting ice incident to all of the riparian lands. It also prevents bathing in its waters, as well as boating along its shores, both of which could be greatly enjoyed except for its terribly polluted condition. The pleasure of fishing in its waters has likewise been destroyed by the pollution complained of. Except for this pollution the ice cutting privileges and the pleasures of boating, bathing and fishing that would naturally exist would of course attract many people to its banks and greatly increase the market for both income and sale values of the property in question. All of the properties are located within commuting distance of New York and near the rapidly growing cities of Paterson and Passaic upon a river road or boulevard running along or near the river's edge. They possess every attribute that is necessary in property for suburban use or development purposes, but are precluded from any and all of these advantages which are naturally incident to such property because of the foul condition of the river. Instead of being a summer resort teeming with pleasure seekers for a good part of the year the Passaic River is and "for some years past has been practically an open sewer." (Testimony of Dr. Leal, Opinion, Vol. 5, p. 26.

While it may be true that the physical damage to the lands from the presence of the sewage in the river may be small, the effect of the pollution upon the physical comfort of the persons residing upon the property is a very strong element in the case. The influence of such discomfort must be determined in the light of popular opinion rather than modern scientific theories. Probably over 90 per cent. of the average men believe and would say without hesitation that the polluted condition of the river is injurious to the health of those residing near its banks. This

popular belief, whether well founded or not, must of course result in serious damage to the property rights of the complainants, for it directly affects their ability to rent or to sell their property. Even such persons who believe that the pollution of the river is not dangerous to health would certainly be unwilling to submit to the discomfort arising from the condition of the river by voluntarily coming to live along its banks. In fact there can be no doubt that the existing conditions of the river prevent the owners of the lands from either occupying them comfortably or from renting or selling them to any one who has any idea of maintaining a home as a place of comfort.

Obviously, also, the effect of these conditions is not limited to that portion of the properties directly affected by the odors, for it appears that the houses and developed portions of the property are near the river, and the remaining portions of the property are at present without any improvements. Since the rear of these properties are attached to river frontage, attractive for residential purposes, obviously both the income and development values of the whole would be greatly increased if the pollution should cease. Even for farming purposes the location and desirability of the houses and farm buildings affect the income and sale value of the whole premises, especially to that class of people who are looking for suburban estates. Likewise the income and sale value of the whole is affected by the undesirability of a part for development purposes. The mere nearness of the rear of these properties to a clear attractive stream which affords the pleasure of boating, bathing and fishing, would give them a value which it is impossible for them now to possess. In estimating the damages to which the complainants are entitled, therefore, the court should not merely consider that part affected by the odors, but should give full effect to each and all of the circumstances

upon the whole of the property owned by the complainants respectively.

There is also another element of damage to which the complainants are entitled, namely, the loss of the natural increase in the value of the land which will result by the continuation of the pollution. It seems perfectly clear that whether the lands in question are ripe for development or not, all of them are so situated that in the course of ordinary events had the pollution of the river ceased on March 16, 1911, they would have been much more valuable in 1915 than they will be if the pollution continues in an increasing degree as it is bound to do up to that time. In other words the continuation of the pollution of the river for any period, however limited, will necessarily prevent, or at least materially reduce, the increment of value naturally incident as time goes on to all properties of the character of those involved in this suit. This is a loss which to a greater or less extent the complainants are bound to suffer as a direct result of the extension of the time during which the City of Paterson may continue to pollute the river, and therefore is an injury for which the complainants should be fully compensated.

The effect which this continued pollution of the river during its continuance will have in changing the neighborhood by encouraging undesirable developments, which would not have occurred had the pollution ceased on March 26, 1911, should also be considered. At least two such developments have already occurred. There is on the easterly side of the Passaic River down near Lodi a settlement of very cheap Italian dwellings. There is also a similar development in the City of Passaic near the river. It cannot be denied that both of these developments were partially, if not totally, brought about by the prevailing conditions in the river. The property was

purchased by real estate men and applied to the only use for which it was available for development purposes in view of this condition of the river. Other similar settlements will no doubt arise in the course of years following during which the City of Paterson retains the right to pollute the river, which will not only result in reducing the sale or income value of the properties during the period, but also prevent the property from ever recovering its true value as suburban property.

There is no doubt that the complainants' property rights will be affected in all of the ways above mentioned, and in each way to a very substantial extent. We submit, therefore, that each of these elements of damage should be given full weight in estimating the extent of the complainants' injuries and in ascertaining the just compensation to which they are entitled "for the diminution of the value of their lands" by reason of the defendant's wrong. *Simmons* vs. *Paterson*, 60 N. J. Eq., 385.

Of course the fact that other damages have been previously awarded to the present complainants should not operate in any way to reduce the damages to be awarded in this proceeding. The continuance of the injury necessarily results in additional damages recoverable by the complainants. By every rule of justice and law the complainants are now entitled to recover from the defendant the full damages which will be sustained by them during the further period for which the complainant's relief by injunction has been suspended.

III.

DEFENDANT'S APPEAL.

In *Simmons* vs. *Paterson,* 60 N. J. Eq. (15 Dick.), 385, Mr. Justice Van Syckel said:

> "A substituted remedy by giving them *adequate compensation* for their injury would be a just disposition of the controversy.
>
> * * * * *
>
> "If these complainants amend their bill or file a new bill asking for an injunction, unless the city will consent to make such compensation for the diminution in the value of their lands as shall be ascertained to be just, such equitable relief can be given to them."

And, as appears from the order made in this case on January 16, 1912, the extension was granted upon the express condition that the defendant should pay the complainants, severally such compensation for diminution in *rental or other value* of their said lands which will result to them, respectively, by reason of the continued pollution of the river during the period of such extension as shall be *fair and equitable.*

Upon the main hearing the Vice-Chancellor concluded that the measure of damages should be the diminution in rental or actual value caused by the pollution of the river and attributable to Paterson alone. (Case, Vol. 5, p. 41.) In dealing with the matter the Vice-Chancellor, after finding the total annual rental values of the portions of the various properties directly affected by the odor, fixed five per cent. of the sums named for the year 1892 and allowed this as damages for that year, and for each succeeding year added one per cent. more. His remarks, found on page 41, show that this was an arbitrary estimate, but considering all the circumstances of the case he thought that it was not too large.

At the last hearing the court adopted the same method of estimating the damages as it did at the former hearing except in two cases, namely, the Nash and Merselis properties, in which cases it allowed damages for arrested development in addition to the amount allowed for diminution in rental value caused by the pollution of the river and attributable to Paterson alone. In some cases the court also increased the amounts which it found to be the annual rental values of the property and upon which it based the loss by reason of the diminution in rental values. A comparison of the amount of damages claimed and the amounts allowed by the court may be found in Schedule B attached to this brief.

The City of Paterson has appealed from the last award and decree for the following reasons:

(a) In the decree the court adjudged that the City of Paterson had since the 26th day of March, 1911, and at the date of the decree—was, wrongfully and illegally polluting the waters of the Passaic river above the respective lands and properties of the complainants in the decree named, whereas as the defendant contends, it was rightfully doing so, subject however, to the obligation to make compensation to the complainants for such injury as might accrue to their lands by reason thereof. In reply to this contention we need only state that in *Simmons* vs. *Paterson*, 60 N. J. Eq., 385, the court held that there was a wrongful invasion of the complainants' rights by the defendant. Plainly the defendant's contention is based upon a misinterpretation of the opinion in the Simmons case and of the constitutional provision against taking property without making due compensation.

(b) The defendant objects to the awards made for the reason that the sums awarded are excessive and in each case are more than the diminution in the rental and other values of the lands and property rights of

the complainants that will be caused by the pollution of the river by the city for the time specified in the supplemental decree. The complainants have taken an appeal based upon the reason among others that the awards made are too small. The answer to this portion of the defendant's appeal therefore will be answered in the argument in support of the complainants' appeal later in this brief. (See Point IV.)

(c) The defendant objects that the allowance of counsel fees and costs are excessive. The vice-chancellor filed a memorandum of his reasons for these allowances which the defendant has not seen fit to include in the record. Without this of course, this court cannot act upon this portion of the defendant's appeal, and in any event we submit that the work involved in the case has been extended and very tedious and difficult and that the allowances of the lower court are very moderate.

(d) The defendant further objects to the portion of the decree which directs that an injunction shall issue unless the awards are paid within a stipulated time upon the ground that it would be contrary to equity for the reason that the sums awarded are excessive. This involves the same questions as are involved in the second of the defendant's objections above set forth, and likewise will be more conveniently answered later in this brief. (See Point IV.)

(e) The defendant further objects to the portion of decree which directs that an injunction shall issue against the defendant on March 26, 1915 (the date to which compensation has been allowed), unless upon application of the defendant the issuance of the injunction is further postponed upon such terms as the court may deem equitable. The defendant objects to this provision of the decree for the reason that in the event that the defendant desires to further continue to polute the river after March 26, 1915, it should be al-

lowed to do so upon condition that it make such compensation to the complainants for the diminution in the value of their lands as shall be ascertained to be just. In other words, that the courts have no power to prevent a perpetual invasion of the complainants' rights by the defendant, but merely from time to time to assess the amount of damages that have been suffered by the complainants. The mere statement of the proposition we submit demonstrates its absurdity. In the Simmons case (60 N. J. Eq., p. 385), this court held that under the circumstances of the case the complainants were entitled to an injunction. The right of the defendant to have the issuance of the injunction postponed is not absolute but is dependent upon the circumstances of the case at the particular time such application is made, and of course the terms upon which such postponement shall be made must necessarily remain within the discretion of the court.

IV.

COMPLAINANTS' APPEAL.

The complainants have appealed from the last award and decree because the amounts allowed by the court are insufficient and do not give to the complainants adequate compensation for their injury. Their reasons are as follows:

(a) The Decree charges Paterson with only a proportionate part of the pollution, whereas upon the theory of joint *tort feasors* it should have been chargeable for the entire damage. This contention has already been developed under Point I of the brief to which, in order to avoid repetition, we again respectively refer the court.

(b) The damages awarded were estimated upon the basis of diminution in rental value alone except

in the case of Messrs. Nash and Merselis where an allowance for arrested development was made. In estimating the damages the court considered only that portion of the complainant's properties directly affected by the odors from the river. It adopted the rule laid down in *Hatfield* v. *Central Railroad Co.*, 33 N. J. L., p. 252, which was an action at law to recover damages for the erection and continuance of a nuisance.

(1) We submit that the court should have dealt with each complainant's property as a whole. Even if only a portion of the property is actually subject to the odors from the river, it seems quite clear for the reasons set forth in sub-division 2 of this brief, that the rental value of the property as a whole is materially decreased in consequence, and that the reduction in the rental value of the whole will amount to more than the reduction in rental value of the portion directly affected by the odors (see sub-division II of brief).

(2) The rule that the taking and injuring of private property for a public use will not be restrained, if compensation in damages can be made and defendant is willing to make such compensation, and a serious and manifest public injury would result from the issuance of an injunction, is confined in its application to the taking or injuring of property by agencies or public service corporations possessing the power of eminent domain. *Mayor, etc. City of Paterson* vs. *East Jersey Water Co.*, 74 N. J. Eq., 49; affirmed 77 N. J. Eq., 588. The court below seems to have had this principle in mind. In its opinion it said:

> "It is clear that the case must be regarded as one of appropriation by the city for public use of property rights attached to land. This was the view of the Court of Errors in the Simmons appeal, for Mr. Justice Van Syckel expressly says that the complainants are entitled to an injunction 'unless the city will consent to make

compensation for the diminution in the value of their lands as shall be ascertained to be just.' "

We submit, therefore, that in estimating the compensation to which the complainants were entitled respectively, the court should have adopted the rules applicable to condemnation proceedings.

This involves the determination of a hypothetical question as to just how much ought to be paid on a bargain where there is a person willing to buy and a person willing to sell. Under such circumstances all sorts of considerations arise which do not appear in a case where the only question is as to damages suffered upon a tort. Incidental damages are considered and a certain amount of speculation as to the value of the property rights and damages must necessarily be indulged in. We can see how a court of law in its desire to diminish litigation when application is made to fix damages for wrong already committed should say that mere speculative opinions as to what would have been the case under an altered state of facts could never afford ground for any legal appraisement of damages. But where a person's property is taken without his consent and the property owner is denied the right to use his property as he may wish and is forced to permit another to use it, the situation is entirely different and these speculative opinions must necessarily be considered as part of the circumstances under which the court will find the sum which the property owners are equitably entitled to.

In *Ferry* vs. *R. R. Co.*, 76 N. J. L., at page 51, Justice Garrison said:

"A proceeding to condemn land is not in the nature of an action for damages. It is merely the prescribed mode of ascertaining the sum of money or price the condemning agent must pay to the owner of private property as the equivalent of that which will be taken or destroyed by the

public use. Shamburg *vs.* New Jersey Shore Line Railroad Co., 44 Vroom, 572.

"The price at which the owner of land so taken may be thus compelled to part with it is computed upon and circumscribed by its valuation as land calculated upon its most valuable available uses, into which also enter all the injurious effects of such taking upon the value of the residue of the tract."

While the court in this case had before it the condemnation of a permanent right, we submit the same principles apply to a temporary taking. In *Hepburn* vs. *Jersey City,* 67 N. J. L. (38 Vr.), p. 113, the City of Jersey City attempted to condemn the temporary use of twenty feet of land upon either side of a strip forty feet in width which was to be condemned absolutely for the purposes of the city in procuring a public water supply. The court held that the temporary use or interest in land might be so taken. In considering the matter the court in its opinion upon the rule of damages said:

"In the case before us the interest or use to be taken is definite. It is 'the right to use and occupy until June 1, 1901.' The damages arising from such a deprivation of land, and those incident to it, from the use proposed to be made of it, are easily ascertainable. They must of course be fixed upon the basis of the *greatest possible injury to the land for the time it is to be so occupied and the use to be made of it while it remains in the possession of the city.*"

In the case of *Johnson* vs. *United States,* 2 Court of Claims Reports, p. 391, the Government took possession of a large tract of land belonging to the claimant and occupied the same as a military reservation. After deciding that the claimant had a right to recover the court said:

"When the right of the claimant to recover is established, it becomes a question of some doubt

and interest as to what is the nature of his action and what should be the measure of his damages. Both by the prayer of his petition and the argument of his counsel he has treated the entry of the Government as a trespass upon his land. * * * But the court has held to the principle of the common law that the republic does no wrong and to the provision of the Constitution 'nor shall property be taken for public use without just compensation,' and by virtue of these it always has been held that a party might recover upon the implied contract as though the property had been acquired under an agreement of purchase, leaving the price undetermined.

"Regarding this, then, as an action on an implied contract, we must determine what it is which the government has taken. The claimant has given evidence of the value of the fee, and insists that it is the measure of his damages. The court is of a different opinion. We think that there is nothing to show such an intent on the part of the government or to establish anything beyond the temporary occupation already pointed out. We therefore think that the measure of the damages must be limited to the value of this temporary occupancy, as though the claimant had leased and the government had rented the premises, regard being paid to the nature of the occupancy and to the fact that the government had the option of discontinuing the implied tenancy on any day or of retaining it indefinitely. This also is the rule which courts have adopted as the measure of damages in actions for mesne profits, and the only rule which can be made applicable to the case. We therefore must assume that at the time of the entry upon the premises the claimant was willing to lease and the government was willing to rent the premises with the

rights and privileges and upon the conditions before enumerated at the fair or market value of an annual rent; and we must regard the claimant as bringing his action to recover this rent for the seven years preceding the commencement of his action. The amount thus found may be regarded in future as the established and agreed rent of the premises so long as the government shall elect to occupy under the implied lease."

Both of the last mentioned cases approach the subject here under consideration in the spirit of contract. The first holds that the damages must *"be fixed upon the basis of the greatest possible injury to the land for the time it is to be occupied and used and the use to be made of it while it remains in the possession of the city,"* while the second declares that it must be upon the basis of lease, *regard being paid to the nature of the occupancy.* Under either of these rules we submit that it is perfectly clear that all the elements of damage which we have heretofore suggested should be given full consideration and effect. For instance, in the present case, suppose the City of Paterson had attempted to acquire the right to the extension in a regular and legal manner. It would have first had to apply to the owners as it did in this case, and having failed as it did in this case, to obtain an agreement from them as to the value of such rights and damages, it would then have had to apply to a court, just as it is now doing, to fix these damages. Upon such an application is it not apparent that the measure of damages would have been far in excess of the rule laid down in the Hatfield case. In such a proceeding would not the city have had to pay upon the basis of the greatest possible injury to the land as a whole during the period, full regard being paid to the nature of the occupancy *Ferry* vs. *R. R. Co.*, 76 N. J. L., p. 51. Surely it must be so, and if such is the rule where the public acquires a

right by lawful manner, certainly the damages to which the complainants are entitled can be no less by reason of the fact that the city has entered wrongfully and now usurps the right in violation of the law.

(c) But even if we adopt the rule laid down in the case of *Hatfield* vs. *Central Railroad Co.*, 33 N. J. L., p. 252, and accept diminution in rental values as a basis of our calculation in estimating the complainants' damages, we submit that the complainants' properties should be dealt with as a whole and not merely damages to that portion of the property directly affected by the odors of the river estimated. (See sub-division 2 of this brief). There should in all cases be a substantial allowance for the enforced retention of the land during the period of the continued pollution. (See sub-division 2 of this brief.) And also for the loss of actual sales which have already resulted therefrom. See *Moore* vs. *Langdon*, 6 Mackey, (D. C.), 6.

In *Hatfield* vs. *Central Railroad Co., supra,* Chief Justice Beasley in delivering the opinion of the court said:

> "It seems, therefore, to me, to be perfectly indisputable that the only damages which the plaintiff can claim of these defendants, in consequence of the railroad track being illegally laid along this land is, for the loss and inconvenience which he has sustained in the prosecution of his lumber business from the presence of any nuisance. What loss, then, has befallen him? Could he have sold it? Would he have rented it, at higher rates, for other purposes? There is no evidence on the subject. Nor can it be presumed that because the property, from the fault of the defendants, has not been in a salable condition, that the plaintiff has been injured. Such enforced retention of the property may have been a benefit, the question depending, altogether on the price for which the property could have been sold, and its

present value. In the absence of all proof, there can be no legal inference that the plaintiff has suffered any loss on this account."

Under the rule laid down in this case we submit that it is perfectly clear that both enforced retention of property and loss of sales due to the maintenance of a nuisance by the defendant are proper elements of damages where as in the present suit they have been sufficiently proved.

The case of *Hetzel* vs. *Baltimore & Ohio Railroad Company,* U. S. Reports, Vol. 169, p. 26, was an action to recover damages for injury done to certain land in the City of Washington by reason of the illegal occupation by a railroad company of the street on which the land abutted. The court held:

"The plaintiff was entitled to recover such damages as were equivalent to or would fairly compensate her for the injury done to her land by the defendant." * * *

The court said at p. 35:

"It results from what has been said that the trial court erred in instructing the jury that the plaintiff could recover nothing more than nominal damages. In our opinion, she was entitled to recover such damages as were equivalent to the injury done to her by the defendant's inexcusable and persistent occupation and use of a public street in violation of law and in disregard of her rights as an owner of adjacent property. At the trial of the first case brought by the plaintiff against the railroad company on account of this nuisance, Judge Hagner instructed the jury that they might ascertain from the evidence what, in the absence of the D street track, would be the fair value of the property in its unimproved condition during the time covered by the declaration; and if they found that the property during that period remained in that

condition by reason of the track maintained and used by the defendant, then they might allow such sum as was equal to six per cent. interest on such value, if they believed that the loss of revenue was caused wholly by the track, or a lesser sum proportionate to the effect which the maintenance and the use of the track had in causing the lot to lie unproductive. This was substantially the proposition of law embodied in one of the instructions asked by the plaintiff.

"What was the plaintiff's land reasonably worth, during the period covered by the declaration, if D street had not been occupied and used by the railroad company in the manner disclosed by the evidence? In the absence of the defendant's track was there a reasonable certainty that it could have been used or sold? If so, for what purpose could it have been profitably used, or for what sum could it have been sold? Was it reasonably certain that neither the original lot nor any sub-lot could have been used or sold while the street was obstructed by the defendant's track? These were all proper inquiries by the jury in determining what damages were equivalent to, or would fairly compensate the plaintiff for, the injury done.

"Of course, in such injuries, absolute certainty as to the damages sustained is in many cases impossible. All that the law requires is that such damages be allowed as, in the judgment of fair men, directly and naturally resulted from the injury for which suit is brought. This is the rule which obtains in civil actions for damages. They have their foundation in the idea of just compensation for wrongs done. In United States Trust Company *vs.* O'Brien, 143 N. Y., 284, 287-289—which was an action for damages for the breach of certain covenants contained in a lease—

Mr. Justice Peckham, speaking for the Court of Appeals of New York, when a member of that court, said: 'It is clear, and so it has been held in many cases, that the rule of damages should not depend upon the form of the action. In all civil actions the law gives or endeavors to give a just indemnity for the wrong which has been done to the plaintiff, and whether the act was of the kind designated as a tort or one consisting of a breach of a contract, is on the question of damages an irrelevant inquiry. As was said by Rapallo, *J.*, in Baker *vs.* Drake, 53 N. Y., 211, 220, the inquiry is what is an adequate indemnity to the party injured, and the answer cannot be affected by the form of the action in which he seeks his remedy.' Again: 'In using the words "uncertain, speculative and contingent," for the purpose of excluding that kind of damage, it is not meant to assert that the loss sustained must be proved with the certainty of a mathematical demonstration to have been the necessary result of the breach of covenant by the defendant. The plaintiff is not bound to show to a certainty that excludes the possibility of a doubt that the loss to him resulted from the action of the defendant in violating his agreement. In many cases such proof cannot be given, and yet there might be a reasonable certainty founded upon inferences legitimately and properly deducible from the evidence that the plaintiff's loss was not only in fact occasioned by the defendant's violation of his covenant, but that such loss was the natural and proximate result of such violation. Certainty to reasonable intent is necessary, and the meaning of that language is that the loss or damage must be so far removed from speculation or doubt as to create in the minds of intelligent and reasonable men

the belief that it was most likely to follow from the breach of the contract and was a probable and direct result thereof. Such a result would be regarded as having been within the contemplation of the parties and as being the natural accompaniment and the proximate result of the violation of the contract. * * * The proof may sometimes be rather difficult upon the question whether the damage was the just or proximate result of the breach of the covenant. In such case it does not come with very good grace from the defendant to insist upon the most specific and certain proof as to the cause and the amount of the damage when he has himself been guilty of a most inexcusable violation of the covenants which were inserted for the very purpose of preventing the result which has come about.' "

Our experts have approved these theories, and in estimating what an owner should have been willing to take in selling or renting the right to Paterson to pollute for a further period of years, from March 26, 1911, have approached the subject as practical men.

In short, they say that had the pollution ceased on March 26, 1911, the complainants could have sold their lands at that time for what they were really worth free from pollution, and consequently would have enjoyed the interest on the value of the lands free from the pollution from the last mentioned date; that by reason of the continuation of the pollution complainants will be unable during the period of its continuance to sell their properties without losing the entire difference between the value at which the properties would sell if the river were clean and the value at which they will sell under present conditions, and, therefore, to reduce their loss to a minimum, the complainants, as reasonable men, are obliged to retain the property during the full period of the extended pollution and at the end of this period they will

be unable to get any greater price for their lands than they could have got on March 26, 1911, had the pollution then ceased; and since the income which they will receive from the lands during the period of the extended pollution will be only the income of the lands subject to the pollution, therefore, by being enforced to hold the property during this period, they must lose at least the legal interest on the difference between the value of the lands subject to the right of Paterson to continue to pollute for the prescribed period and the value which the lands would have been worth on March 26, 1911, had the pollution then ceased. The correctness of this rule is absolutely demonstrated in the experience of the owners of the Merselis property to which we desire to call the court's particular attention. (See Sub-division V of this brief—Merselis property, p. .)

This method of estimating the damages has received the sanction of the courts. In *Grand Ave. Ry. Co.* vs. *Peoples Railway Co.* (Mo.) 33 S. W., p. 472, the court said:

> "The court allowed defendant an amount equal to interest at 6 per cent. per annum on one-half the value of that portion of its road occupied by plaintiff, including the conduit; the plaintiff claims that, as it only uses defendant's tracks, and does not use, directly or indirectly, any part of the conduit or underground structure which defendant uses for the purposes of cable railroad underneath the tracks, it should not be required to pay anything therefor; and that the court erred in including that item in its estimate of the amount to be paid defendant as just compensation, and in including said amount in the judgment rendered. It is conceded by counsel for plaintiff that, if the operation of its cars over the tracks caused any damage to the conduit, such damage would be a proper element of compensa-

tion, and that, in so far as the yokes perform the office of ties supporting the tracks, the value of ties should be included in the amount upon which interest is computed. The fault of the argument is the want of promise upon which to base it. No ties were used in the superstructure of the road, and in estimating the just compensation to be paid we must take the conditions as we find them. The phrase 'just compensation,' as used in the charter of the city and its ordinance, has the same meaning which that phrase has when used in the federal and state constitutions with respect to the exercise of the right of eminent domain; and when thus used 'means a fair and full equivalent for the loss sustained by the taking for public use.' Lewis, Em. Dom., Sec. 462, and authorities cited. In *Bigelow* vs. *Railway Co.*, 27 Wis., 478, it is said that it 'consists in making the owner good by an equivalent in money for the loss he sustains in the value of his property by being deprived of a portion of it.' While plaintiff does not use the conduit, it does deprive defendant of its use to the extent that its tracks are occupied by plaintiff's cars, because the cars of the respective parties cannot occupy the same portion of the tracks at the same time. The conduit is an integral part of the roadway as constructed and used by defendant, and there would be no justice in allowing plaintiff to use the tracks, and thereby deprive defendant of the use of the conduit to any extent, without making compensation therefor. Certainly plaintiff would not be permitted to occupy one of defendant's tracks or rails, and thereby at the same time deprive it of the use of the other track or rail, without making just compensation for the one not used. There is no difference in principle in occupying the tracks, and during such occupation,

> and by reason thereof, depriving defendant of the use of the conduit, than in occupying one track or rail, and by reason thereof at the same time depriving defendant of the use of the other. In either case compensation should be made. There was no compulsion on the part of the plaintiff to occupy defendant's tracks; and the fact that the superstructure was more costly, and some parts of it unnecessary to the operation of plaintiff's cars, affords no just reason why it should not compensate defendant, not only for that which it does use, but also that of which it deprives defendant of the use. This is the measure of the compensation to which defendant is entitled, and nothing short of it would be 'just compensation.'"

By looking at the matter from another point of view we get the same result. Assuming that if the river had been cleansed on March 26, 1911, the owners of the properties in question would have been unable to dispose of their properties immediately, and would have been obliged or would have decided voluntarily to hold them during the four years following, what would have been the result? Under the assumed circumstances, they would have undoubtedly received a reasonable income for the properties free from the pollution. In addition, they would also have received the benefit of an increase in the value of the properties which would naturally have occurred. Experience shows that on property of the character of that in question, located within commuting distance of New York and adjoining large, rapidly growing cities such as Paterson and Passaic, the increment in value is sure to amount to not less than six per cent. on the value of the investment less the amount that ought to be received from the property in its undeveloped state, or condition. In other words in holding land of the character of that in question

the owner may reasonably expect that his investment will net him the same amount as if he should sell at once and put the money at interest. Ordinarily, under such circumstances, this increment in value amounts to much more. The complainants therefore should at least be entitled in this case to the ordinary return that can be reasonably expected in such cases. That is to say, if the river had been cleansed on March 26, 1911, the complainants could have reasonably expected to receive and it is therefore fair to suppose that they would have received during the term of the extended pollution, in the rents and the net increment in the value of the lands together, at least six per cent. on the fair value of the property on March 26, 1911, free from the pollution. But instead of such rents and increment in value, the complainants will, because of the continued pollution of the river, only receive the income from the properties under existing conditions. Assuming that this will amount to a fair return on the value of the property under present conditions (which we submit is a very liberal assumption) the complainants' total loss during the period of the continued pollution will, according to the above principles, be equivalent to the amount of interest on the difference between the value on March 26, 1911, of the properties free from the pollution and the value of the properties under existing conditions, which is just the amount that has been allowed by the complainants' experts.

And it is perfectly apparent that both of these methods of reckoning the damages above set forth are very conservative when considered in connection with the circumstances of this particular case. For while they take into consideration the loss of rents and the damage which will result from the enforced retention of the property, they do not provide any damages that might result from the fact that unfavorable developments in the neighborhood will be in-

duced by the continued pollution, which will prevent the property in question from ever attaining the value it would have attained in case the pollution had never occurred or its continuation had not been allowed, a considerable amount of which damages, for the reasons already stated, we submit will likely occur and result in not only substantial but permanent loss to the complainants.

In order that their estimates should be adaptable both to the method of measuring damages adopted by the court at the main hearing and the methods above presented, the complainants' experts calculated the damages in terms of rental value on the front portions of the premises and in terms of "arrested development" on the rear end of the premises. For the convenience of the court we have attached to the end of this brief a copy of the statement of damages prepared by Messrs. Van Dyne, Mercer and Allen, and marked it Schedule A. The estimate of damages prepared by Mr. Karl and Mr. Coe appears in full in the testimony, page 2346.

At the hearing the court seemed inclined to think that the method of estimating the damages above suggested was not a proper estimate of the damages for the reason that in this case it would be obliged to assume that the pollution would cease completely at the expiration of the prescribed period and that therefore the price at which the property could be sold during that period would gradually approach, and at the end of the period, attain its natural valuation. All the experts deny this to be the effect as a practical matter, and a very good explanation for their conclusion was advanced by Mr. Karl, who said that such a result would not follow for the reason that land for development purposes is in fact usually purchased by companies who have small amounts of capital and it is therefore necessary for them to turn it quickly in order to make

money from their investment and that, therefore, no such company, or in fact, anyone, would speculate upon the proposition from the theoretical point of view advanced by the court, and as a consequence, the depreciation in the value of the property by reason of the pollution would continue until the pollution was actually removed. The defendant's experts apparently agree with this reasoning (case, p. 2413), and it seems that it fully answers the inquiry of the court.

There is however another complete answer to this suggestion. While the pollution lasts the income from the property will be reduced to the full extent during the whole period. The mere fact therefore that possibly the sale value of the property will gradually approach the real value of the property, free from the pollution, will make no difference, for the reason that the owner cannot take advantage of this partial increase in the price during the period of the pollution without losing forever the difference between the price he could get and the price of the property free from the pollution. To save himself this loss therefore he must hold his property and suffer the loss of income during the full period of the continued pollution, which we submit is justly measured by the interest on the difference between the value of the property free from the pollution and subject to it during the whole period of its continuance. The Paterson experts also agree to this. The testimony of Mr. Lee upon this point is as follows, page 2410:

> "Q Suppose then assurance was given to you that within three years the sewage would cease to flow into the river, what would you consider the present value per acre?
>
> "A Well then I would get down to figures, I would try and estimate what it was going to cost me to hold that property for three years, I would take into consideration the interest and

the taxes, I would arrive at it in that way, I think.

"Q What would you do, make the deduction of that cost from the future value?

"A I think that would be the most reasonable way, that would be from a business stand-point, as a real estate speculation I would take that view of it."

When Paterson admits this, we submit that it admits our whole case—at least, it admits the correctness of our method of measuring the damages that will result from the enforced retention of the property by the complainants during the continuation of the pollution.

Also, at the trial, the defendant attempted to show that the premises in question were not adapted to development purposes of a refined character because of the likelihood of the encroachment upon them of cheap Italian or foreign settlements and of factories and their attendant surroundings. We submit, however, that neither of these contentions has any force; (1) for the reason that the development of cheap foreign settlements will be solely because of the continued pollution of the river by the City of Paterson and that, therefore, the city cannot say that such an injury to the plaintiff's property resulting from the city's wrong can have the effect of reducing the damages for which it is liable; and (2) for the reason that it is not likely that there will be further encroachments upon the properties in question by new factories being built along the river. From Sheriff Mercer's testimony it is plainly evident that these factories are no longer locating upon the river bank (case, p. 2146). His testimony in this regard is confirmed by the factory developments in recent years both in Lodi and in the City of Passaic. All the mills in Lodi recently erected have been located along the railroads some distance from the river, while the Doherty silk mill recently erected

in the City of Paterson is located on Main street, some distance from the river. There is nothing therefore in the contention of the defendant upon this point.

In determining the amount of damages to be allowed, we submit that the court should take into consideration the position that the City of Paterson has taken in the matter. By the decree of 1908 the defendant was given ample time within which to discontinue this pollution and as has already been adjudicated by the court, did not exercise due diligence in endeavoring to discontinue this pollution during the time allowed it by the court for that purpose. The City now, therefore, comes before the court not as a party who has conscientiously endeavored to carry out the decree of the court but found it was unable to do so within the time allowed, but rather as one who has disregarded the decree of the court and the adjudged rights of the complainants in this suit. It cannot, therefore, expect to be dealt with liberally by the court, but on the contrary, should be required to pay the full amount of damages by reason of the continuance of the pollution for the full period of the extension. Under such circumstances certainly all doubts should be resolved in favor of the complainants.

The estimate of damages submitted by the complainants' experts was calculated upon the assumption that the total pollution of the river was chargeable to the City of Paterson upon the theory of joint *tort feasors*, or, at least, that the pollution by the city was sufficient in itself to cause the full amount of damage to be suffered by the complainants during the period of the extended pollution. In other words, that the pollution from other sources is inconsequential when compared to the pollution by the defendant. If the court should reject these assumptions as being incorrect and decide to apportion the damages, it seems to us that it clearly appears that the proportion of the pollution of the river due to the city has not decreased since the main trial, but, on the

contrary, has increased and that now it is at least equal to the maximum percentage found by the court at the main hearing. The court after a review of the evidence on this point said:

> "Taking all the evidence heretofore considered, I should be disposed to conclude that the amount of polluted matter coming from the sewers harmful to the properties involved in this suit and likely to create a nuisance to those properties, is at present from two-thirds to three-quarters of the whole." Vol. 5, p. 23.

We submit, therefore, that even if the court does not accept our first contention, it should at least allow the complainants seventy-five per cent. of the amount of loss resulting from the depreciation in rents and arrested development as estimated by the complainants' experts including the damage to each complainants' property as a whole.

But if perchance the court should reject both of the above contentions and decide to follow the method adopted by the court below and take the loss of rental value of the portions of the premises directly affected by the odor as the measure of the complainants' damages, we submit that a new basis of rental value should be determined upon, as it is perfectly obvious that the loss of rental value fixed by the court at the last hearing was exceeding low. We submit that the values testified to by the complainants' experts are fair values. The complainants' witnesses are all experienced men who have devoted many years to the real estate business and have had very wide experience in dealing with just such properties for development purposes as those now under consideration. We submit that their opinion can be relied upon by the court and that the loss of rental values should be based upon the rents which could likely be received from the property if the river were cleaned and not upon those which ought to be received from the property under existing conditions. The increase of one per cent. a year should be added to cover the

increasing damage as the years go on, the same as it was at the main hearing, so that for the year 1911 the complainants should receive twenty-four per cent.; for 1912, twenty-five per cent.; for 1913, twenty-six per cent.; for 1914, twenty-seven per cent.; for 1915, twenty-eight per cent., of the total rental values of the premises fee from the pollution as fixed by the complainants' experts at the present trial.

In addition to this we also submit that there should be an allowance for the loss of sales which have been actually defeated by reason of the polluted condition of the river. Certainly the loss of an opportunity to convert large tracts of real estate located in a city where taxes and other assessments are high is an element that must be considered in estimating damages in a case like this. Or, putting the matter in another way, in lieu of such damages as well as in all cases where no opportunity to sell has presented itself, we submit that there should be an allowance for the damages that will be suffered by the complainants by reason of the loss in the increment of value naturally incident to all properties of the character of those in question. Obviously, this increment in value will be entirely destroyed, or at least, greatly reduced during the period of the pollution. Certainly a substantial amount of damages should be awarded for this element of injury. Likewise, we submit that there should be an allowance to cover the damages that are likely to result from the change in the neighborhood by the growth of undesirable developments, which will be induced and encouraged by the continuation of the pollution during the extended period. As has already been stated this is a danger that is real in this case and will, if it occurs, undoubtedly result in permanent injury to the complainants' property for which they should be justly compensated.

We submit that the complainants will undoubtedly suffer very substantial injuries, and should consequently receive very substantial damages.

We shall now take up the individual claims of the complainants.

V.

SPECIAL ELEMENTS OF DAMAGE CONCERNING THE PROPERTIES INDIVIDUALLY.

SCOTTO C. NASH PROPERTY.

Mr. Nash has a place which with improvements made by him cost him some $50,000. His property was acquired through three purchases. In 1887 he purchased the Rhoades tract for $8,600. (page 129, line 2 of printed case). This contained eight acres (page 126, line 35, of printed case). The same year he purchased the tract known as the Reynolds Tract. For this he paid at the rate of $160. an acre (p. 128, line 4, of printed case). In 1889 he purchased the Vreeland tract for $8,000 (p. 128, line 6, of printed case). These three purchases gave him a frontage of 1,700 feet on Dundee Lake (p. 142 of printed case). At the time he acquired his title there was a house on the Rhoades tract with a barn, pig pen and other outhouses (p. 128, line 25, of printed case). There was a farm house on the Vreeland tract (p. 129, line 1, of printed case). Mr. Nash spent several thousand dollars improving the house. He built an addition to it and also built another house at a cost of $2,300. He also erected a greenhouse, dug wells, etc., at a cost of $22,500 (p. 131-132 of printed case). In addition to this he spent $7,000. and devoted three years of his own time in improving the Pond lot (p. 130 of printed case). Mr. Nash also spent hundreds of dollars in building a walk in front of his house and dumping sand into the lake to improve the bathing conditions. It was bought and improved in part for residences (page 149 of printed case) and in part as an investment or speculation.

The court at the main hearing, in speaking of the properties generally, stated that the farms may be

described as narrow ribbons of land, being with two or three exceptions from one hundred and fifty to five hundred or six hundred feet in width and running back from the river in some cases over a mile. It will be observed, however, that Mr. Nash's property does not fall within this description, it having a frontage of over 1,700 feet along the river and being only six hundred in depth. In awarding damages at the trial the court also said:

> "The amount awarded may seem small * * *. The reasons for this very moderate allowance are the following: The land is nearly all of it used for farming or truck gardening. It is not pretended that the odors seriously affect the lands. The houses are old-fashioned and most of them without modern improvements. The means of access are not such as to attract the ordinary commuter. Churches and schools and places of amusement are distant and north and south along the river are an increased number of factories and such a population and such dwellings as factories bring with them. The growth of these factories toward the land in question would seem to be inevitable."

It will observed that none of these reasons are pertinent to Mr. Nash's property. It was never used for farming or truck gardening, but has always been adapted to residential purposes. The large house, while built a number of years ago, is commodious and comfortable, and when put in proper repair, would make a most attractive residence. It has all of the modern improvements except gas, i. e., it has a large modern range with water back and copper boiler, hot and cold water, stationary wash tubs, two furnaces, bath room with water closet, conservatory, heated by hot water. The cottage has range, furnace, bath room, water closet, hot and cold water and telephone. The other building is a large two-family country

house. The other tract is vacant land. Most of Mr. Nash's land is high and commands a fine view of the river and is naturally suited for a villa site. All of this property is conveniently located to the trolley line which runs six or seven hundred feet from the rear of his property (p. 152 of printed case). This trolley line connects with the main trolley lines of Paterson and Passaic. In addition to it there is also another trolley line running from the center of the City of Paterson to the Cedar Lawn Cemetery which is less than a half mile from Mr. Nash's residence. It is within a half mile of the station at Clifton at which every train running into Paterson stops. At the easterly end of the property is a knoll fifty or sixty feet above the river admirably adapted to residential sites of the finest kind. It commands an admirable view of the stream (pp. 129-130 of printed case); in front of it is a pond in the improvement of which Mr. Nash spent large sums of money and which adapts it particularly as a location for a villa site (p. 124 of printed case). The whole property fronts on the main river road or boulevard, which is a fine macadam road running from Passaic to Paterson. It has fire protection. The streets in the vicinity are all lighted by electric lights all night every night in the year, and a great variety of good amusements, both in Passaic and Paterson, including churches, theatres, lectures and clubs, may be reached by the trolleys and the fine roads in a few minutes. Good schools and large churches are accessible by a twenty-minute walk from any part of the land, all of which features would make it most attractive as a suburban property.

For a time there was a large development in Passaic in the way of handsome residences along the road leading past Mr. Nash's property. This development reached up to a half mile of the Nash property and the same distance from the river. There it ceased. The conditions were very favorable to the continuation

of this development to and beyond Mr. Nash's property. Instead of this desirable development as was natural to any property so conveniently and delightfully located, the chances of such development have been entirely arrested some distance from his property and an undesirable development begun induced by the bad condition of the river which will undoubtedly not only increase the injury, but result in a permanent injury to his property. The polluted condition of the river at this point is particularly offensive because all of the property is located on the west shore of the lake in which there is at this point a large cove. The sewage in the river is by the breezes blown into this cove out of the tide water, and the cove is of such shape that under ordinary conditions after the sewage is once deposited, it is almost impossible for it to be removed by the natural flowing of the stream, and as a consequence islands of this sewage have been formed and whenever the water is low, the sewage becomes bare and lies there, and the odors therefrom are consequently extraordinarily offensive. Moreover, the houses—three in number—are all located within a very few feet of the river and therefore are subject to the full effect of the polluted condition of the river at this point. The ice cutting privileges, which would naturally enhance the value of the property so located, are absolutely destroyed, as are the boating and fishing, which are particularly attractive to persons seeking a suburban estate of this sort. The nuisance has become so bad that the property is unfit for a residence of the character to which it is adapted. It not only prevents Mr. Nash living there himself with any comfort, but destroys all his chances of renting to anyone else.

Much has been said in respect to the present condition of Mr. Nash's large house and the defendant contends that because it is in poor condition, no greater rent could be gotten for it if the river were

clean than can be gotten for it under present conditions. In answer to this we say that if the river were clean it would pay to put the house in first-class condition, but under existing circumstances it would be a waste of money to do so. This circumstance is due directly to the condition of the river and since the defendant cannot profit from its own wrong, it cannot hope to get any advantage by reason of the fact that the house is at present in bad repair. Clearly, under the circumstances Mr. Nash is entitled to the difference in the rent the house would bring in good repair in case the river were clean and the rent which it would bring in good repair under present conditions, less the interest on the cost of putting it in repair. What has been said in respect to the large house also applies to the other houses owned by Mr. Nash. While the present condition of the river continues it will be in the opinion of all the experts absolutely impossible to appropriate any of Mr. Nash's property to the use to which it is adapted or to develop the same for smaller building sites. All of the experts agree that all of Mr. Nash's property is most favorably located for development purposes. The experts produced on behalf of the City of Paterson agree to this also—or at least, they say it is so as to the adjoining property (pp. 2408, 2409). Mr. Clements also stated that this development would be of a good class of houses (p. 2555). Mr. Lee also admits that the vacant triangular piece of property would be worth $2,000 per acre if the river were clean, whereas, in its present condition it is worth only $1,200 (p. 2409). This is a difference of $800 per acre and since there are twelve acres in the place, it makes a total of $7,200. He states that this reduction in value is caused by the odors arising from the river (p. 2455). In order to save the principal sum from being a total loss will not Mr. Nash be obliged to hold the property and submit at least to the loss of interest

on this sum until the pollution ceases? If this is true with reference to this property is it not also true with respect to the balance of the Nash property equally adapted for development purposes. We submit that the damages that Mr. Nash will suffer by reason of the pollution during the next four years will amount to at least $8,400. (Schedule A.) A comparison of this amount and amount allowed appears in Schedule B annexed.

MERSELIS PROPERTY.

This is an old family homestead which has been in the family since 1836 and owned by the complainant since 1881 (p. 193 of printed case). The house is a stone, fourteen-room house, 70 feet long and 40 feet wide, worth $5,000 (testimony, p. 49), and could be easily made into a most attractive residence as is evident by the fact of the improvements which have been made in the Terhune property hereafter mentioned. On the property is also a corn crib, wagon shed, brick carriage house and barn, 40x36, and an addition, 36x30 (p. 193 of printed case). All the buildings are in good condition (testimony, p. 113). There are twenty-six acres of ground (p. 197 of printed case), having a frontage of 640 feet on the river (p. 187, l. 3 of printed case). By way of improving the property the complainants have altered the barn at a cost of $1,000 (p. 194 of printed case) and made other alterations at a cost of $300. They have also erected an adjoining building at a cost of $1,300 and provided the homestead with steam heat and water at a cost of $500 (p. 195 of printed case). Some fourteen or fifteen years ago (p. 199 of printed case) they laid out a street and planted trees with a view of improving the property and selling it for building lots. They were unable to sell any lots, however, on account of the condition of the river (p. 196 printed case). In the year 1895 the complainant sold

twenty-six acres from the rear of the property as it originally was. The purchasers started to develop this tract but they, too, were unable to sell lots on account of the condition of the river (p. 200-201 printed case). The complainants continued to occupy the portion of the property in question for a time but finally the place became unendurable from the river's stench and they moved away in February, 1903 (pp. 169 and 203, printed case). The property has since been rented at a nominal rent of $300 per year (p. 194 of printed case; p. 2093). In May, 1909, they again had a map made of the property dividing it up into building lots but have since been unable to sell any of them—not even one lot. About the same year, as testified by Mr. Allen (p. 2097), he procured a purchaser of the tract in question. The contract was drawn and submitted to the purchasers. Everything was agreeable to them, but before the deal was finally consummated they learned of the condition of the Passaic River and refused to sign the contract. The complainants have not since had a chance to sell the property or any part of it for any purpose. It appears, therefore, that they have been unable to use it either as a residence or to use it for development to which it is naturally adapted. Since the pollution of the river has become extensive the property has been and remains a burden to its owners, and it is perfectly certain in the opinion of the complainants' experts that this state of affairs will continue during the period of the extended pollution of the river by the City of Paterson. This property is situate just above Mr. Nash's, and like Mr. Nash's property, cannot be said to be a mere narrow ribbon of land adapted only to farm purposes. The house has steam heat and water and electric lights (pp. 2093, 2094). It is conveniently located to two trolley lines, one of which runs through the property in the rear (*Ibid.*) and the other within half

a mile of the property on the river drive, which is a fine macadam road. It is conveniently located both with regard to the City of Paterson and the City of Passaic. It is near the Clifton station, at which station every train running to Paterson stops. The train service is good. Streets in the vicinity of the property are lighted with electric lights all night every night in the year, and a great variety of good amusements both in Passaic and Paterson, including churches, theatres, lectures and clubs, may be reached by the trolleys and the fine roads in a few minutes. Good schools and large churches are accessible by a twenty minute walk from any part of the land, all of which features would make it attractive as a suburban property. The homestead is adaptable to this use. It has abundant shade and runs to the water edge. If the river were clean it would have unsurpassed boating, bathing and fishing facilities, all of which have been destroyed and will continue to be prevented during the period of the extended pollution. As in the case of Mr. Nash's property the polluted condition of the river at this point is particularly offensive because all of the property is located on the west shore of the lake at which there is at this point a large cove. The sewage of the river is blown by the breezes into this cove out of the tide water and the cove is of such shape that under ordinary conditions, after the sewage is once deposited it is almost impossible for it to be removed by the natural flowing of the stream, and as a consequence large islands of this sewage have been formed and whenever the water is low the sewage lies there and the odors arising therefrom are consequently extraordinarily offensive. All of the property is adapted for development purposes. This is admitted by the Paterson experts. (See testimony of Mr. Lee, p. 2408 to p. 2410, testimony of Mr. Sherman, p. 2498; and testimony of Mr. Clements, p. 2555.) Mr. Clements also states that his

development would consist of a good class of houses (testimony, p. 743). Mr. Mercer says that he thinks this property suffers as much from the river as any piece of property on it (testimony, p. 276).

The circumstances of this case also demonstrate absolutely the justice of the measurement of damages adopted by the complainants' experts. In 1909 Mr. Merselis had an actual offer from persons who viewed the property without any knowledge of the existing nuisance, and they offered him $42,500. Our experts appraise the value of the property at this time at $44,000, free from the pollution. The court will observe how closely this estimate compares with the actual offer received only four years ago. The difference, of course, is due to the increment in value that would have since occurred if the river had been clean. If the sale had been made by Mr. Merselis in 1909 he would have since been enjoying the income on the sum of $42,500, but he was prevented from making this sale by reason of the polluted condition of the river, and since that time Mr. Marselis has been unable to obtain any other purchaser at this price or any other fair price, and as a consequence he has been obliged and will be obliged to retain the property during the continuance of the pollution. Assuming that during that period he will receive a fair income upon the value of the property subject to the pollution and at the end thereof be able to again sell the property for the sum of $42,500, which is a very generous assumption, is it not perfectly obvious that the loss during the period of the pollution will amount to the difference between the legal interest on $42,500 and the income which he may be reasonably expected to receive from the property in question during that period. The net income, of course, during this period will not likely amount to six per cent. on the value of the property subject to the pollution. Our experts, however, make such a generous assumption when they

allow as damages only the legal interest on the difference between the value of the property subject to, and free from, the pollution.

We submit that it is perfectly clear, therefore, that in this case the owners of this property will lose by reason of the continued pollution during the next four years at least $6,400. See comparison with court allowance Schedule B.

TERHUNE PROPERTY.

Garrett Terhune acquired his property on his father's death (p. 21 of printed case). The property now is and has been since November 12, 1911, owned by John Terhune. (See stipulation, p. 2228.) It consists of ten single lots, five on the west side of the road and five fronting on the river, lots being about 25x100 feet in size (p. 22 of printed case), making a river frontage of 125 feet (p. 27 of printed case; p. 2052). Formerly there was a brown stone house and brick barn on the property (p. 226 of printed case). The house was remodeled in 1861 (p. 227 of printed case), and again in 1901—the last time at a cost of $10,000. A pumping system and engine water system and pipes and acetylene gas machine were installed. The house was wired for electricity and provided with bath rooms and all modern improvements. Part of it was torn down and an addition was built in the back. The entire interior was fixed up with hardwood floors, etc., cement walks were laid around the house and a four-foot wall erected in front of it (p. 231 of printed case). The property is located within the City of Paterson and about two and one-half miles from the City Hall (p. 229, printed case). There is a trolley line immediately in front of the property and the Vreeland avenue station on the Susquehanna Railroad is only about a quarter of a mile away (p. 228, printed case), so that it is provided with ready means of access. The

property is only five hundred to a thousand feet below the Market street sewer (p. 224 of printed case). It is situated in the bend of the river and the current is such as to carry the worst of the pollution close to the bank at this point. Not only that, but in this bend of the river, lying in front of the properties of Mr. Nash and Messrs. Merselis, this foul sediment has been deposited until it has created islands of the most offensive character in front of the property (p. 223, printed case). This property is also situated on the same river drive which runs by the property of Mr. Nash and Messrs. Merselis. It is somewhat above the latter property, but while it is further from the City of Passaic, it is nearer the City of Paterson. It stands, therefore, very much in the position of both the Nash and Merselis property. The property is now unsalable (p. 226, printed case).

We submit that the owners' damage during the next four years will be at least $2,480. (Schedule A and comparison in Schedule B.)

ALBERT A. AND RICHARD OUTWATER PROPERTY.

This property originally consisted of seventy acres of land (p. 253, printed case). The river frontage is about 825 feet (p. 96 of printed case). Ten acres were sold off some years ago (printed case, case, p. 254) and the land divided between the above-named complainants who formerly held it as tenants in common. It was then divided between them, Richard Outwater receiving thirty-one acres and Albert, twenty-eight acres (printed case, p. 278). Albert Outwater died on or about February 26, 1909, leaving a last will and testament wherein and whereby he bequeathed and devised all of his real estate, including the real estate above mentioned, unto his wife, Sarah E. Outwater, to be used and enjoyed by her during the term of her natural life, provided she remained a

widow, and after the death or remarriage of the said Sarah E. Outwater, all the rest and remainder of the said estate to be divided as follows: One-fifth to Peter Wesley Outwater; one-fifth to Garrett Outwater; one-fifth to Eliza Boggart; one-fifth to Edo Outwater, Sadie Outwater and Clifford Outwater, children of John R. Outwater; and one-fifth to Richard Outwater in trust for Albert A. Outwater. The testator's brother, Richard Outwater, and Sarah E. Outwater, were appointed executors and have been duly qualified and are now acting as such executors. The widow is still living and is unmarried. Of this Outwater tract three and one-half acres have been sold at the extreme easterly end thereof which, of course, is the portion of the tract least affected by the river (pp. 2259, 2260). The above named devisees of Albert A. Outwater are still owners of the remaining portion of the premises in question and are admitted to be entitled to compensation in this suit (stipulation, p. 2233). The house on this portion of the premises is a stone house, 70 feet long x 33 feet wide, containing ten rooms and having two attics and two cellars. There is also a carriage house and a cow house 20 feet x 40 feet, and some other buildings. These buildings are all located on the river road along the river front. These buildings are all in good condition (printed case, p. 254).

The Richard Outwater portion of the Outwater estate above mentioned is still owned by him excepting ten acres which he sold in December, 1911 (stipulation, p. 2236, p. 2260). It immediately adjoins the Albert A. Outwater property and has a house upon it in good repair.

Both of these properties are well provided with means of access. They are near the Ferndale, Hawthorne and River street stations on the Erie Railroad and two stations on the Susquehanna Railroad (p.225 of printed case). They are close to the Moffat and Magraw bridges leading into Paterson and were

formerly directly across the river to a trolley line. This trolley line has now been extended and runs within a short distance of each of the properties in question. The property, therefore, has all the means of communication with the City of Paterson as contended is necessary to establish the value of a suburban property. It also has the advantage which the city says comes from proximity of large manufacturing establishments. (Printed case, p. 258.) It is on the easterly side of the river and therefore subject to the odors most of the time as they are carried by the prevailing winds during the summer. It is situated directly opposite the end of River street in Paterson where the River street sewer enters the river (printed case, p. 261). What has been said of the other properties for use as suburban homes is particularly true of this properfty. It has all the advantages of any of the properties and is subject to no less extent to all of the annoyance arising from the polluted condition of the river. There is a demand for building purposes in Glen Rock and Saddle river townships where this farm lies (printed case, p. 338), but no demand for this property (testimony, p. 340).

The defendant's experts say that property nearest the City of Paterson will ordinarily develop first. Since this has not developed, although property beyond it has come in the market and been developed, it must be that the development of this property has been and is being held back by the condition of the river. The defendant's experts admit that it is available for immediate development and for that reason has assigned to it higher value per acre than any property on the east side of the river (p. 2476). The complainants' experts have treated the two properties here involved as one and consequently we have done the same thing. We submit that the total damage which will result to these properties during the next four years will amount to at least $2,192. (Schedule A and Comparison in Schedule B.)

RICHARD VAN RIPER PROPERTY.

Represented by Charlotte Van Riper, Executrix.

Mr. Van Riper owned sixty-five to seventy acres and has a frontage of 800 feet on the river (printed case, p. 90). At the time Mr. Van Riper purchased the property there was an old dwelling house and barn on it which were afterwards torn down (printed case, p. 279-280). He built a new house about fifteen years ago—a frame dwelling house, 28 feet x 30 feet, two and one-hilf stories in height, containing eleven rooms. This cost him about $4,000. at the time when building was cheap (printed case, p. 280). He also erected at a cost of $250 or $300 (printed case, p. 294) an ice house 20 feet x 16 feet with a capacity of forty or fifty tons. In this ice house he used to store ice which he cut from the river for use in his milk business. His cattle also used to drink from the river (printed case, p. 282). These uses have been entirely destroyed by the nuisance (printed case, p. 283). The buildings are all in good condition. (Schedule A.) We submit that for the reasons already stated it is also available for a suburban estate or for development purposes and that the damages which it will suffer during the next four years will amount to at least $3,600. (Schedule A and Comparison in Schedule B.)

GELDERMAN PROPERTY.

This property was purchased by Mr. Gelderman for a country home in 1884 for $6,000. It contains nineteen and twenty-one hundredths acres and has a frontage of 402 feet on the river (printed case, p. 96). At the time of its purchase there was a dwelling house on it 25 x 40 feet with three rooms on the ground floor and four rooms upstairs. It was then in a dilapidated condition. There was also a corn crib and old barn upon the property. Subsequently, Mr. Gelder-

man rebuilt the house, altered the barn, built a new barn and three or four outside sheds and repaired the roads so that the property at the time of the last hearing, represented, including the original purchase price, an investment to him of $18,000 or $19,000 (printed case, p. 354). At the last hearing the Paterson experts testified that they found only one register in the whole house and that if instead of one room, the whole house had been heated throughout it would increase the rental value at least $100. per year (printed case, p. 1,521). In fact, there was, as there is now, a register in every room throughout the house except the kitchen which is heated by a modern range. On the basis of only one register the experts estimated the annual rental value at $300. (printed case, p. 1,474), and the court adopted this figure (Vol. V, p. 40). Obviously, therefore, this was too low in view of the real circumstances of the case and the rent should have been fixed by them at least $400 (printed case, p. 1,521).

Since the last hearing this property has been further improved by the installation of electric lights, hot and cold water, bath room, water closet and other improvements (p. 2,252 and *seq.*) and is still heated throughout by means of a hot air furnace. The water supply is procured by means of an engine pump from wells on the premises. The buildings are all in good condition (pp. 2,252, 2,253, 2,444). The property is advantageously situated near the country club and is within four minutes' walk from the trolley line leading into Paterson. It is also near the trolley line running from Paterson to Suffern, New York (p. 2,487). Mr. Gelderman has had several very advantageous offers for the property, but they have all fallen through because of the condition of the river (printed case, p. 361, 362, 366, 368, 370). Under present circumstances it is not rentable at a fair rental value and consequently Mr. Gelderman has

been obliged and still is obliged to live upon the property himself. It has a large lawn in front filled with beautiful shade trees and is located directly across the river from East Side Park. The property is excellently situated for a suburban home. Mr. Gelderman is engaged in business in Paterson and can get from his home to his office in about twenty minutes. In testifying in reference to this property, Mr. Lee, the Paterson expert said: "Well, the Gelderman farm is —I would not class that as a farm, that in my opinion, would be termed a suburban residence" (p. 2,444). All of Mr. Gelderman's property is high land (p. 2,444) and will be cut up to advantage for development purposes. By running a sixty-foot street through the middle it would have on each side a lot of a full depth of 150 feet. The streets in the vicinity are lighted by electric lights and all the amusements in Paterson, including theatres, lectures and clubs, may be reached by the trolleys, and the fine roads within a few minutes. Good schools and large churches are all accessible from any part of the land within a few minutes' trolley ride. This property, therefore, cannot in any sense be considered as a mere narrow ribbon of land, available for only farming purposes.

The property being situated on the easterly side of the river is almost continuously subject to the bad odors from the river by reason of the fact that the prevailing wind in summer is from the south or west. In fact, owing to a bend in the river at this point the property is never free from the odors except when the wind is between the north and the east which seldom occurs. When Mr. Gelderman bought the property the river was over eight feet deep at this point and one could stick an eight-foot oar down its full length and could not touch bottom. Now there is not six inches of water there. The river has become filled up with sewage which when the water is low becomes

bare and putrifies. Under these circumstances it is obvious that Mr. Gelderman suffers immensely. We submit that the damages he will suffer by reason of the continued pollution of the river during the next four years will amount to at least $3,360. (Schedule A and Comparison in Schedule B.)

MARY A. VAN SAUN PROPERTY.

This property contains seventy-three acres and has a frontage of 575 feet on the river with a stone house and barn and two ice houses on the property with a capacity of about fourteen hundred tons, which are made entirely useless by reason of the condition of the river. All the buildings are now in good condition. The property is less than one-half mile from the Dundee Lake station on the Susquehanna Railroad and one-half mile from Market street and Broadway bridges in Paterson. There is a trolley line running over the Broadway bridge and another trolley line at the end of the Market street bridge. It is obvious, therefore, that this property is located conveniently to the City of Paterson and could be advantageously used for either a suburban home or purposes of development. We submit that the loss which Mrs. Van Saun will sustain by reason of the continued pollution of the river during the next four years will be at least three thousand two hundred and eighty dollare (Schedule A and Schedule B).

ZELA DOREMUS HOMESTEAD OR PETER H. DOREMUS PROPERTY.

Represented by Emma Doremus, et al.

On or about July 5, 1906, Peter H. Doremus, one of the complainants in the above suit, died leaving a last will and testament wherein and whereby he devised all of the property described in the bill of com-

plaint to Garret M. Doremus, who received the damages awarded at the last trial. On December 17, 1911, Garret M. Doremus died intestate leaving his widow, Emma Doremus and his children Peter H. Doremus, Catherine S. Doremus and Harvey Doremus as sole next of kin and heirs-at-law. On October 11, 1912, Emma Doremus was appointed administratrix and assumed to act and is now acting as such administratrix. The children Peter H. Doremus, Catherine S. Doremus and Harvey Doremus, are all minors (stipulation, p, 2,433).

This property contains between seventy and seventy-two acres of land with a frontage of five hundred eighty-five feet on the river. There is a double house on it, part stone and part frame, containing in all eighteen rooms. The house is two stories high, with an attic (printed case, p. 418). There is also a barn forty by forty-five feet and a chicken house, side kitchen and carriage house. The carriage house was built at a cost of six hundred dollars or seven hundrer dollars (printed case, p. 419). All of the buildings are in good condition (p. 2,442). There is a boiling spring on the property, but this became unfit for use in 1898 owing to the condition of the river (printed case, p. 420). The Paterson experts admit that it is as good a farm as any along the whole river (p. 2,442). They admit that it is far removed from the factory neighborhood (p. 2,444). It is advantageously situated about half a mile from the Dundee Lake station, and less than that from the Broadway bridge (printed case, p. 419). Our experts say it is admirably situated either for a suburban estate or for development purposes. It being five hundred eighty-five feet in width on the river front, obviously two streets could be cut through it sixty-two and one-half feet in width, and the owner still would have three series of lots one hundred fifty feet in depth. This development, however, is prevented because, as

is admitted by the defendant's experts, the development of the rear of the property is impossible until the front of the property can be made attractive (p. 2,439). We submit, therefore, that the damages that will be suffered by the owners by reason of the continued pollution of the river during the next four years, would amount to at least three thousand two hundred and eighty dollars (Schedule A and Schedule B).

PETER ALYEA PROPERTY.

Represented by H. Charles Hillman.

Originally this property contained sixty acres, and had a frontage of four hundred forty feet on the river (printed case, p. 91). It is situated within half a mile of the Dundee Lake station, and within ten minutes' walk from the trolley across the Market street bridge (printed case, p. 560). At the time it was purchased by Mr. Alyea it had on it a large double frame dwelling house containing seventeen rooms, also a barn twenty-five by forty feet, and a cow shed with a loft for hay. While Mr. Alyea owned the property he built another out-building twelve by fifteen feet, at a cost of fifty dollars (printed case, p. 559-560). There was a mortgage on the property of forty-four hundred dollars. There became due on this mortgage, in addition to the principal, one year's interest at six per cent. The loan was called by the mortgagee. Mr. Alyea made efforts to secure to loan and replace the mortgage, but was unable to do so (printed case, p. 564). Consequently the mortgage was foreclosed, and the mortgagee purchased the property at the sale for one-half the amount of the decree. Since the last trial the thirty-two acres nearest to the river by several conveyances have become vested in the present complainant, H. Charles Hillman (Stipulation, p. 2229), all of which are still

owned by him except a small triangular lot at the easterly or rear end thereof, which lot was duly marked on the map exhibited before the court as "sold." Since his purchase Mr. Hillman has made extensive improvements. He has installed an irrigation system, and uses the property as a truck farm (p. 2436). The Paterson experts admit that it is a very good farm (p. 2437), and concede that the rear end of the premises is already ripe for development (p. 2428). Our experts claim that all of the property, if the river were clean, would be made available for development purposes. We submit that the loss which Mr. Hillman will sustain by reason of the continued pollution of the river during the next four years, will amount to at least two thousand nine hundred and twenty-eight dollars (Schedule A and Schedule B).

HENRY W. DOREMUS PROPERTY.

Represented by Charity Doremus.

Henry W. Doremus, one of the original complainants, died on or about December 12th, 1911, leaving a last will and testament whereby he appointed his wife, Charity V. Doremus, executrix, and devised to her all of the property of which he died seized. She has since qualified, and is now acting as executrix of the will, and by virtue thereof is the owner of all of the property originally owned by her husband, involved in this suit, except four small lots on the most easterly or rear end of the property in question, descriptions of which are set forth in the stipulation (p. 2227).

The remainder of the tract still owned by her contains about seventy-five acres, with a frontage of six hundred feet on the river, and has upon it a dwelling house, barn, cow house, carriage house, wagon shed and two henneries. The dwelling house is twenty

by thirty feet, with an extension of twenty-two by sixteen feet, and an outside kitchen thirteen by fourteen feet. The main part of the house has two stories and an attic, and the extension one story and an attic. It is a frame dwelling, and contains ten rooms. The barn is of frame, twenty-five by forty feet. The cow shed is twenty-five by sixteen feet in size, and accommodates four cows. It has a hay loft above. The carriage house is twenty by twenty-two feet, and the wagon shed twenty-five by twelve feet (printed case, p. 471). These dwellings are all in good condition (printed case, p. 472). Mr. Doremus during his lifetime used the place for farming purposes, but was hampered even in that use in many ways. He was obliged to give up keeping cows, because he could not allow them to drink the water from the river (printed case, p. 476). Before the Dundee dam was built there was a brook in each slank of the river fed by springs (printed case, p. 480). Since the dam has been built the water remains almost continuously in the slanks, bringing the polluted material within a very short distance of the house. Although Mr. Doremus always lived upon the place up to the time of his death, and never attempted to rent it, he certainly suffered damages equal to those suffered by the adjoining owners. This property is located on the east shore of the lake, and is therefore subject almost continuously to the terrible odors arising from the river. The dwelling is located upon very high grounds, within a short distance of the river banks. The Paterson experts admit that this property is a very good farm (p. 2434, p. 2435), but contend that it is available only for farming purposes. They admit that there are very few farms near Paterson that are still used for farming, most of them having been taken up for development purposes (p. 2435, l. 23). This fact alone would seem to demonstrate the truth of what our experts say, that this farm is now ripe for develop-

ment. The property is located within half a mile of the station at Dundee Lake (printed case, p. 478), and is just the right shape for development—six hundred feet wide, which is sufficient to allow two streets seventy-five feet in width, and three series of lots one hundred and fifty feet deep. Admittedly nothing can be done in developing this farm along these lines while the pollution of the river continues. We submit that the damages that will be suffered by the owners of this property by reason of the continued pollution of the river during the next four years, will amount to at least three thousand six hundred dollars (Schedule A and Schedule B).

CADMUS PROPERTY.

This property contains one hundred acres, with a frontage of six hundred feet on the river. Edo V. Cadmus and Cornelius D. Cadmus, the complainants in the original suit, acquired their title under the will of their father (printed case, p. 496). In the year 1906 Cornelius D. Cadmus died intestate, unmarried and without issue, leaving as his sole heirs-at-law his brother, Edo V. Cadmus, and his nieces, Margaret Massey and Catherine Powilson, children of a deceased sister. In February, 1907, the said Margaret Massey and Catherine Powilson and their respective husbands, conveyed all their right, title and interest in the land involved in this suit to their uncle, Edo V. Cadmus, who by virtue thereof became owner of all of the premises in question. Subsequently, on or about March 10th, 1910, Edo V. Cadmus died intestate, leaving him surviving his widow, Catherine Cadmus, and his children, Emma Cadmus Doremus, John D. Cadmus, Cornelius E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien, and Margaret Cadmus Andrews as his sole next of kin and heirs-at-law, who since his death have been and are now seized and possessed of all of the property for-

merly involved in this suit (Stipulation, p. 2228). As has already been stated, the property contains one hundred acres, and has a frontage of six hundred feet on the river. On it is situated a frame dwelling two and one-half stories high and containing fifteen rooms (printed case, p. 498); a barn about forty by forty-eight feet, with a two-story wagon house twenty-eight by thirty-five feet attached; a hay house forty by fifty feet long; a greenhouse twenty-five by twenty-eight feet square; a wagon house thirty by thirty feet which cost three hundred dollars; a wood shed twenty-five by twenty-eight feet, and a pig pen and several other small buildings, all in good condition (printed case, p. 499). There have been additions and improvements made to the house at an expense of five thousand dollars. The farm part of the property was rented in the year 1906 for eight hundred dollars (printed case, p. 506). The buildings were also rented for four months at twenty-five dollars a month. The tenant left on account of the condition of the river (printed case, p. 509). Subsequently efforts were made to re-rent the property, but they were unsuccessful for a number of years. The property since November, 1910, has been rented at a nominal yearly rental of four hundred twenty dollars (p. 2411). Mr. Mercer thinks this property is ripe for development, because it is near Lodi and Garfield and the other developments that are taking place on the east side of the river in the vicinity of this property. It is near the railroad stations at Plauterville on the Erie and the Passaic Junction and Dundee stations on the Susquehanna Railroad. The defendant's experts admit that the conditions prevailing in the neighborhood give this property a prospective value as a place for homes of the middle class (p. 2412). We submit that the damages that will be suffered by the owners of this property during the next four years by reason of the continued

pollution of the river will be at least four thousand two hundred and eighty-eight dollars (Schedule A and Schedule B).

EDO VAN RIPER PROPERTY.

Mr. Van Riper owns twenty-five acres of land, of which eighteen acres lie between the two slanks of the river. It has a frontage of seven or eight hundred feet on the river and six or eight hundred feet on the slank. There is upon it a large house, with a barn, carriage house, chicken coops, granary and corn crib. The house has five or six rooms downstairs and six or seven rooms upstairs. It is two and a half stories in height. The rooms are large. There is also upon it a barn twenty-five by thirty feet, two brick carriage houses, one a story and one-half and the other two stories in height, the second story of the latter being useful as a granary, and an ice house. All of the buildings were on the property when Mr. Van Riper acquired it. They are all in good condition (printed case, p. 434 and p. 2438). For five or six years Mr. Van Riper rented the privilege of cutting ice at three hundred dollars a year (printed case, pp. 435, 436). He started in the ice business himself in 1887, and in that year built two large ice houses at a cost of two thousand dollars. Each had a capacity of four thousand tons. He filled them with ice for two years, and then leased them to Mr. Vanderbeck at a rental of four hundred dollars a year (printed case, p. 457, 458). In 1894 he sold the ice houses with eight acres to Mr. Vanderbeck. The consideration for the sale was eight thousand dollars, and included the privilege of cutting ice for the ice houses (printed case, p. 440). Subsequently these ice houses burned down, and Mr. Vanderbeck built new ones (printed case, p. 439). In buying the premises Mr. Vanderbeck gave a purchase money mortgage for a part of the consideration. He was unable to meet the interest, so subsequently he reconveyed the portion of

the property purchased by him, to Mr. Van Riper (printed case, p. 442). The capacity of the ice house built by Mr. Vanderbeck is twelve hundred tons. Mr. Van Riper, however, is unable to use them, and no one else will rent them, as the ice from the river is not fit for use, and they are not situated so that they can be conveniently filled with ice from any other source (printed case, p. 440). These ice houses alone should rent for two or three hundred dollars a year (printed case, p. 456), which amount Mr. Van Riper will continue to lose as long as the pollution of the river continues. The whole property owned by Mr. Van Riper lies on the east bank of the river, almost directly across from the Market street sewer. It is only three hundred feet therefrom (printed case, p. 440). In addition to these circumstances, the curve of the river at this point is such as to bring the sewage close to his shore (printed case, p. 448). The property, being on the east side of the river, is also consequently subject to the odors from the river most of the time. Mr. Van Riper lives in the large dwelling house on the premises, and like the others, has been deprived of the privileges of bathing, boating, fishing, watering cattle and cutting ice, and all the other advantages naturally incident to property located upon a clean, pure stream, and will continue to be deprived of these privileges during the full period of the continued pollution of the river. Except for this detriment, the property is most advantageously situated, being only about five minutes' walk from the Vreeland avenue and Dundee Lake stations, and three minutes' walk from the trolley line leading into the City of Paterson. The Paterson experts admit that it is located in the section where the first natural development ought to come (p. 2439, l. 26), and they concede that Mr. Van Riper is affected more than any one else along the river (p. 2481). We submit that the damages he will suffer by reason of the continued pollution of the river during the next four years will

amount to at least two thousand six hundred and eighty-eight dollars (Schedule A), plus an appropriate allowance for the total destruction of the income he might receive from his icehouses except for the defendant's acts. (See Schedule B for comparison with court's figures.

GEORGE VAN RIPER PROPERTY.

Represented by Catherine and Selah Van Riper.

On or about October 16th, 1910, the original complainant, George G. Van Riper, died leaving a last will and testament whereby he devised unto his wife, Catherine Van Riper, and to his son, Selah Van Riper, as tenants in common in fee simple, all of the real estate of which he died seized and possessed, including the property involved in this suit, all of which property his devisees still own, with the exception of a few lots sold at the most easterly or rear end thereof (p. 2231). These lots were so far removed from the river that they were never directly affected by the existing nuisance, therefore their sale cannot materially affect the amount of damages to which the owners of the remaining portion of the farm in question are now entitled.

This portion of the property consists of about sixty-three acres of land, with a frontage of nine hundred feet on the river (printed case, p. 955). There is a house on the property which cost six thousand dollars to build, and two thousand dollars were afterwards spent upon it in the way of repairs (printed case, p. 958). It is heated by steam, and contains other modern improvements (p. 2171): There is upon the premises a carriage house which cost eight hundred dollars, another building which cost one thousand dollars, and a barn which cost four or five hundred dollars. About twenty years ago there was also built an ice house at a cost of four hundred dollars, with a capacity of five thousand tons. For a

time Mr. Van Riper user the ice house himself, and later rented it at a rental of five or six hundred dollars a year. Subsequently this rental was reduced to one hundred or one hundred and fifty dollars, on account of the poor quality of the ice that could be obtained from the river (printed case, p. 959). Subsequently the ice house stood idle for a couple of years, after which it was rented again to Mr. Hopper at three hundred dollars for one year. Since then the owners have been unable to rent the ice house only at irregular intervals, and for a merely nominal figure. They are not now rented or in use (p. 2274). The resulting loss from this condition, we submit, is directly attributable to the defendant, and results in very substantial damages to these complainants. This farm is located within a short distance of trolley service leading into the City of Paterson, and of the railroad station at Dundee Lake. It is on high ground, and like the other properties in the locality, is particularly adapted as a site for a suburban home or development purposes. The Paterson experts admit that this is so, at least as to a part of the premises pp. 2437, 2438). Its value for development purposes is greatly enhanced by reason of its extensive frontage on the river, amounting to nine hundred feet. We submit that the damages that will be suffered by the owners by reason of the continued pollution of the river during the next four years will amount to at least three thousand eight hundred and eighty-eight dollars (Schedule A and Schedule B), plus an appropriate allowance, which should be very substantial in amount, for the loss occasioned by the destruction of the ice business, to which this property is most advantageously adapted.

LINDABURY, DEPUE & FAULKS,
Solicitors for JOHN H. MERSELIS, *et als.*

CHAUNCEY G. PARKER,
J. EDWARD ASHMEAD,
Of Counsel.

Schedule A.

NASH PROPERTY.

Consisting of a large one-family double frame house with eight acres of land. Trees and lawn in front. Finely located on Lexington avenue near lower end of Dundee Lake. Ten rooms and bath, not now in good condition. Needs repairs. Value of land $12,000, building $6,000, total $18,000. Should rent for at least $1,200 per year. With present conditions of river almost impossible to find tenant wanting that kind of property so it is practically a total loss of	$1,200	
Small cottage quarter acres of land worth about $3,600 should rent for $30 or $360, able to rent for nominally $10 or $120, loss,	240	
Old double house rents to two families at $22 or $264, should rent for at least $30 or $360, loss,	96	
Total loss per year,	$1,536	
Loss for five years,		$7,680
Twelve acres on Lexington avenue & Randolph avenue if river was clean worth $2,000 per acre or $24,000 with present condition of river worth $1,200 per acre or $14,400, loss in value, $9,600; interest on same at 6% = $576. As conditions are to continue for five years,	2,800	
Total loss to Nash property on account of foulness of river		$10,500

MERSELIS PROPERTY.

Consisting of a large one-family double brown stone and frame dwelling house and extension with six acres of land. Reasonable rent $1,000. Building is worth at least $5,000, and land $1,500 per acre, or $9,000, total $14,000. Actual rental with the conditions of river about $300, loss per year $700, for five years, ... $3,500

Twenty acres of additional land running bask to car line on Lake View avenue should be worth at least $1,500 per acre or $30,000. Not salable now for over $750 per acre or $15,000. Loss in value, $15,000, interest on same at 6%, $900. As conditions are to continue for five years = 4,500

Total loss to Merselis property on account of foulness of river $8,000

TERHUNE PROPERTY.

Occupied by owner and kept in first class condition with all modern improvements. Frontage of 125′ extending from river across Lexington avenue or River drive about 300′. Total value of property with river clean $15,000. Land $2,500, building $12,500. If owner desired to rent under present conditions of river $40 per month would be outside rental or $480. Should rent under natural conditions 6% of value or $900

Plus tax, ... 150

Repairs, ... 50

Total, ... $1,100

Loss per year $620. As present condition is to continue for five years = ... $3,100

Total loss to Terhune property on account of foulness of river = ... $3,100

CADMUS PROPERTY.

Fronts on river about 510′ and extends considerable depth back from river. House being across river road from the river. Taking the improvements and six acres of this land as suburban property with the river clean its value would be at least $800 per acre or $4,800, improvements $4,000, total $8,800. A fair rental of this property would be $704 per year. Under present conditions of the river I do not think it possible to rent it for over one-half, or $352, making a loss of $352 per year, and for five years $1,760

Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth $800 per acre or $24,000. Under present conditions it would not sell for over $400 per acre or $12,000, making a loss of $12,000 in value. Interest on same at 6% = $720. As conditions are to continue for five years = ... 3,600

Total loss to Cadmus property on account of foulness of river $5,360

HOMESTEAD PROPERTY.

Estate of Henry W. Doremus.

Consisting of sixty acres of land fronting about 635′ on the river with dwelling and out-buildings all in good condition. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about $750 per acre or $4,500, improvements $4,500, total $9,000. This should rent for at least $720 with the river clean. With the river in its present condition I do not think it possible to rent it for over one-half of that amount or $360, making a loss per year of at least $360, and for five years.....	$1,800
Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth $600 per acre or $18,000. Under present conditions it probably would not sell for over $300 per acre or $9,000, making a loss of $9,000 in value. Interest on same at 6%=$540. As conditions are to continue for five years.....	2,700
Total loss to estate of Henry W. Doremus on account of foulness of river	$4,500

CHARLOTTE J. VAN RIPER.

Consisting of sixty acres of land fronting about 775′ on river with dwelling and outbuildings all in good condition. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about $750 per acre or $4,500, improvements $4,500, total $9,000. This would rent for at least $724 with the river clean. With the river it its present condition I do not think it possible to rent it for over one-half of that amount or $360, making a loss per year at least $360 and for five years.....	$ 1,800
Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth $600 per acre or $18,000. Under present conditions it probably would not sell for over $300 per acre or $9,000, making a loss of $9,000 in value. Interest on same at 6%=$540. As conditions are to continue for five years.....	2,700
Total loss to Charlotte J. Van Riper on account of foulness of river.....	$4,500

HOMESTEAD PROPERTY.

Estate of George Van Riper.

Consisting of sixty-seven acres of land with dwelling and outbuildings all in good condition. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about $800 per acre or $4,800, improvements $6,500, total $11,300. This should rent for at least $904 with the river clean. With the river in its present condition it would be almost impossible to rent it for one-half of that or $452, loss per year at least $452, for five years..... $2,260

Thirty acres of this land in addition is materially damaged by the present condition of the river as follows: If the river was clean it would be worth $800 per acre or $24,000. Under present conditions it would probably not sell for over $500 per acre or $15,000, making a loss of $9,000 in value. Interest on same at 6%=$450. As conditions are to continue for five years 2,700

Total loss to estate of George Van Riper on account of foulness of river $4,960

This property in addition to this, when the river was clean, had large ice houses and the condition of the river has prevented the use of that part of the property and entailed a heavy loss which we are not qualified to estimate.

HOMESTEAD PROPERTY.

Edo Van Riper.

Consisting of twenty-three acres of land fronting about 800′ on river with dwelling and out-buildings all in good condition. Taking the improvements and seven acres of this land as suburban property with the river clean its value would be about $800 per acre or $5,600, improvements $5,500, total $11,000. This should rent for at least $888 with the river clean. With the river in its present condition it would be almost impossible to rent it for over one-half of that or $444, loss per year $444, for five years $2,220

The remaining sixteen acres of this land is materially damaged by the present condition of the river as follows: If the river was clean it would be worth $800 per acre or $12,800. Under present conditions it would probably not sell for over $500 per acre or $8,000, making a loss of $4,800 in value. Interest on same at 6%=$288. As conditions are to continue for five years = ... 1,140

Total loss to Edo Van Riper on account of foulness of river $3,360

We understand the owners of this property received considerable from the use of the right to cut ice along the slank running across it. The amount of loss we are not able to state.

HOMESTEAD PROPERTY.

Mary A. Van Saun.

Consisting of seventy acres of land fronting about 600′ on river with old dwelling and out-buildings. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about $750 per acre or $4,500, improvements $2,500, total $7,000. This should rent for at least $560 with the river clean. With the river in its present condition I do not think it possible to rent it for over one-half of that or $280, loss per year at least $280; for five years $1,400

Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth $600 per acre or $18,000. Under present conditions it would probably not sell for over $300 per acre or $9,000, making a loss of $9,000 in value. Interest on same at 6%=$540. As conditions are to continue for five years = ... 2,700

Total loss to Mary A. Van Saun on account of foulness of river $4,100

HOMESTEAD PROPERTY.

Zela Doremus.

Consisting of seventy acres of land fronting about 600′ on river with old dwelling and outbuildings. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about $750 per acre or $4,500, improvements $2,500, total $7,000. This should rent for at least $560 with the river clean. With the river in its present condition I do not think it possible to rent it for over one-half of that amount or $380, making a loss per year of at least $280 and for five years	$1,400
Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth $600 per acre or $18,000. Under present conditions it would probably not sell for over $300 per acre or $9,000, making a loss of $9,000 in value. Interest on same at 6%=$540. As conditions are to continue for five years = ...	2,700
Total loss to Zela Doremus on account of foulness of river	$4,100

HOMESTEAD PROPERTY.

Frederick H. Gelderman.

Consisting of twenty acres of land fronting about 350′ on river with dwelling and outbuildings all in good condition. Taking the improvements and ten acres of this land as suburban property with the river clean the value would be about $1,000 per acre or $10,000, improvements $3,500, total $13,500. This should rent for at least $1,080 with the river clean. With the river in its present condition it would be almost impossible to rent it for one-half of that amount or $540, making loss per year at least $540, for five years..... $2,700

The remaining ten acres of this land is materially damaged by the present condition of the river as follows: If the river was clean it would be worth $1,000 per acre or $10,000. Under present conditions it would probably not sell for over $500 per acre or $5,000, making a loss of $5,000 in value. Interest on same at 6%=$300. As conditions are to continue for five years = ... $1,500

Total loss to Frederick H. Gelderman on account of foulness of river $4,200

OUTWATER ESTATE.

Consisting of fifty-seven acres of land fronting about 645′ on river. This property is midway between two bridges leading into the City of Paterson. Taking the improvements and four acres of this land as suburban property with river clean its value would be about $800 per acre or $3,200, improvements $1,500, total $4,700. This should rent for at least $376 with the river clean. With the river in its present condition it would be almost impossible to rent it for over one-half of that amount or $188, making a loss per year of $188, and for five years, ...	$940
An additional thirty acres of this land is materially damaged by the present condition of the river as follows: If the river was clean it would be worth $800 per acre or $24,000. Under present conditions it would probably not sell for over $600 per acre or $18,000, making a loss of $6,000 in value. Interest on same at 6% = $360. As conditions are to continue for five years = ...	1,800
Total loss to Outwater Estate on account of foulness of river	$2,740

HILLMAN PROPERTY.

Consisting of thirty-two acres of land. Double house now arranged for two families. Taking the improvements and six acres of this land as suburban property with the river clean, its value would be about $600 per acre or $3,600; improvements $3,000, total $6,600. This should rent for at least $528 with the river clean. With the river in its present condition I do not think it possible to rent it for over one-half of that amount or $264, making a loss per year of at least $264, for five years $1,320

Twenty-six acres of this land in addition is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth $600 per acre or $15,600. Under present conditions it probably would not sell for over $300 per acre or $7,800, making a loss of $7,800 in value. Interest on same at 6% = $468. As conditions are to continue for five years = ... 2,340

Total loss to Hillman property on account of foulness of river $3,660

Schedule B.

Names of Complainants.	Amount Claimed.	Amount Awarded.
Scotto C. Nash	$8400.	$2529.36
John H. Merselis, *et al.*	6400.	959.73
John Terhune	2480.	925.02
Richard Outwater		51.39
Albert Outwater Estate	2192.	462.51
Richard Van Riper	3600.	565.29
Frederic H. Gelderman	3360.	668.07
Mary A. Van Saun	3280.	436.82
Garrett Doremus, Estate	3280.	565.29
H. Charles Hilman	2928.	462.51
Henry Doremus, Estate	3600.	565.29
Edo V. Cadmus, Estate	4288.	575.57
Edo Van Riper	2688.	719.46
An additional loss for destruction of ice business		
George Van Riper	3888.	1181.97

An additional loss for destruction of ice business.

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OPINION.

(Reported 3 Buchanan, 475.)

Decided Jan. 15, 1908.

Mr. Depue and Mr. Charles L. Corbin, *for complainants.*

Mr. Stalter and Mr. Dunn, *for defendants.*

Stevens, *V. C.*

This is a suit brought by twenty-five complainants against the City of Paterson. Its original object was an injunction to restrain the city from polluting the water of the Passaic River and from interfering with the enjoyment, by the complainants, of their rights as riparian owners. It was thought by the Court of Errors and Appeals that in view of the delay in instituting the proceeding, and more especially in view of the magnitude of the injury that would result from prohibiting the use of the sewers to the people of Paterson, it would be inequitable to enjoin, if relief could be otherwise afforded. Justice Van Syckle said, "The relators are here asking equity and they must do equity. A substantial remedy by giving them adequate compensation for their injury would be a just disposition of the controversy." (Simmons vs. Paterson, 15 Dick., 385.) At the close of his opinion, the learned judge thus expressed himself: "If these complainants amend their bill or file a new bill asking for an injunction, unless the city will consent to make such compensation for the diminution in the value of their lands as shall be ascertained to be just, such equitable relief can be given them. A Court of Equity, will to effectuate justice, settle unliquidated damages."

The complainants thereupon amended their bill and prayed for an injunction, "unless and until

the said defendants make such compensation to your orators respectively for the diminution in value of their said lands and property rights as shall be ascertained by this honorable Court to be just." The defendant has raised many objections to this proceeding. The decisions in reference to them will be found reported in 18 Dick., 606; 20 Dick., 711; 3 Robb., 188, 175; 4 Robb., 296. The only one that bears upon the present inquiry is the last. The complainants in their bill stated their damages, "calculated upon the basis of said injuries being permanent." The defendants answered this statement so vaguely that application was made to strike it out. In passing upon the application, I said, "This statement necessitates a counterstatement by Paterson of whether it intends for an indefinite time in the future to pollute the waters of the Passaic, or whether it intends to stop polluting them within a definite period. If it intends to stop, it should so aver and it should designate a time beyond which the pollution will cease. Thus only can the complainants' damages be definitely ascertained, if the injury is to be computed on this basis." An order was accordingly make striking out that part of the answer for insufficiency. On appeal taken the order was affirmed. The defendant finally answered as follows: "This defendant elects, rather than submit to an injunction pursuant to the complainants' said bill of complaint, to make such compensation to the complainants respectively for the alleged diminution in value of their said lands and property rights in the said bill of complaint more particularly mentioned and set forth, as shall be ascertained by this Court to be just, so far as the Court shall be held liable to make compensation

for such diminution in value and subject to the same right, if any, to jury trial and appeal to the Court of Errors and Appeals that defendants have in other suits in this Court, and subject also to all valid or tenable defences cognizable in equity set up in this defendant's said original answer." "Such injury or taking, (if any such injury there may be) is to be temporary and is to continue no longer than five years from the date of the filing hereof."

It is upon this issue that proof has been taken.

Before I consider the rule of damages to be adopted and the application of the rule to the individual complainants, each of whose damages must be separately assessed, it will be conducive to a proper understanding of the case and of the difficulties involved in its solution, if the general situation be explained.

Paterson contains within its corporate limits, 5357 acres. Of this, 2600 acres are now drained by sewers whose combined length is about seventy miles. These sewers are, except the Market street and Thirty-third street sewers, chiefly constructed in the built up, or Western, parts of the city near the Great Falls. The river itself encloses Paterson on the west, north and east. Bending sharply to the north after flowing over the falls, it then turns south again. The distance, by way of the river, from the Falls to Dundee Lake, on which all but two of the properties of complainants lie, is about four miles, if the lake is to be considered as beginning at slack water near Thirty-third street. South of the river bank and between the Straight street sewer, are the head and tail races of the Society for Useful Manufactures, and along this stretch of territory,

about a mile in length, are most of the factories, both those on the raceways and those along the river bank. The so-called Dundee Lake is nothing more than the Passaic River somewhat widened by the construction of the Dundee Dam. This dam was rebuilt and raised in the year 1869, and is situate just above the City of Passaic. The greatest width of the lake does not exceed eleven hundred feet, and through a large part of its length of three miles is scarcely wider than the original river,—that is, from three to four hundred feet.

The flow of water past Paterson varies enormously. The Cook tables for 1904 and 1905 show that for three days in July, 1904, and for two days in July, 1905, there was no flow at all. What went into the river bed on those days was sewage and diluted factory waste. On the other hand, one day in March, 1904, the flow was nine thousand cubic feet per second, and on four days in March, 1905, over eight thousand feet. So great and sudden are the variations that averages would probably mislead. These conditions of flow have, to a certain extent, always existed, but they have, in recent years, been intensified by the withdrawal from the river at and above Little Falls, of the water used by Newark, Jersey City, Paterson and other smaller towns. Jersey City is now using nearly forty millions of gallons daily; Newark about thirty-five millions, and Paterson about ten millions. Of course, these figures would not justify the inference that the flow at Paterson was just so much less. The reservoirs that have been built in the upper waters of the tributaries modify the result. In dry weather, however, the abstraction of so much water from the stream does materially lessen the flow at Paterson.

The evidence shows that if sewage is diluted by a large volume of water, it is rendered harmless, except in so far as it may contain typhoid germs and possibly the germ of one or two other diseases. These germs will live in pure water for several weeks, if not months. A single water closet along the stream, if it receives the faeces of a typhoid fever patient, may dangerously contaminate the stream below and produce an epidemic. In larger towns typhoid fever is nearly always present and therefore, the danger of pollution in the case of water used for drinking purposes, if taken out of the stream below the point of infection increases as the city grows. Leaving out of view this species of infection, it is said by Mr. Baldwin that it is usually estimated that it requires a flow of four cubic feet of water per second to take care of the sewage of one thousand people, assuming that the amount of sewage discharged is about 100 gallons per capita. So diluted, water containing sewage to this extent is imperceptible to taste and smell. As illustrative of this rule, although Paterson constructed and used a system of sewerage in the early part of the decade, 1870 to 1880, Passaic took its drinking water from the river until 1882, and Jersey City took some of its water at a point just below Belleville until 1898. The point from which the Jersey City supply was taken was about eight miles below the Dundee Dam.

Testing the capacity of the river to take care of the sewage of Paterson by means of the formula, four cubic feet for 1,000 people, we get the following results:

The population of Paterson in 1905 was 111,000. Of this, in that year over 90,000 people used the sewers. Attributing 100 gallons of sewage to each

person, there would be poured into the river daily nine millions gallons of sewage. To take care of this a flow of 90 x 4, or 360 cubic feet of water would be required. Referring to the Cook tables, we find that water in excess of that number of cubic feet flowed past Paterson from January 1st, 1905, to May 27th, 1905, on which day a flow of 336 cubic feet is recorded. From that time on, the flow diminished. Only on four days in June did it rise above 360 cubic feet. In July it did not average one-half of that figure and never exceeded it. In August, it was generally below it; in September, generally above it, and in October, below it about half the time.

In the stipulation of facts to be found on page 772, of the printed case, it is agreed that "the dilution necessary to prevent Paterson's sewage from becoming a nuisance is taken to be not less than six cubic feet per second, flow of water per 1,000 population." This, I suppose, included the factory waste that goes directly into the river. It is rather an under than an over estimate.

It must be borne in mind that I have given figures only for a single year. In 1903, the flow appears to have been very much greater; in 1904, somewhat greater in June and August.

In considering the situation, it must be borne in mind that the river, after flowing for from three to four miles, is arrested by the water of the lake. The flow here being sluggish, much matter is deposited. In the course of the last twenty years the bottom of the lake has been filled with polluted matter to such an extent that islands have been formed. This would have taken place to a much greater degree had it not been for the extraordinary freshets which every now and then partially cleanse the stream. The bottom and

sides of the lake are covered with a black muck which is constantly undergoing septic action.

The complaint is that the water cannot be used for cutting ice, watering cattle, for drinking, for boating and for fishing, and that the stench proceeding therefrom and from the banks at low water is, at times, unbearable.

One of the contentions of the city is that the conditions which now exist, prevailed to a lesser but considerable extent twenty years prior to the filing of the bill on December 30th, 1901, and that, therefore, to that extent, the city acquired a prescriptive right to pollute. This makes it necessary to consider the state of the river prior to 1881.

The Dundee Dam was built in 1869. At that time the surrounding country was purely agricultural. Passaic was a mere village. It is admitted that the river and lake were, at that time, pure. Paterson appears to have laid one short sewer or drain just below the falls in 1859, but it was not until 1868 that it obtained full legislative authority to sewer in accordance with a comprehensive plan. Short sections were built in 1868 and 1869, but not very much work was done until 1872. In 1873, 1874, 1877, 1879 and 1880, the construction was continued and extensions have been made from time to time ever since. I do not find in the proofs any explicit reference to the ordinance which made connections with the sewers compulsory, but according to one of the witnesses, it was not until 1887 that such an ordinance went into effect.

I stop for a minute to consider what must have been the condition in 1870. At that time Paterson had a population of 33,000; less than one-third of its present population. It was largely

built up around the raceways of the S. U. M. and around the corner of Market and Main streets as a center. Most of the inhabitants used cesspools or vaults. A comparatively few used the Dark and Dublin Spring Brooks, whose waters, according to the testimony, were very foul. I think it may safely be said that scarcely any of the water which went into the cesspools found its way, by percolation, through the soil to the river in a polluted condition. Unless the soil be unusually porous, cesspools constructed fifty feet from a stream which is not subject to inundation, do not pollute it. The intervening soil acts as a filter. Taking this into account, considering the then population, and considering further that no water was diverted from the upper tributaries of the Passaic to furnish a water supply to the municipalities below Paterson, it is not difficult to understand why the river, in a flow of nearly four miles, should have purified itself. The amount of water then flowing in the stream, even in dry summer weather, was abundantly able to take care of the small quantity, comparatively speaking, of domestic sewage and factory waste then going into it, either by way of polluted brooks or directly.

This condition of things did not undergo any considerable change during the decade ending in 1880. Paterson's population had, indeed, increased to 57,000, but no water was then being diverted from the river for drinking purposes, and its volume was still sufficient, even in dry times, to take care of such impurities as found their way into it. The small amount of evidence to the contrary is contradicted by a mass of proof that seems to me conclusive. Perhaps an exception, however, should be made of the gas works, a part of whose tar oil refuse did at times make itself

manifest in the lake. But it was not sufficient to affect the water in any considerable degree. Convincing proof is to be found in the circumstance that the village of Passaic which, in 1880, had grown to be a town of 6,500 people, continued to take its water supply from the Dundee Canal or head race as late as the year 1882. It was not until 1885 that the situation began, materially, to change. The lake had been a favorite place for boating and fishing. The last regatta was, according to one of the witnesses, held in 1884. Whether these regattas were thereafter discontinued because, as one of the witnesses testifying in behalf of the City says, of the disagreeable conditions or because, as another of them, testifying on the same side, says, the members got married and the association disbanded, it is probable that after 1885, the lake, particularly at its upper end where the current met slack water, was not as free from objectionable impurities floating on the surface as it had been. Refuse from the slaughter houses now otherwise disposed of, and soap and oily substances proceeding from the dye works, occasionally, in times of low water, were seen upon its surface. Keeping in mind the ever changing volume of water flowing in it, and remembering that in times of low water impurities would be more apparent than in times of high, it is easy to reconcile the testimony of the witnesses, scarcely any of whom fix, with certainty, either the precise years when the pollution was apparent; the days when they saw evidence of it, or the periods of high or low water. It is quite conceivable that in a dry time and in spots where there was no current there may have been places above the Market street bridge where bathing was disagreeable

and yet it may be true that the general character of the water lower down was still fairly good.

By 1890, the population had grown to 78,000. It was between 1880 and 1890 that the silk dyeing mills attained to a position of importance, and it is admitted by all the witnesses that the factory waste from these establishments was and is far more objectionable than that from the locomotive works or other foundries, which had, up to that time, formed so predominating a part of Paterson's manufactories. The waste from these dye works consists, in large part, of soap and of the gum removed from the silk fibre, the latter of which particularly, is highly nitrogenous and quite as offensive, while undergoing decomposition, as household sewage itself.

One of the complainants, Mr. Nash, bought his properties in 1887 and 1889. They lie on the west shore near the Dundee Dam, and, therefore, farthest away from the sewer outlets. He says that the lake at that time was perfectly pure. That his "folks bathed in it and hundreds of others bathed in it and fished in it."

Another of the complainants, Richard Hoitsman, bought his land in November, 1890. It lies on the east shore just above the Market street bridge, and, therefore, somewhat over a mile further up stream than the Nash property. Hoitsman says, "Well, when I got there first, then, of course, as near as we could see there were little bubbles, but then it was more clear; the water was then in some ways useful because we could fish in it and bathe in it * * *. We was boating more or less and there was a little steamer running through there from East Side Park down to the cemetery, for five cents."

Still another of the complainants, Martha

Phillips, whose property on the East side of the lake lies opposite that of Mr. Nash, bought in November, 1891. Her husband says that when he first went to live there, there was no perceptible nuisance. That he inquired particularly about that before going there; that the water was then colored and had a slight odor, and that the river was not then used for bathing and fishing. Van Zuan says that the fishing stopped fifteen or sixteen years before he testified,—that would be about 1890. Mr. Shriner, one of the City's witnesses, says that he caught fish in one of the slanks in 1883 or 1885. David Miller was the owner of a point jutting out into the lake and kept a boat house there for 28 or 30 years. He rented and took care of boats up to 1890. He says that before that, the boating business was very good, and that, up to that time, you could catch any quantity of pickerel, black bass and yellow perch. Mr. Phillips says that after he went to live on the lake in November, 1891, the fish were dying for two or three years along the river banks and in such large quantities that they were carried away under the direction of the Board of Health of Saddle River Township. Mr. Gardner, the manager of the Dundee Company, says that the water in the lake was in very good condition in 1880, the year in which he first took charge. On cross examination he says he didn't think it was offensive so as to attract attention until along about 1885, when he thinks the Market street sewer was put in. But the records show that the Market street sewer was not put in until 1893. He says, further on, that at one time, which he ultimately fixes as being 1890, or 1891, or 1892, after complaint made by Reed and Barry, manufacturers, who used the water, he noticed greasy

substances under the ice and after making an examination of them found they looked like the white of an egg. There are witnesses on the part of the City who testify to seeing impurities in the river above the lake and in the lake itself, prior to 1890. These may well have been seen, in spots, in periods of low water, but they do not necessarily indicate that the lake, as a whole, was then in an objectionable or offensive condition. It must be remembered that the growth in population, though continuous was, from month to month, almost imperceptible; that the factories were becoming more numerous and were, as times went on, employing more hands. The ability of the river to take care of the slowly but constantly increasing pollution was becoming more and more taxed. More and more sediment was being deposited in the bottom of the lake, and, at times of ordinary high water, along its banks. It would be utterly impossible under these circumstances, to fix any precise day when the river ceased to be pure and began to be offensive, and when the property owners began to have any tangible ground of complaint. High water or freshets might at any time carry off the collecting impurities. Still the evidence shows that scourings of this sort became less and less effective and that islands began to form whose growth was progressive. If I accept the statements of Mr. Phillips, the river was not offensive in the fall of 1891. Only two years before, Mr. Nash had invested his money in additional land, after a residence on the lake for over two years.

I am inclined to fix the summer of 1892 as the time when the water had certainly become sensibly and injuriously polluted. The *maxim de minimis* would probably apply to the time pre-

vious. The fact that the people of Passaic had ceased to use the water for drinking purposes after 1882, is not significant. Typhoid germs are often present in water apparently pure. The danger from these germs began when the first householder built his privy higher up the banks of the stream. As the closets emptying into the river and into the sewers which discharged into the river became more numerous, so did the danger become greater. For this reason alone it was unsafe to use the water for drinking purposes. But even if the evidence showed that the City had begun sensibly to pollute the water in other respects as early as the year 1882, that would not help the defendant, for this suit having been commenced in 1901, a prescriptive right dating back twenty years would not have arisen.

The date that I have designated (June, 1902) finds some support in the testimony of Mr. Gardner, who says that in that year he rented the property now belonging to the Golf or Country Club at a point on the upper end of the lake not far from slack water and that the stench was such that he had to take his family away.

It is justified to some extent by the records of sewage construction. As has already been shown, a volume of water entirely capable of taking care of a smaller amount of sewage, coming from a small number of sewers, may be inadequate to prevent a larger quantity, coming from twice that number, from becoming a nuisance. There were eleven sewer outlets in 1884 and twenty-one in 1892. The date fixed is nearly coincident with the building of the Market street sewer in 1893. This is the largest of Paterson's sewers, and empties its sewage into the middle of the lake itself. Its mouth is not far from a

considerable number of the properties involved in this controversy. It must be remembered, however, that the very considerable territory which it drains is not thickly populated and that in 1893 the amount of sewage which it discharged was not very great.

From 1893 on, the evidence is convincing that the stream became more and more polluted and the odors more and more offensive, but with this caused greater stench than a succeeding wet one, for, as I have already said, a given volume of qualification; a preceding dry season may have water is capable of taking care of a given volume of sewage, and other things being equal, the greater the flow the less the nuisance. Four causes have contributed to the constantly increasing evil. 1*st*: The growth of population. Paterson's population, 33,000 in 1870, had reached to 105,000 in 1900, and 111,000 in 1905. 2*nd*: An increase in the number of factories and in the factory wastage. 3*rd*: An abstraction of water from the upper tributaries of the Passaic to supply the municipalities lower down. 4*th*: Gradual increase in the amount of decaying or putrescent vegetable or animal matters deposited on the banks and bottom of the lake.

The City does not deny that it is under legal obligation to make some compensation for the injury inflicted. Its effort is to minimize the amount.

On this head, the first contention is that it is not responsible for street wash. This is only true in part. The City is not responsible for so much of the street wash as goes into the river from the surface of the streets even though more would, in time of rain, on account of the paved surfaces, preventing absorption by the soil in its natural

state and causing occasional diversion of the natural flow, pass into the stream. Bowlsby v. Speer, 2 Vr., 351. Town of Union v. Durkes, 9 Vr., 2. Jessup v. Bramford Co., 37 Vr. 641. I think it is however, responsible for so much of the street wash as it, by artificial means, diverts into the sewers. It disposes of the matter thus diverted just as it disposes of household points, en masse, into the stream and so pollutes the stream just as household waste pollutes it. It pollutes it in a very different way from what it would if the droppings of animals and garbage were allowed to reach the river over the natural surface of the land. A moment's consideration will make this evident. Garbage and the droppings of animals cast upon the uneven ground in its natural state are exposed to the action of the sun, the dews and the rains, and undergo chemical decomposition on or near the spot on which deposited. The gases generated pass off into the air; some of the solid portions in their changed condition are absorbed by the soil and taken up by vegetation, and only a residuum, largely mineral, finds its way first into the brooks and then from the brooks and rivulets into the river. Even in the brooks and rivulets it may undergo sedimentation and chemical change before reaching the stream. This action proceeds in summer weather, when the river is generally lowest, and therefore, least able to take care of the foreign substances poured into it. How different is the progress of the same matters on paved streets where a sprinkling cart or a light rain would at once carry them into the sewers, with whose current they would immediately enter the river. It seems to me that to this condition of things the rule enunciated in Field vs. West Or-

ange, 10 Stew., 600, is precisely applicable. It was there decided by the Court of Errors that a municipality may not, without making compensation for the property appropriated, collect water from a large area and by artificial means cast it upon the land over or through which it would not otherwise flow, to the injury of the land owner. (See also Soule vs. Passaic, 2 Dick., 29; Miller vs. Morristown, 2 Dick., 62, 3 Dick., 645.) It is the action of the City in casting foecal and other decaying or putrifying matters in a body through an artificial conduit into the stream and thereby polluting it, and not the place from which they came, whether a water closet, a stable or a gutter that gives rise to the actionable injury. The distinction between the surface water, even though polluted, and sewage, is obvious. In the former, the injury is nothing more than a consequence of the permission given by the law to fight what is called the common enemy. It is, in general, incidental and trifling. In the latter, it is serious and often amounts to a deprivation, partial or entire, of the use or enjoyment of property.

The City's next contention is that the Court ought not to give a compensation for the whole injury inflicted, but should deduct therefrom a sum representing such injury as would have been inflicted by a city of the size of Paterson had it been without sewers. This contention is inconsistent with its position that it is not responsible for the injury inflicted by the factories that drain directly into the river. If it be not responsible for those who pour their waste directly into the stream, neither would it be for the individual acts of each and all the inhabitants, if they did the same thing. On what principle then could it offset the wrongful

acts of individuals against its own wrongful act? If it is to be, so to speak, credited with the pollution caused by a multitude of individuals then it must now be charged with all the pollution of all the factories draining directly into the river, in addition to that which is discharged from the sewers. But aside from this, I venture to assert that no one could tell what deduction should be made. In view of the evidence given in this and the Jersey City water case, I doubt whether the riparian owners would have suffered any actionable injury had every householder been provided with a cesspool situated not less than forty or fifty feet from the stream; assuming, of course, that the contents of the cesspools were not afterwards dumped into the river. It is admitted that Dundee Lake was a body of pure water before the sewers were built, though Paterson then had a population of over thirty thousand. The reason was that the soil itself took care of the sewage in the cesspools and so far as complainants are concerned, (I do not, of course, refer to the people of Paterson) there is no reason why the soil should not, for a considerable number of years, have taken care of a much larger amount; for the increasing population would, of course, have extended itself over new territory, and the new cesspools would have been opened in new soil. Then again, it is quite likely that the absence of sewers would have materially interfered with Paterson's growth. The City has not produced, and could not produce, any evidence from which it would be possible to estimate such an allowance.

The next point in dispute relates to the apportionment of the injury between the City and the factories that discharge their waste directly into

the river. How widely counsel of the respective parties differ will appear from the fact that the City contends that the proofs show that forty six per cent or less, of the organic matter that enters the stream is attributable to the sewers and fifty-four per cent to the other sources of pollution, while counsel for the complainants contend that the sewage nuisance is more than eighty-five per cent of the whole.

The principal witness for the City on this branch of the case is Mr. Whipple, a chemist and bacteriologist of learning and experience. This gentleman and his partner, Mr. Hazen an engineer, were employed during the year 1906 to make a report to Paterson touching the best method of sewage disposal. Their employment was one of the results of the agitation of the question of a trunk or intercepting sewer in the valley of the Passaic. The report, with its appendices, contains an elaborate discussion of the entire subject. The tables annexed to it were made without any reference to this suit, and, consequently, without being open to the imputation of partiality. It has been agreed that they may be referred to. In preparing to give evidence in this case, Mr. Whipple was somewhat hampered by the instructions received from counsel. His conclusions must, therefor, be received with caution, for his tables have been prepared on somewhat erroneous assumptions. Acting on his instructions he excluded from his estimate of pollution for which the City is responsible, all the street wash (11,000 lbs. per diem) whether it flowed through the sewers or whether it did not. He estimates that on an average there passes through the sewers daily, in solution or suspension, matter for which the City is responsible, to

the amount of 49,200 lbs. And into the river or through the sewers, matter for which the City is not responsible, 44,240 lbs. In the latter figure he puts all the street waste, (11,000 lbs). But, as I have already said, the City is responsible for so much of it as it diverts into its sewers. Unfortunately, Mr. Whipple was not instructed to apportion it. He conceded, I think, that much the greater part goes into the sewers. Assuming that three-quarters of it does, we must add three-quarters of 11,000 pounds to the matter chargeable to the City and deduct it from the amount not chargeable. This gives us,

Chargeable ..... 57,450 lbs.
Not chargeable, ... 35,990 lbs.

These figures give us the total solids,—that is, all the matters, organic and inorganic. But it is the organic matters with which we are here concerned for they, alone, cause the injury. Hence it is that Mr. Whipple has given us another table of these matters.

Making the proper allowance for street wash, these are his figures, for the organic matter alone:

Organic matter chargeable to the City 27,100 lbs.
Organic matter not chargeable to the City ..... 21,080 lbs.

But I do not regard either of the above tables as being of as much importance to the present inquiry as the table showing the relative amounts of nitrogen which these organic matters contain. It is the nitrogenous products, animal and vegetable, that are chiefly responsible for the nuisance. This is Mr. Whipple's testimony:

Q. Is the nitrogenous matter in the water offensive to the smell?

A. It is more likely to undergo decomposition and cause offensive smells.

Q. So that the greater the amount of nitrogenous matter that is put into the stream the more offensive it is likely to become to the smell?

A. I think that is true.

Q. There would be more nitrogen, I suppose, in animal decomposition than in vegetable?

A. Yes, sir, generally speaking.

Q. Considerably more?

A. Yes, considerably more.

This evidence is rendered more emphatic by what he says of the silk gum. He found that it contained about seventeen per cent of nitrogen, about the same, or possibly, a little more than foecal matter contains. This, he says, is much the most offensive matter discharged from the factories.

This being so, the following figures in Mr. Whipple's table are peculiarly significant.

Making the same correction as before in reference to the street waste, we have for the daily discharge:

Nitrogen in sewers for which the City is responsible	2,980 lbs.
Nitrogen in factory and other waste for which the City is not responsible	1,000 lbs.

There is another thing that comes in to affect the general result. The water flows about three miles after it leaves the factories, as does most of the sewage. Mr. Whipple admits that inasmuch as factory waste contains a larger proportion of mineral matter in suspension, more of it would be likely to settle before reaching the Lake. And then we have the fact that while the factories

empty their waste into the river, the Thirty-third street sewer and the Market Street sewer, the largest of all, are pouring an increasing quantity of sewage directly into the Lake.

Speaking of the factory waste and discussing the question how much of it must necessarily go into any intercepting sewer that might be built and how much of it might safely be allowed to flow into the river, Mr. Hazen, in the report to which I have adverted, used this language: "Of the injurious and polluting substances, by far the greatest quantity is carried by a comparatively small volume of concentrated liquor, not exceeding five or at most ten per cent of the total volume of water used in the dye houses." He is here referring to the silk gum (of which Mr. Whipple estimates that 5,100 pounds are discharged daily into the river) and to the escaping olive oil used in washing the silk. He proceeds, "Certain further quantities of discharge contain some polluting materials, *but the great bulk of the discharge consists of wash water containing only mineral substances or organic substances in such small quantities that they do not pollute the river.*" * * * "Taking into account all the data collected, I estimate that the manufacturing wastes of the city will add 25 per cent to the volume of the sewage to be treated, and that the material added is, on the whole, considerably more difficult to treat than domestic sewage. He adds, it is true, that these wastes will increase the difficulty and expense of treating the sewage to the extent of *fifty* per cent, but this consideration is foreign to our present inquiry. The report, with its appendices, is admitted to be the joint production of Messrs. Hazen and Whipple, and the passage I have read is based no doubt on

Mr. Whipple's accompanying appendix (No. 1). If there is anything in Mr. Whipple's evidence which shows present dissent from the conclusion reached by him in this report (and taking his evidence as a whole, I do not think there is), more weight may fairly be given to the latter than to the former. The difference, if any, is to be ascribed to the instructions of counsel.

There is one other remark called for by the evidence. The term 'pollution' is likely to mislead if its meaning be not clearly defined. There is some confusion in the evidence on this head. No water, except distilled water, is perfectly free from foreign substances. A river contains in its natural state both mineral and vegetable substances held in suspension and solution. Mr. Hunziker's evidence gives a striking illustration of this. He says that, by analysis, he found, in solution, in the artesian well water used in the Weidman Dyeing Establishment 1,770 pounds of solid (mineral) matter per million gallons, and in the pure river water 580 pounds. The solids held in suspension or solution in the waste water discharged from his works (consisting of both river and artesian water) amounted to 21,000 pounds in seven and a half millions gallons; but of this amount 7,900 pounds were contained in the water in its original state. He also testified that much of the solids so contributed, were not detrimental, and because of the chemical reactions that may take place between the alkaline and acid matters when they get together into the stream, some of them may conduce rather to its purity than to its pollution. Mr. Whipple, in giving his evidence, does not always discriminate between such additions as are harmful and cause nuisance, and such as do not. Perhaps it is impossible to do so; but

here, too, his instructions may have hampered him. It will not, however, do in an investigation of this sort, to forget this important consideration. *Harmful* pollution is quite a different thing from pollution which consists merely in the presence, even in considerable quantities, of minerals held in suspension, or of minerals produced by chemical reactions whose specific gravity causes them to sink quickly to the bottom.

Taking all the evidence heretofore considered, I should be disposed to conclude that the amount of polluted matter, coming from the sewers, harmful to the properties involved in this suit and likely to create a nuisance to those properties, is, at present, from two-thirds to three-quarters of the whole.

Hitherto, no allusion has been made to one source of pollution which in the evidence given on behalf of the city has played a principal part. I cannot help thinking that more stress has been laid upon it than it merits. Many witnesses were called by defendant who testified that during the past twenty years or more, the oily tar smell from the gas works was that which was chiefly noticeable. Mr. Hazen in his report which was presented to the Committee in July, 1906, makes this statement about it: "At the present time the gas works, perhaps, contribute more to the offensive condition of the river than any other *single* establishment." It will be perceived that he does not, by any means, assert that the gas works contribute more than all the other establishments combined. His statement, in this form, is no doubt, justified by the facts,—certainly by the facts as they were up to the early part of 1906. He says that it is quite possible to render this waste inoffensive, and in an

appendix to his report, Mr. Clark states how it may be done. Mr. Whittaker, the superintendent, was called as a witness for the complainants. He admits that the Company has, in times past, allowed some of the tar oil to pass into the river; he admits, too, that he told Mr. Clark, whose report bears date February 15th, 1906, that 40,000 gallons of water were then being discharged into the stream and this contained, at times, considerable tar matter, but, he says that since the introduction of improvements, made a year ago, none of that matter has been allowed to escape. There is no evidence to the contrary. The effluent waste water is discharged into the stream through a pipe whose extremity is under the surface. It seems to me that if Mr. Whittaker's statement was incorrect, it could, by a series of observations, conducted near the mouth of the pipe, have easily been determined that the effluent still contained water permeated with this objectionable waste. A slight confirmation of Mr. Whittaker's statement is to be found on page 33 of the appendices to the Hazen report. On June 12th, an examination was made of the water at the Nineteenth Street bridge—among other things, to determine its odor, and in none of the samples taken between 6.20 A. M. and 11.30 P. M. was any tarry odor reported, although in the samples taken in the preceding February, at the same place, while the odor appears to have been mostly that of sewage, it is reported as occasionally tarry. In September, 1906, on the other hand, Professor Cornwall was requested by the City to drive up and down the river and he then recognized an odor which, at one point, he characterizes as an "indescribable inoffensive odor," "rather heavily

charged with organic matter, vegetable matter; little stagnant smell; just a little bit of odor that anybody who was not looking for it would not notice at all," and at another point, "as tar and ammonia odor, strongly perceptible, but not (to him) an offensive odor."

It appears that in October, 1893, there was an unprecedented freshet in the Passaic. It overflowed all the lower parts of Paterson, covering its streets along the river bank with water many feet deep. Mr. Whittaker says that the river rose four feet above the relief holder, or tank, which contained three or four hundred thousand gallons of tar; that a very large quantity was washed out and went down the stream; that some of it was deposited at the Dundee Dam. He adds: "The presence of oil down there now does not mean that anything is going into the river from the gas works at the present time." If this oil adhered to the scum along the banks and at the bottom, its odor would, no doubt, for a long time and particularly when the water was low, be readily perceptible. What would be true of the tar that escaped in the freshet, would also be true of that which in former years was permitted, intermittently, to run out of the tanks. So many witnesses have testified to the presence of the smell that it would be impossible to ignore its existence during a considerable portion of the time covered by the evidence. At the same time, it is quite impossible to conclude that it constituted the principal source of the nuisance. In the conflict that has been raging for the past twelve years between the property owners and Paterson, it would be strange, indeed, if Paterson, knowing all the time that the odor came principally from the gas works and that the

property owners were on the wrong scent, had not taken measures to cause its abatement. No more intelligent and well informed witness was sworn in the cause than Dr. Leal. He was health officer of the city in 1896 and he had made a special study of the problems growing out of Paterson's sewage. In his report for that year he said: "Repeated allusion has been made in these reports to the nuisance and menace to health caused by the condition of the Passaic river below the falls. Each year the amount of sewage poured into it has become more and more out of an allowable proportion to the amount of water in the river to receive it and properly diluted to take care of it, so that for some years past the river has been practically an open sewer." I do not now refer to this passage as showing that the doctor then thought the river a menace to health; he has since modified his views in this regard, but as indicating how slightly he must have considered the effluent from the gas works as affecting the problem. Possibly the gas works were using naptha at the time this report was made, a substance that has no tarry residuum, but if so, then the City's witnesses, insofar as they testify to the presence of the tarry odor for several years prior to 1899, when Mr. Whittaker says they ceased to use the naptha, were mistaken.

Looked at from the standpoint of the nuisance created, I doubt very much, whether, except on rare occasions, the tar oil constituted an important factor. Even assuming its odor to have been at times more intense than the sewage odor, it would not be necessarily regarded as the more objectionable. The faculty of association comes in strongly in these matters, and if a characteristic

smell is always associated with a disgusting appearance, its effect upon the individual is very different from that of a smell quite as strong unattended with such association.

I come now to another question. Mr. Whipple concludes by a method which seems to be founded very much on assumption and is, if I may presume to say so, somewhat fanciful, that for "the appearance" of the river (in which he includes discoloration and matter visibly held in suspension), Paterson is responsible to the extent of 35 per cent. and the direct river drains to the extent of 65 per cent. This ascertainment, even if entirely accurate, does not seem to be of much consequence. The coloring matters that escape from the dye works are not *per se* objectionable. They are the very colors that are most affected by the wearers of silks. Of course, they make decomposing and putrifying masses more conspicuous, but, in general, the purplish blue tinge which they are said to communicate to the stream hardly compares in point of repulsiveness to the masses of foecal matter often seen floating on its surface.

The other witnesses who testify on this branch of the subject are Mr. Hering, Mr. Harrison, Mr. Fonda and Dr. Leal. Mr. Hering, the engineer employed by the Passaic Valley Sewerage Commission, says, he would consider that the matter discharged from the sewers and the factories was about equal in point of offensiveness. He adds, "If my recollection is right, there was even considerably more fluid discharged from the manufacturing establishments than there was city sewage." It is not quite clear whether the witness includes street wash passing through the sewers in this estimate, and whether he is giving

conclusions based on examinations made by himself, or merely stating his recollection of the result of Mr. Whipple's investigations. He expressly says, however, that his conclusions were not based on analytical data. They were those that he formed with a view to giving evidence in a suit between Paterson and the East Jersey Water Company. His evidence there related to the odor or pollution at the point of discharge and not specially to the odor in the lake. The question here presented, viz., the relative amounts of nitrogenous matters found in the sewage and in the factory waste did not come within the scope of his investigation.

Mr. Harrison's testimony does not differ very much in character from Mr. Hering's. He says, "I will stand to my opinion based upon all these facts, that the sewage of Paterson is not cut (?) up in quantity with the dark pollution of the mills, and at least 50 per cent. of the quantity of polluting matter going into the river comes from the mills and in my opinion, at least 75 per cent. of the nuisance to the eye and sense is from the mill refuse,—from that refuse,—and only 25 per cent. of underlying low down basis is from the sewers. Of course, the pollution from the household sewage and foecal matter is much worse than the pollution that comes from the mills,—that is, for drinking, carrying germs." This testimony is not

founded on measurements of flow or on analysis. It is the opinion of an intelligent engineer based on what he could observe as he walked or rode along the river banks, aided, no doubt, by reports read and information received from those who had more or less knowledge of the subject.

The last witness is Dr. Leal, a physician who has devoted a great deal of attention to sanitary science; who has an intimate knowledge of all that concerns the pollution of the river, and whose opinion is entitled to much weight. He testifies that his estimate is that 19,000,000 gallons of refuse per diem come from the dye houses "which form the vast bulk of the manufacturing wastes," and 17,000,000 gallons comes from the sewers. Mr. Fonda's estimate is 26,000,000 gallons going directly into the river, and 20,000,000 from sewers. Neither of these gentlemen attempted to compute the relative amount of solids contained in the water thus discharged. Speaking of the manufacturing waste, Dr. Leal says, "The chief constituents in which we are interested, besides the dye stuffs, which give rise to the color, is the soap. They use vast quantities of soap and that soap is 60 or 65 per cent. organic matter and it decomposes and causes the scum." He apparently attributes more importance to the soap than to the highly nitrogenous silk gum, 5,100 pounds of which are, according to Mr. Whipple, every day emptied into the stream. As I understand it, the gum is discharged with the soapy liquor and he probably includes it in that designation.

There does not seem to be much contrariety of opinion between the five witnesses whose testimony I have been analyzing. None of them have actually measured the flow from the sewers at

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their respective outlets. With the exception of Mr. Whipple and Mr. Fonda, none of them have attempted to compute it. It would have taken so much time to have measured it accurately that the money and labor expended would have been probably out of all proportion to the benefit. I have no doubt that Mr. Whipple's estimates are approximately correct. In the case of the sewers, the problem would have been complicated with an estimate of the rainfall and the ground flow. For the practical purpose of solving the problems involved in this case, the data are sufficient. The complainants have not attempted to produce witnesses to controvert the conclusions reached by Mr. Whipple.

To sum up, the witnesses all think that the whole volume of polluted water discharged from the factories is slightly in excess of, or at least equal to, the volume of sewage discharged from the sewers. They all think that the number of pounds of total solids in the household sewage proceeding from the sewers does not exceed, or much exceed, that discharged from the factories. In point of offensiveness, standing at the outlets of the pipes, Mr. Hering and Mr. Harrison think that the smell of the factory waste is more objectionable than the smell of the sewage.

None of the witnesses, except Mr. Whipple, have attempted to compute the relative amount of organic matters in the sewage and in the factory waste, or to analyze the discharge. Of course, when these matters commingle in the river and reach the lake no witness, scientific or unscientific, could hazard even a guess as to how much of the nitrogenous substances could be attributed by the sense of smell to the factory waste, and how much

to the sewage. I do not find in the evidence any dissent from the view that the amount of smell attributable to factory waste, and that attributable to sewage would, excluding the tar smell, be proportionate to the amount of the nitrogenous substances they contain. Mr. Whipple has, as I have already stated, found these relative amounts to be, per diem, 2,980 pounds for the sewers (including three-fourths of street wash) and 1,000 pounds for the factories.

I have thus far principally considered the case from the standpoint of causes. I now come to effects.

There can be no doubt that the effects arising from the causes indicated, have produced an actionable injury at the lake. No one disputes that the water is full of foul matters which have rendered it unfit for fishing, for cutting ice, for boating, and for drinking, but anyone reading the evidence in a cursory way would think that on the subject of odor it was highly conflicting. Very slight consideration is sufficient to account for much of the apparent conflict. In the first place, people are differently affected by smells. To one, one kind of smell is objectionable; to another, another. In the second place the river itself is never the same on two successive days. The Cook tables show, as I have said, that the flow of the stream below Paterson varies from nine thousand cubic feet, i. e. over 56,000 gallons per second to no flow at all. Between these extremes the differences of amount are almost infinite. A striking illustration of how much volume of water has to do with the pollution or non-pollution is to be found in the waters of New York Bay, which receive thirty times the sewage of Paterson, and which are yet free from odor. This is because

the river water and the water brought in from the ocean by the tides is much more than sufficient to take care of it.

When, therefore, roughly speaking, 1,000 cubic feet are flowing in the Passaic, there will be, theoretically, no nuisance. And this accords with the fact. The river is not objectionable in cold weather. The nuisance is felt only when the water is low and that is nearly always in summer or early fall. Then not only does the odor proceed from the water itself but from the exposed river banks. It varies with the wind and the condition of the atmosphere. Mr. Nash, who bought his property in 1887, says, that at that time the water was pure and that his family bathed and boated in it; that the bottom of the Lake in front of his house was clear but that it is now covered with a deposit. He says that he perceives the smell in his house practically all the time; that it is worse at nights; that in summer he has to keep his windows closed, and that when the filthy deposit left on the shore dries, it blows away and the smell is "fearful". Mr. Phillips, whose wife's property is on the shore opposite, says that there are two smells perceptible —one, the water closet smell that at times almost suffocates, and the other coal, tar smell, which is a sort of antidote,—that the odor is at times intolerable; that his wife and children have been made sick by it and that it has caused vomiting. Mr. Mercelis testifies that "many a night I had to shut my windows and I have done it in the day, if the wind was coming from the East, and many a night, even in the hottest weather, I would have to close our windows; couldn't endure the stench." It is unnecessary to go through the testimony of all the complainants. There may be

some exaggerations in it, but it is much the same. Some of the witnesses characterize the conditions in stronger terms than other, but they all assert that it has been the sewage smell and not the tar smell that has chiefly affected them. On the other hand, the witnesses for the City emphasize the tar smell and say that the sewer smell is neither so strong nor so offensive. When, however, Dr. Leal, as far back as 1897, characterized the river as even then "practically an open sewer" and when Mr. Hering states that under the direction of the State Sewerage Commission he made an examination of it in 1896 and found it highly polluted and very offensive in summer, and that in 1906 he found the odor very much greater, it is plain that the property owners along its banks are suffering from a very real and not a fancied injury. Two questions remain to be considered. First. The time for which compensation or damages shall be given, and 2*nd*, the amount.

At first blush, it would seem that as compensation was to take the place of an injunction, and an injunction could issue only on filing the bill, the compensation should be computed from that time. An examination of the cases, however, does not bear out this view. The precedents, I think, indicate with clearness that the compensation is to be awarded from the time of the taking, and this taking dates, as I have said, from the summer of 1892.

In the first place, it is clear that the case must be regarded as one of appropriation by the City, for public use, of property rights attached to land. This was the view of the Court of Errors in the Simmons appeal, for Justice Van Syckle expressly says that the complainants are entitled to an injunction "unless the City will consent to make

compensation for the diminution in the value of their lands as shall be ascertained to be just."

This, too, was the issue finally made by the pleadings, as will be seen by reference to page 78 of the printed case. "This defendant elects, rather than submit to an injunction, pursuant to the prayer of complainants' said bill of complaint, to make such compensation to the complainants respectively for the alleged diminution in value of their said lands and property rights, as shall be ascertained by this Court to be just, so far as this defendant shall be held liable to make compensation for such diminution in value."

It appears from the decisions that there is one rule of compensation in equity and another at law. Both of these rules have been approved by the Court of Errors; the equitable rule in North Hudson Co. vs. Booraem, 1 Stew., 450, and the legal rule in Leeds vs. Camden and Atlantic R. R. Co., 24 Vr., 229. Mr. Justice Reed in Trimmer vs. Railroad Co., 26 Vr., 46, thus sums up the difference; "The result of these conflicting rules seems to be that if a corporation, under the conditions mentioned takes proceedings to condemn lands, the legal rule applies, but if the question of value of the land becomes involved in a suit in equity, the equitable rule applies." The legal rule, which is of purely statutory origin, gives compensation for the value of the land at the time of the award of the commissioners, the equitable rule, at the time of the entry.

In the Trenton Water Power Co. vs. Chambers, 1 Stock., 471, it appeared that the Trenton Del. Falls Company was chartered in 1831; that it applied to one Chambers for permission to occupy his land, deferring compensation to a future day and that he consented. In 1840, the company was

decreed to be insolvent, and its property and franchises were sold. The purchasers were, by subsequent act of Legislature, incorporated under the name of the Trenton Water Power Co. In 1853, Chambers sued at law, to recover damages for the construction of the raceway by the original company over his lands, and for continuing and maintaining the same. The Water Power Company instituted proceedings to enjoin, and this Court gave compensation for the value of the land taken at the time of the entry, nearly 20 years previously, with interest. In Paterson, Newark and New York R. R. Co., vs. Kamlah, 2 Dick. 331, ejectment was brought by Kamlah to recover possession of land on which the predecessor of the complainant had entered about twenty years before. The Company applied to this Court to stay proceedings. The Company was decreed to give compensation for the value of the land at time of the original entry with interest, and the decree was affirmed on appeal. New York and Greenwood Lake Railway Co. vs. Stanley's heirs, 8 Stew., 288, was also a suit brought to stay an ejectment. The entry had been made by the predecessor of the complainant almost ten years before. Mr. Justice Depue, speaking for the Court of Appeals, said, "The rule adopted in Chambers vs. Trenton Water Power Co. with respect to the time as of which the value of the land is to be determined and from which the interest is to be calculated, was adopted *as the general rule by this Court* in North Hudson Co. R. R. Co. vs. Booraem, and is in conformity with the decisions of other Courts in cases where the original company's property and franchises had been transferred by a judicial sale to purchasers who by the legislative act became a new corporation, * * *. Suc-

ceeding to an equity of the Montclair Railway Co. arising out of its entry on the premises, the appellants take the rights of their predecessors, *cum onere,* subject to the obligation to render to the respondents the same equity which the Montclair Railway Co. would have been required to render, if that Company were making an effort to retain possession. Paying interest on the value of the land and damages from the date of the original entry is not paying the debt of the defunct corporation. *It is making the recompense which the respondents are equitably entitled to on the enforcement of an equity against them.*"

On the Simmons appeal in this very case, Mr Justice Van Syckle referred to Paterson and Newark, R. R. Co. vs. Kamlah (supra) as affording a precedent for the award and ascertainment of damages. It will be observed that in the cases cited, compensation not only antedated the filing of the bill, but it antedated the use, and enjoyment of the property by the corporation then in possession.

Now the only difference that can be suggested between the cases referred to and the present, is this: that in those cases the companies had the right to condemn and that they entered by consent; while here the City may not have the right to condemn and it entered (so to speak) without consent. But this rather strengthens the position of complainants. A court of equity, certainly, will not accord a stronger position to a mere wrongdoer that it will to one who enters by permission. It will not declare that he who has no right to take the property of another even on the terms of making compensation, may demand and receive more liberal terms than he has scuh right. That the City stands in the attitude of one asking a

favor appears, from the opinion in the Simmons case. The Complainants' strict right is an injunction, and such a right has been accorded in circumstances resembling the present even against a City more populous than Paterson. Att'y-Gen'l vs. Leeds Corp., 5 Ch. App. 583. But the Court, contrasting the magnitude of the injury on the one side, with the slightness of the benefit on the other, thought that compensation, if the City were willing to make it, would be more equitable than an injunction. It cannot be doubted that it was intended that this compensation should be made according to the ordinary principle of equity. As the taking was to be regarded as an entirety, so was the compensation to be. Equity does not do justice by halves. In the case in hand there is, moreover, a peculiar propriety in adhering to the equitable rule. The act of the City in building its sewers was expressly authorized by statute. The riparian owners could not complain of that. By fair implication derived from the language of the act, the City had the right to discharge its sewage into the river (Simmons vs. Paterson, 15 Dick., on page 391). This act, too, was of itself, no invasion of the rights of the property owners. It was not until Paterson commenced to pour into the stream more than the stream could take care of, that the complainants could be said to have been injured. As soon as it became evident that they had a reasonable ground of complaint, the property owners made an application to the Board of Health of Paterson to abate the nuisance. Failing there, they applied to the State Board of Health, and that body being unable to help them, to the Legislature. Not until they had exhausted every other means of redress, did they file the bill. The case in hand bears some resemblance to those

in which the entry has lawfully preceded the making of compensation. (Kough vs. Darcy, 6 Hals., 237, Den vs. Morris Canal, 4 Zab., 587; Lehigh Valley R. R. Co. vs. McFarlan, 4 Stew., 706, 14 Vr., 608.) In that line of cases the rule of damages is held to be the same as that sanctioned by the Booraem case.

Neither on principle nor on precedent do I find any warrant for the idea that the injury may not and ought not to be regarded by equity as an entirety, to be compensated for as such.

This brings me to the question of the amount of compensation. The defendant, by its amended answer (page 79) avers that its taking "is to be temporary and is to continue no longer than five years from the date of the filing hereof, (March 26th, 1906.)" This temporary taking is permissible (Hepburn vs. Jersey City, 38 Vr., 114). The problem then is to ascertain the damages from June 1st, 1892 to March 26th, 1911.

On the question of the measure of damages, the only case found in our own reports is Hatfield vs. Central R. R. Co., 4 Vr., 252. In that case the plaintiff was the owner of a tract of land fronting on a street, to the centre of which he had title. Defendant laid a track in the street and maintained it there for fourteen years. The plaintiff carried on a lumber business on the land in question. It did not appear that he had desired to appropriate it to other purposes or had offered it for sale. Beasley, C. J. said "it seems to me to be perfectly indisputable that the only damages which the plaintiff can claim of these defendants, in consequence of the railroad track being illegally laid along this land is for the loss and inconvenience which he has sustained in the prosecution of his lumber business." In an action for

negligently obstructing a drain which caused water and filth to flow back into plaintiff's cellar, it was said by the Supreme Court of Massachusetts (Emery vs. Lowell, 109 Mass., 197) that plaintiff could recover for an injury which diminished the value of his use and occupation of the house. Where the property is rented, the proper measure of damages was said, in Jutte vs. Hughes, 67 N. Y., 271, to be the difference between the rental value free from the effects of the nuisance for which damages were claimed and subject to it. These citations sufficiently declare the rule to be applied to the case in hand which concerns both properties rented and properties occupied by their owners. I think it is quite clear, under the decisions, that no allowance can be made for alleged depreciation in the value of the lands themselves. The injury must, under the pleadings, be treated as temporary and not as permanent. (Brewster vs. Sussex R. R., 11 Vr., 57.)

I do not apprehend that, under the facts of this case, it would be either just or proper to so apply the above rules, as to give the owner of property personally occupied, larger damages than to the owner of the property rented. Compensation is not awarded for personal discomfort. If evidence of discomfort be received, it is only relevant in so far as it bears upon the question of annual value. The situation of all the properties in respect of the injury is so similar that the amount must be determined in some uniform way.

As a convenient means of reaching a definite result, I have estimated the annual value of such parts of the various properties as are, or may be, affected by the condition of the river as follows:—

Peter Van Bussum		$ 350
Edo V. & C. D. Cadmus		450
Martha Phillips		350
Richard Van Riper		350
Henry W. Doremus		375
Peter Alyea, to Dec. 16th, 1904.		400
Geo. G. Van Riper, (ice houses $500, other property $500) ..		1000
Edo Van Riper, (ice houses $125, from Oct. 12th, 1889; other property $475.)		600
Richard Hoitsman, ...		300
Mary A. Van Saun, ...		350
Peter H. Doremus (2 houses) .		500
Paulina Wehnert, ...		300
Frederick H. Gelderman		300
Margaret Kipp		18
Richard Outwater		50
Albert A. Outwater		450
Garret Terhune (to 1902)	$250	
Garret Terhune (since 1902) .	720	
John H. Mercelis		350
Scotto Nash		850

The above estimates do not represent the total rental values of the various properties. The farms may be described as narrow ribbons of land, being with two or three exceptions, from one hundred and fifty to five or six hundred feet in width, and running back from the river, in some cases over a mile. As originally laid out, the plan was, doubtless, to give to every farmer a frontage on the stream and some wood and meadow land in the rear. Counsel for the City ex-

pended considerable effort in showing that these lands are intersected by two railroads, and that the parts in the rear are so severed as not to be entitled to the designation, "riparian". The Susquehanna railroad, where it most nearly approaches the river in crossing these farms, is thirty-six hundred feet therefrom. At that distance, the odor, if it can be perceived at all, is so slight that it has no effect upon land values. The question of legal severance is therefore unimportant. In the above estimates, I have made a deduction on this account. The complainants gave no specific evidence of rental or annual values. I have, therefore, been obliged to take as my guide the evidence of defendant's expert witnesses on this head, making such variations therefrom as the situation of the land in reference to the stream, the acreage, the character of the buildings and their nearness to the river and to trolleys and stations, their condition of repair &c. seemed to require.

In the case of some of these property owners, the contention of the City was that they were non-riparian because former owners had given to the Dundee Co. rights of flowage. This did not divest the grantors of their ownership of the fee. Subject only to the servitude of flowage, they possessed every right *ad medium filum aquae*, which such ownership carries with it. It seems to me very plain indeed that they or their grantees must still be regarded as riparian owners for all the purposes of this controversy.

Taking the above table as my basis, I have estimated the diminuition in rental or annual value caused by the pollution of the river and attributable to Paterson alone, as follows:—For the year 1892, five per cent of the sums above named, and

for each succeeding year, one per cent in addition.

These may be estimated with interest or a rebate. This, of course is an arbitrary ascertainment. It does not regard the differences in temperature and rainfall that have existed in the hot and dry seasons of the successive years and consequently, the difference in the amount of odor and deleterious pollution. But an accurate ascertainment and adjustment of these differences is impossible. Even precisely the same number of inches of rainfall in two successive summers does not mean the same flow in the river. A rainfall evenly distributed and moderate in amount is largely absorbed by the soil, or evaporated. In this latitude it is estimated that nearly one half of the rain that falls in the course of a year is evaporated. The same amount of rainfall coming in heavy storms or violent showers would quickly flow off the surface and be carried away in freshets. The amount of compensation for the taking for the 20 years is a single sum, and if ascertained in the manner indicated will, I think, on the whole, represent the aggregate compensation, as nearly as it can be ascertained, and more exactly than it could be in any other way that suggests itself to me. I have increased the compensation, year by year, for the reason that the population of Paterson has increased and is likely to increase, year by year. The rate of increase is about three per cent per annum, but this does not imply a diminution of annual value to the same extent. The amount awarded may seem small. It is, however, more than double the amount named by the City's experts who, for the entire injury, as well that attributable to the factory and gas wastes, as that attributable to the sewers only allow for the year 1906 from 8-½ to 10 per cent of the total annual

rent, whereas I allow for that year about 20 per cent for so much of the nuisance as is attributable to Paterson alone. The reasons for this very moderate allowance are the following:

The land is, nearly all of it, used for farming or truck gardening. It is not pretended that the odor injuriously affects the land. The houses are old fashioned and most of them without modern improvements. The means of access are not such as to attract the ordinary commuter. Churches and schools and places of amusement are distant, and to the North and South, along the river are an increasing number of factories and such a population and such dwellings as factories bring with them. The growth of these factories toward the land in question would seem to be inevitable. There is no evidence that the very rapid growth that has taken place in Passaic up the river and headrace, has been arrested in any degree by the pollution. Besides, I do not find that sickness and disease have attended the fouling of the river to any such extent as one would naturally suppose. The weight of the evidence is that malaria has considerably decreased; the reason being that the Anopheles Mosquito, which, according to present medical belief, is the sole cause of malaria, cannot breed in a stream whose surface is covered with a thin film of oil. Some of the complainants say they have suffered from this malady, but there is no reason to suppose that they would not have suffered as much, if not more, if former conditions had prevailed. Undoubtedly, nausea has been produced in some instances, and the discomfort on hot nights, with a breeze blowing off the water, has been very great. The river is no longer a place to boat or fish in, or to cut ice from, or water cattle in. But on the other hand, there is no evi-

dence of depopulation along the river banks, or of inability to rent to farmers or truck gardeners. No doubt the number of persons who might wish to live in that locality has been diminished. In determining upon the above sum, I have endeavored to take all these circumstances into account.

The problems involved have been difficult of satisfactory solution but, sitting in place of a jury, I have made the best approximate ascertainment of the damages that I could. In making it, I have not taken into account alleged depreciation in the market value of the land. There is no specific evidence of loss of sales, and the rule seems well settled that where the injury is only temporary and removable, such depreciation cannot be considered. The evidence in reference to the exchange of properties by Mr. Gelderman is too uncertain to be regarded as an exception.

I ought to add that the amounts awarded may not be compensation for the entire injury where the owners themselves occupy the lands, for the nuisance has not only diminished annual rental values, but it has also caused personal discomfort, and, if I am to believe the witnesses, in some cases, sickness. Either injury is ordinarily ground for injunction. Under the issue framed in accordance with the opinion in the Simmons case, the money equivalent for an injunction is to be compensation "for the diminution in value of complainants' lands and property right" alone.

(Filed July 2, 1908.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS *et al.*,
Complainants,

and

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON *et al.*,
Defendant

FINAL DECREE.

This cause coming on to be heard in the presence of Sherrerd Depue, Charles L. Corbin and Richard V. Lindabury, of Counsel with the Complainants, and Edward F. Merrey, Edmund Stalter and Michael Dunn, of Counsel with the Defendant The Mayor and Aldermen of the City of Paterson, (the complainants' bill having been heretofore taken as confessed against the defendants Jacob H. Van Saun, Peter J. Kipp and Samuel Phillips), and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint as hereinafter set forth;

It is thereupon, on this twenty-sixth day of June, nineteen hundred and eight, by his Honor Mahlon Pitney, Chancellor of the State of New Jersey, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of

this court, doth hereby adjudge and decree that the defendant The Mayor and Aldermen of the City of Paterson is wrongfully and illegally polluting the waters of the Passaic River above the respective lands and properties of the complainants in the bill of complaint described, by discharging therein sewage and other deleterious and polluting matter to the injury of the said lands and premises and in violation of the rights of the respective complainants therein and that said injury began on the first day of June, eighteen hundred ninety-two and has continued to the present time.

And the said defendant The Mayor and Aldermen of the City of Paterson, having on the twenty-sixth day of March, nineteen hundred and six, filed an answer in said cause declaring their purpose and intention to cease discharging the said sewage and other deleterious and polluting matter into the said river within five years from said date and electing, rather than to submit to an injunction pursuant to the prayer of the complainants' bill of complaint, to make such compensation to the complainants respectively for the diminution in value of their lands and property rights in the said bill of complaint more particularly mentioned and set forth, as should be ascertained by this court to be just so far as the said defendant should be held liable to make compensation for such diminution in value;

It is thereupon further adjudged and decreed that the diminution in value of the respective lands and property rights of the complainants in the bill of complaint more particularly set forth, through the said wrongful and illegal acts of the said defendant The Mayor and Aldermen of the City of Paterson amounts, at the present time,

upon the basis of the continuance of the same to the twenty-sixth day of March, nineteen hundred and eleven, to the following sums respectively;

To the lands and property rights of the complainant Peter P. Van Bussum One thousand one hundred and ninety-four dollars and twenty-seven cents ($1,194.27); to the lands and property rights of the complainant Edo V. Cadmus One thousand one hundred and fifty-one dollars and sixty-two cents ($1,151.62); to the lands and property rights of the complainant Margaret Massey One hundred and ninety-one dollars and ninety-four cents ($191.94); to the lands and property rights of the complainant Catherine Paulson One hundred and ninety-one dollars and ninety-three cents ($191.93); to the lands and property rights of the complainant Martha A. Phillips One thousand one hundred and ninety-four dollars and twenty-seven cents ($1,194.27); to the lands and property rights of the complainant Charlotte Jane Van Riper, executrix of the last will and testament of Richard H. Van Riper, deceased, One thousand one hundred and ninety-four dollars and twenty-seven cents ($1,194.27); to the lands and property rights of the complainant Henry W. Doremus One thousand two hundred and seventy-nine dollars and fifty-eight cents ($1,279.58); to the lands and property rights of the complainant Peter Alyea Eight hundred and thirty-five dollars and sixty-eight cents ($835.68); to the lands and property rights of the complainant George G. Van Riper Three thousand four hundred and twelve dollars and twenty cents ($3,412.20); to the lands and property rights of the complainant Richard H. Hoitsman One thousand and twenty-three dollars and sixty-six cents ($1,023.66); to the lands and property rights of the complainant Mary A. Van

Saun One thousand one hundred and ninety-four dollars and twenty-seven cents ($1,194.27); to the lands and property rights of the complainant Garret M. Doremus, surviving executor of the last will and testament of Peter H. Doremus, deceased, One thousand two hundred and eleven dollars and sixty-five cents ($1,211.65); to the lands and property rights of the complainant Garret M. Doremus Four hundred and ninety-four dollars and forty-five cents ($494.45); to the lands and property rights of the complainant Frederick H. Gelderman One thousand and twenty-three dollars and sixty-six cents ($1,023.66); to the lands and property rights of the complainant Margaret Kipp Sixty-one dollars and forty-two cents ($61.42); to the lands and property rights of the complainant Richard Outwater One hundred and seventy dollars and sixty-one cents ($170.61); to the lands and property rights of the complainant Albert A. Outwater One thousand five hundred and thirty-five dollars and forty-nine cents ($1,535.49); to the lands and property rights of the complainant Garret Terhune One thousand seven hundred and twenty-three dollars and eleven cents ($1,723.11); to the lands and property rights of the complainants John H. Mercelis and Edwin Mercelis One thousand and one hundred and ninety-four dollars and twenty-seven cents ($1,194.27); to the lands and property rights of the complainant Scotto C. Nash Two thousand nine hundred dollars and thirty-seven cents ($2,900.37); to the lands and property rights of the complainant Edo Van Riper One thousand nine hundred and fifteen dollars and ninety-five cents ($1,915.95).

And It is Further Ordered, Adjudged and Decreed that there be allowed to the said complain-

ants, as a counsel fee to be included in their taxable costs, the sum of Six thousand dollars.

And It Is Further Ordered, Adjudged and Decreed that the defendant, The Mayor and Aldermen of the City of Paterson, pay to the said complainants respectively, or to their solicitors, except in the case of Garret Terhune the said sums of money hereinbefore mentioned, with their costs of this suit to be taxed, on or before the first day of July, 1908, or within thirty days thereafter with legal interest on said sums and that in default thereof an injunction do issue according to the prayer of said bill restraining the said defendant, The Mayor and Aldermen of the City of Paterson, its officers, agents and employees, from polluting and continuing to pollute the waters of the Passaic River above the respective lands and properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or other matter or thing which may contaminate the waters of the said Passaic River into the said River above the said respective lands and properties of the said complainants, and from interfering in any way with the enjoyment by the complainants of their rights as riparian owners in the manner in the said bill of complaint set forth.

And It Is Further Ordered, Adjudged and Decreed that an injunction do issue, according to the prayer of the said bill, restraining the said the defendant The Mayor and Aldermen of the City of Paterson, its officers, agents and employees, from polluting and continuing to pollute the waters of the Passaic River above the respective lands and properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or other matter or

thing which may contaminate or pollute the waters of the said Passaic River into the said river above the said respective lands and properties of the said complainants, and from interfering in any way with the enjoyment by the complainants of their rights as riparian owners in the manner in the said bill of complaint set forth, from and after the twenty-sixth day of March, which will be in the year of our Lord One thousand nine hundred and eleven. If notwithstanding the exercise of due diligence, The Mayor and Aldermen of the City of Paterson is unable to cease polluting the said river by the time aforesaid, leave is reserved to apply to this Court, upon such terms as this Court may deem equitable, to postpone the time of issuing said injunction to a day to be fixed by this Court.

And It Is Further Ordered that the sum adjudged to represent the diminution in value of the land and property rights of the complainant Garret Terhune, (which lands have been conveyed by him since the commencement of this suit) be paid into this Court to abide the further order of this Court.

And It Is Further Ordered, Adjudged and Decreed that the bill of complaint be and the same is hereby dismissed as against the complainant Paulina Wehnert.

Respectfully advised,

FREDERICK W. STEVENS, *V. C.*

(Filed March 14, 1911.)

IN CHANCERY OF NEW JERSEY.

Between,
HENRY W. DOREMUS *et al.*,
Complainants,

and

THE MAYOR and ALDERMEN of THE CITY OF PATERSON,
Defendant.

On Bill, &c.

PETITION OF DEFENDANT.

To the Honorable Chancellor of the State of New Jersey:

The Mayor and Aldermen of the City of Paterson, the defendant in the above stated cause, respectfully shows unto your Honor that on the twenty-sixth day of June, nineteen hundred and eight, it was ordered, adjudged and decreed in the above cause that an injunction issue restraining this defendant, its officers, agents and employes from polluting and continuing to pollute the waters of the Passaic river above the respective lands and properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or other matter or thing, which may contaminate or pollute the waters of the said Passaic river, into the said river above the said respective lands and properties of the said complainants, and from interfering in any way with the enjoyment by the complainants of their rights as riparian owners in the manner in the said bill of complaint set forth,

from and after the twenty-sixth day of March, which would be in the year of our Lord One Thousand Nine Hundred and Eleven,

And in and by the said decree it was further provided that, if notwithstanding the exercise of due diligence, The Mayor and Aldermen of the City of Paterson is unable to cease polluting the said river by the time aforesaid, leave is reserved to apply to this court, upon such terms as this court may deem equitable, to postpone the time of issuing said injunction to a day to be fixed by this court.

And this defendant shows that since the making of the said decree, and up to the present time, this defendant has exercised due diligence to provide a means to dispose of its sewage otherwise than by emptying the same into the Passaic river above the lands of the complainants and, notwithstanding the exercise of such diligence, it will be unable to cease polluting said river in the said manner by the twenty-sixth day of March, nineteen hundred and eleven.

And this defendant further says, that this defendant reserving all its rights to appeal from any order or decree made in this cause elects rather than submit to an injunction pursuant to the prayer of the said bill of complaint to make such compensation to the complainants respectively or to such of them as are now entitled thereto for the alleged diminution in value of their said lands and property rights in the said bill of complaint more particularly mentioned and set forth as shall be ascertained by this court to be just, so far as this defendant shall be held liable to make compensation for such diminution in value, and subject to the same right, if any, to jury trial and appeal to the Court of Errors and

Appeals that defendants have in other suits in this court; and subject also to all valid or tenable defenses cognizable in equity set up in this defendant's original answer in this court.

And further that the defendant has not taken the respective lands and property rights of the complainants except so far as the injury to them, if any such injuries there may be, from or by means of its sewerage system in the complainants' bill mentioned, may be considered as such taking; and that such injury or taking is to be temporary and is to continue no longer than five years from the twenty-sixth day of March, nineteen hundred and eleven.

This defendant shows that before the making of the said order or decree this defendant had endeavored to find a way to dispose of its sewage other than pouring the same into the Passaic river and had spent large sums of money in the employment of expert engineers to that end all of which appears by the testimony in the cause. That on April 14, 1908, and shortly before the signing of said decree, Andrew F. McBride, the Mayor of the City of Paterson, appointed a special committee to study the question of sewage disposal and to make a report thereon to the Board of Finance, which Board has the authority on behalf of this defendant to make a contract for the disposal of such sewage with the Passaic Valley Sewerage Commissioners, a body organized by virtue of Chapter 10 of the Laws of 1907. That such committee consisted of the Mayor, Commissioner Berdan, of the Board of Finance, Commissioner Cooke, of the Board of Public Works, Commissioner Leal, of the Board of Health, the City Engineer and City Counsel. That on April 30th, 1908, the Passaic Valley Sewerage Commissioners

served on this defendant notice that there had been served on all the clerks or other like officers of all the municipalities, lying in whole or in part within the Passaic Valley Sewerage District, duly authenticated maps, plans, specifications and estimates prepared by the Passaic Valley Sewerage Commissioners in accordance with Section 3 of Chapter 10 of the Laws of 1907.

That the special committee, as above mentioned, after a thorough study of the subject submitted their findings in a report to the Board of Finance on October 8, 1909. That the said committee considered the many different methods of local disposal of sewage but finally decided that it was to the interest of the City of Paterson to make a contract with the Passaic Valley Sewerage Commissioners. That after such favorable report the Board of Finance on October 8, 1908, passed the following resolution:

Whereas, The Passaic Valley Sewerage Commissioners have presented to the municipalities comprising the Passaic Valley Sewerage District a report, with maps, plans and estimates for the construction of a joint trunk sewer from the Great Falls in the City of Paterson to a point of disposal in salt water; therefore, be it

Resolved, That the Board of Finance acting for and in behalf of the City of Paterson, accept the said report, with the maps, plans, specifications and estimates, and that the City of Paterson proceed to negotiate with the other municipalities of the Passaic Valley Sewerage District, and with the Passaic Valley Sewerage Commissioners, for the purpose of securing a contract for the construction and maintenance of the proposed trunk sewer, which shall be to the interests of this city.

That the committee as above stated had several

hearings before making a report and had endeavored to have the Sewerage Commissioners modify their plans so as to provide for the disposal of the sewage in the waters of Newark Bay and thus avoid threatened litigation with the State of New York and with the United States. That such litigation was begun and delayed the making of a contract by the said Sewerage Commissioners.

This defendant further shows that its officers realize the nuisance created and damage done by its present method of sewage disposal not only to the complainants but to many of its own citizens and that they are anxious to remedy this condition as promptly as possible; that the question of sewage disposal is a most difficult one to solve and as far as they are able to learn has not been satisfactorily solved under like conditions in any city in this country.

That two general methods of sewage disposal have been suggested, one providing for purification within or near the corporate limits of the city and the other by discharge into tidal waters. That after studying the question the special sewerage committee above mentioned came to the conclusion that either method could be satisfactorily carried out and that the question of expense to the city should be the determining factor in making its choice of plan.

It was decided by the committee that if the estimates of the Passaic Valley Sewerage Commissioners were correct the trunk sewer plan would be the most economical for the city and it so reported to the Board of Finance.

Such being the case, on the sixth day of January, nineteen hundred and ten, Mayor McBride in a special message recommended that if the trunk sewer could be built for the money reported by

the commissioners and if permission could be had to empty the same into New York Bay without purification works, that the City of Paterson should join the plan.

That some time in September, nineteen hundred and ten, a form of contract drawn by or on behalf of the Passaic Valley Sewerage Commissioners was sent to the City of Paterson for the consideration of its Finance Commission, and on September 20th the special committee on sewage disposal above mentioned met and discussed the said contract, and on the fourth day of October, nineteen hundred and ten, the Mayor of the City of Paterson called for a meeting of all the municipalities interested to consider the said contract. This meeting was held at the City Hall, in the City of Paterson, and a resolution was passed at this meeting asking for a hearing from the Passaic Valley Sewerage Commission so that further information might be obtained and certain details be explained to the various municipalities. After some communication with the commission this hearing was granted by the commission and was held on November 3rd, 1910. At this hearing on November 3rd, 1910, a number of questions were submitted to the commission for answers and the answers to the questions submitted on the part of Paterson were replied to on December 27th, 1910. That on December 15th, 1910, a new form of contract was submitted by the Passaic Valley Sewerage Commissioners; that after considering this new form of contract and the answers to the questions submitted by the City of Paterson, on January 12th, 1911, the Board of Finance of the City by resolution (a copy of which is hereto annexed) authorized the signing by the Mayor of a contract with the Passaic Valley Sewerage Com-

mission for the disposal of the sewage of the City of Paterson.

That on January ....., 1911, the contract was officially executed by the Mayor and the City Clerk of the City of Paterson, and on January 28th, 1911, the same was delivered to the Passaic Valley Sewerage Commission at its office in Newark, New Jersey, Paterson being the first municipality to formally enter into contract with the Passaic Valley Sewerage Commission for the disposal of sewage.

And this defendant shows that the trunk sewer should be completed in about five years from this date.

And this defendant further shows that it has used all due diligence to comply with the order of this court; that the cost of properly caring for its sewage so as not to pollute the Passaic River is a most serious one to it; that this cost will increase its bonded indebtedness fifty per cent. and will greatly increase its tax rate; that this defendant could not afford to incur such indebtedness until it was sure that the plan adopted was feasible and could be put in operation, and that it has lost no time in attempting to solve this important question.

And this defendant further shows that some of the complainants to this cause have died since the making of the decree above referred to and that their representatives have not been made parties to this suit; that defendant has not accurate information as to which complainants have died and in whom the titles to their lands have vested.

Defendant further shows that it is informed and believes that some of the complainants have sold and disposed of their lands to persons who are not parties to this suit but that this defendant has

no accurate information as to which properties have been sold.

Defendant further shows that it has been informed and believes that some of the complainants have converted their lands to other uses than those to which they were put at the time of the signing of the decree in this cause with the result that the damage to such lands by the pollution of the Passaic River have been greatly lessened.

This defendant therefore prays that the injunction ordered to be issued against this defendant be stayed and not issued until the twenty-sixth day of March, nineteen hundred and sixteen.

And this defendant will ever pray, &c.

ANDREW F. McBRIDE,
Mayor.

(Seal of the)
(City of Paterson)

T. SIMPSON STANDEVEN,
City Clerk.

Be It Resolved,

That in the opinion of this Board the City of Paterson will be unable to cease emptying its sewage into the Passaic River through its present system of sewers until March 26th, 1916.

And this Board having considered the petition about to be presented to the Court of Chancery, requesting that the injunction in the case of Doremus and others against the City of Paterson be stayed until that date, do approve of the same and do authorize the Mayor and City Clerk to sign and seal the same as the act of the city.

Resolved, That the Mayor be authorized and directed on behalf of this city to sign the sewer contract submitted by him at this meeting and as prepared by the Passaic Valley Sewerage Commission with the addition of the following clause:

And, Be It Further provided, that the actual

work contemplated in this contract shall not be commenced nor shall the commission become obligated to any contractor for any part of said work until such time as the commission shall have received actual bona fida offers from a reputable and responsible contractor or contractors to complete said work within the sum of twelve million, two hundred fifty thousand dollars including the cost of rights of way and other necessary property and equipment.

And, that the City Clerk thereto affix the corporate seal of the city.

Passed January 12, 1911.

(Signed) WILLIAM BERDAN,
President of Board of Finance.

Approved January 13, 1911,

(Signed) ANDREW F. MCBRIDE,
Mayor.

Attest: JNO. J. BROPHY,
Clerk of Board of Finance.

(Filed April 25, 1911.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY DOREMUS ET AL.,
Complainants,
and
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendant.
On Bill, Etc.

ANSWER TO PETITION.

The joint and several answer of Henry W. Doremus, Charlotte Jane Van Riper, Mary A. Van Saun, Garrett M. Doremus, surviving executor of the last will and testament of Peter H. Doremus, deceased, Garrett M. Doremus, Frederick H. Gelderman, Richard Outwater, H. Merselis and Edwin Merselis, Scotto C. Nash, Edo Van Riper and Catherine Paulson, complainants in the above entitled cause to the petition of the Mayor and Aldermen of the City of Paterson, defendant in said cause, filed on the 14th day of March, 1911. These complainants severally answer the said petition of the defendant and say:

1. That they admit that on the twenty-sixth day of June, nineteen hundred and eight, it was ordered, adjudged and decreed in the above cause that an injunction issue restraining said defendant, its officers, agents and employes from polluting and continuing to pollute the waters of the Passaic River above the respective lands and

properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or other matter or thing, which may contaminate or pollute the waters of the said Passaic River, into the said river above the said respective lands and properties of these complainants, and from interfering in any way with the enjoyment by the complainants of their rights as riparian owners in the manner in the said bill of complaint set forth, from and after the twenty-sixth day of March, in the year of our Lord one thousand nine hundred and eleven. And that in and by the said decree it was further provided that, if, notwithstanding the exercise of due diligence The Mayor and Aldermen of the City of Paterson should be unable to cease polluting the said river by the time aforesaid, leave was reserved to apply to this court, upon such terms as this court might deem equitable, to postpone the time of issuing said injunction to a day to be fixed by this court.

2. That they deny that since the making of the said decree, and up to the present time said defendant has exercised due diligence to provide means to dispose of its sewage otherwise than by emptying the same into the Passaic River above the lands of the complainants. But on the contrary thereof allege that no act or thing has been done by the said defendant which has actually decreased or tended to decrease the pollution of the said Passaic River during said period. That when the present law providing for the purification of the Passaic River within the Passaic Valley Sewerage District (Chapter 10, P. L. 1907, p. 22) was being considered in the summer of 1906, a special session of the Legislature was proposed to act up-

on the matter in advance of the regular session of the Legislature of 1907. A hearing was had before the Governor of the State of New Jersey, at which the representatives of the defendant pledged themselves that if a law should be framed giving the defendant option of going into or staying out of the proposed trunk sewer scheme, there would be no further opposition on the part of said defendant to the project. Relying upon the good faith of the said defendant in this respect, the application for a special session of the Legislature was withdrawn and the present law containing a provision, by which it was left to the option of the several municipalities whether they should go in or stay out of the proposed trunk sewer scheme was passed (P. L. Laws 1907, page 22), in the framing of which law the legal advisers of the defendant were fully consulted and made acquainted with all of its provisions.

3. The Passaic Valley Sewerage Commissioners immediately proceeded with the work contemplated by the act and on April 20, 1908, made a report of the work that had been done by them, which report declared the probable cost of the proposed trunk sewer would be $12,250,000. In this report it was further declared that "in estimating the cost of construction and maintenance of the proposed sewer, estimates in detail have been supplied by engineers Hering & Fuller and these estimates have also been considered by engineers William M. Brown, Allen Hazen and Edlow W. Harrison, each acting independently of the other. From the information thus furnished, the commissioners estimate that the total cost of construction will not exceed $12,500,000, which sum includes the cost of obtaining the necessary prop-

erty right, estimated at $250,000; that all of the engineers mentioned in the said report were experts of great ability and experience; that at the time of the making of the said report and for many years previous thereto Messrs. Hering & Fuller had made a special study of and been engaged in the construction and building of sewerage disposal works of all kinds; that Mr. William M. Brown mentioned in the said report had also had similar experience in the construction and building of sewage disposal works, including the construction of the great sewerage system of the Boston metropolitan district which is at least twice the size of the proposed trunk sewer mentioned in said report, which said last mentioned plant has been in successful operation for several years; that Mr. Allen Hazen had also been engaged in the construction of engineering works of all kinds, and is now one of the consulting engineers on the Panama Canal in the course of construction by the United States Government; that Mr. Edlow W. Harrison had had long experience in engineering work in different parts of the Passaic Valley sewerage district and in and about New York and Newark Bays, and that at the time of the making of said report none of these engineers, excepting Hering & Fuller were connected with the said Passaic Valley Sewerage Commission.

After the completion of this report, a copy thereof was immediately delivered to each of the municipalities comprising the Passaic Valley Sewerage district, including the Mayor and Aldermen of the City of Paterson, the same having been served upon them on April 22, 1908.

4. In addition to the investigation hereinbefore mentioned as to the probable cost of the proposed

sewer, several other investigations have been made upon the same subject by the defendant or by parties on its behalf for the purpose of ascertaining what would be the cost to the defendant of a separate sewage disposal plant as compared with its proportionate cost of the proposed trunk sewer. That Mr. Samuel M. Gray, of Providence, R. I., an engineer of great ability and experience in the construction and maintenance of sewage disposal works was first engaged, and as the result of his investigation, prior to the year 1906, he reported that the cost of the separate disposal plant for Paterson both in construction and in operation, would be much greater than its proportionate cost in the proposed trunk sewer, which said report was received and suppressed by The Taxpayers' Association of the City of Paterson. Subsequently another investigation for the same purpose was made by the "Joint Committee on Sewage disposal of the Taxpayers' Association of the City of Paterson" which employed the services of Mr. Allen Hazen, heretofore mentioned, as engineer for that purpose. On June 30, 1906, Mr. Hazen made a most exhaustive report. He estimated that a trunk sewer for 2.25 times the population of 1905 would cost $13,323,000, of which Paterson's proportionate cost on the basis of the valuations of 1905 would be $2,292,000, and that the corresponding cost for separate disposal works for Paterson would be $3,028,000. He estimated that the total cost of operating the trunk sewer would be at the beginning $128,000 per annum or 19 cents per capita. His estimate of the annual cost of operating sewerage purification works, was 58 cents per capita. In brief, the trunk sewer plan would save Paterson $736,000 in construction cost, while the cost of operation

would be only one-third as much as the corresponding cost for separate purification works. At the conclusion of his report Mr. Hazen made the following "Recommendations:"

"In view of all the facts and circumstances as I have found them, and upon the supposition that a full, just and lawful arrangement with the other municipalities upon the Passaic River is reached, acceptable to the Legislature and the Governor, I believe that the interests of Paterson will be best served by joining with other municipalities in the construction of a trunk sewer to take the sewage from the entire district requiring sewage disposal facilities in the Lower Passaic Valley to a point of adequate sea water dilution, either in New York Bay or in Newark Bay near the Kill von Kull.

"I believe that this arrangement will be substantially better for Paterson than the separate local purification of her sewage."

After the Commissioners' Report of 1908 was issued, Mr. Hazen was again consulted by the Paterson Taxpayers' Association. On May 9th, 1908, he presented to that body a report in which he reviewed the report of the Commissioners, in which, respecting the cost, he says:

"The cost of works as estimated by the commissioners, $12,250,000, is about $1,600,000 more than my estimate for that part of the works which would have been required at the present time and about $1,000,000 less than the whole cost of the complete scheme with the outlet works brought up to the full capacity of the sewer. At the present time contract prices are lower than they were two years ago and even on the plan upon which I based my estimate, it may be that at current prices the whole cost would not much exceed the amount

now estimated by the commissioners. I therefore regard the whole as a fair one.

"It may be that something should be added for general and legal expenses and there is, of course, a possibility of contingencies exceeding the estimate on so large a piece of work."

On the proposition of the cost of construction to be paid by Paterson, he said:

"This is fixed by the act at the proportion of the valuation as assessed for the year 1907. On this basis as I compute, Paterson will pay 16.40 per cent. of the whole costs of the work.

"The proportion which I estimated that Paterson would pay based on the assessed valuation of two years earlier was 17.19 per cent.

"The proposition what Paterson will pay will therefore be somewhat less than I estimated and the saving to Paterson because of this will amount to 4.60 per cent of my estimate of Paterson's share of the cost."

In his conclusions he presented the recommendations of his 1906 report above quoted, and added:

"It now seems that such a full, just and lawful arrangement with the other municipalities, acceptable to the Legislature and the Governor, has been reached or at least is easily within reach at the present time. The only condition to my recommendation therefore is removed and I believe it to be clearly for Paterson's best interests to join in the proposed arrangement."

5. At various times between September 20, 1907, and October 25, 1909, certain municipalities advanced to the commissioners, sums aggregating $87,500 to aid them in their work. Of this amount $60,000 came from Newark, $10,000 from

Passaic, $7,500 from Belleville, $2,000 each from Kearny and Harrison, $1,250 each from Bloomfield, Glen Ridge, Montclair and Orange and $1,000 from East Newark; that the defendant did not contribute anything to said fund, nor has it ever shown its willingness to cooperate in any way with them in their efforts to purify the waters of the Passaic River within the Passaic Valley sewerage district, but on the contrary thereof, have always objected to every reasonable scheme proposed by the said commissioners.

6. The preliminary work of the commissioners being about complete, they prepared form of contract under date of August 31, 1910, and delivered the same to the municipalities, with a letter of transmission, requesting each to give it early consideration, " and if possible during the next thirty or sixty days to finally determine whether it will enter into contract with the other municipalities and with the Passaic Valley Sewerage Commissioners for the construction of the proposed sewers and works."

7. The Mayor of Paterson (Andrew F. McBride) in a letter to the mayors of other municipalities, dated September 22, 1910, invited all the municipalities interested to attend a conference in Paterson, on October 4th, 1910. In this letter he said that at a meeting held in his office on September 20th, 1910, attended by representatives from Orange, Glen Ridge, and Paterson, he made the statement that his city was in favor of entering the contract with the following provisions:

"First. That no construction work of any

kind should be commenced until all suits now pending in the courts shall reach a final settlement and if the settlement of any suit entailed a material increase in the cost of construction, each municipality should have the right to withdraw from the contract.

Second. That the commissioners agree to solicit bids from reputable contractors for the entire work, in sections, if advisable, by the unit system, and by the lump sum method, and if it is found that the figures of the lowest responsible bidder should materially exceed the total amount estimated by the engineers, as shown in the contract submitted, each municipality should have the right to withdraw.

Each municipality to subscribe its proportionate share of the expense which this solicitation and reception of bids might entail and which should be forfeited by any municipality so withdrawing."

8. These proceedings resulted in a conference between the commissioners and the representatives of a number of the municipalities on November 3rd, 1910, at which the officials of Paterson presented a number of inquiries which were later considered and answered by the commissioners, as stated in the petition of the said defendant.

In the meantime the contract dated August 31, 1910, had become inoperative in some minor features. These were corrected and some recommendations made at the conference were inserted in a new contract dated November 28, 1910, a copy of which, with explanation of the changes made, was delivered to each municipality on December 8th, 1910.

9. On January 28, 1911, there was delivered to the commissioners a contract executed by the Mayor of Paterson which was in form the contract of November 28, 1910, but with the following proviso appended thereto:

"Be it further provided that the actual work contemplated in this contract shall not be commenced, nor shall the commission become obligated to any contractor for any part of said work until such time as the commissioners shall have received actual bona fide offers from a reputable and responsible contractor or contractors to complete said work within the sum of twelve million two hundred and fifty thousand dollars including the costs of rights of way and other necessary property and equipment."

That at the time the said defendant signed the contract aforesaid, it was well acquainted with all of the provisions of the law under which the said Passaic Valley Sewerage Commissioners were created a body corporate and knew that the said commissioners had no power to accept the conditions proposed by the said defendant and had no money with which to carry out the said conditions, even though they had power to accept the same.

10. That since the making and entering of the said decree of this honorable court on the 26th day of June, 1908, as aforesaid, the defendant has constantly increased the amount of sewage flowing into the Passaic River above the respective lands and property of the complainants; that the population of the city has increased at least nine thousand. The defendant, during said period, has made the following extensions of sewers:

Albion and Crosby ave. sewer 756 ft. 12 in. pipe.

East 19th st. sewer from 5th ave. to 4th ave. 510 ft.

East 23rd st. sewer from 17th ave. to 18th ave. 510 ft. 12 in. pipe.

East 29th st. sewer from 11th ave. to 12th ave. 51 ft. 12 in. pipe.

East 12th st. sewer from 4th to 5th aves. 520 ft. 12 in. pipe.

East 30th st. sewer from present sewer to 11th ave. 280 ft.

East 24th st. sewer from 22nd ave. to 23rd ave. 125 ft.

East 18th st. sewer from 6th ave. to Franklin st. 2200 ft.

East 23rd st. sewer from 22nd to 23rd aves. 500 ft.

East 32nd st. sewer from Park ave. to 17th ave. 375 ft.

East 31st st. sewer from 17th to 18th aves. 325 ft.

Fair st. sewer from Graham ave. to East 18th st. 1200 ft.

Fourteenth ave. sewer from East 25th st. to East 25th st. 125 ft. 8 in. pipe.

Marshall st. from Pacific st. to Sussex st. 448 ft.

Madison ave. sewer from 8th to 9th aves. 475 ft. 10 in. pipe.

North 7th st. from Jefferson st. to Haledon ave. 700 ft.

Oak st. from Martin st. to Lewis st. 507 ft. 12 in. pipe.

Pacific st. sewer from Bloomfield ave. to Newark ave. 500 ft.

Paxton st. sewer from Montclair ave. to Gould ave. 485 ft.

Sussex st. sewer from Montclair ave. to Gould

ave. 450 ft. 12 in. pipe.

Seventeenth ave. sewer from East 22nd st. to East 25th st. 540 ft. 12 in.

Twenty-third ave. sewer from Madison ave. to East 24th st. 1380 ft.

Twenty-second ave. sewer from lot 103 and 104 to East 23rd st. 340 ft. 12 in. pipe.

Twenty-first ave. sewer from East 20th st. to East 21st st. 185 ft.

Water st. from Hudson st. to Stout st. 107 ft.

all of which sewers are connected with the mains that empty the sewage of the said defendant into the Passaic River above the respective lands and properties of the complainants.

11. That in addition to these extensions, the city now proposes to make the following extensions in the West Paterson, Totowa and Lake View sections:

Lateral sewers proposed to be built at an estimated cost of $27,500, are as follows:

Delaware avenue, between Main street and Getty avenue; Buffalo avenue between Main street and Getty avenue; Michigan avenue, between Main street and Getty avenue; Getty avenue between Grove street and Knickerbocker avenue; Knickerbocker avenue, between Getty avenue and West Railway avenue; West Railway avenue, between Knickerbocker and Crooks avenues; Knickerbocker avenue, between Main street and Getty avenue; Knickerbocker avenue, between Main and Paxton streets; Eagle avenue, between Genessee and Crooks avenues; Trenton avenue, between Crooks and Michigan avenues; Crooks avenue, between Wabash and Vernon avenues; East Fifth street between Wood street and 150 feet north of Bleeker street; East Twenty-fourth street, between Seventeenth and Eighteenth avenues; East Twen-

ty-third street, between Third and Fourth avenues; East Sixteenth street, between Putnam street and Eighth avenue; East Twenty-second street, between Ninth and Tenth avenues; North Eighth street, between Belmont avenue and Oxford street; Park Place, between Nos. 16 and 18, and N. Y. S. & W. R. R.; Lyon street between East Sixteenth street and N. Y. S. & W. R. R.

The West Paterson sewer proposed to be built is divided into four sections, as follows:

Section A—Through Ellison street extension and Little Falls turnpike, from Mill street to the junction of the Sixth and Second wards near Reservoir avenue; cost $36,946.

Section B—Little Falls turnpike, from Reservoir avenue to West Eighteenth street; cost $21,610.

Section C—Along West Sixteenth street and over a private right of way on low land from Little Falls turnpike to West Thirtieth street; on Little Falls turnpike and West Eighteenth street to West Thirtieth street; cost $10,209.50.

Section D—On West Eighteenth street and along a private right of way on the Pennington property; cost $5,363.75. Total cost, $74,129.25.

The Totowa sewer proposed to be built is divided into three sections as follows:

Section A—Under Passaic River, cost $13,780.

Section B—Through Westside Park from the line under the river to Totowa avenue and North Fourteenth street; cost $22,979.

Section C—Through North Fourteenth street, Chamberlain avenue, Edmund street, from Totowa avenue to Hill street; cost, $8,648. Total cost, $45,407.

All of which proposed sewers are to be connected with the mains that now empty the sewage of

the said defendant into the Passaic River upon the respective lands and properties of the complainants; that the section covered by the said proposed sewers are thickly built up and the said proposed sewers will receive a large amount of sewage which when emptied into the Passaic River, will greatly increase the pollution thereof.

12. That the said contract signed by the defendant has been submitted to all of the municipalities lying within the Passaic Valley sewerage district, as aforesaid, and has been approved by all of the said municipalities bordering on the Passaic River, excepting the defendant, which is chargeable according to the terms of the said act creating the said Passaic Sewerage Commission with about 16.52 per cent. of the cost of the proposed work; that those municipalities which have agreed to enter into the said contract include Newark, Passaic, Belleville, Nutley, Union Township, Acquackanonk Township, North Arlington, Harrison, Kearny, and East Rutherford, which municipalities are chargeable with about 66 per cent. of the total cost of the said proposed sewer; that all of said municipalities have formally authorized the execution of the said contract except Harrison; that all of said authorizations to sign the said contract were made by the municipalities prior to the signing of the contract by the defendant, except the authorization made by the Town of Nutley; that the delay in executing the said contract has been solely for the purpose of ascertaining what municipalities will finally enter into the said contract; that the defendant has refused to enter into the contract submitted to it except upon the conditions hereinbefore set forth; that the attitude which has been assumed by the defendant since the beginning of the proposed trunk sewer

scheme has been and is now supported by the public sentiment of the citizens and the public press of the City of Paterson and that this sentiment has greatly influenced and governed the defendant in the attitude taken by it as aforesaid and that the whole scheme of the proposed trunk sewer is now being delayed by the refusal of the defendant to sign the said contract in the form presented to it and without conditions.

LINDABURY, DEPUE & FAULKS,
Solicitors of Complainants.

(Filed July 23, 1912.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS *et al.*,
Complainants,
and
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendant.

On Bill, &c.

PETITION.

To the Honorable Chancellor of the State of New Jersey:

The Mayor and Aldermen of the City of Paterson, a municipal corporation, now entitled "City of Paterson," respectfully shows that in accordance with the provisions of the final decree in this cause made on the twenty-sixth day of June, nineteen hundred and eight, it has applied to this court to postpone issuing the injunction provided for in said final decree to the twenty-sixth day of March which would be in the year nineteen hundred and sixteen.

And your petitioner further shows that on the sixteenth day of January, nineteen hundred and twelve, an order was made by this Honorable court that proofs be taken as to what would be fair and equitable compensation to the complainants who have answered the said petition for the diminution in rental or other value of their said lands which will result to them by reason of the continued pollution of the Passaic river by the discharge of sew-

age of the City of Paterson into the same during the period mentioned in said petition.

And your petitioner further shows that on the twenty-sixth day of April, nineteen hundred and twelve, an order was made allowing certain other complainants or their devisees or grantees to be made parties to this proceeding to the end that compensation might be awarded to such added parties as their several respective interests might appear for the diminution in rental or other value of the said lands to which they and each of them might be severally entitled for and on account of the continuation of the pollution of the Passaic River by this defendant from the twenty-sixth day of March, nineteen hundred and sixteen.

And this petitioner further shows that it now believes that it will be able to discontinue the pollution of the said river by the twenty-sixth day of March, nineteen hundred and fifteen, and asks that the period for which the said compensation is to be awarded to the said complainants be changed so that the same be from the twenty-sixth day of March, nineteen hundred and eleven, up to the twenty-sixth day of March, nineteen hundred and fifteen.

And your petitioner will ever pray, &c.

EDWARD F. MERREY,
Solicitor for Defendant.

(Filed June 20, 1911.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS *et al.*,
Complainants,

and

THE MAYOR and ALDERMEN of THE CITY of PATERSON,
Defendant.

OPINION AS TO FURTHER TESTIMONY.

MR. EDWARD F. MERREY, for Paterson;
MR. R. V. LINDABURY, for Complainants.

STEVENS, V. C.

This is a petition by Paterson praying that the injunction restraining the city after March 26, 1911, from polluting the Passaic River should be stayed and not issued until March 26, 1916.

In its amended answer to the bill filed by the property owners, Paterson admitted that it was discharging its sewage into the river and elected rather than submit to an injunction to make such compensation to the complainants for the diminution in value of their lands and property rights as should be ascertained by this court to be just. It expressly stated that such injury or taking was to be temporary and "was to continue no longer than five years from the date of the filing thereof" (March 26, 1916).

The court assessed the damages on this basis

and then made a decree that the city, its officers, agents and employees should be restrained from continuing to pollute the waters of the Passaic from and after the twenty-sixth day of March, 1911.

The decree, made on June 26, 1908, provided that if notwithstanding the exercise of due diligence the Mayor and Aldermen of the City of Paterson should be unable to cease polluting the river by the time aforesaid, leave was reserved to apply to this court.

This decree, unappealed from, is binding as the law of the case. If Paterson desires more time it must, according to its terms, show that it has exercised due diligence. In its petition now filed Paterson avers that it has exercised due diligence.

It says that it has made exhaustive inquiry, and has ascertained that its sewage can be best and most cheaply disposed of by means of the contemplated trunk sewer. It further says that its inquiry has been followed up by action—that it has signed a draft of a contract prepared by the Passaic Valley Sewerage Commissioners. It has, however, done so with the following important reservation: "Be it further provided that the actual work contemplated in this contract shall not be commenced nor shall the commission become obligated to any contractor for any part of said work until such time as the commission shall have received actual bona fide offers from a reputable and responsible contractor or contractors to complete said work within the sum of twelve million two hundred and fifty thousand dollars, including the cost of rights of way and other necessary property and equipment." This modification has not been accepted by the commission and is not as was stated on the argument, agreeable to it.

The resolution containing this proviso was passed on January 13, 1911, and the executed draft containing the reservation in question was delivered to the commission in the same month. As far as the papers disclose, Paterson has done nothing since.

In its petition, Paterson makes the following statement: "This defendant further shows that its officers realize the nuisance created and damage done by its present method of sewage disposal not only to the complainants but to many of its own citizens and that they are anxious to remedy this condition as promptly as possible." From this it is clear that the city and the complainants are in accord both as to the character of the nuisance, which is constantly increasing, and as to the desirability of its speedy abatement. The city, in its petition, admits that the trunk sewer plan is the cheapest and most feasible. Such being the situation, it is no longer a question whether it is or is not advisable to abate the nuisance or even, as it would seem, a question of the best method of abatement. It is rather one of the practical execution of the work. It is manifest that in the exercise of the due diligence demanded by the decree, the city must not only give its assent to a plan in the abstract but must take some action;—action that will be effective. It must either abandon the modification, if not accepted, and come to some understanding with the commission, or, if it deems that inexpedient, it must proceed with an alternative method of sewage disposal. It cannot, after having proposed an unacceptable proviso, stand still and do nothing further. That is not due diligence.

As the city appears to have misapprehended the scope of the decree, I think the case should be set

down for further hearing. The city officials will have an opportunity of showing what it and they have done towards a solution of the problem, and what it is proposed to do. The court will then be in a position to say whether any or what further time shall be granted.

I think further testimony can best be taken in open court where counsel will have an opportunity for cross examination and where either of the parties will be at liberty to subpoena the members of the Sewage Commission. It will be remembered that according to the terms of the decree not only the corporation but its officers, agents and employees are restrained from continuing to pollute the water. It is to the case thus situated that the evidence will be directed.

(Filed January 16, 1912.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS *et al.*,
Complainants,
and
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendant.

On Bill, etc.

ORDER.

This matter coming on to be heard in the presence of Richard V. Lindabury, of counsel with the complainant, and Edward F. Merrey, of counsel with the defendant, and the final decree in this cause having provided that an injunction issue, according to the prayer of the bill of complaint, restraining The Mayor and Aldermen of the City of Paterson, its officers and agents and employes from polluting and continuing to pollute the waters of the Passaic river above the respective lands and property of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or other matter or thing which may contaminate or pollute the waters of the Passaic river into the said river above the respective lands and property of the said complainants, and from interfering in any way with the enjoyment by the complainants of their rights as riparian owners in the manner in the bill of complaint set forth, from and after the

twenty-sixth day of March, in the year one thousand, nine hundred and eleven, and said decree having further provided that if the defendant, notwithstanding the exercise of due diligence was unable to cease polluting the said river by the time aforesaid, leave was reserved to apply to this court, upon such terms as this court might deem equitable, to postpone the time of issuing said injunction to a day to be fixed by the court;

And the said defendant having applied to the court to postpone the issuing of the said injunction until the twenty-sixth day of March which will be in the year nineteen hundred and sixteen, and alleging in said petition that it had not been able notwithstanding the exercise of due diligence to cease polluting the said river at the time mentioned in said decree;

And the complainants Henry W. Doremus, Charlotte Jane Van Riper, Mary A. Van Saun, Peter H. Doremus, Garrett M. Doremus, Frederick H. Gelderman, Richard Outwater, H. Merselis and Edwin Merselis, Scotto C. Nash, Edo Van Riper and Catherine Paulson having filed an answer to said petition, insisting that the defendant had not exercised due diligence in providing for the disposal of the sewage of the City of Paterson without emptying the same into the Passaic River; and testimony having been taken before the court and it appearing that since the filing of said answer the defendant has contracted with the Passaic Valley Sewage Commissioners for the building of a trunk sewer which when completed will enable said defendant to dispose of the sewage of said city without emptying the same into the said river, and that the period of four and a half years or thereabouts will be required for the completion of said trunk sewer; and the said com-

plainants above mentioned having upon the said proof being taken consented in open court to the granting of the said petition of defendant upon terms that the defendant pay to them severally such compensation for the diminution in the rental or other value of their said lands which will result to them respectively by reason of the continued pollution of said river during the period of such extension as shall be fair and equitable, the same to be fixed and determined by this court in this proceeding;

It is, thereupon, on this sixteenth day of January, nineteen hundred and twelve, ordered, that the hearing on the said petition of the defendant be continued to the thirty-first day of January, nineteen hundred and twelve, at Chancery Chambers, in the City of Newark, at ten o'clock in the forenoon, at which time proofs may be offered as to what would be fair and equitable compensation to the foresaid complainants severally for the diminution in the rental or other value of their said lands which will result to them by reason of the continued pollution of the said river by the discharge of the sewage of the City of Paterson into the same during the period mentioned in said petition.

Respectfully advised,

(*Signed*) FREDERIC W. STEVENS, *V. C.*

(Filed April 27, 1912.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS *et al.*,
Complainants,
and
THE MAYOR AND ALERMEN OF THE CITY OF PATERSON,
Defendant.

On Bill, etc.

ORDER.

Upon reading and filing the petition of Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased, Catherine Cadmus, widow, and Emma Cadmus Doremus, John D. Cadmus, Cornelius E. Cadmus, Bertha Cadmus, Laura C. Van Dien, Margaret C. Andrews, heirs at law of Edo V. Cadmus, deceased; H. Charles Hillman, Catherine Van Riper and Selah Van Riper, devisees of George G. Van Riper, deceased; Emma Doremus, widow of Garret M. Doremus, deceased, individually and as administratrix of the estate of Garret M. Doremus, deceased, Peter H. Doremus, Catherine S. Doremus, Harvey Doremus, sole heirs at law of Garret M. Doremus, by Emma Doremus, their next friend; Sarah E. Outwater, widow of Albert A. Outwater, deceased, Peter W. Outwater, Eliza Bogert, wife of Ernest C. Bogert, Garret Outwater, Richard Outwater, trustee for Albert Outwater, and the said Albert Outwater, Edo Out-

water, Sadie Outwater and Clifford Outwater, by Mary Vreeland, their mother and next friend, all devisees under the last will of Albert A. Outwter, deceased, and John Terhune; and on due cause shown, on motion of Messrs. Lindabury, Depue & Faulks, solicitors for and of counsel with the complainants and petitioners;

It is, on this twenty-sixth day of April, 1912, ordered by the Chancellor that Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased, Catherine Cadmus, widow, and Emma Cadmus Doremus, John D. Cadmus, Cornelius E. Cadmus, Bertha Cadmus, Laura C. Van Dien, Margaret C. Andrews, heirs at law of Edo V. Cadmus, deceased; H. Charles Hillman, Peter Alyea, Catherine Van Riper and Selah Van Riper, devisees of George G. Van Riper, deceased; Emma Doremus, widow of Garret M. Doremus, deceased, individually and as administratrix of the estate of Garret M. Doremus, deceased; Peter H. Doremus, Catherine S. Doremus, Harvey Doremus, sole heirs at law of Garret M. Doremus, by Emma Doremus, their next friend; Sarah E. Outwater, widow of Albert A. Outwater, deceased, Peter W. Outwater, Eliza Bogert, wife of Ernest C. Bogert, Garret Outwater, Richard Outwater, trustee for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, by Mary Vreeland, their mother and next friend, all devisees under the last will of Albert A. Outwater, and John Terhune, be and the same hereby are made parties in the above entitled cause as complainants therein, and that the said cause shall proceed accordingly to the end that compensation may be awarded to the said petitioners as their several respective interests may ap-

pear for the diminution in rental or other value of the said lands to which they and each of them may severally be entitled for and on account of the continuation of the pollution of the Passaic River by the defendant from the twenty-sixth day of March, nineteen hundred and eleven, up to the twenty-sixth day of March, nineteen hundred and sixteen.

And it is further ordered that a copy of this order, and a copy of the said petition and affidavit on which it is made, certified by the solicitors of the complainants in the said cause, be served upon the defendant or its solicitor within five days after the making of this order.

Respectfully advised,

FREDERIC W. STEVENS, *V. C.*

MAHLON PITNEY, *C.*

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS et al.,
Complainants,
and
MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendant.

Before his Honor Vice-Chancellor Stevens.

Mr. Richard V. Lindabury appearing for the complainants.

Mr. Edward F. Merrey appearing for the defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Thursday, November second, nineteen hundred and eleven, at Chancery Chambers, Newark, New Jersey.

JOHN S. GIBSON, sworn.

Direct Examination by Mr. Merrey:

Q. Mr. Gibson, what is your position with the Passaic Valley Sewage Commission?

A. Clerk and treasurer.

Q. Have you a copy of the contract entered into by the City of Paterson and other communities with the Passaic Valley Sewage Commission for the construction by that Commisssion of a trunk sewer?

A. I have.
Q. Let us have it, please?
A. I have the original.

Mr. Merrey.—I offer that contract in evidence.

Q. (*By Mr. Lindabury*) Are there any copies in existence?
A. I can get an exact copy of it, but I don't happen to have it here.

Mr. Lindabury.—I consent that the original produced by the witness be offered in evidence and a copy substituted, a copy to be certified by him as a true copy.

WILLIAM G. TAYLOR, sworn.

Direct Examination by Mr. Merrey:

Q. What is your position with the Passaic Valley Sewage Commission?
A. Deputy chief engineer.
Q. Have you charge of the plans and construction of the sewer, under Mr. Harrison?
A. I have.
Q. Can you tell us how long it will take the Commission to construct that sewer?
A. Under normal conditions I believe that the sewer could be constructed in four years from now, that is from the commencement of the work.
Q. What are the probabilities?
A. The probabilities are that it may be completed in that time; of course unforeseen legal difficulties may add.
Q. None of those in sight now?
A. No, sir.

Cross Examination by Mr. Lindabury:

Q. Do you know anything that is likely to take more time, or occasion the postponement of completion?

A. No, sir, I think there should be nothing that would come, I foresee nothing.

Q. So far as you, as an engineer, are able to estimate that is the length of time to be needed?

A. In about four years the sewer ought to be completed.

Q. That means four years from this date?

A. About four years from now, yes, that is, completion of the work.

Q. (*By the Court*) Has any actual beginning been made?

A. A vast amount of fundamental work has been accomplished; and the surveys and preliminary plans and general plans for the outlet and the pumping station and the works have been completed and have been submitted to the United States Government for their approval, which plans have received said approval.

Re-direct Examination:

Q. You have not let any contracts yet?

A. No, sir.

Q. I presume the first work you will do now will be to secure rights of way?

A. Among the first pieces of work to be taken up will be that.

Q. Have you consulted with Mr. Harrison?

A. I have, yes, sir.

Q. About this matter?

A. Yes.

Q. Do you know whether or not the opinion you have expressed is concurred in by him?

A. It is.

Q. He is chief engineer, is he?

A. Yes, sir.

JOHN S. GIBSON, recalled.

Direct Examination by Mr. Merrey:

Q. Has the city of Paterson made a payment on this work?

A. The city of Paterson paid its first installment on this work yesterday.

Q. Can you give us the amount of that?

A. A little over one hundred thousand, between one hundred and one hundred and one thousand.

Q. (*By Mr. Lindabury*) That is pursuant to a term of the contract?

A. Pursuant to the terms of the contract; the first installment was due yesterday and the city of Paterson paid its installment yesterday.

WILLIAM S. ACKERMAN, sworn.

Direct Examination by Mr. Merrey:

Q. Are you a member of the Passaic Valley Sewage Commission?

A. I am.

Q. How long have you been such?

A. Since 1907.

Q. Are you familiar with this trunk sewer work?

A. Every foot of it.

Q. You are an engineer by profession?

A. I am.

Q. Can you tell us about how long it will take to complete that work?

A. In my opinion as an engineer it will take four to four and a half years.

Q. Any difficulties that you can foresee now to prevent completion in that time?

A. I am sure I cannot answer that; I don't foresee anything, but so many things cropped up since we started, by legal delays and adverse legislation and so on, but we seem to be all right now,

contracts entirely signed and payments made on account.

Q. Are you in position now to let contracts?

A. We will be in a very short time, I suppose the first contract undoubtedly will be let somewhere around January first.

Mr. Lindabury.—If your Honor please, we think, waiving all questions as to past delay which may be taken up when the Court comes to consider the question of damages, that it is right and fair that there should be an extension now of time to cover such period as is reasonably required to complete this work, and I am inclined to let Paterson say whether it will be four years or four and a half, since if it should turn out to be four and a half and be made four they would have to make another application for another extension, so if they prefer to pay for four and a half instead of for four I think that I would not object.

Mr. Merrey.—Of course you see the time ran out in March.

Mr. Lindabury.—I mean four and a half years from now.

Mr. Merrey.—That would practically mean five years; we ask for five years from the first of March last; it may be it will be done a little sooner than that, but we ask for five years from the twenty-sixth of March last.

Adjourned until January 31, 1912.

IN CHANCERY OF NEW JERSEY.

Between

HENRY W. DOREMUS et al.,

Complainants,

and

MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

Defendant.

Before his Honor Vice-Chancellor Stevens.

Mr. Chauncey G. Parker, and Mr. J. Edward Ashmead (of Lindabury, Depue & Faulks) for the complainants.

Mr. Edward F. Merrey, for the Defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Wednesday, January 31, 1912, at Chancery Chambers, Newark, New Jersey.

Mr. Parker.—We expect to go on as to most of the properties, but before the evidence is taken we wish to make a statement with reference to, I think, three or four of the owners of properties who have died since the matter was tried and determined by your Honor. Mr. Henry W. Doremus is dead, he died last December, leaving all his property, both real and personal, to his wife, and his wife's name is Charity Doremus, and we propose to ask your Honor to make an order permitting her to be a party. I understand there will be no objection to this by Mr. Merrey for the City of Paterson, but that Mr. Merrey desires that the papers should be put in

formal shape and submitted to him so that he can investigate as to whether or not the facts that I now state to your Honor are true. What I say with reference to Mr. Doremus and his death would also apply to Edo V. Cadmus who died intestate in the spring of nineteen hundred and ten and left a widow, Catherine Cadmus, and six children: John, Emma, now the wife of Zela Doremus, Cornelia, Bertha, Laura and Margaret. Now Peter H. Doremus was represented by Garret M. Doremus, the surviving executor, and Garret M. Doremus is dead, but some one will be substituted as administrator, under that will, and we expect to put him in as a party. Then Garret M. Doremus personally, is dead, and has an interest and we expect to substitute the persons that come in under his will, or, I believe there was no will; he left a widow, Emma, and three children, Peter, Catherine and Harvey. Albert Outwater is dead; he left a last will, and by that will all his property was given to his wife Sarah E. Outwater during her life, with power to sell it, and at her death the property is to go to her five children, Albert, John, Peter, Lydia and Garret C. John predeceased his mother and left three minor children, Edo, Sadie and Clifford.

Garret Terhune has sold his property to John Terhune, who will apply and become a party.

George G. Van Riper is dead; he left a widow and one son; the widow's name is Catherine and the son's name is Zela Van Riper.

The Phillips property I understand has been sold and has been divided up into such small shares that we do not propose to attempt to bring them in now.

Peter Alyea has sold his plot in bulk to Herman C. Hillman, this taking place on a foreclosure of mortgage on the property, and we propose to bring in Mr. Hillman. I believe that completes the statement of how the titles to the properties have changed since your Honor decided the case. We suppose we have the right to bring these in under the Chancery rule admitting all new parties, and we understand that Mr. Merrey does not desire to raise any questions of technicality on the matter of form, but he does desire to investigate these facts and have them stated to him in the formal way.

Mr. Merrey.—I do not desire, where they are actually entitled to receive any compensation under this decree, to put the other side to any annoyance by applying technicalities, I simply desire that they state exactly so that I can investigate the accuracy of the facts. Now there are two classes which they mention here; there are those in which the title has devolved upon others by operation of law, and there are two cases, Terhune and Alyea, where the title has passed by act of the party, and I think we should know just where we are at before we start in with the taking of testimony.

The Court.—They will have to bring in these parties in accordance with the statute. If you object to their being brought in they will have to give you notice of an application to substitute them on the record.

Mr. Merrey.—I do, in those cases.

The Court.—Then they will have to give you an application to substitute the grantees for the grantors, and then you can make your objection.

Now I take it that counsel will agree that the evidence heretofore given shall go in;

I do not suppose that counsel on either side are going to put in evidence again that which is already in the case in the printed volumes.

Mr. Merrey.—Oh no. If your Honor please, I desire now to put on record an amendment asking for three years from the date in March which was fixed, reducing the time estimated from five years to four years, because one year has almost elapsed now.

The Court.—Then you must put on file an amendment to your petition to that effect, and we will proceed now on the theory that the damages will be assessed for four years.

HAROLD J. HARDER, sworn.

Direct Examination by Mr. Parker:

Q. Mr. Harder, you are the city engineer of the city of Paterson, are you not?

A. Yes.

Q. How long have you been such engineer?

A. Nearly twelve years.

Q. I suppose as engineer the matter of the construction of sewers for the city has been more or less under your personal supervision and observation?

A. Yes, sir.

Q. Were you served with a subpoena to produce various records here to-day?

A. Yes, sir.

Q. Have you got that copy with you?

A. I have only one record, an estimate book, which I did not bring because it is in use.

Q. That referred to a number of sewers of which you were asked to bring records; have you got that statement?

A. I have the subpoena, yes.

Q. Will you produce that, please. Referring to that list there, I understand you have checked off, and won't you read the sewers you have checked off, and which are actually constructed and in use, so far as they empty into the Passaic at the present time?

A. Do you mean the sewers on this that were built since June 28, 1908?

Q. Yes?

A. Yes, sir. Albion and Crosby avenue.

Q. Give the length of it?

A. Seven hundred and fifty six feet.

Q. And the size?

A. Twelve inch pipe.

Q. You recognize the map that has been put upon the frame?

A. Yes, sir.

Q. Was that used in the other trial of this case?

A. Yes, sir.

Q. Now could you point out the Albion and Crosby avenue sewer on that map?

A. (Witness points to Totowa section on the northwest side.)

Q. Just describe it?

A. The sewer was built in Albion and Crosby avenue and empties into a sewer at Albion avenue, at Redwoods.

Q. Then goes into the Passaic about where?

A. At the foot of Hamilton avenue.

Q. Now take the next sewer?

A. East Twenty-ninth street, from Eleventh avenue to Twelfth avenue, fifty-one feet, twelve inch pipe.

Q. That is an extension of another sewer, is it?

A. Yes, sir, and empties into the Passaic river at the foot of East Thirty-third street. East Twelfth street from Fourth avenue to Fifth avenue, five hundred and twenty feet, twelve inch pipe, a sewer in the Riverside section, emptying into the Fifth avenue sewer. East Twenty-fourth street from Twenty-second avenue to Twenty-third

avenue located in what is known as the People's Park section and empties into a sewer in Twenty-second avenue.

Q. That is the southern part of the City?

A. Yes, sir. East Eighteenth street, from Sixth avenue to Franklin street, a sewer in the Riverside section, emptying into a sewer in East Eighteenth street.

Q. Where is that, just show us?

A. (Witness points to the northeast portion of the city.) East Twenty-third street from Twenty-second avenue to Twenty-third avenue, five hundred feet, in the People's Park section.

Q. That being the southern section of the city?

A. Yes, sir. East Thirty-second street, from Park avenue to Seventeenth avenue, three hundred and seventy-five feet, in the East side section. East Thirty-first street from Seventeenth avenue to Eighteenth avenue, three hundred and twenty-five feet, the same section of the city. Fourteenth avenue from East Twenty-fourth street to East Twenty-fifth street, in the East side section. Marshall street from Pacific street to Sussex street, four hundred and forty-eight feet, in the southwesterly section. Madison avenue from Eighth to Ninth avenues, four hundred and seventy-five feet, in the Riverside section.

Q. Northeast section?

A. North-east, yes, sir. Do you want to describe it that way?

Q. No, that is all right.

A. North Seventh street from Jefferson street to Haledon avenue, that is over in the northwesterly section. Oak street from Martin street to Lewis street, five hundred and seven feet, right here in the middle of the town. Pacific street from Bloomfield avenue to Newark avenue, in the southerly section. Paxton street from Montclair avenue to Gould avenue, in the southerly section.

Q. Give the number of feet?

A. Four hundred and eighty-five feet in Paxton street, and four hundred and fifty feet in Sussex street, which is in the same section, southerly section.

Q. Are those all twelve inch pipe?

A. No, they are not stated here, some of them are twelve and some are eight. I am having a list prepared showing all that. Twenty-second avenue from lots 103 and 104 to East Twenty-third street, that is in the southerly section, three hundred and forty feet of twelve inch pipe. Twenty first avenue from East Twentieth street to East Twenty-first street, one hundred and eighty-five feet, that sewer is in the same section. Water street from Hudson street to Stout street, one hundred and seven feet, a short end there in the middle of the town.

Q. Now there are certain other sewers that are mentioned in that subpoena that have been built in what years, for instance this East Nineteenth street sewer from Fifth to Fourth avenues, five hundred and ten feet, what year was that built?

A. Nineteen hundred and seven.

Q. And East Twenty-third street sewer, from Seventeenth to Eighteenth avenues, is that the same year?

A. Yes, sir.

Q. East Thirtieth street from present sewer to Eleventh avenue, is nineteen hundred and six?

A. Yes, sir.

Q. Then Seventeenth avenue sewer from East Twenty-second street to East Twenty-fifth street, five hundred and forty feet, nineteen hundred and seven?

A. Yes, sir.

Q. Twenty-third avenue from Madison avenue to East Twenty-fourth street is nineteen hundred and seven also?

A. Yes.

Q. Do you happen to know whether those sew-

ers were mentioned in the former schedule of sewers offered in this case?

A. I don't remember.

Q. Now there are certain sewers that are proposed in the future that have gotten, in some official way, before the city; I think you have checked over those too, haven't you; are they mentioned in this subpoena? What are these here?

A. The second batch of sewers mentioned have been built during the past year, with the exception of Trenton avenue between Michigan avenue and Crooks avenue.

Q. Are they in different parts of the city or are they all in one section?

A. Most of them are in the Lakeview section.

Q. Does the subpoena give a list of those as correct, where checked?

A. Yes, sir.

Q. Now how about the West Paterson sewers that are mentioned there?

A. None of those are completed, three sections are under construction.

Q. What sections are under construction?

A. Sections A, B, C and E, four sections are under construction.

Q. As mentioned in this subpoena?

A. Yes, sir.

Q. Now, what is the condition of section D; has not been taken in at all?

A. Section D has not been started.

Q. How long a time will it be until the sections A, B, C and E are completed?

A. It will probably be late this year.

Q. And section D, will that be completed in the next year or so?

A. Section D will be completed this year.

Q. What part of the city are these; you say the Riverside section, you mean on the other side of the Passaic from the main part of the town?

A. The Totowa section is the northwesterly part of town, and the Stony Road section is across the river from it, up the side of Garret Mountain.

Q. It is the intention that all of these sewers should empty into the Passaic, either directly or into other sewers that lead into the Passaic?

A. Yes, an outlet connects with the present Mill street sewer.

Q. Are there other sewers which are not mentioned upon this paper that have been constructed since the last trial?

A. Yes, sir.

Q. Will you furnish that to us later?

A. Yes, sir.

Mr. Parker.—I suppose there is no objection to the use of this as a memorandum. This seems to be a copy of the other except there are no check marks on it, and I would like to have it marked.

Marked Exhibit C-1.

Q. Now, cannot you tell us in a general way as to the character of the districts through which the sewers run; of course by that I desire to direct your attention towards the question of the degree of population that will use them, whether they are the densest kind or less dense or how?

A. Are you speaking of these sewers on this list?

Q. Yes, the sewers on the list, just so as to get a general idea of where the population is densest in the city, with reference to those particular sewers?

A. Why, those sewers were not built in a densely populated section.

Q. Well?

A. Sort of keeping growth with the natural growth of the town.

Q. Where is the densest population of the city, what part of it?

A. Around where those figures 4 and 5 and 9 are on that map.

Q. What is that called, that part of the city?

A. It has no distinguishing name, just the center of the town.

Q. Well, could you indicate the streets around which the densest population of the town is, what would bound them?

A. On the north the river and the Haledon Borough line.

Q. What line?

A. The Haledon Borough line, it would be right in here (indicating on map); the name has been changed since that was made. On the east, I should say Madison avenue.

Q. Is that shown here?

A. That is this street here (indicating), and on the south by Clay Street and around Barclay street; and on the west by Marshall street and Slater street up as far as Spruce street.

Q. And on the other side of the river?

A. And on the other side of the river up to the Haledon line.

Q. (*By the Court*) Where is the Delaware, Lackawanna depot?

A. Right at this point (indicating).

Q. (*By the Court*) Just below the figure 8?

A. Yes.

Q. What portions of the city are those where the population is growing, where the city is developing?

A. Yes, they have been built along,—the sewers have been built in streets where the town is growing.

Q. Which is the direction in which the town grows chiefly?

A. Most of the growth for the last two years has been between Park avenue, Madison avenue, Market street and East Twenty-third street, and what is known as the Rogers tract.

Q. In what portion of the city is that?

A. It is right in here (indicating on map), right in that section near the Susquehanna station, and then of course there is a little growth in different parts.

Q. (*By the Court*) What is the present population of the city now?

A. In nineteen hundred and ten it was 125,600.

Q. (*By the Court*) It increases about how many thousand each year?

A. It increased about fourteen thousand in ten years.

Mr. Parker.—Reading from the Legislative Manual I find that the population of the City of Paterson in the year nineteen hundred, according to United States Census was 105,171, and that the population of the City of Paterson in the year nineteen hundred and ten, by the same Census, was 125,600, which shows an increase during the ten years of nineteen and four-tenths per cent. By the census in nineteen hundred and ten, as shown by the Legislative Manual the population of the different wards of the City of Paterson are as follows:

First Ward	13,659
Second Ward	17,378
Third Ward	13,848
Fourth Ward	16,282
Fifth Ward	7,679
Sixth Ward	4,726
Seventh Ward	7,715
Eighth Ward	9,028
Ninth Ward	13,966
Tenth Ward	10,450
Eleventh Ward	10,869

Cross Examination by Mr. Merrey.

Q. Mr. Harder, these sewers you have referred to in your testimony are mostly short sewers of say a city block in length, with the exception of the last two mentioned?

A. Yes, they were all lateral sewers.

Q. That is, they were to take care of the general growth of the city?

A. Yes.

Q. And they are distributed all around at different points going towards the outskirts of the city?

A. Yes.

Q. And is there any means of telling how many people use these additional sewers?

A. I don't know that now; we are trying to get that information.

Q. You spoke about the Lake View sewer, that is one of the large lateral sewers?

A. Yes.

Q. Do you know the character of the district that that goes through?

A. It is very thinly settled.

Q. Can you tell us how many people have houses along the line of that sewer?

A. Why, there are only fourteen houses connected with the sewer now, and it is nine thousand feet in length.

Q. And the West Paterson sewer and Totowa sewer that you spoke about is a long, fairly long sewer that has been built or is now being built?

A. It is now being built.

Q. What is the character of the section through which that sewer goes ?

A. Why, the Totowa section is about the same as the Lake View, very sparsely settled; the West Paterson section is a little more thickly built up.

Q. Has the city been building these small lateral sewers to any greater extent than has been usual in the past, for the last fifteen years or so?

A. No, about the same number each year.

Q. And these sewers represent the amount of extension which is necessary to take care of the growth of the city?

A. Yes.

Q. Is it probable that the people in West Paterson section will connect with this sewer, rapidly I mean?

A. Well, not very, because no laterals have been constructed up there.

Q. What is the nature of the ground?

A. Why a good deal of it is blue rock, solid blue rock.

Q. That makes the laterals very expensive to build, doesn't it?

A. Yes.

Q. What is the character of the property as to its value, is it valuable property?

A. No, most of the property is not valuable, most of the houses are of a—well, you might say cheap class.

Q. Is it likely that they will connect without being absolutely compelled to do so?

A. Well, I don't know that, I suppose some of them will.

Q. That section is scattered along the side of the Garret Mountain, isn't it?

A. Yes.

Q. Do you know whether a number of industries in the city of Paterson have closed down since the taking of the census?

A. Only from hearsay.

Q. What is the character of the neighborhood through which the Lake View sewer passes as to dryness?

A. Why, the land is wet down there.

Q. And will the effect of this sewer be to bring into the river a great quantity of fresh water that would not otherwise get there?

A. Yes, an under drain was provided under

that sewer; the sewer itself is a sanitary one, but this under drain carries off the ground water.

Q. Is there any unusual quantity of that water there?

A. Yes, the whole country was saturated.

Q. It was a swamp practically?

A. There used to be a lake there some years ago.

Q. So that this sewer will drain the bed of that lake and brook there?

A. Yes, it has done it now.

Q. Would that water get to the river in any great quantity without this sewer?

A. No, I don't think it would get there at all.

Q. And how was the lake drained to a certain extent to the river?

A. The Lake View lake was drained south into what was known as the Lake View brook.

Q. That would empty below the Dundee dam?

A. Yes.

Q. So that whatever water is brought in by this sewer is brought in at a considerable distance above its natural point?

A. Yes, the water is taken north now along the line of this sewer, where it used to go south.

Q. Have you any idea how much water that diverts in that way and brings in above these properties?

Mr. Parker.—Has he measured it?

A. No, it has never been measured, but there is an eight inch under drain running almost full.

Q. All the time?

A. All the time.

Q. (*By the Court*) That would represent a drainage of how many gallons?

A. Well, an eight inch pipe with a four foot head, if you can make a comparison that way, will carry about eight hundred thousand gallons

a day; I think probably there is that much passing through there; that is only a guess though.

Q. And that under drain is not polluted in any wise by the sewage?

A. No, no sewage gets into the under drain, just ground water.

Q. And that sewer empties into the one at Market street, just above the river?

A. Well, it connects at Market street and Vreeland avenue with the Eastside sewer.

Q. Discharges into the great Eastside sewer which empties in at Market street?

A. Yes.

Q. (*By the Court*) Where is that sewer?

A. The outlet is right at that point (indicating), and runs along here.

Q. (*By the Court*) Just above Cedar Lawn Cemetery?

A. Yes.

Re-direct Examination by Mr. Parker.

Q. Where does the eight inch pipe come into the sewer?

A. At Market street.

Q. Just point out the sewer?

A. It is this section below Market street and Twenty-second avenue.

Q. South of it?

A. Just south of it.

Mr. Parker.—Witness indicates the district just west and northwest of Cedar Lawn Cemetery.

Q. Where was the lake situated that you are talking about?

A. It was situated down there in this southerly end of the city from Wabash avenue and Crooks avenue up to about Florida avenue and Crooks avenue.

Q. (*By the Court*) How much acreage?

A. It must have been about a half a mile long and four or five hundred feet wide.

Q. How long is it since the lake ceased to exist?

A. I think that was drained off some time in the late eighties or the early nineties, if I remember correctly.

Q. Since then there has been a swamp there?

A. Most of it.

Q. And this eight inch pipe was put down so as to drain that swamp?

A. Yes, and to keep the storm water from getting into the sanitary sewer.

Q. You do not mean to say it runs full in dry weather?

A. It has been running nearly full ever since it has been completed.

BENJAMIN GRUNAUER, sworn.

Direct Examination by Mr. Parker.

Q. You live in the City of Paterson?

A. Yes, sir.

Q. How long have you lived there?

A. About thirty-two or thirty-three years.

Q. You have done some business as a real estate man, haven't you?

A. What is that?

Q. (Question read).

A. Yes, sir.

Q. Have you kept in touch with the growth of the city?

A. Yes, sir.

Q. During the last four or five years?

A. Yes, sir.

Q. Will you point out on that map the portions of the city where the city is most densely populated?

The Court.—I do not think it is worth while to do that; it has been all gone over before; I understand the situation, and you will find it all described in the notes. The engineer has given us an idea of where the density of the population is.

Q. You heard what the engineer said about the section of the city where the population was dense; is that about correct?

A. Yes, sir.

Q. Now what have you to say as to the density of population outside of that area that he spoke of?

A. I don't know, I can't understand what you mean.

Q. Did you hear the question?

A. Yes.

Q. Tell us?

A. I don't understand the question.

Q. Why don't you understand it?

The Court.—You heard what the engineer said with respect to the density of the population, he has pointed out where the population is most dense; now the question is how the population is in other parts that are less dense.

A. What do you mean by "dense"?

Q. (*By the Court*) Plenty of people, I suppose?

A. Then I can talk on that. Want me to show it on the map?

Q. (*By the Court*) Yes?

A. I hadn't exactly been listening entirely to the engineer.

Q. (*By the Court*) The engineer has shown where the population is dense?

A. Yes.

Q. (*By the Court*) Now are there any other

sections in which the population is dense, that he has not pointed out?

A. Well, take Little Falls Turnpike there, that has been getting pretty well built up the last year, where that new sewer is going through.

Q. What is the name of the new sewer?

A. I think they call it Spruce street sewer, it starts from Ellison street, corner of Ellison and Mill and runs through Ellison, Spruce and down Little Falls Turnpike Road; that is a section that is getting pretty well built up, it has been, in the last year about twenty-five or twenty-eight new houses put up there.

Q. In what part?

A. In that part (indicating).

Q. Over what extent of the area?

A. Well, within the section of Little Falls Turnpike Road.

Q. How many blocks?

A. Oh, for about, within the section of about six or seven blocks.

Q. Well now, what other sections of the city show building and improvements?

A. Well, take for instance what we call the New Eastside.

Q. Where is that?

A. Well, that is taking in Madison avenue, East Eighteenth street and Ninth and Tenth and Eighth avenues; I have founded it the New Eastside, when I laid it all out; I was the part owner of one large tract there and several others, and I was the seller and layer out of the land there and we called it New Eastside; that has growed in four years, I should say within four years; we built up there, or they built up there about twelve or fifteen mills and about, well, we will say about four or five hundred houses, within four years or five years at the most; that has growed wonderfully; that has been one of the best growing sections of the city of Paterson, what we call the New Eastside; and Rogers, the other tract, Rog-

ers Land Company, they opened a large tract nearer towards the city, takes up Market street and Twenty-second street and all those streets around where this other sewer is in that section, near to the Vreeland avenue sewer.

Q. The engineer spoke of that, Mr. Harder spoke of that; now this New Eastside section is not the same, is it, as the Rogers section?

A. No, it has not as high class buildings getting put up at the New Eastside, but it has growed, I think, much more than the Rogers section has.

Q. What other parts of the city show growth, in the way of building houses, people going to live there?

A. Well, take it around Vreeland avenue, there is a new section getting opened up there by a large land developing company, and they are building there now; there is one contractor that is putting up about twenty houses, valuable houses, high class houses, and I guess that taking in Vreeland avenue and taking in the hill, Park avenue, around that new part, what we call Eastside Park, within three or four blocks of that section there, I guess there is in the neighborhood of fifty or sixty houses under erection now, some getting finished, some just about finished.

Q. Do you know the section of the city down near the Cedar Lawn Cemetery?

A. Yes, sir.

Q. Do you recollect any lake being there ever?

A. Well, that wasn't in my time; I heard of a lake being there.

Q. How many years have you been in Paterson?

A. I lived in Paterson about thirty-two or thirty-three years.

Q. You never knew of the lake there?

A. Well, I was pretty young then; I heard about the lake there, I never seen it; it has been filled up here about, oh, I guess about twenty years ago it has been filled up; we couldn't see no lake there, only some times before they drained it,

you know, why, if it rained very hard the water would lay there, you could see it was a lake but the original lake was filled up, I think, if I am not mistaken.

Q. When were you last in that section of the town?

A. Why, what we are speaking of now is not right by Cedar Lawn, it is in that section (indicating).

Q. Yes?

A. I developed a tract of land there about six years ago, within a half a mile, within a quarter of a mile of the cemetery I developed some land there.

Q. Do you know Trenton avenue and Vernon avenue?

A. Yes; that is all in that section.

Q. Lakeview avenue?

A. Yes.

Q. Are there any houses on Vernon aveune or Trenton avenue?

A. Getting built now or has been?

Q. Actually up, that is, take south of Maryland avenue?

A. Well, on Trenton avenue there has been property built about within the last year about a dozen houses, between ten and twelve houses; it is a very poor growing section.

Q. How near this filled up part?

A. What?

Q. How near were those houses to the place that has been filled up, where the water used to lie?

A. These are on top of the hill, and where the water used to lie that is more down on the flats.

Q. Down on the flats, are there any houses down there yet?

A. Well, scattered; you see there never was any sewer through that section, you know, and so developers didn't care much about developments.

Q. Just testify to the fact, won't you; I don't care why, but are there any houses down on that

section of the town where you say it has been filled up and where the water used to lie after rains?

A. Very few, yes, sir.

No cross Examination.

HARRISON VAN DUYNE, sworn.

Direct Examination by Mr. Parker:

Q. How long have you resided in Newark, Mr. Van Duyne?

A. Fifty years.

Q. How long have you been in the business of engineer and also had to do with the buying and selling and leasing of real estate?

A. Forty-five years.

Q. I understand you are a civil engineer?

A. I am.

Q. Just state what experience you have had?

The Court.—I do not think that is worth while; everybody knows Mr. Van Duyne.

Mr. Parker.—I was not going to ask him as to his experience as a civil engineer, but as to his experience with reference to Essex County and the adjoining territory.

Mr. Merrey.—If the Court please, I shall object to that, I don't see how we are concerned with the conditions in Essex County.

The Court.—Well, Mr. Van Duyne's experience probably has extended beyond Essex County. I will take the evidence.

Q. What experience have you had with reference to the buying and selling and leasing of real estate generally?

A. Well, I have had a great deal of experience in the buying and selling and development of suburban property.

Q. Go on and tell us how many years it extended over, and to what extent and where?

A. Well, it has extended through my whole business life, of course mainly around Newark, in Essex County; I have also developed property on the other side of the river up through Harrison and Kearney and up in the Nutley section and have a general knowledge of suburban property and its value.

Q. You also had experience in the value of farm lands?

A. I have.

Q. By the word "value" I mean both the cash value or purchase and sale and also annual value, in the way of rental value?

A. I have.

Q. Has that experience also been had by you with reference to what you call suburban property?

A. It has.

Q. You might just tell us what, if you use that phrase in any technical sense—if it is in the common sense we know what that is—you mean by suburban property?

A. I mean property adjoining cities that prior to that perhaps has continued as farm land and the time has come for developing it for either suburban property in larger tracts or laying out in lots twenty-five by a hundred, or about that, and selling in that way, improving the streets, taking the farm tract and improving the streets and selling the lots.

Q. Now, have you been acquainted with the Passaic river from the Dundee dam up, for any length of time?

A. I have been acquainted with the Passaic river almost all the way through for years.

Q. Have you been acquainted with it since the year nineteen hundred and eight which, I understand, is the date when this case was last tried?

A. I have.

Q. Had you had any official position that has made you take particular interest in it, with reference to sewage and all that sort of thing?

A. Well, I took quite an active interest when the river commenced to get almost unbearable, in an effort through our Board of Trade here in Newark to advance the clearing of the river again.

Q. When was that?

A. Well, during the last ten years.

Q. Well, have you kept in touch with the condition of the river with reference to pollution, and particularly to that part of the river that extends from the Dundee dam north up to Paterson?

A. I have known the condition, but not just as familiarly as the lower section.

Q. You were employed to make an examination of different properties belonging to the complainants in this suit on each side of the Passaic river above the Dundee lake; did you make such examination?

A. I did.

Q. When?

A. During the last three months.

Q. Did you take anybody in company with you?

A. I did.

Q. Who?

A. Mr. Allen of Passaic and Mr. Mercer of Bergen.

Q. Just give Mr. Allen's name and occupation?

A. Mr. Allen is a real estate man in Passaic; I don't remember his first name now.

Q. Frank R. Allen?

A. Yes; and ex-sheriff Mercer of Bergen County.

Q. He is also in the real estate business?

A. I believe him to be, yes, sir.

Q. Where was his office located?

A. I think he is in Hackensack.

Q. Did you make that examination of these properties for any purpose?

A. I did.

Q. What was your purpose?

A. To give testimony in this case as to the condition and the effect of the condition of the river on the value, both rental and real, of this property.

Q. Now, you handed to me a schedule of some twelve properties that you examined, beginning with the Nash property; I think you have a copy of the statement I have, haven't you?

A. I have, yes, sir.

Q. You made that up yourself?

A. Well, we made it up together.

Q. Now, have you formed an opinion as to the cash value of these various properties, and also of the annual value of these various properties, based on the assumption that the river would be free from the sewage and pollution of the city of Paterson?

A. I have.

Q. And have you also formed any opinion as to what is the annual value and what is the real value of these properties, under the present situation?

A. I have.

Q. And that opinion has been formed by you as to each one of the properties that you considered?

A. It has.

Q. Now, won't you just state as to the property of Scotto C. Nash what generally that consists of?

A. It consists of a large one family double frame house—

Mr. Merrey.—If the Court please, unless there has been changes, we have the complete testimony as to the character of this property, unless there have been changes within the last two or three years.

The Court.—It is not necessary to go into a minute description of the properties; they can be characterized generally, and then if there has been any change in them since the last trial that can be stated.

Mr. Merrey.—Of course I expect to object to Mr. Van Duyne testifying about values on his experience in that neighborhood.

The Court.—I think Mr. Van Duyne is sufficiently experienced to testify. The evidence is competent, but it is subject to cross examination of course.

Mr. Merrey.—Well, I object.

A. (Continuing) —With about eight acres of land, with trees and lawn in front, finely located on Lexington avenue near the lower end of Dundee lake. I consider the value of the land $12,000. Building $6,000. Total $18,000. Should rent for at least $1200 per year. With present conditions of river almost impossible to find tenant wanting that kind of property, so it is practically a total loss, as far as rental is concerned, of $1200.

The Court.—It is occupied by Mr. Nash himself, is it not?

Mr. Parker.—Yes.

Q. It is occupied by Mr. Nash, is it not, Mr. Van Duyne?

A. Possibly a very little part of the year.

Q. Wasn't occupied when you looked at it?

A. Didn't seem so, no.

Mr. Parker.—Now that applies to the main property which I think is shown on this map. This is a copy of the map that was used in the other trial, if your Honor please, and we will have this marked.

Marked Exhibit C-2.

Q. Mr. Van Duyne, look at this map, please. The eight acres comprises the area between the river on the east and what is shown here as Devon-mills property on the north, running out to this

point which seems to be some seven hundred and fifty feet from the river, and bounded on the south by a triangular plot which is called Scotto C. Nash; is that what you mean by the eight acres?

A. Excepting there is a smaller house in the southeasterly corner that we have included a quarter of an acre with, separate from the eight acres.

Q. You are speaking now of the main part of this property with the outbuildings that are shown on the north end of it and the homestead as being capable of being rented as a suburban residence?

A. As a suburban residence, yes.

Q. What did you say was the value of that, rental value of that as a suburban residence?

A. Yes.

Q. How much?

A. Twelve hundred dollars per year.

Q. What else has he got there?

A. He has got a small cottage with about a quarter of an acre of land, at the south easterly corner of the eight acre plot and is worth about thirty-six hundred dollars.

Q. That is, the land and the house?

A. The land and the house, that should rent for about thirty dollars a month; I understand its nominal rent is ten dollars, making a loss of two hundred and forty dollars a year.

Q. Now what other properties has he there?

A. Then adjoining it, still further on the south and fronting on the other road—

Q. (*By the Court*). Weasel Road?

A. Well, that is the old name of it.

Q. This triangular portion marked Scotto C. Nash on this map?

A. That is the plot, yes.

Q. Well?

A. That has an old house, but arranged now for two families, rents for twenty-two dollars a month, and a moderate rent would be thirty dollars a month, if under favorable conditions.

Q. As to the river?

A. As to the river.

Q. What do you say is the loss on that house?

A. Loss on that house is ninety-six dollars.

Q. Per year?

A. Per year; making a total loss from those three houses, with the river in the condition that it is, of $1536. a year.

Q. Now that does not take into account at all the property, the eleven acre tract of Mr. Nash's on the south side of what is called here the Weasel road?

A. No, it doesn't. There are twelve acres on Lexington avenue and Randolph avenue, and in my judgment if the river was clear it would be worth two thousand dollars per acre, or twenty-four thousand dollars. With present condition of river I don't think it is worth over twelve hundred dollars per acre, or thirteen thousand four hundred dollars; loss in value nine thousand six hundred dollars; interest on same at six per cent, five hundred and seventy-six dollars; and that in my judgment is an actual loss per year on that property as long as the river is in its present condition.

Q. Why do you think that, why do you think there is an actual loss per annum, per year, on the unimproved property?

A. Because of the inability to develop the property and sell with the condition of the river as it is, as compared with a clear river and a clean lake there.

Q. Would there, in your opinion, be any difficulty about developing or selling if the river was clean?

A. I don't think so.

Q. What makes you think that the property would be then ripe for development?

A. On account of the conditions all around, the building of the towns and cities not far from Passaic and not far from,—near the development, down below the dam.

Q. What is the nature of the main, the first piece of land you spoke of where the homestead is, as to whether it is high or low, how is its location?

A. It lays very nicely above the lake.

Q. What about its size for the purpose of suburban residence?

A. Well, it is, just as one tract it is possibly large, but that would be my estimation of its value as suburban property.

Q. Are there trees on it, is it well laid out for country use?

A. It is a very handsome tract for a gentleman's residence, surely.

Q. How about the land that you last spoke of, below Weasel avenue?

A. Well, the property south of the land that I last spoke of has already been laid out and developed for a smaller class of residences, and that tract could also be developed in the same way.

Q. What do you mean by smaller class?

A. I mean instead of just strictly suburban expensive property of that kind; it has already, south of this other tract, been laid out in lots twenty-five by a hundred and comparatively small houses built upon it.

Q. Then you think that that character of development ought also to be carried on as to the eleven acre tract?

A. Well, I think it would be almost necessary.

Q. (*By the Court*) When you say small houses, houses costing how much, on an average?

A. Houses costing two thousand or twenty-five hundred dollars.

Q. What facilities have they with reference to trolley?

A. Why, the trolley is a quarter of a mile back on Lake View avenue, and there are other trolleys coming on down from Passaic.

Q. I do not think there has been any change there about trolleys for the last three or four years, except perhaps more cars run?

A. I think that is all.

Q. What is this marked "pond"; is that pond still open?

A. That pond is there still, in front.

Q. Well, is that clean and pure, so far as you could see?

A. As far as I could see that is kept pretty clean.

Q. Now the next property you examined was that of Merselis which is on the same side of the river, as I understand it, and right near Mr. Nash?

A. It is. That consists of a large one family double brown stone and frame dwelling house and extension, and I think, taking six acres of the tract as a proper amount to go with the house as a suburban property—

Q. That has frontage on the river too, hasn't it?

A. That has frontage on the river also, or on this lake; a reasonable rent of that I think would be one thousand dollars. The building is worth at least five thousand dollars; land fifteen hundred dollars per acre or nine thousand dollars; total fourteen thousand dollars. Actual rental, with the conditions of the river, about three hundred dollars; loss per year, seven hundred dollars; for five years, thirty-five hundred dollars. Now in addition to that there are twenty acres of land running back to car line or Lake View avenue that in my judgment should be worth at least fifteen hundred dollars per acre or thirty thousand dollars. Not saleable now, I don't think, for over seven hundred and fifty dollars per acre, or fifteen thousand dollars. Loss in value, fifteen thousand dollars; interest on same at six per cent, nine hundred dollars.

Q. Now you were not asked as to Mr. Nash's property this question, as to whether you would assign the same degree of loss, annual loss for the three years coming, up to March, 1915, as you would for the coming year?

A. I certainly would.

Q. You would not assign anything less than that?

A. I would not assign anything less than that.

Q. And would that opinion also apply to the Merselis property?

A. It would.

Q. Do you know whether the Merselis property is actually rented?

A. That I understand is rented for three hundred dollars a year.

Mr. Merrey.—I think we ought to have what is known; I object to that; he understands that it is.

The Court.—Mr. Van Duyne is hardly competent to testify to that, in the face of objections.

Q. The six acres that you speak about as attached to the Merselis house and property would be located how, with reference to the river?

A. Why, right around the house, nearest to the river.

Q. It would run from the south line to the north line and back from the river enough to take in six acres?

A. Taking in a suitable plot of six acres that would go with a suburban house of that character.

Q. Did you examine the Terhune property?

A. I did.

Q. Is that on the west side of the Passaic?

A. It is. It is occupied by owner and kept in first class condition, with all modern improvements.

Mr. Merrey.—This is one of the properties that was sold, I believe; shall we go ahead and take the testimony?

Mr. Parker.—What is the objection to it?

Mr. Merrey.—I am merely calling atten-

tion to the fact that this is one of them; if the Court is willing to take the testimony.

The Court.—We might as well take it while Mr. Van Duyne is here; if it turns out that these properties that have been sold are not to be considered in this case it is easy enough to disregard the testimony.

Mr. Merrey.—It might be well at the beginning of the testimony to make some sort of a note.

The Court.—Yes, state in each case that the property has been sold, that it has been sold.

Mr. Parker.—I therefore state that I understand the Terhune property has been sold; this property formerly belonged to Garret Terhune and has been sold to his brother John Terhune who is the present owner and now occupies it.

Q. Now proceed, Mr. Van Duyne?

A. It has a frontage of about one hundred and twenty-five feet, extending from the river across Lexington avenue or River Drive about three hundred feet. Total value of property with river clean, in my judgment would be fifteen thousand dollars. Land twenty-five hundred dollars. Building twelve thousand five hundred dollars. If owner desired to rent under present conditions of river forty dollars a month would be outside rental, or four hundred and eighty dollars a year. The property should rent under natural conditions, say six per cent. of value or nine hundred dollars, plus tax one hundred and fifty dollars, repairs fifty dollars, total eleven hundred dollars; loss per year, six hundred and twenty dollars.

Q. Would that loss continue at the same or a different sum for the next four years, assuming the present condition of the river?

A. I believe it would.

Q. That Terhune property I think is not shown on this map C 2, is it?

A. It is just south of the Market street bridge crossing.

Mr. Parker.—At this point map D 2 is brought into the case and put on the frame.

Q. Now, Mr. Van Duyne, the next property you have is the Cadmus property; is that on the same side of the river with the three you have described or the opposite side?

A. That is on the other side of the river.

Q. That is the east side?

A. On the east side.

Q. Won't you kindly describe that property as you saw it?

A. That fronts on the river about five hundred and ten feet, and extends a considerable depth back from the river; house being across river road from the river. Taking the improvements and six acres of this land as suburban property with the river clean its value would be at least, in my judgment, eight hundred dollars per acre or forty eight hundred dollars; improvements four thousand dollars; total eighty-eight hundred dollars. A fair rental of this property would be seven hundred and four dollars per year. Under present conditions of the river I do not think it possible to rent it for over one half, or three hundred and fifty-two dollars per year, making a loss of three hundred and fifty-two dollars per year. Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth eight hundred dollars per acre, or twenty-four thousand dollars; under present conditions it would not sell for over four hundred dollars per acre or twelve thousand dollars, making a loss of twelve thousand dollars in value; interest on same at six per cent, seven hundred and twenty dollars.

Q. And would that amount of loss continue for the next three years or so, and until March, 1915, under the present conditions of the river?

A. It would.

Q. Now the next property you have is the estate of Henry W. Doremus; that is on the east side of the river too, is it not?

A. That is also on the east side of the river, further north.

Q. North of the Cadmus property?

A. It is. That is the homestead property and consists of about sixty acres of land, fronting about six hundred and thirty-five feet on the river, with dwelling and out-buildings all in good condition. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about seven hundred and fifty dollars per acre or four thousand five hundred dollars; improvements four thousand five hundred dollars; total nine thousand dollars. This should rent for at least seven hundred and twenty dollars with the river clean. With the river in its present condition I do not think it possible to rent it for over one half of that amount or three hundred and sixty dollars, making a total loss per year of at least three hundred and sixty dollars. Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river. If the river was clean it would be worth six hundred dollars per acre or eighteen thousand dollars. Under present conditions it probably would not sell for over three hundred dollars per acre or nine thousand dollars, making a loss of nine thousand dollars in value. Interest on same at six per cent. would be five hundred and forty dollars per year.

Q. Would the same rate of injury continue until March, 1915, if the river continued in the same condition?

A. It would, at least.

Recess.

Q. The last property that you told us about was the Henry W. Doremus property. The next one is that called Charlotte J. Van Riper, and on the map I understand it is marked as Richard Van Riper. I understand that Richard Van Riper is dead and Charlotte J. Van Riper is the executrix. I am told that before the case was finally decided that Charlotte J. Van Riper was substituted for Richard, and that the property is referred to in your Honor's opinion as the Richard Van Riper property, but it is the same as this Charlotte J. Won't you tell us about that?

A. That I understand to consist of about sixty acres of land, with front of about seven hundred and seventy-five feet on the river, with dwelling and out-buildings in good condition. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about seven hundred and fifty dollars per acre, or four thousand five hundred dollars; improvements four thousand five hundred dollars; total nine thousand dollars. This should rent for at least seven hundred and twenty-four dollars with the river clean. With the river in its present condition I do not think it possible to rent it for over one half of that amount or three hundred and sixty dollars, making a loss per year of at least three hundred and sixty dollars. Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river as follows: If the river was clean it would be worth six hundred dollars per acre or eighteen thousand dollars. Under present conditions it probably would not sell for over three hundred dollars per acre or nine thousand dollars, making a loss of nine thousand dollars in value; interest on same at six per cent. five hundred and forty dollars.

Q. And this loss would continue for the period up to March, 1915?

A. It would, certainly.

Q. Now the next property is the homestead property of the estate of George Van Riper. George Van Riper died, and the persons presently interested in it are those mentioned by me to your Honor at the opening of the trial. Tell us about that, please?

A. That I understand to consist of sixty-seven acres of land, with dwelling and out-buildings all in good condition. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about eight hundred dollars per acre or forty-eight hundred dollars; improvements six thousand five hundred dollars; total eleven thousand three hundred dollars. This should rent for at least nine hundred and four dollars with the river clean. With the river in its present condition it would be almost impossible to rent it for one half of that or four hundred and fifty-two dollars. Loss per year at least four hundred and fifty-two dollars. Thirty acres of this land in addition is materially damaged by the present condition of the river. If the river was clean it would be worth eight hundred dollars per acre or twenty-four thousand dollars. Under present conditions it would probably not sell for over five hundred dollars per acre or fifteen thousand dollars, making a loss of nine thousand dollars in value. Interest on same at six per cent four hundred and fifty dollars, and that would continue each year.

Q. Until March, 1915?

A. Yes.

Q. You have not said anything about the value of the ice house?

A. That we haven't taken into consideration. There are ice houses upon it and I understand they were filled each year with ice, but I am not familiar with the value of that to the property.

Q. The value you have not taken into consideration at all in your estimate of the annual loss that you have given?

A. I have not.

Q. The next property is that of Edo Van Riper. Is there any change in that title, Mr. Ashmead?

Mr. Ashmead.—No.

Q. I see by the map that that lies immediately north of the George Van Riper property and seems to be intersected by two so-called slanks which are on the lake. Kindly give us your views as to that property?

A. That is the homestead property of Edo Van Riper and consists of about twenty-three acres of land, fronting eight hundred feet on the river, with dwelling and out-buildings all in good condition. Taking the improvements and seven acres of this land as suburban property with the river clean its value would be about $800 per acre or $5600; improvements fifty-five hundred dollars; total $11,100. This should rent for at least eight hundred and eighty-eight dollars. This rental on these suburban properties is figured at eight per cent. per year with the river clean. With the river in its present condition it would be almost impossible to rent it for over one half of that or four hundred and forty-four dollars, loss per year four hundred and forty-four dollars. The remaining sixteen acres of land is materially damaged by the present condition of the river as follows: If the river was clean it would be worth $800 per acre or twelve thousand five hundred dollars. Under present conditions it would probably not sell for over five hundred dollars per acre or eight thousand dollars, making a loss of four thousand eight hundred dollars in value. Interest on same at six per cent., two hundred and eighty-eight dollars.

Q. Didn't you say twelve thousand five hundred dollars. The correct amount is twelve thousand eight hundred dollars?

A. Twelve thousand eight hundred dollars.

Q. And that loss would continue also how long?

A. That would continue undoubtedly until the

river is clean. The question of cutting ice, that we didn't take into consideration; there are two slanks run in across this property.

Q. I see a square marked here on the part lying between the two slanks; I suppose that indicates the ice house, doesn't it?

A. I am not so sure about that, if it is it is very small.

The Court.—Is there not evidence in the case that the ice house was burned down?

Mr. Merrey.—Yes.

A. It was the other property that had the large ice house still standing.

Mr. Parker.—Is there any change in the title of Mrs. Van Saun?

Mr. Ashmead.—No change in title.

A. That I understand to consist of seventy acres of land fronting about six hundred feet on the river, with old dwelling and outbuildings. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about seven hundred and fifty dollars per acre or four thousand five hundred dollars; improvements two thousand five hundred dollars; total seven thousand dollars. This should rent for at least five hundred and sixty dollars with the river clean. With the river in its present condition I do not think it possible to rent it for over one half of that or two hundred and eighty dollars, making a loss per year of at least two hundred and eighty dollars. Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river. If the river was clean it would be worth six hundred dollars per acre or eighteen thousand dollars. Under present conditions it would probably not sell for over three hundred dollars per acre or nine thousand dollars, making a loss of nine thou-

sand dollars in value. Interest on same at six per cent., five hundred and forty dollars.

Q. How long would that loss continue?

A. It would undoubtedly continue as long as the river continues in its present condition.

Q. Now the next property is the property of Zela Doremus. This is property of Peter H. Doremus who is dead, and the present owners of the title would be as shown in the opening, now called by Mr. Van Duyne the property of Zela Doremus. Go on and tell us about that?

A. That consists of about seventy acres of land, with about six hundred feet of frontage on the river, with old dwelling and out-buildings. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about seven hundred and fifty dollars per acre or four thousand five hundred dollars; improvements two thousand five hundred dollars; total seven thousand dollars. This should rent for at least five hundred and sixty dollars with the river clean. With the river in its present condition I do not think it possible to rent it for over one half of that amount or two hundred and eighty dollars, making a loss per year of at least two hundred and eighty dollars. Thirty acres in addition of this land is materially damaged in selling value by the present condition of the river. If the river was clean it would be worth six hundred dollars per acre or eighteen thousand dollars. Under present conditions it would probably not sell for over three hundred dollars per acre or nine thousand dollars, making a loss of nine thousand dollars in value. Interest on same at six per cent., five hundred and forty dollars.

Q. How long would that loss continue?

A. At least that amount as long as the river continues in its present condition.

Q. Now the next property is that of Frederick H. Gelderman. There being no change in the title.

A. That consists of about twenty acres of land fronting about three hundred and fifty feet on river, with dwelling and out-buildings all in good condition. Taking the improvements and ten acres of this land as suburban property with the river clean the value would be about one thousand dollars per acre or ten thousand dollars; improvements three thousand five hundred dollars; total thirteen thousand five hundred dollars. This should rent for at least one thousand and eighty dollars with the river clean. With the river in its present condition it would be almost impossible to rent it for one half of that amount or five hundred and forty dollars, making a loss per year of at least five hundred and forty dollars. The remaining ten acres of this land is materially damaged by the present condition of the river. If the river was clean it would be worth one thousand dollars per acre or ten thousand dollars. Under present conditions it would probably not sell for over five hundred dollars per acre or five thousand dollars, making a loss of five thousand dollars in value. Interest on same at six per cent., three hundred dollars.

Q. And that loss would continue for how many years?

A. That would continue at least that amount until the river is cleaned.

Q. The last I think is the Outwater estate. What is the present condition of that title?

Mr. Ashmead.—There are two Outwaters; one still remains the same and the other changed by will.

Mr. Parker.—Which one remains the same?

Mr. Ashmead.—Richard Outwater.

Mr. Parker.—This seems to be the property of Albert A. Outwater, I think.

Mr. Ashmead.—That has changed in title by will, as stated in the opening.

A. We understood there was an Outwater estate consisting of fifty-seven acres of land, fronting six hundred and forty-five feet on the river; that would take the two tracts.

Q. Go ahead?

A. This property is midway between two bridges leading to the city of Paterson.

Mr. Merrey.—I think we should not have testimony of property that is not in the case.

Mr. Ashmead.—It is in the case.

Mr. Merrey.—Is Richard Outwater, both parties?

Mrs. Ashmead.—Yes.

A. Taking the improvements and four acres of this land as suburban property with the river clean its value would be about eight hundred dollars per acre or thirty-two hundred dollars; improvements fifteen hundred dollars; total forty seven hundred dollars. This should rent for at least three hundred and seventy-six dollars with the river clean. With the river in its present condition it would be almost impossible to rent it for over one half of that amount or one hundred and eighty-eight dollars, making a loss per year of one hundred and eighty-eight dollars. An additional thirty acres of this land is materially damaged by the present condition of the river. If the river was clean it would be worth eight hundred dollars per acre or twenty-four thousand dollars. Under present conditions it would probably not sell for over six hundred dollars per acre or eighteen thousand dollars, making a loss of six thousand dollars in value. Interest on same at six per cent., three hundred and sixty dollars.

Q. How long would that loss continue?

A. That would continue until the river is cleaned.

Mr. Parker.—Now, if your Honor please, there were, in addition to the twelve tracts that Mr. Van Duyne has testified to, a tract called the Phillips tract, which I understand has been sold and we do not expect to include that at all. The Van Bussum tract, which has been sold and which we do not intend to give any evidence with reference to. The Peter Alyea tract which is now owned by Henry C. Hillman, whom we hope to make a party to the case, but the experts have not examined that property and are not prepared to give any evidence about it just now. The Hoitsman property has been sold, and we do not include it. The Wehnert property has been sold and we do not include it, and the Kipp property has also been sold; so that there seems to be only one other property that we wish to give evidence with reference to, beyond what we have already given in evidence, and with that reservation, why, Mr. Merrey can cross examine this witness.

Cross Examination by Mr. Merrey:

Q. Mr. Van Duyne, your experience in selling real estate has been confined principally to the city of Newark and county of Essex, hasn't it?

A. And on the other side of the river, in Hudson county.

Q. In Hudson County? Have you ever had any experience in the sale of land in Passaic County?

A. I have in appraising land in Passaic County for the Department of Banking and Insurance.

Q. But have you had anything to do with the sale of land?

A. I don't recall just in Passaic County.

Q. Have you had any in Bergen County, in the vicinity of Paterson?

A. I don't recall selling any or buying any in Bergen County, in that vicinity.

Q. Where do you obtain your values for this property to which you have just testified?

A. Why, in a great measure, from the training that I have had in forty years in considering the value of property and judging by its surroundings; the conditions to a certain extent being very much the same, all surburban property near Paterson, as suburban property near Newark or near Harrison or the other towns.

Q. You only assume that the conditions are about the same in the vicinity of Paterson as they are in the vicinity of Newark?

A. In a degree, yes.

Q. That is an assumption on your part?

A. Well, it is an assumption founded on experience.

Q. You have had no experience in one place, and all your experience in the other. What is your basis for comparison, if it is not pure assumption?

A. Well, experience, I have appraised property in Paterson.

Q. Oh, but the fact that you have appraised it doesn't say that you knew anything about it?

A. Well, when I did people that were interested seemed to have confidence in my judgment.

Q. Was any of this property which you appraised on the river between the Great Falls and the Dundee dam?

A. It was on the high ground near the river.

Q. Where, in Paterson?

A. In Paterson.

Q. On the high ground near the river?

A. Yes.

Q. Can you tell me what street it was located on?

A. I don't recall because it was a couple of years or three years ago, but it was in this section of Paterson.

Q. What was the nature of that property?

A. Why, it was an estate that I was first appointed to appraise the property, and afterwards I was one of the Commissioners.

Q. I mean the nature of the property?

A. Oh, I thought you meant nature of the appraisal. Why, it was mostly vacant land, as I remember, with a couple of tenement houses.

Q. It was of the character that was cut up into building lots for sale?

A. Yes.

Q. It was not farm land?

A. No, it was already cut up into lots.

Q. You haven't even appraised farm land in this vicinity?

A. I don't recall right in this particular vicinity, no.

Q. In the neighborhood of Newark suburban property is developing very rapidly, is it not?

A. Well, of course I don't remember, our percentage of increase maybe is a little greater than the percentage of increase of Paterson.

Q. Isn't it much greater?

A. Well, perhaps one half greater.

Q. Wasn't the increase more than double?

A. Just from memory I thought it was thirty odd per cent.

Q. In Newark?

A. In Newark.

Q. How much in Paterson?

A. Well, the statement was about twenty per cent.

Q. In ten years?

A. In ten years.

Q. Greater than that in Newark in ten years?

A. Yes.

Q. I say it is much greater than thirty per cent. in Newark, in ten years?

A. I was thinking it was about thirty-three.

Q. You have not considered what the ratio of increase in both towns was?

A. I recognize them both as rapidly growing cities in the metropolitan districts in this State.

Q. How often have you visited the city of Paterson?

A. A great many times; I live in the summer four or five or ten miles beyond Paterson and go through it very frequently.

Q. Whereabouts?

A. On the Delaware Lackawanna line at Towaco.

Q. You go through the city and above it?

A. I go through the city and above it.

Q. Your opportunity of noticing development is not very great on the Delaware Lackawanna railroad?

A. Very considerable, yes, the Delaware Lackawanna railroad runs so that you look over the whole city.

Q. Can you see from the D. L. & W. railroad any development of any kind in the city of Paterson?

A. Why yes, I can see new houses going up.

Q. Whereabouts?

A. Different parts of the city, any part most of the city, and I have often gone through the city.

Q. Now can you tell us any suburban district in the city of Paterson that is developing rapidly?

A. Why, I should think there was considerable development even in continuing along the railroad, the upper end I will say.

Q. The upper end?

A. Well, going north, going northwest.

Q. You are probably referring now to West Park near Little Falls, through which you pass?

A. Not as far up as Little Falls.

Q. But towards Paterson from Little Falls?

A. Towards Paterson, yes.

Q. Did you know that that was not in the city city of Paterson?

A. I say I am not away up to Little Falls.

Q. As a matter of fact have you been through the city of Paterson except on the train of the Delaware Lackawanna Railroad lately?

A. Oh yes, numbers of times.

Q. Can you tell us any particular section of the city of Paterson that is developing at all rapidly?

A. Well, just the fact of increasing in population twenty per cent. in ten years there must be considerable development in the city.

Q. I am asking you if you know any particular district that has increased?

A. Well, to name the districts, I don't know that I can do that.

Q. Do you know that in this last year that the three principal industries of Paterson have quit and are about to leave there?

A. I know there has generally been depression in real estate in the last year; that extends here in Newark too.

Q. Do you know that the Cooke Locomotive Works, the Rogers Locomotive Works and the Passaic Rolling Mill have quit operation entirely?

A. No, I didn't know.

Q. Did you know they were the main industries in the city of Paterson?

A. I have heard of them, still I don't believe Paterson is going to the bow wows on that account.

Q. Don't you realize that the closing of three large industries, employing thousands of men who could not obtain employment in the city of Paterson, is going to have some effect on the future growth?

A. Hurts for the time being, undoubtedly.

Q. Don't you think the growth of Paterson for the next three or four years on that account is to be much lessened?

A. Possibly.

Q. You don't know then any part of the city of Paterson that has grown, yourself, you couldn't tell us?

A. I would say generally it had grown.

Q. That is just because the returns of the population experts show it has an increase; that is the only reason you know?

A. Oh well, in going through, I wouldn't have to go very far to find new buildings going up.

Q. Do you know buildings which are being abandoned?

A. No, I don't know anything about that; I don't believe there is much property abandoned and given away up there.

Q. Do you know anything about the sixth and seventh wards of the city of Paterson?

A. I don't know the place by wards at all.

Q. The section near the Rogers Locomotive Works, near the raceways of the S. U. M. and not very far below the Great Falls; are you familiar with that section?

A. Well, not to—I am familiar in the way of going through it.

Q. Do you know that much of that section has been abandoned by the population?

A. You mean the property abandoned?

Q. Yes, idle?

A. No, I don't know that at all; oh, there may be some factories idle.

Q. I am not referring to the factories, but the people are going to other parts of the town from there; did you know that?

A. I didn't know that; I don't believe it shows any great reduction in tax value even, or any other value.

Q. Do you know what the town increased in tax value per year?

A. Not exactly, no, I don't, but I don't doubt but what it is like all of the metropolitan districts, increasing every year.

Q. Do you know that it is less than two per cent. a year?

A. In Paterson?

Q. Yes?

A. Well, I don't know that, no.

Q. You know that Newark is probably six or seven times that?

A. Well, we boom property perhaps more in Newark, in the Tax Board and some other places.

Q. Then there is a boom in Newark?

A. Well, not now, in real estate, no.

Q. And the suburban districts around Newark have developed rapidly, haven't they?

A. All suburban districts on either of the roads, what we call the metropolitan districts of this state, have developed rapidly; I don't know of any direction that you can go without finding that condition to prevail.

Q. Do you know any farms around Paterson that have been cut up and developed into building lots lately?

A. Right around Paterson?

Q. Yes?

A. No.

Q. You don't know of any?

A. No, but I haven't any doubt but that they are the same as here; there are plenty of them being developed just in that way.

Q. Mr. Van Duyne, you are testifying here as an expert?

A. Yes.

Q. And I hope you will confine yourself to what you know and not to what you think; most of it so far has been purely supposition and assumption?

A. Well, I don't think that; I think with the experience that I have had during forty years that it is not all assumption.

Q. Don't you think that each particular community has its own conditions which make values?

A. To some extent.

Q. And they have great influence on the general condition?

A. They do, and yet there is a general law governing them all.

Q. But that is very much modified in some instances?

A. Undoubtedly.

Q. You have not, as an expert, attempted to find out what modification there is in that vicinity of Paterson?

A. No, but I can see in going up through this territory, see enough to help me form a pretty correct idea of value, I think.

Q. Well now then, you have seen, you say, some evidence of growth?

A. Yes.

Q. In the vicinity of those properties. What is the nature of that growth?

A. What is the nature of that growth?

Q. Yes.

A. Why, I didn't say I had seen some evidence of growth in the vicinity of those properties; you said that.

Q. I mean near those properties?

A. Well, the evidences of growth are considerable, cities within reach of those properties, in one line, and with the railroad facilities in the other direction to New York city, they are both very great elements in the growth of this property as changing it from ordinary, just farm land, into either suburban property or property that in time should lay out and perhaps sell in small lots; some of this property is available for one and some for the other.

Q. You speak of railroad service; do you know the character of the railroad service into this vicinity?

A. You mean the steam railroad service?

Q. Yes.

A. I don't know very much about it, I haven't looked at the time tables.

Q. Hasn't the character of the service of steam railroads from New York an effect on the value of these properties?

A. Oh, undoubtedly.

Q. If that service is very poor and very objectionable and open to great criticism would not it keep the values down?

A. That is something you always hear criticism of, railroads.

Q. I say if it is well founded?

A. You always hear criticism of railroads, and yet my experience is that they pretty nearly try to increase service with the growth of the place.

Q. Well, then I will ask you this question. Do you know that there were more trains on the Erie railroad into Paterson twenty years ago than there are to-day; did you know that?

A. Well, I didn't know that.

Q. Did you know that the service was several minutes faster to New York than it is to-day?

A. No, I didn't know that; I am not sure of it yet.

Q. Do you know that the number of trains on the Susquehanna Railroad has been cut nearly in half in the last fifteen years?

A. No, I don't know that.

Q. If that were true do you think it would have some effect on the value of this property?

A. If trolley roads had been opened or something of that kind that took part of the travel away that might lessen the steam railroads, I don't know.

Q. Do you know of any trolley railroad that is open that takes any of this business?

A. They are running pretty close, within reasonable distance.

Q. To New York?

A. No, not to New York but to Paterson.

Q. The business of those roads is mainly commuting business to New York?

A. That is true, but some of these properties are undoubtedly available for supplying lots and houses for factories near.

Q. Do you know the railroad which runs near-

est this property, with the station at Dundee Lake?

A. Yes.

Q. How far that station is distant from New York?

A. Not exactly, no.

Q. It is about twenty miles. Do you know that it takes a train an hour to go that twenty miles, on the average?

A. I don't know; I live ten miles further up in the summer time on the Lackawanna and I can come down in an hour.

Q. Well, that is a much better railroad. You have not noticed the time tables to see how much faster service is given on the Morris & Essex and on the Pennsylvania Railroad than the Erie railroad, have you?

A. No; I have seen in the papers a good deal of criticism of the Erie railroad.

Q. You don't know then that the service which is rendered by the Erie, whether it is good or bad?

A. I don't know how bad it is; I say I have seen criticism, but still the road is there and they run passenger trains, but how many I don't know.

Q. The fact that the railroad is giving poor service must have an effect in Paterson on the value of this kind of property, must it not?

A. Well, to some extent, undoubtedly.

Q. Now, I notice in your testimony that you seem to have a general plan for fixing the value of these properties. You refer to a tract of six or seven acres around the homestead first, and then you refer to the other property, the remaining acres. In what way could these remaining acres be developed in each of these properties?

A. Why, some of them could be developed for the sale of small lots; some of them perhaps development on a little larger way, in the way of plots for suburban houses; there is a difference in this very property.

Q. Is there any demand for any such development as that?

A. I think there is always more or less demand for just those developments when you are near cities like Paterson and Passaic or Newark.

Q. No matter where that development takes place and to what extent it is done?

A. No matter where it takes place?

Q. Yes?

A. It is not likely to be done faster, not much faster at least than the requirements of the growth of the place. Of course with one man it would be his homestead and he won't put it in the market and it may continue just as he has it for five, ten or fifteen years while property adjoining is developing just in this way; they don't all develop at once and yet the value is there.

Q. When you get it; it is not there until you can get it?

A. No.

Q. Do you know that there is in the city of Paterson a great amount of undeveloped property?

A. I suppose there is.

Q. Which is more available than this?

A. There is in every city.

Q. All that property is not developed because there is no market for it if developed?

A. Well, I don't think that. Now I listened to the testimony of the extent of the increase of sewage in Paterson, which is going on every year; Paterson would not go ahead and build sewers out in the field if there was no chance of developing that property so as to use the sewers, that is sure.

Q. You don't know anything about the percentage of increase, that is, that you heard testified to?

A. I heard testimony here; I didn't notice exactly the increase.

Q. Do you know how many miles of sewers there are in Paterson?

A. No.

Q. In the testimony it was stated that there were seventy miles?

A. Yes; that means pretty big development to justify seventy miles of sewer.

Q. That was here three years ago?

A. Yes.

Q. And this increase is inconsequential?

A. Well, how much increase in the last three years?

Q. I couldn't tell you; we haven't the detail of that, but it is probably two or three per cent?

A. Then the city of Paterson, in other words, would not be justified in building any additional sewers if the place was absolutely standing still and no new development.

Q. You don't know then the condition of the city of Paterson as to its undeveloped real estate?

A. I suppose the condition is just the same as any other city that is undeveloped, I believe it to be.

Q. You know there is a great quantity of it there?

A. There is in every city, of course.

Q. Do you know whether that fact has anything to do with the value of this property as to cutting it up into building lots?

A. It don't begin to have fractionally as much to do with the value of this property as the sewage that Paterson dumps down against it.

Q. Do you know that part of the property that is in this suit has been sold for figures away beyond that, irrespective of the river?

A. Possibly.

Q. And that the fact that there is a river there, smelling or not, has not interfered one iota with the sale of that property?

A. That may be a factory site, and the factories coming necessarily brings a demand for small lots, and a good many of the occupants of that style of property don't care as much and are not af-

fected as much as take for instance the Nash property and that class of property.

Q. Now then, have you gone along the banks of the Passaic river, opposite the city of Passaic and up through Garfield to where this property is located?

A. Yes.

Q. Have you noticed the great mills which are being built there?

A. Yes.

Q. Isn't it a fact that all the development towards this property is the character which follows the growth of mills?

A. Yes, a great deal of it below is that, yes, that is true.

Q. Isn't the future of this property entirely of that character?

A. Well, then when the river is clean it will develop much faster.

Q. Just answer. That is the fact, isn't it?

A. That is the fact, they are building big mills down there, yes, that shows the growth of the place.

Q. Does the question of smell or not affect a manufacturer in locating his mill?

A. Well, I have heard very prominent manufacturers say if they hadn't as much invested on the river, where they have been suffering from this smell, they would go somewhere else.

Q. Isn't it a fact that they have gone here, with the smell and everything else, right on this property?

A. Possibly with the hopes that it was going to be remedied even before this.

Q. Have you noticed the growth of the city of Passaic just below this property?

A. I understood Passaic was growing very rapidly.

Q. Have you seen the growth of it?

A. The way I have seen it in Paterson and other places.

Q. You have not evidently examined this question so as to be prepared to give an opinion that would have great weight?

A. Well, I don't know, I have examined it so that in my judgment I have stated what is the fact.

Q. Didn't you notice that the growth on that side of the river, the right bank, is of the same character of mill growth and small houses?

A. That is below the dam?

Q. Yes?

A. Undoubtedly.

Q. Isn't that moving, the tendency to move up upon this property?

A. Undoubtedly.

Q. Do you know that all surrounding Paterson and not on the river there is a great amount of property of this character that is for sale, with no takers?

A. Well, that is so in Newark and everywhere.

Q. Do you know the value of farm land of that kind in the vicinity of Paterson?

A. Of farm land?

Q. Yes?

A. Well, it is worth undoubtedly a good deal more than as farm land.

Q. What is that?

A. It is not held by any owner, I don't believe, as farm land; they may farm it for some years to come, but if you wanted to buy it it would not be as farm land.

Q. There isn't any demand for that property, is there?

A. That is, farm land around Paterson?

Q. Yes?

A. I think so.

Q. Do you know of it?

A. I don't know, except as I know generally. There isn't, just as I said before, just now there isn't much demand around Newark and yet we are

growing, for the development of new property; the last year it has been at a standstill.

Q. Has there been any around Paterson in the last five or ten years?

A. Oh, I think so.

Q. Do you know of it?

A. I know just from the statement of your engineer and what you are doing that there must be some growth there.

Q. I am asking about the farm land?

A. Well, I haven't gone there just to see which particular farm has been developed.

Q. If this property was to be developed in the manner specified by you, these properties which you have testified to, do you think you could get any population to go there and live?

A. I think some of it, yes.

Q. Where from?

A. I think near the mills at the lower end, and near the railroad crossing in the middle and near the upper end between the two bridges where the Outwater property is, those are all growing sections.

Q. That property sells because it is in the vicinity of the mills there?

A. Oh, that helps, of course.

Q. And there has been a very great increase in these last two years in the size of the dyeing plant which is located right at Market street?

A. Yes.

Q. On the Bergen County side of the river?

A. Yes.

Q. How often have you gone along this river, Mr. Van Duyne, at this point?

A. Oh, quite a good many times.

Q. Did you go there last summer?

A. Yes.

Q. How often?

A. I don't remember, but I have been along the river there a couple of times last summer.

Q. In what manner did you go?

A. Auto.
Q. What part of the river did you go to?
A. I went up along the river most of the way in riding out from Newark.
Q. That is, you went from Newark to Paterson?
A. Went from Newark to Paterson.
Q. Which side of the river?
A. This side.
Q. That is, the Paterson side?
A. Yes.
Q. How far into Paterson did you go along the river?
A. Went on up across and so on up.
Q. I say how far along into Paterson?
A. Went on up across and so on beyond.
Q. When did you turn away from the river?
A. I don't remember exactly; I wasn't on the business of examining this property; do you mean that?
Q. No, passing there?
A. I say I don't know, I don't recall just exactly.
Q. You were there twice?
A. Yes.
Q. Do you remember what months it was in?
A. I don't remember now, no.
Q. And the year before that how many times were you there?
A. Oh, I don't know; I have traveled all through this country a good many times.
Q. You presumed to pass upon the amount of nuisance there as affecting the land, and you don't know very much about that, do you?
A. I know a good deal about that nuisance, yes.
Q. The lower part?
A. I know the lower part and I know it is bad in the lower part; if you dam up you make a cesspool instead of a running stream, that is worse.
Q. From what you have seen, you are familiar with the conditions, down here the pollution is a good deal in excess of what it is above?

A. I don't believe it is in excess, in comparison, so far as that lake is concerned, because the river is dammed, and that tends to hold it almost like a cesspool.

Q. You think there is more pollution up there than there is down below?

A. I think the conditions are possibly worse just there than any other part of the river, some worse.

Q. Have you examined any of the reports of the chemists as to the condition below and above?

A. I know it is bad enough below.

Q. This is all your surmise?

A. No, I know, I have been along the river and smelled the lake.

Q. Once or twice?

A. Oh, a good many times.

Q. When you were up there and examined these properties, when was that, for the purpose of testifying?

A. Why, last fall, about three times now in the special examination.

Q. Well, these last three times you were there you spent more time, I suppose?

A. Yes.

Q. Did you get any odor then?

A. Oh, no, it was in winter time, all frozen up.

Q. There isn't any odor there now?

A. I don't suppose so, it is pretty well frozen up.

Q. You spoke about the value of certain parts of the property, so many acres which you say is worth now only about one half what it would be if the river wasn't there; that is a guess, isn't it?

A. If the river pollution wasn't there.

Q. Well, that is a guess?

A. That is taking a reasonable amount. I think that when you get as far back as those whole tracts running back sixty odd acres you probably get beyond that special effect of the river.

Q. Your idea now is, and you mean to testify, if that property was sold now those acres which you refer to, not connected with the homestead sites of about six acres, if the other property was sold at the present time it would bring about one half what it would do if the river were clear?

A. That is my judgment, taking the six acres and the other part, all of it.

Q. That is because people would not have a nuisance of that kind at their door, but suppose that assurance was given that within three years that nuisance would be removed, what effect would that have on the purchaser?

A. It would depend somewhat on how the purchaser looked at that matter. My own judgment is against all possibility of removing the nuisance in three years, even if the sewage is taken out.

Q. No, answer the question as it is put now. I am asking you now if there was assurance given that the nuisance would be removed in three years what effect would that have upon a possible purchaser; would he give more with that assurance than he would under the theory on which you testify?

A. If he had positive assurance that within three years the river would be clean, why, I think that the difference then would not be one half, the way we have concluded, that it would be in a number of these cases.

Q. What would it be?

A. Well, the proportion would be less.

Q. How much less?

A. Well, I don't know that I can say that because I am sure it is not possible to clean the river in that time myself.

Q. We think so?

A. Well, I mean to clean the river, that is to take the sewage out and remove the effects of the sewage.

Q. With the effects removed now, a person knowing it would be done within a certain time he

would give a great deal more than the one half you mention?

A. Then I think he would give more.

Q. A great deal more too?

A. Well, considerable more; he would discount the nuisance if he was going there to live with his family, he might consider how much nuisance he could stand for three years with the hope of having it cleared up afterwards.

Q. Are you familiar with the Hillman property which is right in this section (indicating on map), just below the Cadmus property?

A. Well, yes; the conditions are about the same.

Q. Do you know that Mr. Hillman farms that property and finds no difficulty in operating it as a farm?

A. Oh, I don't doubt but what he can farm it.

Q. You know that some of that property is rented there without any difficulty?

A. I don't know as to that.

Q. You didn't investigate as to that?

A. No. I was told about what Mr. Hillman paid for it.

Q. Do you know the price the Phillips property and Van Bussum and the Passaic Brick Company property, just below Hillman, was sold for?

A. I wasn't given those figures, no, but I understand that is nearer that factory site, that factory property down below.

Q. You think the river prevents the sale of these properties, do you?

A. I think that they would sell more easily for the larger figures if the river was clean than they will sell for the lower figures with the river in its present condition.

Q. Do you think that the Brick Company property, where the large woolen mill is, would have sold for any more if the river was clean?

A. I think it is possible it might have.

Q. You don't know what it brought?

A. No, I don't know what it brought.

Q. Mr. Van Duyne, do you know the people who live along this stretch of the Passaic river; you know the gentlemen who own this property?

A. I met some of them.

Q. You know practically all of it has been in the same owners or their descendants for probably a hundred or two hundred years?

A. I understand so, yes.

Q. There have been no sales there?

A. No; they are homestead properties.

Q. Do you know that that property wasn't in demand by anybody for long before this river became a nuisance?

A. Well, my experience is that where property stays for several generations in the same family it is often because it is pretty good property.

Q. Well, I am asking you if there was any de mand for it?

A. I don't know.

Q. Isn't it a fact that the mosquitoes and the flies and the malaria caused by that river, before it became a nuisance through the pollution by sewage, made the property on its banks not desirable?

A. Well, I know that mosquitoes are pretty general throughout the State, and we seem to survive them; I don't know about that particular place.

Q. Didn't you know that they were more likely to be found in the vicinity of water?

A. Oh, undoubtedly.

Q. Don't you know that there are many parts of the State where there are no mosquitoes?

A. Well, I have met a good many people that haven't many mosquitoes right at their houses but they were next door or two or three doors away.

Q. Don't you know that in the higher parts of Paterson there is never much complaint about the mosquito pest?

A. No.

Q. Are you familiar with the Barbour residence in the city of Paterson, J. Edwards Barbour?

A. Near the station?

Q. No, it is right opposite these properties in question, on Broadway, opposite East Side Park?

A. On the top of the hill, right up on the hill?

Q. Yes?

A. I know there are several handsome properties up there.

Q. Well, they are as near the river as these properties, are they not?

A. I should say that some of the handsomer places on the Passaic side of the river—

Q. Paterson side of the river?

A. On the Paterson side of the river, were further from the river than these places.

Q. How much further?

A. Oh, well; I don't mean the rear, but I mean these houses right along the river.

Q. How much further away are they from the river?

A. I am not prepared to say in reference to that; no house was pointed out to me just as the Barbour house.

Q. You know where the Country Club is, across from the Broadway bridge?

A. Yes.

Q. Well, the Country Club is located about the same distance away, isn't it, from the river?

A. Oh yes, that is quite near.

Q. And Mr. Spidel, next to the Country Club, built a very nice place lately?

A. Yes.

Q. Right on that river front; and are not all those properties as near as Gelderman's?

A. Yes.

Q. Do you know the Campbell property and the Doctor Marsh property, the property of Judge Scott, and the property of Eugene Stevenson on Park avenue?

A. Not by those names.

Q. Vice Chancellor Stevenson?

A. I don't know, not by those names.

Q. You don't know where they are?

A. Not by the name.

Q. Do you know, as a matter of fact that on the Paterson side of the river most of the fine houses of the city have grown up right at that point, right near East Side Park and not a great distance from the river?

A. Well, I didn't know that, that most of them are there.

Q. Now, what change has taken place in the last three years in these properties or in their values?

A. I don't think any change has taken place.

Q. They are worth then just about the same as they were three years ago?

A. I think as long as this nuisance keeps up the value of those properties will not change.

Q. There is no change in the condition at all you might say in three years in regard to values?

A. Except just in the lower end, near the dam, where quite a large factory has come, and where the railroad crosses, and a little village around, and at the extreme upper end between the two bridges there right opposite Paterson, I think in all of those places there is a continuous slight change.

Q. That has been caused by these mills.

A. Oh, that is helped by the mills, undoubtedly.

Q. And you say the influx of mills brings a class of people who do not care whether the river is clean or not?

A. They are not as particular as parties wanting a house like the Nash house; people wanting to rent a place like the Nash house, overlooking the lake perhaps, a lawn in front, and everything of that kind, they pay the most and they are much more particular, and if there is a nuisance in the neighborhood, why, they will go somewhere else.

Q. There is a sharp difference in the class of property between the Nash and the Terhune prop-

erty and the property on the other side of the river?

A. Than quite a good deal of the property on the other side of the river, yes.

Q. All of the property, isn't there?

A. Well, yes, perhaps you might say all of the property.

Q. There isn't a property on the other side of the river of the character of the Terhune or Nash house?

A. No.

Q. You then would have testified in this suit three years ago the same as you do now, as to values?

A. I think pretty nearly the same, yes.

Q. So that there is no change whatever in your opinion from the present condition as to what they were three years ago?

A. With the exceptions I have stated.

Q. With those exceptions?

A. Yes, that is my judgment now.

Q. How do you fix those rental values that you spoke about?

A. We fixed those on a basis of eight per cent. of what we considered the house, the improvements and a reasonable plot around, as a fair rental value.

Q. Do you make any comparison with properties which are actually rented in the neighborhood?

A. In this way, that the rents that we knew of in the neighborhood were mostly rents for farm purposes, and of course that wasn't what we were considering; we were not considering this property as farm property, it was beyond that.

Q. What is it beyond farm property?

A. Why, I consider it suburban property.

Q. And who would live in it, what class of people?

A. In the end near the factories of course workers in the mills would live there, and for that reason some of that property has been sold, and

as I understand sold in lots and some little houses built. With the conditions different and the river clean why there are plenty of people that like a suburban property like the Doremus house or the Van Riper houses and will pay a reasonable rent for them.

Q. Did they ever, people of that class, go in that neighborhood and settle before the river became in this condition?

A. As you stated a little while ago, those properties have been satisfactory enough to the owners so that they and their families have stayed for a great many years.

Q. These properties have been for sale continuously, haven't they?

A. Well, not that I know of; it would be a wonder if some of them hadn't sold if they had been for sale all this time.

Q. Should this property bring a higher value than similar property just as near the city of Paterson and not located on the river?

A. Should it bring as high a value if the river was clean? I should think it would bring higher.

Q. For what reason?

A. If it had the benefit of the river. Lots of people like to be near the river for boating and fishing and the pleasures it brings.

Q. Isn't it a fact now that people prefer the higher ground and a mountain lake rather than a river of this type?

A. Both.

Q. Can you tell me of any development now in this neighborhood and the neighborhood of the city of New York along a river of this type?

A. Why, of course, all along the Passaic river, going up through Nutley a development all along, and Rutherford.

Q. On the banks of the river?

A. On the banks of the river; it is built mostly all the way to the river.

Q. On the banks of the river?

A. Not just immediately on the line of the river in some places.

Q. I thought that the pollution was such that people wouldn't do that?

A. Well, they were there long before the pollution, and some of them have left on account of the pollution, a number of them; I have known of a number of houses to be literally deserted on the lower branch of the river, on account of the nuisance.

Q. Isn't it a fact that twenty years ago people desired to be on the banks of a river af this character and that since that time, since the doctors have discovered what causes our malaria and typhoid and yellow fever, that they desire to be on the higher ground and away from a river of that kind?

A. I didn't know that. I know that if you allude to the mosquito plague, I know that that reaches the higher ground, even up in Morris County on the ridges, certain years there will be plenty of them.

Q. Are you familiar with the Passaic river above the Great Falls at Paterson?

A. I am.

Q. There is much property of a similar character in that neighborhood, isn't there?

A. Above the Great Falls, between the Great Falls and the Little Falls?

Q. Yes?

A. Well, there has been quite a little development up in there too.

Q. Whereabouts?

A. Well, along up in that section, I have noticed going up on the Lackawanna train considerable.

Q. What kind of development?

A. Oh, well, small house development.

Q. Little bits of places?

A. Small places, yes.

Q. And confined to a place called West Park, isn't it?

A. Might be so.

Q. Do you know the Ryle property?

A. Not a property by that name.

Q. Do you know of any property along that river above the Great Falls of Paterson and below the Little Falls that has been developed into a gentleman's residence or anything of the character of this property that you say is capable of being developed into and bringing rentals?

A. No, I don't know because I think the development has been along other lines, in small places, and has furnished more money as the result.

Q. Do you know the river from Little Falls to Bernardsville?

A. From Little Falls to Bernardsville? I know a good deal of it.

Q. There is considerable property of this character along there, isn't there?

A. There is considerable swamp property all the way up through from Little Falls three quarters of the way to Bernardsville.

Q. There is considerable property of this character?

A. Very little, until you get to Chatham.

Q. Do you find any of that property that there is there that you know of, that is being used in the manner that you say this property could be used for to bring rents?

A. Well, as I say, all the way from Little Falls clear up to Chatham the river runs mostly through the Big Piece and the Troy Meadows and all those places.

Q. Well, above Chatham?

A. Along through Chatham, Long Hill overlooking the river, yes.

Q. I mean on the river?

A. The properties have not run down to the river the same as these do; they built on the higher ground, most of them.

Q. They did?

A. Yes.

Q. Then it is a fact that they prefer to be on the higher ground and away from the river?

A. Well, they like to have both, if they can be on the high ground with their house and the property run down to the river, why, that is a clear gain.

Q. How far from the river, the property you refer to, does the house stand?

A. I don't recall that; they are all distances.

Q. You don't know anything about that?

A. They are all distances from the river.

Q. Mostly more than a quarter of a mile?

A. Well, within a quarter of a mile; where there is high ground along the river there are a good many houses.

Q. Now do you know the Hackensack river above Hackensack?

A. I am not as familiar with the Hackensack river above Hackensack, no.

Q. Do you know the other branches of the Passaic river, the Wanaque?

A. Yes, I know the Wanaque, well.

Q. And the Pompton river and the Ramapo?

A. Yes.

Q. Do you know of any development of gentlemen's houses down to those rivers?

A. On the Ramapo plenty of them.

Q. They are back?

A. A little back, but the river is close by.

Q. Are they not more than half a mile back?

A. Many are quite near.

Q. How many?

A. Within a thousand feet probably, running right to the river.

Q. Isn't there only about one house, George Gregory's, which was abandoned when he built his new place, that is near the river?

A. On the Ramapo river?

Q. Yes?

A. More than that.

Q. Whose are they?

A. I don't know the names, but I rode up through the valley a number of times, in the Wanaque Valley and I know there are some handsome places within a thousand feet.

Q. Are they not across the road which runs parallel with the river and from the river?

A. Both sides of the road.

Q. How many houses on the left hand side of the road going up?

A. I couldn't tell you that, but I know it is handsome property through there, a good deal of it handsomely developed.

Q. They all stand back on the heights, away from the river?

A. Not all, no, I doubt whether half of them are up on the high ground away from the river, away up.

Q. You cannot tell us the names of any of those places?

A. I don't know the names of any of the people, except to ride through, which I don't remember the times.

Q. Are you sure that there are two houses around that river, within a quarter of a mile, more than two?

A. Of the Ramapo river?

Q. Yes.

A. I haven't any doubt that there are more than that, quite a number of them, yes, I am sure there are a good many more than that; you take down just above Pompton where the Ramapo comes in, where the old Terhune homestead is, in that section, and across the Ramapo river and the lake on the other side, there are dozens of houses.

Q. That is down on the Pompton lakes you refer to now?

A. That is an outlet of the Ramapo river.

Q. A great deal of that is old development?

A. There are some quite new houses in there, but old or new it is there, and looks like a very handsome place to live.

Re-direct Examination by Mr. Parker:

Q. I omitted to ask you what official position you have had here in the City in the past which dealt with matters of development in real estate affairs. Are you not with the Board of Works?

Mr. Merrey.—I object to that. In the first place I think it is direct examination, and in the second place I do not think the city of Newark has been in the development business of real estate.

The Court.—No, I think that is too remote altogether.

By the Court:

Q. Did you go into these various houses on the east bank of the river?

A. I did.

Q. Go inside?

A. I did.

Q. Do you know what is the character of the interior?

A. Well, some of them are fixed up finely, modernized, so to speak, with steam heat and condi tions are very favorable, very pleasant residences; there are two or three of just the old style of buildings that haven't been modernized, that we put down at a nominal figure; take the Van Riper houses, two of them, and Doremus and Gelderman, inside is better than out, as far as the look is concerned; they are all in very nice condition.

Q. With modern improvements?

A. With modern improvements.

Q. Have you taken into consideration the fact that those houses are away from the churches and schools and trolley lines?

A. Well, the churches and schools and trolley lines reach around pretty close to a number of these houses; the trolley line running up Market street to the bridge, that is within reach of a

number of these properties, within from quarter to half a mile, and the steam road about in the center of the property, Susquehanna station, near this same street, and then at the extreme upper end again the trolley lines are pretty close.

Q. Well, did you estimate on a basis of eight per cent. for rental, in the case of all those houses or only in the case of those which had the modern improvements?

A. Well, especially those that had the modern improvements; the others we put the value down at a nominal price; take for instance, I have forgotten the names now of two of those properties, they got great big old fashioned, old style houses arranged possible for a couple of families, and we put the price down at fifteen hundred dollars as a nominal price.

FRANK R. ALLEN, sworn.

Direct Examination by Mr. Parker:

Q Where do you live?

A. Passaic.

Q. How old are you?

A. Thirty-six.

Q. What is your business?

A. Real estate and insurance.

Q. How long have you been in that business?

A. Fourteen years past.

Q. Where have you conducted it?

A. At Passaic for ten years and a half, and Union County for the balance, Elizabeth, between Elizabeth and Dunellen, along the Jersey Central railroad.

Q. Were you first at Elizabeth and Dunellen, and afterwards moved to Passaic?

A. Yes.

Q. So for the last ten and a half years you have been at Passaic?

A. Yes, sir.

Q. In the course of your business I suppose you have bought and sold and rented real estate?

A. I have, sir.

Q. And in addition to that you have made appraisals of real estate for the owners or persons that were interested in making money on it?

A. I have, sir.

Q. And that experience has extended over the ten and a half years?

A. Yes, sir.

Q. Do you represent any banking institution in Passaic?

A. Not direct.

Q. Do you make appraisals for any savings banks?

A. No.

Q. Are you frequently called upon, however, to make appraisals?

A. I am.

Q. Well now, over what territory has it been your custom to deal?

A. Passaic County.

Q. Does that include the city of Paterson?

A. Yes, sir.

Q. And from Paterson down to the city of Passaic?

A. Yes, sir.

Q. Have you actually represented any of the complainants in this case?

A. Not previous to this hearing.

Q. Haven't you been agent for Mr. Merselis?

A. Yes, sir.

Q. Did you rent that property?

A. I did.

Q. When did you rent it?

A. About two years ago, it was a year ago last May.

Q. How much did you rent it for?

Mr. Merrey.—I object to that, if the Court please.

The Court.—I will admit the evidence. You can cross examine, of course.

Mr. Parker.—There is another reason why I wish to put this in. I wanted to show the actual rent so that it might be credited, if these people were entitled to any credit.

Q. What was the rent of the Merselis property?

A. Three hundred dollars per year.

Q. You were not engaged in this suit at that time, were you?

A. No, sir.

Q. You didn't make that lease with reference to any controversy between Mr. Merselis and the city of Paterson, did you?

A. Nothing to do with it whatsoever.

Q. State whether or not that was the best rent that could be obtained then?

A. It was absolutely the best rent I could possibly get for it. I had another tenant that looked at it and would not pay over twenty dollars for it; twenty-five dollars was the highest I could get.

By the Court:

Q. What was the condition of the property?

A. The buildings?

Q. Yes, what improvements were there?

A. Well, the house has fourteen rooms, all in good shape; the owners have kept it up in good condition, and it has large barns, carriage houses, I think there are two barns, and woodshed, all buildings in good condition.

Q. Well, bath rooms and water and sewer pipes?

A. It hasn't any sewer pipe; it has a well, if I remember correctly; the range in the kitchen supplied the hot water, with a boiler attached; that's about all the improvements.

Q. Any bath rooms in the house?

A. One bath room over the kitchen.

Q. And gas or electricity?

A. I don't think it has either one, gas or electricity, not at that time.

Q. Well, I had a recollection that the house had none of the modern improvements, and that is the reason I asked the question.

A. They have the electricity in front of the building now.

Q. It has the electricity?

A. Yes.

Q. It is lighted by electricity?

A. I don't know whether they are using the electricity at the present time, but I know it is there, been put in about six months or a year ago.

Further Direct Examination:

Q. How far is it from the trolley?

A. The land? The rear of it is right on the trolley, Lake View avenue.

Q. Well now, have you rented any, or do you know about the rents of any of Mr. Nash's property?

A. I am familiar with the buildings of Mr. Nash's.

Q. I want to know whether you know how much the buildings are rented for at the present time?

A. Yes; the two family house is rented for twenty-two dollars a month, and the small single house at ten dollars a month, a hundred and twenty dollars a year, and the homestead is in very poor condition, not tenantable.

Q. (*By the Court*) The large house?

A. The large house.

Q. Not rented at all?

A. No, sir.

Q. Have you dealt in any property on the east side of the river?

A. On the east side of the river?

Q. Yes?

A. Yes, sir.

Q. Do you know anything about the annual values of the property from the dam up to Paterson, on the east side of the river?

A. I do, sir.

Q. What experience have you had with reference to that character of property?

A. About four years ago I had charge of the Burrows property and had a party wanted to rent it, with an option of buying and the rent at that time was twenty-five dollars a month.

Q. What other properties have you had to do with?

A. Not any more than that, that I know of at the present time.

Q. Are you acquainted with the values of real estate on both sides of the river, from the Nash property north?

A. Yes, sir.

Q. Did you make an examination along with Mr. Van Duyne and another gentleman whose name is Mr. Mercer?

A. I did, sir.

Q. Of the properties of the different complainants in this case?

A. Yes, sir.

Q. Will you state how many times you went over the properties together?

A. Three or four times in company with Mr. Mercer and Mr. Van Duyne, and several times personally.

Q. Besides that?

A. Yes, sir.

Q. Have you studied the various properties with an idea of giving an opinion upon the loss that the property owners suffered by reason of this nuisance in the Passaic?

A. I have, sir.

Q. Mr. Van Duyne has testified in detail as to the loss on each property; have you been in court and have you listened to it?

A. Yes, sir.

Mr. Parker.—Now, I do not want to take the time of having him go over each one of these various properties and say the same as Mr. Van Duyne. The fact is that they made the report in writing; Mr. Van Duyne had it before him; and this gentleman will say substantially on direct examination exactly what Mr. Van Duyne has done, and I would like, if counsel has no objection, simply to ask this witness if he agrees as to the figures?

Q. (*By the Court*) What have you got to say as to Mr. Van Duyne's figures; how do they correspond?

Mr. Merrey.—I object to the witness testifying, because he has not shown as yet that he has any knowledge of sales in the vicinity.

The Court.—He says he is a real estate agent with experience in all parts of Passaic County; that he has bought and sold in all parts of Passaic County; now that will qualify him to speak; then you may cross examine and find out how far those sales have extended.

A. I might state, for the satisfaction of counsel, I sold thirty acres adjoining this property of Mr. Merselis.

Q. (*By Mr. Merrey*) Yes, you got Mr. Phillips' property, didn't you?

A. No.

Q. (*By Mr. Merrey*) Next to it?

A. No, the railroad property above, back off Lake View avenue.

Q. (*By the Court*) You can tell us generally, unless Mr. Merrey objects to the form of the

question, how your figures in reference to these various properties agree with Mr. Van Duyne, and your reasons for making those figures?

A. We went over the entire matter carefully, the three of us, and we made separate memorandum of different ones and compared finally, and came to the report that Mr. Van Duyne submitted here, that is to say, we might vary possibly a dollar or two on one way, and a dollar or two another, but we came to the report Mr. Van Duyne submitted, to which I wish to add further, that the amounts there I consider are very low, in connection with the value of that property. You take the Merselis property and the Nash property, that is not farm property, there has not been any farming done there at all, and it is dead ripe for development, has all modern improvements such as electricity and fire protection, city water and trolley lines, railroads, macadam, and the property surrounding all that section is ripe for development, and the only thing that holds it back is on account of the condition of the river at the present time. I might state that I had this same property of Merselis' sold three years ago, the contracts were drawn, to a New York party and after they investigated the conditions of the river Doctor Reynolds stated to me that he wouldn't pay me fifty per cent. of the amount and therefore the sale was off; but of the entire property on this side of the Passaic river, I don't think our report is out of the way at all. I look at it in another way. I think the owners are entitled to that amount, on the rental basis, in order to hold this property to such time that they can sell it; should there be a mortgage on any of that property, sixty or eighty per cent., the owners certainly would have to pay six per cent. interest on that, and in order to hold his property he should be entitled to an income sufficient to carry it. I have gone into it carefully and those are my views in connection with it.

Q. (*By the Court*) The question is not so much

what the owner would ask in order to protect himself, but what he could actually get. A man may ask two thousand dollars rental for the Nash property but he may not be able to get more than seven hundred and fifty or a thousand dollars. Now the question is not so much what he ought to ask in order to protect himself, but how much he can get?

A. The Nash property is situated on the front of the lake, and with the lawn, the shade trees and the privilege of the use of the lake for boating and fishing and bathing and the use for ice, why, I don't think that, in fact I am positive I would not have any trouble in getting twelve hundred dollars a year rent for such a property, if it was in good condition; with the location of those properties you would have very little trouble in finding a tenant. The properties back from the Nash property and Doremus, or Merselis rather, has more or less been sold in building lots; Clifton has built a number of houses the last two or three years, the other side of the track, but this side of the track, towards the river, I have been unable to do anything with that property. Any one that is familiar with the conditions there, the very minute I talk to them about a sale they quit at once.

Q. Were you able to form an opinion of the present value of all the improvements on the various properties that you looked at?

A. Yes, sir.

Q. And you three gentlemen formed an opinion which has been stated by Mr. Van Duyne correctly?

A. Yes, sir.

Q. Now were you able to form an opinion also of the cash value for the purposes of sale, of the various properties if the nuisance in the river were removed?

A. Yes, sir.

Q. And Mr. Van Duyne has stated what those various values in detail is; according to your judgment is that correct?

A. Yes, sir.

Q. Then you also formed an opinion, did you not, about the present rentable value of the properties, assuming that the nuisance continued as it is at present?

A. Yes, sir.

Q. And Mr. Van Duyne has stated as to that?

A. Yes, sir.

Q. Now what basis did you take for the ascertainment of the rentable value of the properties?

A. Based on the amount of the value.

Q. Well, what percentage?

A. I think, on the property across the lake I think we based that on eight per cent.

Q. Yes, and what of the other?

A. I think the other was six or seven per cent., I am not just sure of that.

Q. Now, in basing that rentable value did you take the entire plot or farm, or did you decide that some part of it was appropriate for renting in connection with the house and the other was not?

A. I took the buildings, including about six acres, as an average and totaled up the value for that amount and what the income should be.

Q. Having made those calculations is it your judgment that if the nuisance was not in the river that the owner would be able to get, in renting it, the eight per cent. that you figured?

A. Easily.

Q. Would the fact that the various properties didn't have, or any of them didn't have modern conveniences, or didn't have light in them or running water at the present time,—make any difference in your reaching the opinion as to the rentable value that you put upon it?

A. We didn't put them all into the same value, we took into consideration the condition of the buildings and the improvements.

Q. You mean by that that you, in assigning a value to the rentable value you also allowed for possible improvements that might have to be made in order to get that value out of it?

A. Yes.

Q. So that the rentable value given was what might be called the net rentable value, is that correct?

A. Yes.

Q. Did you agree with Mr. Van Duyne as to allowing six per cent. on the value of much of the other vacant land which was affected by the improvement?

A. I did, sir.

Q. How did you make up that?

A. Practically as a total loss to the owner, and if the river was in good condition he would have no trouble whatever in getting the amount of fifteen hundred dollars per acre; we put it in at seven hundred and fifty dollars, a very low figure, and we feel that the owner is entitled to six per cent. interest on the amount.

Q. What would you say as to whether or not he had sustained the loss of six per cent. on the depreciation by reason of this pollution continuing?

A. I think he will sustain the loss of that amount as long as the river is in its present condition.

Q. Well now, why do you think that?

A. Well, I feel that I would have no trouble whatever in selling it at fifteen hundred dollars per acre, under good conditions, and I would have quite some trouble in finding a purchaser at seven hundred and fifty dollars or fifty per cent. of that amount.

Q. Under present conditions?

A. Under present conditions; difference of about fifty per cent. on the value of the land, easily.

Q. (*By the Court*) Well, but that would be on the assumption that the conditions were not going to improve, would it not?

A. Well, I think that would take effect at once, if the conditions were good.

Q. (*By the Court*) But suppose you knew for a certainty that in four years from now the City would cease to pollute the water, suppose you knew that as a certainty, what would you say then?

A. We could dispose of the land at fifteen hundred dollars or two thousand dollars per acre.

Q. (*By the Court*) You think that your estimate would then be instead of fifteen hundred dollars, two thousand dollars?

A. Easily two thousand dollars; the land in the rear sold for two thousand dollars an acre, and it is nowheres near as desirable as this.

Q. The rear of what?

A. The rear of the Doremus property.

Q. That is on the east side of the river?

A. It is on the Paterson side of the river, westerly side of the river, isn't it,—I meant to say the Merselis property.

Cross Examination by Mr. Merrey:

Q. Mr. Allen, have you had experience in selling property in Bergen County?

A. Bergen County? No, sir.

Q. You have had none?

A. I haven't sold any property in Bergen County.

Q. Have you bought property in Bergen County?

A. I have had charge of property in Bergen County.

Q. And your business has been principally in Passaic, has it not?

A. Passaic and Paterson.

Q. Passaic City?

A. Well, throughout Passaic County.

Q. Where have you sold property outside of the City of Passaic, in Passaic County, or bought it?

A. I have appraised the property for the Erie Railroad at Paterson.

Q. I am asking you where you have bought or sold property outside of the City of Passaic, in Passaic County?

A. Well, it has been mostly in Passaic County.

Q. Outside of Passaic City, in Passaic County, what township or city?

A. Why, I have had a lot of experience in Clifton.

Q. That is in Acquackanonk Township?

A. Yes.

Q. You have bought and sold a lot of property there?

A. Yes.

Q. Have you bought and sold any in Paterson?

A. I don't just remember of a sale made there.

Q. You haven't had a sale then in Paterson?

A. Not direct, no.

Q. The property which you have sold has been mostly for building lots, hasn't it?

A. Both improved and unimproved.

Q. Yes, but they are small plots twenty-five and fifty by a hundred?

A. No, sir.

Q. Well now, what large tracts have you bought or sold outside or had charge of outside of the city of Passaic, or in the city of Passaic?

A. Well, ninety per cent. of the best residential part of the hill section of Passaic, eighteen acres at Delawanna station I bought personally, and sold thirty acres directly back of the Merselis property.

Q. This Merselis property? (indicating on map).

A. Yes, sir.

Q. You bought that, did you?

A. I bought it.

Q. Bought it and sold it?
A. I bought at Delawanna personally.
Q. How about this property back of the Merselis property?
A. I had full charge of it.
Q. Did you buy it yourself?
A. No, sir.
Q. Who bought it?
A. Why the Erie Realty Company bought it.
Q. And who sold it?
A. I did.
Q. You sold to the Erie Realty Company?
A. I did, sir.
Q. From whom did you buy it?
A. I never owned it.
Q. Who did own it?
A. Merselis Brothers.
Q. They sold to the Erie Realty Company?
A. Through me as agent, yes, sir.
Q. And your connection with that property then was as agent?
A. Broker only.
Q. How near is that to the Clifton depot?
A. Not over half a mile.
Q. How far is it from this Merselis house?
A. Well, not over a third of a mile; the house fronts on Lexington avenue and this is on Lake View avenue.
Q. This property is on which side of Lake View avenue?
A. The westerly side.
Q. The westerly side?
A. Yes.
Q. And it runs up to the railroad, does it?
A. Yes.
Q. So that it is right at the railroad and very near to the station?
A. Within half a mile of the station.
Q. And the trolley line runs through it?

A. In front of it.

Q. And there is another busy trolley line about a half a mile away, through Main street?

A. Not over half a mile away.

Q. Is there any mill near by this property?

A. There was a match factory adjoining the property.

Q. It is very near the city line of Passaic, isn't it?

A. No.

Q. How far is it from the city line of Passaic?

A. This land or the factory?

Q. The land?

A. Must be about one mile to Highland avenue, Highland avenue divides.

Q. How far is it from the city line of Paterson?

A. I should judge about,—the city line of Patson?

Q. Yes?

A. I don't know just where that line comes in.

Q. Crooks avenue?

A. I am not familiar with that.

Q. Isn't it much nearer Passaic than Paterson?

A. Merselis property?

Q. The property that you sold to the Erie Land Company?

A. To the City of Passaic it is nearer.

Q. You haven't had any experience in buying or selling farms, have you?

A. I have had charge of farms for sale.

Q. Have you succeeded in selling them?

A. Well, I don't as a general rule make a practice of bothering much with them, except this one case I took it up and tried to sell it.

Q. One farm then you have tried to sell?

A. Well, outside of what I bought myself.

Q. The ones you bought were not for farms, they were for cutting up into building lots?

A. Well, it has kind of a care taker there at the present time, he isn't working very much.

Q. Was it the intention of farming this property which you bought?

A. No, I had no idea of farming it.

Q. Have you had any experience in buying property which was to be farmed?

A. Except this one particular property of Burrows.

Q. The Burrows property?

A. Yes.

Q. That is one in very close proximity to the property in suit?

A. Yes, sir.

Q. To whom was that sold?

A. I believe it is owned by a party by the name of Denser.

Q. Did you have it for sale?

A. I had the handling of it.

Q. Did you sell it?

A. I did not; I believe it was purchased direct.

Q. There have been a number of sales of this property down at Dundee Lake?

A. Not to my knowledge.

Q. You have heard the counsel in this suit state at least five of those properties which have been sold?

A. I don't think they were bona fide sales.

Q. Do you know anything about it?

A. Don't know anything about it.

Q. What makes you think they were not bona fide?

A. Well, that is just my opinion of it.

Q. Upon what do you base your opinion?

A. Hearsay, possibly.

Q. Were they sold for the purpose of influencing the evidence in this case?

The Court.—The witness does not know anything about that; the witness cannot testify to matters of which he has no knowledge.

Adjourned until February 1, 1912, at Chancery Chambers, Newark, New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS et al.,
Complainants,
and
MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendants.

Before His Honor Vice Chancellor Stevens.

Appearances as before.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Thursday, February 1, 1912, at Chancery Chambers, Newark, N. J.

FRANK R. ALLEN, recalled.

Cross Examination by Mr. Merrey.

Q. Mr. Allen, what experience have you had in the renting of properties of the character of these which you have described here?

A. Considerable experience in renting.

Q. Whereabouts?

A. Well, a hundred feet from the Merselis property.

Q. That is the one you spoke about yesterday?

A. No.

Q. What property was that?

New Jersey State Library

A. It was the building right next to the school on Lake View avenue, consisting of about eight rooms, a hundred feet front by about two hundred feet in depth.

Q. That was not a property of the character of these properties on the west side of the river,—or the east side of the river?

A. No.

Q. Have you had any experience in renting such properties as are on the east side of the river?

A. Well, as I stated yesterday, I had charge of that particular property of Burrows.

Q. The one Burrows property?

A. Yes, sir.

Q. And you didn't sell that?

A. No, I did not.

Q. You didn't rent it to anybody?

A. No, sir.

Q. Is that the only piece of property of this character that you have had in your hands to rent?

A. Right in that immediate vicinity.

Q. What is that?

A. In that immediate vicinity.

Q. Have you had any other farms that you were to rent?

A. Yes.

Q. Whereabouts?

A. Delawanna.

Q. At Delawanna?

A. Yes.

Q. What farms were they?

A. Durkin property.

Q. How large a property is it?

A. About eighteen acres.

Q. Is it farmed?

A. Yes.

Q. Whereabouts in Delawanna?

A. It is between Delawanna avenue and Schneider Lane, being about five hundred feet from the

river,—of the bridge that runs into Rutherford directly opposite that.

Q. That is on a trolley line, is it?

A. No, it is half a mile from the trolley line.

Q. It is used simply as a farm?

A. Yes.

Q. For what did that rent?

A. It is two hundred and forty dollars a year or twenty dollars a month.

Q. What kind of a house was on it?

A. Sixteen room house.

Q. In what condition?

A. Fairly good condition.

Q. Any modern improvements in it?

A. No.

Q. Was it in good repair?

A. Medium repair.

Q. What sort of barns were there?

A. Out-buildings, didn't amount to much.

Q. It was available simply as a farming proposition?

A. Yes.

Q. Now what other farms in the vicinity of Paterson and Passaic have you had anything to do with the rental of?

A. I don't just recall any other.

Q. As a matter of fact your business has been confined mostly to the city of Passaic, has it not, Clifton?

A. Principally.

Q. And to the buying and selling and acting as agent for the buying and selling of city lots, city houses?

A. Real estate in general, not altogether city lots.

Q. In the city of Passaic?

A. Well, throughout Passaic County I have had quite some experience.

Q. You haven't sold anything in the city of Paterson of any account, have you?

A. Well, not as much in Paterson.

Q. Have you sold any?

A. No, I haven't made any direct sales.

Q. Have you sold any in any other township or borough of Passaic County than in Acquackanonk?

A. Not direct, no.

Q. (*By Mr. Parker*). What do you mean by "not direct"?

A. Well, I haven't put the sale through personally, that is, I have clients, people have come to them and wanted to buy the property and the clients have turned it over to me to look after it, inasmuch as I had charge in the closing up of the title, I wasn't the broker, being familiar with the ins and outs of it but not making the sale direct.

Q. What properties in the city of Paterson have you had that much familiarity with?

A. I didn't say Paterson.

Q. What properties outside of the Township of Acquackanonk or the city of Passaic, in the county of Passaic, have you had such familiarity?

A. Well, take above Ridgewood, Saddle River, through there.

Q. Is above Ridgewood or Saddle River in the County of Passaic?

A. No, but I say I have had experience outside of Passaic.

Q. In the County of Passaic you have done no business yourself, outside of the city of Passaic or the Township of Acquackanonk which immediately adjoins it?

A. My business has principally been confined to—

Q. Have you had any business outside of those two communities?

A. Why, yes.

Q. In the county of Passaic?

A. No, not in the county of Passaic.

Q. Now, have you had anything to do with the sale or purchase of property in the Township of Saddle River, Bergen County?

A. Yes, sir.

Q. Whereabouts?

A. About a mile from DeBaun's store in Saddle River.

Q. Is that in Saddle River Township?

A. I think it is.

Q. Have you any idea where Saddle River Township is?

A. I know where Saddle River is.

Q. Saddle River itself?

A. Yes.

Q. Well, that extends from the New York State line all the way to Passaic, but the Saddle River Township is the small Township which is immediately north of the Borough of Garfield, and these properties are situated in it?

A. Yes.

Q. It doesn't run up to Ridgewood. Now have you in that section had anything to do with the sale or purchase of property?

A. Not in the section of Ridgewood.

Q. Below Ridgewood?

A. The other side of Ridgewood.

Q. Below Ridgewood?

A. This side of Ridgewood.

Q. To the south of Ridgewood, in Bergen County?

A. Well, as I say, I have had charge of property at Saddle River.

Q. That is the one you mentioned?

A. Yes.

Q. But have you had any below Ridgewood in Bergen County?

A. I don't think so.

Q. Now what property did you have charge of above, to the north of Ridgewood?

A. Winter estate.

Q. One estate?

A. Winter estate, yes.

Q. Any other?

A. No.

Q. What was your connection with the Winter estate?

A. Well, I had charge of their little house, above their present home.

Q. What were you to do with that; sell it?

A. Well, I had charge of all their property; we sold quite some to the Erie Railroad.

Q. Is your connection with that property one as a real estate agent to sell it or as a care taker or to collect rents or what is it?

A. Well, as general agent.

Q. Are you authorized to sell that property?

A. Yes, I have been authorized to sell the property, otherwise I couldn't sell it.

Q. You haven't sold it?

A. No.

Q. The title is in the name of your principal?

A. Yes.

Q. Do you rent that property?

A. No.

Q. You haven't anything to do with the rental of it?

A. No.

Q. What do you do in connection with it?

A. Look after the sales.

Q. After what?

A. After the sales.

Q. That is, sales, if you can sell them?

A. Yes.

Q. How are you selling it, as farm property?

A. No, in lots.

Q. You are cutting it up in building lots?

A. Yes.

Q. Is it very close to Ridgewood?

A. It is principally off towards Allendale, from Saddle River.

Q. What is the nearest railroad station?

A. Allendale.

Q. On the main line of the Erie railroad?

A. It is.

Q. How far is it from that station?

A. Why, not over a third or a quarter of a mile.

Q. In that section there is a very strong development for cutting up farms into small tracts?

A. No, not so much cutting up farms into small tracts.

Q. How is the property sold there, in what shape?

A. Well, they own considerable; some is already plotted out and some is left in farm state.

Q. Farm land? Is that property that is used as farm, is it used by the owner?

A. No, it is simply there, it is not used at all.

Q. It is not being used?

A. No.

Q. Have you endeavored to get a tenant for it?

A. Well, it is vacant property, there is no building on it.

Q. It is farm land?

A. It is vacant land.

Q. I say is it farm land?

A. It might be classed as such.

Q. It has been used as a farm, hasn't it?

A. Very little.

Q. Years ago it was used as a farm?

A. I suppose so.

Q. There isn't any demand for it as a farm now?

A. Well, we haven't done much with it lately.

Q. Isn't it a fact that most of the property in that neighborhood is being abandoned as farm land?

A. That I couldn't answer.

Q. You are not familiar with the section at all?

A. Not all of it, no.

Q. You have simply taken this one farm and plotted it out in small plots?

A. It belongs to a client of mine; I look after it in a general way.

Q. What do you do?

A. Just as I stated before, sell it off.

Q. Have you sold any of it off?

A. Yes.

Q. How much of it?

A. In the neighborhood of sixteen to twenty lots.

Q. Lots of what size?

A. Twenty-five by a hundred.

Q. Do you sell single lots of that size?

A. Well, no, we generally sell it in plots, fifty feet front.

Q. Fifty by a hundred feet?

A. A hundred or a hundred and twenty-five, whatever way it cuts up.

Q. What class of people do you sell to; people of means?

A. No, we have sold different ones, some people in moderate circumstances, and the Erie Railroad took some of the property.

Q. You sold it mostly on the installment plan, haven't you?

A. Not to the Erie Railroad, that was cash.

Q. I am asking about those people of moderate means?

A. No, some was paid in cash and others on mortgage.

Q. The Erie Railroad, for what purpose did it buy the land?

A. I suppose to put down the four track system.

Q. Then this property is right on the Erie Railroad?

A. Some of it, yes.

Q And right at the station of the Erie Railroad, called Allendale?

A. Well, within a half a mile.

Q. Within half a mile of it?

A. Yes.

Q. Does the road run from this parallel with the railroad to the station?

A. Beg pardon?

Q. Does the road run through this property parallel with the railroad and to the station?

A. No, this land runs down to the railroad.

Q. That is the only property of that kind that you have had to deal with?

A. That is all that I think of at present.

Q. Outside of this Delawanna property you haven't rented any farm property?

A. No.

Q. Well now then when you told us about the rental values of farm property how did you fix it?

A. Rental values of farm property?

Q. Yes?

A. Well, I don't know just how you would get at that; as a general rule any property that is,—the rental is placed according to the value of it, and generally based on a six per cent. interest.

Q. That is your general rule, is it not?

A. Yes.

Q. Now, as a matter of fact is not the rental value of property what you can get for it?

A. Well, we generally base it on a six per cent. income.

Q. But if you cannot get six per cent. you get as near that as you can, is not that true?

A. That is a matter for the owner to decide.

Q. Is not the rental basis in farm property much lower than six per cent. in cases?

A. I don't see how it could be.

Q. Where the property is not desirable and there are not many applicants for it is it possible to get six per cent. return?

A. That might have something to do with bringing the value down to an extent that you might get a little bit less than six per cent.

Q. I understood you to testify that Mr. Van Duyne and you put a value on this farm property of eight per cent.?

A. Yes.

Q. And added to that the taxes and other costs of carrying it; do you mean to change that testimony now?

A. Taking the eight per cent., add eight per cent. on the value placed, when you come to pay your taxes which will run about one, one and a half per cent., and the repairs to the buildings and so on, it will come pretty nearly taking an additional two per cent., which will leave net six per cent. on the first value.

Q. But I understood Mr. Van Duyne to testify —his figures and yours agree—he didn't deduct the cost of the taxes and other expenses from the eight per cent. but added it, so that the net return was to be eight per cent.?

Mr. Parker.—Oh no; you misunderstood it.

A. That is not my idea of it.

Q. So that your idea is that the owner should have a net return of six per cent.?

A. Yes.

Q. And your putting these rental values on this property is based simply on that, that you think the owner ought to get that?

A. I don't see how he could retain his property unless he did get that.

Q. Isn't it a fact that property which is held for future development does not make returns of that amount?

A. Most of my clients generally get six per cent. on their investment.

Q. How about your Winter clients, this property which is lying vacant, which is not farm, which is not cut up into building lots, what return do they get on that?

A. I suppose a loss.

Q. If you had any of these farms over here (indicating) would you not have exactly that same loss?

A. Possibly, under the conditions.

Q. So, do you think it is possible to cut these farms up in the next five, six, seven, eight or ten years and get purchasers?

A. There is a future for this whole section.

Q. But how far in the future?

A. Not so very far off.

Q. Ten years?

A. Well, the future for that property is when things are in much better condition than they are at the present time, on account of the river.

Q. Suppose the river were clean, could you develop all that property in ten years and get purchasers for it?

A. If the river was clean and in good condition you would have no trouble whatever in developing that property.

Q. How long would it take you to do that?

A. Why, I don't think I would have any trouble in finding a purchaser right off the reel.

Q. Are there any other properties that you know of, in the vicinity of Paterson just as near as this property that could not find purchasers?

A. No.

Q. You don't know that? Don't you know that through the Lake View section, right across from

the river, from this property and far enough away to be out of the district that is affected by pollution, there are hundreds of acres of property that could not find purchasers?

A. Yes, they can find purchasers if it is in the right location and the price is right.

Q. If the price is right?

A. Yes.

Q. That is, if it is low enough?

A. Yes, reasonable figure.

Q. And it can be purchased for less than the amounts you put on this property?

A. You couldn't show me an acre that can be purchased for less than the amounts I placed on this property.

Q. Fifteen hundred dollars?

A. I was speaking under present conditions, seven hundred and fifty dollars.

Q. Seven hundred and fifty dollars?

A. Yes, per acre.

Q. You say you cannot find any acreage around Paterson that can be purchased for less than that?

A. You cannot.

Q. Do you know of the property at Hawthorne that is owned by the Arnold Brothers?

A. I do not, I am not familiar with it.

Q. Do you know what that is worth?

A. I do not.

Q. Do you know where Hawthorne is?

A. Not perfectly familiar with it.

Q. (*By Mr. Parker*) You contend that land in the city of Paterson that is dry and level can be bought for seven hundred and fifty dollars an acre?

A. I have plenty of purchasers looking for just such property as that if you know of any.

Q. Just outside of Paterson and across the line at Hawthorne?

A. I am speaking now of City property, not too far out.

Q. I am now speaking of property somewhat similar to this except there is no proximity to the river pollution?

Mr. Parker.—Show the witness where it is, if you can, Mr. Merrey.

Q. Property lying north in Hawthorne Borough here, north of the city of Paterson on the Erie Railroad?

A. Well, that would be worth less than property in the city of Paterson; property outside would be worth less than property in the city of Paterson.

Q. I am making a comparison with the property on the east bank of the river and which you have testified about, owned by the complainants?

A. Yes.

Q. You think that property is worth more than the property at Hawthorne that is not affected by the pollution of the river?

A. Well, I would have to see it to give a definite answer and get the correct location of that.

Q. Well, any of that property. You don't know anything about it, do you?

A. Well, only from personal experience, with reference to looking it over.

Q. The Hawthorne property?

A. No.

Q. You don't know anything about what that can be purchased for?

A. Not perfectly familiar with it.

Q. Do you know what property along the Passaic river, just outside of the city of Paterson and above the Great Falls can be purchased for, an acre?

A. I do not.

Q. Do you know what property can be purchased for along the Newark branch of the Erie railroad, in the vicinity of Paterson, say at Athenia, per acre?

A. Quite familiar with it.

Q. What does that bring per acre?

A. A thousand dollars an acre.

Q. One thousand dollars, as it is now?

A. Yes; in fact I sold it.

Q. What property?

A. The Merselis property.

Q. I am speaking now at Athenia, along the Newark branch of the Erie railroad?

A. That is just exactly the location I am speaking of too.

Q. That is another Merselis property than the one you referred to yesterday?

A. No, they were interested in the property at Athenia.

Q. It is not the same property that you spoke of yesterday that adjoined this Merselis?

A. They owned twelve acres at Athenia.

Q. It is not the same property?

A. Oh, no.

Q. Whereabouts at Athenia did they own this?

A. Between Allwood and Athenia depot, directly between the two railroads, the branch of the Erie and the Lackawanna; this plot of twelve acres fronted on the Lackawanna railroad, and ran from there over to Van Houten avenue.

Q. That brought a thousand dollars an acre?

A. Yes, sir.

Q. That is in line with the development there near Athenia?

A. Well, I suppose it is.

Q. There is considerable development going on there now?

A. Some building.

Q. There are two railroads?

A. Yes.

Q. It is accessible to the Lackawanna railroad and the Newark branch of the Erie?

A. Yes.

Q. How far is it from the United States Government Quarantine?

A. Less than a mile.

Q. How near is it to the cemetery there at Ridge Lawn?

A. Two miles.

Q. How far is it from the Lackawanna depot, nearest station?

A. They have a station at Athenia.

Q. Yes, but how near is this property from that station?

A. Why, I should not think over a quarter of a mile, possibly a half a mile.

Q. How far from the Athenia station on the Erie railroad?

A. Less than a mile.

Q. Do you know how long it takes them to go to New York on the Lackawanna railroad from the Athenia station?

A. I do not.

Q. You haven't gone over that road?

A. I have traveled over the road.

Q. To Hoboken from there?

A. Yes.

Q. Is the average time more than twenty or twenty-five minutes to Hoboken?

A. I couldn't say definitely on that.

Q. Do you know how long it takes to go to Jersey City on the Susquehanna railroad from the Dundee Lake station?

A. I do not.

Q. Do you know how many trains a day they get at Dundee Lake?

A. I do not.

Q. Would that have anything to do with the value of this property?

A. It would add value to the property by having railroad facilities.

Q. If they had numerous trains; suppose there were very few?

A. The accommodations naturally would help.

Q. Suppose there were only four or five trains a day each way?

A. Well, I suppose that would take care of itself, as the section built up and the demand called for more traffic.

Q. Do you know as a matter of fact that this Dundee Lake station was abandoned until the Utilities Commission made them open it again?

A. I wasn't aware of that.

Q. Would not all those things have something to do with the value of this property?

A. It would add to it.

Q. That is if it had better accommodation?

A. It would have a tendency to add to it.

Q. But the mere fact that there is a railroad there, if the accommodations are not good does not help it, is not that true?

A. I don't see that it can do any harm, under present circumstances.

Q. Now, as far as using this for villa sites, do you think there is any future for property of that kind?

A. At the lake?

Q. At the lake, yes?

A. Yes, sir, I do.

Q. Where are the people coming from that are going to use these houses for villa sites or gentlemen's homes?

A. Principally from New York City.

Q. Isn't it likely that people coming out from New York City will want good train service?

A. Well, I think the Erie train service is fairly good.

Q. The Erie train service doesn't reach this point, does it?

A. Why, it is within a mile of the westerly side of the lake.

Q. Whereabouts?

A. Right back of the Merselis property.

Q. Is it possible to cross the lake to the east side and get to these properties?

A. Yes.

Q. How?

A. Both ends of the lake.

Q. How do you get across?

A. There is a bridge at Market street.

Q. How far above the dam is that bridge?

A. It must be a mile I should imagine.

Q. Well now then, take the Cadmus property?

A. Yes.

Q. How far is the house on that from the nearest station on the Erie railroad?

A. I should judge about a mile and a half.

Q. By a wagon road?

A. Yes.

Q. You would have to go by the Market street bridge?

A. Well, either that or the lower bridge down below the dam.

Q. So that you think people would come from New York and use that property in that way?

A. Yes.

Q. And you think it is only a mile and a half?

A. I should imagine about a mile and a half to the station, either the Clifton station or the Lake View station.

Q. You haven't driven there, have you?

A. I have gone over the road several times.

Q. Paid any attention to the distance?

A. Not exactly.

Q. How did you go, in automobile?

A. Yes.

Q. Went rather rapidly?

A. Well, medium.

Q. How long have you been familiar with this property on the east side of the river?

A. Six or eight years.

Q. What change has taken place in the last three or four years in the condition of the value of that property?

A. Well, there has been no advance in value.

Q. Worth about the same to-day as it was three years ago?

A. I should think so.

Q. Now property just below the Cadmus property, the Phillips property and the Van Bussum property, the Passaic Brick property which you notice on these maps have come into the market lately, haven't they, and been sold?

A. I understand so, I had nothing to do with the transaction.

Q. There is a large woolen mill erected there?

A. In the rear.

Q. Worth upwards of a million dollars?

A. I am not in a position to say.

Q. I mean that is the reputation it has, of being a very expensive and large industry?

A. Yes.

Q. And do you know what the history of the property in that neighborhood was, as soon as that mill was put up?

A. No.

Q. There became a great demand for these properties, for small plots?

A. I am not familiar with that.

Q. Do you know how it has been sold?

A. No, sir, I do not.

Q. Has it been sold in small lots?

A. I am not sure about that.

Q. What is that?

A. I don't know; I had nothing to do with that property.

Q. Now you are familiar with Clifton and Passaic more than anything else?

A. Clifton and Passaic, yes.

Q. And you find that people do come from New York looking for a nice class of houses in that neighborhood?

A. Yes.

Q. Do you know of any other neighborhood similar to this, near the city of Paterson, that there is any demand from New York for houses of this character?

A. I do not.

Q. There is getting to be, above the Merselis property, quite a development in the way of mills and houses for working people, is there not?

A. I didn't know there were any mills there.

Q. Isn't there a large mill erected on Main street right on the Passaic city line?

A. Well, that is at least a mile or a mile and a half from this property.

Q. And between the Merselis property, on the west bank of the river now, and the city of Passaic there is a brook runs, isn't there?

A. Yes.

Q. And considerable low and swampy ground?

A. It comes through there, just the side of the city line.

Q. And there is the Botany mill district there, just above there?

A. Yes.

Q. Is not that growing rapidly towards the Merselis property?

A. Why, I couldn't say that it is growing rapidly towards Merselis' property any more than it is spreading out in general.

Q. And spreading also towards this property?

A. Yes.

Q. Is not that a very undesirable class of neighbors for gentlemen's houses?

A. If the neighborhood gets started that way it might have a whole lot to do with keeping the better class away.

Q. Well, the growth of the part of the city of Passaic nearest this property is all of that character, isn't it?

A. Well, that is the manufacturing center, yes.

Q. And that is nearest this Merselis property?

A. Yes.

Q. And also the growth of Acquackanonk Township, adjoining the city of Passaic, and between the city of Passaic and this property, is of that same character, isn't it?

A. Not all, no.

Q. Well, a great deal of it?

A. No; take west of the Merselis and the Nash properties there isn't any of that class of people there, it is all private residences.

Q. At the present time?

A. Yes.

Q. But the growth towards that is of the other character?

A. Yes.

Q. Now are you familiar with the large mill which Mr. Barbour has erected at the Lake View station on the Erie railroad?

A. No.

Q. You know there has been another tremendous mill erected there by Henry Dougherty, on Main street?

A. Yes.

Q. The largest silk mill in the vicinity of the city of Paterson?

A. Yes.

Q. How far is that from this property?

A. From the Merselis property?

Q. Yes?

A. It must be a mile and a half, easily.

Q. How far is the Merselis property from the Lake View station?

A. I should judge about the same distance, very little difference.

Q. Is not the growth from that section likely to be of small houses for working people?

A. In that immediate location of the factory more so, but down nearer this land it is built up with private residences; there has been a number of such places built this last year or so.

Q. (*By the Court*) When this property is utilized for the residences of operatives, workmen in the factories, is it generally bought by the workmen themselves or is it bought by some speculator who builds houses for them and rents the property?

A. Why, it is generally bought by the acre and cut up into small lots and sold direct to the employees.

Q. (*By the Court*) How much will they give for it?

A. Well, lots from three hundred, three hundred and fifty to four hundred dollars.

Q. (*By the Court*) What class of building will they put up?

A. Well, the building to cost in the neighborhood of two thousand dollars.

Q. (*By the Court*) Well, that would be done by the skilled mechanics, I suppose; but take the working man, the laborer, what sort of house would he put up?

A. Well, it would not exceed that amount, the cost would not exceed over two thousand dollars, including the land he might buy.

Q. (*By the Court*) He would put up such a house, would he?

A. If anything it would be less than that.

Q. (*By the Court*) How would he get the money?

A. Building and loan I suppose; as a general rule if they have five or six hundred dollars they can get a mortgage for the balance.

Q. (*By Mr. Parker*) How much will a building and loan lend, what portion of the cost of the land and building will a building and loan lend?

A. About sixty per cent.

Q. Isn't it a fact that the operatives in the city of Passaic who receive lower wages, not the skilled mechanics, are able to save considerable money to est in land there?

A. They don't, as a general rule.

Q. Are they not very thrifty and live on very little?

A. Yes.

Q. And put a great many of people in one room?

A. Yes, sir.

Q. Isn't that the fact in the city of Passaic, that the element in the factories there live very close together?

A. They do.

Q. And in that way they are able to buy land?

A. May be able to but they don't.

Q. And these prices that you mention these lots are bought for, are on the installment plan, are they not?

A. There are lots that are sold that way.

Q. Is not a considerable portion of the development there land sold on the installment plan to people of that type?

A. Not exactly that class that you just spoke of.

Q. And isn't it a fact that very great commissions are paid to agents for the sale of that land?

A. Not over five per cent., to my knowledge.

Q. To your knowledge?

A. Yes, sir.

Q. Don't you know it is common reputation that twenty-five to thirty and forty per cent. are paid?

A. Not in my office.

Q. Not in your office?

A. No, sir.

Q. Do you know anything about the development by the Realty Commercial Company?

A. Not familiar with it.

Q. Do you know Mr. Schottscun?

A. I know of him.

Q. Hasn't he developed a great lot of the property in Passaic?

A. Possibly.

Q. And isn't it his method to bring people from New York, foreigners who know nothing of the value of the property?

A. Not to my knowledge.

Q. You don't know that?

A. I do not.

Q. You believe that is true though?

A. I can't agree with you at all.

Q. That is not the general reputation of their means of selling property and getting high prices for it?

A. Not to my knowledge, no, sir.

Q. Isn't a great deal of that property sold by New York agents to New York people?

A. I don't know anything about that, sir.

Q. You don't know anything about it?

A. No, sir.

Q. But you do know that Mr. Schottscun, and his company have sold a great deal of property in the city of Passaic and in the Township of Acquackanonk near this property?

A. Possibly so.

Q. And most of it has been sold to people who have lived in this country a very short time, is not that true?

A. I can't agree with you on that.

Q. That is not true?

A. I can't agree with you on the selling proposition.

Q. Are not most of the purchasers Poles and Hungarians and Slavonians who own property in this neighborhood?

A. No, sir.

Q. Does not the greater portion of the city of Passaic, down towards the Botany mill, consist of population of that kind?

A. Mr. Schottscun has not developed down there.

Q. Isn't that the kind of people there?

A. Absolutely, yes, sir.

Q. Are not those the people who are buying that property?

A. No, sir.

Q. Don't buy any of the property in the Township of Acquackanonk?

A. Very little.

Q. Who are buying it?

A. Jewish people principally.

Q. And they are the ones who have only lately come to the country, haven't they?

A. Well, they got a pretty good footing.

Q. This property in Acquackanonk Township, near the Merselis property you refer to now?

A. Which property did I refer to?

Q. Near the Merselis property that you spoke of there in Clifton, property that you examined and testified to?

A. I don't know just which property you refer to.

Q. You know the Merselis property you testified to yesterday?

A. Perfectly familiar with it.

Q. And the property between the city line and Passaic, the Botany mill district of the city of Passaic, and that Merselis property has been purchased by foreign people who have been in this country a short time?

A. Why, there has been quite a lot of that property sold down through there.

Q. Yes, a lot of it, and they are not skilled laborers?

A. I don't know just who the purchasers are.

Re-Direct Examination by Mr. Parker:

Q. Well now, will you point out on the map, Mr. Allen, on C 2, state where the sales are that Mr. Merrey spoke to you about just at the end of his examination?

A. In the Botany district?

Q. Yes?

A. It is down this side here (indicating on map).

Q. You mean south of the dam?

A. It is both sides; it is building up some over here (indicating).

Q. You mean both east and west sides of the river and south of the dam?

A. Yes, down in the Botany district.

Q. That is nearer Passaic, is it?

A. It is right in the city of Passaic.

Q. How far is that from the properties of Mr. Nash which is the nearest property of any of the complainants in this case?

A. The Merselis property would be the nearest and that is at least two miles from that.

Q. What Merselis property are you talking about now?

A. This one here (indicating on map), Edward and John H. Merselis.

Q. You don't mean to say that would be nearer the Botany district than Mr. Nash?

A. No, I mean to say Mr. Nash is the nearest.

Q. And nearly two miles off, is it?

A. Well, at least a mile and a half; it is in the city of Passaic, it is not in the Township.

Q. Now in reaching the opinions that you expressed as to the present value of the lands on the east and west side of the river if the pollution was removed; did you take into consideration the matters that were brought out by Mr. Merrey on his cross examination?

A. Did I take into consideration?

Q. Yes; did you consider this in reference to other matters?

A. I did, yes, sir.

Q. And the opinion that you reached then is an opinion based upon all your experience as a real estate man in the city of Passaic and vicinity?

A. Yes, sir.

Q. And that is also true with reference to the opinion that you have expressed as to the present value of these lands on both sides of the river, in the existing state of pollution?

A. It is.

Q. And what you have said applies also to the annual values that you have given under both conditions?

A. Yes, sir.

Q. Now you were asked, I think by the Vice Chancellor, a question as to the present value of these lands, assuming that the river was entirely clear three years from now. I think that was the question your honor put to him. Do you recollect the answer you gave to that?

A. I do not, just at present.

Q. The Vice Chancellor wanted to assume that the pollution was entirely removed in the river, and the river was put in a clean state three years from

now, and he asked you if you could give an opinion as to the present value of the lands on the east and west side of the river. Based on that hypothesis are you able to give such an opinion?

A. I am able to give the opinion that the land at the present time is worth seven hundred and fifty dollars per acre, under the present conditions.

Q. That is on the east side of the river?

A. Yes.

By the Court:

Q. That is on the assumption that the present conditions will continue?

A. As long as they continue.

Q. Is it based on the assumption that they will come to an end in three years, absolutely; suppose it were absolutely certain that the pollution would stop, so far as it is caused by the city of Paterson, in three years, absolutely; now is it still your opinion that the property would then be worth seven hundred and fifty dollars?

A. It would not be worth over seven hundred and fifty dollars during the entire time of the pollution of the river. With the assurance of the river being put in good conditiion you might be able to get possibly a hundred dollars more per acre, with the assurance that the improvements would come along, but not over that.

Q. Suppose that the seller gave that assurance, and suppose that the purchaser believed him and did not have any doubts on the subject, what would you say then?

A. Not over seven or eight hundred dollars per acre.

Q. You see you have got a period of three years, and that period is constantly lessening; now, suppose that two years have passed, and suppose that it was absolutely certain, and not only absolutely certain in itself but so considered by both buyer

and seller that the pollution would come to an end in a year, in one year, would you still say that the property during that year was worth from seven to eight hundred dollars an acre, and immediately upon the expiration of the year was worth twice as much?

A. Well, knowing the lake as I do it is impossible—

Q. No, but I am making a hypothesis which you may regard as improbable; it may be improbable in itself, but I am making that hypothesis; now I want you to take that hypothesis as I have made it and answer that question?

A. I don't think we will get over eight hundred and fifty dollars, under those conditions.

Q. That is in the last year; remember I am confining you to a single year, the last of the three years, and you think that during that year you could only get seven hundred and fifty to eight hundred dollars, and that at the end of that year you could immediately jump up to fifteen hundred or sixteen hundred dollars?

A. I don't think I would be in a position to get anyone interested on it; they would have to see the conditions before we could.

Q. Well, that would arise out of the fact that the purchaser would not believe that the river would be free from pollution?

A. I don't think I could find a customer, if it was given in writing that the river would be in shape in a year, to give over eight hundred and fifty or nine hundred dollars; the whole section has had a black eye to that extent I am afraid, in a very hard manner.

Re-cross Examination.

Q. You visited the Outwater property you say?

A. Yes.

Q. Does the new Suffern trolley road run through that?

A. No, it doesn't.

Q. How near does it run to it, do you know?

A. It starts at Broadway, and in fact I haven't been over the line, I have driven by it; that doesn't cross until it gets up near Saddle River, it doesn't cross the river road at all, it keeps on the right of the river.

Q. Do you know which the Outwater property is now; you have got that in mind?

A. Yes, between the two bridges.

Q. This is the property here, shown on the map?

A. Yes.

Q. And you say now that the new trolley road that was built there within these last two years does not cross that property?

A. I don't think that it does.

Q. Have you been over the property?

A. I have been all up through here (indicating on map) yes, sir; on the hill.

JAMES W. MERCER, sworn.

Direct Examination by Mr. Parker.

Q. Where do you live, Mr. Mercer?

A. Hackensack.

Q. How long have you lived there?

A. I have lived in Hackensack seven years.

Q. How long have you lived in Bergen County?

A. For twenty-eight or twenty-nine years.

Q. What has been your business in the past?

A. I was in the coal business, and station agent in a small town, my first position.

Q. What town is that?

A. In Lodi, in Bergen County.

Q. How far is that from where these lands are situated?

A. Why, Lodi is a mile and a half from Garfield directly east almost, and the upper part of the Borough of Lodi backs on to these properties, or almost; it runs up along the Saddle River.

Q. When was that that you were at Lodi?

A. I lived there until seven years ago.

Q. After that where did you go to live?

A. Hackensack.

Q. During the time you have lived in Hackensack what has been your business?

A. I was in the sheriff's office for three years and I have been in the real estate business, actively engaged in it since that time, and was interested in real estate before that; I have been in the real state business practically for fourteen years, fourteen or fifteen years.

Q. To what section of the country have you given special attention to or given any attention to in the real estate business?

A. Bergen County principally.

Q. Have you bought and sold farming lands and lots?

A. Yes.

Q. Bought and sold what might be called suburban property?

A. Yes.

Q. Or villa sites?

A. Yes, my firm has; at times I have arranged the sales and sometimes I have arranged for the buying; I at all times carry all of the deals through.

Q. Who has been your partner?

A. My brother, George C. Mercer, one of them, and Mr. John M. Contant.

Q. Have you also had to do with the renting of properties?

A. Yes.

Q. What character of properties have you rented?

A. All kinds.

Q. Well, by all kinds what do you mean?

A. Why, buying in Hackensack; we rented a good many properties there; we have rented a good many properties outside, farm properties; other properties.

Q. Suburban properties as well as city properties? 10

A. Yes.

Q. And dwellings as well as stores?

A. Yes.

Q. Have you rented farming properties?

A. Yes.

Q. And acted on which side, as renting them or—

A. The agent, yes.

Q. The agent usually acts for the owner, doesn't he? 20

A. Also rented some that we have owned ourselves as a farm, and one particularly which backs on to the properties in question, which I owned and sold some time ago personally.

Q. What is that?

A. That is the Smith farm on Outwaters lane, on the Saddle River, it runs back to Harrison avenue and Garfield.

Q. (*By the Court*) How far is that from Dundee Lake? 30

A. From Dundee Lake to the back of this farm is about a mile and a half.

Q. (*By the Court*) How far is Hackensack from Dundee Lake?

A. About four miles, between four and five miles.

Q. (*By the Court*) When you say four or five miles do you mean four or five miles to the outskirts or four or five miles to the court house in Passaic?

A. From the court house to the Passaic river would be between four and five miles; I wouldn't like to say positively.

Q. Have you had to do with the management of properties as well as the renting and selling?

A. Yes.

Q. And what kinds?

A. Practically every kind of property, residences and vacant property.

Q. While you were in the sheriff's office did that also bring you into connection with real estate and the buying and selling of it?

A. Yes, largely.

Q. Have you become acquainted, sheriff, with the values of property on the east side of the Passaic river, between say the Lake, the Dundee dam up to Paterson?

A. Yes, I know the section pretty well.

Q. That would apply both as to market cash values of sale, and also values for the purpose of renting?

A. Yes.

Q. Do you know anything about and have you considered the annual value and also cash value of the properties on the west side of the Passaic river in the neighborhood of the Nash and Merselis properties?

A. Until I became interested in this particular matter I did not know very much about that property; I have been over there, I know the properties generally very well, I have driven up through that neighborhood for a great many years back, gone up one side of the river and down the other; I have seen those properties many times; I have seen Passaic grow, in the twenty-eight or twenty-

nine years that I have known it, from a small town to fifty or sixty thousand people, I have seen it gradually squeezing out into the upper parts of the city.

Q. So that you have had a general familiarity with the nature of the properties on the west bank of the Passaic as well as the east bank?

A. Yes.

Q. And lately you have considered the values with Mr. Van Duyne and Mr. Allen?

A. Yes, sir.

Q. Of the lands of the complainants?

A. Yes.

Q. I think you were four times together, weren't you, in making this examination?

A. Why, I think with Mr. Allen and Mr. Van Duyne four times, but, as I say, I go up and down the Bergen County side of the river much more frequently, I am up and down there quite often, drive through that neighborhood.

Q. How long a time have you given this particular matter, that is the matter of the values of the complainants' properties, your attention and consideration?

A. Why, this was drawn to my attention first off probably six or seven months ago.

Q. Since that time have you had it in your mind with the idea of forming an opinion?

A. Yes.

Q. You have been over all of these properties, haven't you, personally?

A. Yes.

Q. And examined their different features with particularity?

A. Yes.

Q. And you did that in company, I suppose, with the other two gentlemen, didn't you?

A. Yes, sir.

Q. Now I will ask you to give us your views, first of all with reference to the Cadmus property which is the first one on the east bank of the Passaic?

A. That property we put in as being worth eight hundred dollars an acre, fifty dollars more an acre on that property on account of its being closer to the Garfield development, which is gradually crowding in on there; I consider that a conservative estimate for the Cadmus property, eight hundred dollars an acre.

Q. On what theory; on the theory of the river being clean or being as it is?

A. If the river was in better condition I think the property would be worth more money. The farm that I spoke of, that I sold, which was a mile and a half back from here, I got eight hundred dollars an acre for, and as farming property it was possibly not as good as some of those properties along the Passaic river; I didn't buy it for that purpose, of course; I bought it for development, and finally sold it to someone else who has developed. We were further away from population and from business with that farm than those properties on the Passaic river.

Q. Do you assign eight hundred dollars an acre to the whole farm of some,—well, it has quite a number of acres?

A. No, I don't think that the back end of any of those farms along the road and along the river there is worth quite as much; their outlet of course is in front at the river; there is a good road along the river and good outlet both north and south, and the distance is not very far to transportation, both trolley and steam road.

Q. Do you assign that value per acre with the river in its present condition, or with the river clean?

A. Why, in all probabilities you couldn't get that price now, no.

Q. What could you get now?

A. Why, with Mr. Van Duyne and Mr. Allen and several other people I have talked to, I think that the general impression is that five hundred dollars an acre would be possibly all they could get now.

Q. What would you consider to be a fair rental of the house and a plot, say of six acres of that land rented with it, suitable for a suburban villa, if the river were cleaned?

A. That is the Cadmus property?

Q. Yes.

A. There are so many of those that I kept this memorandum.

Q. (*By Mr. Merrey*) Let me ask you, is that your own memorandum?

A. My own, yes, sir.

Q. (*By Mr. Merrey*) One that you had typewritten yourself?

A. Had typewritten myself? No, it is a copy of the others that we went over and had typewritten; it is the same as Mr. Van Duyne's, only I kept this copy because there were so many of those properties that I thought I might not be able to remember each one of them particularly, as those questions were asked.

Q. (*By Mr. Merrey*) You had no notes of your own?

A. No, I didn't bring any notes of my own with me, simply adjoining properties that I made notes of as to valuation.

Mr. Merrey.—I do not think the witness should be permitted to testify from somebody else's notes.

The Court.—As I understand this was a statement which was made by the three witnesses together, and agreed to by the three; it is just as much the statement of one as it is the statement of the other, they all had a hand in making it. It seems to me that the mere fact that it is typewritten will not prevent it from being read.

A. The statement is just as much mine, your honor, as it is Mr. Van Duyne's; I had possibly as much to do with making it up as he did.

Q. What do you say as to the value of the Cadmus property here? Now look at this map. Here is the dam here (indicating).

A. Well, I haven't seen this map, no, sir.

Q. Here is the Cadmus property (indicating on map).

A. On the basis of eight hundred dollars per acre, and the improvements, seven hundred and four dollars a year, that would be figuring on a basis of eight per cent.

Q. And in your judgment is eight per cent. a proper figure to allow on the values that you have given for what may be considered a fair rental of the property, if the river were clean?

A. In these cases, yes. In my office we figure on a basis of ten per cent. of those things, but in the farming neighborhoods and districts of this kind, the rate of taxation is lower and it makes some difference.

Q. What amount do you think would be a fair rental value for the Cadmus property, if the property continued in the present condition?

A. I don't believe you could get over half of that.

Q. Could you get the half?

A. Very doubtful.

Q. Do you think that that situation would continue until say March, 1915?

A. I think it is going to continue indefinitely.

Q. Until the river be cleaned?

A. Yes.

Q. How much of the balance of the farm would be injured by the proximity of the river, cash value?

A. Thirty to thirty-five acres.

Q. And to what extent?

A. About the same proportion as rental.

Q. About half?

A. Yes.

By the Court.

Q. Won't you explain that? I do not see why a farm hand would care very much whether he was occasionally annoyed by these smells; it certainly would not injure the soil and the only objection to it would be that it would be disagreeable to plough and sow and all that sort of thing; now do you think that that would have much effect upon a farm laborer?

A. I think so, yes; I think it would be almost impossible to rent some of those farms along there to new people, if they knew the conditions; if any one went at this season of the year they wouldn't notice it; if they went during the summer time I think they would back out of hiring.

Q. You have separated, as I understand it, the frontage on the river from the rest; you go back probably, with your seven or eight acres, some six or seven hundred feet?

A. Yes.

Q. Now, at a distance of six or seven hundred feet from the river, unless the wind is blowing pretty strong, I presume that the smell would not be very perceptible. Now take that rear part

simply as farm land; of course you have already, on your theory, separated it from the front part so that it would stand there merely as an unimproved tract to be farmed; do you think it would make much difference to the ordinary farmer whether he at that distance from the lake was occasionally annoyed by the odor?

A. Well, at that distance the difference would not be so much; in separating those things of course it has been as a residential property that we have done it.

Q. Of course a man close by the river, on the seven or eight acres that you have separated from the rest of the tract, would be very much annoyed by the smells, there would be no question about that, but the rear property would be simply farm land, you have got to rent it as farm property, you could not rent it as anything else, could you?

A. No.

Q. If you wanted to rent it you would have to rent it as farm property; now it would bring farm property rental, would it not?

A. Why, this is so close to the better property that the prices would not be so very great in difference; it is part of these properties.

Q. A farmer could not afford to give more than a certain rent, and that rent would be small; he would rent at such rates as farmers ordinarily pay for farm property, would he not?

A. Yes.

Q. Well now, take all those cicumstances into consideration and tell us what you think would be the effect on a property unimproved and lying at its nearest point at that distance from the river?

Mr. Parker.—You are referring to the thirty acres back?

The Court.—Yes.

A. To tell rental values of farm properties is the hardest thing in the world, and it is almost impossible to do it, unless you go up in the northwestern part of the country; down here those properties are nearly all rented for development, and to compare them in that way it would be a very hard matter. I rented this farm I spoke of, of my own, for five hundred dollars a year, forty acres of farm land.

Q. For farming purposes?

A. For farming purposes.

Q. No house on it?

A. Yes, there was a house on it, not in particularly good condition but the house was there, and more for the sake of having somebody on the farm; the farm value proposition in this neighborhood is most too hard for anyone to figure up.

Further Direct Examination.

Q. Well, now, for what purposes would you give a value, a market value to the lands of Mr. Cadmus and those other people on that side of the river?

A. The location of the property generally, the fact that it is close to the mills in Garfield, and the fact that those mills located there have located all of their cheaper help right in the immediate vicinity around their mills; those people usually locate right in the neighborhood, as close to the mills as they can; I think that those mills are going to have a great many people there that are above the ordinary, a mill of that size, like the one adjoining this property, is bound to have a lot of skilled people, high priced people that are quite likely to want to locate as near the mill as they can conveniently, without being up against the cheaper help and their houses. I think the Cadmus property comes in under that class. My

reason for putting a little more value on the Cadmus poperty than on the adjoining property to the north.

Q. Because you thought it was more adaptable for use for development purposes?

A. It will come in quicker, it will develop quicker.

By the Court.

Q. Is it not more likely that some other factory will come in just as these factories have come in from away down toward the lower part of Passaic, each one coming in a little bit higher than the other; it seems to me that these factories all prefer to front on some stream; they need the water, they some times need the water for washing purposes and some times for other purposes, and they would like to have it pure when it comes into their factory, but they would also like to discharge their refuse into the lake. Now it seems to me that this property has been demonstrated to be useful in that direction; and the next man who wants to build a big silk factory or some other kind of a factory would just go, from the necessities of the case, a little further up the stream, and so this property will come into the market for precisely the same use that the property lower down will come into the market. Is not that a fair view of it?

A. In the case of factories locating on this particular property I think they would go east, so that they would be closer to the railroad and on the railroad, leaving the best of this property, the property facing the road and river, free for development of a better class.

Q. Well, the others have all built their factories right along the stream, both in Paterson to the north and down below to the south, have they not?

A. In those properties here where those factories have located they are back from the river; there is only in Garfield one factory, two factories in the old town that are close to the river, one is the one of Robertford and the other the Oil Company in Garfield proper, in the village, then the former Garfield Woolen Company, which is down at the foot of the Saddle River, is on the Passaic river; the other mills in Garfield are back from the river each a considerable distance.

Q. On the Passaic side they are near the river?

A. Yes, they are on the bank of the river.

Q. Well now, the tendency then is to come up the stream, and some of them are nearer and some of them further from the river, but they all want, apparently, to be near the river; they have not gone off to the west or to the east, but they have come up the river; now why is that? I suppose it is because they want the water for some purpose.

A. I think that practically all of the mills in Passaic are taking their water from the ground, from the artesian wells, or putting in expensive filtering plants.

Q. They empty their refuse into the river?

A. Yes, that is one benefit they have; in Passaic they turn most of it into the canal; a few of the mills run small pipes, the Botany runs some of their pipes back into the river.

Q. That is an advantage they have, that drainage, and it would be very difficult I suppose to get rid of the refuse if they were not able to do it in that way?

A. On the property adjoining this or close to it they ran a pipe from their mill to the river, still they are quite a little distance from the river.

Q. Well, your idea is that the mills will not go up any further on the eastern bank of the lake?

A. I don't think they will go so close to the river or to the lake, no; I think that they will stick to the railroad, and if necessary run a pipe back to the river.

Q. Which railroad are you speaking of?

A. There is a branch or spur of the Susquehanna road that goes in through this neighborhood, and further down a spur of the Bergen County short cut goes through.

The Court.—Well, that, if I remember rightly, is about three-quarters of a mile back.

Mr. Merrey.—Yes, it varies a little, the nearer you get to Passaic the nearer it gets to the river.

The Court.—Take the Cadmus property; how far back is it?

Mr. Merrey.—Four thousand feet, three quarters of a mile.

Further Direct Examination:

Q. Now, Mr. Mercer, the next property you examined was that of the homestead property of the estate of Henry W. Doremus?

A. Yes.

Q. Did you coincide in the views expressed by Mr. Van Duyne, you heard what he had to say about that?

A. Yes.

Q. Now I notice that you assigned the value of this land, that is the six acres next the dwelling house, at about seven hundred and fifty dollars per acre?

A. Yes.

Q. What reason did you have in making a difference between the value of the Doremus land and the Cadmus land?

A. The fact that it is a little further north and, as I stated before, that the Cadmus property would in all probability come in for development a little quicker.

Q. North from what?

A. North from the Cadmus property.

Q. Yes. Well, in your opinion from what direction would the development come?

A. It will naturally come north.

Q. Why?

A. Garfield down here has got to be the second town in Bergen County and is growing up and is growing that way; Garfield from the river east is pretty well filled up now-a-days.

Q. Where are the two factories that you spoke of as being built in Garfield; are they shown on this map at all, referring to D-2?

A. No, I think not; this map is older than these factories.

Q. Is the property shown there where the factories are?

A. The factories are, I think, on the Hillman and Phillips or Van Bussum.

Mr. Merrey.—They are not on the Van Bussum property, I think.

A. Yes, on the Van Bussum property.

Q. Where are they located on it, do you know?

A. In here (indicating).

Mr. Parker.—The witness states that the factories are on the Van Bussum property, which is several hundred feet south of the Cadmus property, and that they lie about half way between the railroad and the river.

The Court.—If I recall the lay of the land rightly it rises from the river until it reaches a point, say fifteen or sixteen hundred feet from the river and then it falls again; in the rear there is, I think, some very low land, I do not know whether it is marshy or not.

Mr. Merrey.—The brook naturally must be the low point; there is a brook shown running through these properties here.

The Court.—Well, that brook would seem to be about three thousand feet from the river.

Mr. Merrey.—No, it is not quite that; the brook is twenty-five hundred feet from the river.

The Court.—Where does the land begin to fall?

Mr. Merrey.—Right about half way between the brook and the river, say about fourteen hundred feet from the river.

Q. (*By Mr. Merrey*) The factory is just beyond the rise, is it not?

A. Yes, sir, there is a little rise between the factory and the river.

Q. (*By the Court*) Then the factory is on the eastern slope about between the highest point and the brook; now how near the brook is it?

A. I couldn't answer that question.

Q. (*By the Court*) Quite a distance from the brook, according to your idea. Your idea is that those factories will develop then along that line?

A. I believe that they will develop the cheaper class of property along towards the railroad, and in back over that brook probably, while the front of the property will be left for a better class of residences.

Q. That would apply to all along the river up, would it, to what extent?

A. Yes, until you get up to Market street again, which I consider a little more valuable; now then the property south of it that you see is again closer to development now.

Q. In your opinion could the six acres of land and the dwelling house, the homestead property of Henry W. Doremus, be rented if the river were clean?

A. Yes, I think unquestionably it could.

Q. At what value?

A. Why, I think we put that down, if I remember, at seven hundred, seven hundred and twenty.

Q. Seven hundred and twenty dollars, wasn't it?

A. Seven hundred and twenty dollars a year, yes.

Q. What do you say about the rental value, in the present condition?

A. The present owners have got to stick to their property, Mr. Parker; I don't think there is very much chance of renting there.

Q. Suppose they wanted to rent what do you think they could get for it?

A. If they got three hundred and fifty dollars a year I think they would be doing well.

Q. Now you have referred also to six hundred dollars per acre for thirty acres of land outside of the six acres with the homestead, on the Doremus property; how do you fix that value as the present value?

A. Being further away from the road or the river, not affected, and in the same comparison that I did in the other properties.

Q. You think that has been affected in value by the condition of the river?

A. Oh, I think, that all of those properties, each property being as a whole is affected, yes, properties belonging to the one owner, you cannot very well divide them up into parts.

Q. But referring to that portion of the farm which is included in these thirty acres of land, back from the six acres around the house, what have you got to say as to whether or not its value has been affected by the river; what could you sell that for today, do you think, if at all; what is the market value of it?

A. Half of it, its real value, which we put at six hundred dollars, I think.

Q. Now the next property is the property of Charlotte J. Van Riper, which I think is that which is marked Richard Van Riper on this map?

A. Yes.

Q. You heard what Mr. Van Duyne said about that?

A. Yes.

Q. You joined in his report, didn't you?

A. Yes.

Q. And you agreed with him as to the value which was put upon the house and six acres of land, both for cash values and rental value, if the river was clean?

A. Yes; those conclusions were all arrived at, Mr. Parker, after considerable talk and examination and going over them pretty carefully.

Q. Will what you say now apply to each one of the properties which Mr. Van Duyne has testified o?

A. Yes.

Q. You agree in all his opinions?

A. In all his opinions, and I heard all of Mr. Van Duyne's testimony.

Q. Now that would apply, therefore, to the homestead property of the estate of George Van Riper?

A. Yes.

Q. Homestead property of Edo Van Riper?

A. Yes.

Q. Homestead property of Mary A. Van Saun?

A. Yes.

Q. Homestead property of Zela Doremus?

A. Yes.

Q. Homestead property of Frederick H. Gelderman?

A. Yes.

Q. And the Outwater estate?

A. Yes.

Q. Now, Mr. Mercer, I want to ask you a few questions about the property on the west side of the river belonging to Mr. Nash first; you looked that over, too, didn't you with Mr. Van Duyne and Mr. Allen?

A. Yes, I have been over that property carefully.

Q. What have you to say as to the availability of what might be called the eight acre plot, with the homestead on it?

A. I think that the value we put on that of fifteen hundred dollars an acre is a very conservative one; the house, of course is in poor condition just now, Mr. Nash has been practically chased out of it by the condition of things, as I understand it, but that property in good shape ought to rent very rapidly, it is close to Passaic, it is close to Paterson, it is a very desirable piece of property, has a very nice piece of property around it.

Q. You refer to the neighborhood on each side of the property?

A. He controls that piece of property there, of course, the eight acres takes in quite a stretch on the road, and owns on the other side of the road and owns to the lake.

Q. Well, now what could that property rent for, if the river were clean, the eight acres with the

house and buildings, excluding the little cottage down here on the corner?

A. I think we said fifteen hundred dollars a year for that.

Q. Just look at your memorandum and see what that is?

A. Twelve hundred dollars a year.

Q. Well, you say if you added the value of the small cottage it would come to about fifteen hundred dollars; just as you said. Now is that property capable of renting in its present shape?

A. No, the house has been allowed to run down.

Q. Assume that a proper sum was used to put the house in order, what have you to say?

A. I think the property would rent very readily; the location is very good.

Q. I mean with the present condition of the river?

A. Well, with the present condition of the river, no, I think that is why it is unoccupied and that is why it is running down.

Q. I thought you were referring to the present condition of the house, from the point of repair?

A. No.

Q. I ask you, Mr. Mercer, what you think would be a fair rental value, if any, of the Nash property, the house and all that, if the river were clean?

The Court.—And if the property were in good repair.

Mr. Merrey.—If the Court please, I think that that would not be a fair criterion.

The Court.—You will have to make the same assumption with reference to the other; you cannot compare a property in good repair with a clean river with a property in bad repair with a polluted river;

you have to make the two assumptions; you have to make the assumption the same in both cases; I think we better have the opinion of the witness put in both ways.

A. If the house was mine I would let it stand rather than rent it to a cheap tenant. If Mr. Nash put the house in good condition and made it perfectly habitable for a tenant of his own kind he would be compelled, I think, under present conditions to stay there.

Q. Why do you say that?

A. The condition of the river in the summer time would drive any ordinary tenant away; if he fixed the house up partially and put somebody in simply for the sake of having a tenant in there I think they would do more harm to the house than benefit to it.

Q. What could he get if he fixed the house up suitable for such a tenant as would take it, how much rent would he get for the house?

A. Probably fifteen or twenty dollars a month; it is a house that is suitable for one family only, you know, unless he wanted to go to some expense and divide it up, which I think would be rather hard work in this case.

Q. Now what about the other twelve acres that Mr. Nash has?

A. The twelve acres on the south side of Lexington avenue is very nice property, but it is like his other property, it is situated just in that particular turn of the river or lake where everything drifts in, and I think that he is about as badly off as any one on the river; everything seems to drift in there, the current kind of goes around and leaves practically everything; I think that that part of the river, to my knowledge, has filled up considerably.

Q. With what?

A. With just dirt and filth which has been coming and gradually settling there, the current brings it around there.

Q. Well, what would be the value of this piece of ground on the south side of Weasel Road, the so-called twelve acre tract, if the river were clean?

A. I consider that a very valuable piece of property, it is nicely situated, it has a high rise from the road there to quite a little height, you know; that property looks to me to be worth two thousand dollars an acre.

Q. And that would be for what purpose?

A. For building purposes; there is a nice piece of property there for a good class of residences.

Q. And at present it is incapable of any sale, as I understand it?

A. Well, it is suffering with the other Nash property and with the property on the east side of the river, in the same way, the conditions are just about the same.

Q. You refer to the bend of the river. Do you know at all, from experience, as to whether there is any tendency in the current, or what current there is in the lake to throw the filth, all that sort of thing, towards Mr. Nash's side?

A. The current down this way just kind of takes it in there and leaves it on this bend; it comes down that way (indicating); Mr. Nash's property is right on the turn there, you see.

Q. Refer to the small cottage with the quarter acre of land, on the eight acre plot of Mr. Nash's property; that is rented at present, I understand, for two hundred and forty dollars?

A. No, I think that he has someone in there.

Q. One hundred and twenty dollars?

A. Yes; about ten dollars a month.

Q. What would that house rent for, under favorable conditions as to the river?

Mr. Merrey.—Isn't that the same property?

A. This is a smaller house on the same property.

Mr. Merrey.—How many houses are there?

Q. You testified to the main homestead?

A. Yes; the small house is a house that should rent for thirty dollars a month.

Q. Then there is another house on Weasel avenue which is referred to as a two family house?

A. Yes, a large house, double house.

Q. What should that rent for, under favorable conditions as to the river?

A. Why, as I remember that house I think that to two families that should rent for thirty dollars, possibly a little better than that; I think it is rented now for about twenty or twenty-two dollars, to two families.

Q. Take the next property, Mr. Merselis, north of the Nash property; you went over that too, didn't you?

A. Yes.

Q. Do you remember the house, what sort of a house it was?

A. I wasn't in the Merselis house, I was around it, looked all over it, it was a house in good condition, good big roomy house and everything looking nice around it.

Q. Did you consider the value of the house, with a reasonable plot around it for suburban use, as

a proper use?

A. The building is a five thousand dollar building.

Q. Yes, and what do you think would be the rental value of the house and buildings and say six acres around it, if the river were clean, under favorable conditions as to the river?

A. A thousand dollars a year.

Q. What of the rest of Merselis' property; how far back do you recollect it ran from the river?

A. I can't tell the number of feet now; it runs from the river back to the trolley line between Passaic and Paterson, the White Line trolley.

Q. It has been testified to be about seven hundred and fifty feet, is that right,—or fifteen hundred feet to the trolley, yes, fifteen hundred feet to the trolley?

A. I don't know just what depth that property has.

Q. What is the nature of that property with a view to development?

A. It seems to me that that property is ripe for development now.

Q. Why?

A. It is property that is very nicely laid out, the back end of it has the trolley running past it, the front of it has a good country road in good condition, and I think has all the improvements that they can have so far away from the town.

Q. How near is it to the city of Passaic?

A. Well, I have driven over that road many times; I couldn't tell you just what is the distance.

Q. It is not very far, is it?

A. No, it is right out on Lexington avenue; the road is straight out, all the way out almost, a good wide road in nice condition, just above the turn at Mr. Nash's property there, in fact just one section north of that.

Q. Is the land so arranged that it could be readily utilized for building lots?

A. Yes.

Q. I mean by that is it flat and level for streets?

A. It would not cost much to put it in shape; I think streets at some time or other has been shaped up, graded up and allowed to go back probably.

Q. What have you to say as to the value for that land, outside of the six acres you have spoken of, for development purposes?

A. I think in that locality fifteen hundred dollars an acre is a very conservative estimate.

Q. Is it saleable now for anything?

A. Well, that has the same contention there, as to the river.

Q. What is your opinion about it?

A. I think under present conditions it is not.

Q. (*By the Court*) When you get ten or twelve hundred feet back from the river?

A. It might not be the same.

Q. (*By the Court*) The odor is not very perceptible, is it?

A. I should not think so at that distance, no.

Q. How much of Mr. Merselis' property do you assign as being affected by arrested development, how much beyond that immediately near the river?

A. Why, the best half of it, running west from the river.

Q. (*By the Court*) Does the Merselis property slope up or is it level?

A. No, it has just a nice grade from there west, there is no slope to it really.

Q. Do you recall what streets are actually laid out around the Merselis property?

A. Merselis avenue is the one running east and and west, on the south side of the property, as I remember it.

Q. Is there any other street there that touches it in the rear? Here is Merselis avenue here (indicating on map); then it runs out to the trolley, you see, doesn't it?

A. Yes.

Q. Do you know any streets running along the north side of it?

A. Well, there are two streets through the property, as I remember it, and I think probably one, possibly more, cut through it from south to north.

Q. Then the river road runs in front of it?

A. The river road is in front.

Q. I will ask you now about the Terhune property which is the last one on that side of the river. Will you look at that? That is a pretty nice little place, isn't it?

A. They have got a very fine property, yes, sir.

Q. What have you to say as to whether there is any injury to the rentable value of that property on account of the conditions of the river?

A. I would say it would have the same effect as the other property.

Q. Does the owner occupy that property?

A. That is occupied by the owner.

Q. What do you think is the fair rentable value of that property, if the river were clean?

A. I think when we talked over that property I said it was a property that ought to rent for about twelve hundred dollars a year; I think that the rental was finally put at nine hundred dollars, after some discussion, and an allowance made for taxes and repairs.

Q. It came to eleven hundred dollars, didn't it?

A. Bringing it up to about eleven hundred dollars, yes.

Q. Under present conditions what do you think it could be rented for?

A. Pretty hard matter to say what it could be rented for; if owner didn't occupy it it would be a losing property; very similar to the Nash property.

Q. What do you mean by losing?

A. He would not be able to get a tenant that would pay what ought to be paid for the property.

Q. Well, has the fact of renting to a cheap tenant any effect on the market value of a property, for the purpose of renting?

A. Yes, if the property runs down, yes.

Q. Suppose property is kept up, as far as its exterior purposes are concerned, will the fact that a cheap tenant has been put in there have any effect upon the rentable value of the property at the termination of that particular tenant's lease?

A. In my estimation, yes.

Q. In what way, would it hurt it, help it or what?

A. Hurt it. People would think there was something wrong with the property if they had to put a tenant of that kind in it, simply for the sake of having a tenant.

Q. If you had the property under your management what, in your opinion, ought to be done with it in the event that the owner did not occupy it, what would you do with it, shut it up, rent it or what?

A. I would rather put someone I knew to be right in there and let him have the use of it, rather than rent it; I would consider that a better proposition than getting a small rent for it.

Q. I suppose that certainly would be the case if you had the assurance that the river would be clean inside of three years. I think that is all.

Cross Examination by Mr. Merrey:

Q. Sheriff, you and Mr. Van Duyne and Mr. Allen got together and agreed upon these properties?

A. Yes.

Q. Did you depend any upon their experience in real estate of this kind?

A. In Passaic County to some extent; I think I know values in Bergen as well as either one.

Q. So that in the Passaic County property you depended upon Mr. Allen and Mr. Van Duyne?

A. Not entirely.

Q. Well, to a great extent?

A. Yes.

Q. And in Bergen County on whom did you depend?

A. My own knowledge of adjoining values principally.

Q. Now then you probably are the one who fixed these values, rather than the other two?

A. Not exactly, I suppose they were guided some by my ideas, and I was guided some by theirs.

Q. Your experience was far greater than either of theirs in Bergen County?

A. I think probably it is.

Q. As a matter of fact they didn't have any experience in Bergen County, did they?

A. A real estate man, in a general way, can form pretty good opinions, I think.

Q. Then your opinion on this property is based upon your general knowledge as a real estate man. Bergen County has had a wonderful growth, has it not, in the last ten years?

A. It has the best, most healthy growth of any county in the State.

Q. Do you know what the increase in population was?

A. In ten years from seventy-eight thousand to about one hundred and forty thousand.

Q. That is it nearly doubled, did it?

A. Well—

Q. It is a matter of calculation. It is the fastest growing section in New Jersey, is it not?

A. The fastest growing county, yes.

Q. It grows much faster than Passaic County and all the territory around, and that is the County in which you have made your experience, isn't it?

A. Mostly, yes.

Q. The effect of this growth of population has been to rapidly increase the values in Bergen County; that has been your experience?

A. Yes.

Q. Now the country has not developed uniformly, has it?

A. Why, all sections of the country have been benefited by that growth, yes.

Q. But not uniformly, some have received greater benefit than others?

A. Oh, naturally.

Q. Is not Bergen County a peculiar county in the fact that it has no center?

A. In a way, yes.

Q. It is made of several centers?

A. Yes.

Q. That is there is no central town which dominates the rest of the county; that is a fact, isn't it?

A. Why, Hackensack being the county seat is the center, the principal center.

Q. It is the geographical center?

A. Yes.

Q. But what I mean is that there is no center for shopping or general intercourse in the county?

A. Hackensack is getting to be quite a town in

that line, so is Rutherford, so is Englewood.

Q. But these developments have been around separate centers in the county; there has been no general development out from a common center; is not that true?

A. That is correct.

Q. Now this development has been principally of a class of people who wish to work in New York and live out in the country, has it not?

A. A good many commuters in our county, yes.

Q. That is, the main growth comes from that class of people; it does, doesn't it?

A. A great deal of it.

Q. And naturally those people in going to Bergen County seek to be located near a railroad station?

A. A great many, yes.

Q. And there are several lines running through Bergen County, isn't that true?

A. Yes.

Q. You find the great growth of the county has been in little communities around the stations of these various roads; is not that true?

A. A good deal of that, and a great many are going out into the country, away from the station also.

Q. Much away from the station?

A. A great many of them, yes; I have many requests in my office for places on the river or a mile from the station, or a mile and a half from the station, there would be no objection to it, if everything is congenial, and I have a number of requests for places on the Hackensack river.

Q. And a little distance from the river?

A. Why, they will go near the river; they don't mind if they are a mile from the station; I have lots of requests of that kind, a mile and a half from the station.

Q. Your experience has been more around Hackensack than in the rest of the county?

A. Not necessarily; I have been around the county a good deal, and my business in one way or another has taken me around the county; I think I have kept pretty well posted on conditions in the county generally.

Q. That is, in your position as sheriff?

A. Yes.

Q. But you haven't bought and sold much property at a great distance from Hackensack?

A. No; pretty considerable in Hackensack.

Q. You have done no business in Englewood?

A. Some.

Q. Small amount?

A. No, handled some, well, at the time it was farm property, between Englewood and Highwood.

Q. Have you done anything in Rutherford?

A. Done a little business in Rutherford and nearby, yes.

Q. In Ridgewood?

A. In Glen Rock or adjoining Ridgewood, yes.

Q. Those are all developments which are of the class of people who are called commuters, who go back and forth from New York every day, isn't that true?

A. Yes, a good many of them.

Q. You are familiar, you say, with the developments of Garfield and Wallington and all those sections opposite Passaic, your old town of Lodi?

A. Yes.

Q. That is a different class of development?

A. Those are manufacturing centers, those are.

Q. Entirely different class of people?

A. Yes.

Q. The railroad communication with New York is not so good from that section, is it?

A. No.

Q. As far as the commuting train service is concerned. Now then, isn't it your opinion, sheriff, that the development of those farms owned by Mr. Cadmus and the Van Ripers and Merselis and Doremus that you have testified to and which are located on the Bergen County shore of the river, is more likely to be that of the manufacturing type than the other?

A. No.

Q. You think not?

A. No; I think I stated that when Mr. Parker questioned me on those things, and my reason for it.

Q. You said you thought that the mills would not follow up the river but would go along the railroad?

A. Yes.

Q. Now then, what has been the development of the front of the Van Bussum farm on which this large mill, the Forstmann Hoffman mill is—is that the name of it?

A. Yes.

Q. What has been the development there?

A. From the mill down towards Garfield, into Garfield, there has been quite a development in small houses.

Q. Now the front of that, resting on the river, what has developed there?

A. What do you mean?

Q. I mean the front part of the Van Bussum farm, the part nearest the river, between the mill and the river?

A. Just as I say, the small houses.

Q. So that the fact that that mill was located

back from the river has not changed the character of the development of the front part?

A. No, because those are practically the same properties; the houses and the factory are in the immediate vicinity of each other.

Q. What has been the development of the Phillips property?

A. Similar.

Q. There is no mill on that?

A. No.

Q. But it has been sold off for small lots?

A. Those farms of course were controlled by Mr. Bogart, taken practically as one and developed by him and his associates in that way, for that purpose.

Q. You are quite familiar with this section and the people who live there and work there?

A. Yes.

Q. There are a great number of factories?

A. Yes.

Q. And they employ the laborers and skilled mechanics who live nearby, don't they, and there are a certain number of the overseers and other men who receive larger salaries, where do they live?

A. Over to Passaic mostly; they go further down and further back on the hill, in Garfield.

Q. Do you know any of them that go further back in the hill, in Garfield?

A. Do I know any of them that will go?

Q. Yes?

A. Well, if everything was nice and as it should be along the river I believe that class of people you are talking about would settle there.

Q. I am asking you where they do go now?

A. They go to Passaic, good many of them.

Q. Notwithstanding the fact that there are un-

limited possibilities for them getting in farm houses in this neighborhood away from the river they don't do it?

A. I don't know where the unlimited room is now; there is about one house on each of those farms.

Q. Isn't there any amount of farm property in that neighborhood to be purchased?

A. Any amount of farm property, yes, but those people are going away from that property on account of the conditions.

Q. I don't mean at the river but back from the river; they don't go there now, do they, where they are not bothered by the river?

A. They are not likely to go there because they don't want to get in connection with the cheaper help that put up the cheaper grade of houses; they are getting away from there.

Q. There are other properties near by those mills and a short distance from them which are not developed for the factory hands, but are open farm lands and that class of people have not taken those properties?

A. That property is all north of there, Mr. Merrey, and when you get east of that I don't know where you can get anything. You have been trying to show the Court that back here the ground was very low, swampy, had a brook in it and all that.

Q. Across the branch of the railroad?

A. Across the branch?

Q. Yes?

A. Why, that is the same kind of development across there; when you go back into Plauderville you have exactly the same thing from the other mills in Garfield that have settled down there.

Q. Well, a little north of Plauderville?

A. Then you are getting into a section where it is impossible to get around, you have no kind of a road out there, when you get off Outwaters lane there is nothing.

Q. Outwaters lane leads you into that territory?

A. It will lead you directly to it.

Q. And there are a number of farm houses?

A. No.

Q. There are some?

A. There are one or two houses there that are not particularly fine; the Ryan property was sold a little while ago, I think about forty-five acres back in that neighborhood, for a pretty good price I believe.

Q. But your experience has been that these workmen go to Passaic, that is, the better class of the workmen?

A. The better class of them do, yes.

Q. Isn't it a fact that they go across the Erie railroad in Passaic and up on the hill there?

A. Why, some of them may go as far as that.

Q. That is where they find more congenial company?

A. And they go across the Erie Railroad; I don't think that many of the foremen would be going very far across the railroad; I think Mr. Forstmann or Mr. Hoffman lives across there, I know one lives at Passaic.

Q. Why would not the foremen go up there?

A. Why wouldn't they?

Q. Yes?

A. Because prices would be entirely too high for them.

Q. What do you think these men can pay?

A. What do I think they could pay?

Q. Yes?

A. I suppose a great many of those people would

pay forty or forty-five dollars a month.

Q. Then they could not afford these places here, at your rentals?

A. Couldn't afford which places?

Q. The places along this river front which you have been telling us was worth seventy-five, eighty and a hundred dollars a month?

A. I am telling you those people would pay forty and forty-five dollars a month, that is for a house and a lot; if you will look that over you will find we include in that quite a good piece of ground and six acres with the house.

Q. Do you think they could afford to pay that?

A. I hardly think they could, but I say this property is ripe for development for men that would pay that price.

Q. So that they would not come from the mills in any way, the people who would rent that, not even the better class of help?

A. Oh yes; I say that property is just ripe for people of that class.

Q. But they could not afford to pay these prices that you put upon them?

A. Which prices?

Q. Seven hundred, eight hundred and a thousand dollars a year?

A. For a piece of property of that kind, yes; I have no doubt there are a number of foremen in those mills in and around Garfield that could pay that; I know in my own town of Lodi quite a number of foremen get fifty to seventy-five dollars a week; those men don't settle around the mills, they couldn't afford to get so close to that kind of people and they move over to Hackensack, and live in Hackensack, live in Passaic, over to Garfield.

Q. How many men in a mill of the size of the Forstmann Huffmann receive fifty or sixty dollars a week?

A. I don't know about theirs particularly; I know in that line of work that about probably eighty per cent are pretty cheap.

Q. Yes?

A. And about five per cent. are a little better and the other fifteen per cent. are well paid.

Q. By well paid you mean that the other fifteen per cent. are paid twenty, twenty-four or twenty five dollars?

A. No, I mean the five per cent. would run about that, and the fifteen per cent. would probably reach thirty-five to fifty.

Q. Fifteen per cent of the people employed in that mill would receive such wages?

A. That is my idea, yes.

Q. And do you think they could afford to pay seventy or eighty or ninety dollars a month for this property?

A. Not all of them.

Q. Many of them?

A. A number of them; probably getting better pay than that.

Q. Do you think the men like the owners of the mill would care to live in houses of that character?

A. Why, I don't see any reason why they should not; most of those houses along there are in pretty good condition.

Q. Without electric light and without sewage facilities, and with steam plants of ancient make, and so on?

A. No, you are mistaken. Now take the two Van Riper houses for instance, and they have modern steam plants in them and the houses inside are modern houses; they are old fashioned in their style of architecture but inside they are entirely modern. The Doremus house is in the same class, a number of those houses along there. Mr.

Gelderman's house has a hot air furnace in it, for instance.

Q. You don't know anything about its capabilities, whether it can keep the place warm or not?

A. I have been in the main house I imagine probably once or twice; last time I was there was very cold weather and I found them very comfortable, the heater was doing the work in very good shape.

Q. You spoke about the values of farm properties in Bergen County, and you say that it is a very difficult proposition to fix any value on it; that is true, isn't it?

A. For farming purposes, yes.

Q. The condition of the market and the methods by which they sell their produce has caused that, hasn't it?

A. No, I should think that the better market that they have right at home ought to have a different effect. The property in Bergen County is practically all ripe for development as residential property, it is ready to go on the market nearly any time, and there is little of it,—I think the cheapest farm that I have listed just now in Bergen County, anywhere near this property in question, is back on the Broadway road probably two miles from here, at four hundred dollars an acre; I don't know anything in this whole neighborhood that you can buy cheaper than that.

Q. As a farm proposition you are not selling or buying many farms in Bergen County?

A. What do you mean?

Q. I mean people are not buying property in Bergen County to farm?

A. No, not to farm, no.

Q. And isn't it a fact that they cannot make it pay?

A. When property begins to be worth five or six hundred dollars an acre it is entirely too high for farming purposes.

Q. Do you mean to say that the entire Bergen County is now ready for population?

A. Not the entire county, no.

Q. But the great part of it?

A. Why east and south of Ridgewood, yes, the great part of it.

Q. Why, isn't there room enough in Bergen County to house the entire population of the city of Newark?

A. Why isn't there? I suppose there is; I haven't figured it out to that extent.

Q. Isn't it an immense county in area?

A. Yes.

Q. And it is not possible to develop that county for a great many years to come?

A. Oh, no.

Q. Because you cannot get the people there?

A. The east side of it is developed and populated now, and that is where the main increase is; the rest is coming up further west.

Q. You have a hundred and forty—

A. One hundred and thirty seven or eight thousand people.

Q. And it is capable of holding a couple of millions, is it not?

A. I haven't the least idea how many you could put in; I know there is a whole lot of property still vacant.

Q. It is much greater in area than Essex County, isn't it?

A. I am not sure of that.

Q. As a matter of fact this whole question of suburban development is one of chance and the skill of the developer, is it not?

A. Oh, no; the skill of the developer in some cases comes in all right; there are other places where just natural conditions put the property on the market.

Q. That is when the developer has been next door?

A. Not always, no.

Q. You don't know then whether farming can be carried on profitably or not in Bergen County?

A. Oh, it can; there is a lot of it being done.

Q. Isn't it a fact that the development of transportation from the south, bringing up the produce from there so much earlier than can be produced in Bergen County has affected the price of it?

A. I suppose it has.

Q. Are not a lot of the farmers giving up their farms because they could not make them pay?

A. No, I think those of them in Bergen County giving up their farms are cutting them into lots.

Q. Putting signs up and waiting?

A. Not waiting very long.

Q. You spoke about these farms being in the vicinity of Paterson?

A. Yes.

Q. And therefore having a market for their produce?

A. Yes.

Q. Isn't it a fact that a great many of these farmers take their stuff by wagon to New York?

A. Yes, a great many of them.

Q. Isn't there a great deal more produce raised there than Paterson can take?

A. I have never figured it that way; I don't know just why; those people have always gone to New York with their produce and they go yet, and a number of them go to Paterson; a good many go to Newark from that neighborhood.

Q. So that that is not of such an advantage then to be in the vicinity of Paterson with those farms?

A. I don't know why it should not be, but they go the other way.

Q. The fact is that they go to New York and Newark?

A. A great many; probably prices are better in New York, bigger demand; people from above Paterson come to Paterson with their produce.

Q. Now the property which you have in Bergen County and which has been abandoned practically as a farming proposition, and which they are sitting down waiting for the influx from the city of New York to bid up the prices on it, has caused this condition, has it not, that it is impossible to get any rental out of it?

A. Oh no, oh no, I didn't figure that at all, Mr. Merrey.

Q. Well, these farms you say here are now about ready for development, that is true, isn't it?

A. Yes.

Q. And they are not of much use as a farming proposition. Now you have testified that they are worth eight or nine hundred dollars an acre?

A. A very conservative estimate.

Q. That is based upon their prospective value of building lots?

A. Yes.

Q. Is that true?

A. The fronts of those properties we figured would make very fine residential property for residences, and residences of the better class.

Q. Now then I am referring to the other part of the property, the property which is ready now to be cut up into building lots and has a greater value than it otherwise would have had on that account; can you in cases of that kind obtain a rental return based upon this anticipated value?

A. The owner probably couldn't, if he was renting it.

Q. Can anybody?

A. The owner's benefit would be to stay there himself, of course.

Q. Well now, sheriff, just follow this: If you have a farm which is in a position that it will soon be fit for development into building lots, it has a value far in excess of its value as a farm on account of that prospective value; does anybody who rents that property, in fixing the amount of rent which they are willing to pay, take into consideration the prospective value for building lots?

A. The renter?

Q. Yes?

A. Certainly not, no, that is no affair of his.

Q. So that a man coming along and looking at these properties would consider them now, the back part of them, merely as a farming proposition and he would not pay a dollar more because in three or four or five or ten years they are going to be cut up into city lots and will have a greater value, on that account, to the owner?

A. But if someone else creates a condition which prevents that man from developing his property sooner I don't see why he should be made to suffer.

Q. Answer the question?

A. I am answering it, probably not as you want me to but I am answering it as I see it.

Q. You are not answering the question?

A. In your way.

Q. The rental will not be more for a property, as a renting proposition?

A. I have admitted that.

Q. That is all then, as far as that is concerned. And therefore, in fixing the loss to the owner, in

a case of this kind, we could not consider this property as anything more than a farm?

A. I don't agree with you at all; if there is a condition created by someone else which prevents him doing that then he ought to be paid for it.

Q. How long do you think it would take to develop this property, if the river were clean?

A. Everything favorable, everything going along nicely?

Q. Yes.

A. With a nice big clear lake in front of that property?

Q. Yes.

A. I think it would be taken up in a very short time; there is nobody that can tell how long; the front of that property, what I am going by mostly, would develop very quickly, and the back of it gradually; I think if everything was right along there that property would all develop inside of five years.

Recess.

Q. If this river was cleaned out these properties would not sell all at once, would they?

A. No.

Q. They would come one after the other; and how long do you think it would take to develop the last property?

A. With conditions favorable I think that all of the front of that property would be disposed of in four or five years.

Q. How about the backs?

A. Take a little bit longer possibly.

Q. How do you arrive at the rentals of farm lands in Bergen County?

A. Well, I have just said that it is a pretty hard matter to arrive at a conclusion in that way; for farming purposes it is almost impossible to tell because there is so very little farm land left in Bergen County south of Ridgewood, or a little above it.

Q. There is a great deal north of Ridgewood, isn't there?

The Court.—Is there not a rate at which good farm land rents per acre?

A. No, I have never heard of it.

Q. (*By the Court*) In this part of the State, assuming that the soil was good, would not the farmer expect to rent at a certain rate?

A. Why, I never heard of any specific rating, or anything of that kind; of course if a farm is good it will rent for more than a poor one, naturally, but aside from that I don't know of any rule to go by.

Q. You haven't had experience then in the renting of farm properties as such?

A. I have rented some farms; they have been in outlying districts mostly.

Q. How was the rental fixed?

A. Why, there hasn't been any form for it, it has simply been a guess; in some cases where the older farmer, the older owner would die and the younger man would not care to take up farming, great many of them being brought up in the cities, and they would rent a good deal according to the house on the property and the buildings, if they were in good condition and everything in good shape there would be more money coming; if they were poor the rental would be lower.

Q. In the township on the west bank of the

river, Acquackanonck Township where this property is located there is considerable farming property, isn't there?

A. You can hardly put that down as farming property along there.

Q. Not along at that point but I mean in the Township of Acquackononk, around Athenia and Ridgefield?

A. When you get back there it is a farming community.

Q. And there is quite some farming property there?

A. I am not as well acquainted with them.

Q. So that you haven't had very much experience putting the value upon a farm property, as a farm proposition?

A. As a farm property, no.

Q. You have confined yourself principally to the properties which are changing in character from farms into building lots, and you say there has been a great deal of that done in Bergen County?

A. Yes.

Q. And very successfully, I presume. Bergen County real estate men are inclined to be optimistic about the future of Bergen County, are they not?

A. Naturally so, yes.

Q. So that you see a greater future there than you do in some of the other places, and you are inclined to put a higher value on your property?

A. Not unreasonably so, no.

Q. But you are rather inclined to be high than low?

A. Why naturally, yes; there isn't any of us care to go back, in money matters particularly.

Q. Now, you have stated about the develop-

ment of these properties which we have had under consideration, and you have stated that the first property on the—that is the most southerly property on the easterly side of the river in Bergen County, the Cadmus property, in your opinion would be the first into the market; that is true, isn't it?

A. It will develop a little quicker, yes.

Q. Why?

A. On account of its proximity to the other properties it will develop, I think, in a little better way.

Q. Give that a little more precisely; the proximity to what other property?

A. To the property which has been developed in a cheaper scale, it will develop in that way.

Q. You mean on account of its nearness to this new mill?

A. Yes.

Q. That has been put up?

A. Yes.

Q. Then you presume from that that the development will be of like character?

A. Part of it, yes, I think the part of it adjoining those other properties where the cheaper development has taken place will come in.

Q. Then that development will come in time when there are other mills there?

A. Why, I made the statement that I didn't think the mills would be close enough to the river to injure that property, the front of it, the best part of it, in any way; I think that mills which locate there in the future will locate nearer to the railroad than they will to the river.

Q. Outside of the six acre tract, say in this Cadmus property, you think the development is going to come from the mill hands and from the adjoining property, do you not?

A. In that particular property it would be affected in that way, yes.

Q. That property will be developed in that way; and before it is developed won't it need an extension of that mill property or other mill properties to be located there?

A. No, no.

Q. Do you think that it will naturally get its increase from this mill?

A. Just as I said before, with the better element, and the conditions that are holding things back now are done away with that property will come along.

Q. What do you think are the conditions that are holding it back?

A. There is only one condition we are figuring on, I think, and that is the river, that is the principal condition.

Q. The factories which have been located in Garfield and this lower end are woolen factories, are they not?

A. Principally, yes.

Q. Is not the development of those factories considered to be dependent on the question now pending in Congress as to the woolen bill, as to schedule K?

A. I suppose there will be more or less effect from that.

Q. Isn't there considerable question as to what effect any action of Congress is going to have on all this property there, for that reason?

A. No, I don't see it in that way; I think that the factories located there at the present are bound to increase, naturally, I never knew of a factory that didn't and those factories will.

Q. Are not these factories all in the woolen business?

A. Mostly, yes, I think all of them in that neighborhood.

Q. Has not Passaic and this section of it developed mostly as a woolen center?

A. Passaic has a great diversity of industries, you know; the Botany mill of course and their worsted concerns is the principal one in that line, and then when you get over to Robertfords and the Garfield Worsted Company further back.

Q. Isn't the New Jersey Woolen Company there too?

A. That is away down in Garfield, and right on the line between the borough of Garfield and the Borough of Lodi, from this point (indicating), that is about a mile and a half.

Q. Isn't the new development of factories in Garfield of the type of woolen mills?

A. Yes.

Q. And you don't consider that the tariff question has anything to do with whether they shall increase or not?

A. Well, the mills in Garfield are all that kind in this neighborhood, still all of the mills in Garfield are not all that way, when you get further down there are different industries.

Q. They have all come there lately?

A. Well, in the last few years, yes, located there from time to time.

Q. The change in the condition in the woolen business is liable to cause a big difference there?

A. Well, that is kind of anticipating things too.

Q. Well, if a change takes place?

A. If it takes place it will have its effect, I suppose, temporarily.

Q. Are there any other mills there besides woolen industries of any kind?

A. In that particular neighborhood?

Q. Yes.

A. No.

Q. Now then, in the natural growth of things another factory is located along here on the Hillman property or on part of the Cadmus property, is not that the natural development that we may expect there?

A. I won't be at all surprised if there are more mills of that or other industries located along there, one factory usually brings another; it doesn't always bring the same industry.

Q. So then the hope of developing within a short time all comes from the hope that additional mills will be located there?

A. No, I don't wish to be quoted that way.

Q. You think that even if there are no mills additional built in that section that there will still be an increase?

A. Yes, I do.

Q. Where will that come from?

A. It will come naturally, just as the county is filling up; according to your own statement lots of people are leaving Paterson, possibly some of them will come over to Bergen County.

Q. No, they won't go to Bergen County. Where will the people who live there work, or what will they do, what reason will cause them to locate there if it is not that additional factories are to be built?

A. Why, I haven't at any time said, Mr. Merrey, that that property along there, above a certain point, was going to increase in population from those mills; the natural increase in the population of Bergen County will bring people there.

Q. But that natural increase, as you have said,

comes from commuters who work in New York?

A. Some of them.

Q. Isn't it practically all of it, except this locality, of that class of people?

A. No; people come in there, there are people locating in all parts of Bergen County, and some of them will locate there eventually; they are simply getting away from New York, taking it easy, getting their own little places.

Q. We will assume they are not people with independent means who do not have to do something for a living that will go there; is that true?

A. Why, I think that would be an ideal place for a man in that position to locate.

Q. Are those the kind of people that you expect will come there?

A. I think a good many of them will eventually go there, if that property was opened and everything in the shape that it ought to be.

Q. Then it has got to be either men that are beyond work, retired, or somebody that is going to work in some of the mills to develop that section?

A. Not at all.

Q. What will the other people do?

A. A good deal of that property is close to the railroad at Dundee Lake, they can go in and out to New York there.

Q. Do you know how often the train service is from Dundee Lake?

A. I can't tell now; I know they have had more or less trouble, but they are getting pretty good service now.

Q. Is there anybody on the Susquehanna railroad getting good service?

A. Yes, we are getting good service in Hackensack, and we haven't much more than at Dundee Lake.

Q. You use the New York & New Jersey Railroad?

A. We have both roads and they have done exactly the same in Hackensack that they did in Paterson, when they got control of the Susquehanna, they rearranged their schedule so that you get better service.

Q. They took a lot of trains off?

A. May have taken some off one road and put some on the other, at different times.

Q. They took them off the Susquehanna?

A. Took some trains off the Susquehanna but very few; they were trains that interfered with their main line traffic; you people in Paterson from the Erie and Susquehanna are getting better service to-day than you were at that time.

Q. At what time?

A. At the time they made those changes.

Q. Do you know how many trains the Erie ran from Paterson fifteen years ago?

A. No.

Q. Do you know how many trains the Susquehanna ran from Paterson fifteen years ago?

A. I couldn't tell you that, fifteen years ago I worked for the Susquehanna.

Q. How long ago is it that the Erie got control of the Susquehanna?

A. In eighteen ninety-nine or nineteen hundred.

Q. Immediately upon that didn't they take off a great number of the passenger trains?

A. No, not a great number; kind of fixed things up in Paterson and between there, but they didn't take off a great number of trains.

Q. Did they take off any?

A. Yes, I think they did.

Q. So that the service is less than it was before?

A. And a great deal of the holler against that proposition was the fact that some of the trains from Paterson didn't stop between there and some place else, and some of the trains didn't back into Paterson from Broadway as they did formerly; those were the changes; of course we are all likely to holler and raise a big time about what the rairoad does; there wasn't so much to that.

Q. Didn't they add some time to their schedule so that it took them longer?

A. That has helped the Erie to reduce the increased running time, possibly little cheaper to do that, but I think between the two roads between Paterson the service is as good as it was fifteen years or more.

Q. The Erie road doesn't reach this place?

A. No; they control the road that does; there is practically no difference in that in the last few years; the service is better from Dundee Lake than it has ever been.

Q. That is since the Utility Commission made them open the station?

A. I don't know who did it; I know one of our local papers made a great time about closing it.

Q. Well, they abandoned it?

A. For a time.

Q. And as a matter of fact are they not operating that road as a coal road in preference to passenger service?

A. No; they are running a good deal of coal over that road, but that coal doesn't come on to the Susquehanna road until you get below Dundee Lake.

Q. Until you get below Dundee Lake?

A. Yes.

Q. You mean it comes then?

A. At Passaic Junction, goes on to the Susquehanna and goes into their coal yards; doesn't affect the service up there at all, not in the least.

Q. You don't know, do you?

A. I do; certainly there are a lot of coal trains; we see more of them in Hackensack than you do, but those coal trains coming over the Erie and Susquehanna railroad, over the Erie particularly come off the main line at Ridgewood on to the short cut and go on to the Susquehanna and into what they call their coal station at Passaic Junction, which is a mile below this.

Q. How many trains stop at Dundee Lake a day?

A. Why, I haven't got a Susquehanna time table with me now; we have, I think, from Hackensack—

Q. Not from Hackensack; they all stop at Hackensack.

A. No, they don't; we yell about that, too, some of them give us a little toot of derision going through and that is all, they just go on, and of course we make trouble about those things, but for a local service I think that Dundee Lake is pretty well supplied; I couldn't say right off just how many trains they do have either way there.

Q. Five or six?

A. Oh, yes, all of that.

Q. About that?

A. Yes, they have all of that; they have a number of trains in the morning which run pretty close together.

Q. Now then, what change has come over this

property in the last three years in regard to value?

A. What has come over it in the last three years?

Q. Yes, any change?

A. Why, it has increased in value with all of the adjoining properties, no reason at all why it should not.

Q. How much has it increased?

A. That property in the last five years has increased, in my estimation, twenty-five to thirty per cent.

Q. Do you find any person looking for property in that vicinity?

A. Why, I haven't had any request for anything in that vicinity lately, and if someone wanted it for residential property I would not be particularly anxious about taking them over there, unless it was this season of the year.

Q. You have had one sale in that neighborhood, I understand from your testimony, and that's all, of property?

A. No, I spoke of that particular sale because that was my own property, property which I owned and sold, and my firm, or I might say myself, sold two properties, one north and two south of that.

Q. Of that particular property?

A. Of this property which I mentioned this forenoon.

Q. Where does that property lie that you are now speaking of?

A. East from there.

Q. About a mile from the river?

A. Why, about that, yes.

Q. Is it on a railroad?

A. No. This property I spoke of, all of the properties I spoke of are between Lodi and Ro-

chelle Park and on the west of the Saddle River, which would bring them east of the Passaic river, in that section, and all of those properties are away from the Susquehanna railroad, Rochelle Park would be the nearest point to them, a mile, and the next point to a station south would be at Lodi which would be about another mile, and very poor service there, being on a branch.

Q. Well now, how much did you get for those properties, how much did they bring?

A. I don't mind telling what I got for my own property; eight hundred dollars.

Q. Per acre?

A. An acre.

Q. What kind of a house was on it?

A. Very poor one, a rambling old Jersey farm house, that is all you could make of it, part stone and part frame.

Q. The other properties, what did they sell for?

A. One with no house at all on it sold for a little better than seven hundred and fifty dollars an acre, and the other one, while I started the sale of that it was in a way taken out of my hands, and I think brought about eight hundred dollars, although I never knew positively.

Q. What were these properties to be used for?

A. Development.

Q. What character of development?

A. Lodi is a manufacturing town, but as I say those properties are about a mile from there.

Q. How near to the trolley road that runs from Lodi to Hackensack?

A. About the same distance.

Q. About a mile from the trolley road?

A. Yes.

Q. Are they a mile from the nearest mill?

A. The trolley goes through between the two

big mills of the place, yes; the distances are about the same.

Q. Whoever developed those properties expected to sell them to the operatives in the mills?

A. Yes.

Q. There is considerable swampy land in that vicinity, isn't there?

A. Considerable of it on that particular farm that I spoke of, yes; it brought just as much as the good land though.

Q. The Saddle River runs through there?

A. East of it, yes, east of all of those properties.

Q. Was it sold to a development company?

A. One was, yes.

Q. Yours was, was it?

A. Mine wasn't, no.

Q. Have they since passed into the hands of a development company?

A. Two or three of them.

Q. And was the consideration stock or cash?

A. Cash, in my case.

Q. You received the cash?

A. I did, yes, partly, and part mortgage; the other two went into the hands of development companies that paid partly in cash and contract, of course.

Q. Partly in stock?

A. Release clause.

Q. Partly mortgage and partly cash?

A. Mortgage and cash and contract with release clause.

Q. What is the character of the people who work in the Lodi mills, are they of the foreign element?

A. About the average of the factory employees nowadays, yes, good many of them foreigners, a

good many of them,—well, a little superior to some of them you see in some sections.

Q. What are they, Italians?

A. A number of them.

Q. And they purchase land on the installment plan, do they not?

A. No; my experience with the Italians has been that most of them pay for their land and they borrow money to build their houses.

Q. Is there any of that property in there that has been bought up for gentlemen's residences?

A. Not there, no.

Q. Rochelle Park is the nearest station on the Susquehanna?

A. To those properties I spoke of, yes.

Q. And that is going to be quite a nice section there in the way of development?

A. Rochelle Park, yes, developing very nicely, there are some nice places there.

Q. Nearly all new, isn't it?

A. No, Rochelle Park has been growing along for ten or twelve years.

Q. But they are new houses; do you know of anybody renting the old farm houses in that section?

A. No; there are only a few of the old farm houses along that mile and a half or a mile and three-quarters and those are occupied by the original families, I think, most of them; there is the Romaine family, Demarest, and then when you go up above there up into the newer settlement you get the Baker place, Thomas, Mitchell and a number of them.

Q. So you have not found any opportunity of letting or selling properties of the character of the Cadmus property in this Lodi neighborhood or Rochelle Park?

A. In the Lodi neighborhood, no; in the Rochelle Park neighborhood they have built houses just such as this property is adapted to, they have built a better class of houses up through there.

Q. Such as this property is adapted to?

A. Yes.

Q. The Richard Van Riper property which is next north of the Cadmus property, how will that be developed, in the same way?

A. That will come in with those other properties lying north of the Cadmus property.

Q. Well, will it come after the Cadmus property or before it?

A. No, I look on that river front as coming in gradually from both ways.

Q. Both ways?

A. Yes.

Q. Then the properties in the center will naturally be the last to receive improvement?

A. Why, possibly the back properties there will be a little longer, but on the front and along that road I think that those properties will all develop fairly well and close together; the distance is not very great between any of them you know.

Q. You don't know of any development in that neighborhood, on either side of the river before the river became polluted, do you?

A. No, there hasn't been any development since the river became polluted.

Q. Before the river became polluted was there any sale or building of fine houses?

A. Before the river was polluted the development hadn't started in any part of Bergen County hardly, it has all come in that time; this pollution has been going on for twenty years, and the river in that time has been gradually filling up; I remember I used to drive along either side of the

river, the Passaic side principally because the road was better there, until some few years ago when things were entirely different on the lake, that is when they had their boat clubs there, when you would see people out rowing, fishing and one thing and another.

Q. Now the development, you say, is coming from the south and also from the north, the development from the south being principally over the greater area of the character of the growth below, mill hands and their houses?

A. Not over the greater area, I don't wish to be quoted that way; I said that the Cadmus property would probably develop a little quicker because it might have that effect.

Q. Well, will the Doremus property develop quickly on that account?

A. Wouldn't come in as quick as the other, I don't think.

Q. As quick as the Van Riper or Cadmus?

A. It would come in probably as quick as the Van Riper property; the Cadmus property, I made that statement this forenoon because I think that that would probably be the first to come in, if it was affected by the element building below there.

Q. Well now, tell us what will cause the development from the north?

A. It is nearer to the railroad up there, and there is development between Market street and the railroad, along that side, and up into the upper part of Dundee Lake, up over the railroad and through that way, back from the river that is.

Q. Now then there is a large silk dye works there?

A. There is a silk dye works up there.

Q. Between Market street and the railroad?

A. Right along the railroad.

Q. And that has been increased in size very much lately?

A. Yes.

Q. A fast growing concern, is it not?

A. Why, they seem to be going right ahead, yes.

Q. It is one of the two big concerns of the city of Paterson, is it not?

A. I have never heard it placed that way; it doesn't compare with the mills in Lodi, of course.

Q. There are no silk dyeing mills in Lodi?

A. Oh, yes, the largest in the world.

Q. Silk dye works?

A. Yes.

Q. Who operates that?

A. The United Piece Dye Works before they were consolidated, the Alexander Dye Works and the Butnick Piece Dye Works; this National you could put down inside of either one of their plants.

Q. Well, it is one of the two largest of the silk dyeing works in the city?

A. I don't know much about their comparison with other places in Paterson.

Q. The National consists of the consolidation of all the plants outside of the Weidmann plant?

A. I wasn't aware of that; I have seen their plant up there and I have seen it grow from time to time.

Q. Of course the National Company operates other plants in the city of Paterson, it has not abandoned the others entirely. Now, hasn't the growth of the neighborhood from the north had something to do with the increase of that plant?

A. I don't think so, not to any extent, it will help it some, it will make a growth there, possibly that is what caused the little growth north of the Susquehanna railroad there but it has made no

appreciable difference right around their neighborhood.

Q. It hasn't the same effect then as the Forstman Huffman mill down below?

A. They are differently situated; a great many people who work for this concern in Paterson have their houses and go home there, go back at night, a very short walk from that concern over to the end of the trolley line, you know, the Cedar Lawn line, a five minutes walk will take them over that, less than that probably.

Q. Then in your opinion that plant will have very little effect on the growth?

A. It will have some, yes.

Q. But not a great deal?

A. As I say, a great many of those employees go back to Paterson at night, because they have always been located there.

Q. Now the growth of the rest of that neighborhood in that vicinity will come from what?

A. It will be just a natural growth, people will gradually go in there, come down south just the same as they go north.

Q. So that there is no particular reason for that increase there?

A. No.

Q. There isn't anything that we can point to and say it is the cause?

A. The reason for development will be just the same as would be all along the line, there is no particular difference in any of those properties, they are all close enough together to be practically the same.

Q. In that neighborhood, about say fifteen hundred feet or more from the river, in the vicinity of the Dundee Lake station, is there any particular growth?

A. Oh, yes, things are growing, back in Dundee Lake, back this way, over the railroad, and then through here at the school house, they have a little chapel back here, this being the main road I suppose has something to do with that.

Q. That growth is not affected by the pollution of the river then?

A. Away back there where the school house is and where that new church has been erected they are about half a mile from the river, you know, and I don't consider that they get any particular effect of the river there.

Q. The school house is erected on the old farm of George Van Riper?

A. I think on the back end of the Van Riper farm, yes.

Q. Only about half way back from the river?

A. It is more than that, Mr. Merrey.

Q. The farm runs away down here, you see? (indicating).

A. George Van Riper's farm is sixty to seventy acres.

Q. So that you could not see any particular reason, except general growth, to effect these properties near by, near to Market street?

A. No, not there.

Q. The Van Riper properties and the Doremus property?

A. I feel this way, Mr. Merrey, that with the general increase that those properties, if conditions were favorable, would be amongst the first to benefit; I have always felt that way.

Q. Do the back end of these farms which back on Market street,—have they had any growth at all?

A. Why, back to here (indicating), there is quite a little settlement, yes.

Q. Is there any settlement at all there on Market street, where it crosses the Susquehanna railroad branch?

A. In the neighborhood, yes, in the neighborhood, yes.

Q. Do you know of any properties being sold in there?

A. Not lately I don't, no.

Q. You were then pointing to the Henry W. Doremus property?

A. What is that?

Q. You were then pointing to the Henry W. Doremus property?

A. I was giving that location with the road and railroad there, more than I was any particular property.

Q. That is one of the properties that they are seeking to recover damages for in this suit. Now the rear end of that Doremus property is just as suitable for development as the part which fronts on the river, is it not?

A. In a way, yes, in a way, they are on a main road there, a thoroughfare between Paterson and Hackensack.

Q. Well now then, if that part of that farm does not develop it is because the growth has not reached that neighborhood yet, isn't it?

A. Well, I say that there is some growth back there.

Q. Well, they don't claim so here?

A. Well, I am quite sure that back in that part there (indicating) there are a number of houses gone up; and then when you go a little further over on the road there are two or three nice residences on the hill there, you know, just before you get over to the Bergen short cut.

Q. Yes, but then there is another station there, isn't there?

A. Well, that is north of that, on the main line of the Susquehanna; this is the Passaic branch we are talking of now, you know.

Q. I thought you referred to the short cut?

A. No, no; the short cut is over here altogether. (indicating); you are crossing now the Susquehanna branch into Passaic from Passaic Junction.

Q. When you referred to the new houses, fine houses that were being built, you meant they were on the hill near Bergen County short cut of the Erie?

A. I said that in here (indicating) where the branch of the Susquehanna from Passaic crosses Market street that there is quite a little settlement there, and when you get over Market street up into here (indicating), before you go over the hill to the short cut there are a number of houses, nice good class of houses; when you get over there (indicating) and go a little north, up towards Passaic Junction there is quite a settlement up around there.

Q. Is there any settlement on the back end of the George Van Riper farm, which is in this suit, the Market street part of it?

A. Along Market street, yes.

Q. Have they sold off any of that?

A. I don't know what they have sold; they must, I should think, have sold some of that property there.

Q. Any houses there except the school house?

A. I am not quite sure about that, I think so.

Q. When were you over there last?

A. Why, I haven't been over Market street in some little time.

Q. I am referring to between Market street and the river?

A. Between Market street and the river?

Q. Yes?

A. Well, if there was anything there it would be on Market street, because there have been no streets cut in.

Q. Did you see anything there?

A. On the Van Riper farm?

Q. Yes?

A. I wouldn't like to say that, because the back end of those farms and the way that Market street goes in there is rather misleading; you can see that on the map.

Q. Yes; you didn't go over then to the back of the farm?

A. To the back of it? No. I have been along that road hundreds of times, and I don't know that I can tell whose farms all backed on to that, in that angle.

Q. When you made this examination for the purpose of testifying, you did not walk over the property to see it?

A. All the way to the back, no; we walked back there on each of those farms anywhere from five hundred to a thousand feet.

Q. If you went a thousand feet back on the George Van Riper farm you would be getting near to Market street?

A. I don't say I went a thousand feet on that, I say from five hundred to a thousand feet we would go back there, go around their out-buildings.

Q. If that farm hasn't been developed it is because the neighborhood is not yet ripe for development, isn't it?

A. Well, there is more or less development along Market street all the way.

Q. But there is nothing to prevent this development, if people are ready to go there?

A. The Van Riper farm, both of those Van Riper properties will be in about the same as my statement in connection with the Cadmus property on the other end.

Q. But what I am talking of is present conditions; if it has not been sold it is simply because there is no market for it; is not that it?

A. The back end of the property I wouldn't,—we have given more attention of course to the front of the property, the part affected by that, and if you go back there you are back on that, back to the spur of the Susquehanna running into Passaic which is not a passenger road at all, you know, there is nothing to bring people in and out that way, except those who locate on the road.

Q. But what I am getting at is this: You claim that this neighborhood is all ready now to be sold and cut up, if it wasn't for this river; I am now pointing to a part of this farm which you say is advantageously situated for development, and notwithstanding, has not been developed. Now I ask you if that does not show that the time is not ripe yet?

A. Well, and I still insist, Mr. Merrey, that the time when the river is put in condition and cleaned up that all of that property will be located just ripe for development; it will come then but it positively won't come now; it has the effect on all of those properties all the way back.

Q. Then why do those parts of the property which are not affected by the river, why don't they sell?

A. They are further away, that's about the only reason.

Q. Now the back end of the George Van Riper

farm is not further away from the Market street bridge nor from the depot than is the Cadmus farm, the front part of the Cadmus?

A. The difference is very slight.

Q. It is considerable, isn't it?

A. Well, there is a difference but not very much. You were asking about the Van Riper property?

Q. I am asking about George Van Riper's, back here? (Indicating on map).

A. It is only a short ways from there to here (indicating).

Q. I am comparing the front part of the Cadmus property with the rear end of the Van Riper property, and ask you if the rear end of the Van Riper property on Market street is not much nearer the railroad station and the Market street bridge?

A. Some parts of it, yes.

Q. Than the Cadmus property?

A. Some parts of it, yes; and from the other you have a straight line up to the railroad, along the river road; I consider the front end of all of those properties much better than the back.

Q. Even better than the back which is crossed by Market street?

A. Market street back there, yes.

Q. Market street is a main road, is it not?

A. It is a main thoroughfare from Paterson to Hackensack, yes.

Q. It would be more likely to be traveled than the River road?

A. Why, for people having to go that way; yes. The great trouble is, that keeps some people off our end of it at Hackensack is there is quite a heavy grade back there.

Q. Not only that but you don't improve it?

A. You are mistaken; it is one of the finest roads in the State.

Q. Been improved over the Red Hill?

A. Yes; we have a fine road from Saddle River to Hackensack.

Q. (*By the Court*) Is there a trolley?

A. No; the nearest trolley is the Hudson River line which is north of this road, crosses the Broadway bridge.

Q. (*By the Court*) Is there any trolley between Paterson and Hackensack?

A. Oh, yes; the Hudson River line which crosses at Broadway, goes out that way.

Q. Market street, however, is a much shorter route than the Broadway route?

A. It is a straight line by trolley; when the rolley goes off the public road at Warren Point they make almost a straight line to Hackensack then, you know, which is south of the Turnpike.

Q. I mean for people traveling on the road?

A. People would go that way, according to the part of the city they were in I suppose; if they were in the neighborhood of Broadway, going over Bergen County or to Hackensack, would probably go that way.

Q. You don't know the distance on both roads?

A. No, in all the times I have gone over them I can't tell you that, hundreds of times both by automobile and driving.

Q. Now then the Cadmus property, Doremus property and the three Van Riper properties are all located close together and are somewhat alike?

A. Very similar, yes.

Q. Now the Van Saun property is considerably different in character, is it not?

A. Why, I think we put in a different valuation on that property on that account.

Q. What was your valuation on that property?

A. It seems to me six hundred dollars an acre, I am not quite sure. Am I right on that?

Q. Don't you know, Mr. Mercer?

A. You have been talking so much, Mr. Merrey, and asking me so many of those things that I can't carry them all in my head; I know that of the Van Saun property there is about seventy acres.

Q. Is that the property with the pond in the front, near the road?

A. The pond is not in the front, it is in the back, back of their building.

Q. But it is in the front part of the property, near the river?

A. I couldn't tell you just exactly what difference is there. The Van Saun property, their houses and out-buildings are located right on the road, in fact the house stands with the end to the road.

Q. And the pond is right—

A. The river is right up to the road at that point also; there is very, very little distance between the Van Saun house and the river.

Q. Did you put in the pond at the same price per acre?

A. I don't think the pond is included in that.

Q. You don't know, do you?

A. No, but I think there are seventy-one acres of property, if I remember right.

Q. Now, about the future of that property, where is that to come from; what circumstances is going to change the value of it?

A. It is located just in about the same position as some of the other properties, between two

points, this is between those other properties north and the Broadway bridge.

Q. Well, that isn't any reason why it should grow in value. What class of people are likely to go to live there?

A. Just the class that I have been speaking of right along.

Q. What class is that?

A. The better class along the river there, if things were favorable.

Q. Where are they to come from?

A. About the same source that we have been discussing.

Q. We were discussing two sources. There are no factories in that neighborhood?

A. Not up there, no.

Q. There are no railroad facilities for a factory?

A. No, not for a factory perhaps, no.

Q. Is it likely that any factories will be built in that neighborhood?

A. Hardly think so, they are most too far from a railroad there.

Q. Do you think there is any chance of property of that kind being developed for several years yet, even though the river were clean?

A. I don't see any reason why all of that property along there should not; I made that statement several times; it looks to me that the property is about ripe for development of a nice class.

Q. Don't you think that this is one of the last parts of Bergen County that will be developed?

A. I do not; no, sir.

Q. Do you think Bergen County is going to develop over the whole in the same ratio about?

A. South of Ridgewood or a little above it, south and east of it, yes.

Q. You are getting further away, at this property, from the railroad, are you not?

A. That is further away from the railroad; yes, but it is nearer to a good trolley, in a way, than some of the other properties.

Q. How much nearer?

A. That property is just about midway between the Broadway trolley and Market street.

Q. What trolley did you mean when you said it was nearer a good trolley?

A. I thought it was nearer the Hudson River line than it was to the Market street.

Q. Do you think there is more service on the Hudson River line than there is on the other?

A. There isn't any more service; I like it better, that's all.

Q. There is more service on the Market street road, isn't there, more frequent service?

A. I don't know, they have twenty-minute service on the Hudson River line between Paterson and Hackensack all day.

Q. (*By the Court*) Why do you call it the Hudson River, does it go from Hudson to Hackensack?

A. It goes from Paterson, from Broadway and Main street in Paterson to the Hudson River at Edgewater, makes the 129th street ferry.

Q. It is the line that runs a great distance over a private right of way?

A. Yes, they make very good time.

Q. They don't run along the roads the entire distance?

A. Private right of way from the Broadway bridge to Maywood.

Q. They make a practice of stopping at the crossroads and having stations there?

A. Yes.

Q. After the fashion of the steam railroads. Now the P. H. Doremus property; that is property somewhat similar to the Cadmus property, is it not, in location?

A. Yes; this is north of the Van Saun property and nearer to the trolley at Broadway.

Q. But as far as factories are concerned there is little likelihood, isn't there, of any being located there?

A. Not much likelihood of factories locating out there, no.

Q. And it is waiting for the growth from Paterson to develop it or from other places?

A. Yes.

Q. It is at a distance from any railroad, isn't it?

A. Why, it is at a distance from a railroad and a very short distance to the trolley.

Q. But the commuters from New York won't come over on that trolley?

A. Possibly they haven't got out as far as that, but they are using it out in other parts of the county, they are using it out to Maywood extensively for commuting purposes.

Q. People working in any particular portion of New York?

A. I suppose a number of those people working up-town probably, and they connect with the subway there, about two minutes from the trolley, which takes them to any part of the city.

Q. (*By the Court*) How long would it take to go from the ferry on the Jersey side to the Broadway bridge?

A. Forty-five to fifty minutes.

Q. (*By the Court*) It is the line that starts from the same point that the road going up to Englewood starts from?

A. Yes.

Q. (*By the Court*) Is it the same road?

A. Yes.

Q. (*By the Court*) The Englewood trolley goes north, of course?

A. Yes, they separate at Leonia Junction, in Leonia.

Q. Then you would think this would most likely develop as a residence for somebody who would take the entire property, would you not?

A. Not necessarily, that property ought to open up for residences there of say an acre or a half acre plots, all that property ought to go in that way.

Q. The back end of it is available for that now, isn't it?

A. The back end of that property?

Q. Yes?

A. No, there is hardly any way of getting in there.

Q. If a road is run in?

A. If a road is run in the property would be all good, so would all the other properties we have discussed.

Q. That is, the rear of these properties would develop without regard to the river, if you had facilities by means of a road?

A. To a certain extent, yes.

Q. You would need a road from the north to develop it, running parallel with the river road, or nearly so?

A. Yes.

Q. Now the Gelderman property is along in about the same class as the last two, isn't it?

A. Yes.

Q. Has no future as far as homes for factory employees is concerned?

A. Not in that neighborhood, no.

Q. And most likely at present will have to depend upon one owner?

A. I think that Mr. Gelderman is in all probability very well pleased with his home, still he has that river to contend with, which is probably the only contention he has of a serious nature.

Q. What does he do with the back end of this property, away from the river?

A. I suppose he farms it more or less, I don't know exactly; I think Mr. Gelderman has twenty acres of ground in there.

Q. Has it got such a value that it is not profitable to farm it?

A. I don't know that Mr. Gelderman is a farmer; I don't know just how he uses it; I think he is in business in Paterson and finds it very convenient to come over there, and would find it much more convenient if he didn't have that same contention that we have been talking of.

Q. It is not far from Broadway, is it?

A. Mr. Gelderman's property is close to Broadway.

Q. If a road were run through that property it could be opened up?

A. From where?

Q. From Broadway.

A. If Mr. Gelderman could arrange with the Spidel people and the North Jersey Country Club and probably one or two other owners he might run a street in in the back of his property, I suppose he could; that would be the only way, he would have to arrange with somebody else to do it.

Q. Suppose that he applied to the courts and had surveyers of the highway appointed and that road put through without their consent?

A. I don't see that he has any occasion for doing it.

Q. Why?

A. I don't see why he should; Mr. Gelderman's property is all right; the only complaint that Mr. Gelderman has is the one we have been discussing all day.

Q. You think the use of that property is as farm property?

A. I don't say it is as farm property, he might use it for something else; I say to develop back of his property, as you suggest, he would have to get somebody else to do it with him.

Q. What possible thing can he use the back of that farm for now, unless he uses it as a farm?

A. I suppose he does use it as a farm, I don't know.

Q. Could he use it for anything else?

A. By running a street in there.

Q. Yes, but without that?

A. I don't know just what you are getting at, I don't quite understand it.

Q. You suggested that he might use it as something else than a farm; I wondered what?

A. He might use it as building sites.

Q. Either building sites or as a farm is the only use to which this may be put; is that true?

A. That is all, yes, that is all that practically any property can be used for.

Q. To do that he needs to put roads through there?

A. He would have to put roads through, yes; have to put roads through any of it to develop it, eventually.

Q. As far as the rear is concerned he could do that now without having any loss through the river?

A. Could do it with all those properties we have talked of.

Q. The Outwater property, that is a little different from any of the others, is it not?

A. In a way it is, the Outwater property comes in between those two bridges; ought to be a very valuable piece of property.

Q. What two bridges?

A. Moffit bridge and Wagaraw bridge; their property comes right on to the river at this bend.

Q. That is at the most northerly portion of the city of Paterson?

A. Yes.

Q. And it is at a considerable distance from these last properties?

A. It is quite a ways above those properties, yes.

Q. What is the nature of the development at that point?

A. Very similar to the others.

Q. To which others?

A. To the properties below.

Q. Is it similar to the Cadmus property or to the Van Riper and Van Saun and Doremus property?

A. It is similar to all of them, only that this comes in between those two bridges; just below this property there has been a mill built there, which has never been used for some reason or other.

Q. That is a large mill?

A. Not a large mill; built for a bleachery, and they haven't been able to utilize it for some reason or other.

Q. Right across the bridge there, in the city of Paterson, there is a very large silk mill?

A. Yes.

Q. Johnson Cowdin & Company?

A. I don't know whose mill it is; comes to the Moffit bridge.

Q. That section of Bergen County is being utilized by the mill hands from Paterson, isn't it?

A. Some; there has been some property opened up east of the Wagaraw bridge there that is selling, I believe, quite rapidly.

Q. You speak of it as the Moffit bridge; now that is a bridge built by a real estate speculator by the name of Moffit?

A. I think so, yes.

Q. And given to the people there?

A. No, it wasn't given, the County bought it from Moffit.

Q. (*By the Court*) Where is the county line between Passaic and the river?

A. At this particular bridge.

Mr. Merrey.—The river is the County line up to the Moffit bridge.

Q. (*By the Court*)Is it just at the Moffitt bridge?

A. Bergen County line comes into a section, a part of the Moffit bridge, it doesn't take in all of it.

Mr. Merrey.—The surveyor tells me that here is the line here (indicating on map), East Nineteenth street.

The Court.—And then the line runs due north?

Mr. Merrey.—Yes; Bergen County would be to the east and Passaic County to the west.

Q. And is this place on map D-4, the Moffit bridge?

A. Yes.

Q. At East Nineteenth street?

A. It is Cherry Lane in Bergen County and the dividing line between Bergen and Passaic County part of the way up there.

Q. On map D 4 I call your attention to the fact that part of the road is called East Nineteenth street and part Cherry Lane?

A. Yes.

Q. And is that the development that Moffit undertook?

A. I think the Columbia Heights property, yes.

Q. What was the character of that, fine houses?

A. No, I don't think there were any particularly fine houses there; I suppose he probably opened that up for the purpose of getting the factory hands over from Paterson there, I think.

Q. And that development by Moffit adjoins the Outwater farm?

A. I don't know that it adjoins it quite, it comes pretty near it, I think there is a strip in between probably.

Q. (*By the Court*) There was not very much development there, was there; it was all on paper, was it not?

A. Nearly all of Moffit's developments were, I think.

Q. (*By the Court*) I do not remember any settlement near the Outwater property; to the west of course there was.

A. No, there was very little.

Mr. Merrey.—I am referring to the west.

The Court.—To the north and east I do not remember any.

Mr. Merrey.—There isn't any to the east, except this mill which Mr. Mercer now speaks of, but to the west you are approaching again that part of the City of Paterson which is on the left bank of the river.

Q. You think then that it is not likely that the Outwater property can be developed for a gentleman's house?

A. Well, I don't say that it couldn't but I don't think it is likely to, situated as it is in there; I think they suffer as much from the river as any piece of property on it.

Q. And they will depend for buyers upon people from the city of Paterson, won't they?

A. I don't know what their intention is eventually.

Q. But I mean that is the natural place from which it will come, isn't it?

A. Yes, most natural that they should come over that way.

Q. There is a trolley line right at the other end of the Moffit bridge?

A. Yes.

Q. Called the Riverside line?

A. Yes.

Q. And it is about three miles to the City Hall in Paterson?

A. I should say about that, probably.

Q. Now on the other bank of the river, taking up the Nash and Merselis and Terhune properties; they are much different, are they not, from the properties on the Bergen County side, in character?

A. Much different in what way?

Q. Well, they are smaller properties?

A. Smaller, yes.

Q. The Nash property is quite well developed now, is it not; it has three houses on it?

A. There is the large old mansion and the smaller one which was built as a kind of caretaker's place for the property, and then the large double house on the back, and then there are twelve acres across the south of that, south of Lexington avenue.

Q. There is considerable swamp there, isn't there?

A. No, sir; there isn't any swamp in that neighborhood; there is a pond which Mr. Nash spent a great deal of money on, south of his residence.

Q. That takes up quite a lot of the twelve acres, does it not?

A. I don't know that it takes up a great deal of it; there might be in that pond, running back from the river, two acres I should judge.

Q. Now, as far as that property is concerned you haven't had much experience, you say?

A. I haven't had much experience in Passaic or Passaic County, any more than, as I stated, that I have seen Passaic grow from very little to a large city, and I have formed my own opinions of the growth and the value of property that naturally increase along with it.

Q. Your prices that you put on these three properties on the Passaic County side are mostly guess, are they not?

A. No.

Q. You are probably familiar with the Dundee race track property; how long ago was that laid out for development into building lots?

A. That I couldn't tell; I know it laid out a good many people before it was laid out that way.

Q. You mean the race track itself?

A. Yes.

Q. I didn't think they raced there?

A. They did some years ago.

Q. And that is far enough away to be out of the line of this river smell, isn't it?

A. Oh, it is considerably further than that, I couldn't tell just how far that is across there.

Q. They have been trying to sell lots there for fifteen years, haven't they, since the race track was abandoned?

A. No, it is inside of that a good deal, since they laid it out.

Q. It is not a very successful development, is it?

A. I haven't seen any development on it hardly, when I have gone past there; development along there has stuck mainly to the main avenue, it seems to me.

Q. It is property very similar to all this property we talked about, except it is not right on the river?

A. No, that is the principal bone of contention, isn't it?

Q. Then there is another property, the Bellaire property; do you know where that is?

A. In Bergen Couny, yes, I know the Bellaire property.

Q. It is north of all these other Bergen County properties and south of the Outwater?

A. It is just below the Fair Lawn road.

Q. That is similar property to this?

A. In a way; the people had that property and thought they would go in, when they saw other people developing, and simply laid it out and left it there; there has been no effort to do anything with the property.

Q. They haven't developed it, although they tried?

A. No, I don't know that they tried, I don't wish to be quoted as saying they tried.

Mr. Parker.—I may wish to ask Mr. Mercer a question or two later on in the case; I do not expect to close today, but I expect to take but very little more time now. You have no objection to my examining Mr. Mercer later on?

Mr. Merrey.—No, I haven't any objection.

Mr. Parker.—If there is any to be made you have no objection to its being made at the adjourned day, because I do not expect to close today anyhow.

Mr. Merrey.—If it is such examination as you might make now, all right.

FREDERICK H. GELDERMAN, sworn.

Direct Examination by Mr. Parker.

Q. You are one of the complainants in this case, are you not, Mr. Gelderman?

A. Yes, sir.

Q. You are occupying a house on your property?

A. Yes.

The Court.—We all know where Mr. Gelderman lives, and it is not necessary in the case of these property owners to have them testify to what is already in the printed book. I understand that the printed book will of course be a part of this case, it could not very well be otherwise, and so any preliminaries may be waived.

Mr. Parker.—I simply want to put on the record—I don't know whether it is in the printed book—as to the size of the

house, the number of rooms and the conveniences in it.

The Court.—That was gone into fully; if there have been any changes Mr. Gelderman can speak as to them.

Q. Is there heat in your house?

A. Has been for about twenty-six years.

A. What sort?

A. Hot air furnace.

Q. Does it run into all the rooms?

A. I have one in every room downstairs and one in the hall and one in the large sleeping room upstairs, that makes seven.

Q. Is there running water in the house?

A. Pump from the well.

Q. Is it run in by a pipe?

A. Yes, sir.

Q. And do you have hot water?

A. No, sir.

Q. What is the distance from your house to the trolley?

A. Oh, about twelve, eleven or twelve hundred feet.

Q. Now did you make a contract as to the sale of your property in April, eighteen hundred and ninety-six?

A. Yes, sir.

The Court.—We have gone into that fully; it formed a large bone of contention in the other case and I think it was investigated about as fully as anything on that hearing.

Mr. Parker.—I was anxious to ask Mr. Gelderman a question or two about that,

because I thought it was perhaps not in the case.

The Court.—It is not worth while to go into that.

Cross Examination by Mr. Merrey.

Q. Is your heating plant twenty-five years old?

A. Let me see. I bought the place in eighteen hundred and eighty-three, yes; in eighteen hundred and eighty-five or eighty-six, that is I had it renewed two or three times since that, you know.

Q. (*By the Court*) Do you mean you put in a new furnace?

A. Yes.

Q. (*By the Court*) When did you last put in a furnace?

A. About twelve years ago.

Re-direct Examination.

Q. The heating plant is adequate for your house, it heats your house in cold weather?

A. Yes, and more so even.

SCOTTO C. NASH, sworn.

Direct Examination by Mr. Parker.

Q. Won't you kindly speak of the present condition of your large house?

A. The present condition inside is good, perfectly, easily inhabitable, the floors all carpeted, walls all papered, but outside of the house it needs paint; we can't paint our houses there, the stench from the lake peels it off as fast as we put it on.

Q. You have inside, haven't you, bath room with hot and cold water?

A. Yes.

Q. And a toilet?

A. A closet.

Q. You have a range with hot and cold water?

A. Yes, copper boiler.

Q. You have furnaces?

A. Two furnaces.

Q. You have water in the house from the artesian well and tank?

A. Yes, in my big house, my own house.

Q. I am talking about the big house?

A. Well, we have the other water in the other house.

Q. The other house is connected with the water supply of the City of Passaic?

A. What we call the little cottage is connected with the hydrant water from Acquackanonk Water Company.

Q. How much would it cost you to put your house in first class order, large house, for occupancy?

A. Two hundred and fifty or three hundred dollars probably.

Q. (*By the Court*) You mean for the painting?

A. Well, that would be the main repair.

Q. Now you have described already the general location of your property on which the big house is located; I do not think you have mentioned the effect of the river on account of the cove there, the currents in the river, what effect that has upon the polluted matter that comes down?

Mr. Merrey.—He testified to that before.

The Court.—I remember Mr. Nash testified as to the matter that was carried up along the river bank.

A. It is blown out by the current into the cove there and cannot get out very well.

The Court.—I do not know but what there ought to be some formal proof in reference to the continuance of the odors and the continuance of the pollution of the water; I suppose that will be conceded, but there ought to be no unfavorable inferences drawn from the silence of these gentlemen on the subject; for instance, Mr. Gelderman was on the stand and he said nothing about it, but I suppose it is conceded that as the city grows the pollution becomes greater and the odors do not diminish. There is is use going all over this testimony again and again; it was described in terms of considerable intensity before and I do not believe it could be added to very much now, but I think it ought to be conceded that the conditions are not more favorable than they were three years ago or four years ago, when I tried this case.

Mr. Parker.—Do you want to put us to the proof of all the nuisance again?

Mr. Merrey.—As I said, I tried to get before today a statement from the complainants as to what their claim was; I don't know whether they claim that there was any greater nuisance than would have been caused by the increase of the number of the population. As a matter of fact I think the conditions are, and our proof would simply go to that if we were put to it, that we are polluting the river to the extent that the number of persons additional that are in the City of Paterson would naturally do.

The Court.—Yes, I suppose that will all be conceded.

Mr. Parker.— We don't go any futher than that.

The Court.—One season is no criterion at all. A season of high water may be accompanied with comparatively little smell, while a season of low water, particularly in the middle of the summer, will be attended with great degree of smell; you cannot judge by a single year, you have got to take a series of years, and of course as the population increases and as the sewers continue to be built and as more sewage is necessarily discharged into the stream why the odors will, on the whole, increase, I presume that will be conceded.

Mr. Merrey.—I think so. Now the complainants started off with a demand on us and an attempt to prove by Mr. Harder, the engineer, that a certain number of sewers were built since this last hearing. I did not think that that made a great deal of difference in the case for the reason that the real test, in my mind, is the increase in population.

The Court.—I think so; that was Mr. Van Duyne's testimony; his testimony was that the sewers were built to accommodate the increasing number of people. I take it that is so.

Mr. Merrey.—That is so. We found that part of the cause of the slow growth of the city has been that certain sections were absolutely left without sewage facilities, and then it was determined that this trunk sewer was to be built, and that we could safely

go ahead, the Lake View sewer which is now completed, and the Totowa and West Paterson sewer should be extended because we found that people being unable to get sewage facilities were not moving to the City of Paterson. As Mr. Harder testified, they go through those great open tracts of land in the city, that was referred to before and which have not been built upon and which in all probability will not be built upon for some years to come, and now putting them in in the way it was done I don't know whether it will be argued by the complainants that there has been a great increase. If that is done, why, it would simply put us to going into the proof of showing just how many people have connected with the sewer and what the conditions are, but we can be relieved of that as the complainants can be relieved of the necessity of proving that there is a smell here, if it is agreed that the increase is the natural one caused by such an increase in the population of the city as is shown by the census.

The Court.—I shall assume, unless there is proof to the contrary, that the new sewers put in do not add to the pollution any more than the natural increase in the population would be likely to add to it, in the absence of evidence to the contrary. Now if they do not put in any evidence then you are relieved from the necessity of putting in evidence going to show that these big sewers have not increased the pollution in proportion to their size.

Mr. Merrey.—We go further than that, because it is our contention that the Lake

View sewer is putting about a million gallons a day right into the worst part of this.

The Court.—Yes, I understand that.

Mr. Merrey.—But of course taking it altogether our feeling has been that the amount of increase of pollution has been in proportion to the increase of population, and of course we claim that on account of the closing down of several important manufactories that it is not likely that the city will increase in the next three years as much as it did in the last five; that is only as to the future. Will that be conceded now?

Mr. Parker.—We do not expect to give any further evidence on the question of pollution than what we have already done, except we would like you to supply a list of the sewers so as to make the record complete.

Mr. Merrey.—Will you concede it is a fair test of the increase in proportion to the population, increase in pollution?

Mr. Parker.—That is substantially what our contention has always been.

Mr. Merrey.—Now I was going to say, as I understood, your Honor's theory was that the actual conditions as dry season or wet season would not be taken into consideration because we were guessing at the future. As a matter of fact, I think the last year the conditions were not as bad as they have been the other years, and there are some little changes, for instance, the establishment of these great dye works, with the consequent pollution of the river, right at this lake, and the abandonment of other

dye houses in the center of the city which were dumping in the sewer, would slightly change the proportion, but it is so much a matter of guess and the total is so little that I think it hardly worth while for us to take up those questions on account of the situation that the case is now in; I do not want to take any more time than is necessary.

Cross Examination by Mr. Merrey.

Q. How long is it since you painted your house?

A. Oh, it is nine years.

Q. How long was it before that that you painted it?

A. Before that I painted it every three years regularly.

Q. That is usual, isn't it, for a house of that character?

A. Three to five years, according to the quality of the paint.

Q. Then the smell does not take the paint off any faster there than it ordinarily would other places?

A. It didn't in earlier years because it wasn't anything like as intense as it has been in recent years.

Q. There has been no paint on it in late years?

A. There is paint on it now.

Q. You did not paint it in nine years?

A. But there is paint on it, but there are places where it has all peeled off, especially on the lake side.

Q. And you think the smell did that?

A. I think so, because the same thing occurs all the way down the Passaic river, and below Passaic, worse than we are a good deal.

The Court.—I will adjourn this case now until Thursday, May 16th, 1912, with the understanding that the case will go on until it is finished, without reference to the number of days it will take.

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS, *et al.*,
Complainants,
and
MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendants.

Before His Honor Vice Chancellor Stevens.

Appearances as before.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Thursday, May 16, 1912, at Chancery Chambers, Newark, New Jersey.

Mr. Parker.—We want to put in evidence the stipulation which has been made between counsel, dated May 14, 1912, with reference to the new parties and the present interests in the land of the parties who were named in the original suit. I don't know that it is worth while to read this stipulation now, except I might perhaps state it, and I will, for the purposes of the record.

Mr. Merrey.—I think it is already practically in the record.

Mr. Parker.—Well then, perhaps it had better be copied in the record just as it is. Mr. Merrey calls my attention to the fact that most of this has been stated in the record. Of course this is the correct statement, and whatever is in the record will be subject to correction by this stipulation.

It is hereby stipulated and agreed, by

and between counsel for the respective parties in the above entitled cause, as follows:

1. That Henry W. Doremus, one of the original complainants in the above entitled cause, died on or about December 12th, 1911, leaving a last will and testament wherein and whereby he bequeathed and devised unto his wife, Charity V. D. Doremus, all of the property, both real and personal, of which he died seized and possessed, including the property owned by him and described in the second amended bill of complaint filed in the above entitled cause, excepting the following described lots, to wit:

(a) Beginning in the W. side of a proposed street 100.86 ft. S. from the S. W. corner of said proposed street and Market St., being most Ely. cor of lands conveyed by party of first part to Thomas Higgins, thence (1) n. 88 deg. 33 min. W. along lands of Higgins 100 ft., thence (2) S. 5 deg. 33 min. 30 sec. E. 50 ft., thence (3) S. 88 deg. 33 min. E. 100 ft. to the W. side of said proposed St., thence (4) N. 5 deg. 33 min. 30 sec. W. along same 50 ft. to beginning.

(b) Beginning at a point in the W. side of a proposed St. 225.86 ft. S. from S. W. corner of said proposed St. and Market St., thence (1) W. 100 ft. thence (2) S. 50 ft., thence (3) E. 100 ft., thence (4) along said W. line of said proposed St. 50 ft. to beginning.

(c) Beginning in the W. side of a proposed St. 150.86 ft. S. from S. W. corner of said proposed St. & Market St., thence (1) W. along land of Straub 100.75 ft., thence (2) S. 62.29 ft., thence (3) E. 100

ft. to W. side of said proposed St., thence (4) N. along same 50 ft. to beginning.

(d) Beginning S. W. side of a proposed St. 200.86 ft. S. E. from W. cor. proposed St. & Market St., thence (1) S. W. 100 ft. thence (2) S. E. 25 ft., thence (3) N. E. 100 ft., thence (4) along said S. W. side of said proposed St. 25 ft. to beginning.

That the said Henry W. Doremus appointed his wife, Charity V. D. Doremus, executrix of his said will, and that she has since qualified and is now acting as such executrix, and individually is the owner of all the property of which he died seized as aforesaid.

2. That John Terhune is now and has been since the 12th day of November, 1906, the owner of all the property fronting on the Passaic River formerly belonging to Garret Terhune, and more particularly mentioned and described in the second amended bill of complaint filed in the above entitled cause.

3. That some time in the year 1906, Cornelius D. Cadmus, one of the original complainants in the above entitled cause, died intestate, leaving him surviving no widow and children, and leaving as his sole heirs-at-law Edo V. Cadmus, his brother, and Margaret Massey and Catherine Powlison, children of a deceased sister, and thereafter and on or about the 7th day of February, 1907, the said Margaret Massey and Catherine Powlison, with their respective husbands, conveyed all their right, title and interest in the land described in the second amended bill of complaint filed in the

above entitled cause as owned by Cornelius D. Cadmus to the said Edo V. Cadmus, and subsequently, on or about March 10th, 1910, the said Edo V. Cadmus, then owner of all of the said premises mentioned in the said second amended bill of complaint as owned by himself and his brother, Edo V. Cadmus, died intestate, leaving him surviving his widow, Catherine Cadmus, and his children Emma Cadmus Doremus, John D. Cadmus, Cornelius E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien, Margaret Cadmus Andrews, his sole next of kin and heirs-at-law, who since the 10th day of March, 1910, have been and are now seized and possessed of all of the property described in the said second amended bill of complaint filed in the above entitled cause as being owned by the said Cornelius D. Cadmus and Edo V. Cadmus.

4. That H. Charles Hillman is now and has been since the 20th day of October, 1908, the owner of all the real property fronting on the Passaic River formerly belonging to Peter Alyea, and more particularly described as follows: All that tract or parcel of land situate in the Township of Saddle River, in the County of Bergen and state of New Jersey, beginning on the easterly side of the Passaic River, where same is intersected by the southerly line of lands of George Van Riper; and running thence (1) north seventy-seven degrees, fifteen minutes east along the northerly line of lands hereby intended to be conveyed to a point in said line which is distant 897.5 feet westerly from a point in the

southwesterly line of the right of way of the New York, Susquehanna & Western Railroad Company where the same would be intersected by said first mentioned course, as extended; thence (2) south seven degrees thirty-five minutes west 328.4 feet along the westerly line of lands described in the release recorded in said Bergen County Clerk's office in Liber 5 of Releases, page 557, to a point which is the southeasterly corner of the lands hereby intended to be conveyed; thence (3) along the same south seventy-seven degrees fifteen minutes west to the Passaic River; thence (4) up the stream of the Passaic River to a point or place of beginning; that he became such owner by conveyance from the said Peter Alyea and wife, by Charles R. Soley, Sheriff of Bergen County, to Howard D. Terhune and Jane E. Van Riper, administrators of the estate of J. Hartman Van Riper, deceased, and by said Howard D. Terhune and Jane E. Van Riper, administrators of J. Hartman Van Riper, deceased, to Forest May, and by the said Forest May and wife, to Charles A. Williams, and by the said Charles A. Williams and wife to Wallace Wilbur Slocum and by the said Wallace Wilbur Slocum and wife to the said H. Charles Hillman.

5. That on or about October 16th, 1910, George G. Van Riper, one of the original complainants in the said second amended bill of complaint filed in the above cause, died leaving a last will and testament wherein and whereby he devised unto his wife, Catherine Van Riper, and his son, Se-

lah Van Riper, as tenants in common in fee simple, all of the real estate of which he died seized and possessed, including the property mentioned in the second amended bill of complaint excepting the following parcels of land, to wit:

(a) Beginning at S. W. cor. of said plot and adjoining George G. Van Riper's land on the south and land since conveyed to Wenzel on the west; thence (1) N. along lands of Carrie Wenzel 316.14 ft. to lands of Peter J. Merselis, (2) E. 42 ft. to Erie R. R., (3) S. along same 320 ft. (4) W. along S. line of George G. Van Riper's land, 47 ft. to beginning.

(b) Beginning in N line of farm of party of the first part on E. side of Chestnut St., being W. line of land of party of the first part, thence (1) W. along N. boundary line 50 feet to W. side of lands of party of the first part, (2) S. along same 100 feet to N. line of William H. White's land, (3) along White's line W. 50 feet to E. line of Chestnut St., (4) along same N. 100 feet to beginning.

(c) Beginning in the centre of Great Spring Brook and Main avenue, thence (1) E. along Main avenue 200 ft. to W. line of land of Gall (2) S. along Gall's line 150 ft. (3) W. 70 ft. to center line of Great Spring Brook, (4) along same 230 ft. to beginning.

(d) Beginning at the N.E. cor. of Pesek's land, thence (1) S. along E. line of Pesek's land 170 ft., (2) E. 88 ft. to W. line of Van Riper's land, (3) N. along same 170 ft. to S. line of Main Ave., (4) W. along same 88 ft. to beginning.

(e) Beginning at the N. W. corner of Pesek's land and running thence (1) Ely, along the Sly. line of Main Ave. thirty ft. to Wly. line of land of party of the first part, thence (2) Sly. along said Wly. line 166 ft. more or less, thence (3) Wly. parallel with Main Ave. 80 ft, more or less to the centre line of the brook, thence (4) along said centre line of brook NWly. to the Sly. line of land of Pesek, thence (5) Ely. along said Sly. line 50 ft. more or less to the Ely. line of land of Pesek, thence (6) Nly. along said Ely. line 141 ft. more or less to point or place of beginning, being part of farm of party of the first part.

(f) Beginning at a point on the Sly. side of Main Ave. or Orchard St., and intersected by the Ely. line of property belonging to Frank Balek forming the N.W. corner of the property to be hereby conveyed, thence (1) Ely. along the Sly. side of Main Ave. or Orchard St. 802 ft. to the Wly. line of Bergen County R. R. and thence (2) Sly. along said Wly. line of Bergen County R. R. property 100 ft. to a stake, thence (3) Wly. parallel with Main Ave. or Orchard St. 802 ft. to the Ely. line of land of Frank Balek, thence (4) Nly. along said Ely. line of Frank Balek 100 ft. to point or place of beginning.

That the said Catherine Van Riper and Selah Van Riper were appointed executors of said will, and have since qualified and are now acting as executors thereof and individually are the owners of all of the property described in the second amended bill of complaint filed in the above entitled cause as belonging to the said George G.

Van Riper except as aforesaid.

6. That on or about the 5th day of July, 1906, Peter H. Doremus, one of the complainants in the second amended bill of complaint filed in the above entitled cause, died leaving a last will and testament wherein and whereby he devised all of the property described in said second amended bill of complaint to Garret M. Doremus, and thereafter on the 17th day of December, 1911, the said Garret M. Doremus died intestate leaving his widow, Emma Doremus, and his children, Peter H. Doremus, Catherine S. Doremus and Harvey Doremus, his sole next of kin and heirs-at-law; that afterwards on or about the 11th day of October, 1911, the said Emma Doremus was appointed administratrix of the estate of said Garret M. Doremus, and has assumed to act and is now acting as such administratrix by reason whereof said Emma Doremus, Peter H. Doremus, Catherine S. Doremus and Harvey Doremus have become and are now seized of all the property described in said second amended bill of complaint as being owned by the said Peter H. Doremus.

7. That Albert A. Outwater, one of the complainants in the second amended bill of complaint, filed in the above cause, died on or about February 26th, 1909, leaving a last will and testament wherein and whereby he bequeathed and devised all of his real estate, including the real estate described as owned by him in the said second amended bill of complaint filed in the above entitled cause, unto his wife, Sarah E. Outwater, to be used and enjoyed by her during the term of her

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natural life, providing she remains a widow and after the death or remarriage of the said Sarah E. Outwater all of the rest and remainder of the said estate to be divided as follows: One-fifth part to Peter Wesley Outwater, one-fifth part to Garret Outwater, one-fifth part to Eliza Bogert, one-fifth part to Edo Outwater, Sadie Outwater and Clifford Outwater, children of John R. Outwater, and one-fifth part to Richard Outwater in trust for Albert A. Outwater; that by the will the said Richard Outwater and Sarah E. Outwater were appointed executors and have duly qualified and are now acting as the executors of said last will and testament of Albert A. Outwater; that the said Sarah E. Outwater, Peter Wesley Outwater, Garret Outwater, Eliza Bogert, Edo Outwater, Sadie Outwater, Clifford Outwater and Richard Outwater in trust for the said Albert A. Outwater, are now the owners of the property described in the said second amended bill of complaint as being owned by the said Albert A. Outwater, deceased, with the exception of the following described parcel of said tract of land, to wit:

Beginning at a point in the centre of public road from Cherry Lane to Paterson and Ridgewood Road, commonly called Snyder's Lane, 375 ft. N.Wly at right angles from division line between lands of Albert A. Outwater and lands of Richard Outwater, running thence (1) along centre of said Public Road known as Snyder's Lane, and the extension of same N. 87 deg. 6 min. 30 sec. W., 349/500 ft. to S.Ely. line of lands of Erie R. R. Co., thence (2) along same N. 45

deg. and 35 min. E. 196.85 ft. to a corner in same; thence (3) still along said R. R. line and also the Ely. line of Cherry Lane as formerly laid out, S. 20 deg. and 7 min. W. 63.36 ft. to a corner in same; thence (4) still along said R. R. line N. 50 deg. and 11 min. E. 154.44 ft. to a corner in same; thence (5) still along said R. R. line N. 44 deg. and 25 min. W. 39.6 ft. to a corner in same; thence (6) still along said R. R. line N. 45 deg. and 36 min. E. 531.5 ft. to a point in same that is distant 375 ft. N. Wly. at right angles from the division line between lands of Albert A. Outwater and Richard Outwater, and thence (7) S. 22 deg. 1 min. and 30 sec. W. along centre line of a proposed 50 ft. street parallel with and distant 375 ft. N. Wly. at right angles from said division line between said Albert A. Outwater and Richard Outwater 641.9 feet to place of beginning.

That Mary A. Van Saun, Frederick H. Gelderman, John H. Merselis, Edward Merselis, Charlotte Jane Van Riper, Scotto C. Nash, Edo Van Riper, parties to the suit at the time the final decree was entered therein on June 26th, 1908, are now respectively seized of the same interest in the properties described in the said second amended bill of complaint as they were at the time of the making of the said final decree. And Richard Outwater, one of the original complainants in the said second amended bill of complaint is now seized of the same property in his own right as he was at the time of the filing of said second amended bill of

complaint and the entry of the final decree, excepting however the following tract:

Beginning at a stake in the N. W. cor. of the herein described tract, said beginning pt. being the cor. formed by intersection of dividing line between lands of estate of Albert A. Outwater and lands of Richard Outwater with the Sly. line of lands now or formerly of Berdan and running thence (1) S. 22 deg. 1 min. and 30 sec. W. (magnetic 1907) 1099.33 ft. to a stake placed in the centre of the public road (known as Harristown Rd.) leading from Cherry Lane to Paterson & Ridgewood Rd., said Public Rd. being also called Snyder's Lane; thence (2) along centre of said Harristown Rd. S. 87 deg. 45 min. E. 347.6 ft. to a bend in same; thence (3) still along centre of said road N. 87 deg. 37 min. E. 99 ft. to a bend in same; thence (4) still along centre of said Rd. N. 60 deg. 29 min. E. 100 ft. to a bend in same; thence (5) still along centre of said Rd. N. 49 deg. 7 min. E. 156 ft. to Wly. side of Bass Brook; thence (6) along same up stream the various courses thereof in general Nly. direction to a point on the Wly. side of said brook that is intersected by a line drawn from the beginning point having a bearing of S. 87 deg. 19 min. E.; thence (7) N. 87 deg. 19 min. W. along the dividing line between lands of Richard Outwater and lands formerly of John Berdan, 456.72 ft. to the place of beginning, containing ten acres.

The above stipulation is made upon the condition that the said defendant shall have reasonable opportunity to examine into the

foregoing facts, and in case of any error appearing therein, it reserves the right to make any corrections therein as its solicitors may deem advisable.

May 14, 1912.

EDWARD F. MERREY,
Solicitor for Defendant.
LINDABURY, DEPUE & FAULKS,
Solicitors for Complainants.

It is agreed between the parties that the property described on D-4, lying east of the Erie Railroad and west of the prolongation of the centre line of Bergen Avenue and north of the so-called Road, which is known also as Snyder's Lane, has been sold. Also all of the tract called Richard Outwater that lies north of the said road and between the lands of Albert A. Outwater and Bass Brook, as shown on the map, has also been sold. Both of these tracts are marked in pencil with the word "sold".

FRANK R. ALLEN, recalled.

Direct Examination by Mr. Parker.

Q. Mr. Allen, did you make any examination of the so-called Hillman property, formerly known as the Alyea property, lying just south of the George Van Riper property, as shown on map D 2?

A. Yes, sir, I did.

Q. How many times did you visit it?

A. I have been over the property at least five times.

Q. Now, won't you state kindly what it consists of?

A. Consists of thirty-two acres of land, double house, now arranged for two families.

Q. One moment. Double house; are there any other improvements on the property?

A. The house has all improvements.

Q. Yes; by that you mean that it has heat and light and plumbing and water?

A. Yes, sir.

Q. And it is arranged, you say, for two families?

A. Yes, sir.

Q. Now are there any other buildings on the premises, besides the house?

A. Yes, sir.

Q. What?

A. Barns and carriage houses.

Q. Is the house in good condition?

A. Yes, sir.

Q. Now, won't you kindly state first what would be the value of six acres of land with the improvements, with the river clean?

A. Taking improvements and six acres of this land as suburban property, with the river clean, its value would be about $600. per acre or $3600., improvements $3,000, making a total of $6,600.

Q. What ought that to rent for?

A. This should rent for at least $528., the river clean; with the river in its present condition I don't think it possible to rent it for over one half of that amount or $264., making a loss per year of at least $264 for five years $1,320.

Q. Will you kindly state whether or not Mr. Van Duyne and Mr. Mercer were with you when you visited the property?

A. On two occasions.

Q. You have been reading from a memorandum here?

A. Yes, sir.

Q. Do you know whether or not that was also the opinion of both of those other witnesses?

A. That was the opinion we arrived at.

Q. Now the balance of the property what does that consists of?

A. Twenty-six acres of this land in addition is materially damaged in selling value by the present condition of the river, as follows: If the river was clean it would be worth $600. per acre or $15,600; under present conditions it would not probably sell for over $300. per acre or $7800., making a loss of $7800. in value; interest on same at six per cent. $468.

Q. You mean by that, interest on the loss?

A. Yes, sir.

Q. At six per cent. is $468. per annum, isn't it?

A. Yes. As conditions are to continue for five years—

Q. If it continues five years what does that amount to?

A. $2,340.

Cross Examination by Mr. Merrey.

Q. You say the house is fitted for two families?

A. Yes, sir.

Q. Is that the house, a picture of it? (showing witness photograph).

A. Yes, sir, that looks like the house, the stables are off here (indicating).

Q. (*By Mr. Parker*) You identify the picture?

A. This driveway doesn't look familiar here, Mr. Merrey; I went in here (indicating).

Q. Can you identify that as the Hillman house?

A. I am not positive as to that picture; Mr. Van Riper can identify that.

Mr. Parker.—That is all right.

Q. You haven't a very good idea in your mind just what this Alyea or Hillman house is, have you?

A. I think I have.

Q. How is it arranged for two families?

A. Why, I didn't make a personal inspection of each and every room, but Mrs. Hillman showed me where one family is on the right side as you would enter, and they occupied the left.

Q. Who occupies the right?

A. I don't believe it is rented at the present time.

Q. Has it been rented?

A. Yes.

Q. Do you know what rent was received for it?

A. I don't.

Q. Do you know how many rooms there are in the house?

A. I should think about sixteen, if I remember correctly.

Q. Do you know?

A. As near as I remember.

Q. What sort of improvements are there in it?

A. Have steam heat, and I think they have a boiler, driven by windmill, I think, that forces the water, I am not positive as to that one point.

Q. Got gas?

A. I don't think so.

Q. Electric light?

A. No.

Q. Sewage facilities of any kind?

A. River down ahead of them.

Q. Do they sewer into the river?

A. Not to my knowledge.

Q. Do you know whether they do or not?

A. I don't.

Q. Do you know how they dispose of their household waste?

A. I don't.

Q. Do you know the rent of any house in this vicinity, that is actually received?

A. No, sir.

Q. There are numerous houses in this vicinity which are let out to tenants, aren't there?

A. I don't think so, I think they are mostly all occupied by the owners.

Q. Do you know whether or not that is true?

A. Well, yes, from going over the different properties.

Q. Is the house next south of it occupied by a tenant or its owner?

A. I believe there is one property, the Danser property, that is rented, that is the only one along the line that I know of.

Q. How about the Cadmus property?

A. Not familiar with it.

Q. How about the property next below the Cadmus property?

A. I am under the impression that those houses are occupied by the owners.

Q. When you went and examined this property you made no examination of properties in the vicinity, as to their rentability?

A. Only the properties in question.

Q. You don't know what any other house in the vicinity rents for, do you?

A. I don't believe there are any houses there to rent, it is all farm property and occupied by the owners.

Q. The next property below you say is for rent, the old Annie Burrows property, owned by Mr. Danser, who is here?

A. I stated that is a tenant.

Q. But I mean by the owner?

A. No.

Q. Well, I mean did you go around and find out where houses are occupied what rent was being paid for them?

A. Well, that is the only case I know of, is the Danser property.

Q. Well, about the Cadmus property?

A. I didn't go into that.

Q. Did you inquire from anybody as to any house in the vicinity, as to what it brought?

A. I didn't.

Q. Did you endeavor to find out what other properties could be rented for?

A. No; there is no property there to rent.

Q. Did you go to find out if there was any property in that vicinity to rent?

A. Perfectly familiar with it that there isn't.

Q. All the property in this vicinity is occupied then?

A. Except that.

Q. Except this?

A. Hillman, as far as I know.

Q. Seems to be no difficulty then in securing tenants in this vicinity?

A. There are no houses there to rent.

Q. There is a house on every farm, isn't there?

A. Yes.

Q. None of them you say are to rent?

A. I don't believe there is any to rent at the present time.

Q. Did you inquire about it?

A. Why, no.

Q. When you fix a rental basis for this house how do you do it?

A. By similar property, not in that immediate location.

Q. Well, how do you know what effect the river has upon that property, as to renting?

A. I am perfectly satisfied that it has an effect on it.

Q. It is your guess, isn't it?

A. No, personal experience.

Q. Well, what experience, now tell us?

A. From a real estate standpoint.

Q. What experience?

A. Why, trying to sell property in that immediate vicinity.

Q. I am not talking about sales, I am talking about renting?

A. There hasn't been any property there to rent, that I had charge of.

Q. So you don't know how much people will pay for the rental of property of this character, at this point?

A. Not right there in that location.

Q. When you fix this value for this Hillman house it is without any experience on the subject whatever, isn't it?

A. Practical experience, from a real estate stand-point.

Q. Tell us that practical experience, and where you got it?

A. From other property in the neighborhood there, across the river on Lexington avenue.

Q. I am talking about on the east bank of the river, the Bergen County side, tell us all the property that rented, to your knowledge, and what it brought?

A. I haven't any personal knowledge of renting any property.

Q. You haven't any personal knowledge of rents in this vicinity?

A. Not in that immediate vicinity, no.

Q. Affected by the river or not?

A. Not in that immediate vicinity.

Q. So that when you fix this value for this Hillman property you do it without any experience whatever; that is true, isn't it, as far as this class of property is concerned?

A. In that immediate vicinity.

JAMES W. MERCER, recalled.

Direct Examination by Mr. Parker.

Q. Have you examined the so-called Hillman property?

A. Yes, sir.

Mr. Merrey.—Mr. Hillman owns about three tracts over there.

Q. I refer now to the property that was formerly Peter Alyea's, lies just south of the George Van Riper property?

A. Yes, sir.

Q. Mr. Allen has described the property, and would you kindly state what, in your opinion, would be the value, market value of the house and six acres of land, with the river clean, in your opinion?

A. From $8,500. to $10,000., six acres of ground and the house.

Q. What ought that to rent for?

A. Well, it ought to rent for eight to ten per cent. on that investment.

Q. What, in your judgment, is the present rent-

able value with the river in its present condition of pollution?

A. They have had a tenant in there at $15.00 a month before they put some improvements in the house, and when they raised it to $18.00 I understand the tenant left, that is, the one half of the house is vacant; there is a two family house on there arranged with practically all improvements that they can have in the house.

Q. So that that $15.00 a month was for half the house?

A. Yes, for nine rooms of it.

Q. Was the house equally valuable on the other half?

A. The other half is a little larger, and they occupy that.

Q. What do you think would be the outside rent for the property in its present condition?

A. For the whole property?

Q. Yes; thirty or thirty-five dollars?

A. Oh, it ought to bring more money than that, the whole property.

Q. I mean the six acres and the house?

A. Six acres and that ought to bring about a thousand dollars a year.

Q. In its present condition I am talking about?

A. It is almost impossible to rent it, one half of the house is vacant now, they couldn't get $18.00 a month for that; the tenant they had in it paid $15.00.

Q. So that in the present condition of the river, in your opinion the property is not rentable for more than say thirty to thirty-five dollars a month?

A. No.

Q. Now, of the balance of twenty-six acres of land, what do you think that is worth?

A. I put that property in at $750. an acre, which I consider a conservative price.

Q. Is that on the theory that the river be cleaned?

A. Yes.

Q. What do you think its value is, in the present condition?

A. It is a very hard matter to place a value; if those people didn't own their own properties I think the most of them would be vacant, on account of the river.

Q. Is it saleable in its present condition?

A. Hardly.

Q. What is the difference, in your opinion, between the present value, under present conditions of that property, and the selling value it would have if the river were cleaned?

A. Fifty per cent.

Cross Examination by Mr. Merrey.

Q. Sheriff, do you say that most of these houses are occupied by the owners, on these properties?

A. A great many of them, yes.

Q. Most of them?

A. Most of them I think, yes.

Q. You don't think that anybody would come here deliberately and buy a farm for the purpose of farming it, under the present conditions?

A. Why, I think I made the statement before, Mr. Merrey, that if anybody went there in the summer time they would be quite likely to back out; just now, of course, the conditions aren't so noticeable.

Q. Do you know that some of those people only live on those places in the summer time and go away from them in the winter time?

A. I don't know one of those families that do.

Q. Do you know Mr. Nash?

A. Yes.

Q. He only lives there in the summer time?

A. He is compelled to, I think, Mr. Merrey, he has got to take care of his property in some way or other.

Q. But he leaves it vacant in the winter time?

A. With the conditions of things in the summer time I don't hardly know how Mr. Nash stays there, I guess it is unavoidable if he does.

Q. He can go away in the winter time; you understand that?

A. I understand what you say.

Q. You didn't tell us that last time you were here?

A. I wasn't aware of that fact.

Q. You understand that Mr. Hillman came in and bought this property when the pollution was at its height, don't you?

A. I don't know how long Mr. Hillman has been on there; I know they are complaining very much about conditions.

Q. Hasn't been there more than three years?

A. About three years, I should judge he has been there that time to my knowledge.

Q. When he did, as the record in this case shows, move there about three years ago he did it with full knowledge of the conditions?

A. I don't know that Mr. Hillman moved there with full knowledge of the conditions, Mr. Merrey, I think that if he had known the actual conditions that he might not have been so anxious; I don't know what he paid for his property, it may have been a bargain that induced him.

Q. Don't you know he has bought other property right on the river, smell and all?

A. I am not aware of that fact; I know he owns

considerable property there, I don't know that he has bought anything lately.

Q. Don't you know that he owns the farm just below Mr. Cadmus?

A. I didn't know that he had bought that.

Q. And that he and his family are renting other farms in the vicinity, did you know that?

A. No.

Q. Did you know he is putting in a great many improvements, system of irrigation for these properties, at great expense?

A. He has been doing that on the place he is living on ever since he went there.

Q. Isn't he farming between the river road and the river?

A. Yes.

Q. That is very low lying ground, isn't it?

A. Not very low; it is good farming ground; it is lower than the homestead of course, there is a drop there.

Q. Would the fact that Mr. Hillman went there deliberately, with these conditions, have any effect on your opinion as to what other people would do?

A. I know that the Hillman family make great complaint about conditions.

Q. What Mr. Hillman does in the winter time, do you know?

A. He works the farm, I suppose, more or less.

Q. Do you know whether he operates some farms in Florida in the winter time?

A. I don't, no.

Q. Do you know the particular line of farming he carries on there?

A. Market farming, gardening.

Q. Farms of that kind are hard to get, aren't they?

A. Around this neighborhood, yes; possibly that is what took Mr. Hillman here.

Q. Isn't it a fact also that that is the most expensive kind of farming?

A. I think it is, yes.

Q. And it requires additions to the ground and buildings of an expensive nature?

A. Yes.

Q. Did you ask any of the tenants along the different properties there, when you went over the ground, as to whether they objected to the river?

A. Yes.

Q. Did you ask the people on the Cadmus property?

A. What is the name of the man in the Cadmus property?

Q. The name is Rheingold, that is the property furthest to the south, on that side of the river, in this suit?

A. I am not quite sure whether the last man I talked to there was on the Cadmus or the Van Riper property, but he seemed to be very much amused with the fact that he was getting very cheap rent on account of the conditions.

Q. What rent is he paying?

A. Fifty dollars for sixty acres; got a very fine house on there.

Q. Fifty dollars per month?

A. Fifty dollars per month, yes.

Q. You said before that you didn't know what farm property brought per acre, in rental?

A. I said it was a pretty hard matter to tell; there wasn't any established standard for renting farms, that I have ever been able to find.

Q. You didn't know that there was a standard for renting farms?

A. No, I haven't found it.

Q. You haven't had any experience in that line?

A. Oh yes, I rented farms.

Q. That is, they were farms that was about to be sold for development?

A. Throughout Bergen County development is crowding in to such an extent that people all have that idea in mind most of the time.

Q. The farms you rented, however, were not to be used for farming, as I remember?

A. Oh yes, we have rented farms for farming purposes.

Q. Do you know any other properties along there, besides the Cadmus property, which are rented?

A. Which are rented?

Q. Yes.

A. Why, I don't recall them just off-hand now; this one party that I speak of on the Van Riper farm rents his place.

Q. On the Van Riper farm?

A. On the Van Riper place.

Q. Which Van Riper is that; there are three of them?

A. On the Richard Van Riper place.

Q. That is the one north of the Cadmus property?

A. There is between sixty and seventy acres in that farm.

Q. That is the only one that you know of that is rented?

A. I have talked with this man particularly, this man who is on that farm.

Q. Do you know any other houses in that vicinity that are rented and what the rents are?

A. No; I think the most of those properties, the Van Ripers, the Doremus, are occupied by their own people, by the owners.

Q. You don't know about that?

A. Not particularly, no.

Q. You didn't go around in that neighborhood to find out what rents actually were paid?

A. I have been around the neighborhood, didn't inquire about those things particularly from them, except here and there.

Q. Tell us what you learned then about what rents people actually get upon farms fronting on this river?

A. That is the only case that I can talk of.

Q. That is the Richard Van Riper farm?

A. Yes.

Q. Outside of that you couldn't tell us what the others actually get?

A. The other Van Ripers, Edo Van Riper, George Van Riper farm, and the others, are occupied, Henry Doremus, occupied by the families.

Q. This depreciation in rent then is a matter of your own opinion, isn't it?

A. No, it is the condition of things there, it is just what you get from the Dundee dam up all the way along there.

Q. You can't tell us now but one property that is rented at this point?

A. I tell you of that particular property, I think that most of the other properties are occupied by their owners.

Q. Isn't the figure which you put on of depreciation in this case merely a matter of your judgment and not founded upon what is actually paid?

A. Why, those farms are mostly occupied by their owners, Mr. Merrey; I am telling you of this specific case where this man thinks he has a bar-

gain at $50. a month, with sixty acres of ground and with a very good house on it.

Q. As far as you are concerned there was no way that you could learn what farms are actually rented for at this point?

A. I have said that I haven't any rule to go by.

Q. No, you have no rule to go by, there is no way that you could ascertain what would actually be received if the farms were put up to rent?

A. You can figure certain percentage on the value of the property.

Q. But that is not founded on experience?

A. Not on my actual experience with renting farms, no.

FREDERICK H. GELDERMAN, recalled.

Direct Examination by Mr. Parker.

Q. Since the last hearing in this case have you put in any alterations or improvements in your house?

A. Yes, sir.

Q. Just state shortly what they were and how much they cost you.

A. Got electric lights all through the house, around twenty-seven or twenty-eight lights, I don't know which, hot and cold water, established a water plant, all through the house, and every modern convenience that can be put in.

Q. You have plumbing?

A. Oh, sure.

Q. Well now, what expense were you at, as to that?

A. I suppose by the time I get through it will cost me, I have to do a little tiling yet, it is all complete, will be tonight, electric lights have been put in about four weeks now.

Q. Yes.

A. They all get through tonight, and all I have to do is to tile the bath room and dressing room combined.

Q. How much is this going to cost you?

A. I suppose about fifteen or sixteen hundred dollars.

Cross Examination by Mr. Merrey.

Q. Fifteen or sixteen hundred dollars?

A. Yes.

Q. Did you do this by contract?

A. Not all, no.

Q. Well, you didn't put in the electric lights by contract, I suppose?

A. Well, part of it, the wiring, yes.

Q. How much did that cost you?

A. That cost me $98.00.

Q. Now what else did you do there?

A. The electric fixtures.

Q. Yes.

A. I haven't the bill for that yet, on account of one or two fixtures was to be changed.

Q. How much are they going to cost you?

A. I don't know, I suppose about, little over a hundred dollars.

Q. What else did you put in there?

A. Water system.

Q. A new water system?

A. Yes.

Q. What kind of water system?

A. The Leader.

Q. How is it supplied?

A. Why, it is air pressure, it is a five hundred and fifty gallon boiler pumped by a motor.

Q. Pumped by an electric motor?

A. Yes.

Q. You have a well and pump the water into your house with a tank?

A. The tank is in the house.

Q. Well, how much is that costing?

A. About three hundred and twenty-five dollars.

Q. Now, what else are you doing?

A. There is the plumber, hot and cold water.

Q. How much is that costing?

A. Why, that runs about the same as the other, about $325.

Q. That is $325. for putting in water pipes?

A. Yes, sir, and bath, bath tub, everything what belongs to it you know, hot and cold water.

Q. You have told us about a thousand dollars worth now; is there any more than that?

A. Eh?

Q. You have told us about $1,000. worth?

A. Yes.

Q. About $850. worth; what makes up the rest of the $1500?

A. There is the tiling.

Q. What is that?

A. I had to have some of the rooms, had to be torn up, they have to be replenished, and the tiling of the bath room, I made inquiries from Norwoods, it will cost about $110.

Q. For what?

A. For the tiling.

Q. Tiling in the bath room?

A. Yes.

Q. Tile the floor?

A. And some papering.

Q. Did you tile the floor of your bath room?

A. No, that will be separate.

Q. Tile the sides of it?

A. The sides, yes, sir.

Q. Then the rest was spent in redecorating?
A. Yes.
Q. Paper and painting and so on?
A. Yes, sir.

RICHARD OUTWATER, sworn.

Direct Examination by Mr. Parker.

Q. You are interested in this piece of property called the Outwater estate? (indicating on map).
A. That is the property.
Q. Shown on map D 4; is that property under lease?
A. The both pieces are under lease.
Q. Now, just state what rents?
A. The property owned by myself, consisting of about twenty acres, is leased for fifty dollars a year.
Q. That has no house on it?
A. No house on it.
Q. And the property next it?
A. The property with the house, and the land as far as Snyder's lane is leased for twenty five dollars a month.
Q. Which makes $300. a year?
A. $300. a year.
Q. How long are these leases, yearly?
A. Year by year.
Q. (*By the Court*) What is the acreage?
A. Well, the acreage is on the map; twenty acres and some fraction in my own property.
Q. Your property is twenty acres and the other is fifteen, isn't it?

Mr. Ashmead.—The other is about twenty-three acres.

A. Well, fifteen acres I am referring to, I am not referring to the back property.

Cross Examination by Mr. Merrey:

Q. Mr. Outwater, did you endeavor to sell your property?

A. I recently sold a portion of it back of the road.

Q. Have you tried to sell the rest of it?

A. I have had it in the hands of real estate agents for a number of years.

Q. How much are you asking for it?

A. Six hundred dollars an acre.

Q. That is twenty acres?

A. Yes.

Q. How much is your brother asking for his?

A. They are asking $1,000. an acre, that is, the estate is.

Q. Is the property somewhat similar?

A. Very similar.

Q. Is this the property that adjoins the Moffit tract?

A. Property belonging to the estate of my brother adjoins the Moffit tract.

Q. That has all been cut up into building lots and sold?

A. That was cut up and partly sold several years ago.

Q. And a lot of the property in this neighborhood has been developed and sold into building lots, hasn't it?

A. I am not acquainted with any other tract in that immediate neighborhood, except Moffitt property.

Q. All back of you and through Hawthorne?

A. Well, that is across the railroad, in Passaic County.

Q. You are very near the Passaic line, aren't you?

A. The Passaic County line divides the Moffit property.

Q. From your brother?

A. No.

Q. It runs through the Moffitt property?

A. Through the Moffitt property.

Q. Through East Nineteenth street, on map D 4, and Cherry Lane?

A. It is Cherry Lane, yes, that is the division line.

Q. Some property that your brother used to own adjoins the Passaic County line?

A. Some was in Passaic County.

Q. Yes, some was in Passaic County. Been a large mill erected right below you, hasn't there?

A. Yes, on the Alyea estate.

Q. That adjoins your property, does it?

A. Alyea estate?

Q. Yes?

A. Well, I believe a portion of the Alyea estate was sold to some other person several years ago, whose name I don't know, small section between my property and the Alyea estate.

Q. What sort of mill is that?

A. I don't know for what purpose it was built, but it has never been run since construction.

Q. Did you ever hear what it was intended for?

A. Bleachery I was told several years ago.

Q. Were they to use the water from this Wagaraw pond, which is shown on D-4?

A. That is my understanding, I have no knowledge.

Q. I want to show how close it is to the pond; it is right below the pond shown on the map?

A. My property goes to the pond.

Q. I mean the mill is right on the other side of the pond?

A. At the foot of the pond on the road.

Q. How far from the pond is it?

A. It is on the road at the very lower end of the pond.

Q. Can you tell us how many feet the mill is from your property?

A. Oh, the mill from my property? Maybe two or three hundred feet.

Q. Two or three hundred feet?

A. I suppose maybe something like that.

Q. Right below that is the large ice houses belonging to the Alyea estate?

A. To the east of the pond.

Q. They are very large ice houses, aren't they?

A. I presume they may be considered so, I am not a judge on the size of ice houses particularly.

Q. You endeavored to sell your property as a whole, have you?

A. I have.

Q. You don't care to go in and develop it yourself and cut it up?

A. I have never taken up the matter.

Q. Never taken up the matter at all?

A. Of lots.

Q. Do you live on the property?

A. I do not.

Q. There is no house on that property?

A. No house on that property.

Q. How long ago did your brother leave the other property?

A. Since he died?

Q. Well, I didn't know he was dead; how long ago is that?

A. About four years ago I should judge, I don't recall exactly.

Q. Has that house been rented steadily ever since?

A. At times off and on, it was vacant for several months, and has been rented off and on during the period since he died.

Q. Your property is very near what is known as the Moffit bridge, isn't it?

A. About midway between the Moffit bridge and the Wagaraw bridge, my own particular property.

Mr. Parker.—That is different bridge from the Market street bridge, is it?

Mr. Merrey.—Oh yes.

Q. Across the Moffit bridge there is a large silk mill situated in the city of Paterson?

A. Yes.

Q. People who have lived on your property and by it are people who would work in those mills?

A. That would be your impression that they might.

Q. You say there has never been any offer made, nobody has ever made that proposition to you to cut it into building lots?

A. No.

Q. The condition of the river at this point isn't quite as bad as it is down at the dam, is it?

A. Well, that is a question on which I cannot offer an opinion.

The Court.—I understood this witness to say he had sold some of his property?

Mr. Merrey.—Yes; we have dictated that into the record; I can point it out; this piece here, which is quite a distance from the river, back of this road.

Q. (*By the Court*) What was the price?

A. I sold the property back of the road for $300 an acre, my own.

Q. How many acres were there?

A. Ten acres, about five acres of upland and five acres of swamp.

Q. Was there a little house on it?

A. A little house.

Q. And a barn?

A. Little shack. I will give you the price of the other property?

Q. Yes, how many acres in that?

A. Two and two-thirds, that is property owned by my brother's estate, and sold for $500 an acre.

Q. When did you sell these?

A. This sale of mine took place in December, 1911.

Q. And your brother's sale?

A. Brother's sale took place,—I will find out from a document, if you will permit me.

Q. (*By Mr. Parker*) Well, very recently, this year?

A. No, within a year or two, three years maybe, 1907.

Q. Who bought the property from your brother?

A. Ernest Bogart and T. Wesley Outwater jointly.

Q. This piece is right on the Erie railroad?

A. On the Erie railroad.

Q. And also the two streets, East Nineteenth street and, is that Snyder's lane?

A. Well, East Nineteenth street if extended, but not extended, and Snyder lane on the south.

Q. (*By the Court*) About how many feet from the river?

A. Three thousand feet from the river.

Q. (*By the Court*) It would not be affected by the river?

A. No.

Q. (*By the Court*) Are you one of your brother's executors?

A. Yes, sir.

Q. (*By the Court*) You say that his estate holds the estate property for $1,000 an acre, while you hold yours for $600, what is the reason for the difference?

A. Because, while the property is somewhat similar, large section of my property on the pond is of a low and rather useless character, a good many acres in this piece of property here, and I am asking that as a whole for the whole tract; if I was to put a price on it,—you ask the price what I was asking for the whole tract, $600 an acre; part of this property, if anybody examines it, is nothing but a slank.

Q. (*By Mr. Parker*) To the rear of the Richard Outwater property on the map, near the pond?

A. That property is a level tract of land all the way through, except down right here it slopes down to the river.

Q. It is also nearer the Moffitt development?

A. Yes.

Q. Do you think that adds anything to it?

A. Possibly slightly it might; it is the judgment of my co-executor that the property is worth $1,000 and that is the price the co-executors have placed upon it.

Q. How long has it been for sale?

A. Ever since my brother died; it has been for sale ever since we held it, thirty years.

Q. If you got your price. That is all.

JAMES H. COE, sworn.

*Direct Examination by Mr. Parker*ss

Q. Where do you live?

A. Englewood.

Q. What is your business?

A. Been a member of the Bergen County Tax Board for the last six years, until May first.

Q. How old are you?

A. Fifty-two.

Q. What other positions of trust have you had, any?

A. Collector.

Q. County Collector?

A. County Collector.

Q. When was that?

A. I was County Collector in 1902 for six years, until 1908. Also Collector of the old Township of Englewood, and Assessor in the old Township of Englewood. In the real estate business, I might say I have been in the real estate business for twenty odd years, appraisals, property appraisals, insurance.

Q. Where has your real estate business been carried on?

A. Throughout the County, I have done a general real estate business in the County.

Q. County of Bergen?

A. Yes.

Q. With offices at Englewood?

A. Englewood and in New York.

Q. Well now, in the course of your business as real estate agent, and while you were acting, as I understand, as Tax Assessor for the County of Bergen?

A. Member of the Board of Taxation.

Q. Member of the Board of Taxation of the

County of Bergen, did you have occasion to look into the valuation of property in the vicinity of the Passaic river?

A. Throughout the entire County from the Passaic line to the river, from the Rockland County line to the Hudson line.

Q. So that you have familiarized yourself with the condition of the properties along the Passaic river from Dundee dam say up to the Falls?

A. Yes, sir, up to Cherry Lane.

Q. You are familiar with the character and condition of that property?

A. Yes, sir.

Q. And valuations there?

A. Yes, sir.

Q. Now have you made any examination of the properties of the various persons that are interested in this suit?

A. Yes.

Q. With a view of testifying here?

A. Yes, sir.

Q. When did you make your examinations?

A. Day before yesterday.

Q. Who was with you?

A. Mr. Karl, Mr. Mercer, Mr. Allen and Colonel Phillips.

Q. Now I want to ask you as to the result of your examination, your opinion as to the valuations there for rentable purposes and sale purposes, and also as to the effect of pollution on the various properties, and I will try and preserve the same order as was the case with the other witnesses.

A. I have my memorandum here as I took them off, if there is no objection to my referring to it.

Q. You have a memorandum; you have your own notations on that memorandum, have you?

A. Yes, sir.

Q. Refer first to the Cadmus property which is the one furthest south and shown on map D-2, it is marked on the map Cornelius D. and Edo Cadmus?

A. Yes, sir.

Q. Taking the improvements and six acres of this land as suburban property, with the river clean, what in your opinion would be its value?

A. With six acres do you want? We figured it on a basis of seven acres.

Q. Well, state the seven acres then, and the improvements?

A. I figure under good conditions there that ought to rent at about $60 a month, with the river in good condition, but in its present condition I should cut that in half, I should say about $30 a month.

Q. What would be its value for the purpose of sale, of those seven acres?

A. Those seven acres?

Q. Yes, if the river were clean?

A. We made a figure on that, and I based my calculations on the eighty-seven acres which was in that farm there, and put a valuation on that of $850 an acre, and put a valuation on the building of $3500; the building is not in a very good condition, it is pretty well run down at the present time; of course I took the building as it is to-day.

Q. Now that valuation was put on it on the theory that the river was clean?

A. Yes.

Q. With the river in the present condition what do you state to be the value?

A. I would cut that in half, Mr. Parker, I think.

Q. (*By the Court*) Suppose it were certain that the river would become clean in five years hence, what would you then say was the value?

A. Why, the value of the land?

Q. (*By the Court*) Suppose you knew as a certainty that the river would become clean in five years?

A. I would put a valuation on that property there of $850. an acre; of course the building would necessitate a great deal of work done to it, it has depreciated on account of the condition of the river there, and people have apparently not spent the money on it to keep it in repair; of course if conditions were different there I suppose people would take better care of their property.

Q. At the present time what, in your opinion, is the market value of the land?

A. I should figure that land about $450 to-day.

Q. Of the eighty-seven acres?

A. Yes.

Q. And in making the sale would you say that the value of the house would be $3500 in addition?

A. Yes, add $3500 for the value of the house, in good condition.

Q. Now take, Mr. Coe, the Henry W. Doremus property, as shown on map D-2, which consists of sixty acres of land—

The Court.—Well now, I would like to call attention to the fact that inasmuch as there has been so much public discussion on this subject that anybody who buys real estate will buy with his ideas, whether they are erroneous or correct, with his ideas on this subject of river purification, and so you see the answer of the witness as to what this property is worth to-day, with the river polluted, his opinion, I take it, will be colored by what he thinks of the probabilities of the river becoming clean by reason of the the fact that this sewer is going to be built; is not that so?

A. Why, I took that into consideration, and I have figured that is was a physical impossibility to clean that river out at the present time or within the next fifty or hundred years, unless we have another flood that will tear everything loose down the river, but take the sediment that is in the bottom of the river, where it runs in some places eight or ten feet, it would be practically a physical impossibility to remove that.

Q. (*By the Court*) If they removed the Dundee dam temporarily, why, that would make a difference, would it not?

A. It would open that stuff on to the sun and ferment there, and be almost worse than it is covered with water.

Q. Now, Mr. Coe, when you gave your opinion as to the value of this property with the river clean did you make any assumptions as to what it should be used for, and also what assumptions, if any, entered into your opinion as to the value?

A. Well, I figured my valuations of the property as clear, on the basis of the improvement of properties throughout the entire county, that is the development for home development; commuter development has been very great on the other side of the county, along the Hackensack river and along the Hudson river, and it should have been, in my opinion, a great deal larger along the Passaic river if conditions had been such that they could do it, but it has kept these farm properties out of the market practically, for home development; the over-flow from Paterson should go over there in Bergen County, and those places could all have been laid out on the same basis as all the farm lands have along the Hackensack river, West Shore, Northern New Jersey and New York, all those railroads run through there; all

the farms have been taken up in that commuter development.

Q. In making your figure on the value of this property with the river clean, did you assume that the river actually would be cleaned?

A. Not in the future, no; it was as the river was thirty, forty years ago, when I remember it there, the most beautiful section in Bergen County, along there.

Q. That assumption you made in reaching this value of $850 an acre?

A. As the river was at that time. In my estimation I don't think the river could ever be put back in its original condition again, even if they took all the sewage out, it would require a million dollars to dredge the river out and clean it to its former condition, which would be a physical impossibility; they have no way of disposing of the sewage that is in the botton of that river and along the banks.

Q. In giving this $850 an acre opinion as to the Cadmus property you assumed that the river would be in the condition that it was when there wasn't any pollution there at all?

A. Before there was any pollution in the river at all.

Q. So that the water would be pure?

A. Yes.

The Court.—The question would have to be what would the property be worth if the river were entirely freed from the pollution which the city of Paterson, as a corporation, empties into it; that would be the real question, because Paterson is not responsible for the illegal acts of the factories, and so you cannot figure on the assumption that the river will be absolutely

pure, but have to figure on the assumption that the river will be free from the sewage that the city of Paterson in its corporate capacity, empties into it.

Q. Won't you make that assumption in answering the question?

A. Which one?

Q. The question as to what would be the value of the Cadmus property, assuming that the river was free from the pollution caused by the corporation of the city of Paterson?

A. I should say the same, $850 an acre.

Q. Now, Mr. Coe, you said you thought the property under the present conditions of pollution with reference to the city of Paterson—and I will ask you with reference to the present conditions all around—wasn't worth in your judgment over $425 per acre?

A. Fifty per cent. of the value I put on it, yes.

Q. What entered into your opinion as to the present value of the property, what consideration?

A. The present conditions there of the river, the sewage.

Q. But in reaching that opinion what assumptions did you make as to purchase and sale?

A. Why, I simply judged it as I would any other property that I go around to judge, that I knew of.

The Court.—The question is as to the continuance of the pollution of the river by the city of Paterson.

Q. Did you make any assumption as to the continuance of the pollution?

A. No, sir, I take it just as it is at the present time, made no assumption whatever, at all, as to

the future of the river, just as it was now, as I saw the conditions there now.

Q. (*By the Court*) You must have made an assumption that the pollution would continue; you either made the assumption that the pollution would continue as it is now or become worse, or you made the assumption that the river would be freed from the Paterson pollution?

A. I didn't know that the river was going to be freed within the next fifteen or twenty years, I simply took the conditions as I have seen them there for the last fifteen or twenty years, and as they are at the present time; it has been getting worse and worse, in the summer time it is unbearable along that road, you can't drive there; I was over there quite a number of times last summer, and had to go around the back way to get away from it.

Q. If this property was put in your hands for present sale what would be your asking price, knowing as you do that the river is going to be clean in three years?

A. You mean as an owner?

Q. (*By the Court*) Freed from the pollution of the Paterson sewage?

A. You mean as an owner or agent?

Q. As an agent, for the purposes of sale?

A. I wouldn't bother about handling the property; the chance of a sale is so remote that it wouldn't pay to take anybody there.

Q. Even assuming that you knew and you could assure purchasers who came in there that the river would be clean in three years?

A. Because you couldn't assure him that; those conditions will remain there probably for the next twenty-five or thirty years.

Q. (*By the Court*) But you could assure them at least—

A. If I could guarantee them positively.

Q. (*By the Court*) No, you could not assure them that the river would be clean, nobody could make than assurance, but you could assure them, at least in the way in which I am obliged to try this case, you could assure them that Paterson would stop polluting the river through its sewers in three years; that you could assure them of; that is the whole foundation of this case; the city of Paterson now says I am going to condemn a right to pollute for three years, and after that time I am going to stop; that is what Paterson says; now I do not know whether Paterson will be able to do that, that will depend upon the rapidity with which the work is done, but Paterson now says, and that is the assumption that I have got to make, Paterson now says we are not going to empty our sewage into the river after the expiration of three years; I am trying the case on that basis; of course that is a very different proposition from the proposition that the river is going to be clean in three years.

A. I would not raise my fifty per cent. value on it.

Q. Even under those circumstances?

A. No.

Q. Now, having discussed the Cadmus property I will ask you to turn your attention to the estate of Henry W. Doremus which consists of sixty acres of land, with dwelling and outbuildings?

A. I put the valuation of that sixty acres at $800 an acre, under good conditions, and the buildings at $4500.

Q. Now when you said $800. per acre under good conditions, did you mean, or didn't you mean with the river clear from the pollution made by the defendant?

A. Yes, sir.

Q. Improvements, how much?

A. $4500.

Q. What, in your opinion, would be the rentable value of the buildings with six acres say of land?

A. Why, I should think about $60 a month, $720 a year.

Q. If the river was clear from the pollution of the defendant?

A. If the conditions were good there.

Q. What, in your opinion, is the present rentable value of it?

A. About half that, $420.

Q. $360?

A. About $360 to $400.

Q. What would be the value of the balance of the property, say thirty acres of the balance of the property, if the river were clear of pollution by defendant?

A. Well, I figured that $800.

Q. And under present conditions?

A. About fifty per cent. of that.

Q. Go next to the property of Charlotte J. Van Riper?

A. Is that the estate of Richard Van Riper?

Q. Yes, that is shown right south of the Doremus property, on D-2, that consists of sixty acres of land fronting seven hundred and seventy-five feet on the river, with dwelling and out-buildings; now take the dwelling and six acres of land?

Mr. Merrey.—I don't think it is quite that, Mr. Parker, I don't think there is that much.

A. I would say, Mr. Parker, I have got a statement here on each piece of property, if you want it read into the record it will save time.

Q. Well, if the statement is made up on the basis of the river being clear of the defendant's pollution, and then under present conditions?

A. Yes, sir.

Q. It is, is it?

A. Yes, sir.

Q. (*By Mr. Merrey*) Are you sure that that is understood; do you mean to say clear of the pollution by the city of Paterson or clear of all pollution?

A. Clear of the pollution.

Q. (*By Mr. Merrey*) Of all pollution?

A. Pollution.

Q. No, I mean city of Paterson pollution?

A. Yes, city of Paterson pollution, that's the way we figured it.

Q. (*By Mr. Merrey*) Do you understand that the pollution in the river is entirely caused by the city of Paterson?

A. Yes, sir.

Q. (*By Mr. Merrey*) You are then acting on an erroneous assumption.

A. It comes from the Passaic County side, the pollution, there is none of it comes from the Bergen County side.

Q. I think we better go ahead. Take Charlotte Van Riper?

A. Yes, sir.

Q. What do you say is the value of that property?

A. $850 an acre.

Q. If the river was in good condition, that is, clear of defendant's pollution?

A. Yes, sir.

Q. And the buildings are worth how much?

A. Four thousand dollars.

Q. What would be the rentable value of the

buildings say, and four acres of land, if the river was clean of defendant's pollution?

A. $65.00 a month I figure that.

Q. What do you think is the present rental?

A. $30 a month.

Q. What do you think is the present value of the land, under the present conditions?

A. Not more than $450. an acre.

Q. Turn next to the homestead property of the estate of George Van Riper, that consists of sixty seven acres, with large eighteen room house, in good condition, with three large barns, etc., what is the value of the buildings?

A. The buildings on that, $8,000.

Q. What would be the rental value of the buildings and seven acres of land, assuming that the river was free from the defendant's pollution?

A. Twelve hundred dollars a year.

Q. Under present conditions what would that rent for?

A. I figured that at $540 a year.

Q. What is the present value of the land, under present conditions?

A. $450.

Q. Did you give the value of the land under the condition that the river was free from defendant's pollution, how much would that be?

A. You didn't ask me that, $950.

Q. Now I understand there are four ice houses on that property, isn't there?

A. Yes, sir.

Q. How much are the value of the ice houses?

A. Those buildings are worth about $1500 a piece.

Q. That would be $6,000. for the four?

A. Yes, $6,000. for the four.

Q. And that is the present value, is it?

A. Yes, I figure that at the present value.

Q. Are they rendered useless by the pollution of the river?

A. They weren't in use.

Q. But did the pollution make them useless?

A. They couldn't use them, they couldn't get any ice.

Q. They couldn't get ice from anywhere else?

A. Oh, it would be too expensive to cart ice in there and fill them in.

Q. Some of those properties have ponds; there is none there on the Van Riper property?

A. No, they took it from the river.

Q. Take the homestead property of Edo Van Riper?

A. Yes.

Q. That consists of twenty-three acres of land, eighteen hundred feet frontage on the river, three lakes, twelve room frame house; is the property in good condition?

A. Yes, very fair condition.

Q. And has that property modern improvements and that sort of thing?

A. Only partial improvements in there.

Q. What has it got?

A. I think there was, as I remember, hot air furnace in that house, no other modern improvements except the hot air furnace.

Q. How much were the buildings worth?

A. There was a bath room in that house, as I remember it, yes. The buildings on that, I valued those buildings $6500. house and barns, and the—do you want the land?

Q. What would be the value of the land, assuming that the river was clean of the pollution of the defendant?

A. One thousand dollars an acre I put that.

Q. What would be the rentable value of the buildings and three acres of land?

A. Seventy dollars a month, $840 a year.

Q. That is, assuming that the river is free from the defendant's pollution?

A. Yes, sir.

Q. Now, under present condition what is the present rent?

A. $25.00 a month, $300. a year.

Q. The balance of twenty acres, what is that worth under the conditions that the river be free from the present pollution of the defendant?

A. $1,000. an acre.

Q. What is the value under present conditions?

A. $500. an acre.

Q. Take the homestead property of Mary A. Van Saun, what does that consist of?

A. Seventy-three acres of land, an old house, barns, etc.

Q. If the river were clean from the defendant's pollution what would be the value of that land per acre?

A. $550.

Q. What is the present value?

A. $250.

Q. Per acre is that?

A. Yes, sir.

Q. Now the buildings and thirteen acres of land, what would they rent for, if the river were free from the defendant's pollution?

A. $560. per annum.

Q. With the river in its present condition what is the value?

A. $300. $25. per month, $300. per annum.

Q. And the value for the purposes of sale of the land, in the present condition?

A. $250.

Q. Per acre?

A. Yes, sir, per acre.

Q. The homestead property of Zela Doremus, what does that consist of?

A. Seventy acres, six hundred feet river frontage.

Q. Give the value of the land if the river is clear from the defendant's pollution?

A. $700. per acre.

Q. What is the value of the building?

A. $3,500.

Q. Now, what is the rentable value, if the river is clear from the defendant's pollution, of the buildings with ten acres of land?

A. $600. per year.

Q. Present rentable value?

A. About $360. $30. a month.

Q. And what would be the saleable value of the sixty acres of land if the river were clean from the defendant's pollution, how much per acre?

A. If the river were clean?

Q. Yes?

A. $700. per acre.

Q. And under present conditions?

A. $350.

Q. Homestead property of Frederick H. Gelderman, what does that consist of?

A. Twenty acres of land, four hundred feet river frontage.

Q. What sort of house?

A. In good condition, has all improvements in the house.

Q. Light, furnace, plumbing, water?

A. All the modern improvements and water system.

Q. What is the value of the building?

A. $4,000.

Q. That is occupied by the owner, isn't it?

A. Yes, sir.

Q. What would be the value per acre of this

twenty acres of land, if the river was clean of the defendant's pollution?

A. $1,000. per acre.

Q. What would be the rentable value of the buildings with ten acres of land, under the same conditions?

A. $1200. a year.

Q. What is the present value of the rentable value of the property?

A. What is the present or what would be the present?

Q. No, what is the present?

A. It is not rented; I should say about $600.

Q. What is the value of the whole twenty acres of land, the remaining ten acres of land, under present conditions?

A. $500 an acre.

Q. Outwater estate, state what that is?

A. Fifty-seven acres all told up there, it is up on the northerly boundary line of the county between Passaic and Bergen County, the old Outwater estate there runs right near the Moffitt bridge and the Moffitt development there.

Q. I think about twelve acres have been sold?

A. The way it was given to me I figured there were fifty-seven acres.

Q. Just look at this map; that 2 and 33-100 acres has been sold off, and that 10½ acres has been sold off. Well, we will call it forty-three acres; that consists of forty-three acres of land, six hundred and fifty feet river frontage, what would be the value of this land if the river was clean of the defendant's pollution?

A. $800 an acre.

Q. What is the value of the buildings?

A. $2,000.

Q. What would be the rentable value of the

buildings and four acres of land, if the river was clean of defendant's pollution?

A. $360 a year.

Q. Under present conditions what is the rentable value?

A. $180 per year.

Q. Now what is the present value of the forty three acres of land, per acre, under present conditions?

A. $500. per acre.

Q. Turn to the Hillman property; did you look at that?

A. I beg pardon?

Q. Hillman formerly Alyea property, did you examine that?

A. Yes, sir.

Q. What does that consist of?

A. Thirty-two acres and large double house for two families.

Q. How many acres do you take with the improvements for the purposes of renting?

A. Six acres.

Q. What would be the rentable value of those six acres and the buildings, assuming that the river was clean from the defendant's pollution?

A. $528 with the river clean there; we figured the value of both buildings, it is a double building you see.

Q. Under the present conditions what is it worth?

A. About half that, fifty per cent.

Q. How much would the property be worth per acre, assuming that the river was clean of the defendant's pollution?

A. $600.

Q. And under present conditions what is its value?

A. Half of that, fifty per cent. of it, $300.

Q. I think that completes all the Bergen County side, doesn't it, Mr. Coe?

A. I think it does, yes; we had the Charlotte J. Van Riper.

Q. Yes, you testified to that, and also George; did you testify to Edo Van Riper?

A. Yes; yes, sir, that finishes the Bergen County side.

Q. Did you make examination also of the property on the west side of the river?

A. Yes, sir.

Q. The Nash property, the Merselis property and the John Terhune property?

A. Yes, sir.

Q. First take the eight acres of land with the large ten room house; this is the Nash property?

A. Yes, sir; the value of the land $12,000.

Q. What, in your opinion, would be the rentable value of that property, that is of the eight acres with the large house, if the river should be clear of the defendant's pollution?

A. $1,200 per year.

Q. What, under the present conditions?

A. Why, about $300.

Q. Then take the small cottage, with a quarter of acre of land?

A. Yes.

Q. What should that rent for if the river was clean of the defendant's pollution?

A. $35.00 a month.

Q. What is its present value?

A. About $10.00.

Q. So, with the double house on Lexington avenue, with a plot of ground, what would be—there are three houses on the Nash property, are there not?

A. There is three houses on this.

Q. (*By Mr. Merrey*) I think the first you testified to was the double house?

A. No, that was a big square house; this is the double house.

Q. Two family house, isn't it?

A. Yes, double house.

Q. What would be the rentable value of that if the river was clean from the defendant's pollution?

A. $32.00 a month for the whole house.

Q. And under present conditions does it rent?

A. At $22.00 a month.

Q. Did you put any saleable value on the property if the river was clean of the present pollution of the defendant?

A. On the large house I put a valuation on the land of $12,000 and on the buildings of $6,500. a total of $18,500.

Q. What would that sell for, under present conditions?

A. About fifty per cent. of the value.

Q. Now the cottage?

A. The cottage, value of ground $3,500; that is the value of the whole thing, $3,500, the ground and the building together; that's just a quarter of an acre.

Q. What is its present value?

A. About fifty per cent of that value.

Q. What value did you put on the double house on Lexington avenue?

A. $3,500.

Q. What do you think its saleable value is, under present conditions?

A. Fifty per cent.

Q. What value did you put on the twelve acres of land as unimproved, on the other side of Lexington avenue?

A. The Randolph avenue land?

Q. Yes.

A. About $2,200. an acre on the land.

Q. If the river was clean from the defendant's pollution?

A. Yes, sir.

Q. Present conditions what would you say it is worth?

A. About $1,000. an acre.

Q. Well, that is a very nice piece of ground, isn't it, that twelve acres of land?

A. Yes, sir.

Q. Lies high up, just at the bend of the river, and commands a view of the river up and down almost?

A. Runs back to the trolley line.

Q. Yes, but it has a view commanding the approach of the river?

A. Yes.

Q. So that it would be a very attractive spot for a large fine house?

A. Yes; it is the plot that runs through from the river road to the trolley.

Q. Look at the map here, Mr. Coe, we are talking about the Nash property, not the Merselis property; the river comes around here, this is north, and the trolley is over back here (indicating on map); you made a mistake about that, didn't you?

A. Oh, this plot. I thought you were talking about this plot back up there (indicating).

Q. This is the piece we are talking about, on the south side of Weasel Road. You must have looked at the wrong property.

A. This is the piece, right on the curve in here, here it is, that's the plot (indicating on map).

Q. That does not front on the trolley, does it?

A. No; that is another plot.

Q. This plot of Mr. Nash, I say, commands a fine view?

A. And the curve of the river, yes, sir.

Q. Take next the Merselis property on the west side of the river.

A. Yes.

Q. Did you examine that?

A. Yes, sir.

Q. Well, tell us about it?

A. One family brown stone and frame house with extensions, fifteen rooms, buildings in good repair, house, barns, etc., was; $7,000. put a valuation on there.

Q. The buildings are worth $7,000?

A. Yes, and six acres of land at $1,500. an acre, $9,000.

Q. That would make a total valuation for the house and six acres $16,000?

A. $16,000, yes, sir.

Q. What would be the rentable value of that property in the event of the river being clean of the present pollution of the defendant?

A. $1,000. a year.

Q. What do you think would be the rentable value of it, under present conditions?

A. $25. a month, $300. a year.

Q. What would be the saleable value of the house and the six acres of land, under the present conditions?

A. Fifty per cent. of that value.

Q. Now look at the nineteen acres of land back of this, running to the trolley line, what would be the value of this, if the river was clean from the defendant's pollution?

A. $1,500. an acre.

Q. And under present conditions?

A. $750.

Q. Turn to the John Terhune property, that is

up near the city of Paterson, that is in the city limits, isn't it, Mr. Merrey?

Mr. Merrey.—Yes.

Q. Did you look at that?

A. Yes, sir.

Q. Just tell us about that?

A. The piece of land there 125 x 300 feet, buildings and land in best condition, value of buildings about $12,500, and the land $3,500, total $16,000.

Q. What should that rent for, on the assumption that the river was clean from the defendant's pollution?

A. $1,600 ar year.

Q. And under the present conditions?

A. $480. $40. a month.

Q. What could the property be sold for, in your opinion, if the river was clean of the present defendant's pollution?

A. About fifty per cent. of that value.

Q. You didn't hear the question?

A. Oh, I withdraw my answer; we figured on $16,000., the total value of their property, it was worth.

Q. What do you think you could sell it for, under the present conditions?

A. Fifty per cent. of that value.

Cross Examination by Mr. Merrey.

Q. You are a member of the County Tax Board of Bergen County?

A. Not at the present time, no.

Q. You were?

A. I was up to May first.

Q. Do you know the extent of Bergen County in miles, square miles?

A. No; we don't measure it up in square miles.

Q. It is quite a large county?

A. Pretty big, one of the largest in the State.

Q. As a member of the Tax Board you heard

appeals from valuations by assessors, didn't you?

A. All over.

Q. That was about the extent of your duty, wasn't it?

A. No, sir; we visited every municipality in the county every year, and went over the land with every assessor.

Q. What did you do, go over all the land in every municipality?

A. In every municipality, every year; we commenced on the first of January and we didn't stop until the middle of September.

Q. How many years were you on the Board?

A. Six years.

Q. Do you mean to tell me you visited every piece of property in Bergen County every year?

A. That is what I said.

Q. How many years?

A. We went over the districts with the assessors every year.

Q. Did you go on to each piece of property?

A. Each district.

Q. How many separate pieces of property are there in Bergen County?

A. Well, it's a pretty hard proposition to tell; there is a geat deal of lot development there; I suppose we could say some,—some days we go out there might see eight or ten thousand lots at one clip; you take the Columbia Development property—

Q. Well, how many farms are there in Bergen County?

A. Very few farms left, except down along the Passaic river, they are most all cut up.

Q. None above Ridgewood?

A. That is mountain property; they call them farms.

Q. There are some farms?

A. Some few, some few that are left up there that aren't cut up.

Q. You haven't any statistics to show how much?

A. I didn't bring my reports with me.

Q. But you have reports to show how much of the acreage of Bergen County is farmed?

A. Oh yes, we have all those reports; I thought I had them in my pocket, but they are in my overcoat pocket, so I haven't them here.

Q. Do you mean to say Bergen County is closely built up?

A. Not up in the northern portion of it, no.

Q. Isn't it one of the most sparsely settled counties in the northern part of the State, near New York?

A. No, sir.

Q. Is it as well settled as Essex County?

A. Essex covers more ground of course, it is a first class county, we are second.

Q. Are you sure Essex is larger in area than Bergen?

A. That I can't tell you, I haven't examined it.

Q. Isn't there a great deal—

A. I said Essex was first class; not as large; I don't think there is any county in the State covers more ground than Bergen; we have a great deal of mountain land that cannot be utilized; take the Ramapo mountains and the Palisades, they cannot be utilized; those pockets in the Palisades never will be utilized until they build sewers out down to the bed of the river to take it out.

Q. Great deal of the Palisades is occupied now, isn't that so?

A. Very little of it.

Q. Opposite One Hundred and Twenty-fifth street?

A. That is in Cliffside.

Q. Englewood runs to the top of those cliffs, doesn't it?

A. No, sir.

Q. How near does it get to it?

A. Within very nearly a mile, Englewood Cliffs is at the top, Englewood only runs up to the second hill.

Q. Some population up there, isn't there?

A. Very sparsely settled.

Q. Nothing in Englewood Cliffs?

A. Right on the edge of the Cliffs is a large place, the Catholic Protectory is one place, and the Dana place, and my uncle's old place, and John Ames place, and Mr. Allison has three little houses on the west of the road, and there is a run of pretty nearly four miles that there isn't a house.

Q. Isn't there a fine road running from Englewood Cliffs to Alpine?

A. No, they are building it now; Daneville Borough have taken over that portion of the Cliffs, and had to build their road to the north there.

Q. Your office is in Englewood, isn't it?

A. It has been in Hackensack up to the present time, it is in Englewood now.

Q. Did you have a real estate office in Hackensack?

A. I did a real estate business, but I couldn't, with my duties in the Tax Board I didn't do very much real estate business, I couldn't, didn't have the time.

Q. Your Tax Board is quite different from all the other County Tax Boards?

A. We have the reputation of being the best.

Q. The first time I heard of a Tax Board working, except during December?

A. Our Board was open every day, a member there every day.

Q. So you didn't do very much real estate business then?

A. I didn't have the time at that time.

Q. How long are you out of the Tax Board?

A. Since the first of May.

Q. Were you in the real estate business before you went into the County Tax Board?

A. Yes.

Q. Where was your office then?

A. Englewood; had an office in New York too.

Q. Did you sell much property west of the Hackensack river?

A. Only one piece, one of the farms over there, Mr. Easton bought it.

Q. So that your experience in Bergen County has been mostly to the east of the Hackensack river?

A. East, yes.

Q. I am not referring to the Passaic now, but to the Hackensack?

A. Hackensack, between the Hackensack and the Palisades.

Q. What piece of property did you sell west of the Hackensack?

A. One of the farms there that the Columbia people bought.

Q. What borough was it?

A. Midland Township, Saddle river, across the river from Rochelle Park.

Q. Across the Saddle river from Rochelle Park; you mean at Arcola?

A. Near Arcola, west of Arcola; the trolley line now runs through it.

Q. You say Columbia people, you mean Mr. Eastwood, the phonograph man?

A. No, he is on the east of the Saddle river, this is on the west, Saddle River Township.

Q. What do you mean by the Columbia people?

A. Columbia Real Estate Company.

Q. They are developing a section there?

A. Not at the present time; they bought it to develop, but haven't started yet.

Q. What did you get for that per acre?

A. I think it was $400. an acre, I got the two parties together and they concluded their transaction among themselves.

Q. That was near the Susquehanna Railroad?

A. No; the trolley line runs through it.

Q. How far is it from the Susquehanna railroad?

A. About fifteen or twenty minutes or more.

Q. Was the property used as a farm?

A. Yes, it was leased out as a farm.

Q. What kind of buildings on it?

A. Just old tumbled down buildings not of much use.

Q. That is the only farm you know, the sale of, west of the Hackensack river?

A. That's the only one I did have any dealings with.

Q. I presume your estimates of value in the present case are based on that sale?

A. No, not necessarily, at all; that sale took place some time ago.

Q. What knowledge have you got as to the saleable value of farms along the Passaic river in Saddle river Township?

A. Simply basing it on valuations throughout the county.

Q. What do you know about the valuations in Saddle River Township?

A. Why, we came in contact with the assessors there and heard testimony on sales and pur-

chases; we have had probably fifty or sixty cases before the Board where we have heard evidence on the values.

Q. Do you know what those farms are assessed, per acre?

A. I couldn't tell you now, no, I haven't got those books with me; it is pretty hard to keep track of those things.

Q. Do you know anything about the Paramus Road?

A. Yes.

Q. Is that a nice road?

A. Yes, but it is not in very good condition at the present time.

Q. Is is a nice road, good class of farms there?

A. The Golf Club have taken most of that property over there.

Q. I mean up north of Broadway?

A. Oh, yes.

Q. The Golf Club has taken that away?

A. Up north of the Broadway road?

Q. Yes. They are not north of Broadway, are they?

A. Yes, they have taken all that Easton property, all the Zabriskie farms have gone into the new Golf Club; I don't mean the Country Club.

Q. You mean the new club that Governor Griggs is organizing?

A. Yes.

Q. Do you know what they paid for farms along there?

A. No.

Q. That is convenient of access to New York, isn't it ?

A. Not particularly, no, unless you have automobile.

Q. Trolley road there, isn't there?

A. No, not near there.

Q. How far are they from the railroad?

A. A mile, a mile and a half from the railroad, fully that.

Q. Are those properties as valuable as these properties along this river front?

A. Over there? (indicating)

Q. Yes?

A. No.

Q. How much more valuable are the farms along the Passaic river?

A. As I testified, if the conditions were so that a person could live there, why, there is no comparison, absolutely, between that property that the Golf Club have bought and the property lying along the Passaic river.

Q. (*By the Court*) Is that on the Saddle river?

A. Yes, east of the Saddle river, and backing on the Easton place there; Mr. Easton sold a portion of his back land to them.

Q. (*By the Court*) Is it on the trolley line?

A. No, the trolley line is considerably to the south of that, runs over to the Phillips, to the south.

Q. The trolley line is to the south of the Golf Club?

A. Away south; then it comes out on Broadway away over towards Warren Point to the east of the Erie railroad there, Bergen Shortcut.

Q. The Golf Club does?

A. The trolley line does; this Golf property was some of those old farms that hadn't been used for a great many years, and some of that property I understand they bought very reasonably, I don't know what it was, I think Mr. Easton's went in at $500. an acre, but the other I don't know.

Q. That is along the Saddle river?

A. No, considerably east of it.

Q. He has some property on the Saddle river there, hasn't he?

A. Yes, at the lake.

Q. What properties have you rented or know the rental values of west of the Saddle river or west of the Hackensack river?

A. None.

Q. How do you fix those values which you have testified to?

A. Size of the house, the condition of the house, general figure what a house will rent for.

Q. Do you know what people are willing to pay for farms in this vicinity not affected by the pollution of the river?

A. No, sir, I didn't ask any of the tenants at all.

Q. You didn't endeavor to find out?

A. Not what they were willing to pay, no, I took the conditions.

Q. Do you know that farms just as good as these, near by, rent for $25.00 a month?

A. No, I didn't know that.

Q. You made no effort to find out about that?

A. I was just examining this particular property.

Q. How do you base your rental values?

A. On the general conditions.

Q. Well, what did you start with?

A. Well, his house has something to do it, and the condition of the land, what the man has to do with the land; if a man has his farm for some time and has it well fertilized it is worth more.

Q. What is your theory, is it based on your knowledge of what people pay for places of that kind, or what you think they ought to pay?

A. What I think the place is worth.

Q. It is not then based upon knowledge of what people actually pay for properties of this kind?

A. I figure on, as I say, what the property is

worth, not what they think they ought to pay.

Q. Do you start out with any knowledge of what people do actually pay for places of this kind?

A. Yes.

Q. Where are those places?

A. We have some farms over towards Hackensack river there.

Q. Whereabouts?

A. On the West Shore road, there is a large eighty acre farm there rents for $650. a year, but the man takes it with the condition that he can only have it by the year, he couldn't get any term lease on it.

Q. What kind of a house is it?

A. Old farm house, stone house.

Q. Who is the gentleman that leases that?

A. Mr. George Blank.

Q. Does he farm it?

A. Mr. Blank?

Q. Yes.

A. You mean who leases it from Mr. Blank?

Q. Yes.

A. They are Italians.

Q. What do they do on it?

A. Raise garden truck.

Q. Merely as a farming proposition, and they pay $600?

A. $600. a year; that is right on the West Shore railroad, they cut it right in two, it is adjoining Phillips estate.

Q. How many acres do you say there are?

A. Eighty.

Q. How much is that farm worth?

A. They are asking $1,500 an acre for it; they haven't gotten it yet.

Q. Why not?

A. The old man is in such condition that he couldn't sign a deed, I believe he has two nurses;

they want to sell but cannot as long as he lives.

Q. Is it near the station?

A. Right on the station.

Q. It has a value then for building lots?

A. It will eventually open.

Q. The total value of that place you consider as how much?

A. $1,500. an acre.

Q. That is $120,000, isn't it?

A. Yes.

Q. That rents for six hundred and something a year?

A. The man rents it, and put those Italians on there simply to keep the place, that was all.

Q. You think that property of that kind could be found to rent for eight per cent. of the value?

A. Oh no.

Q. Per year?

A. Do I think it could be found?

Q. Do you think a tenant could be found that would pay eight per cent. a year for property of that kind?

A. I don't, not that, because it's given to those people, practically.

Q. Isn't property of this kind rented as a farm proposition?

A. This is speculative property; he is simply holding those Italians there until the old man dies, the family are, and they can dispose of it.

Q. When you are renting property of that class can you get any return on that speculative value for rent?

A. No.

Q. You have got to rent it as a farm proposition?

A. You have to rent it for what you can get for it to keep it open.

Q. What is the difference between that farm

and these along the river that you have testified to?

A. I claim those properties across the river have been damaged.

Q. What is the difference between them and this farm you speak about that Mr. Blank owns?

A. One is on the river and the other is back in the woods.

Q. Now why should they get return on speculative value, and Mr. Blank could not?

A. I don't think they get any return on specu lative value; I haven't seen any return on speculative value; if they did they would have to get pretty large prices on those farms; I think they are practically giving them away.

Q. We will take the Doremus property; you testified there were sixty acres there worth $800. an acre, is that true; Henry W. Doremus?

A. Sixty acres, $800. an acre.

Q. Is it worth $800. an acre as farm land?

A. No, I didn't think it was.

Q. What gives it its value of $800. an acre then?

A. The simple reason that the increase in value is all around the county here, and they have simply let them lay there.

Q. It is something of a speculative nature?

A. No, I think it is worth that value.

Q. It is not worth that as a farm?

A. But they have been compelled to use that as a farm, because they wouldn't develop it.

Q. It is not worth $800. an acre as a farm?

A. For farming purposes?

Q. Yes?

A. I don't think so; I wouldn't myself personally pay that for it.

Q. What is farm land worth in this neighborhood, for farming purposes alone?

A. No man can work a farm, buying it with a valuation more than from one hundred to one hundred and twenty-five dollars an acre, and get anything back on it, the way taxes and expenses are.

Q. That includes the buildings and all?

A. Includes buildings, yes.

Q. Evidently you consider that this property has some other value than as a farm value?

A. Certainly do.

Q. What is it?

A. I think property there should have enhanced same as all properties in the county have enhanced; Saddle River Township, increase in valuation has been lower there than any municipality in Bergen County.

Q. The increase in Saddle River has?

A. Yes.

Q. Why is that?

A. On account of conditions there people won't go there, can't develop it, the river has retarded development there.

Q. There is a great deal of Saddle River Township that is not affected by the river in any way?

A. That has grown, as other portions of it that are convenient to the railroad.

Q. What other portions of Saddle river have grown?

A. Rochelle Park, Arcola.

Q. Is Arcola in Saddle River?

A. No, but in the other side, up Warren Point section.

Q. Warren Point section?

A. Yes.

Q. That is affected by the river, isn't it?

A. No, not way back there by the Bergen Short Cut.

Q. That is not affected. How far back from the river do you think the property is affected?

A. Mile, mile and a half back.

Q. You think the odor reaches that far?

A. I do, most decidedly, with a good strong west wind they get the odor there in Hackensack, on the Heights, from the river.

Q. Then the whole of Paterson must be affected by it?

A. Possibly.

Q. Is it?

A. The prevailing winds in the summer time is from the west and southwest; the east winds you generally get rain and that kills it.

Q. That kills the smell, does it. Have you gone into the borough just below Saddle river, Garfield Borough?

A. Yes, know it very well.

Q. What is the character of development down there?

A. Mostly factories, and that brought in the foreign element there quite a good deal.

Q. Is not Saddle River Township, where this property lies, developing in exactly the same way?

A. Stops just at the line there; the Forstman Huffmann mill there have a little bit of property in Saddle River Township, I think they have fifteen, twenty acres running over.

The Court.—Saddle River Township is all that part between the Passaic river and Saddle river, or does it extend east of Saddle river?

Mr. Merrey.—No, it doesn't; the line between the Phillips and Van Bussom property is the line of Garfield and Saddle River; Garfield is the borough directly south of Saddle river.

The Court.—Saddle River Township runs between Saddle River and Passaic?

Mr. Merrey.—Yes.

The Court.—Does it extend east of Saddle river?

Mr. Merrey.—No.

Q. (*By the Court*) Saddle River Township is bounded on the east by Saddle river.

Mr. Merrey.—Yes, and on the west by the Passaic, and Garfield Borough is the southerly boundary.

Q. Is Lodi a separate municipality?

A. Yes.

Q. Garfield Borough doesn't extend entirely to the west, as far as Saddle River?

A. Oh, yes, that's the Garfield Borough, they come away over here (indicating on map); Garfield Borough lies between Saddle river and Passaic river, it is a portion of old Saddle River Township, that was in Saddle River Township, Garfield Borough, taken out of there at the time of the formation of the borough.

Q. Do you know the Phillips farm that was formerly in this suit, lies south of the farm of Herman Hillman, another farm?

A. I didn't go over it, I know of it though.

Q. Did you notice how that is developed?

A. No.

Q. Did you see the character of the development?

A. You mean to the south.

Q. It is two farms below the Cadmus farm?

A. No, I didn't notice that particularly.

Q. Did you notice the big Forstman Huffmann mill there?

A. Yes, been all through there.

Q. Did you notice the character of the settlement around there?

A. Yes.

Q. What kind is it?

A. Mostly small houses; few of the nicer houses for the heads of the departments, but mostly small houses.

Q. Did you notice that some of the houses on the Hillman farm could be built for $300. a piece?

A. I should think they could, some of them.

Q. That is the property which is developed just below this?

A. Just below the boundary line in Garfield.

Q. Do you think that kind of development would have any effect on those properties?

A. I don't think so, it has not got up to them yet.

Q. (*By the Court*) Do you think the factories are going to gradually creep up?

A. I don't think they can get up, because there are no railroad facilities to the north, there is nothing there that would induce a factory to come up there, because the hauls are so long that they wouldn't want a factory there; they have got to be where they can get railroad communication.

Q. Do you think that is always true?

A. Most decidedly.

Q. Are you familiar with the silk business?

A. Silk people can use automobiles, but they would rather, if they were going to a place like that, get railroad communication.

Q. Do you know that silk manufacturers desire to be as far from the railroad as possible?

A. I didn't know that, no, sir.

Q. Did you know that the coal smoke interfered with their operation?

A. I should judge it would.

Q. Have you looked over the location of the newer silk mills in Paterson?

A. No, I haven't.

Q. Haven't noticed that they are all built quite a distance from railroads?

A. No, I haven't.

Q. Hasn't the Cadmus farm and the Van Riper farm a railroad running across them?

A. Why, towards the easterly end of them, Susquehanna road, branch road runs in there.

Q. Isn't it the same railroad that gives service to the Forstman Huffman mill on the Van Bussum property?

A. No, there is a switch built in from that branch of the Susquehanna.

Q. Why couldn't they get service from that same branch on these other properties?

A. Possibly they could if they owned the land, if the railroad companies would go in there and buy the land from them and build them a line.

Q. Don't all those farms intersect that switch?

A. No, sir.

Q. The ones south of Market street?

A. Some of them may run to it, I don't think they run over it.

Q. You don't know about it then?

A. Which ones do you want to speak of particularly?

Q. We will refer to the Cadmus property?

A. You mean this one here? (indicating on map).

Q. Is not that intersected by this switch?

A. The back part of it, away back.

Q. The Richard Van Riper property, that is true, isn't it?

A. The same way, yes.

Q. The Henry Doremus property?

A. Those are not on the river.

Q. Henry Doremus property is not on the river?

A. I said if a mill wanted to come here they would want to settle down in here (indicating).

Q. You think they would rather settle on the river?

A. That's what you said.

Q. I am asking for your opinion; do you think so?

A. You ask me that?

Q. I mean on these farms; I am not talking about the river.

A. If you go away back on the farms, on the railroad portion of it there, some would settle there, if they wanted to.

Q. A silk mill might settle right on the river?

A. Might if they wanted to.

Q. What kind of people do you think would come and give those prices of seven and eight hundred dollars an acre for a farm such as the Cadmus farm, Van Riper and Doremus and Alyea farm?

A. Why, people going in there for speculation, and open that property up into building plots 20 x 100, and sell them for three or four hundred dollars a piece.

Q. To whom would they sell them for those prices?

A. They would pick them up, anybody they could get hold of.

Q. What class of people?

A. Usual factory hands.

Q. Well, then we would have to wait until the factories developed there before that would happen, wouldn't we?

A. Not necessarily.

Q. You think you could sell?

A. If factories kept away and the river was in good condition it is one of the prettiest residential

sections there is; Mr. Gelderman built a pretty house up there.

Q. Well, we are only talking about these properties south of Market street; do you think they can be sold to anybody, but for development and sale to factory hands?

A. Not at the present time, because the river has depreciated them so.

Q. Well, if the river was clean?

A. Yes, most decidedly.

Q. Where would you get those people from?

A. Just the same as you would get them for any other town.

Q. Where would they come from?

A. Paterson, New York.

Q. Paterson and New York?

A. Yes, sir.

Q. When you brought them out from New York how would you bring them?

A. Come out around in their automobile, same as they do in the development on the Maywood section.

Q. Bring them on the Susquehanna railroad?

A. Yes; if there was development there enough I suppose the Erie railroad would be glad to build up.

Q. You would get off at Dundee Lake?

A. Yes.

Q. And what is the first thing you would notice there?

A. Smell of the river.

Q. With your eyes?

A. The sewage going down the river, I should judge.

Q. You could see that?

A. Yes.

Q. When were you over there last?

A. Day before yesterday.

Q. Did you smell the river then?

A. Yes, sir, I did.

Q. How near did you get to it?

A. We were along the river there. You mean how near to the river bank?

Q. Yes.

A. Right along the bank.

Q. Isn't the river in flood now?

A. Not necessarily; it is washing a good deal of stuff down there, but it is not flooded.

Q. Do you mean to say there is any noticeable smell up there at the present time?

A. Yes.

Q. When you get off, suppose the river was clean, when you get off at Dundee station you would see a great big dye works?

A. That probably wouldn't be there, if not for the conditions.

Q. What would you see to-day; you would see the great big dye works?

A. Yes.

Q. And what effect would that have on a man who was looking for a fine residence or nice residence?

A. You are asking your question in a different way from the way you put it at first; you were asking me about the condition of the river when it was clear, what it would bring there.

Q. I have no desire to argue; counsel for the complainants will do all that.

A. Well, if you will ask both questions alike I can answer better, but you are asking the conditions thirty years ago and to-day.

Q. I am only asking one question; what effect would the fact that right at the Dundee station there was a large factory, have on an intending purchaser who desired a very nice location and nice house?

A. I will give you the same answer to that as I did a little while ago; if there are factories there you get factory people; if conditions were proper there you would have got good people.

Q. With the factory there you think that a nice class of people who would pay good prices and want a fine house would be likely to stay away, wouldn't you?

A. I most certainly do, with the present conditions.

Q. So that whether that river is clean or not, the chances are that these properties will develop for factory hands?

A. They are at the present time.

Q. That is, those which are south of Market street?

A. Possibly are; you cannot deal with the condition to-day and condition ten years from now.

Q. Do you think there is any possibility to-day, taking the fact of the present development on both ends by large factories,—there is any possibility of selling this out for residences to gentlemen who want fine houses?

A. No, sir, I don't, to-day.

Q. The future of this property, in your opinion, is for sale to factory hands?

A. Yes, that is my idea, with the river in the present condition.

Q. How many lots do you usually get out of an acre, ordinary city lot?

A. What size?

Q. 25x100?

A. Twelve, taking the streets out.

Q. So that in a farm of forty acres you would have four hundred and eighty lots?

A. Depends on how you divided your streets.

Q. Well, about that, might have a little more

or little less, but you would average twelve lots to the acre?

A. About twelve to the acre.

Q. (*By Mr. Parker*) There are twenty 25x100 lots in an acre?

A. Sixteen.

Q. And if you cut streets through them there is twelve?

A. Yes, depends upon the width of the streets.

Q. In a forty acre plot you would have four hundred and eighty building lots?

A. About four hundred and eighty.

Q. If you were to put two family houses on those how many people would you get in a house, about?

A. That is pretty hard to tell, in some of those factory districts.

Q. Would ten be an average in each family?

A. I couldn't say.

Q. What is the average; we won't ask about Passaic, but ordinary places?

A. In Bergen County they average about eight to the family.

Q. So that a farm of forty acres could accommodate nearly four thousand people, couldn't it, built closely?

A. You can figure it that way, yes.

Q. Do you know what the average increase in Paterson is, a year?

A. No, sir, I haven't kept track of it.

Q. Well, the State Census, National Census shows an increase of twenty thousand in ten years?

A. Yes.

Q. Do you realize that the increase for one or two years could be put on any one of those farms, with the increased population of Paterson?

A. We figured the increase of Bergen County.

Q. Now you understand that; do you realize that the increase in Garfield could be put, in every year, could be put on half of any of those farms?

A. I haven't figured it out.

Q. Well now, with that realization is there any prospect of selling that property for building lots in ten years?

A. I haven't figured that.

Q. You haven't considered that at all?

A. No, I haven't gone into that, increase in population element.

Recess.

Q. I noticed you testified in the Cadmus property that it was worth to rent about $60. a month, that is if the river were clean, but that under present conditions it only should rent for about $30. a month; is that a correct statement?

A. That is the Edo and C.?

Q. Yes?

A. Yes.

Q. Who occupies the place now?

A. I don't know.

Q. Is there a tenant in there?

A. I think there is, yes, there is somebody in the house.

Q. Isn't that tenant paying a great deal more than you say?

A. I don't know; I didn't ask him.

Q. Didn't you ask about that?

A. I didn't ask him at all.

Q. If a tenant were willing to pay say $425. a year for that place as a farm, would you think it was worth that much?

A. I should not pay it myself.

Q. You made no inquiry as to what people actually were paying?

A. I just took conditions as they were.

Q. You in most cases have said that you thought that at present they would only rent for about one half what you thought they would rent for if the river was clean?

A. Yes.

Q. There are some exceptions to that but that is the general statement?

A. Yes.

Q. How did you arrive at that conclusion?

A. I took the conditions there as they were the day I went there and figured, worked my figures out on the basis of what I saw there.

Q. That is not figured upon any basis of what people actually are doing?

A. I didn't look into those conditions at all, sir.

Q. That then is what you would do?

A. That is my basis of what the values were there to-day.

Q. What would you do personally?

A. Well, what the values were, what I consider those values were.

Q. Take the Cadmus property, what could that be used for, other than a farm?

A. Development.

Q. To what class?

A. Well, I should say the back part of it near the railroad could be used for factory purposes, and the front part for development purposes, as I testified here.

Q. You think it is worth $850. an acre for factory purposes?

A. Yes, sir.

Q. Does the pollution by the river interfere with its sale for factory purposes?

A. It depends altogether upon what sort of factory you are going to put in there, some factories it might, some it might not.

Q. What factories would it interfere with?

A. Any factory where they objected to obnoxious smells that develop from the river there; with a factory working in there that developed a smell worse than the river it might not do any damage.

Q. You have observed the development in Garfield Borough and Lodi, just below those properties? 10

A. Yes.

Q. Has the pollution of the river interfered with their development as factory property?

A. They are further back, away back.

Q. Do you know the Robertford mill?

A. Yes.

Q. Where is that?

A. Down in—I know the name of it.

Q. But don't know where it is? 20

A. I can't recollect it now.

Q. It is right on the river?

A. I can't say; I know the people but I have never been through their mill; that is in the Passaic County district.

Q. No, it is on the Bergen County side, and a very short distance below these properties. Did you go down into Garfield when you were over looking at these properties?

A. Not to-day; I have been all through the Borough of Garfield though. 30

Q. How many times did you go over these properties for the purpose of testifying?

A. I went over the properties for this specific purpose.

Q. Yes?

A. Day before yesterday.

Q. Only once?

A. That's the only time I have been over these properties, but I have known the properties for a great many years, I have been familiar with that property.

Q. How often would you go over that way?

A. I don't suppose I missed a year for forty years going over there.

Q. How often a year?

A. Some times a dozen times, some times once or twice a year; I suppose I went over that Borough there last year fifty or sixty times during the summer.

Q. The last time you were over you found the river pretty high, didn't you?

A. Day before yesterday?

Q. Yes?

A. There was more than there was the previous times I was over; there was very little the previous time.

Q. In putting your figure of $60. a month on the Cadmus property, you say that would be the house with seven acres; why do you make it a seven acre plot?

A. Because we figured on the back part of the property, the development there would be for factory purposes, and on the front part the property would be a better class of development.

Q. Yes?

A. They would get a better class of people, they wouldn't have fifteen or twenty foot lots there with a little two hundred and fifty or three hundred dollar house on it, as they would in the rear; the back property right close to the factory it would naturally develop into property used by the factory hands, a cheap property.

Q. What made you believe that to be true?

A. If the river conditions were such the people would come to the front.

Q. Is that based upon experience?

A. What kind of experience?

Q. What actually happens in the development of property similar?

A. Down below there the small tenement house development is right around the factory.

Q. You had exactly the same kind of property below here, didn't you?

A. Not right on the river.

Q. Take, for instance, the Van Bussum property and the Passaic Brick property which were originally in this suit, and since the suit began have been developed as factory properties; what became of the houses that were on the front of those?

A. I don't know what they did with those houses.

Q. Are they used for nice residences?

A. If I am not mistaken I think those properties are used for the managers of the mills.

Q. Used for office purposes?

A. Maybe offices too.

Q. Now the Robertford mill just below the dam, what is the house on that property used for?

A. I couldn't tell you.

Q. There are probably ten or twelve farms just below this, of similar character, aren't there, that have been built upon and developed?

A. Been developed within the last ten years.

Q. Can you find any of those farms where the original houses are used by a nice class of tenants, original farm houses?

A. I haven't examined the original farm houses down there.

Q. Haven't they all disappeared?

A. Possibly had to get them out of the way for the factory development.

Q. Isn't it fair to assume that those houses on those farms will be used in the same way?

A. Not necessarily.

Q. Torn down?

A. If the river was in good condition people wouldn't let their houses go, would probably hold on to them.

Q. Do you think if the river was clean that the present factory development would not interfere with the development of these properties as a residential section?

A. I think if the river had been clean there never would have been any factory development along that river at all, it would have been a fine residential district.

Q. Your idea is that fine residences can keep out factories?

A. Most certainly do, yes.

Q. Isn't it a fact that factories will drive out fine residences?

A. Not necessarily.

Q. Do not business houses always drive out fine residences?

A. Not necessarily.

Q. Isn't that the experience all over? Take, for instance, Fifth avenue, New York, as the business increases it keeps moving up into the residential district, and do not the people go away that used it for residence purposes?

A. We are not comparing Saddle River with Fifth avenue. Take Englewood property, as a country property, lots of the business interests are in the residential district.

Q. Do you mean to say if this was developed

for fine houses along here that it would prevent factories coming in that location?

A. I don't think people would have sold to the factories.

Q. Have they any choice about the matter when they sell, as to what may happen?

A. They don't want to sell, if a man has a country home, on the same principle as Mr. Barbour's across the way at the Broadway bridge, he built a handsome home, and he wouldn't sell any of his property to a factory.

Q. Does Mr. Barbour live opposite the Broadway bridge?

A. Just beyond, about half a mile.

Q. You mean Country Club?

A. I mean Mr. Ed. Barbour.

Q. That is in Paterson?

A. In Paterson City, up on the hill.

Q. Do you think his residence is damaged by the river?

A. He is too far away.

Q. He is no further than was the Van Riper house, George Van Riper?

A. Oh yes.

Q. How much further?

A. Well, I should say Mr. Edward Barbour's place there was very, very close to twenty-five hundred feet, three thousand feet away from the river.

Q. You haven't measured it, have you?

A. Well, I used to run, and I wouldn't want to run it for a half mile.

Q. Do you know anything about the rentals of property in the city of Paterson?

A. No, sir.

Q. Do you know anything about rentals of prop-

erty in Aquackanonk Township, between Paterson and Passaic?

A. No.

Q. You have said that the Terhune property should rent for $1,600. per year; that is the last property you testified about?

A. That was on the Passaic side?

Q. On the Paterson side?

A. Yes.

Q. How do you fix that?

A. On the condition of the house, general appearance of the house inside.

Q. You have no experience in the rentals of Paterson property?

A. No, sir. You call that country property.

Q. That is country property?

A. It is out in the country, isn't it; it is in the city limits, but would rent more as country property.

Q. What is the character of the property north of it, on the corner of Market street?

A. Hotel, but there are several properties in between it.

Q. It is a saloon property, isn't it, city saloon?

A. On the corner there is a hotel, then there is three properties in between there.

Q. They are not occupied, are they?

A. Which?

Q. The ones between the saloon?

A. There are no houses on them.

Q. What is just south of this property?

A. Of which one?

Q. Of the Terhune property?

A. There is a road house.

Q. No, it is the cemetery, isn't it, south of it?

A. Oh, Cedar Lawn Cemetery.

Q. A large cemetery?

A. Yes.

Q. It is the only house of its charater on that road, isn't it, that is, within some distance?

A. Yes.

Q. Now on Market street north of there there are some fine residences, are there not?

A. Commencing on the corner and going west.

Q. Far enough away from the river not to be affected by it?

A. Well, I should say not, about half mile to three-quarters.

Q. You say they are affected or they are not?

A. I should say not, unless you get a strong east wind, same as we get it on the other side.

Q. Can you tell us what they rent for?

A. No, I don't know.

Q. How do you arrive at this $1,600, per year?

A. I base it on the same basis that I would fix the rental value of a house in Bergen, in Englewood or in Hackensack, a house of that class and build, general construction, would rent for that price; in Englewood he probabaly would get $2,500 a year for a house like that.

Q. Do you know if there is any difference between the values for renting properties of that kind in Paterson than Englewood?

A. Oh certainly; you get out of Englewood and you get much lower rates than in Englewood.

Q. What comparison is there between rents in Englewood and rents in Paterson?

A. For a house like that we would get from two thousand to twenty-five hundred dollars a year rent.

Q. You think you would get more rent in Englewood than Paterson?

A. Undoubtedly I do.

Q. You have no knowledge what rents you do get in Paterson though?

A. No.

Q. So this is merely based upon your idea of what the Englewood property brings?

A. Yes; I say a house in that condition ought to bring that price.

Q. That is ten per cent. on its valuation, isn't it?

A. I think so, yes.

Q. Do you think property of this class brings ten per cent. in Paterson, on its valuation?

A. I couldn't tell you, I don't know what the valuations are, what they base their valuations on in Paterson City.

Q. You are putting $1,600. on this as somewhat of a guess?

A. No, I figure it on actual experience.

Q. What is that?

A. I am figuring it on actual experience that I have had in property of that kind.

Q. What actual experience have you had of properties of that kind in Paterson?

A. I haven't any in Paterson.

Q. Then it is a guess?

A. I don't know what your rents are in Paterson; I am only basing it on what I have been in the habit of doing.

Q. You are not competent to pass on rental values in Paterson?

A. I didn't say I was, did I?

Q. Well, you swore here as if you were?

A. No. I was simply asked to give my ideas as to the value of that one house, and I have given the valuation, and that is my idea.

Q. Well, if you don't know we won't go any further with that.

A. I didn't say I don't know; you are the one who says I don't know.

Q. You don't say you do know?

A. I say that's what I consider the value of that house.

Q. You don't know what rental values are in Paterson?

A. Paterson has nothing to do with that house; I am giving you the rental value on what I consider that single house is worth.

Q. It is in Paterson?

A. It is in the city limits, I understand it is.

Q. Now then the Merselis property; how did you base the rental of $1,000. per year there?

A. The same as I did on the Terhune property.

Q. That is very near to Paterson, isn't it, near to the city of Paterson?

A. Same as the other.

Q. And it is near to Passaic?

A. Yes.

Q. There are a number of fine houses along Lexington avenue or the Dundee drive as it is called that are not affected by the river, are there not?

A. I don't know.

Q. As you go towards Passaic?

A. I should not think so, I don't know though, I am not familiar with that below Dundee dam there; I have always been in the habit of making that swing out Market to going down the river road and going along that way.

Q. You don't go down along Passaic?

A. Through Passaic.

Q. Have you noticed going, where this Merselis property is located, to Passaic, there are some nice houses along there?

A. Some are nice houses, yes.

Q. Quite a distance from the river?

A. Yes.

Q. Do you know what they rent for?

A. No, I do not.

Q. Do you know what they sell for?

A. No, I don't.

Q. Now you say that nineteen acres back of the house on the Merselis property are worth $1,500. an acre, if the river is clean?

A. Yes.

Q. At present only $750 an acre?

A. Yes.

Q. Are you familiar with that property?

A. Only from going over it.

Q. Do you know what it sells for in that vicinity?

A. I don't.

Q. Do you know the Kipp property, adjoining it?

A. I know of it.

Q. Is it a similar property?

A. It struck me so, very similar to this property.

Q. Do you know what that sold for several years ago?

A. No, sir.

Q. If that sold for $1,200. an acre four years ago, should not this property bring more than $750. an acre now?

A. It might, but I am only basing it on my idea of the valuation.

Q. Don't you think even with the pollution of the river, that this property should bring as much as the Kipp property?

A. I think with the pollution of the river there I wouldn't want to buy the property at all.

Q. If the river damaged the sale of this prop-

ery it should damage the Kipp property adjoining it, should it not?

A. I should say so.

Q. If they were able to sell it at $1,200 an acre four years ago why is the back part of the Merselis property only worth $750 now?

A. That is based, that is what I figure that property as worth, that's all.

Q. You didn't know about the Kipp sale?

A. Didn't ask anything about it.

Q. Didn't know that similar property around there was actually bringing $1,500 an acre now?

A. I didn't examine the Kipp property, only Merselis.

Q. Can you tell us the value of the property unless you examine and ask about similar property right near it?

A. As a rule I can tell what development brings forth there.

Q. If one farm sells for $1,500. an acre, the farm next to it, exactly similar, same facilities, ought to bring about the same, ought it not?

A. You know there is a fool born every minute, and some are willing to pay more than property is worth.

Q. Are you familiar with the development there between the Merselis property and Passaic?

A. And Passaic?

Q. Yes.

A. I saw the development there.

Q. Growing very rapidly?

A. Quite rapidly, apparently.

Q. Doesn't seem to be interfered with by the river at all?

A. Not down to this section, I should not say.

Q. If the Kipp property sold for that price

don't you think you are mistaken in the price you put on the Merselis property?

A. No; I am willing to stand by my valuation.

Q. Whether the other property sold for more or not?

A. Don't care whether he got $20,000. an acre, I don't think this property is worth more than $750.

Q. Suppose we had somebody to offer you $1,500. for it, now would that change your opinion?

A. Let him offer it; I am not selling the property.

Q. You still put the $750. on it?

A. I put $750; doesn't change my opinion of it at all.

Q. Now the Nash property, you said that there were twelve acres there on Lexington avenue that was worth $2,200. per acre?

A. Yes.

Q. How did you come to make that worth so much more than the other property, the Merselis property?

A. That is surrounded by development there, it is all laid out there ready to develop.

Q. That is, development coming from the Passaic end of it?

A. Yes.

Q. What is the character of that development?

A. Cheap development I should say, about twenty foot lots.

Q. It has gone on irrespective of the river?

A. Seems to have.

Q. Hasn't prevented the development of the property next at all?

A. Apparently not.

Q. Then why does the pollution of the river

make this property only worth $1,000. per acre instead of $2,200?

A. Comes down nearer the river; this is nearer the river than the other development.

Q. Than which development?

A. Than the development to the west of it; you are talking of the development to the west.

Q. No, I am talking about the development to the south of it; the development near this twelve acres is all to the south of it, isn't it?

A. No, there is some to the west of it.

Q. When you were on your direct examination you became confused about the whereabouts of this plot.

A. Well, I have got, the map shows it.

Q. You said this plot ran back to the trolley?

A. That was another section on the next plot that I was mixed up with.

Q. Are you sure you examined this particular piece?

A. I am, I went over it, Mr. Karl and myself.

Q. It has no trolley connection?

A. No.

Q. It runs along the river and along Lexington avenue?

A. Yes, sir.

Q. Whatever development is to the south, towards Passaic?

A. Yes, to the southwest.

Q. That lies along the river too?

A. Not all of it.

Q. Well, along the Dundee—

A. The only development I saw was this house that belonged to Mr. Nash in there.

Q. I would like to call your attention to a map made by the Geological survey of the State of New Jersey. It is not in evidence; if you will

allow me to mark it D 5. I ask you to point out this plot; I am talking of the Nash property

A. (Witness indicated on map.)

Q. Then the twelve acres that you examined you have now discovered is not the piece that Mr. Nash owns?

A. Not the piece that I thought it was.

Q. Now you spoke about the large house?

A. The big Nash house.

Q. Yes; that is Mr. Nash's residence, isn't it?

A. I think Mr. Nash lives in there, I don't know; there was somebody in the house.

Q. You were there day before yesterday?

A. Yes.

Q. Was Mr. Nash there?

A. No.

Q. Did you go in and find out about it?

A. No.

Q. Did you look over the character of the house?

A. Just looked at the outside of the house.

Q. In pretty bad shape?

A. Yes.

Q. And would require a great deal of money to put it in shape?

A. Yes.

Q. There are large greenhouses there, are there not?

A. Just attached to the house.

Q. Oh, back of the house?

A. Oh, in the back, yes.

Q. They are falling down, are they not?

A. Pretty dilapidated.

Q. I just call your attention to a photograph of them?

A. Yes, looks like them.

Q. They are in very bad shape?

A. Very dilapidated.

Q. Did you notice the barn, or what was the barn?

A. Barn was in a pretty dilapidated condition, a piece of it was burned down, destroyed, the easterly side of it.

Q. And the house is badly in need of paint?

A. Yes.

Q. Didn't you go inside?

A. No, I didn't go inside of that house.

Q. Do you think anybody would care to rent that house in that condition?

A. I shouldn't think so; I don't know whether there were tenants or whether Mr. Nash's family was in the house; we figured that at $25. a month.

Q. That is at present?

A. Yes.

Q. You said $1,200. per year if—

A. If it is in repair, the house is in good repair.

Q. Do you know of any property of similar character, in that neighborhood, that rents for $1,200 per year?

A. Now?

Q. Yes.

A. No.

Q. Not affected by the river either?

A. Well, I don't know.

Q. Don't you know, as a matter of fact, that properties of this kind bring a very small return upon the value?

A. Not if they are in condition, and the surrounding conditions are all right, they as a rule get pretty good prices for them.

Q. Do you know of any properties of this kind in the vicinity of this Nash house, or on the Bergen County side of the river, that are held for the purpose of obtaining the rent only?

A. Why, the majority of the houses on the Bergen side the owners live in them themselves.

Q. Do you know any others around in the neighborhood?

A. Not on the Passaic side.

Q. Or on the Bergen County side?

A. No, except where the owners live themselves, houses of that calibre the owners live themselves, usually.

Q. You spoke about the small cottage, and you thought you ought to get $35.00 a month for that house?

A. Yes.

Q. That is a very small house, isn't it?

A. There is some improvements in it, good condition.

Q. If that house were located in a very desirable section of the city do you think you could get $35. a month for it?

A. Undoubtedly; you could get $60. a month for that in Englewood.

Q. Could you get $60. for it in any section of Paterson?

A. I told you before I didn't know what the rental values are based on there. We valued that house at $3,500 and figures on a ten per cent. basis.

Q. What do you mean when you say you valued it at $3,500.?

A. Put a valuation on the house of $3,500.

Q. Do you think you could replace it now for $3,500?

A. Couldn't now, no.

Q. How many rooms?

A. I think—

Q. Do you know?

A. I didn't go in it.

Q. You don't know anything about that, do you?

A. I think it has eight or nine rooms.

Q. Very ordinary looking house?

A. It is now, yes, the condition of the river there has ruined the paint on it, as it has all those places, that acid coming from the river.

Q. What acid is that, from the sewage?

A. Sewage; there is no paint could live in that acid, in that smell.

Q. Has that house been painted in nine years?

A. I couldn't tell you, I don't know.

Q. Doesn't look it, does it?

A. Doesn't, no.

Q. While you are speaking of that, the Terhune house below, that was made out of old material taken out of another house, wasn't it?

A. I couldn't tell you.

Q. What kind of stone is used in it?

A. Why, it looked like an old frame house painted over.

Q. The brown stone is painted over?

A. Yes.

Q. Painted over to cover defects in the stone?

A. Not necessarily.

Q. Did you notice any of the paint taken off that house by the river?

A. I don't think so, no.

Q. It seems to be as if the Nash house is the only one where the river has had that effect on?

A. No, on the other side of the river all the houses are affected that way.

Q. Any of them been painted in the last eight or ten years?

A. Yes.

Q. Which?

A. Gelderman's house was painted about a year ago.

Q. Any paint off the Gelderman house?

A. Oh yes, all discolored.

Q. How far back is it from the river?

A. About a hundred and fifty to two hundred feet I should think, it is right along the river road there, along the Country Club, the river runs right close to the road there.

Q. Speaking about the Hillman property, you think that ought to bring $600 per acre if the river is clean?

A. Yes.

Q. What do you base that figure on?

A. On the general conditions there, same as I do on the others.

Q. Do you know any farms in the vicinity, about what they sold for?

A. No, I didn't examine that.

Q. How did you get $600. per acre?

A. My idea of the value of it.

Q. Where did you get that idea?

A. What I considered it was worth.

Q. Don't you base your ideas of value upon what similar property sold for?

A. I take the condition around the property, surrounding conditions.

Q. Are you affected at all by what similar property sells for?

A. No.

Q. You are not?

A. No; I base my valuations on what I think the conditions will allow.

Q. In the Outwater property, you say that is worth $800 per acre; is that right?

A. Yes, sir.

Q. You know that part of that property was sold for $500. per acre?

A. That is the low end of it, portions of it, that has been cut up into different sections.

Q. The part that was sold is just as valuable as the part that is left, isn't it?

A. Oh no, different conditions there.

Q. What is the condition?

A. It is divided up, some of it is nearer the Moffitt development there, some is lying there right on the road from the Moffitt bridge.

Q. Isn't the part which was sold the nearest to the development?

A. I don't think so, no.

Q. I call your attention to D 4, and ask you if the term "Columbus Heights" is not just where the Moffit development is?

A. The Moffitt development is on the north side of Cherry Lane, and the Outwater property on the south side; Moffitt is now Passaic County.

Q. Didn't Moffit own Columbus Heights?

A. I don't know.

Q. And Bergen avenue and East Nineteenth street and Loretta avenue, is not that true?

A. I don't know whether Moffitt was the owner or not; I don't know what he called it; it was always called Moffitt development.

Q. Is not that 2 and 33/100 acre tract which was sold by Mr. Outwater for $500 per acre, is not that right back of the Moffitt tract, as appears on this map D-4?

A. Yes, to the east of it.

Q. Isn't Cherry Lane the main road for travel there?

A. That is the division line between the two counties.

Q. Isn't that the main road to North Paterson?

A. Yes.

Q. This two acre tract is located right on the Erie Railroad, isn't it?

A. Yes, on the Susquehanna.

Q. And it lies quite high too, doesn't it?

A. Why a portion of it, there is a hill in there.

Q. You say, I think, it is about three thousand feet from the river?

A. I didn't say.

Q. Do you know how far it is from the river?

A. Not exactly, no, I should say it was in the neighborhood of three thousand to thirty-five hundred feet, I should judge.

Q. From the river?

A. Yes.

Q. It is not affected by the river, is it, by the pollution?

A. It is on the turn there, I should think it would be, yes, if the wind is in the right direction, it all depends upon the wind, it may be objectionable to-day and not to-morrow.

Q. Is that piece any nearer the river than Mr. Barbour's house in Paterson?

A. I should say pretty close to it.

Q. About the same thing?

A. Three to four thousand feet.

Q. Now that you look at it, isn't that piece that was sold about as good as any part of the tract?

A. No, because it is a single piece, it is just a small piece there, and they couldn't do much with it.

Q. You think you could sell the whole tract, with the low lands and everything else for a higher average?

A. No, low lands weren't taken in, because they had been sold; go back over the Outwater land to the east and you strike a beautiful tract away up on the hill there.

Q. As you go to the north?
A. The north runs into Cherry Lane.
Q. Isn't it a fact that a great part of it is low near the Wagaraw pond?
A. Not so much of it, that has been sold off.
Q. Did you hear Mr. Outwater testify to that this morning?
A. I heard some of his testimony.
Q. Did you hear him say that this part up here near the pond was low lying land?
A. And he had sold it.
Q. Not all of it?
A. He sold it for a price; in going over that we took the whole business and made the average rate.
Q. Did you go over it?
A. Yes.
Q. All the way over it?
A. Yes.
Q. You went over it day before yesterday?
A. Yes.
Q. Went over all those properties?
A. Yes.
Q. What time did you start out?
A. About ten o'clock.
Q. Ten o'clock in the morning?
A. Yes.
Q. How long did it take you?
A. About half past four or five in the afternoon we got through.
Q. What means did you use of travel?
A. Machine.
Q. Automobile?
A. Yes.
Q. Now, isn't this Outwater property right in position now to be developed quickly, sold quickly?

A. It ought to be.

Q. Are you familiar with the Moffitt development?

A. The Moffitt?

Q. That is, Columbus Heights development?

A. Yes.

Q. Is that retarded in any way by the river?

A. It has been sold, the County had to buy the bridge there from Mr. Moffitt, which I think saved him pretty well, Bergen and Passaic Counties bought the bridge there.

Q. That had nothing to do with the property?

A. He has been a great many years developing that property and has not gotten out of it yet, unless somebody else took it off his hands; at the time they bought the bridge there I was Collector of the County at the time, and he had quite a lot of property in his hands at that time.

Q. How many houses have been built around there?

A. I couldn't tell you.

Q. Are you familiar with Paterson on the other side of the river from this section?

A. No, just running over there.

Q. That is pretty well developed?

A. Yes.

Q. The river doesn't seem to interfere with that development?

A. Doesn't seem to; I think the development took place before the trouble came in the river there.

Q. Hasn't the development been within the last eight or ten years?

A. It has been developing there by degrees, slowly.

Q. As a matter of fact the nuisance from the

river is not so great up here as it is down near the dam?

A. Not quite as bad, I should not think.

Q. The house on the Outwater property is a very ramshackle old building, isn't it?

A. Well, it is in pretty fair condition outside now, they put a coat of paint on it, apparently; it is one of the oldest farm houses up around that section.

Q. And the Gelderman property, what do you think that that is useful for, farm property?

A. You mean, Mr. Gelderman lives there?

Q. Yes, is it a farming proposition?

A. Why, a portion of it, portion of the property.

Q. Is it actually farmed?

A. I think he does farm it, yes.

Q. Isn't this property only useful as a residence?

A. Well, it is good farming property back there, if anybody wants to utilize it; the Hudson River trolley, it is right below, there is one house in between, below the Country Club there, and there is the North Jersey Traction & Hudson River trolley runs in there, which makes good development of that property.

Q. It is quite a distance from factory development; I didn't recognize it by that name.

A. The Gelderman property? It is up near Broadway bridge.

Q. It is quite a distance from factory development?

A. Yes.

Q. There are no factories in this neighborhood?

A. No, sir.

Q. And there isn't any likelihood of it selling for factory sites?

A. No.

Q. No railroad near there?

A. Two trollleys.

Q. Steam railroad?

A. No.

Q. It is very near the Country Club?

A. Country Club is the second place above it.

Q. Are you familiar with the section called Rosemont?

A. In the Saddle River district there, where they built up over towards Broadway, east.

Q. It is north of Broadway, I should say?

A. North of Broadway but east of the river.

Q. East of the river?

A. Yes.

Q. Are you familiar with that?

A. Yes.

Q. They seem to have sold a great deal of that property, haven't they?

A. Not very much, no, development has been very slow.

Q. What prices do they get for it?

A. $250. a lot up.

Q. That is not far from the Warren Point station, is it, on the Bergen County branch of the Erie?

A. It is near there.

Q. Do you know anything about the Bellair development?

A. I haven't been over that lately.

Q. How long ago has that been started?

A. I think that was started two or three years ago, I am not sure.

Q. Wasn't it ten or twelve years ago?

A. I don't think as long as that.

Q. Isn't that going slowly too?

A. Yes.

Q. And that is on the Bergen County branch of the Erie, isn't it?

A. On the Bergen County Short Cut.

Q. Do you know the property that is developed by the Phoenix Manufacturing Company, the old Morlot farm, still north of Fair Lawn, near Fair Lawn?

A. What was the name of the farm?

Q. Morelot or Morelock?

A. Oh yes, Morelock, yes I know that development; I didn't recognize it by that name.

Q. Has that developed very rapidly?

A. No, it has been slow, most of that, steady growth.

Q. They put down sidewalk, curb, gutters, graded the streets and spent a lot of money?

A. Yes.

Q. And were not successful in that?

A. Too far away from Paterson.

Q. It is about the same distance from Paterson that Gelderman is?

A. No, Gelderman is right near the bridge, and you are going off into the country.

Q. But Morelock is right at Thirty-third street bridge?

A. But he has no transportation to get people off into the city.

Q. It is only a short distance from Broadway to Thirty-third street, isn't it?

A. No, there is quite a little walk, on a rainy day.

Q. There is a great large mill there on the Paterson side?

A. Yes.

Q, And practically no houses there at all?

A. There are a few been put up there.

Q. How long has that been in the market?

A. I couldn't tell you.

Q. Now, do you know any property in this neighborhood that has facilities for getting into Paterson, that has been a successful development as building lots, except down at Garfield?

A. Why, Garfield, the development has had to grow there.

Q. But I mean outside of that do you know of any development along this section at all, where there has been successful development into building lots?

A. On that section there the prevailing wind seems to be from the west and southwest, and those people get that stench from the river there all summer long.

Q. I am talking now about the property just sufficiently far away not to be affected by the river?

A. They get it there just the same.

Q. If it is far away not to be affected by that?

A. I don't know how far you can get, unless you go to Hackensack, and there they get it on the Heights.

Q. You don't know of any section there that has had successful development around this place?

A. Not outside of the Garfield section where the mills have come in so fast they had to have residences, and they put up cheap residences.

Q. Are you familiar with the Passaic river above Paterson, above the pollution?

A. No.

Q. Do you know of any development up there that has been successful?

A. I haven't been up there at all, lately.

Q. Do you know anything about the Susquehanna railroad, as to service?

A. As to its service?

Q. Yes?

Q. I know it is very poor north of Paterson.

Q. Do you know anything about the Delaware road?

A. Lackawanna?

Q. Lackawanna, the service is better, isn't it, faster?

A. They give you pretty good service on the Lackawanna, as a rule; wherever they have development they will give you good service.

Q. Do you know how long it would take you to go from Dundee Lake station to New York?

A. No; I should say about forty minutes.

Q. Isn't it nearer an hour?

A. No, I don't think so, about thiry-five or forty minutes.

Q. You are not familiar with it then?

A. Oh yes.

Q. Don't you think train service has a great deal to do with the development of a section?

A. It depends on where they are going to develop from, where they are going to get their development from; if they are going to depend on the city they have to have good train service; if they have to depend on trolley or nearby towns, the way they do with that development there—

Q. We will take the Gelderman property and those properties lying between it and Market street, where are they going to get their development from?

A. From Paterson I should judge.

Q. It won't come from New York?

A. They would get quite a number of the commuting element there; people nowadays have machines and the mode of transportation is so much faster than it used to be.

Q. Well, do you think any of those people would

locate there, seeing that large dye works at the Dundee station?

A. I don't see why not, if they come north.

Q. They get off right at that dye house?

A. That doesn't hurt them.

Q. Do you know anything about the character of people that work in that neighborhood, the workmen?

A. In Garfield?

Q. Yes.

A. I have run across a few of them, yes.

Q. Do you think any man that owned a mill or was superintendent in a mill would care to live within two or three miles of it?

A. Superintendents of the mills have to be on the ground as near as possible, as a rule.

Q. Do you think they would live there?

A. They probably couldn't help it.

Q. Do you know any of them that live there in Garfield?

A. No, I don't.

Q. Don't they all live in Passaic?

A. Couldn't tell you.

Q. Don't you know that they fear an uprise there in strike times and riots; they only had them a few months ago?

A. Yes, but they were put down very quickly.

Q. Do you think the superintendents and higher workers would care to have their families and daughters where they could be pounced upon by that class of people?

A. I am not competent to answer that.

Q. You would think they would want to get as far as possible from them, wouldn't you?

A. I haven't had the chance to try it, Mr. Merrey, I don't know.

Q. You wouldn't try it either?

A. Probably, that is not my line of business, yours either.

JOHN A. KARL, sworn.

Direct Examination by Mr. Parker.

Q. Where do you live?

A. Garfield.

Q. What is your business?

A. Plumbing business and real estate business.

Q. How long have you been in the real estate business?

A. A little over ten years.

Q. Where have you conducted your operations?

A. Garfield and vicinity.

Q. What do you mean by vicinity, how far have you dealt in property in the neighborhood of Garfield?

A. Why, Passaic and Garfield and Fair Lawn, and all through that way.

Q. Has that been so for these past ten years?

A. More or less, yes.

Q. Have you dealt in this property in the way of buying and selling, and also of leasing and renting?

A. Buying, selling for developing purposes principally; I have done some leasing, not very much of that.

Q. Have you made examinations for the purpose of appraising?

A. I have.

Q. For institutions, that sort of thing, on loans, or how?

A. No, I have bought and sold property through that section; I have organized several companies and have sold to private individuals as well as

to other companies that I was not connected with.

Q. Have you dealt with property in the neighborhood of the city of Passaic, up in what they call Acquackanonk Township?

A. Yes.

Q. You are familiar with the values there?

A. I think I am, yes.

Q. Do you think that you are familiar with the values of properties along the both sides of the Passaic river between Dundee Lake up to Hawthorne?

A. I have had a lot of experience and own some property on both sides of the river all the way up to Hawthorne.

Q. You are familiar with the properties and the values there on both sides of the river?

A. I am.

Q. Did you make an examination of the properties belonging to the different parties complainant in this suit, with a view of testifying?

A. Yes, I think all of them.

Q. And who was with you, if anyone, when you made the examination?

A. Mr. Coe, Mr. Allen and Mr. Mercer was present at the time we made this examination.

Q. Have you been in court and heard the testimony of Mr. Coe?

A. I have heard nearly all of it, yes.

Q. You also made, didn't you, a written memorandum which gives the details of what you consider the values when the river is free from pollution by the defendants, and under present conditions, both as to the selling price of the properties and their rentable value too, have you?

A. I have.

Q. Have you got that statement?

A. I have.

Q. You have the statement in your hand, have you?

A. Yes.

Q. I want to ask you a question or two about Mr. Nash's property; you recollect that, do you?

A. I do.

Q. Do you remember looking at the property on the south side of what is shown as Weasel Road on this map D-2?

A. Yes; that is the property at the intersection of Randolph and Lexington avenues, on the southeasterly side.

Q. Yes, it lies between the, just at the bend of the river?

A. Just at the bend of the lake.

Q. On the north side of it it is a pond?

A. Yes.

Q. And there is some high land up beyond?

A. Yes.

Q. Will you state whether or not in making your statement as to the Nash property you considered that property as the twelve acres of land on Lexington avenue, south side of Randolph avenue, is that what you mean by it?

A. That is the one.

Q. In giving values, both selling and rentable values of the property, the different properties, on the assumption that the river was clean, what assumption exactly did you make in that respect, clean how, clean from the pollution of the defendant or in what other way?

A. I would say yes, what we took in consideration was the odor of the river, in our estimation that was the real damage to the property lying along the river on both sides.

Q. And so in your opinion, when you gave an estimate of the value of the various properties

when the river was clean, whether rentable or selling values, you assumed that the river was free from the pollution by the defendant?

A. Yes, what I understand as pollution by the defendant of course is the sewage, which is the real offense complained of in this case.

Q. Would stop?

A. Yes. Of course it has been asked here this morning about the factories; we consider that while that would be objectionable to sight it would not affect the values of the property so much as the odor would.

Q. Take the Nash property, what did that consist of?

A. There are four pieces of property, which one do you refer to?

Q. I am referring to all of it.

A. The first piece we examined was the large house consisting of ten rooms, bath room, and eight acres of land; we valued that at $12,000. for the land and $6500. for the buildings; the buildings cost considerably, in my estimation, more than that, but they are in bad repair at the present time, and we valued them, including the land, at $18,500: we figured that with a little repair that the house and the eight acres of land should bring at least $100 a month; it is a very big house, and with little repair it should bring that price; with present conditions we figured they couldn't get more than $25. a month for it.

Q. How about the cottage?

A. The cottage is an eight room cottage with a quarter of an acre of land; we valued that, with the land, at $3500.

Q. If what?

A. If the river was clean, yes, we valued the price of the land and the property under clean

conditions of the river at $3500, and we figured they should get at least $35 a month; it was a very nice little house, it is well located, right along the lake, and with a clean lake in front of it it should bring a good rent, should bring at least ten per cent. on the investment; to-day I believe they are renting it for $10. a month, and they couldn't possibly get more than ten or twelve dollars a month, with the present conditions.

Q. Next comes the double house on Lexington avenue?

A. Then the next is the double house, that's an older house, it is a much larger house but it is in worse repair than the cottage, and we figured that at the same price of $3,500 with the small plot of land; we didn't measure that out to see how much was in it, but we figured that it should bring at least, for each family, $16.00 or $32.00 a month, and I understand that they are renting it now for $22.00 a month; that is the information we gathered from the people in the house.

Q. Is that up high or low?

A. That is reasonable, under the present conditions, I think they are getting a very fair rent for it, under the present conditions.

Q. How about the twelve acres of land on Lexington avenue, south side of Randolph avenue?

A. Twelve acres of land of course is different from the rest, there is no building on that, and we didn't consider rental values, didn't go into details on rental values on that because it really has no rental value; that is in line for development.

Q. Well, in what way?

A. The property immediately south of that is being developed very nicely.

Q. If the river was clear and clean from the

defendant's pollution what would that twelve acres be worth?

A. At least $2200. an acre, and to-day under present conditions it is safe to say it is not worth half of that; we figured it at $1,000. an acre.

Q. In figuring present prices what assumptions, if any, did you make about the river?

A. You mean as to the purification of the river?

Q. Yes; when you figured the present prices, that is, when you say the property is worth so much under present conditions what do you mean by that, with reference to the river?

A. Why, we mean that the present condition of the river, the foul odors has retarded the growth of all of the property along the river, on both sides, and that with that condition changed that that property should come into the market very quickly.

Q. If you had that property for sale, either as an owner or an agent what would be, in your judgment, a fair value for it, under present conditions?

A. The present conditions, I think if they got $1,000. an acre they would be very lucky.

Q. (*By the Court*) Well, suppose you felt sure that the pollution of the river would cease, so far as it is affected by the sewage from Paterson, in three years, what would your judgment then be as to the value of this particular tract?

A. Why, I would say then that the value of the property would be at least $2200. an acre.

Q. (*By the Court*) Well, that is after the pollution had ceased?

A. After the pollution had ceased.

Q. (*By the Court*) But suppose that you were setting a price upon it to-day, but you were certain, absolutely certain that the pollution that I have described would cease in three years from

to-day, what value would you then give to the property?

A. I would say then $1,000. an acre, because it would take several years, even though the city of Paterson stopped the pollution to-day it would take several years before you would overcome the effects of the pollution.

Q. What do you mean by that, effect on the purchaser or effect on the river?

A. The effect of the odor, which would be the effect on the purchaser.

Q. Supposing that it is absolutely certain that the nuisance created by the city of Paterson in the river will be wholly abated in three years from the present time what, in your opinion will be and is the present value of that Nash property?

A. $1,000. per acre. If the Court will permit, I would like to say that you couldn't sell that property to-day for $1,000; we have taken that in consideration, that the property would be worth with a clean river $2200. an acre; we value it to-day at $1,000. an acre, but you could not find a purchaser at $1,000. an acre to-day, so that it is really worth less until they get that assurance, and up to the present time we haven't the assurance; we have had the promise for a number of years, we have had promises of trolleys and steam railroads and everything else.

Q. Now can you state any other ground, if you have any, as to why it is that under the present conditions of the river, even on the assumption that the river will be absolutely clean in three years, you believe that the present value of the property is only $1,000. an acre, in the Nash case?

A. Yes. The question is is there any other reason?

Q. Yes, can you give any other reason, or why it is?

A. Why, I don't know as I can give any other reason.

Q. What is your reason for saying so?

A. The fact that the river is polluted, the odor of the river has retarded the development on both sides of the river all the way up, it is very plain; anyone that will take time to go up and examine the conditions from Garfield, from Saddle River, the mouth of the Saddle River all the way up along both sides of the river until you get into Paterson you will find that along the banks of the river there is very little development, while if you go back a quarter of a mile or half a mile back from the river it is developing all along that way. Take it in Garfield you can buy lots along the River Road for $200. a lot, while four blocks back on the main street I sold two lots a short time ago for $1250. a piece; you can buy lots along the river at $200. a piece; and the same condition exists on both sides. Take it along the Nash property, up back of the Merselis property, there is a part of one of the Merselis properties back of the hotel, the Orleans hotel I think it is called, that property was laid out several years ago in building lots, some company took hold of it, and could not do anything with it, and just back of that property it is building up solid. Take at the turn of the White Line trolley along the Cedar Lawn Cemetery, the development in through there is phenomenal, they are building, I was going to say night and day, but they are building houses right straight along; and below that, nearer to the river there isn't a house going up.

Q. (*By the Court*) Now suppose you wanted to speculate in real estate, and suppose you knew for

a certainty that in three years you could get $2200. an acre for this Nash property that we have been speaking of; that is the price you fix with the river free from pollution. Now suppose you had a chance to bid on that property, wouldn't you pay more for the property to-day, per acre, if you knew that in three years from now you would have a property worth $2200. an acre, than if you knew that conditions at the end of the three years would be worse, if anything, than they are now, and that those conditions were likely to continue indefinitely. In other words, if you could more than double your principal in three years would not you pay more for the chance of doubling your principal, or rather the certainty of doubling your principal than you would for land which perhaps three years from now would not be worth any more than it is to-day by reason of the pollution?

A. I would say, if I was financially able to buy a piece of property of that kind and hold it for the three years I might take the chance.

Q. (*By the Court*) No, there is no chance about it, according to my supposition. At the end of three years I not only guarantee you but I tell you as a matter of certainty that the property is going to be free from this odor; I am speaking now of any man who has money to invest and who wants to invest profitably; would not any man jump at a chance of doubling his principal, more than doubling his principal in three years?

A. The fact of the matter is that real estate companies formed for developing purposes are generally formed by men with small capital, and you would only find one man, such as the Court speaks of, in a long time, where you would find thousands that would be willing and able to invest a small amount of money if they could ex-

pect quick returns, but they wouldn't invest it if they felt reasonably sure that they had to wait at least three years before they would get any returns, and then begin to sell and take several more years before they would get their money back; that is why you cannot sell the property to-day, because they will not take that chance of waiting three years, without any return on their money.

Q. (*By the Court*) Well, that would be a very fair answer, I should say, if this property were now divided up into lots, and somebody was offering these lots for sale; but you have got a piece of property that is not divided up into lots, and anyone buying it would buy it as a whole for speculative purposes, and such a man would necessarily have some capital.

A. True. I want to call the Court's attention to the fact that I am in eight real estate companies, I am president of five of them, and director in two others; there isn't one man in all of those eight companies that has any more money than what he wants to use every day of his life; he couldn't afford to go into it; if I wanted to buy any one of those properties I couldn't get any one of those men in the whole eight companies to go into the proposition, because they couldn't afford to wait three years for returns.

Q. (*By the Court*) Your answer, as it seems to me, is an excellent answer so far as it relates to that class of people who have but little money and who are able to invest only a small amount of money.

A. And those are the men that are developing all of the property around the suburbs to-day.

Q. Your theory is, as I understand you, that the real effect of the cleanliness of the river will not be felt in the price, selling price of the prop-

erty until that is a matter that can be absolutely appreciated by people who go there and look at it, is that right?

A. Certainly. If the city of Paterson stopped the pollution to-day of course there would be a little change in the value of the property, we have taken that into consideration, but until it is an actual fact that the pollution is stopped the value will not increase very much.

Q. Now we will go to the Merselis property?

A. Well, that consists of a one family brown stone house with fifteen rooms, in good repair.

Q. Now just go on and state what the values are, according to your memorandum?

A. We value that piece of property—

Q. If the river was clean?

A. If the river was clean, six acres of land at $1500. an acre, and the value of the buildings $9,000. or a total of $16,000. We figured that that property should rent, that is a very fine piece of property, one of the best of the lot that we are considering, it is in very good condition, and we figured that should rent for at least $1,000. a year, right along the lake, providing the lake was clean.

The Court.—Well now, why could not this statement be put in; the testimony of this witness in its main facts will be exactly the same as the testimony of the former witness, in fact I think this is a joint valuation, as I understand it; we understand his theory, so why could not this be put in with the statement that what he has said about the Nash property is applicable to the other properties, and then turn him over for cross examination?

Mr. Merrey.—I have consented to that already.

Mr. Parker.—Then I offer the statement.

Q. I understand what you have said with reference to the Nash property, in discussing the way in which you made your valuations, is true as to all other properties that you have valued in your statement?

A. All of the other properties came under the same consideration.

Q. You used the same consideration in making those valuations?

A. Yes, sir.

Mr. Parker.—Then I offer this statement in evidence, and it can be copied into the record.

MERSELIS PROPERTY.

Consists of a large one family brown stone and frame house with extensions, 15 rooms, buildings in good repair. House, barns, etc., worth at least $7,000. Six acres of land at $1500. per acre or $9,000. Total $16,000. This property should rent for at least $1,000. per year. Usual rent received on account of river, $300. a loss of $700. per year, or for five years $3500.

Additional nineteen acres of land running back to trolley line, value if river was clean, $1500. per acre, present value not more than $750. per acre; a loss in value of $14,250.

Interest on same at six per cent. $855. or five years, $4275. Total loss to Marselis property $7,775.

JOHN TERHUNE PROPERTY.

Consists of a very fine stone house with all improvements and plot of ground 125x

300 feet. Buildings and land in best of condition. Value of buildings $12,500. value of land $3,500. Total value of property $16,000.

This property should rent under natural conditions for at least ten per cent. or $1,600. per year. Best rent obtainable under present conditions of the river would not exceed $40. per month or $480. per year, a loss of $1,120. per year or five years $5,600.

EDO VAN RIPER PROPERTY.

Consists of twenty-three acres, 800 feet frontage on river, three fine lakes, fine twelve room frame house in good condition, modern improvements, bath room, hot air furnace, etc., good barns, etc. Value of land with clean river at least $1,000 per acre, value of buildings, $6,500. Total, $29.500.

This property should rent with three acres of land for $70. per month or $840. per year. Under present condition of the river it could not be rented for more than $300. per year, a loss of $540. per year, amounting in five years to $2,700.

The balance of twenty acres, value at $1,000. per acre, the present value of which is not more than $500. per acre, shows a loss in value amounting to $10,000. Interest on same for five years at six per cent, $3,000. Loss to Edo Van Riper $5,700.

I also understand the owner of this property has sustained considerable loss by reason of the pollution of the lakes which were formerly used as ice ponds. This loss we do not feel competent to estimate.

EDO AND C. CADMUS PROPERTY.

Eighty-seven acres of land valued at $850. per acre or $73,950. Value of buildings, etc., $3500.

Buildings with seven acres of land should rent for $60. per month or $720. per year with clean river. Under present condition of the river would not rent for more than $30. per month or $360. a loss in five years amounting to $1,800.

Value of land under present conditions not more than $450. or a loss amounting to $32,000. Interest lost per year at six per cent. amounting to $1920. or in five years to $9,600. Total loss to property, $11,400.

RICHARD OR CHARLOTTE J. VAN RIPER PROPERTY.

Consists of sixty acres of land, twelve room house, hot air furnace, bathroom, etc. This property is in good condition, value of buildings $4,000. Value of land $850. per acre. Total value amounting to $51,000.

Buildings with four acres of land and a clean river should rent for $65. per month or $780. per year. Present rental $30. per month or $360. per year, a loss per year amounting to $420. in five years to $2,100.

Present value of land not more than $450. per acre, or on the fifty-six acres amounting to $22,400. Interest on this for five years $6,720. Loss to these people on account of foul condition of the river $8,820.

ESTATE HENRY W. DOREMUS.

Consists of sixty acres, with about six hundred and fifty feet frontage on river,

dwelling and out-buildings in good condition. Value of land $800. per acre, value of buildings $4,500.

Buildings and five acres of ground if river was clean, would rent for $720. per year. Under present conditions could not rent for more than $420. per year, a loss in rents amounting to $300. per year, or in five years to $1,500.

Loss of $400. per acre on fifty-five acres (the present buying price) amounts to $22,000. Interest on this amount at six per cent. for a term of five years amounts to $6,600. Loss account foul condition of river $8,100.

HOMESTEAD PROPERTY ESTATE OF GEO. VAN RIPER.

Sixty-seven acres with large eighteen room house in fine condition, three large barns, including water tower, bathroom, steam heat, and other improvements. Value of buildings $8,000. Value of land $950. per acre with clean river. Present value of land $500 per acre.

The buildings and seven acres of land should rent for $1,200. per year; under present conditions could not rent for more than $540. per year, loss per year in rents $660. or for a period of five years to $3,300.

Sixty acres of land sold at a loss of $450. per acre would be $27,000. Interest on same for five years at six per cent. would be $8,100. Total $11,400.

There are also four ice houses on this property worth at least $1500. each or $6.000. which have been rendered useless on account

of the fouling of the river. Interest on these at six per cent. for a period of five years would amount to $1,800. Total loss to this property $13,200.

MARY A. VAN SAUN PROPERTY.

Seventy-three acres of land, old house, barns, etc. Value of land $550 per acre with clean river. Present value not over $250. per acre. Value of buildings $3,000.

Buildings and thirteen acres of land should rent for $560 per year. With the river in its present condition would not receive more than $25. per month or $300. per year. A loss in rental each year of $260. or in five years to $1,250.

Sixty acres of land at a loss of $250. per acre amounts to $15,000. Interest on same for a period of five years at six per cent. would be $4,500. Loss to above person $5,750.

HOMESTEAD PROPERTY
ZELA DOREMUS.

Consists of seventy acres of land with six hundred feet river frontage, value of land if river was clean $700. per acre. Value of buildings $3,500.

Buildings with ten acres of land and a clean river would rent for $600. per year. Present rental value would not be more than $360. per year or a loss in rent per year of $240. which in five years would amount to $1,200.

Remaining sixty acres of land under present conditions would not sell for more than $350. per acre or a loss of $21,000.

Interest on same at six per cent for five years would bring $6,300. Total loss, $7,500.

FREDERICK H. GELDERMAN.

Consists of twenty acres of land four hundred feet frontage on river, very fine house, all improvements, electric light, hot air furnace, first class plumbing, Kewanee water system, very desirable property. Value per acre if river was clean would be $1,000. per acre. Value of buildings $4.000.

Buildings and ten acres should rent for $1,200. per year. Under present conditions would not rent for more than one-half this amount or $600. a loss in five years of $3,000.

Remaining ten acres at present value of $500. per acre would mean a loss of $5,000. Interest on same at six per cent. would be $300. per year or for a period of five years $1,500. Total $4,500.

OUTWATER ESTATE.

Consists of 57 acres of land six hundred and fifty feet river frontage between the Moffitt and Wagaraw avenue bridge. Value of land if river was clean would be $800. per acre. Value of buildings $2,000.

Buildings and four acres of land if river was clean would rent for $360. per year. Under present conditions would rent for not more than $180. per year, a loss in rental of $180. per year which in five years would amount to $900.

Remaining 53 acres which could not be sold under present conditions for more than

$500. per acre would mean a loss of $300. per acre or $15,900. Interest on same at six per cent. for a period of five years $4,770. Total loss to Outwater estate on account of fouling of river $5,670.

Q. Then you also joined, didn't you, in the statement as to the Hillman property, with Mr. Coe and with Mr. Mercer and Mr. Van Duyne?

A. I did, yes.

Mr. Parker.—I have that here too, which I will offer in the same way.

HILLMAN PROPERTY.

Consisting of thirty-two acres of land. Double house now arranged for two families. Taking the improvements and six acres of this land as suburban property with the river clean its value would be about $600. per acre or $3,600. Improvements $3,000. Total $6,600. This should rent for at least $528. with the river clean. With the river in its present condition I do not think it possible to rent it for over one-half of that amount or $264. making a loss per year of at least $264. for five years. $1,320.

Twenty-six acres of this land in addition is materially damaged in selling value by the present condition if the river as follows: If the river was clean it would be worth $600. per acre or $15,600. Under present conditions it probably would not sell for over $300. per acre or $7,800. making a loss of $7,800. in value. Interest on same at six per cent. $468. As conditions are to continue for five years, $2,340. Total loss to

Hillman property on account of foulness of river, $3,660.

Q. And all that you have said with reference to the Nash property, as to the basis of making your valuation, applies also to the Hillman property?

A. It applies to all of the properties.

Cross Examination by Mr. Merrey.

Q. Are you the Mayor of Garfield?

A. Ex.

Q. Ex-Mayor; and you say you are a plumber?

A. I am in that business.

Q. You are in the plumbing business now?

A. I am in the plumbing business, yes.

Q. Do you give your personal attention to that?

A. No, sir, I have a foreman that takes charge of that and a book-keeper.

Q. Don't you attend at your store?

A. Except to figure on plans, and I do that principally evenings.

Q. What is your time principally devoted to?

A. To the real estate business.

Q. Have you an office, real estate office?

A. I have.

Q. Where is it?

A. 32 Passaic street, Garfield.

Q. Where is your plumbing business?

A. 32 Passaic street.

Q. You operate both at the same time?

A. I do.

Q. From the same headquarters?

A. I do, as a separate business, separate accounts, separate books, entirely separate business.

Q. How long have you been in the real estate business?

A. Little over ten years.

Q. Have you been in it extensively?

A. Well, that depends what you call extensively, I have been in it, I have done considerable business.

Q. I understood you to say you didn't have any more money than you knew what to do with; have you been successful in your real estate transactions?

A. I think I have.

Q. What did you do about ten years ago; did you buy any farms?

A. Why, eight years ago I bought one in Lodi.

Q. Was that your first venture?

A. That was the first in the developing line, yes.

Q. What had you done before that?

A. Why, I built a house seventeen years ago, where I live, and I bought one in Wallington, six family brick house in Wallington, and sold it again.

Q. When you first opened your real estate office ten years ago what did you do?

A. Simply sold as a broker on commission, principally.

Q. I suppose at the same time running your plumbing business?

A. At that time, yes.

Q. You were actually engaged in the actual work of plumbing four or five years ago, weren't you?

A. Why, I have been in it for eighteen years.

Q. You actually supervised the work four or five years ago yourself, I mean?

A. I supervise it now.

Q. Your plumbing business quite a large business?

A. Not as large as it has been.

Q. Giving more attention to the real estate end of it?

A. Yes, so much so I had twenty men working one time, I only have six now.

Q. Well, is that caused by not so much business to be secured?

A. Why, I think it is caused by the reason of the foreign element coming in there and underbidding us, and I have got kind of tired of that business and got into something better.

Q. You have quite a foreign element in Garfield?

A. Yes.

Q. Quite a turbulent foreign element?

Q. No, we get along very nicely with them.

Q. You say about eight years ago you bought a farm?

A. Yes.

Q. Where was that?

A. In Lodi, on Union street.

Q. Was it on Saddle River?

A. No, it wasn't on the Saddle river, it is on Union street in Lodi, right in the borough.

Q. The farm was?

A. Yes.

Q. How large was it?

A. That was a small piece; that was the first venture; five acres.

Q. What did you do with that?

A. Cut it up in building lots; originally I sold it to Jim Donnelly of Paterson, the wholesale liquor dealer.

Q. The whole farm?

A. Whole business, and then bought it back from him, and Mr. Burke and myself went in partnership, Edward Burke of Lodi, and we sold

out the lots; we have all of those lots sold.

Q. Cut it out into lots, did you?

A. Yes.

Q. And sold it?

A. Yes.

Q. How much did you pay for the farm?

A. $2,300.

Q. For the five acres?

A. Yes.

Q. That is right near the mills in Lodi?

A. One of those mills weren't there then; it is probably ten or twelve minutes walk from the mills.

Q. Lodi has quite some large mills?

A. Yes, they have three.

Q. Great large piece dye works there?

A. Yes.

Q. It is developing very fast there, isn't it?

A. It is developing rather fast, not as fast as Garfield, but they are growing very fast.

Q. And the developing goes up towards Outwater Lane?

A. From Lodi?

Q. Yes.

A. No.

Q. Goes up that way?

A. No, up towards Rochelle Park principally.

Q. Well, Outwater Lane lies between Rochelle Park and Lodi, doesn't it?

A. No, it lies west of Lodi, and Rochelle Park lies east of Lodi.

Q. Just step this way a moment, please. I show you on D-5, Outwater Lane marked on the map above Lodi?

A. Yes.

Q. You say that is incorrectly marked there as Outwater Lane?

A. No, I don't say that is incorrectly marked. The Borough of Lodi is down here, now we are going west.

Q. Lodi Borough lies east of the Saddle River, does it?

A. It lies south-east of Outwater Lane.

Q. And it is developing towards Outwater Lane?

A. No, it is developing out toward this end of Outwater Lane.

Q. That is the easterly end?

A. Easterly end, yes.

Q. Of Outwater Lane?

A. Yes.

Q. And it is reaching up back of these farms in question, is it not?

A. Not the Borough of Lodi, no; these farms don't extend back of Lodi, or Lodi back of the farms.

Q. Is there considerable developing along Midland avenue?

A. Some.

Q. Where does that developing come from?

A. From Garfield.

Q. What is it called?

A. Why—

Q. Plauterville?

A. Plauterville is west of Outwater Lane; there is quite a development in there.

Q. What causes that development?

A. That development origially was caused by a German settlement or some German company that bought a farm and divided it up between this association.

Q. That is Plauterville?

A. Plauterville, yes; and that of course brought

New Jersey State Library

quite a number of houses there, and others of their friends followed them.

Q. Is it easy to get into Garfield from that section?

A. It is part of Garfield, it is in the Borough of Garfield.

Q. Is it near the mills in Garfield?

A. It is near the mills now, but when that section was originally opened there were no mills there.

Q. It was opened there by a society of New York Germans, was it?

A. New York or somewhere down that way, I don't know where they came from.

Q. They bought the farm and held sort of a raffle, each put in so much money and got a lot?

A. They had some kind of lottery or chances on getting their lots in some way, I don't know just how it was done.

Q. Now after you sold that five acre farm what other farm did you purchase?

A. Why, I bought one, let me see, the second one I guess—

Q. Was it in Garfield or Lodi?

A. Yes, I think, the second one that I bought; I wouldn't be positive about the number, or just when the different ones was bought, but I think the second one that was bought was right in Garfield, now known as the Midland Heights Land Company.

Q. How large is the farm?

A. Seven acres that was.

Q. How much did you pay for that?

A. $3,500.

Q. For the seven acres ?

A. For the seven acres.

Q. Did you cut that up into building lots?

A. We did.

Q. What class of people did you sell it to?

A. Sold it to Italians, Germans, foreign elements.

Q. What was the next one?

A. I think the third one that I got interested in was above Paterson, the Prospect Heights Land Company.

Q. Is that near the Outwater property?

A. Oh no, no, that is Prospect Heights Borough.

Q. Prospect Heights Land Company, whereabouts was it, near Paterson?

A. It is just above Paterson in the Borough of Prospect Park, just north of the old Muse property.

Q. How much did you pay for that?

A. $36,000.

Q. How much?

A. $36,000.

Q. For how many acres?

A. Thirty-six acres.

Q. You paid how much, thirty six—

A. $36,000.

Q. How near is that to the Paterson City line?

A. The Paterson City line?

Q. Yes.

A. Just across the street I believe, the City line is on Eighth street, as I understand it, and the property is on the opposite side of Eighth street.

Q. Is there a trolley near?

A. The nearest trolley is the,—I don't know which one it is, there is one runs up there through Haledon, is it Haledon or,—there is a trolley line runs up that way, and there is another runs on the foot of the hill, North Paterson.

Q. How long does it take you to get into the

center of Paterson, near the City Hall, from this property?

A. I wouldn't swear to that, I don't know; it is a short run.

Q. About three quarters of a mile away from the center?

A. No, it is a mile and a half.

Q. Does it take more than ten minutes to get in?

A. I wouldn't testify as to the number of minutes it would take.

Q. What did you do with that farm?

A. Sold it, that is, the biggest part of it we sold, we still have some of it.

Q. Did you sell it in lots?

A. Yes.

Q. How much did you get a lot for it?

A. Oh, different prices.

Q. Well, on the average?

A. Anywhere from two hundred and fifty to seven hundred dollars.

Q. You didn't sell any of it off in large sections, did you?

A. Yes, eight acres of it to some man that has got a stone crusher in there, I don't remember his name.

Q. Sauerbot?

A. Yes.

Q. Did you have full control of this?

A. Not full control, no, I am one of the directors in that company.

Q. How much of an interest did you have in that?

The Court.—Does that make any difference?

Q. Well, what other property have you sold?

A. I have one piece in South Jersey, 237 acres.

Q. No, near here?

A. I have another piece in South Jersey of sixty seven acres; also interested in the Clifton Interstate Realty Company.

Q. Where is that?

A. At Clifton, between Passaic and Paterson.

Q. How large was the farm they bought?

A. Eighty acres.

Q. How much did you pay for it?

A. $80,000, without the improvemtnts.

Q. Where is that in Clifton?

A. It faces Main avenue, it was formerly known as the Grucock property.

Q. Is it east or west of Main avenue?

A. West of Main avenue.

Q. Trolley line on that?

A. Trolley line passes it.

Q. A short distance from Paterson and Passaic?

A. Between Passaic and Paterson.

Q. (*By Mr. Parker*) About here where the word "Clifton" is on the map?

A. This is the property (indicating on map).

Q. About where it is marked "'Clifton"?

A. Just above where it is marked "Clifton", the fourth block up, known as Washington avenue.

Q. That was all laid out, wasn't it?

A. It was not.

Q. In streets?

A. No, sir.

Q. Laid out in streets?

A. No, sir; there was one street that was partly cut and that was Washington avenue.

Q. How far is that property from the Merselis property?

A. About three-quarters of a mile, less than that.

Q. It is very similar to the Merselis property, is it not?

A. Similar to the Merselis?

Q. Yes, in character?

A. Well, so far as the land, if you are talking about the land, yes.

Q. Its location is better, isn't it.

A. The Clifton property?

Q. Yes.

A. The front part of it is, the back part is not.

Q. How far back does it run?

A. It runs a mile and thirty feet back from Main avenue.

Q. How wide is it?

A. It is a narrow strip, I should judge, I don't know exactly without referring to the maps but I should judge about five hundred feet wide, or something in that neighborhood, I wouldn't be positive about that.

Q. The part near Main street is a very valuable part of it?

A. That front part is valuable, but that is the narrowest part of the property, because the homestead was excepted from the rest of the property.

Q. What other farm did you buy?

A. One in Hawthorne, ten acres.

Q. Yes; where is that?

A. I don't know, it is on that map I suppose, it is in Hawthorne, it is one of the De Grey properties.

Q. Is it near the railroad?

A. No, it is back at least a mile from the railroad, just on the side of the mountain.

Q. How much did you pay for that?

A. We paid $500. an acre.

Q. You got a house too, with it?

A. No house, no.

Q. You are selling that into building lots?

A. Yes.

Q. How near is the trolley car to that?

A. The trolley car now runs, oh, probably five hundred feet from the property, but when we bought it it didn't.

Q. How long does it take you to get into Paterson?

A. I wouldn't be positive but I should judge about fifteen minutes to the City Hall.

Q. There is a very great large manufacturing place there, is there not, Arnold Brothers?

A. There is two different manufacturing concerns, one of them at least, and I think there is two up there, I don't know their names, I am not very well acquainted up that way.

Q. Across the river into Paterson there are a large number of others?

A. Number of factories in Paterson.

Q. And more easily reached from this property?

A. Not any more so than any of those other properties we are talking about.

Q. In speaking about twelve acres of the Nash property, that lies between Randolph avenue and the River road, you say there is quite a development right south of that?

A. There is.

Q. What kind of development is that?

A. Fairly good development.

Q. Is that what is known as the Botany mill district?

A. No, it is part of Clifton.

Q. Where is the Botany mill?

A. The Botany mill is on Dayton avenue in Passaic.

Q. Right on the line, isn't it, Passaic line?

A. It does extend up to the Passaic line, but the entrance is quite a ways from the Clifton line down into Passaic.

Q. Don't a great many of the operatives live in Clifton?

A. Some.

Q. And towards this Nash property?

A. There may be some lives up that way, yes.

Q. Now this development is right near the river, isn't it, that you speak of?

A. No, sir, it is not.

Q. I show you on D 5 the point just south of the Nash property which is shown here, and ask you if that is not very near the river, the development that is shown?

A. The development is all back, at least four blocks back from the river, four or five blocks, on a very high bluff up above the river.

Q. Isn't there a hotel right adjoining this Nash property, right on the river road there, on Randolph avenue?

A. There is a hotel, I don't know whether it is just adjoining now, I wouldn't be positive, but there is a hotel there known as, I don't know now, I forget.

Q. Isn't there a lot of development along that Randolph avenue?

A. No.

Q. Isn't there a great school there?

A. There is a school, yes.

Q. And a lot of houses around it?

A. Down below, when you get back from the river there are a number of houses, but not close to the river.

Q. Aren't they near Dundee canal?

A. Not the houses, no; the Botany and the Forstman Huffman mills takes in all of the property between Randolph avenue and the Passaic river or the canal, and back to the river across the canal.

Q. Going north from the Merselis property you say that there is very little development near the river, is that so?

A. Yes.

Q. Well, most of that property belongs to Cedar Lawn Cemetery, doesn't it?

A. Oh, that is up considerable distance above the Nash property.

Q. How far is it above the Merselis property?

A. It is a considerable distance, I am not competent to say just now, without maps or something of that kind to guide me just how far it is, it is considerable.

Q. Aren't there two properties between the Merselis property and the cemetery property?

A. There are two or more.

Q. Godfrey and Simmons property?

A. I wouldn't be positive about the exact number of properties between there, but there are at least two or three properties between.

Q. Then the cemetery reaches down almost to the Terhune property, doesn't it?

A. Well, there is a part there that I don't know whether that belongs to the cemetery or not, there is a part on the southerly side of a cross street there that they have got a headstone and apparently a grave, and I don't know whether that belongs to the Cedar Lawn cemetery or to whom, but it does appear to belong to the Cemetery Association, but that is not part of the cemetery that is known as Cedar Lawn cemetery to-day.

Q. But is it owned by the Cedar Lawn Cemetery Company?

A. I don't know.

Q. May that not explain why there is no development there?

A. Not at all, no, that wouldn't explain it.

Q. Now then west of the cemetery, is there any development?

A. Yes.

Q. Isn't it a fact that that is all open land at the present time?

A. No.

Q. The Lakeview section of Paterson?

A. No.

Q. Do you mean to say that is developed?

A. I certainly do.

Q. In what way?

A. Why, with fine houses.

Q. In the city of Paterson?

A. I guess it is in the city limits, it is right at the top of the hill, immediately west of the cemetery, and then running south from there.

Q. Running south, but how about running north from there?

A. Well, we are now going to the Nash property.

Q. We are going north?

A. Going north there isn't so much development there because there is a low poor piece of property in behind there that formerly was known as the lake, and that formerly was the lake that Lakeview derives its name from, it is filled in ground.

Q. Isn't it a fact that that section of Paterson lying south of Park avenue and all the way up to the Cedar Lawn Cemetery is the part which is less developed?

A. That is true.

Q. Isn't it a fact that that open undeveloped tract lies between the city and these farms?

A. Between the city and the farms, that is also true, but immediately behind or west of the Merselis property is where the development is that I am speaking of.

Q. That is in Clifton?

A. I don't know whether it is in the township or in the city limits, but the Court will bear in mind that the city of Paterson has developed slower than any other city in this part of the country for the last ten years.

Adjourned until Friday, May 17, 1912, at Chancery Chambers, Newark, New Jersey.

Between,
HENRY W. DOREMUS,
Complainant,

and

THE MAYOR and ALDERMEN of THE CITY OF PATERSON,
Defendant.

Before his Honor Vice Chancellor Stevens.

Appearances as Before.

Transcript of shorthand report of the evidence given upon the trial of above cause on Friday May 17, 1912, at Chancery Chambers, Newark, N. J.

JOHN A. KARL, recalled.

Further cross-examination by Mr. Merrey.

Q. Did I understand you to say yesterday that streets were not laid out through the Grucock property when it was purchased?

A. Washington street was laid out through there.

Q. Was not the adjoining property developed and built upon extensively at the time you purchased it?

A. Quite extensively, yes.

Q. So that the Grucock property was ready and ripe for development and quick sale?

A. There has been quite a little of it sold, I

guess that would be true, the Grucock property was in pretty good shape.

Q. I show you this lithograph, is this a picture of it?

A. It is.

Q. And that is about the condition at the time your company purchased it?

A. With the exception of those streets here.

Q. The streets running north and south were opened by you and the ones running east and west were open, weren't they?

A. No, Washington street was opened from that point there (indicating) to Second or Third street, I wouldn't be positive which now, but just this short distance, and this Second street ran through to Washington avenue.

Q. Wasn't Luddington street open?

A. That is not on our property, it adjoins our property.

Q. Luddington avenue was open?

A. Yes.

Q. And Union avenue was open?

A. Yes.

Q. And the section between this property and Passaic was well built up, wasn't it, as shown on your lithograph?

A. Yes.

Q. Now the Merselis property is right across the Erie railroad from your property, at this point, isn't it, marked "White Line trolley"?

A. Yes, somewhere in about here (indicating); I am not positive on that map.

Q. So that it is about three or four streets to the west of your property, isn't it?

A. Oh no, it is a mile from here.

Q. Main avenue is shown here, isn't it, on your map?

A. Yes.

Q. On the westerly part?

A. Yes.

Q. There is no street between Main avenue and the Erie railroad, is there?

A. There is at Clifton avenue.

Q. How about Union avenue?

A. No, I don't think there is, that is not opened up there.

Q. Then doesn't the White Line trolley run right next to the Erie railroad at the Clifton station?

A. At the Clifton station it does, yes.

Q. How far away is it, opposite Union avenue?

A. From the Clifton station?

Q. Yes, no, how far is the White Line from the Erie railroad, opposite Union avenue?

A. I couldn't be positive.

Q. It is only a short distance, isn't it?

A. Well, this map is not made to a scale, of course that is just a penciled drawing originally.

Q. Was this property all ready for sale when you purchased it, except for the opening of streets; did you have to do much grading?

A. Yes, considerable.

Q. Where was the grading done?

A. On Washington avenue, First street,—principally on Washington avenue, one of those cross streets, Fourth street, Third street I think it was, yes, Third street.

Q. One of the blocks was a little low, wasn't it?

A. This was very low in here (indicating).

Q. Say where that is?

A. First street.

Q. First street was low, and that was filled in for you when they lowered Main street, wasn't it?

A. It was not; it was filled in under contract.

Q. Didn't the contractor who put the sewer through Main avenue dump the dirt in on your property there?

A. Some part of it, but he was paid for it.

Q. Now in the property you call the Prospect Heights property near Paterson, for which you paid a thousand dollars an acre, wasn't the property which adjoined that closely built up?

A. Yes, on the west side.

Q. Wasn't all that was necessary to do was to pull down the fence and run a plough and designate streets?

A. No, I wouldn't say that; we spent considerable money, not as much as we have spent on the other tract but we spent considerable money in cutting streets through there.

Q. But that was a farm which sort of marked the division line between the lot development and farm development?

A. True.

Q. And it was the next property ready to be taken up at that point?

A. It was.

Q. Now in speaking about the twelve acres on the Nash property, if you had that to develop into building lots do you think it would require any grading or work?

A. Very little.

Q. How about the pond there, wouldn't that be filled up?

A. Not necessarily.

Q. Then you couldn't utilize that part of the property covered by water there, could you?

A. Not the part covered by water.

Q. Isn't there a very steep slope there?

A. There is quite a bluff, but it is not too steep to go up on to it.

Q. Now in case you were to develop that for city lots, as the property is south of it, wouldn't a great deal of grading and work be necessary?

A. Only on one street, to get in on the property, then when you get up on top of the hill you are level with all the other land surrounding it.

Q. Isn't there a very steep slope right on the property, leading from the hill down to the water line?

A. Down to Randolph avenue, there is quite a drop there.

Q. How about leading into Lexington avenue?

A. It is not anywhere near as steep leading into Lexington avenue.

Q. Do you think you could sell lots on Lexington avenue where that pond was, without filling it up?

A. Not where the pond is, no, of course.

Q. Would that cost very much to fill it up?

A. It would cost considerable if you wanted to fill up the entire pond.

Q. A person who bought property of that character for development into lots would consider the cost of grading and so on in paying his price for it, wouldn't he?

A. A man takes everything into consideration when he is buying a piece of property; but a piece of property like that with a pond, a clean pond, would add to the value of the land.

Q. Is that pond clean?

A. It is not, on account of the pollution in the river.

Q. Where does that pond come from?

A. The feeder?

Q. Yes, where is it fed from?

A. I don't know.

Q. Does the water from the river back into that?

A. Certainly does.

Q. Do you know that?

A. I do.

Q. Whereabouts does it go in?

A. There is a culvert runs right under Randolph avenue, here, at that point.

Q. Is not that where it discharged into the river?

A. It discharges and also backs up.

Q. These land companies you have told about, you have only a small interest in them, haven't you?

A. I have an interest in them, Mr. Merrey.

Q. But it is small?

A. Not necessarily, some of them smaller and some larger.

Q. The Grucock, for instance, was engineered by Mr. Sullivan, wasn't it?

A. The company was probably formed by Mr. Sullivan, Mr. Dunn and some of the others.

Q. And Mr. Sullivan was counsel for the Borough of Garfield when you were Mayor, wasn't he?

A. He was.

Q. He has been in most of these land companies you were in?

A. He is only in that one.

The Court.—What difference does that make?

Mr. Merrey.—I don't care to press the matter, if your honor doesn't desire to hear it, but at the same time it seems to me that it might appear from all this testimony that he has given that he is a man that has been an active developer, when as a matter of fact I believe he has simply had a little interest in each of these companies, and they have been developed by other men, men whose judgment has been relied upon and not his.

The Court.—No, I think it is too remote.

A. To correct that, I want to say that everyone of those companies have been organized by me.

The Court.—One moment. Strike that out.

Q. Taking up the properties on the Bergen County side of the river, north of the Dundee dam and south of Market street, do you think that those properties are ripe for development?

A. Some of them.

Q. Which ones?

A. Why, take the first one south of the Garfield borough line.

Q. Name it?

A. The Cadmus farm I think is the name of it.

Q. Well, that is north of the borough line?

A. North of the borough line.

Q. The Cadmus property, you think that is ready. How could the Cadmus property be developed at present?

A. Same as any piece of property of that character is developed.

Q. How would you get to it?

A. You can get to it by the Erie railroad, they have a station at Plauterville, also have a station at, called the Passaic Junction station on the Susquehanna railroad, and another one at Dundee Lake.

Q. Well now, then you would have to come along the river road, wouldn't you, to get into the Cadmus property?

A. Depends where you are coming from, you can come in by the way of Market street or by the River road.

Q. Can you get to that property from Garfield without going along the River road?

A. Not from Garfield.

Q. Can you get to it from Paterson without going along the River Road?

A. Why, I don't know now whether that farm

crosses Market street or not, most of them do; that extends out to Midland avenue.

Q. And at that point it is more than a mile and a half from the Market street bridge, isn't it?

A. It is quite a distance.

Q. It is all open and undeveloped territory?

A. That particular farm, of course, it has been farm land.

Q. Between the other developed properties and the Cadmus property is the Hillman farm, isn't it, Herman Hillman property to the south of it?

A. It is one of the Hillmans, I didn't examine but one Hillman property, and that, as I remember it, is Charles Hillman.

Q. But that is the Alyea farm on the map, up to the north; but could you develop the Cadmus farm properly without an outlet to the south over Herman Hillman's property, as shown on the map?

A. I don't think it would have any effect.

Q. The fact that the Hillman farm was left undeveloped?

A. I don't think it would have any effect on the development of the Cadmus property.

Q. That would throw people around so that they would have to come in through the Dundee drive, that is true, isn't it?

A. River road, yes.

Q. How wide is that farm?

A. The Cadmus farm?

Q. Yes.

A. Why, it is a long narrow strip of land, I should judge, I didn't measure it but I should judge about five hundred to a thousand, no, it is about a thousand or eight hundred feet wide, something like that.

Q. Look on the map and scale it, if you can; it is about four hundred and fifty feet in width, isn't it?

A. Yes.

Q. Does that width lend itself to a good development?

A. That depends how it is cut up.

Q. Well, there is only one possible way of cutting it up, is there not?

A. No.

Q. Long road through the center?

A. No, there are several ways; a four hundred foot piece of property or four hundred and fifty foot with one street through, of course it would cut up bad, but with two streets it would cut up just about right.

Q. Two streets of what width?

A. Any width you see fit to make them; I generally make mine fifty feet, but in a case of that kind where you are crowded they very often use a forty foot street.

Q. That would cause a cheaper class of houses to come there, wouldn't it?

A. Not necessarily.

Q. To cut it up into two long streets would take a hundred feet, about, off the frontage, wouldn't it?

A. Say eighty feet.

Q. Eighty feet to a hundred, depending on the size of the streets?

A. Yes.

Q. What class of people would buy property there, if it was cut up?

A. Some of those farms there are very nice places, have fine residences; it could also be developed for the cheaper class, that would depend largely upon the man that was handling the property.

Q. Do you think that anybody could sell the Cadmus farm to a nice class of people, with the character of people on the farms below?

A. I don't know why not.

Q. Do you know that on the Phillips farm there

are little bits of houses, worth about three hundred dollars a piece built?

A. I know there are some very cheap houses in there.

Q. And the type of people there, are they mostly foreigners?

A. Mostly Italians on that particular farm.

Q. Have you ever heard the farmers complaining that is is almost impossible to raise stuff and keep it?

A. I hear farmers complaining all over Bergen County that they can't keep anything.

Q. Do you know whether the Cadmus farm is rented or not?

A. No, I wouldn't be positive about that, no.

Q. Is this the type of development just below the Cadmus farm, houses of that character?

A. There are some of that character yes, yes, there are some of them in there.

Q. How much are those worth to build, about?

A. Oh, two hundred, two hundred and fifty dollars; that small one there probably a hundred and fifty dollars.

Q. Do you think that anybody would attempt to or care to build a nice house in the vicinity of those $150 and $200 houses?

A. Not in the vicinity of those houses, no, not the immediate vicinity.

Q. Those are the nearest next to the Cadmus property, are they not?

A. That is the nearest farm.

Q. They are only about five hundred feet away from it?

A. Yes, they are very close to it, but just on the other side, down a little further, on the Forstman Huffman property there are some very fine buildings there, new buildings, that were built within the past three years.

Q. Brick buildings?

A. Some brick, some frame.

Q. Tenements?

A. No, private houses.

Q. And the Richard Van Riper farm next above the Cadmus, what character of development would you get there?

A. Why, the same class, all of those farms from there right on up to Market street all lay about the same.

Q. Now where would the people come from that would buy farm, buy land there?

A. That is hard to tell; I have sold lots to people away from the West, I have sold them to New York people, I have sold them to people from Paterson, and in fact all over the country.

Q. Who occupy them, people who work in the mills?

A. Occupy what?

Q. The places that you have sold?

A. I sold them; we were talking about selling lots; sell them to anyone comes along.

Q. The people that build on them, who are they?

A. Those people that buy, from all over, different places.

Q. What do those people do, rent them?

A. Some of them speculative builders, some live in them themselves, some are rented like the Plauterville property, nearly everybody there owns their own home.

Q. What do those people do for a living?

A. Work in the mill, some of them, and some in New York; it was originally started by New York people.

Q. That is, Plauterville?

A. Plauterville section, just below there.

Q. That is slightly to the east of these properties?

A. To the east of these properties. I just bought thirteen and a half acres myself in behind

Plauterville, same kind of property as this.

Q. Back of Midland avenue?

A. Back of Midland avenue.

Q. Do you know what the Cadmus property rents for?

A. No, I don't.

Q. I understood you to say you had very little experience in renting properties of this character?

A. I haven't had a great deal of experience in renting property of this character.

Q. Have you had any?

A. Not to any extent, I have rented a few small places.

Q. Have you rented any farms?

A. But they are not in this vicinity.

Q. You haven't rented any farms, have you?

A. Not in this vicinity.

Q. Anywhere?

A. Oh yes, yes, I have rented and sold farms.

Q. Whereabouts?

A. On the southern end of the state.

Q. When you speak of this vicinity you mean in the northern part of the State ?

A. I mean in that section of Bergen County, right through there.

Q. You think that those properties are ripe for development then?

A. I think that any one of those properties could be developed almost any time, if the conditions of the river was favorable.

Q. You think the condition of the river affects the back ends of the property too?

A. I think it does, for this reason, that in selling a farm of that kind you sell it to a company that will generally buy the whole tract, and the front of the property adds the land value to the back end of it, and consequently we take in consideration the entire property.

Q. How much time did you spend on making these appraisals?

A. We started out ten o'clock in the morning and got through about five.

Q. You had a copy of the appraisement made by Mr. Mercer and Mr. Van Duyne and Mr. Allen with you, didn't you?

A. No, sir.

Q. Never saw that?

A. I did see it, but I didn't have it with me.

Q. Haven't you put your figures down yourself?

A. The prices?

Q. Yes.

A. We fixed those prices ourselves, right from our own original notes.

Q. Without any reference to the other appraisements made by Mr. Mercer and Van Duyne?

A. Yes.

Q. You don't know anything about renting in Paterson either, do you?

A. Not this class of property, I have had some property in Paterson.

Q. Class of the Terhune property?

A. Renting that class?

Q. Yes.

A. Only from general knowledge, not from anything I have rented myself.

Q. How did you make up your mind that if the river was clean the Terhune property should bring $1,600 a year?

A. From the size and the value of the house, and the location, the conditions, the trolley car being right near there, and near the city of Paterson, and because other houses of that size in the City of Paterson would rent for about that price.

Q. Tell us one of them that would rent for that, or does rent for that in the City of Paterson, tell me one house in the City of Paterson that brings in $1,600 per year rent, one?

A. I don't know as I can name any just that

brings in $1,600 a year rent, but I know that all of the houses through that section that cost a certain amount of money bring a certain amount of rent.

Q. How do you know that?

A. Because I have owned some of them up there, I have this house on Sixth avenue.

Q. Tell us one single one family house that you get $75 a month rent for?

A. I never had any house of that kind that I got $75 a month rent for.

Q. Do you know any house in the City of Paterson that brought $75 a month rent?

A. I don't, in the City of Paterson, no.

Q. Do you know the Reynolds house owned by John H. Reynolds, former president of the Savings Institution?

A. I don't.

Q. On Twenty-third street and Park avenue?

A. I don't; I may know the property but I don't know it by that name, couldn't recognize it.

Q. Have you ever talked to real estate agents in the City of Paterson about the rents that houses of that character bring, what percentage of their valuation?

A. No, I can't say I ever talked with real estate men in Paterson about it.

Q. Ever hear of a man building a house of that type as a speculation, to receive income from it?

A. No, a man wouldn't built it for speculation to receive an income from.

Q. Why not?

A. Because it is not a proper house to build for speculation, this kind of a house a man would build for himself.

Q. Those kind of houses don't produce a good income, do they?

A. That would depend altogether where they are.

Q. You don't know of any that produce five per cent on their investment, do you, in Paterson or its vicinity?

A. No, I don't know of any in Paterson.

Re-direct examination by Mr. Parker.

Q. Mr. Merrey was asking you about the advantage the front of the Cadmus property particularly would have to a person that wanted to develop the entire tract; do you know of any particular reason why the front of a property which is being developed, lying as the Cadmus property is, should be kept looking nice, from the standpoint of a developer and speculator; do you know whether that has any weight with operators?

A. You mean whether the looks of the place in the front would have any effect on the sale of the property, is that the question?

Q. And on the value of it to an operator?

A. Naturally it would have some; a man going in to buy a piece of property that was kept up in good condition would naturally feel that there was better chance of handling it and turning it quickly than a place that was run down, but it wouldn't add any value to the land particularly.

Mr. Parker.—I have a witness here who will testify that Hillman who was a plaintiff in this case is not the same Mr. Hillman who has speculations in Florida and that sort of thing. I do not think it is necessary to call a witness on that.

The Court.—It was only brought out on cross-examination.

Mr. Merrey.—There are a number of Hillmans there, and I am confused in which is which; there are the father and two sons live there, they are partners in business

and work together, as I understand it.

Mr. Parker.—I do not see what materiality it has, one way or the other.

The Court.—No, it does not strike me that it is at all important.

Mr. Parker.—Now we want to locate the sales of a few properties, Mr. Merrey, and we might agree on that.

Mr. Merrey.—Yes; we have agreed on some, have we not?

Mr. Ashmead.—It is agreed that the location of the conveyances mentioned in the stipulation as having been made by Henry W. Doremus are indicated on the map in lead pencil, D-2, and lying at the rear of the Doremus tract near Market street, there are three small lots of about 25 x100 feet. And the conveyances set forth as having been made by George G. Van Riper, one of them is indicated on the north side of Market street in lead pencil on map marked D-2; the others are so far in the rear that they are not shown on this map at all. Mr. Hillman has sold a triangular piece bordering on Market street and containing three acres; he still retains all of the original tract west of Market street.

Mr. Merrey.—This piece cuts out and separates entirely the part east of Market street from the other part of the farm.

Mr. Parker.—Yes, the piece seems to run from the north to the south side of the tract, as shown on D-2, and includes all the front on the south side of Market street, and runs back on the northerly line of the Alyea tract about fifty to a hundred feet.

One other thing. I want to correct in

the last witness's statement, talking about Mr. Nash's pond, Mr. Merrey asked the witness as to how it was polluted by the river. The fact is, of course, that that pond is above the level of the river and that it is clean and fresh, and that the witness made a mistake in answering that question that way.

Mr. Merrey.—We can agree on that; that is true.

Mr. Parker.—We can agree on that that is Mr. Merrey's idea and mine too, and save calling Mr. Nash who knows about that and would testify that that is so.

Mr. Merrey.—Yes, we will agree on that.

Complainants Rest.

JOHN F. LEE, sworn.

Direct examination by Mr. Merrey.

Q. Where do you live?

A. I live at Haledon.

Q. Have you been a resident of the city of Paterson for some time also?

A. Well, I have lived in the City of Paterson up to, well, I have lived there from the time I was two years old until I was forty-five.

Q. Where did you live after that?

A. I moved from Paterson to Bergen County and rented a farm on the Paramus Road at Bergen County.

Q. How long have you been in the real estate business?

A. Twenty-four years.

Q. In the City of Paterson?

A. In the City of Paterson.

Q. And what kind of property have you dealt in?

A. Well, I have dealt in all kinds of property, farm properties, and I have bought some farms for developing purposes, and I have dealt principally in city real estate property.

Q. Do you get out a publication at Paterson?

A. I do.

Q. What is the name of it?

A. The Credit Reporting & Collection.

Q. Does that publish a list of liens upon real estate?

A. It does.

Q. Do you edit that personally?

A. I do.

Q. Have you had anything to do with the rentals of property?

A. Considerable.

Q. Rentals of farms?

A. Yes.

Q. Does your publication show a list of tenants who have been dispossessed for the non-payment of rents?

A. That is one of the objects of the publication, to keep landlords and property owners posted as to the people who are being dispossessed for the non-payment of rent.

Q. In the preparing of that information do you find the rental values of properties?

A. Some times.

Q. Have you leased farms for your own use?

A. I have.

Q. Have you had anything to do with developing farms in the neighborhood of Market street bridge, in Bergen County?

A. I have.

Q. What farms did you purchase there?

A. I purchased the farm called Jane Van Riper farm.

Q. Is that just north of the Edo Van Riper and Hartman Van Riper property?

A. It is north of the Edo Van Riper property and south of what was called the Hoitman property.

Q. Is a corner of it shown on map D-3?

A. Yes, that is the homestead.

Q. Now, when did you buy that farm?

A. Bought that farm in February, 1898.

Q. What did you pay for it?

A. $3,500.

Q. For how many acres?

A. Twenty-eight acres.

Q. What did you do with it?

A. Well, I bought it for the purpose of developing it; I laid it out in streets, what I could of it, and I sold seven acres of it to a Mr. Vanderbeek that lives along there, and he made an ice pond on it; the balance I cut up into city lots, that is city lot size, and tried to dispose of them.

Q. What other farm have you bought for development?

A. Well, I bought other farms for development, but declined to develop them after I found out, if that is what you mean.

Q. Are you developing any at the present time?

A. Yes.

Q. Where?

A. Haledon.

Q. How far distant from the City Hall, Paterson, is that?

A. Well, it would be ten minutes by trolley and twenty minutes by walking.

Q. How big a farm?

A. Eighteen and three-quarters.

Q. What did you pay for it?

A. $630 an acre.

Q. How long ago did you buy it?

A. I bought that in September, 1909.

Q. Can you tell us what other farms you have purchased?

A. Yes, I purchased a fifty-acre farm at Arcola, that would be east of the property that is in question today.

Q. How far from it?

A. Well, probably a mile, I don't think it would be more than that.

Q. What did you pay for that?

A. I paid, I wouldn't be sure, either $4,500 or $5,000.

Q. For how many acres?

A. Fifty acres.

Q. What did you do with that?

A. Well, I bought it with the idea of developing it, and after looking the matter over I concluded that it wasn't in line for development, and I sold it to Mr. Easton who was then buying a lot of property around there, adjoining his homestead.

Q. He is the man Mr. Coe spoke about selling property for the Golf Club?

A. Yes, same man.

Q. What did you get for it when you sold it?

A. I took a house in Washington, D. C., in exchange, and I consider—I sold the house, and I consider I got $5,000 for it.

Q. What other farms have you purchased?

A. Well, I purchased a forty-acre farm at Allendale.

Q. What others?

A. A twenty-acre farm at East Paramus.

Q. Go ahead?

A. Twenty-acre farm at East Paramus; twenty-three-acre farm at Mountain View; a twelve-acre farm at Preakness.

Q. What others?

A. Well, I think that's about all.

Q. Have you rented any farms?

A. Oh, yes.

Q. Personally?

A. Yes.

Q. Many?

A. Well, I moved to the country on account of my health at that time, and I rented the farm that I occupied on the Paramus road.

Q. Is that near these farms?

A. No, I should say it would be between two and three miles.

Q. North?

A. South or—north, yes.

Q. What kind of a road is the Paramus road?

A. The Paramus road is a very fine road, considered as nice a road as there is in Bergen County, that is, for country road.

Q. What did you pay per year for that farm?

A. I leased that farm for two years at $25 a month.

Q. At that time did you endeavor to secure other farms in the vicinity of Paterson?

A. Yes, I did.

Q. What did you find out then as to the rental value of farms?

A. Well, there were other farms in that vicinity that I could have rented for about the same price; I could have rented a farm nearer Ridgewood, within a few hundred feet of Ridgewood avenue for, forty acres, I think it was forty acres—for about forty dollars a month.

Q. What kind of property are you living on now?

A. I am living now on a place that I bought for myself, I bought a house and three acres of ground.

Q. Before that did you rent some property?

A. Yes.

Q. What was the character of that?

A. Do you want me to continue on?

Q. Yes.

A. Do you want to know the improvements that are in those houses?

The Court.—Oh, no.

Q. Just a general statement?

A. After leaving the Paramus road I rented the Shaw property at Haledon with one acre of ground.

Q. What kind of property was that?

A. That was residential property, suburban residential property.

Q. Was it nice house; Mr. Shaw was quite a wealthy man, wasn't he?

A. He was.

Q. And the house was a good house?

A. Extremely so.

Q. What did you pay for that?

A. $25 a month.

Q. Then what other house there did you rent?

A. Then I didn't rent any more, I bought a property then on Haledon avenue where I am living at the present time.

Q. Did you rent a house from Bridge?

A. When I was burned out in the Shaw house I rented a small house from Bridge.

Q. Are you familiar with the different developments around the City of Paterson?

A. Quite some.

Q. And the rental values of houses throughout the city?

A. I am.

Q. And the different farms which have been cut up into building lots?

A. Yes, sir.

Q. You know the prices that have been paid for a great many of them?

A. I do.

Q. Are you familiar with the farms that have been mentioned in this suit?

A. Quite.

Q. How long have you known them?

A. Oh, well, I have walked over those farms when I was a boy, thirty-five or forty years ago.

Q. Did you know the owners well?

A. I knew Mr. Van Riper, I knew Mr. Cadmus, and Mr. Doremus very well, I knew Mr. Doremus particularly well.

Q. Have you gone over those farms lately for the purpose of estimating as to their value?

A. I have.

Q. When?

A. I went over last Saturday, and Monday and Tuesday of this week.

Q. Take up these properties separately now.

Mr. Parker.—Did he go over with anybody else?

Q. Yes; you went over with other people, didn't you?

A. On Saturday morning I went over the property with Mr. Clement, on Monday I went over the property with Mr. Clement and Mr. Sherman, on Tuesday I went over the property alone.

Q. Now the Terhune property, what is the character of that property?

A. Private residence.

Q. Just describe it shortly?

A. Well, it is a large brown stone house.

Q. Yes; painted?

A. The house, as I know very well, was formerly occupied by old Judge Terhune, as we called him, and was torn down by his son and rebuilt of the material that was in the old house.

Q. How much do you think that house is worth?

A. I would estimate that house to be worth about $8,000.

Q. And the land?

A. Well, I should say, I put a value on the land of $2,500.

Q. What do you think that house would rent for if the river was not polluted by the sewage of the City of Paterson?

A. I think $500 a year would be the limit.

Q. What has been your experience in renting properties of this class in the City of Paterson?

A. Well, my experience has been that,—take the Reynolds property that you mentioned on Park avenue, which is equally as good as this property and I think in a much better location, that property stood idle for three years and they couldn't get $75 a month for it.

Q. Well, as a general proposition is it possible to get a fair return of rent from properties of this class?

A. It is not.

Q. Can you give any reason for that?

A. Well, I could explain that in this way. For instance, take the Ryle house on Broadway, that cost, that was worth $50,000; they couldn't rent it for anything. The Herrick house that was owned by Carlton Herick (formerly editor of the Guardian) that house cost in the neighborhood of twenty-five to thirty thousand dollars to build,

the ground was estimated to be worth $9,000; they couldn't get a rental for that property of over $50 a month. The William Strange house on Broadway, which occupies as much land as the Terhune property, and is worth in the neighborhood of well, $35,000; they couldn't rent that to any private person for anything like a return they should get from it, and it is rented now to a boarding house I think, I wouldn't be quite sure, but I think for something around sixty or sixty-five dollars a month.

Q. Well, is that a general rule throughout the City of Paterson?

A. Well, I have had some personal experience in that myself; I own a house on East Twenty-Third street that I value at $7,500 and I rented it; I had it idle for a long time and I finally rented it to Mayor Hinchliffe of Paterson; I gave him a lease on the place for three years at $35 a month, that was the best I could get for it.

Q. Is there any difficulty renting the lower priced properties?

A. No, there isn't much difficulty in renting properties averaging twenty, twenty-five or thirty dollars a month, that is the class of property that would cost from three thousand to forty-five hundred dollars, five thousand dollars to build.

Q. Do you think there is anybody in Paterson paying $1,600 a year for the rental of a one-family house?

A. I do not.

Q. Do you think that you could get that rent from anybody for a house, no matter how located?

A. If it was possible to get it for any house the Ryle house is the only house that could ever command that rent.

Q. Are there many houses idle in the city of Paterson of this class?

A. Quite a number. I might also mention that I bought a house on Hamilton avenue, in a very fine residential section, that cost $16,000 to build, and the ground was assessed at $7,000. I occupied that house for a time and then I tried to rent it, and I offered it for $50 a month, and I couldn't get anyone to pay $50 a month for it; and that was a very fine house, the chandeliers in the parlor and library alone cost $500 apiece.

Q. Was there anything objectionable about it?

A. Nothing objectionable; it was next to what they call the Colonial house occupied by Isaac Hall.

Q. Is that a very fine house?

A. A very fine house.

Q. What is the character of the neighborhood?

A. The character of the neighborhood, all the houses on that,—Mr. Wurts, who was former editor of the Press adjoined my property, and the Hinchliffe brewery people owned the property above Hall's, and Henry L. Butler, father of Doctor Murray Butler, he occupied the corner above me again; that was the class of residences and class of neighbors that were in the block.

By the Court.

Q. Take such houses as Doctor Marsh used to live in up to the time of his death, what would a house of that kind rent for, that faced the Park?

A. The Marsh property facing the Park?

By the Court.

Q. Yes, next to Vice Chancellor Stevenson's property?

A. Well, your Honor, that is a pretty hard question to answer, for this reason; that people who can pay the rent that a house like that should bring will buy and build a house to suit themselves; that property, I believe, if it was put on the market today for renting purposes, wouldn't

bring over a thousand dollars a year, and I doubt whether it could be rented for that or not.

Q. Do you know who rented the Reynolds property that you have spoken about on Park avenue and Twenty-third street; was it Doctor Marsh's son?

A. Doctor Marsh's son, yes.

Q. Do you think the Terhune property would be damaged in its rental value by the pollution of the river?

A. I think it would to some extent.

Q. Do you think its rental value would be cut in half by that condition?

A. No, I do not.

Q. Have you been in the vicinity of that river often?

A. I should say I had.

Q. What did you find the condition of the river the three days that you were out there last week and this week?

A. The river just now is in as good condition as I ever saw it.

Q. Any perceptible odor from it?

A. Not a particle, I tried to detect any odor but I couldn't.

Q. (*By the Court*) The river was very full, was it not?

A. Yes.

Q. (*By the Court*) In consequence of the rain?

A. Yes.

Q. (*By the Court*) We have had an uninterrupted period of rain lately.

A. The river is right up to the shore and is high.

Q. What do you think about the location of the Terhune property irrespective of the river, concerning the neighborhood?

A. Well, from a real estate standpoint it is a very poor location, and one that in my opinion wouldn't be desirable as suburban residence.

Q. What are the objections to it?

A. The objection in the first place is, a man who would want to rent a suburban home would want to go further away from the city; when a man applies to a real estate agent he will invariably ask the question how far is it, about the first question he asks is how far is it from the depot and what is the character of the neighborhood, are there any mills around it, or is it a nice residential section, is it high, is there any swampy land around it; those are the first questions he asks. The tendency now seems to be to get a little further in the country than it used to be, in fact I don't believe any New York man would consider renting the Terhune property as a suburban residence at all, for the reason that it is not a suburban residence, it is a city residence; and then the first thing that would, in my opinion, be objectionable would be the saloon on the corner; it is a road house, and everything comes along there, trucks and automobiles and carriages, they will all stop there and have a drink and pass on; then there is nothing between that and the Terhune house; and when you get on the other side of the Terhune house, to the south of the Terhune house there is the Werner nursery, which is kept in a most fierce condition, there is no attempt at all to keep it looking in any kind of shape; if a man approached that I think that would deter him from considering that place as a suburban residence. Then again, a man who is looking for a suburban residence, particularly a city man, he will take this into consideration, as I said before, the character of the neighborhood, he will look

over the ground, and if he sees that the character of the houses around him are occupied by people that he thinks will be desirable neighbors, and be congenial in a social way, it is apt to have a great deal of effect on a man, and would enhance that property, in my estimation, as a renting proposition.

Q. How about the cemetery?

A. The cemetery, well, we all know that would be very objectionable; we know that there are some people who wouldn't take the Terhune property and rent it if they got rent free because,—particularly a nervous person, they don't want to see—I think it is safe to say there is, well, on an average of probably four or five funerals a day passes there to the cemetery, and every time they pass into the cemetery the bell tolls, which wouldn't be very pleasant thing to have tingling in their ears.

Q. How about the trolley line, is that a benefit?

A. The trolley line is positively not a benefit as a suburban residence, it might be if it was about two or three or four hundred feet away, I should say four to five hundred feet away from there, say two or three blocks away, then that would enhance it also as a renting proposition, but to have the trolley right in front of your door, continually passing up and down, and particularly in that neighborhood where the dust is something fierce in summer, and you are very near the road, a person wouldn't be as well off there as they would be living in the City of Paterson, because the streets are sprinkled, and if you live on one of the residential streets of the city of Paterson your comforts would be far greater than living there.

Q. Do you find now that the development is on the streets through which the trolley runs in the city, or through streets near by?

A. No, the tendency is to get about a block away from the trolley, and that is where the fine residences are being built in the City of Paterson.

Q. Taking up the Merselis property, are you familiar with that?

A. Quite familiar with that, yes, sir.

Q. How long have you been familiar with it?

A. Oh, I have known the Merselis property for the last twenty-five, thirty years.

Q. Have you walked over it often?

A. Very often.

Q. What do you think that house is worth there with the barns? Did you have the appraisement made by Mr. Mercer and Mr. Allen and Mr. Van Duyne with you?

A. I did, yes.

Q. What do you consider about the prices put on the buildings by them?

A. I went over their testimony very carefully, Mr. Merrey, and as to the buildings I think their estimation is very fair, excepting the Nash property, I don't think that is worth quite as much as they estimate it to be.

Q. And the Terhune property?

A. And the Terhune property.

Q. Now on the Merselis property the building is worth about $5,000, they report; does that agree with you, is that about right?

A. I would say the building would be worth between four and five thousand dollars.

Q. Now the land per acre, what is that worth?

A. Well, it is worth at least $1,500 an acre.

Q. What effect has the river on the land?

A. Well, I can't say that the river, in my opinion, would have any effect on the land there.

Q. Which part of the land are you referring to now?

A. I am referring to the land particularly in the rear of the house, running over to the White Line trolley.

Q. Do you think it is now worth $1,500 an acre?

A. Positive.

Q. With the present condition of the river?

A. Positive.

Q. Do you know of any sales in that neighborhood?

A. No, I don't, for a very good reason.

Q. What is the reason?

A. Well, they won't sell.

Q. Do you know about the Kipp farm?

A. I do.

Q. Is that near to this Merselis property?

A. It is adjoining.

Q. Do you know what that was sold for?

A. That was sold for $1,200 an acre four years ago.

Q. Do you think it has enhanced in value since that time?

A. Certainly has.

Q. How much would it be worth now?

A. Well, if the same owner had it back he told me he wouldn't sell it for less than fifteen to eighteen hundred dollars.

Mr. Parker.—I object to that.

The Court.—It is not what he said, but what your estimation is.

Q. The question was what you thought it was worth now?

A. Which land are you referring to?

Q. The Kipp property?

A. The Kipp property?

Q. Yes.

A. I would say $1,800 an acre.

Q. Is that affected by the river?

A. No, sir.

Q. Is it as close to the river as the other portions of the Merselis property?

A. Well, there is so very little difference that it is hardly worth considering.

Q. Is that section ripe for development at the present time?

A. Oh, yes.

Q. Where is that development coming from? 10

A. Principally from Passaic.

Q. And is it building up?

A. Very rapidly.

Q. You think the river has any effect on the front portion where the house is, condition of the river?

A. I don't think it has; I think it would have some effect if you were to consider it as suburban property, but then again it is, in my opinion, farm property and for that reason I don't think the 20 river would have so much effect on it.

Q. The front part, you mean on the River road?

A. I mean the front part.

Q. Do you know the character of the house?

A. I was in the house.

Q. Are the ceilings high?

A. Oh, no, you can touch the ceilings, well, I touched the ceiling with my hat, it is very low.

Q. Is that an objection to a house of that character? 30

A. It would be.

Q. What is the character of the house?

A. The interior or the exterior?

Q. The exterior?

A. It is an old-fashioned frame and stone house, about the same class of stone houses as you see throughout the country that was built here years ago.

Q. (*By Mr. Parker*) What they call the old Dutch houses?

A. The old Dutch houses.

Q. What do you think the rental value of that building would be, with a small tract of say five or six acres around it?

A. In its present condition?

Q. Yes.

A. I think $300 a year would be a fair rental for it.

Q. Suppose the city stopped pouring its sewage in the river?

A. I am considering it now as a farm with five or six acres.

Q. (*By the Court*) How can you consider a house with three or four acres of ground around it a farm?

A. Five or six acres.

Q. (*By the Court*) Yes.

A. Well, it is much easier to rent a farm of five or six acres than it is a farm of twenty-five, thirty, forty or fifty acres nowadays, for this reason, that about seventy-five per cent. of the people who want to go in the country and go in the farming business they all want to go in the chicken business, and they don't want a farm that they can till, they want a farm that they can build chicken coops on and have it practically a poultry farm, and get as near to the city as they can, where some of their daughters or sons can work in the mills or shops; that is why I say a farm of that kind is much easier rented than a larger farm; that is why I consider it a farm property.

Q. Suppose it was to be considered as a piece of suburban property, what rent would you get for it, supposing the river was not polluted by the sewage from Paterson?

A. And put it in shape, in good condition?

Q. No, as it is now?

A. You wouldn't get more than $25 a month for it at the present time from anybody, for this reason, that the house is in very poor condition, the only improvements in it is heat, and the class of tenants that it is occupied by at the present time would have a tendency to rack the house and depreciate it; for instance, now one of the parlors that was formerly used by the Merselis family is now being used as a storage house for potatoes and vegetables; now after they leave that house the house will be in such a condition that no person would rent it, no nice person, unless it was a person something like the class of people that are in there now, farmers, pure and simple, that's all they are. If the house was put in good shape and fixed up I think that it would rent for probably $40 a month, with a little ground around it.

Q. What would a developer do who bought the entire farm with the house, what would he do with the house there?

A. Well, that would all depend on how the land is laid; if it became necessary for him to remove the house to get his lots out of the proposition, why, he wouldn't hesitate a minute about tearing down the house; if the property could be improved without interfering with the house it would be likely he would let it stand and try and sell that separately, but in this particular case I am inclined to think that if that property was cut up for development the idea would be to get the streets running from Lexington avenue to the White Line trolley, and in order to do that the house would not cut much of a figure.

Q. What would be done with the house, in that event?

A. Torn down.

Q. Now the development along there, has it come along with relation to the trolley in any way, in that section?

A. There has not been any development in that section in thirty years.

Q. Well, just above it and towards Passaic is there some development?

A. Oh, yes.

Q. What has that followed, what road?

A. It follows along Lexington avenue and up towards Outwater Lane and over, all through that section it is all developed.

Q. When you say there has been no development in thirty years what do you mean by that?

A. I thought you meant has there been any development along what we call Cedar Lawn Road, Dundee Drive.

Q. Yes.

A. No, there has not been any development.

Q. No change, you mean, in the character of the properties there?

A. There has been change, yes, the house that was formerly occupied by one of the Merselis' is now occupied as a road house, a saloon, it is owned by a man who runs the saloon, and the house adjoining that that is now occupied and owned by Godfrey, that is also a road house or a saloon of some kind.

Q. Well, have the back ends of these properties been developed away from the river?

A. Not between the rear end and the trolley line, excepting when you get down near Crooks avenue, on the south of the—well, I might say in the rear of the Hinchliffe property, that is pretty near adjoining the cemetery, there is some development there.

Q. Is there development towards Passaic, along the trolley line?

A. Yes, there is quite some development on the other side of the White Line trolley, between that and the railroad, if that is what you mean.

Q. The back of this property is near the Clifton station on the Erie, isn't it?

A. Yes, quite convenient to it.

Q. What is the character of the service on that line of the Erie from Clifton?

A. Oh, it is fairly good.

Q. Are there many trains?

A. Well, mostly every train that runs into Paterson stops there; we experience that when we are traveling through.

Q. Is the service quick?

A. About as quick as you usually get on the Erie.

Q. Now take the Nash property and just describe that to us; take up first the large one-family house?

A. Well, the large one-family house is in very poor condition, and from the exterior parts of the house and grounds it would lead a person to believe that the place was abandoned, in my opinion.

Q. Does anybody live there now?

A. Mr. Nash's family lives there now.

Q. Do you know whether they live there in the winter time?

A. I know from what Mrs. Nash told me that they didn't live there last winter, that they moved there the first of May of this year.

Mr. Parker.—What difference does it make whether this gentleman knows as to that fact, when the owner himself has said he didn't live there in the winter; if this witness don't know it it is certainly not material for him to say so.

Q. What do you think that house is worth?

A. The large house now you refer to?

Q. Yes.

A. I estimate it to be worth about $4,000.

Q. And the tract of land around it of about eight acres, what would that be worth?

A. I place an estimate on that of $1,200 an acre.

Q. And if that was sold as a whole do you think that the building on it would add anything to the value of the land?

A. I do not.

Q. What other structures are there on that land?

A. In the rear?

Q. Yes.

A Well, there are a lot of tumbled down hot houses and different buildings of that class, there is a partly burned barn, as I thought.

Q. Do you think that the rental value of that building is hurt by the condition of the river?

A. I think it would be to some extent, yes.

Q. Well, in the condition that it is now is it injured?

A. Oh, no.

Q. If the building was put in good shape do you think that the present condition of the river would interfere with its rental value?

A. I think it would.

Q. What do you think that building would bring in rental value if the river was freed from the pollution by the city, and the house was in good condition?

A. With the eight acres of ground?

Q. Yes.

A. I think about $500 a year, $500 to $600.

Q. That is if the river was clear?

A. Yes.

Q. Well, suppose the river continued as it is now, and the house was put in good condition and was rented with the eight acres of ground, what do you think it would bring?

A. I don't quite understand your question.

Q. The first question was if the river was freed from pollution by the city and the house was put in good condition what rental it would bring; I understood you to say about $500 a year?

A. Five to six hundred dollars a year.

Q. If the house were put in good condition, but the river was not clean and remained as it is now, what do you think it would bring then?

A. Well now, what do you mean by putting it in good condition?

Q. (*By Mr. Parker*) Tenantable condition?

A. Do you mean improvements in it?

Q. No, in tenantable condition?

A. In painting it?

Q. Yes.

A. Oh, it ought to rent for $40 a month, I should think.

Q. With the river clean or as it is now?

A. I think if the house was put in condition I could rent that house with the eight acres of ground for $35 to $40 a month.

Q. With the present condition of the river?

A. Yes.

Q. Suppose the river was cleaned up, what would that add to its rental value?

A. I don't think it would make much difference, might make some; if a person came along and wanted it for a suburban residence it would make some difference; if they came along and wanted it for farming purposes or chicken business it would not make any difference.

Q. Take the small cottage with the quarter of

an acre of ground, what about that, first as to its value?

A. Well, the value, I placed the value on that cottage of $2,000, $1,800 to $2,000. Do you want me to explain why I place that value?

Q. Yes.

A. Well, I looked over the house very carefully from all sides, and I got my ideas from it in this way, I am at the present time about building houses, and I am building—

Mr. Parker.—Why go into that? Why not answer the question?

Q. Yes, just tell us; you say it is worth $2,000?

A. $1,800 to $2,000.

Q. How big a house is it?

A. Well, it is what would be called a cottage house.

Q. Is it a full two-story house?

A. No, it is partly one and a half, it runs to two; the roofs are peaked somewhat.

Q. What ought that to rent for?

A. Well, I wouldn't say over $15.00 a month.

Q. What effect has the river on it, the polluted condition of the river?

A. Well, with the class of tenants you get there I don't think it would have very much effect, it undoubtedly would have some, there is no question but what the property would be more desirable if the river was not polluted, but for the person who would rent a cottage of that size I don't believe the river would make much difference.

Q. Do you think that it could be possible, under any circumstances, to get $30 a month for that property?

A. Not from my experience, I wouldn't, no.

Q. River clean or otherwise?

A. No.

Q. Take up the double house?

A. Yes.

Q. What do you think that is worth, with the ground around it?

A. I agree with Mr. Mercer and Mr. Van Duyne and the others on the value of the house.

Q. What do you think it ought to rent for?

A. Just what it is renting for now.

Q. What is that?

A. The two-story house there is only four rooms, a front room and kitchen and two rooms upstairs, no water, no improvements of any kind in it and it rents for $12 a month; that is all the house is worth under any conditions or in any locality; the other house is one and a half story old-fashioned stone house with three rooms on the first floor and two on the second, the second floor is a half story, and the kitchen of that house is not to be considered at all because it is in such condition it is hardly worth while considering, in fact the woman told me she didn't use it, didn't consider it a room at all; that house is rented for $10 a month and that is all I or any agent could get for that house.

Q. Whether the river was clean or not?

A. Whether the river was clean or not.

Q. Now, did you look over the twelve acres of land between Randolph avenue and Lexington avenue?

A. Yes.

Q. What is the character of that land?

A. Well, the character of the land in front, on Lexington avenue, is low lands, where the ponds were, where Mr. Nash formerly kept his lillies, and then on the other avenue running off, Randolph avenue, I believe, sloping around there,

and then when you get up around back of the property you get on a very nice slope of ground there overlooking the lake.

Q. How could that property be developed for sale?

A. You mean as a developing proposition?

Q. Yes.

A. Well, if I was about to develop it I would first consider the filling in of the ponds in front, which I think is very objectionable for developing purposes, I would take some of the higher land on there and have that filled in in some way in order to utilize it; in its present condition it couldn't be utilized.

Q. Is it an expensive proposition to fill in?

A. It would be, I think—well, I don't know that it would be such an expensive proposition there because there are a number of buildings going on there and probably the contractors would be very glad to get a dumping ground.

Q. What is the character of the development to the south of it?

A. There is a class of houses there that would cost from $1,500 up to $2,500.

Q. How do you think this could be best developed, as a single proposition for a country residence, or as the property to the south is now being developed into small building lots with small houses?

A. As a residential proposition, you mean?

Q. Yes.

A. Well, as a residential proposition it would appeal to a man very forcibly, I think, who wanted a nice residence, for the reason that it overlooks Dundee lake, you can see all the way down to Market street from the brow of that hill.

Q. Could it be farmed?

A. If he would be satisfied to live in a neighborhood such as is being built up around there. Now if I brought a man to look at that property, and talked it up to him, I think the first question he would put to me would be, well, the class of neighbors around here is very objectionable, and for that reason I wouldn't consider the property; the property is all right but I wouldn't consider locating here because of the conditions otherwise.

Q. What do you think the present value of that land is per acre?

A. I put it down as being worth $1,200 an acre.

Q. What do you think it would be worth if the river was freed from the pollution from the sewage of the City of Paterson?

A. I think it would be worth $2,000 an acre, about.

Q. Suppose that assurance was given that within three years the city should cease to discharge its sewage into the river, would that have any effect on its present value?

A. Very materially, I should think.

Q. What effect would it have?

A. Well, I will answer that question in this way, Mr. Merrey, it would have this effect: now for instance if I owned a piece of property, or a number of lots on this side of the street, and on the other side there is already there a garbage or disposal plant that is throwing out an offensive odor, and by reason of that my property is depreciating in value, or has depreciated, I would gladly sell those lots probably for five hundred dollars a lot, in order to get rid of them; but if you could assure me that in a year or two years or three years from now that that disposal plant would be removed, and that that offensive odor

that that plant threw out would be removed, I would hold my lots for their prospective value which, if that was removed, would enhance the value of those lots and bring them back, probably be worth ten, twelve, maybe fifteen hundred dollars. Now, then, on the other hand, if I was not assured, as I said before, if I owned lots that were opposite a very desirable neighborhood, for instance, and I was positively sure that there was a disposal plant coming there I would get rid of those lots for whatever I could.

Q. Just answer the questions, and let us confine ourselves to the point. You say that this land is worth, under present conditions and with the pollution expected to continue, how much—twelve hundred dollars per acre, but if the river was freed from the pollution it would be worth about two thousand dollars an acre?

A. In my opinion.

Q. Suppose then assurance was given to you that within three years the sewage would cease to flow into the river, what would you consider the present value, per acre?

A. Well then, I would get down to figures, I would try and estimate what it was going to cost me to hold that property for three years; I would take into consideration the interest and the taxes, I would arrive at it in that way, I think.

Q. What would you do, make the deduction of that cost from the future value?

A. I think that would be the most reasonable way, that would be from a business standpoint, as a real estate speculation I would take that view of it.

Q. Now, then, we will cross the river and take the Cadmus property; you say you were well acquainted with Mr. Cadmus?

A. Yes, sir.

Q. Been on his property several times?
A. Yes, sir.
Q. You were there last Saturday?
A. I was.
Q. Who occupies the property now?
A. It is occupied by a man named Rheingold.
Q. What is he using it as?
A. Farming purposes.
Q. What is he paying for it?
A. $40 a month, $420 a year.
Q. That is $35. Do the people there complain about the condition of the river affecting them, from a farming standpoint?

Mr. Parker.—I object.
Admitted.

A. I asked Mrs. Rheingold if the river had any effect on her as a tenant, and she laughed and said no, the river didn't bother her at all.
Q. How long has she lived in that neighborhood?
A. She formerly occupied a farm further south, below the dam, called the Minick farm, I believe, and that was sold out to the people who came and bought the mills, or some of the speculators there, and she was obliged then to move on another farm and she rented the Cadmus farm; she had been there since a year ago last November.
Q. Do you think that Cadmus property is ready for development?
A. I do not.
Q. What is that?
A. I don't.
Q. What do you think that farm is worth per acre?

A. I estimate that farm to be worth, as farm lands, $200 an acre.

Q. (*By the Court*) Not as farm lands, but for any purpose?

A. $200 an acre.

Q. Do you think there is any prospective value for development there?

A. I can't see it, unless the factories come up towards that end, the same as they have been coming, then there is a prospective value.

Q. (*By the Court*) Well, the possibility or the probability that they may come would add to its value, would it not; that is what speculative value consists in?

A. I think so.

Q. (*By the Court*) You say that it is worth $200 for farming purposes, or regarded as a farming proposition; now it seems to me you ought to say what it would sell in the market to any one, for any purpose?

A. Well, that would depend on just how many farms you got in that locality; you are speaking now particularly of the Cadmus farm; the Cadmus farm, as I saw it and went over it, is a long, narrow strip, and from a real estate standpoint I would not think of buying the Cadmus farm alone for developing purposes, I wouldn't consider it.

Q. Why is that?

A. Well, you couldn't get your streets laid out properly; it is about five hundred feet, isn't it, four hundred and fifty feet I understood you to say.

Q. In width.

A. Well now, you would have to get your frontage, you would have to get your entrance from the River road, and then back from Midland avenue, and you would likely run a street right through the center of it, and if you did that would

give you lots far above the city size lot, the average lot, and if you cut two streets through it would then leave you only four hundred feet.

Q. (*By the Court*) Less than four hundred feet.

A. Less than four hundred feet, it would only leave you three hundred and fifty feet, and you wouldn't get a full sized city lot, your lots would be, I think, about eighty-seven and a half feet deep, under those circumstancees.

Q. Will a developer buy property of that kind, unless he sees quick development in the future?

A. Oh, no.

Q. Is it possible to develop and make a profit, unless it is done quickly?

Q. No, it is not.

Q. Why is that, Mr. Lee?

A. Well, there are many reasons; in the first place, in buying a farm of that kind a developer usually pays probably all the way from one to two, three, four, very rarely over five thousand dollars on the property, the land companies and people who develop them, and their interest begins to start right away, they will immediately lay it out into tracts and get out maps and lay it out in city lots, and just as soon as they do that the tax assessor comes around and he jumps the property from farm property up to city lots, so that they are carrying, instead of a farm proposition, they are carrying a city lot proposition on their hands, and unless they can see their way clear to dispose of that property in a very short time it will eat itself up.

Q. Does that affect its sale value when it lies in a farm then, the fact that it is not ready for development?

A. I would think so. If you can bring me to a farm and show me that that farm is ready for development I am interested right away, but if I see

no chance, that the chance for development is remote I am disinterested, I am not interested at all.

Q. Would you think the hope that a mill might be erected there would add materially to it?

A. Personally I wouldn't think so, that is buying on wind.

Q. (*By the Court*) What do they do in the case of these developments that have been spoken of so largely, do they curb and flag and macadamize, or do they simply open the streets with a plough and grade them off, or do they put water through them or gas through them, or what do they do?

A. Some of the streets, for instance the Prospect Park Land Company that Mr. Karl—is it,—the acres that they bought was ready and ripe for development, and they improved it.

Q. (*By the Court*) Well, to what extent; what do you call improving it?

A. Grading and putting down concrete curbing and guttering, and in some cases they will curb and gutter it and lay cement sidewalks all through before they sell a lot; other cases they will just merely turn a plough in and turn a street, and shape the street up and call an auction sale and sell it for what they can get.

Q. (*By the Court*) That is what they do generally in the case of those tracts around Lodi and Garfield and places of that sort?

A. Yes.

Q. (*By the Court*) That is what they generally do, is it not?

A. Yes.

Q. But if they expect a higher class of development I suppose they spend more money on it, is that the idea?

A. Oh, that's the idea; the greater your improvements the better class of houses you will get.

Q. (*By the Court*) Which is considered to be the more profitable, putting improvements on it at the beginning, I mean sidewalks, paving and gas?

A. The company or the speculator who has money will almost invariably, before he sells a lot, curb and gutter and put down walks; then advertises his place; have it in shape so that when people come there they will see that the property is laid out, and it is likely to entice a desirable element there. The land company that hasn't got much money, or the man who hasn't got much money, he is going to spend as little as he possibly can, until he gets something out of it.

Q. (*By the Court*) I understand you to say that this kind of development that is going on around Paterson is being made by people who have very little money?

A. I didn't say so, no, sir.

Q. (*By the Court*) That is the way I understood. I understood you to say they did not spend more than a thousand or two thousand dollars upon the property at the beginning, and then they wanted to get rid of the payment of interest and taxes.

A. Oh, I mean by that that land companies who are buying outside suburban property, that they very rarely pay more than one, or from one to five thousand dollars on a piece of property, in order to secure it, and then they give a mortgage and have the lots released on the payment of so much money, yes, I did say that.

Q. What do you think about the rental value of the Cadmus property, $420 a year, is that a good value or a low value?

A. I think that is all it is worth.

Q. Do you think if the river was clean it would bring more money?

A. I don't know why it would.

Q. Do you think it would?

A. No.

Q. (*By the Court*) It strikes me that if the river were clean there would come into that region a a better class of development; the land is quite high, there is a pretty prospect, and if the river were clean the people who develop would lay the property out into larger lots, would start the building of a better class of houses than they would if the river was in its present condition; that is the way it looks to me; now is that a proper view to take of it or not, in your opinion?

A. That would be, in my opinion, a proper view to take of it if the development that is already there was of that nature, but the class of development that is coming in there now, for instance, the Phillips property, that is close to the Cadmus property, there are probably twenty or twenty-five houses on that tract, and I looked the whole place over very carefully, and there isn't one house on the whole tract,—there is one house I believe that is worth about six hundred dollars; now the other houses are all worth less than that, and I think the most of them would not exceed three hundred dollars, they are occupied by the very poorest class, and I think that would deter any man who contemplated putting up a home for himself, I mean now a man in moderate means, I am not speaking of a wealthy man, I mean a man who would want to build a twenty-five or thirty hundred dollar house, that had his children and he wanted his children to associate with people something like he himself, I don't think that man would think of going into that neighborhood to buy property there, I think it would be in line for development only by the class of people who are developing it now.

Q. (*By the Court*) How far would the influencce of that class of development that is actually going on extend?

A. How far would that extend?

Q. (*By the Court*) Yes, how many hundreds of feet or yards or miles away would that influence reach?

A. I think that would be likely to extend along that whole section from Market street to the Cadmus farm, for this reason, that the class of labor that we are getting now in the mills is about that class. Now the only thing that will develop the property south of Market street will be more factories coming there, and the fact that there is so much land now developed in Paterson that you are not likely to get a very good class of people from Paterson to go over there. I can't see that there is any future for that property as a developing proposition, other than what might be termed the middle class of people; the people, as I said before, who would put up a two thousand or a twenty-five hundred dollar house or three thousand dollar house, that might come from Market street; but coming from the south end of the property I don't believe that you could sell that property there to any person other than to the people who occupy it now, such as Slavs, Hungarians and Italians and people of that class.

Q. Do you think that you could get a class of people from New York to live in that neighborhood?

A. Oh, no.

Q. Did you have any experience on the farm that you developed right there in regard to where people desired to live?

A. I did.

Q. Did you get much information from the people that you endeavored to sell lots to?

A. I did.

Q. Can you tell us some of your experience there, what the people thought about it?

Mr. Parker.—Well, I suppose this is competent, if it is not too remote in point of time, that is my only objection.

Admitted.

Q. When did you complete the sale?

A. The last sale, I sold the last twelve lots last year.

Q. What objections did you have from the people whom you tried to induce to buy there, concerning the river?

A. Well, I had a map of that property.

Q. All right, now tell us; you sold part of your property to the dyeing company that has erected the large mill there, didn't you?

A. Part of it, only a very small part.

Q. Now then, what did people say to you concerning the river when you endeavored to sell these lots?

A. I sold a few lots on block D and block E and I to people who put up small residences there, and some of them whom I sold lots to on the installment plan found out from the people who occupied the houses there and had built that they were sorry they built, for the reason that it was too inconvenient, that it was all right in summer time but not winter time when they struck stormy weather, and in order to go to Paterson to work they would have to leave their homes at least six and before six o'clock in the morning, and then they couldn't depend on the cars on account of the storm; so that I found, while I anticipated that I would get fifty dollars a lot for each lot after it was cut up, I had to lower my price and sell them

for twenty-five dollars a lot; then I sold them to people who bought six and seven and eight lots together for a little garden.

Q. What objections to the river were stated to you?

A. I found no objections whatever to the river, there were not, to my knowledge, any complaints made about the river; the only complaint that I heard from any of those people who bought, built and afterwards sold their homes, principally was about the inconvenience of the place.

Q. Did you sell some to people outside of Paterson?

A. I did, yes.

Q. Where did they come from?

A. They came from Hoboken.

Q. Did they have any objection later to it?

A. They said it was too far away from the city, and too far away from the church and everything, and they sold out and went back to Hoboken.

Q. You sold a piece of this property to Mr. Vanderbeek, you say, for an ice pond?

A. I did, yes, I sold Mr. Vanderbeek seven acres for $1,200, for an ice house.

Q. What became of the house that was on the property?

A. I sold that to a man named Mr. DeHaan for $1,600, and three acres of ground.

Q. Is that house still standing?

A Yes.

Q. Has it been changed in any way?

A. Yes, Mr. DeHaan sold to a man named Vanderkoi for $1,600.

Q. (*By the Court*) How did the price that you put upon lots fronting on the River road compare with the price which you put upon lots on the streets distant from the river?

A. The property on the River road I sold very rapidly, I had no trouble, I had very little trouble in disposing of the property facing on the River road, I sold everything there within a very short time after I developed the property; the only property that I got left on my hands was the property on Lee street running up on the hill.

Q. (*By the Court*) Well, the lots on the River road are larger than the lots on the street back of the River road?

A. About eleven feet longer.

Q. (*By the Court*) How did the prices that you got compare with each other?

A. On the River road I sold lots on block B, facing on the river, for fifty dollars a lot.

Q. (*By the Court*) Well, take the lots on Orchard street and Grove street which would seem to be, some of them, not quite so large and others about the same size?

A. The Orchard street lots from the River road stops at lot No. 12, and there is a line running from that right over to the railroad that was sold to Mr. Vanderbeek, seven acres in there sold to him for an ice pond, which he is using at the present time. The lots on Grove Street, I sold those lots, lots from one, on the River road, to No. 20 or 21 on Grove street, I sold those lots at an average of about, I sold them all to one man for I think about $30 a piece.

Q. Are you familiar with other attempted developments along this neighborhood, in Paterson and in the Bergen County side?

The Court.—Before you leave that, how far is this property from Market street?

Mr. Parker.—Right near it, isn't it?

Q. Can you tell us in feet, Mr. Lee?

A. It would be about three hundred feet south of the railroad bridge crossing there, Susquehanna railroad.

Q. (*By the Court*) The nearest point would be three hundred feet from Market street, is that it?

A. The nearest point would be about three to four hundred feet from Market street.

Q. (*By the Court*) And the trolley is on Market street?

A. Yes, sir.

Q. (*By the Court*) That is the trolley to which you referred?

A. Yes, sir, that is the trolley.

Q. What other developments in this neighborhood do you know of?

A. Well, there is Rosemont.

Q. Where is that?

A. That is situated on Broadway opposite the Country Club.

Q. That is near the Gelderman property?

A. That is near the Gelderman property, yes.

Q. How long have they been attempting to develop that?

A. Well, I think eight to ten years, eight years I think, about.

Q. What is the character of that property?

A. That is very fine property.

Q. How is it affected by the smell from the river?

A. Oh, I don't see that it is affected at all by the smell from the river.

Q. How many houses are on that property?

A. There are actually sixteen houses built on it.

Q. How large a property is it?

A. Oh, it is the old Van Riper farm, it would

take in probably, well, between thirty and forty acres, I couldn't be positive.

Q. Has it been a successful development?

A. I should not think so.

Q. What other developments have been attempted in this neighborhood?

A. There is the Grenaire property just east of this on Broadway, that is very good property, and the trolley line running by the door, that has been under development now for probably ten years.

Q. (*By the Court*) How far from the river is it?

A. Oh, it would be maybe two thousand feet.

Q. What other properties are there there, that you know of?

Mr. Parker.—Where is that located exactly?

Mr. Merrey.—On Broadway just east of Rosemont.

Q. What other properties do you know of there?

A. On that side of the river?

Q. Yes; Bellair?

A. Well, when you get down to Bellair, there is the Phoenix property, property that was formerly owned by Morelot, the silk dyer, after he went away they took possession of that and tried to develop it, laid it out in lots, curbed and guttered; it is there yet, hasn't been anything built on it. Then adjoining that is a forty-five acre tract belonging to the estate of R. M. Aikens, that was sold to Mr. Grenaire, forty five acres was sold for $300 an acre, and that is still undeveloped.

Q. Well, what other developments are there on that side of the river, that you know of?

A. Well, when you get down further towards

the Henderson tract, that is about the only one that is down towards the Outwater place.

Q. How about the Columbus Heights or Moffitt development next to the Outwater place; do you know about that?

A. Yes.

Q. Has that been a successful development?

A. It has not.

Q. Lots of open ground there yet?

A. Oh, yes.

Q. Well now, as you approach the Market street bridge from the Paterson side, have there been any developments there?

A. No.

Q. Well, do you know the Sherwood property?

A. I do.

Q. Where is that?

A. Well, that is lying all in on Thirty-first and Thirty-second, Thirty-fourth, Thirty-fifth and all those streets in along adjoining the railroad, the Susquehanna railroad.

Q. What is the character of the property?

A. Why, it is fairly good building lots, some of it is curbed and guttered, sewered.

Q. How does it compare with this property on the east bank of the river?

A. Oh, I should think it would be better property.

Q. Do you know what happened to the development of that?

A. I certainly do.

Q. What, tell us?

A. Well, there are two hundred and forty lots that Mr. Sherwood tried to develop there.

Q. How long has he been trying to do it?

A. Oh, twenty-five years.

Q. Is it affected by the river at all?

A. Not at all.

Q. How far from the river is it?

A. Oh, I should say four to five hundred feet.

Q. Does the trolley line pass it?

A. Within, some of the places within a block, some within two blocks, three blocks, four blocks, five blocks.

Q. Has that been a successful development?

A. Certainly has not.

Q. What happened to it?

A. At the present time Mr. Sherwood is allowing the City of Paterson to take it over for the taxes that is due on it.

Q. The city does own it, doesn't it?

A. The city does own it.

Q. Do you know the Brown & Thompson Parkside development?

A. On Vreeland avenue, yes.

Q. How far is that from the river?

A. Oh, that is two or three thousand feet.

Q. Is it affected by the smell from the river at all?

A. No.

Q. Is it on this Cedar Lawn trolley line that runs out to Market Street?

A. Yes.

Q. And is the direct course of travel to those farms?

A. Yes.

Q. How successful was that development?

A. Wasn't successful; it was all laid out in building lots and was curbed and guttered and sewered, and cement sidewalks laid down, and the sidewalks are there yet and the brush has grown over them, you couldn't find them unless you went looking for them.

Q. Is that a large tract?

A. Very large tract.

Q. (*By the Court*) On the east or west side of the river?

A. On the west side.

Q. And it is much nearer the center of the city?

A. Oh yes, very much.

Q. (*By the Court*) And the character of the ground, high or low?

A. Level ground, good ground.

Q. Was any hard attempt, was the attempt strenuous to sell those lots?

A. Very strenuous.

Q. Was there much advertising done?

A. They had advertising there, and had auction sales several times.

Q. And it has been unsuccessful you say?

A. Up to the present time.

Q. Do you know of any other tracts of land there that have not been developed successfully?

A. Well, there is several tracts of land, there is tracts down on Trenton avenue, between Trenton avenue and the Erie railroad, down towards Crooks avenue, Acquackanonk Township, and that way, they have been for twenty, twenty-five or thirty years, some of them, trying to develop them and sell them off, but they are there yet.

Q. What development has there been along Market street, Paterson, starting with this Market street bridge and running down about a mile?

A. Very little, very little development.

Q. Has there been development attempted?

A. Oh yes.

Q. Do you know about the Lynch farm?

A. At Haledon?

Q. No, the Lynch farm?

A. Oh, the old Lynch farm on Market street?

Q. Yes.

A. Yes.

Q. How long ago did they attempt to sell lots there?

A. Do you mean Lynch or Barbour?

Q. Well, either one?

A. Well, Lynch sold out to Barbour, and then Barbour, his first sale there was about fifteen years ago.

Q. Has that been a successful development?

A. No.

Q. The Barbour you refer to is Colonel Barbour, the thread manufacturer?

A. Colonel Barbour.

Q. (*By the Court*). The development, of course, depends upon the growth of the city, I suppose if the city grew very rapidly, why, then the development would be rapid, and if the city grew slowly the development would be slow, so far as the city itself is concerned; is not that so?

A. Not particularly so, for this reason that, now for instance where I live at Haledon, that property was all undeveloped and all farm lands when they started to develop this city property; the development is inclined to go towards the mountains, towards the higher land; Haledon in proportion and Totowa and Totowa Borough is building far more houses and developing faster than the City of Paterson is today, while the conveniences aren't so good, yet they develop there, and people will go there and buy and build a house much quicker than they will in Paterson.

Q. Now the developments to which you refer, and which you have been speaking about, along Market street, the Sherwood development and Brown & Thompson development, all lie between the main part of the City of Paterson and these farms across Market street bridge, don't they?

A. They do.

Q. Do you think that it would be necessary to make a successful development on those before the farms across the river can be developed?

A. From my experience I would say yes.

Q. Do you know, for instance, how long it would take you to get into the center of Paterson from the Cadmus farm, with no other conveyance than the trolley?

A. Well, it would take you twenty, about twenty to twenty-five minutes on the trolley, and it would, I should think, take you fifteen minutes to walk from Cadmus, or twenty minutes, take you about forty to fifty minutes.

Q. Are there many manufacturing places in the city of Paterson between Market street bridge and the center of the city?

A. Oh yes.

Q. Now, taking up the Henry Doremus property, is that any different from the Cadmus property?

A. Well, it is about the same class of property, only it is in better condition, it is kept in better condition, it is occupied by the owner and the Cadmus property is occupied by a tenant, and of course when you begin to compare grounds, from a farm standpoint, between the Doremus farm and the Cadmus farm there is no comparison, for this reason, that the Cadmus ground has been robbed; the Doremus farm has not been robbed.

Q. What do you mean by that?

A. Well, I mean this, now the Cadmus farm was rented to a tenant three years previous to Mr. Rheingold occupying the farm, and he got all that he could out of the ground; now then, I asked Mr. Rheingold if the ground hadn't been robbed; I said, "I suppose the ground isn't as good as it was some years ago"; "No," he said, "it is

robbed''; what I mean by robbing the ground is manuring from the top, what he is doing now, he is manuring from the top, instead of spading and ploughing up and putting manure in the ground, he is manuring from what we call the top of the ground, he plants his seeds and then manures from the top; that is robbing the ground.

Q. Are there any of those properties that might be considered ripe for development, between Market street and the Cadmus property?

A. I wouldn't think so.

Q. What do you consider them all?

A. I consider them all as a farming proposition, excepting when you get back to the rear end of the Van Riper farm and the Hillman farm, and those farms abutting out on to Market street, that might come in line for development sooner or later.

Q. Do you think that that back part of those farms is affected by the pollution of the river?

A. I don't see how it could be.

Q. Why is that?

A. Well, it is not near enough to the river to be affected by any pollution from it; I have driven over that place hundreds of times when I lived on the Paramus road, and I never noticed any effect.

Q. In the back you mean?

A. In the back.

Q. How would those properties be developed if a mill came there, where would the mill be located on the front or on the back?

A. Well, I should think the most likely place would be on the front; the tendency seems to be for the factories to get near the river front, where they can get rid of their waste water.

Q. You think some of them might go back on the railroad?

A. The Susquehanna railroad?

Q. No, the spur, the Susquehanna spur that is back there?

A. Why, back in Midland avenue where the farms crosses?

Q. Yes?

A. I don't think so; I don't know why they would.

Q. Now do you think that if the river were clean that you could rent those farm houses to a class of men who would like country residences, gentlemen?

A. No, I don't.

Q. Do you think you could bring people out from New York who wanted fine residences, and rent any of those farm houses to them?

A. I do not.

Q. What would be the objection to them?

A. Well, the objection would be this,—now as a real estate agent, if I made an appointment with a man or corresponded with a man in reference to a suburban property, almost invariably the first question he would ask, is that high, dry ground, and how far is it from the station, and what is the character of the neighborhood, and so on; now if I made an appointment with that man and brought him,—for instance he came in on the Susquehanna railroad, the very first thing that attracts his attention there is the ice pond and the ice houses, and then the National Silk Dyeing Company's dye works there, and if we drive up along the River road you see the chimney of the Forstman Huffman mill, isn't it, the big mill there that was recently built in Passaic, you can see that right from Market street; now any man coming in to look for a suburban residence the outlook, as soon as he would get out of the station,

I think would have a rather dampening effect on his desire to locate there.

Q. Do you think men from the mills and Garfield and around there, who receive fairly good wages, the foremen and supervisors and so on, would care to live in properties of this kind?

A. I don't think so.

Q. Why would they object to it?

A. Well, I know that the superintendents and owners of mills want to get as far away from the mills now, on account of the class of help they are getting, as they possibly can.

Q. Why is that?

A. Well, they are afraid of them.

Q. Violent people?

A. People that they couldn't reason with; it is not like it was twenty-five or thirty years ago. Take Paterson, for instance, twenty-five or thirty years ago we had a class of help there, English, Irish and German and Scotch people that you could appeal to and reason with and such a thing as violence was never thought about, but nowadays it is quite different; for instance where I live, at the Cedar Cliff Silk mill one of the Italians there, because something didn't go right he laid for the superintendent, not very long ago, and threatened to shoot him, that is Mr. Ulrich, and he tells me he wants to get away from there as far as he can; and with that class of people I don't know why any man would want to live near the mill, I should think he would want to get as far away as he possibly could, because with the strikes and disturbances we are having now it is not considered a very safe proposition.

Q. Do you think that the men who work in those mills could afford to pay seventy or eighty or ninety dollars a month for properties of this kind?

A. The men who work in those mills down there?

Q. Yes, the bosses or superintendents?

A. No. How much a month?

Q. Seventy and eighty dollars a month?

A. Oh no.

Q. What is about the limit?

Mr. Parker.—I object, I don't see that he is an expert on that.

Q. Do you find, in your experience in renting, that the bosses and superintendents in the mills usually live in houses that cost seventy-five and eighty dollars a month?

A. We rent to silk mill bosses and superintendents, and they are considered people who get about as high a salary as any, and I never knew of any of them that could pay anything like such rent as that.

Q. Going up the river a little further, crossing the property which you developed, and coming along to the Mary Van Saun property?

A. Yes.

Q. What is the character of that property?

The Court.—Has the witness given his estimate of the value of the Doremus property? He compared the land, the quality of the land, but he did not give us his estimate of the value.

Q. What do you think the Doremus property is worth per acre, about?

A. I put the Doremus property in at two hundred to two hundred and fifty dollars an acre; buildings four thousand to forty-five hundred dollars.

Q. Do you think that the selling value of those premises at present is affected by the condition of river?

A. The selling value?

Q. Yes.

A. I don't, for the same reason that I gave before, I don't think it makes any difference.

Q. Do you think that the rental value would be affected by the condition of the river?

A. Not in the least.

Q. Do you consider it purely as a farm proposition?

A. I do.

Q. Now, taking these farms as a whole, is there any reason why they should be more or less valuable than they were a few years ago, outside of the fact that some of them have been robbed, as you say; their location, for instance?

A. For farm purposes?

Q. Yes.

A. Why, I don't know just how to answer that question.

Q. Well, does the fact that they are right across from the city, and right near the development at Garfield help their value as a farm proposition?

A. The fact that those farms are near the city of Paterson, I won't say that has such a bearing on it as the fact that they are near the city of New York, and they are what would be called a short haul for a farmer, has an effect on them for farm purposes.

Q. You think the condition of the road has anything to do with their value?

A. Very much.

Q. What effect has that?

A. The condition of the road at the present time?

Q. Yes.

A. Why, it would have a very material effect. Now if it were not for the fact that those farms are near the city of New York, near the market, there is no reason why farmers should go over there and pay $600 for a farm, such as they are paying on the Van Riper farm, when he could go up to Pompton or Preakness or any of those surrounding places and rent farm land for about half what he is paying there. In other words, you can buy farm land up in those sections for fifty, seventy-five, a hundred and a hundred and twenty-five dollars an acre, you can buy excellent farms up there for a hundred dollars an acre, and why should a man pay six hundred dollars, if it wasn't for the reason that he is nearer the New York market, and that makes, in my opinion, those properties more valuable as a farm proposition.

Q. Do you know where farmers in that neighborhood deliver their goods, or sell their farm products?

A. To New York principally.

Q. Sell any in Paterson?

A. No.

Q. Where is Paterson supplied from?

A. Upper and Lower Preakness, Pompton, Little Falls, Ridgewood and Glen Rock and places out in that section.

Q. So you think the rentals which they are receiving on those properties are a little higher than the usual farm rentals?

A. Well, I was very much surprised when I got over there and found out the rentals they were paying, I had no idea you could get such rental for farms as they are getting, from my experience.

Q. As far as Paterson is concerned, and its effect on the value, does the fact that there are good

roads leading out of Paterson reduce these farms in value?

A. I think it would to an extent, for this reason, that those farms twenty-five or thirty years ago when Mr. Doremus and Mr. Van Riper and Mr. Kipp and Cadmus and all those people who owned those farms, Paterson then was their market; I can remember as a boy we had to depend on those people for our milk and our vegetables; the people on the upper sections, which are now inhabited and tenanted by farms, where we get our produce from now and our milk, the roads then were in such a condition that those farms were not as good a proposition then as they are to-day because,—for instance, Mr. Van Riper could get into Paterson at nine or ten o'clock in the morning, no matter how the roads were, while Mr. Campbell who lived at Lower Preakness, would probably drive in at three or four o'clock in the afternoon. Now that would make those farms over there more valuable then, in my opinion, for farm purposes than they are today, because Mr. Campbell's farm, which was away back with no good roads accessible to it, is just as good to-day for farm purposes as those properties are over there; the only advantage they have over Mr. Campbell's place is the fact that they are nearer the New York market.

Q. What do you think the Doremus farm should rent for as a farm?

A. Why, I should say that farm ought to rent for probably five hundred dollars an acre, five hundred dollars a year.

Q. Do you think that if the river was clean it would bring more than that?

A. I don't see why it would.

Q. Do think you could take the farm house and

rent it advantageously with a small tract of ground around it, as a country residence?

A. The house is too big, and it is one of those old fashioned houses that wouldn't appeal to a man, I think, that wanted a house of that kind.

Q. Do you think you could get more than $200 an acre for it if the river was clean, in selling it?

Mr. Parker.—He said two hundred to two hundred and fifty dollars.

Q. Two hundred to two hundred and fifty dollars?

A. I don't think so, I don't think so for this reason, I have got good land, that is equally as good as that for farm land, that I can sell for $100 an acre, and I don't know why that land should be worth more as a farm proposition than other land is.

Q. Are there other farms that are more convenient to the city of Paterson, surrounding it, than there are at this point?

A. Are there other farms more?

Q. Yes?

A. Very few now, they have mostly been taken up for development purposes.

Q. Go on to the next property above, that is the Richard Van Riper or Charlotte Van Riper?

A. Yes.

Q. What is the character of that farm?

A. Oh, it is about the same as the Cadmus farm.

Q. How much would it bring about?

A. It is not as good, in my opinion, as the Doremus farm. How much does it bring?

Q. How much should it bring, yes?

A. I should think about $500.

Q. Well, is it rented?

A. It is.

Q. Do you know what the rent is?

A. The man who lives on the farm told me he had a lease on the farm and he was paying $600 a year.

Q. Do you think that is a good rent?

A. I should say it was.

Q. Do you think they could get more if the river was clean?

A. I do not.

Q. Do you think it would be possible to rent out the house and small tract of ground around it for suburban property, residence, country residence?

A. And rent out the back for farms, is that your idea?

Q. Yes?

A. No, I think that would decrease the value of the whole business if they done that.

Q. How much do you think that should sell for, that farm?

A. I would place all those farms along there to be worth from two hundred to two hundred and fifty dollars an acre.

Q. Do you think that would bring more if the river was clean?

A. I do not.

Q. Now the Alyea farm or the Hillman farm as it is called, that is next above, isn't it?

A. Yes.

Q. Well, what is the character of that?

A. That is a very good farm, it is somewhat different from either of the other farms for the reason that it is a truck farm, it is a garden truck farm, and the ground in garden truck farming is much more valuable than the ordinary farming, for the reason that a truck farmer has to take great care of his ground to get results, and he has

got to feed it pretty well, and that is just what Mr. Hillman is doing.

Q. Is he putting in any extensive system there?

A. On the low lands running between the river and the road it is all planted in truck farming, and he is now installing an overhead irrigation plant there, and drawing the water from the slank.

Q. Well, is that a very expensive improvement?

A. Well, I don't know just how expensive it is, I can't say as to that.

Q. Is it such an improvement as a man, who expected to shortly sell his farm into building lots, would make?

A. Oh no, it is a permanent improvement, would be considered a permanent improvement.

Q. Is that farm a narrow farm?

A. I can't just answer that question; I went over it as a farm and as a truck farm.

Q. If it is three hundred feet in width would that affect it as a development proposition?

A. It would, in my opinion, because if you take a farm three hundred feet in width you could only get one street through it, and that would take a fifty foot street off that would leave you two hundred and fifty feet, and that would leave you lots on each side of one hundred and twenty-five feet deep.

Q. Go on to the George Van Riper farm, do you know that very well?

A. I know that farm very well.

Q. You knew Mr. Van Riper before he died?

A. Yes, sir, knew him very well.

Q. Is that about the same as the others?

A. About the same.

Q. Do you put about the same price upon it?

A. I would put about the same price on Mr. Van Riper's farm as a farm, yes.

Q. Is it ready for development?

A. Parts of it.

Q. Which parts are those?

A. The parts running out on to Market street would, in my opinion, soon come in for development.

Q. Little of it has been developed, hasn't it?

A. Yes.

Q. Do you think the river has any effect on that development?

A. Not in the slightest.

Q. Is the back end of that Van Riper farm somewhat similar to your farm that you developed?

A. At Dundee?

Q. Yes.

A. About the same property, only my farm was, some parts of it was a little nearer Market street.

Q. Now the Edo Van Riper farm?

A. The Edo Van Riper farm, yes, sir.

Q. What is the character of that?

A. That is a very good farm, all in good condition, twenty-three acres of ground, the buildings are all in fair condition, and I agree with the other witnesses, Mr. Mercer and Mr. Van Duyne, as to their valuation of improvements, I think they are perfectly fair.

Q. You think that is possible for to be developed at the present time?

A. I think that farm for development is entirely out of the question.

Q. Why?

A. Well, parts of it is low, and it is between the river and the slank. Of course I am talking now on this subject from a real estate man's point of view; my experience and all our experience has been that since the floods we have a certain line of land that we call the flooded district, and we find it very had to dispose of land in that dis-

trict; now I would put this in that same line as the flooded district, because this farm was all flooded at the time, and I think that would have an effect on it for developing purposes.

Q. It is located nearer to the section from which development will come, is it not?

A. It is, yes.

Q. Now, then, will it be feasible to develop one of those farms without developing the others?

A. Well, you mean to pick one out of the center?

Q. Yes.

A. Oh, no.

Q. Why is that?

A. Well, you couldn't get people to pass along and go through a long country road to their residence, where there is no lights or no improvements, no water, no gas or anything, you couldn't get them to do that; you couldn't develop that class of property; you have got to start your development from some place that is pretty near civilization.

Q. When these farms are finally developed into building lots how will that development come, from what direction?

A. Well, I would think it would mostly come from Market street.

Q. And go which way, south?

A. South.

Q. And which farms then would develop first?

A. I would say the George Van Riper farm would develop first.

Q. Would you expect any development from the south, from the Garfield section?

A. Not unless such a factory as that located there came in, I don't see any other reason why.

Q. (*By the Court*) Well, I do not quite see why you would not infer that what has hap-

pened in the past with regard to the factory development along the Passaic river should not happen in the future, unless you have some reason for supposing that the growth of Passaic is now going to be suddenly arrested; the history of that district for the last fifteen years, as I understand it, is that of a very rapid development for factories, along this river where they can get the water; now that has been going on constantly and almost, as I understand, without interruption. Now why should that be suddenly interrupted, why should the development come suddenly to an end? I do not quite understand that. As I understand, Passaic has grown more rapidly during the last decade than any other town in the State, and the reason of its growth, I suppose, is this great factory development. Now why should not that go on?

A. I answered that question, as I thought, by saying unless there was another factory or something similar to the one that has been located there.

Q. (*By the Court*) Is not there a strong probability that there will be another factory; in other words, as a real estate agent would you not infer from the past history of Passaic that it would continue to grow in this way?

A. I would think so.

Q. (*By the Court*) Well, then, that would impart a speculative value to some of these farms, at all events to those of the farms that are nearest the present development, would it not?

A. But that might be somewhat remote, and from a real estate standpoint a real estate man would not think of buying any of those farms there now and holding them in anticipation of

something coming, unless he was positively assured that it was coming.

Q. (*By the Court*) In other words, you would wait until the factory was actually built, would you?

A. Well, we can take past experience on that, we can take Mr. Philips' farm for instance, and the farm adjoining him; Mr. Philips never would have sold his farm had he known there was a factory coming there, but unfortunately for Mr. Phillips the real estate agents, who knew the factory was coming there, came and bought his farm; now if they didn't know that they wouldn't have bought his farm.

Q. That is, they were the men who actually located the factory?

A. Yes; Mr. Hughes is a very wide-awake real estate man, and I am quite sure he wouldn't buy Mr. Phillips' farm if he wasn't positively sure the factory was coming there; he didn't want it previous to that time.

Q. Now then, going across Market street, is there any difference in the value of the farms that you meet there?

A. That first one was the—

Q. Mary Van Saun farm?

A. That is right, Mary Van Saun.

Q. What is the character of that property?

A. That property is in very poor condition.

Q. I see there is a pond on the front of it?

A. The buildings are in very poor condition; there was a pond and there was formerly an ice house there; the ice house was blown down last summer, and it is allowed to remain there and presents a very unsightly appearance.

Q. Does that pond in front of it affect it in any way as a proposition for developing the farm,

hinder development of the farm into building lots?

A. I wouldn't think anybody would want to buy that farm for building lots.

Q. With the pond there. What is the value of that farm?

A. I put that farm down at about $100 an acre.

Q. What is its rental value?

A. Well, under present conditions I would say about $300 a year.

Q. What do you mean by the present conditions?

A. The condition the house is in, the condition the ground is in, it is not kept up; part of it is occupied by the son of the owner and the other part is occupied by the tenant.

Q. Do you think if the river was not polluted by the sewage of the City of Paterson it would bring a higher rental?

A. Not that farm.

Q. Would it increase the value of the farm for sale, in case the river was not polluted?

A. I wouldn't think so, not one cent.

Q. Now go to the next farm above that, Doremus farm?

A. Yes.

Q. That has been called the Zela Doremus property?

A. Yes.

Q. What is the character of that?

A. That is a very good farm, that is as good a farm as there is along the whole section, it consists of about seventy acres, the buildings are fairly good, old-fashioned farm buildings but they are all in good condition, the barns are in good condition and the land is good, it is a very desirable farm for what might be called a boarding

farm for horses, the pasture land on it is excellent.

Q. What would that be worth per acre?

A. I think that farm would be worth $300 an acre, $250 to $300 an acre down there.

Q. What should it rent for?

A. Well, it is renting for $600 a year,—it is renting for $780 a year, and I think that is all it is worth, I think it is a little more than it is worth.

Q. Do you think that if the river was not polluted by the sewage of the City of Paterson that it would bring a higher rental?

A. Higher than $780 a year?

Q. Yes.

A. Oh, no. I don't know how they get their money out of it at the present time, paying that.

Q. Do you think that it would sell for any higher than $250 to $300 an acre if the river was not polluted by the sewage?

A. I do not.

Q. Do you think that that could be separated, the front part of it with the houses, and used as a country residence?

A. The front part separated from the rear?

Q. Yes.

A. I think it might.

Q. Would the houses bring any higher rental as such?

A. Well now, you mean to take the house and rent it with five or six acres of ground, is that your idea?

Q. Yes, such as Mr. Mercer testified to?

A. I don't think it would bring any more rent as a whole for this reason, that then you would be getting your average acreage rent on the rear, and what little increase you might get in front I don't believe would make up the difference, would any more than make up the difference.

Q. This farm is getting a little away from the factory neighborhood, isn't it?

A. Oh, yes.

Q. And it is getting further away from the growth in from the City of Paterson?

A. Yes.

Q. Now what is the next farm above that, Gelderman's?

A. The next farm is the Gelderman farm.

Q. What do you know about that?

A. Well, the Gelderman farm is,—I wouldn't class that a farm, that, in my opinion, is what would be termed a suburban residence.

Q. How large a place is it?

A. Twenty acres, with an old-fashioned frame dwelling and outbuildings all in good condition; as near as I could say there is about five acres of the land running to the river bank, that is what would be called good land; all in the rear of that is brush land and some low lands that for farming wouldn't amount to much, but the front of the property facing the river, and the trees and everything would all give it the appearance of being a suburban residence, which I think it is.

Q. Is the house situated back some distance from the river?

A. Yes, I should say the house is probably three hundred feet, between two and three hundred feet, about three hundred feet, I should think, back from the river.

Q. Is it high?

A. High, yes.

Q. Is it likely to be affected by the smell, as the properties nearer to the dam?

A. Oh, no, no.

Q. What do you think that property is worth?

A. I think that property would be worth about

nine thousand or—eight to nine thousand dollars.

Q. That is presuming the river to stay in its present condition; now if you were assured that within three years the City of Paterson would cease emptying its sewage into the river, would you pay any more for it than that, or would it be worth more?

A. Oh, yes.

Q. How much?

A. Well, if I wanted it as a suburban residence, and I was assured that the river was going to be cleaned, oh, I think that it would be worth at least $12,000.

Q. What do you think the rental value of that property is?

A. I think it would rent for about $500 a year.

Q. Now if the river was not polluted by the sewage from the City of Paterson what do you think it would bring in rentals?

A. Not more than six.

Recess.

Q. Mr. Lee, taking up the Outwater property, what is the character of that?

A. That is a very nice piece of farm property, it is property adjoining what we call the Moffit development, the Moffit development is on the west of that property, and then there is the Henderson property somewhat east of that again, that is also being developed; the Outwater farm would, I think, be worth about $500 an acre.

Q. What is the Henderson property that you speak of?

A. That is a farm right directly opposite the River street bridge.

Q. Is it affected by the river?

A. No, not any more so than the Outwater property would be.

Q. Do you know what that sold for?

A. $700 an acre that was sold for, but that's a different property from the Outwater property because it has a very valuable frontage on the main road running to Ridgewood, and it is all very level land, there is really no bad land at all in it, it is all good land.

Q. How near the river is it?

A. Well, it would start about three or four hundred feet from the river.

Q. Is it nearer to Paterson?

A. Than the Outwater property?

Q. Yes.

A. About the same distance.

Q. And the facilities for getting to Paterson, are they any different?

A. Well, I think it is a little,—no, it is about the same as the Outwater property.

Q. The Outwater property is not at a great distance from the tract you are developing at Haledon now, is it?

A. About a mile and a half.

Q. Do you know the Lynch farm, or the Graham farm that Lynch bought?

A. At Haledon, yes, very well.

Q. What is the character of that?

A. There is seventy-two acres in the farm, there is thirty acres of it in mountain land, what we call trap rock, there is forty acres of it that is part rock and part low land, there is probably thirty acres of what you would call real good land.

Q. What was that purchased for?

A. The seventy-two acres was purchased for $23,000.

Q. And has been developed by Mr. Lynch?

A. It has, yes.

Q. Is that near to the center of Paterson?

A. Well, it is about a hundred,—the beginning of that property I would say would be about two hundred feet south from the corner of Burhans avenue and Haledon avenue, and that corner would be in the corner of the City of Paterson, that is the dividing line.

Q. Does Haledon lie as near as to the center of Paterson as these farms over the Market street bridge?

A. Oh, much nearer, I won't say nearer than the George Van Riper farm, but much nearer when you get down to the Cadmus farm.

Q. How long does it take you to run in on the trolley?

A. Well, I live above the Graham farm, and it takes me just fifteen minutes to get from my office home on the trolley.

Q. Do you know what time it takes the Cedar Lawn trolley to run from Market street bridge to the City Hall?

A. Twenty-three minutes.

Q. So that your trolley is eight minutes faster?

A. Yes.

Q. Do you know of any properties near the City of Paterson undeveloped that will bring a thousand dollars an acre, outside of the Clifton development?

A. Not that I can recall just at present.

Q. Now in developing a property that you would pay,—or it doesn't matter what you would pay, but in developing property how much more do you have to get after it is cut up into lots, than you paid for it, in order to make a fair profit, about?

The Court.—Well, that does not seem to me to be material.

Q. I will ask you then what is about the usual expense of developing a farm into building lots?

A. Well, we expect to get about two and a half times, per lot; for instance, we would buy an acre of ground, that we would get twelve city lots out of, if we paid $1,000 for that acre we would expect to get at least $250 a lot, to make anything out of it.

Q. Are you familiar with the Pennington property?

A. Oh yes, very familiar with it.

Q. Where is that?

A. That is on the Little Falls Turnpike, what we call the River road running from Paterson to Little Falls.

Q. Is it on a part of the river that is not polluted, just above the dam?

A. Yes.

Q. About what frontage has that on the river?

A. Oh, I should say five thousand feet.

Q. How much?

A. Five thousand, let me see—

Q. How many acres?

A. There were thirty-two acres.

The Court.—That property is so different from this, so differently situated in every way; what do you want to show?

Mr. Merrey.—It is about a twenty-three acre tract, it is on a fresh water stream, unpolluted, it was used by Mr. Pennington as a country seat in a sense, although it was very near the center of the city, and was available for almost any kind of development; I want to show that the price it was bought for was very low, and it bears its comparison to these other properties.

The Court.—I do not think it is going to help us very much, we have got so much light on properties that are similar to the properties here, but I will let you ask the question if you think it is important.

Q. Do you know how many acres there were?
A. I think twenty-three or twenty-four acres.
Q. What was the price?
A. $31,000.

Cross Examination by Mr. Parker.

Q. Mr. Lee, I understand that you now live at Haledon?
A. Yes, sir.
Q. Do you conduct your real estate business there or in Paterson?
A. In Paterson.
Q. What is the address of your office in Paterson?
A. 49 Hamilton street.
Q. Do you make a specialty of renting properties?
A. That is in my line.
Q. I asked you whether you made a specialty of it?
A. No, sir, I do not.
Q. How many properties have you under rent, of which you have charge at the present time?
A. At the present time I haven't more than five or six properties, for the reason that I have cut that out; I formerly had charge of all the Hinchcliffe renting properties and I found out that it took up so much of my time that I cut it out.
Q. Well, how many years ago was it that you cut out this part of your business?
A. About three years ago.

Q. Are you associated with anybody else in your business?

A. No, sir.

Q. What branch of the real estate business do you give your particular attention to?

A. Buying and selling property principally.

Q. Located in the City of Paterson or outside of it?

A. More particularly now in the city, formerly outside.

Q. Well, when you devoted yourself formerly to properties outside of the city how many years ago was that?

A. Oh, four or five years ago.

Q. And then for the last four or five years you have been giving your attention specially to the buying and selling of properties within the city limits?

A. And also property outside of the city limits.

Q. I know, but specially within the city?

A. Yes, sir.

Q. I suppose that that kind of real estate business involves the buying and selling of one, two or three city lots with buildings on it; there is nothing in the way of development doing in the City of Paterson, is there?

A. No, sir.

Q. So that your business has been dealing in improved city properties or lots within the city?

A. No, sir, not particularly; I say that we are always on the look-out for something on the outside that we think we can buy and develop, and I have been talking about that.

Q. I am talking about what you are specially interested in for the last four or five years, as a practical man?

A. Yes.

Q. That consisted in buying and selling city properties within the city limits, usually city lots with improvements on them or without them?

A. Principally.

Q. Now, are you familiar with the rents in Passaic?

A. No, sir, I know nothing about rents in Passaic.

Q. Well, when you gave a rentable value for the Nash property did you consider the returns that could be got by way of rent in the City of Passaic and vicinity?

A. No, sir.

Q. And so it was when you considered the rent of the Merselis property, you didn't consider the rate of renting in the City of Passaic and vicinity?

A. No, sir.

Q. How did you fix those values?

A. Why, I fixed them from my, partially from my own personal experience that I found out when I was looking for a residence of that kind; that is just the kind of a residence I was looking for, such a residence as the Merselis property and the Nash property, only I wanted something in a little better condition than they are in at the present time, and I found out from my own personal experience what I could rent property for, and what I did rent it for, and in that way I drew a line of comparison between the two.

Q. Now, when you made these investigations as to a house for yourself, was that in the neighborhood of Passaic or was it in the neighborhood of Haledon?

A. It was in Bergen County.

Q. Well, how far from the Market street bridge?

A. It was north of Broadway, what we call the

Fair Lawn, Arcola, Bellair and the Paramus road.

Q. Just look at this—I am not pretending that this is as accurate as a state map at all—here is Paterson up here, now this goes a little higher than a state map, I brought it for that purpose; here is Haledon, isn't it?

A. Yes, sir.

Q. Now in what section did you look for your residence?

A. Arcola, Fair Lawn, Glen Rock, and then the Paramus Road I should think runs along here (indicating on map) there.

Q. Up along Saddle River?

A. Up along Saddle River.

Q. All the points that you have indicated are say from Arcola north along the Saddle River?

A. Yes, sir.

Q. Now I understood you to say that in order to properly develop the twelve acre tract of Mr. Nash, that is the tract which is south of, I think what they call Randolph avenue, it would be necessary to fill up that pond, you did say that, didn't you?

A. Yes, sir.

Q. That is a clean pond, isn't it?

A. I wouldn't consider it such, not in a dry spell.

Q. Why not?

A. I think it would be like all ponds of that nature, it would become somewhat stagnant in dry weather and would breed mosquitoes and be very undesirable, unless it was a thoroughly spring water pond where there was a fresh spring running into it all the time.

Q. Isn't that a fact?

A. I wouldn't think so, not from my investigations.

Q. Do you know whether or not there are fish in that pond?

A. I do not.

Q. Well, if there were it couldn't be stagnant?

A. Not very well.

Q. What character of development would you assign to that twelve acre tract?

A. What character of development?

Q. Yes; would you put it in twenty-five foot lots or would you seek to utilize it for a larger and better residential character?

A. Why, I think I would consider that I would be almost compelled to develop it in about the same, with the same class, with the idea of selling it to the same class of people who are building on the south of the property.

Q. That means twenty-five foot lots?

A. Yes, sir.

Q. You wouldn't seek to utilize it for, well, what might be called suburban residences?

A. I would not for my own reason, no, sir.

Q. Well, now, I don't know what your reason is, what would it be?

A. My reason is this, that eliminating all pollution and not allowing that to enter into the question at all, my private opinion is that the Dundee lake or the Passaic river will never again be what it was, and that notwithstanding that the city of Paterson will eventually stop polluting the river, the river, on account of the amount of water that is going over it, going through that river now in comparison to what went through it twenty, twenty-five or thirty years ago, if we have an extremely dry spell it will become low on the banks, as it has been often; we know that we can go back twenty-five years ago, we can go back thirty-five years ago, at least I can, and I can recall when I

worked in the mill in Paterson we used to work in the morning from seven o'clock until ten o'clock at night and we never thought of such a thing as shutting down for the want of water, but the last two or three years I worked there, up to the time I was nineteen years old, we had to stop work some times two, three and four o'clock in the afternoon sometimes for lack of water, which would go to show that we were not getting the flow that we formerly got, and that has been kept on continuously, say for the last twenty-five years; now then, if that continues and we don't get the water we ought to get, in my opinion that river never will be a desirable place for residence, that is my private opinion.

Q. You don't mean to say that the river would be bare above the dam if the dam was kept up, do you?

A. If the dam was kept up, I certainly do.

Q. You mean to say that the river would become bare in spite of the dam?

A. Bare? Oh, I beg your pardon. I don't say bare.

Q. Would the river become low in that section above the dam, if the dam was kept at the regular height?

A. I think it would.

Q. Why?

A. Not right there, no, I don't suppose it would, not right at the dam.

Q. Doesn't the dam fix the level of the water from that point all the way up to Paterson?

A. Oh, no.

Q. Well, how much fall is there?

A. If you went along there some times in summer when we get a dry spell you would see.

Q. Do you know?

A. I do know. There are times there—

Q. Well, just give it in feet, I don't want you to extend on your personal experience; answer the question?

A. Oh, I would say there is times there when he could go out four, five, six feet.

Q. I ask you what was the fall of water from the city of Paterson down to the dam, if you know?

A. I don't know.

The Court.—Do you know how far the water backs up north of the Market street bridge?

Mr. Merrey.—Between Broadway and Thirty-third street somewhere.

Q. What value do you assign to that twelve acre tract at the present time?

A. $1,200 an acre.

Q. If the river were clean how much would it be worth, clean of defendant's pollution?

A. I would say $2,000.

Q. What is your reason for that?

A. What is my reason for that?

Q. Yes.

A. Because on account of the odors that are coming from the river at the present time; if there were no odors that property certainly would be more valuable.

Q. When you give the value of $1,200 per acre at the present time do you mean that to be the cash value that you would expect to get if you were selling that property to a person that was ready to buy?

A. I believe that property could be sold at the present time for $1,200 an acre.

Q. If you told that person or purchaser that the

river was certainly going to be clean in three years would that affect the market value of the property?

A. I would think so.

Q. How much?

A. Well, that would all depend, one person might take one view and one another. I would consider it in this way, if I considered that property worth $1,200 an acre today—

Q. No, I am talking about the cash price you can get for it, not what you consider it worth?

A. I told you I thought you could get $1,200 for it to-day.

Q. Was that based on the assumption that the river would be clean in three years or not?

A. No, sir.

Q. What was it based on?

A. Present conditions.

Q. (*By the Court*) If those conditions would continue, based on the idea that those conditions would continue?

A. Yes.

Q. Do you mean to say by that then that any puchaser that would come forward and purchase that property, in considering the cash value of it would assume that the present conditions would continue, unless he could see actually a change; is that what you mean?

A. I don't quite catch that.

Q. (Question read.)

A. I think so.

Q. Now take the Merselis property, I think you said that the whole land there was worth $1,500 an acre?

A. Yes, sir.

Q. That is the whole tract?

A. Yes, sir.

Q. What do you base that on?

A. Present conditions and the values of property adjoining and surrounding that neighborhood.

Q. You refer to the Kipp farm purchase of four years ago at $1,200 an acre?

A. Yes, sir.

Q. Do you know of any other sales there?

A. Nothing else for sale.

Q. Well, now, the Kipp property was not next to the river, was it?

A. No, sir.

Q. How far was it from the rear of the Merselis?

A. Not very far.

Q. Do you know whether it was on the other side of the street, Lakeview avenue, that is, on the west side of Lakeview avenue or not; I am talking about the Kipp property?

A. The railroad is on the west side of Lakeview avenue.

Q. Yes; well, now was the Kipp west of the railroad or not?

A. West of the railroad? No, sir.

Q. Can you point here on this State map where the Kipp property was?

A. (Witness did so) Kipp property would come in here some place.

Q. You mean back of Mr. Nash's place?

A. No, Mr. Nash's place, as I understand it, backs up on the Merselis place.

Q. Look at this sketch, it seems to be a page torn out of a county atlas; this shows the Merselis property?

A. The Kipp property lies right in here (indicating).

Mr. Parker.—He identifies the Kipp property as being some little distance back of the Nash property, and on the east and west side of Lakeview avenue about seven hundred feet south of the rear end of the Merselis property.

Q. Do you know what the property back of the Merselis property, called the Merselis Land Company, was sold for?

A. No, sir, I do not.

Q. This piece here between what is called Trenton avenue and Lakeview avenue?

A. I don't know.

Q. Do you think that the Nash property of twelve acres, with the river in its present condition, is worth as much per acre as the Kipp property?

A. As the Kipp property today? A. No, sir.

Q. You think the Kipp property is worth more than what was paid for it four years ago?

A. Yes, sir.

Q. How much more?

A. Four hundred dollars an acre.

Q. That would make sixteen hundred dollars an acre?

A. Yes, sir.

Q. Do you think the front of the Merselis property is as valuable as the rear, with the river in the present condition?

A. No, sir.

Q. What is the difference in value per acre?

A. Well, if you are going to cut it up into lots you mean now?

Q. No, no, I am talking about cash value; take the six or seven acres in the front and around the dwelling house, I ask you whether the land there

is worth per acre as much as the land in the rear per acre?

A. I wouldn't think so.

Q. Well, what would be the difference?

A. I think about $300 per acre.

Q. If the river were clean would the front part, of six or seven acres, be affected in value by it?

A. I don't think so; I think the extreme front might, take an acre of the ground in front or two acres in front it might, but not the rear.

Q. I am talking about the five or six acres in connection with the dwelling house there, and ask you whether or not if the river were clean the value of that five or six acres would be increased?

A. I wouldn't think so.

Q. Then you don't think that the river has any effect on the Merselis property?

A. I think it has.

Q. If it has an effect it is not a pecuniary effect, is that what you mean?

A. Oh, no.

Q. Well, what do you mean?

A. I mean this, that if you took the Merselis property as a farm property or whatever way you want to term it, and put five or six acres in there with the house that is on it, then you are making a farm proposition of it, but if you took the house off that and ran your streets through from Lakeview avenue to Dundee drive and cut it up then I don't think it would make any material difference.

Q. And that that acreage would be worth just as much today as it would be if the river was clean?

A. I would judge so, yes, sir, for that purpose.

Q. Your opinion is that you could develop and utilize the front of the Merselis property today just as well as you could if the river were clean,

and when I use the word "well" I mean from a financial point of view?

A. Well, I answered that question before by saying that I thought the first one or two acres of the front of the Merselis property might be affected by the river.

Q. (*By the Court*) Why not as much of it as was subjected to the odor as coming from the river?

A. Well, I think when you go back two or three hundred feet from the river, on that side of the river, the odor is not so perceptible.

Q. (*By the Court*) Well, but there is odor, I suppose under some conditions, more than two or three hundred feet back?

A. There probably is, yes.

Q. (*By the Court*) Then why should not the value of the land be affected as far back as the odor would go?

A. Well, I would consider the river, I am considering it from this standpoint, the river in its present condition in a dry spell people would be very dubious about going right out to the front of the river; I don't think that a person would care to build a nice residence on Lexington avenue, for instance, facing that condition.

Q. Now isn't it a fact that the River road there is the chief thoroughfare between Passaic and Paterson?

A. Yes, sir.

Q. And isn't it also a fact that the lots fronting upon that chief thoroughfare ought to be worth more as lots than the lots in any other part of the Merselis property, if it were not for the river?

A. Certainly.

Q. Well, wouldn't it interfere with the proper

development of the Merselis property as a lot proposition if the front of the property could not be developed into houses really of a better class than those that would be built in the middle and back of the tract?

A. I don't think so.

Q. You said that the Merselis house might rent for forty dollars per month, did you mean that it might rent for that in the present condition or under circumstances that the river was clean?

A. I think if the house was put in shape that it might rent for forty dollars a month at the present time.

Q. Do you think you could find a tenant for the house at that rate?

A. If they would put improvements in; they have steam heat, and if they would put bath and improvements in I think I could get forty dollars a month; I wouldn't say whether I would find one tenant or two tenants, but I think I could get forty dollars rent for it.

Q. You think you could get people to undertake to live in that house during the summer months with the river in its present condition, paying forty dollars a month, one or two tenants?

A. I think so.

Q. Now, if the river were clean what do you think would be the rentable value of that house, under the same conditions?

A. With five or six acres of ground?

Q. The same as you based your other forty dollar a month proposition on?

A. I think it would rent for $50 a month.

Q. Suppose you had two families, what could you get out of it?

A. Well, you wouldn't get that out of it if you rented it to two families; I am basing my opinion

on renting it to a party who would want to live there and have a little ground and occupy it as a suburban residence, and do a little farming at the same time.

Q. Now take the Nash house, I understood you to say that that house was worth $4,000 in its present condition?

A. $4,000 to $4,500, yes, sir.

Q. I think you also said it added no value to the rest of the property, is that so, that is to the eight acre plot?

A. I don't recollect saying that.

Q. Didn't you say that?

A. I have no recollection of saying that.

Q. Well, does it or doesn't it add value to the rest of the property?

A. I wouldn't think so.

Q. What do you say the eight acres are worth under the present circumstances, how much per acre?

A. I would say about $1,200.

Q. If you were to sell it you would sell the whole plot then for $9,600 and disregard the house, is that right?

A. Well, I certainly would disregard the house; if I was buying it I would buy it for developing purposes and would not consider the house.

Q. You think that the value of that property with the house and buildings on it, eight acres, is in other words $9,600, is that right?

A. Yes, sir.

Q. Now, why do you say the house is worth $4,000 then?

A. It is worth $4,000 in its present condition, I said.

Q. Do you mean it could be sold for $4,000?

A. Could the house be sold for $4,000, eliminating the ground, you mean?

Q. Yes.

A. No, sir.

Q. Could it be sold with the ground so as to realize $4,000 for the house?

A. No, sir.

Q. Then what do you mean by saying that the house is worth $4,000?

A. Well, I mean that a man who would go there to buy that property, if he was buying it for developing purposes he wouldn't consider the house at all, he would consider the ground as being worth $1,200 an acre; if he was buying it with the idea of living there he would consider it as an old fashioned house and would spend a little money and fix it up and make it a residential proposition; that is what I mean.

Q. Well, in either case you say he would not give anything for the house, he would only buy the land, pay for the land, is that it?

A. I put a value on the house and I put a value on the land; I said the land in my opinion was worth $1,200 an acre, and the house was worth $4,000.

Q. Then you added also that the house added no value to the land; now what do you mean by that?

A. The house adds no value to the land to a man who is going to buy it for speculative purposes.

Q. Let us consider not speculative purposes, let us consider the actual cash value of this property from the stand-point of purchaser and seller, let us know what you think it is worth, the eight acres and the house and the buildings?

A. I don't see that I can make it any plainer.

Q. Give the figure, repeat what you have said?

A. I said the ground was worth $1200. an acre,

which would be $9,600, wouldn't it? And I said the house would be worth about $4,000.

Q. Do you mean the property is worth $16,000?

A. I didn't say so, no, sir.

Q. I mean $13,600.?

A. I said I thought it would be worth that, yes, sir.

Q. Then the house does add value to the land?

A. Well, I have answered that question so often I don't know how to answer it again.

Q. I think you said that if the house was put in tenantable condition you could rent it for forty dollars a month, under present conditions; is that right?

A. Yes, sir.

Q. That would be $480. a year. Now, suppose the river was clean, and the house was put into fair tenantable condition under the same circumstances what could you rent it for?

A. I would say $600.

Q. Now I will ask you about the Terhune property; what did you say is the present rentable value of that property?

A. Oh, about $500. a year.

Q. How many rooms are there in it, do you know?

A. No, sir.

Q. Do you know whether there are improvements in it?

A. Yes, sir.

Q. There are?

A. There are improvements in it.

Q. Do you know whether it is occupied by the owner or not?

A. Yes, sir.

Q. How large a house is it?

A. Well, I should judge it is a house fifty feet front, I think something like that.

Q. How deep?

A. Well, there is the main building and there is a two story brick extension in the rear, I can't just give you the depth of it.

Q. Well, thirty or forty feet?

A. I think the main building would be thirty feet.

Q. Two rooms deep, is it?

A. Downstairs, yes, sir, I think it would be.

Q. How many stories is it?

A. Two and a half.

Q. Then there is an annex with kitchen and that sort of thing in it?

A. Yes, sir.

Q. So it is a pretty good sized house, isn't it?

A. Yes, sir, it is a good sized house.

Q. Ought to have fifteen to sixteen rooms?

A. I should judge so.

Q. Now I understood you say that the condition of the river did not affect the rentable value of that house at all, is that so?

A. Yes, sir.

Q. You thought that the house was poorly located for the purpose of renting on account of the situation of a road house, and the fact that the trolley ran in front of the door and so much carting and so many funerals; is that right?

A. Yes, sir.

Q. I think you said also that you didn't know any house in Paterson which was rented as a residence for more than $600 a year?

A. No, sir, I didn't, I don't think so.

Q. Well, do you know of any house that is rented for more than $600 a year in Paterson for residence?

A. Oh, I can't just recall them now, I presume there are but I can't recall them; yes, I do.

Q. I want to know whether your opinion as to

the limit of rentable value of houses in Paterson was based upon actual knowledge of the conditions or based upon the fact that you didn't have any knowledge of the conditions?

A. I consider I have some knowledge of the conditions.

Q. Tell us what house is rented for more than $600. a year, that you know of?

A. Well, the house we spoke of this morning, the house formerly occupied by John Reynolds, ex-president of the Savings Institution, is now rented for seventy-five dollars a month.

Q. That is nine hundred dollars a year?

A. Yes, sir.

Q. Is that the top notch of rents in Paterson, for dwellings?

A. Pretty near, yes.

Q. What is the top notch, give us that?

A. I don't know anything that goes much above that.

Q. Well, have you inquired to see?

A. Have I inquired?

Q. Yes?

A. Well, I am fairly well posted.

Q. I asked you whether you had inquired to find out?

A. No, sir.

Q. How far is the road house from the Terhune house?

A. Oh, probably four hundred feet.

Q. Which way, north or south?

A. North.

Q. How far is the cemetery from the Terhune house?

A. Well, there would be about three hundred feet between the cemetery and Wener's nursery, and the cemetery adjoins the nursery.

Q. How far is the gate of the cemetery from the corner nearest Terhune's house, corner of the cemetery nearest Terhune's house, do you know the distance from the Terhune house to the gate of the cemetery?

A. I should say between five and six hundred feet.

Q. Do you know of any other condition in the neighborhood of the Terhune house that would make it undesirable to live in, than those you have mentioned?

A. No, I don't.

Q. You have given us everything you could say against it?

A. I have given you everything I could say against it?

Q. Yes.

A. Well, I have given you what I think is facts.

Q. Well, how about the river?

A. I gave you that also.

Q. Do you know whether the water backs up, water from the dam at Dundee backs up beyond, north of the Terhune house, or not?

A. North of the Terhune house?

Q. Yes?

A. Backs up on the road?

Q. Oh, no, whether the northerly point where the water backs up from the dam is north of the Terhune house or not; I think they said it was between Broadway and Thirty-third street, so that would be so, wouldn't it?

A. I think it would.

Q. The result is that from some point north of the Terhune house down to the dam there is, in summer time at any rate, and during a large part of the year, still water?

A. Yes, sir.

Q. And the Market street sewer empties into the Passaic river?

A. Right under the bridge.

Q. Well, right under the bridge, which seems to be about three or four hundred feet north of the Terhune house?

A. Yes, sir.

Q. Now you said the Terhune house is not affected by the conditions of the river?

A. I think so.

Q. Now you told us about some unsuccessful real estate development enterprises, and I think you told us about one that you were interested in yourself, called the,—well the one that you engaged in at Dundee Lake; you had a map made in February, 1898?

A. Yes, sir.

Q. When did you sell off the lots fronting on the River road?

A. I sold twelve lots the year I opened up, which was in 1898.

Q. Who did you sell them to?

A. I sold some to a man named Scott, a man named Shear, and the other man's name I can't recall.

Q. How much did you get for the twelve?

A. The twelve lots, I think they averaged about $40 a piece if I am not mistaken, or something like that, forty to fifty dollars.

Q. Did you consider them the best land there?

A. I didn't until I sold them, and then I did, for selling purposes.

Q. And you sold them in the year 1898?

A. Yes.

Q. For forty dollars a piece?

A. Yes.

Q. You don't own them now?

A. No, sir.
Q. You didn't buy them back?
A. No, sir.
Q. When did you sell the others on the river?
A. I sold, well, I cleaned up that whole section within three years after I developed it.
Q. You mean you cleaned up all your purchase in 1898 within three years afterwards?
A. All along the river, not the other part, but all along the river front I cleaned up inside of three years, including the homestead.
Q. The other part, when did you sell that?
A. Last year.
Q. To whom?
A. City of Paterson.
Q. How much did you get for it?
A. $300.
Q. How much did you get for the entire tract?
A. I never figured that out.
Q. Did you make a profit or a loss?
A. I made a profit.
Q. What per cent, a hundred per cent?
A. Not fifty per cent, as much as I thought I would make though.
Q. Did you make a hundred per cent on what you spent?
A. No, sir.
Q. Fifty per cent?
A. No, sir, I don't believe I made over twenty-five per cent.
Q. I notice on this map that there are a number of streets laid out, like Grove, Orchard and Lee streets?
A. Yes, sir.
Q. Were they ever graded?
A. Yes, sir, Lee street was.
Q. Did you do it?

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A. Orchard street was, and the other side was, yes, sir.

Q. You did it, did you?

A. Yes, sir.

Q. Did you do anything more than grade it?

A. No, sir.

Q Didn't put in any water?

A. No, sir.

Q. Didn't put in curbing or flagging?

A. No, sir.

Q. Where were the seven acres you sold for a pond for the ice, were they next the railroad or where?

A. They were between the River drive and the railroad adjoining what is marked on there as the school house plot; here is the school house plot (indicating).

Q. The seven acres ran in on that triangle?

A. Starts in from the River drive, and takes a course this way (indicating on map), taking in about that seven acres on that section.

Q. If you drew a line south from the east end of the cove marked on the map, and divided that triangle in two, everything east of that would be what you sold for the pond?

A. If you draw a line from lot No. 25 on block A, over to lot 23 on block C that would be about, between that line and the River road, what I sold for a pond.

Q. That must have been very low ground?

A. Yes, sir, it was very low.

Q. Marshy was it?

A. Yes, sir.

Q. What was the character of the ground between that pond and the River road?

A. High, sandy ground.

Q. What did you get for the lots on each side of Orchard street, do you remember?

A. I think, if I remember right I think I sold those lots for, I am not sure whether I sold them for twenty-five or thirty dollars a lot.

Q. And on Grove street the same price?

A. On Grove street I sold the lots from No. 1 to No. 23 for about thirty dollars a lot each, sold them all to one party.

Q. Now you made all the sales of the property that you have been talking about there, that is the lots for the pond and the lots between the pond and the river within two or three years, didn't you, after you purchased the property?

A. Yes, sir.

Q. Now the back lots running along Lee street in a long line, how long did you hold them?

A. I held some of them up to last year.

Q. Is Lee street opened?

A. Yes, sir.

Q. What is the value of those lots now?

A. I sold them for twenty-five dollars a piece, and the last twelve lots I sold I got $500 for the twelve.

Q. Where were they located?

A. They were located, they were lots 15, 16, 17 and so on up to 23 on block I.

Q. High or low ground?

A. High ground.

Q. Does the ground gradually rise from the river back?

A. Yes, sir, nice slope all the way up.

Q. Well, Oak street, is that open?

A. Oak street?

Q. Yes.

A. No, that is away down.

Q. That is away back there, isn't it?

A. I sold the ground running from Summit street to Oak street in acres, I couldn't dispose of it in city lots so I sold it to a man in acre plots.

Q. When?

A. Oh, I think about four or five years after I opened it up, four years after.

Q. Then you cleaned out practically the whole tract, didn't you, within four years after you bought it?

A. No, sir.

Q. Well, practically all; you didn't have much left, did you?

A. I had about fifty lots left.

Q. That was not a quarter of what you had already?

A. Yes, sir.

Q. About a quarter?

A. I had about sixty lots left.

Q. This Lee street don't lead to anywheres, does it?

A. No, sir.

Q. And there is nothing east of it in the way of a settlement or a development?

A. No, sir.

Q. How far is the end of Lee street from the railroad?

A. Oh, I haven't any idea.

Q. Some distance, eh?

A. Lee street practically stops, so far as I was concerned, at Summit street; the other property running from Lee street east I sold in farm plots, sold to one man.

Q. Now you have told us about a number of developments or attempted developments in the neighborhood of Paterson that in your opinion have not been successful; you mentioned first the Rosemont?

A. Yes, sir.

Q. You say that has not been successful?

A. I wouldn't think so.

Q. Who is handling that?

A. I don't just recall the party's name now.

Q. Do you know what prices they are asking for their lots at Rosemont?

A. I have some idea.

Q. Well, how much do they want?

A. Oh, from, some of them on the Broadway front there as high as $500; of course when you go back you get down to $200 to $250.

Q. Take the Columbus Heights Improvement, you said, I believe, in your direct examination that you thought that was not successful either?

A. I did, yes, sir.

Q. Is that still being operated?

A. Well, I think that is pretty well closed out; but what I mean by successful operation, I mean successfully operated by making money out of it.

Q. You think that the backers of that enterprise didn't make any money?

A. I don't think they did.

Mr. Merrey.—I think they testified in the case about it.

A. I know I bought lots there for fifty dollars a piece myself.

Q. Where is Columbus Heights, north of the Outwater property?

A. Yes, sir.

Q. Between the Outwater property and the railroad?

A. Northwest, I should say.

Q. You said you bought lots there for $50 a piece; did you buy them at private sale or auction?

A. Private sale.

Q. From whom, from the original enterprise or from somebody who had bought?

A. From people who had bought and paid too much, thought they had paid too much.

Q. Was it near the river or far from it?

A. About two hundred feet or five hundred feet back from the river.

Q. Are the streets opened?

A. Yes, sir.

Q. Graded?

A. Yes, sir.

Q. Have they any curbing or flagging?

A. I think not.

Q. What is the nearest access to Paterson?

A. What we call the Moffitt bridge running over to River street.

Q. Where is the nearest station to the railroad, Erie railroad, how far from the property?

A. Why, Hawthorne I should judge, if I remember right.

Q. Of course the river didn't have anything to do with that development, in the way of injuring it?

A. No, sir.

Q. When was the enterprise first started?

A. Oh, in the nineties some time, I just couldn't recall now.

Q. When did you make your purchases?

A. About 1902.

Q. Do you still own them?

A. No, sir.

Q. You bought them for $50; what did you sell them for?

A. $75.

Q. Do you know what lots are worth along East Nineteenth street to-day?

A. Yes, sir; I can buy lots there for $150.

Q. Well, along Bergen avenue?

A. And down here they are worth $250.

Q. That is, you are pointing near the corner of Columbus avenue—between Columbus and Loretta avenues?

A. Yes.

Q. Are they worth more near the river than away from it?

A. Yes.

Q. Along Hawthorne avenue how much are they worth?

A. Couldn't tell you what the values are there.

Q. Passaic avenue what are the values?

A. Haven't any idea there.

Q. Are some lots worth more than $250 a piece?

A. I wouldn't think so.

Q. Well, I am talking about the values as they are understood in the real estate business?

A. No, sir.

Q. Then you think the range of values is between $150 and $250.

A. Yes, sir.

Q. Is the land level?

A. Yes, sir.

Q. And the lots are near the grade of the street?

A. Yes, sir.

Q. Any buildings, any houses yet?

A. Oh yes, quite a few.

Q. What character of houses?

A. Oh, ordinary houses, costing from $1500 up to $2500.

Q. How many do you think there are on the entire tract?

A. Oh, at a rough estimate I should say there is probably, may be thirty per cent of the tract built on.

Q. Why do you say that that development there was unsuccessful?

A. Because Mr. Moffitt lost money on it.

Q. I notice that you assign the highest value per acre for any land, or any of the property on the east side of the Passaic river, to the Outwater property, don't you?

A. Yes, sir.

Q. Why is that?

A. Because it is more in line for development than any other property.

Q. Oh, it is near Columbus Heights?

A. I don't consider the Outwater property farm property.

Q. You think then that is in what might be called development property, do you?

A. That can be opened for development any time, providing they will sell for a reasonable figure.

Q. You said, I think, that the Outwater property was worth from five to six hundred dollars an acre, didn't you?

A. Yes, sir.

Q. You also expressed the view that it would not be worth any more if the river was clean?

A. I would not think so, for the reason that the Henderson property, almost adjoining it you might say, sold for $700 an acre which, in my opinion, is a more desirable tract, was sold last year for $700 an acre, and the river doesn't affect that at all.

Q. Is that on the river?

A. No, sir.

Q. How far back from the river?

A. About four or five hundred feet I should think, on another road, and if that property was worth $700 an acre the Outwater property is not worth as much as that.

Q. What direction to the Outwater property was this Henderson property; look at this map D 4, and tell us about where it was?

A. Well, it doesn't show on this; this is Hawthorne avenue, and you come along here (indicating).

Q. Go south?

A. To the River street bridge; then you turn.

Q. Go east?

A. Right on the corner here of the Alyea ice house, and this is what we call the Fair Lawn road, and in here is the Henderson tract.

Q. What other of the complainants' properties do you think have passed from the character of farming property to development property, if any?

A. I don't know of any.

Q. And you are of opinion, therefore, that all the rest of the property on the east side of the river, outside of the Outwater property, must be regarded only as farming property?

A. Yes, sir.

Q. Except the Gelderman property, I think you said that was suburban?

A. I would consider that as a suburban proposition.

Q. You wouldn't look upon that as either development or farming, you would say that is suburban?

A. Yes.

Q. Now, take the George Van Riper property?

A. Yes, sir.

Q. Next to Market street. Market street is the main thoroughfare to Hackensack, isn't it?

A. Yes.

Q. And has the trolley on it?

A. No, sir, Broadway has the trolley.

Q. Well, it is a paved road?

A. Good road all the way through, yes, sir.

Q. Do you think that the George Van Riper property that fronts upon this Market street isn't development property?

A. That is just what I said, if I remember right I said that I considered the back of all those properties, the Van Riper property, the Hillman property and those other properties backing up to Market street as in line for development.

Q. But none of the other properties?

A. None of the other properties, no, sir.

Q. I understood you also to say that the different properties of the complainants, that is from Cadmus to Hillman, now Alyea, were worth for farming purposes anywheres from one to two hundred dollars an acre?

A. From where?

Q. One hundred to two hundred dollars an acre, as farming property?

A. From where?

Q. From Cadmus up to Alyea, or now Hillman?

A. No, sir.

Q. Well, what is the limit?

A. I fixed my values there from two hundred to two hundred and fifty dollars an acre.

Q. For what?

A. Excepting the Hillman property, and I put a little higher value on that for the reason that there is thirty-two acres in that, it is all desirable land, there is no poor land on it, and it backs right up into Market street, up to where the new Catholic church is built.

Q. Do you know what price Mr. Hillman got for the three acres of land that he sold on the rear of his property, fronting on Market street?

A. I do not.

Q. Would the price that Mr. Hillman got for

that back lot affect your opinion at all as to the value of the other farms?

A. It would not, no, sir, for this reason, that it was sold for church purposes, and usually property sold to charitable institutions and churches are sold for a nominal sum; people in the country are only too glad to get school houses and churches around them.

Q. You think the property of Mr. Hillman down near the road, the River Road and near the river is worth more or less than the rear sold to the church?

A. I think it would be worth less, certainly.

Q. And the further away from the river you get the more the value, is that it, or does Market street make the difference?

A. The further away from the river I get? Is that your question?

Q. Yes, do the values increase or decrease?

A. I should say probably nearer Market street would be more valuable than property on the River road, not as farm property, it wouldn't be worth a cent more.

Q. Now, taking the other farms that have no frontage upon Market street, do you regard the rear of the property as more valuable than the front, or otherwise?

A. Oh, no.

Q. Well, what is the most valuable portion?

A. The front, I would say.

Q. You also are of opinion that the value of all of that property is not affected at all by the pollution of the river by the defendant?

A. That is my opinion.

Q. Either renting or selling?

A. As a farm proposition, I want that to be distinctly understood.

Q. Well now, let us get a little clearer light on

that. You say as a farm proposition doesn't make any difference whether the river is polluted by the defendant or not; do you also mean to say that none of the property between the Cadmus property on the south, and including the Richard Van Riper and the Henry Doremus, those three pieces I think are all, are valuable at the present time for any other purpose except farming?

A. Are they valuable for any other purpose except farming?

Q. Yes.

A. I wouldn't think so.

Q. In other words, no value should be put upon the Cadmus property, the Richard Van Riper property or the Henry W. Doremus property from the stand-point of future development?

A. From the stand-point of future development?

Q. Yes.

A. No.

Q. And you have the same opinion, as I understand it, with reference to the Edo Van Riper, George Van Riper and Hillman, except so far as those properties front upon Market street?

A. That is my opinion; I might add, the future development is so remote that I didn't consider it in my opinion.

Q. You don't think the river has retarded the future development at all?

A. No, sir, not from my knowledge of it, and from what I have learned in going along the river I wouldn't think so.

Q. And isn't going to retard it in the future at all?

A. I can't answer as to the future, I don't know anything about the future.

Q. Now you said that Edo Van Riper's property, which lies between those two slanks and the river, was of no value for development purposes,

and was of very little value for farming purposes, didn't you?

A. No, sir.

Q. You said the property was so low it was in the flood district?

A. I said it was the most desirable farm, that all the land was good land.

Q. But that it was of no value for development purposes, is that right?

A. Yes, sir.

Q. In your opinion does the river, the pollution in the river affect the value of that property, the sale of that property at all?

A. I should think that Mr. Van Riper would be more affected than any other one along the river.

Q. Why?

A Because he is closer to the river, and he is right near where the sewage from Paterson comes in.

Q. You recollect when the Van Ripers utilized that property for ice?

A. Yes, sir; I don't know that that Van Riper utilized it, I am not quite sure, I think it was, I have an idea it was George Van Riper that owned the ice plant.

Q. Do you know whether Edo Van Riper did?

A. I think not; I wouldn't be sure about that.

Q. If the river were clean those slanks could be utilized for the purposes of ice, could they?

A. I don't know any reason why they couldn't.

Q. Do you know anything about a sale of lands in the neighborhood of Plauterville by a man named Johanning?

A. No, sir.

Q. Well, would the value that was realized for that property for development purposes affect your judgment as to the value of the Cadmus

property and the Richard Van Riper and Doremus properties for the same purposes?

A. Would that affect my judgment?

Q. Yes.

A. Certainly would.

Q. It would?

A. Certainly.

Q. If you knew that property owned by a man named Johanning, in the neighborhood of Plauterville, was sold within a year or so for $1,000 an acre, would that affect your judgment as to whether the Cadmus property, the Van Riper property and Doremus property were worth more than what you say?

A. That would all depend on how near it was to the properties you mentioned.

Q. Do you know Plauterville, do you know the region of Plauterville?

A. Not very well acquainted over there, no, sir; I know it, I have been all through there but don't know much about it.

Q. Is not that generally the same character of property as this which is found on the east bank of the Passaic river, when you get to the property in the neighborhood of the railroad?

A. Farm property, but you are going over more towards Garfield there, aren't you?

Q. It is a little nearer Garfield, but still it is not so far off?

A. You are getting nearer the development proposition than the farms you are questioning me on.

Q. Now I understood you to say one reason why the Cadmus property could not be used for development purposes was because it was so narrow?

A. I said it would have an effect on it for de-

veloping; I do not think any one person would care to buy the Cadmus property alone for developing purposes.

Q. Did you necessarily assume that if a person, if this property was of a character to be utilized for development purposes that a man must own practically all of it in order that it could come into the market for such?

A. No, sir, I didn't say nothing of the kind.

Q. Isn't it a fact that in your experience as a real estate man that frequently farms are bought for development purposes and held, and continued to be farmed for two or three years before they are utilized for such?

A. Yes.

Q. And they pay a price on a development proposition when in point of fact development does not arrive for several years after?

A. Not for several years, no, sir.

Q. Well, for how many years?

A. If you see a farm and you find out that the lands surrounding that farm is building up close to it you are apt to get your eye on it and put a value on it, and think that probably in two or three years by holding it it will then come in the market, you are apt to buy it, but if it comes to holding that property for several years, which might mean ten years, the man that would buy it with that prospective idea I think he would come out the loser unless he got an exorbitant price for his property when he developed it.

Q. You also expressed the view that none of the property along the river, on the east side, except possibly the Gelderman property, could be utilized from a suburban point of view; that is right, isn't it?

A. Yes, sir.

Q. Why?

A. Well, because people who are looking for suburban residences are not looking for a residence in such a locality as that. When we advertise a piece of property in any of the New York papers we get any number of inquiries, and about the first inquiry we get is, as I said before, how near the station, and they are very particular to ask are the properties high; the tendency of the people who are looking for property of this kind is to get the higher land, mountainous land, and they want to go far back into the country; you couldn't think of selling a property to a man who was coming in the country to look for a country residence where there are mills in sight, if you brought him where he was going to come in contact with mills or with the class of help that works in the mills he wouldn't consider that for a moment; the man who comes out in the country he comes out and looks over a piece of ground, if the ground suits him, if it is high ground and the locality is what he thinks is to his liking, the house may be there, he don't consider the house, he will tear down that house and put up another house, he will move the house off, or maybe leave the house for a lodge house and go back on the hill and build a house where he likes; he wants to get away from the city. You couldn't sell, you couldn't begin to sell and you couldn't name me, or no person can name me a suburban property that has been sold in this vicinity to any man who is looking for a class of property of that kind, near the smoke of the mills and the factories or near the city.

Q. Now I will test you on that. Have you ever been down to the south end of Newark, through what they call the Weequahic tract?

A. I am not talking about Newark.

Q. Have you ever been out to the north end of Elizabeth, on the other end of Waverly?

A. No, sir. I am confining myself to the class of people who come here looking for suburban property from real estate men in this vicinity.

Q. You seem to take for granted that no one would come to this locality for the purpose of a suburban residence, unless they are drawn, by advertisements, from New York City?

A. No, I don't say anything of the kind.

Q. What do you say?

A. I said when we advertise a suburban property or a farm that we think might suit a man, or when we answer an ad. that a man puts in the paper, a want ad., for instance I pick up the New York Sunday Herald and go over the want ads.; this man wants a farm, so many acres; if I think I have anything that suits him I will answer the ad. and he will answer me by writing and wanting a description of the property.

Q. Now, Mr. Van Duyne, Mr. Allen, Mr. Mercer, Mr. Karl and Mr. Coe, all men who are in the same general business that you are, state that in their view in case the river was clean the front portion of each one of those farms that we have been talking about on the east side of the river, with a lot of say five, six or seven acres, would come into the market and could be utilized for suburban purposes; do I understand you to say you differ from that altogether?

A. I certainly do, for this reason, that the approach to the property from the south to the north would, in my opinion, depreciate it for suburban property; when a man can go over on a road,—take Paramus road for instance, in Bergen County, a man can go over there and buy a house that is worth at least $7500, with forty acres of ground;

with eighty acres of ground for $14,000, and he is not coming over to a neighborhood of this kind and pay any such prices as you put on it. The Harding farm on one of the most desirable roads over there, thirty-five acres, with house with all improvements, sells for $7,500. Sixteen acres of ground on the Paramus Road has sold for $200 an acre, with all advantages, the main road running from the ferry out to Tuxedo Park, not over a half a mile from the trolley station running to Broadway, and about fifteen minutes drive from the Ridgewood station. Now there is where I get my ideas from; I am not guessing at it, I am forming it by comparisons with property, what we call desirable suburban residential property.

Q. You are making a comparison between the property on the east side of the river, and property which is located to the north of Paterson, do I understand it, in the neighborhood of this high ground you are talking about?

A. No, I am talking now about the Bergen County property, I am not talking about Paterson property.

Q. Where?

Mr. Merrey.—It is a mile or two north of the property in question.

Q. Along the Saddle River?

A. Yes, sir, along the Saddle river.

Q. You mean property near the Fair Haven post office?

A. No, sir.

Q. Fair Lawn?

A. Fair Lawn, yes, sir, there is some good property there.

Q. Where is this property you are talking about, this Harding property?

A. There were forty-five acres bought at Fair Lawn for $300 an acre.

Q. When?

A. About five years ago.

Q. Where is this property of Hardings that you are talking about?

A. On the Paramus road, the main road leading from New York to Tuxedo.

Q. How far from Ridgewood?

A. About a mile and a half, probably two miles from the Ridgewood station.

Q. North?

A. North east, yes, sir.

Q. (*By Mr. Merrey*). The station is north east of the property?

A. The property is south east.

Q. Of what?

A. Of the Ridgewood station.

Q. How far is it from Paterson?

A. Oh, about four miles.

Q. How far is it from the nearest railroad?

A. Mile and a half to two miles to the Ridgewood station.

Q. How far is it from the nearest trolley?

A. About a quarter of a mile.

Q. What is that trolley?

A. The new trolley running from Broadway to Suffern.

Q. Suffern is away up in New York, isn't it?

A. Yes, sir, but it runs from Broadway bridge right near the Geldermen property to Suffern.

Adjourned until Wednesday, May 22, 1912, at Chancery Chambers, Newark, New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS,
Complainant,

and

THE MAYOR and ALDERMEN of
THE CITY of PATERSON,
Defendant.

Before His Honor Vice Chancellor Stevens.

Appearances as before.

Transcript of shorthand report of the evidence given upon the trial of the above cause, on Wednesday, May 22, 1912, at the Chancery Chambers, Newark, New Jersey.

GEORGE W. SHERMAN, sworn.

Direct examination by Mr. Merrey.

Q. Mr. Sherman, where do you live?
A. Little Falls, New Jersey.
Q. What is your business?
A. Real estate.
Q. How long have you been in that business?
A. About twelve years.
Q. Do you follow any special line?
A. Mostly suburban property, farms and country homes.
Q. What has been the extent of your business?
A. Why, I have sold about a million and a half

dollars worth of suburban property in the last twelve years, especially farms and country homes.

Q. Have you been employed by any State Commission for the purpose of appraising farms?

A. I was appraiser for the Field Commission in 1906, taking in the Mountain View Reservoir site, consisting of ten thousand five hundred acres of land, and five hundred and fifty buildings.

Q. Did you have any assistance in that work?

A. Only my clerks.

Q. (*By Mr. Parker*) What was the name of the commission?

A. Passaic Valley Field Commission.

Q. That Commission reported on your work, did it?

A. Yes, sir, it accepted it.

Q. You haven't a copy of their report here, have you?

A. I haven't; I did have it but I didn't bring it down today.

Q. Have you examined these properties of the complainants in this suit, Mr. Sherman?

A. Yes, sir.

Q. In addition to selling farms have you had anything to do with the renting of farms?

A. Yes, sir, that is in my line of business.

Q. Do you do much of that?

A. Quite considerable.

Q. Have you examined these farms of the complainants?

A. Yes, sir.

Q. Now, we will take them up in order; the Terhune property—

The Court.—Were you one of those who went over the ground with Mr. Lee?

A. Yes, sir, I went over the ground with Mr. Lee and Mr. Clements.

Q. Now the Terhune property, what is the character of that?

A. Well, it is a stone house and about, I should judge half an acre of ground, facing the river.

Q. What is the character of that house?

A. Well, it seems to be in pretty fair condition, the house seems to be in pretty fair condition.

The Court.—Well, I have not heard a single dissent yet as to the evidence with respect to the condition of repair in which the properties are. This last witness that we had agreed with the witnesses on the part of the complainants on everything, so far as the condition of the river was concerned. Unless there is something that you wish to bring out, in addition to what has already been brought out, it seems to me that those points upon which the witnesses agree had better be left as they are.

Mr. Merrey.—There isn't any dispute, I think, about the character of the premises, I think they are mostly all agreed upon that. The only reason I go over that is to show that the witnesses have examined the houses and are familiar with them.

The Court.—I do not think that is necessary, I will assume that. I will assume, until it appears to the contrary, that the witnesses have all of them made a proper examination of the property as to which they are giving their judgment in reference to value.

Q. What is your idea as to the rental value of the Terhune house as the river is, in its present condition?

A. I should judge that that house would be worth from four to five hundred dollars a year, in its present condition and situation.

Q. And if the river were clear from the pollution by the City of Paterson what would be your idea as to its rental value?

A. Well, I never saw the river when it was very serious, but I should judge it would have a little effect on it probably during the months of July and August, may depreciate the value of the rent $100 a year.

Q. Now then, we will pass down the road to the Merselis property, twenty-three acre tract, just below,—well, before we leave the Terhune property can you give us an idea as to its saleable value?

A. Well, I should judge it was worth about seven or eight thousand dollars.

Q. And that is with the river in its present condition?

A. That is a good fair price for it, when the river is in any condition.

Q. Well, do you think the effect of the river cuts that down any?

A. I don't think it would.

Q. You think the situation is a good situation for property of that kind?

A. Well, it is not so desirable for homes of that class; that is about the only good house along there that is desirable to rent at present.

Q. Do you think the fact that it is isolated would have any effect on its value?

A. I do, I certainly do.

Q. (*By the Court*) Do you not think that if the river were, or this lake were in such a condition that people could boat on the lake, could fish in the lake and could go down to the shore and sit there, during the summer months, do you not

think that that would enter into the calculation of a man who wanted that kind of a house to live in?

A. I think it would have a little bearing on it, if you could get the river in that condition.

Q. (*By the Court*) Well, I am assuming that you could; it may be that you could not, I don't know how that is, but assuming that you could restore the river to the condition in which it was, say twenty years ago, when there were plenty of fish in the river, and when there were boat clubs along there, and when everybody who had a house there had his own boat and could go out on the lake and fish and row, do you not think that would make a difference in the value of the property, if it went to a sale?

A. Yes, sir, I do, if they could get the river in that condition that you speak of it would be worth more money, it would be better, more desirable for homes.

Q. Would it increase it very much in value?

A. I should think it would, if they made a development of one particular class along the river.

Q. Now, are you familiar with the section of the river which is not polluted, and which has deep water?

A. Very much.

Q. Where is that?

A. Well, at Little Falls we have a dam, we have deep water and sail naptha launches up as far as Singac and Two Bridges; at Pompton, I have property there, and we have deep water there ten, twelve, fifteen feet deep; we sail around there.

Q. Do you find that adds very much to the value of the property?

The Court.—How can he tell; they have never been without it there.

Q. Well, comparing it with other property in the vicinity which has not those privileges?

Mr. Merrey.—I want to show that here is a point above Paterson, on this same river, with deep water, opportunities to boat and fish, and no pollution in it, and yet that fact does not add much, if anything, to the value of the property.

The Court.—You can show that under similar conditions that property has not yet been developed.

Mr. Parker.—I suppose it is not very important testimony, considering the remoteness of both Little Falls and Pompton; Little Falls is away beyond Great Notch and Cedar Grove and Singac, and all low country all along there.

The Court.—Well, you can show the conditions existing there, if you want to.

Q. Do you know the condition of the river at Little Falls?

A. Yes, sir; it is pure.

Q. Is there much demand for the farms along the river there?

A. Not any more than the farms that are inland.

Q. Do they bring any higher prices?

A. Well, they have brought less.

Q. Well, as a general rule?

A. As a general rule they haven't any higher valuation.

Q. Now then, are you familiar with a very fine house right at Little Falls, on the river?

A. Mrs. William H. Beatty owns a nice house there worth $30,000.

Q. What kind of house, describe it?

A. Sixteen room house with three bath rooms, has four and a quarter acres of land, laid out with shade trees and drives, and coachman's cottage.

Q. Is it on the river?

A. Right near the river, within about three hundred feet.

Q. Is that place for rent?

A. Yes.

Q. Has it been rented by you?

A. I have rented it.

Q. What did it bring?

A. We rented it out for $100 a month, for a year, $1,200 a year, the summer season $150 a month.

Q. Do you have difficulty getting tenants at that price?

A. Have quite a job getting them at that; one season it stood idle.

Q. Is there another fine house there that burned down, that you know of?

A. Formerly the hotel at Singac, the Mansion House.

Q. Did you rent that?

A. I lived there one time for three years, rented it.

Q. Before there had been a hotel there?

A. Before it had been a hotel, yes.

Q. How large a house is that?

A. Large house, finished interior with San Domingo mahogany, cost $18,000 to build, situated on three and a quarter acres of land, river front about four hundred feet.

Q. What did you pay for that?

A. $25.00 a month rent, and option to buy it.

Q. Did you finally buy it?

A. I transferred it to Senator Hinchliffe.

Q. And it has since burned down?

A. Since burned down.

Q. Do you find that rental values are of like character in the neighborhood?

A. I have a number of other houses on my list at the present time, that is, some of them are situated on the river and the others are accessible to the river; the property extends to the river which I own myself, I own four farms at the present time that run down to the river, and I have three houses with all modern improvements vacant at the present time, and the rentals are $30 a month.

Q. The character of the houses?

A. The houses are all modern houses with improvements, bath room and acetylene gas, Kewanee water system and steam heat.

Q. (*By the Court*) How far is that from Little Falls?

A. One of them in Mountainview, adjoining two stations, between the Delaware station and the Greenwood Lake, about three minutes walk to either station. On the corner of the Pompton Turnpike, right in Mountainview, the old Mead homestead large house, four acres of ground, $30 a month, and will be idle the first of June, the party that is living in it is going back to Newark because they can get rent cheaper, $18.00 a month, and they don't care to pay $30 a month.

Q. What is the character of railroad there?

A. Twenty-five trains on the Greenwood Lake to New York, and twelve on the Delaware, we have more on the Delaware but only about twelve stop there at Mountainview, but on the Erie, Greenwood Lake, they all stop.

Q. What is the time to New York from Mountainview?

A. About fifty-two minutes; we have the river there, good boating and bathing.

Q. Is there any pollution of any kind in the river?

A. No, sir.

Q. Have you any other farms for rent?

A. I have another one at Pompton Lakes on the high lands, elevation six hundred feet, with all modern improvements, access to the river, $30 a month.

Q. (*By the Court*) What is that, the old Ludlow property?

A. No, sir, this is down this way a little further, below the dam, on the deep water near the lock, it is the Post farm, I bought eighty acres, remodeled the house and put all improvements in it, and put it into four acre tract to rent.

Q. How near is that to the railroad?

A. Three quarters of a mile to three railroad stations, Pompton Plains, Pompton Lakes and Pompton Junction.

Q. (*By the Court*) Very near the Ludlow house?

A. Yes, only a quarter of a mile, probably a fraction over.

Q. You bought eighty acres there?

A. Yes.

Q. What did you pay for that?

A. Six thousand dollars for it.

Q. (*By the Court*) How long ago?

A. About two and a half years ago.

Q. Have you any other farms in their neighborhood?

A. Yes, sir, I have a number of acres over in Pompton Plains at the station, where I am developing.

Q. Is that on the water?

A. No, in Pompton Plains, right at the station, near the water, about half a mile; and at Moun-

tainview have a large farm there on the river, and have a tract of land in Pequannock, on the river.

Q. Do you find for properties of this kind that you can get a rental of about eight per cent. of their value?

A. No; we couldn't get that, couldn't seem to get that; this year it is very dull in the country, my experience; I spend a lot of money advertising and I can't seem to get hold of anybody to rent those three properties; two of the people moved out of them, one to Newark and the other to New York City; one of my tenants rented a place on Mt. Prospect Street, here in Newark, for eighteen dollars a month, all improvements.

Q. You have been, however, very successful in the past in your operations, haven't you?

A. Yes, I am successful yet, I don't get cold feet because I can't rent two or three houses, I am doing business right along all the time.

Q. You made a great deal of money out of farm speculations?

A. Yes. I made more I guess than anybody in North Jersey, in the last ten years.

Q. You think you have sold more farms than any man in North Jersey?

A. I think I have; I have sold at least five hundred different properties.

Q. How far do you come down in your range towards Newark?

A. I don't come down much further than Montclair, there are enough agents down there without me, after I get down there that is my line.

Q. (*By the Court*) Well, that rather indicates that all that section of New Jersey around Pompton has been somewhat in demand, does it not?

A. It has been in demand, yes, sir, through my energetic ability in advertising, I brought them out, where other people has laid down and busted up.

Q. You do advertise in all the New York papers?

A. I am the largest advertiser in North Jersey, I spend five to ten thousand dollars a year in advertising, and that is small ads, in large development tracts, specially farms and suburban homes.

Q. Take the Merselis tract and tell us what you think the rental value of that is?

A. Well, it is an old stone house, has low ceilings, it is a general old fashioned farm house, I should judge the house, with the number of acres, would rent as any other farm, for about twenty-five dollars a month.

Q. What do you think about the sale value of that farm?

A. Well, on that side of the river the property seems to be under immediate development, and I should judge that land in there would be worth twelve to fifteen hundred dollars an acre.

Q. To develop?

A. Yes, to develop, not to farm.

Q. Do you think it is damaged very much by the condition of the river?

A. Well, I didn't see anything of it; I never saw the river as some people has put it; I have been down through that way all times in the summer, spring and fall, but I never took any particular notice of the river being so bad, although I believe it is bad, from what I have heard, but I don't think it would have any bearing on this property at the present time as to its valuation.

Q. Do you think that if the river was clean it would increase that rental value any?

A. Not very much, because they haven't much frontage there, not so very much frontage; it might affect the frontage for a hundred and fifty or two hundred feet deep.

Q. Are you putting this rental value of $25. a month on your experience in renting similar farms?

A. As a farm rent, yes, sir.

Q. Do you think anybody would desire a place of that kind as a suburban residence, without considering the farm?

A. Not of that kind, no, sir, they couldn't use it for anything else only farm.

Q. What is the objection to it as a suburban residence?

A. Why, it is an old fashioned house, old, low ceilings, hasn't any modern improvements, is not very close to the station, good many things about it that would not be desirable; for a New Yorker or some man who came out there to live, they generally want a house that is up in pretty good condition, all modern improvements, when they come out in the country to live, and accessible to the station, and in a section where there is desirable neighbors and sociability.

Q. Do you think that the development of that neighborhood would have any effect on that class of people?

A. I think it would.

Q. You saw what the development was there?

A. Yes.

Q. What is it?

A. Well, there are houses in that vicinity that look to me as though they cost about fifteen or twenty hundred dollars, that is, further down, that is the general run of the cost of them, as near as I could figure it out by looking at them.

Q. Now go down to the Nash property, taking first the small cottage there, what do you think that is worth, with an acre of ground?

A. Why, I understood that property only consisted of about half an acre.

Q. Half an acre?

A. Or quarter of an acre, something like that, it is a very small tract.

Q. Yes, quarter of an acre?

A. It is a small cottage, kind of Queen Ann cottage, I should judge the house would cost, without improvements, about eighteen hundred to two thousand dollars.

Q. What do you think that ought to rent for?

A. Without improvements it would rent for about twelve to fifteen dollars a month.

Q. What effect has the river on that rental value?

A. I don't think it would have much, with the kind of tenants that would live there, the kind of tenants that would live there would be very apt to work in the mills around.

Q. What would the property sell for?

A. As it is?

Q. Yes?

A. Might sell for $2.500.

Q. What effect has the river on that?

A. Well, as far as I can see I can't see any effect whatever.

Q. Now take the double Nash house, what is the rental value of that?

A. Why, that is renting at now, I believe, for about twenty-two dollars, something like that, twenty or twenty-two dollars a month, with two families; it is an old fashioned house with an extension, main building is two full stories high and extension story and a half, and it is dilapi-

dated, the rear of it, the kitchen is all tumbled down, and I think they are getting a good fair rent for it at the present time at eight, ten or twelve dollars.

Q. Do you think that cleaning the river would raise the value of that?

A. Not unless they improved the property.

Q. What do you think the value of the house is, with the plot?

A. Why, I don't know how much ground would go with it.

Q. About an acre, twelve lots?

A. About an acre?

Q. Yes?

A. Why, it would be worth from three thousand to thirty-five hundred dollars with an acre of ground.

Q. What effect would the cleaning of the river have on that, would it make it more valuable?

A. Not much; it is on the street going away from the river.

Q. Now then the big house itself, say with about eight acres of ground around it, Mr. Nash's house there, his own house in which he lives, what would be the rental value of that?

A. With the eight acres?

Q. With the eight acres?

A. Well, I don't know whether that property has improvements in it or not, I didn't go in that house.

Q. What is the condition of the house from the outside?

A. Why, it is very poor from the outside, paint all off it, needs a whole lot of repairs, and the ground is naturally low and needs to be graded and filled in, and the old buildings in the back all tumble down, one of them has been burned half

down, a lot of other old buildings there that is not used, haven't been used for a number of years, it is not a desirable country home in present condition; it is most dilapidated property in the whole list, as near as I could see.

Q. What would be its rental value, if it is not improved?

A. As it is?

Q. Yes?

A. About $25. a month would be a good fair price for it.

Q. And if the river was clean from the pollution how much would it be advanced?

A. In the same condition?

Q. Yes?

A. $25. a month, with the house the way it is and the ground.

Q. What should that eight acres and the house sell for, in the present condition of the river?

A. Well, if you wanted to take the house out of the way so that you could get in to develop there you could probably get ten or twelve hundred dollars an acre for the land; the land, in my opinion, isn't as desirable as Merselis' for development, because it needs a lot of filling to get it up to a grade.

Q. Is that expensive?

A. Sometimes it is very expensive if you have to cart dirt very far.

Q. What would that price be advanced in case the river was clean, not polluted?

A. It would probably have a tendency, as I stated before if the river was clean we probably would get a little more money for the properties, if it was like you had it twenty years ago.

Q. How much more, could you say?

A. Why, if we used it for suburban residences

and built a certain class of property where they would all conform with each other probably it would increase the value about thirty per cent., but if they should go on and develop this property into factory sites and cheap class of tenements I don't think it would increase it one dollar by the river being clean.

Q. If that sort of development came on the adjoining property could it be developed for a nice class of residences, as you first spoke of?

The Court.—Have you not got the kind of development on the adjoining property?

A. Yes, we have.

Q. (*By the Court*) Now suppose that that kind of development—it is not either the Hungarian shanty nor the palatial residence, it is a class of houses, as I understand, which cost from fifteen hundred to three or four thousand dollars, that is the way I understand the evidence, now suppose that that class of development continued?

A. I don't think that would increase it very much, because that class of houses would have a tendency to get tenants that would not want to pay over fifteen, eighteen to twenty dollars a month, and they wouldn't have very nice homes along there.

Q. (*By the Court*) But then when people came in there and wanted to make a selection of a building lot, would not they be more likely to select a property near the lake than they would property away from the lake, would not that be an element in their purchase? Suppose they saw two lots in all respects the same, except in respect of proximity to the lake, the lake being pure, now in the majority of cases would not they be likely to select the lake, if they had a choice?

A. There are a great many people would prefer

to be along the river, and then there are a great many that are troubled with throat trouble, a great number afflicted that way, and they don't want to be out on the river at all, they want to be on the higher lands.

Q. (*By the Court*) You do not think that that would increase the demand?

A. It doesn't do it up our way, it doesn't make any material difference in the valuation from Little Falls to Pompton Lakes whether you are on the river or off it; in fact we get more money for some of the farms back, get better land.

Q. (*By the Court*) Is not the land rather low there; I do not know what the character of the land at that precise point is, but as you go west along the Passaic the land along the river is very low and marshy in places?

A. The land along the river from Little Falls to Fairfield, going around that way, is above high water mark on the left hand side, they are all good farms in that section.

Q. (*By the Court*) That is on one side?

A. After you get above Singac and go right around towards Fairfield they are all good farms, all under cultivation.

Q. (*By the Court*) Is that so on both sides of the river?

A. On the other side of the river down near the bridge and the Pompton Turnpike the land for about five hundred feet back from the river is low, marshy land some places, and after that it begins to rise up so that it is under cultivation.

Q. (*By the Court*) Well, the marsh land along the river bank would, of course, make it undesirable to live along the river bank?

A. On the one side of the river, the west side it is low until we get up near Wilkins' driving

park, up along Two Bridges, then it is all high land in there, good desirable property, road runs right around the river, right around Mountain View property.

Q. How is it along the Pompton river?

A. Pompton river is generally classed as high lands all the way up, all runs up, slopes down gradual slope to the river, but general high ground all along the river.

Q. How is the condition of the water there during the summer?

A. The water up there is fine, better than it is at Little Falls; in Little Falls we get both the rivers; the Passaic river is quite muddy in summer, there isn't much water in July or August, the Water Works pulls the bottom out of the river there in the summer, in July and August and the water is very low and never running over the dam, and it naturally purges and there is a little aroma to that some times.

Q. There is in all fresh water lakes, where the supply runs short in the summer, a certain amount of odor?

A. Yes, when it is purging and low any water will smell.

Q. Now take up the twelve acre piece of the Nash property between Randolph avenue and the River Drive, with no house upon that, what is the sale value of that at present, with the present condition of the river?

A. Well, the present condition is very crude, there isn't any improvement there, as I can see, and it has got a swamp in front of it, some people might call it a lake, but it looked to me to be a derelict lake if it is one; it is a nice desirable piece of ground, runs up high, has got a nice elevation, and the present price in that particular

vicinity, I should judge it was worth a thousand dollars an acre, that would be a good fair price for it.

Q. If the river was freed from the pollution would that increase its value?

A It might have a slight tendency.

Q. About how much would you think it would increase it?

A. Well, it is according to the development; if they continue the same development as they have in that vicinity now I should not think it would make much difference, might make ten per cent.

Q. You went back and saw the character of the development there?

A. Yes; if they are going to build all small houses along there, all tenant houses, I don't believe it is going to make much difference in the valuation.

Q. Is there much grading or change of any kind to be done to the surface there, in order to make it available?

A. If they want to lay it out in streets it will cost a little money; if somebody wanted to buy it for a tract he might get through it cheaper.

Q. You mean if somebody wanted to use it as one tract for one house?

A. Yes, I think he could lay it out with less expense, as far as streets are concerned, wouldn't probably want so many streets, as much grading and everything done.

Q. Taking up the properties on the other side of the river, that is the Cadmus property and Van Riper property, Henry W. Doremus property, Peter Alyea or the present Hillman property, George Van Riper property and the Edo Van Riper property, what have you to say about those properties, the character of them?

A. Well, the character of them is principally for general farming, there isn't anything else to be done with them at the present time.

Q. And what is their general value?

A. I should estimate the value of those farms, including the buildings right through, from two to three hundred dollars an acre, and that is a good fair price, more than we can get up our way for farms.

Q. Do you think there is any prospective value there now?

A. Not now, no sir, they are exclusively farms and nothing else, you couldn't get anything more out of them.

Q. What do you think their rental value is?

A. I should judge they would be worth from four to six hundred dollars a year, some of the farms are very small, a seventy-five acre farm should rent for about six hundred dollars.

Q. (*By the Court*) Take the land that lies in front of the Ludlow house, that stands on the hill, then there is a plain looking towards the west; now take that—and it is farm lands, as I understand it, exclusively, I have not been up there very recently, but I used to be very familiar with it, still I do not know what developments have taken place lately, but take that land as farm land, ho wmuch would that land sell for?

A. We are buying that land in there for about from seventy-five to a hundred dollars an acre.

Q. (*By the Court*) That is good farm land?

A. That is the best farming land in the country, it is all bottom soil; the old river I suppose flowed in there, they call it bottom lands, especially now at this time; it has been dry as long as I have known it, for thirty years, but it is usually called bottom land, and it is a rich soil for farm-

ing purposes, truck farms. My farm that I own down below there runs down to the river, and down on the river I have twenty-four acres, a tract there between the Black Oak Ridge Road and the river which is the finest land in the country for truck, soil, lettuce beds and such things as that, it is near James A. Graham's estate, and on the high lands the same property is not as desirable for farming as the low ground.

Q. Do you think it is possible to get any more for those farms if the river was clean?

A. They wouldn't bring any more money to the farmer, I don't think he would pay any more for them.

Q. Do you think the condition of the river is holding back development into building lots?

A. I don't.

Q. Do you think these properties could be developed as suburban residences for gentlemen?

A. Not at the present time, it is too remote, we have too much vacant land around; you couldn't develop all the property that people would like to have developed, it looks good on the paper, but you couldn't sell it.

Q. Is there anything that holds this back, outside of the river?

A. I think so; there isn't any stores around there, there isn't any improvements, no water, and the railroad is quite a little ways away, and schools, and like that; it is undesirable for development at the present time; you have got to be very near a station, people won't walk over five or ten minutes, they want to be on a direct line from New York. From the City of Paterson, if you looked to the City of Paterson, for your trade I don't think you would get so much out there, it is further away than Little Falls, it takes longer to get there;

we ride from Little Falls to the City Hall in twenty minutes, right from our town, and we have got high land, fine lots, we have the finest elevation in North Jersey at Little Falls, we have a hundred feet above the river at Little Falls.

Q. You came in on the trolley in twenty minutes?

A. Yes, right from the City Hall; have a trolley every fifteen minutes, and Saturdays ten minutes, and we will have more after a while, and I think it is more desirable up there to own a home than it would be away over there across the river, better elevation and healthier, and you get rid of this smell in the river.

Q. Did you notice the class of houses which were being built near the Cadmus property?

A. I did, yes, sir; I went up on top of the hill there, on a crude street that has just been ploughed up, and we went over back by that factory and saw a number of those little cottages and they are very poor, very common, I should judge the cost of them would be from two to three hundred dollars, the best one I saw would be worth about $600., that is down in the valley.

Q. Has that any effect upon these properties for development into country residences of the better class?

A. It would have an effect if anybody wanted to develop the whole thing, take all those farms in one tract, why the nearest ones to these properties would be affected; the only proper way to develop that tract of land across the river there is to take it up, some corporation take the whole thing, then he could restrict his property, but you couldn't do it with any one particular tract, it is too narrow, and everything would work against it.

Q. Do you think the sight of the mills would

have any effect upon people alighting from the station at Dundee Lake?

A. I should think it would, unless it is taken as a whole and restricted, as I stated, and keep out anybody else only the ones you want.

Q. Take the properties north of Market street, the Mary Van Saun property and the Doremus property, called the property of Zela Doremus, what about those two, what is the character of them?

A. Farming property.

Q. Would the same thing apply to them that you have stated about the properties between the dam and Market street?

A. Why yes, I should judge all that property comes under one class on that side of the river.

Q. And should rent for you say how much?

A. Why, I said they should rent from four to six hundred dollars a year, those farms, that is a good fair price for them, more than I can get for any farms up our way.

Q. And the cleaning of the river would not advance that?

A. Would not make any particular difference on the farms.

Q. What about the Gelderman property right near Broadway bridge, near the Country Club?

A. Gelderman, well, that is not a farm, that is a little country estate, gentleman's country home, that is something that there isn't any of the rest of the places like, it is one particular place among all the rest; that gives you an idea what the places would be worth if they were all like that along there; he doesn't do any farming, he has a special home there where he lives, laid out with beautiful shade trees, nice little cottage with all modern improvements and electric lights and about twenty

acres of land, and I should judge that place would be worth about ten or twelve thousand dollars; it is not a large house, it is a small cottage.

Q. Is that the price with the present condition of the river?

A. That would be the price.

Q. And what about the cleaning of the river?

A. The cleaning of the river would not make much difference to him because he is twelve or fifteen hundred feet from the river.

Q. Taking the Outwater property, near the Moffit bridge, over near the Moffit development, what is the character of that property?

A. Well, that is farming land, I don't think it is ripe for development.

Q. Do you know anything about the Moffit development?

A. I attended a sale there in 1897, about fifteen years ago, and we had very poor success selling land there that day, and it is not all developed yet; it has been there fifteen years.

Q. Well, as a farming proposition what is it worth?

A. Why, to farm it it would be worth about from two to three hundred dollars an acre, that is a good stiff price for it too, to farm; if anybody pays that amount of money for farming they have to do some work, they have got to have good land.

Q. What is the value of it to sell for the purpose of development into building lots?

A. I would want to buy it at that price, two or three hundred dollars an acre, if I wanted to buy it.

Q. What is the rental value of the one property there that has a house on it?

A. The Outwater property?

Q. Yes?

A. I should judge it is worth about three or four hundred dollars a year.

Q. Do you think the cleaning of the river would raise that any?

A. Not unless the whole tract was taken up in a different proposition from what it is at the present time.

Q. That is, the character of the house you mean is not one that would lend itself?

A. Eliminating the factories, if you could take that property, as I suggested, in one development it would have a tendency to bring a better class of people there, but if you let everybody go on and develop it as they see fit, and sell to everybody comes along I don't think it would make much difference whether the river is clean or not, from the class of houses I saw already going up there.

Cross Examination by Mr. Parker:

Q. I understand you to say that you dealt in properties in Bergen County?

A. I haven't sold any property over in that section.

Q. When?

A. I haven't sold any over there, I say; my territory consists mostly from Montclair to Greenwood Lake, and along the main lines of the Delaware and Erie, as near to the station as I can get.

Q. Do I understand you to say that you dealt chiefly in farming properties?

A. Chiefly in farming properties and suburban homes, consisting of a few acres, and like that.

Q. When you say you were dealing chiefly in farming properties did you mean by that that you would buy and sell farms as a whole?

A. Yes, sir.

Q. And when you say that you also are dealing in suburban homes, did you mean that you would buy and sell small lots of ground with a house on it for people that wanted to live in the country?

A. I have bought them myself and sold them, and I sold for other people as their agent such property as you are speaking of.

Q. I am speaking about the character of the properties that you have been dealing with?

A. Yes, sir, I am dealing in that kind of property.

Q. They have been farms and small plots of land with dwelling houses on them, suitable for country residences, is that right?

A. Yes, sir.

Q. And I understood you also to say that you dealt chiefly in properties along the Passaic river from Paterson up to Pompton?

A. Well, I don't confine myself to the river, I take in all of Passaic County and Morris and Essex.

Q. You buy and sell properties at Morristown?

A. I have sold property very near Morristown.

Q. How near?

A. Well, from Caldwell all the way over, up along the river there, and Pine Brook.

Q. Do you mean between Caldwell and Whippany?

A. Yes, out through there.

Q. That is not a very settled country, is it?

A. Well, not as it is near Morristown, no, but Caldwell is a good section.

Q. Caldwell is about five miles from the mountains?

A. We get pretty good prices.

Q. But Caldwell is about five miles from the top

of the mountains in Montclair?

A. Yes, and about five miles from Little Falls.

Q. And from Caldwell south there is a place that is called Essex Fells?

A. Yes, sir.

Q. Do you know what plots sell for there?

A. Yes, I know about what they sell for.

Q. Well, take a plot without the house, what would that sell for?

A. Essex Fells is a restricted property and very high class property; a plot there of half an acre may bring three or four thousand dollars.

Q. Three or four thousand dollars for a half acre, in a suitable location?

A. Yes.

Q. All depending on whether it had a view or had a bit of woods or something of that sort that would add to its value?

A. Yes; in Essex Fells I am speaking about.

Q. Now, have you any property around Pompton that sells as well as that?

A. We haven't got any property up there that is bringing as high a price as that, but we have some just as nice elevations, and just as good a view and just as accessible to New York City; the road that runs over to Caldwell is a branch road, and it is not very desirable for the middle man to live there, because he has to take a trolley to Montclair to get to New York, and by our way we come directly out there and get to Pompton as quick as you do over to Caldwell.

Q. Take a half a acre or acre of ground in a nice location, with a nice view and good neighborhood, at Pompton, what would it be worth?

A. Half an acre right in Pompton proper, near the lake there?

Q. No, I mean for a suburban property, some-

thing similar to what you would pay three or four thousand dollars for at Essex Fells?

A. It would be worth about five hundred dollars half an acre, good desirable location, that would be cheap for it.

Q. Have you any such property as that in Little Falls?

A. In Little Falls? Yes, we have some very desirable property in Little Falls.

Q. That belongs to you?

A. With a nice view.

Q. Does that belong to you?

A. No, it doesn't belong to me.

Q. Well now, I am just trying to find out what a property of that kind in Little Falls, the kind that you were speaking of at Pompton, would be worth at Little Falls?

A. Well, at Little Falls, on the southern end of it near Great Notch, that is in Little Falls Township, we are getting a thousand dollars an acre for rough crude land there, because it is pretty close to New York, it is only sixteen miles, and we have fifty-three trains a day, and all stop there, and we have electricity and city water.

Q. That character of property, it is not necessary that that should be right next to the station or railroad, in fact it would sell better if it was away, isn't that so?

A. No, it wouldn't, they won't walk too far.

Q. Do you mean to say a plot of ground that would be suitable for a suburban country home would be worth more if it was next the railroad than it would be if it was a short distance away?

A. If it adjoined the railroad it wouldn't be worth as much, but if it was three or four hundred feet or couple of blocks away it would make a difference.

Q. It would have to be far enough away to get rid of the smoke and dust and noise of the trains?

A. Yes, it would, to make it valuable.

Q. Therefore the operation of the trains, with the smoke and the dust would hurt the value of that property for a suburban property?

A. Yes, unless you wanted to use it for a hotel, or something like that.

Q. Did you ever consider what would be the value of property at Pompton or at Little Falls if the river was dirty all through the summer?

A. We don't seem to take much notice of the river there, it seems to be a second consideration.

Q. Did it ever occur to you to think or consider what would be the relative value of your property and other property at Little Falls and at Pompton if you had a dirty lake and a dirty river all through the summer?

A. At the price I am selling it at now if it depreciated very much I wouldn't get enough to pay the taxes on it, because I am selling desirable land along the river at $100. an acre, right on the river, deep water, three hundred feet wide, dammed right up, was a nice desirable property, under absolute cultivation, for $100. an acre, and if the river was polluted and as you state I don't suppose I would get hardly anything for it, only for farming land, probably sell it that way; this property I am speaking of now we are selling for bungalow sites; I sold a plot to a party in Astoria and they are developing it, selling the lots for $25. a piece along the river.

Q. Well, bungalow sites mean, I suppose, that people from the city expect to come there and spend a couple of months living out doors in sort of camps or tents?

A. Not altogether that way; we had one man

built a bungalow costing $10,000. up there.

Q. Well, he calls it a camp?

A. He lives there the year round, and so does Mr. Georgie the Standard Paint Company's treasurer.

Q. Do you call that a bungalow?

A. Yes; he built a bungalow costing $3,000. You can build bungalows from one hundred dollars up to half a million.

Q. Tell us where the three thousand dollar one is?

A. The three thousand dollar one is up on my farm at Pompton.

Q. On the lake?

A. Right with privilege to the river, is near the river, the tract of land I spoke about developing up there.

Q. What is the name of the river that runs from Pompton Lakes down into the Passaic river?

A. Oh, it is the Pompton river, that is what we call it, some people call it Pequannock, I call it Pompton because its head is at Pompton lakes.

Q. Well, what do they call the rivers that come into the head of the lake?

A. The Pequannock river and the Ramapo river.

Q. The one that comes down by Butler is Pequannock?

A. Yes.

Q. And the Ramapo from where?

A. From Oakland, up around there.

Q. (*By the Court*) The Ramapo rises in New York?

A. Yes.

Q. (*By the Court*) And flows south into Pompton lakes?

A. Yes.

Q. (*By the Court*) Has the land around the

lake and along the Ramapo above the lake come into the market for suburban residences?

A. Yes, sir, they are building up through there quite considerable.

Q. (*By the Court*) Take the Ramapo river above the lake?

Mr. Merrey.—How far above, all the way up?

Q. (*By the Court*) I am talking about the Ramapo river say for five or ten miles above the lake?

Mr. Merrey.—Then you are getting into the best development in New Jersey.

A. Yes, that is the desirable property from Pompton right on up.

Q. And the further up you go the more desirable it gets?

A. Seems to be worth more, people building better house up there.

Q. Is that on account of the superior accommodations of the Erie railroad over the Lackawanna?

A. No, it is not.

Q. Why is it then?

A. It is on account of the altitude, the elevations, healthfulness.

Q. (*By the Court*) The altitude at Pompton is not very great?

A. It is on the high lands, runs up to eight hundred and eighty-six feet, Geological Survey monument, at Bald Hill, shows eight hundred and eighty-six feet, that is just west of Pompton Plains, I stood on it and saw it marked.

Q. (*By the Court*) How high is Pompton Lake above tide water?

A. I really couldn't say that, I don't know; I think it is about three hundred and twenty feet, the lake proper.

Q. (*By the Court*) If I remember rightly the ground just above the lake there is some marshy ground?

A. No, it is very high.

Q. (*By the Court*) Is there not marshy ground at the inlet of the lake?

A. The lake takes in a little marsh around at the inlet, yes.

Q. (*By the Court*) Now beyond that the land, as I remember it, slopes down from some height to the river?

A. Yes, sir.

Q. (*By the Court*) How much is that land worth, say for two or three miles above the lake?

A. There has been farms sold in there as low as twenty dollars an acre, and some other special tracts,—if you want to take out half an acre you would have to pay five hundred or a thousand dollars for it.

Q. (*By the Court*) But what would be the general average for the land along the Ramapo river for a distance of say four or five miles above the lake?

A. Some places it is worth a little more than others, but the general average would be about seventy-five to a hundred dollars an acre, and there is some there that you can buy for twenty dollars an acre.

Q. I will call your attention to Pompton Lake, a good many houses built so as to overlook the lake, are there not?

A. There are quite a few houses up on the east

side of the lake, overlooks the lake.

Q. How many?

A. I should judge last summer and the year before they built about fifteen new houses there.

Q. How many were there before that?

A. Well, there weren't many.

Q. Were not so many?

A. No, there weren't so many.

Q. Those were nice summer houses, weren't they, suitable for summer houses?

A. I think they live there all the year round.

Q. What character of houses were they?

A. Houses cost from four to five thousand dollars.

Q. Is that all?

A. Is that all?

Q. Yes?

A. That is all these houses cost to put up on the cedars there, special tract that overlooks the lake, and right at the junction of the two roads, some are winter bungalows; I should judge their value from three to five thousand dollars in the cedars they call it, special named tract, about fifty acres; Stead from Paterson and some other people operating it, and selling it.

Q. How much do plots cost per acre?

A. I guess they sell plots in there from $200. up.

Q. How large plots?

A. Half acre and quarter acre, I guess a quarter is about as small as you can get.

Q. Well, say a quarter of an acre at $200. would be the lowest price; what is the highest price?

A. The highest price would be two hundred and fifty or three hundred dollars, there isn't much choice in any of that property up there.

Q. Three hundred dollars for a quarter of an

acre, would make about twelve hundred dollars an acre?

A. Yes, that would be about twelve hundred dollars if you computed it.

Q. Do they have any streets or expenses of that sort of thing connected with it?

A. Oh yes, quite an expense.

Q. What?

A. Why, it cost about half as much as the property cost, any kind of property, to get rid of it, you have to advertise it, cut in the streets, pay the interest on the mortgage, taxes, one thing and another, and soon runs away with itself if it don't sell readily.

Q. You are referring to a general average of expenses in what you call development work?

A. Yes, that has got to be looked after if you go into the development business.

Q. Where is this ten thousand dollar bungalow you are talking about?

A. On my farm.

Q. Where is that?

A. It is on the Hamburg Turnpike, about five hundred feet this side of the junction of Black Oak Ridge Road on the high lands.

Q. Is it on the Passaic river?

A. Overlooks the Passaic river and Passaic Valley, has an unobstructed view of about forty or fifty miles.

Q. Near what village or settlement is it?

A. The nearest settlement is Pompton, down by the Steel Works there, where you referred to Ludlow.

Q. Did you build it?

A. I didn't build it, no, I sold the land.

Q. You said it was on your farm?

A. Well, it was.

Q. Farm that you bought and sold?

A. I own all the rest of the land around it, I call it my farm because it adjoins the property that I just sold.

Q. Well, how much did you get for the land that you sold?

A. I sold him the land for three hundred dollars an acre.

Q. With the understanding he should put up a ten thousand dollar house?

A. No, he could put up a house that cost two hundred and fifty dollars if he wanted to, he did the first year, had a tent there; I didn't know what kind of a house he would put up.

Q. What did you sell the balance of the farm for?

A. We are selling farming land on the west.

Q. That is these twenty-four acres?

A. $100. an acre.

Q. You sell it now?

A. Yes.

Q. Why did you ask three hundred dollars of this man?

A. Because he had an elevation up there, with giant oaks, which increases the value for his property; he had oaks there two or three hundred years old, twenty-five or thirty of them, four acres, beautifully laid out, and had a spring brook running through it, which gave him a chance to build a little lake by his house and have water; that is the reason I get a good price for it.

Q. If the river or lake, wherever it is, that this bungalow is situated near or adjoining was accustomed to be dirty and smelly during the summer months, the probabilities are that that man couldn't get three hundred dollars an acre for that property?

A. No, I couldn't get three hundred dollars an acre for that property, it wouldn't be any good to farm, it is about all rocks, trees and stone.

Q. In other words, you sold the rocks, stones and trees for three hundred dollars an acre?

A. Yes.

Q. When the farming land around it was only worth a hundred dollars an acre?

A. Yes.

Q. And this farming land is the best there was in the State?

A. That is it, exactly; we get less money for good farming lands some times than we do higher lands where there is nothing but rocks and trees, and that everybody knows that has been in the country and wants to buy a nice home site elevation.

Q. Are you familiar with the rental values of properties in Passaic, city of Passaic?

A. No, sir.

Q. Have you ever had any experience in that, or dealt in that?

A. No, sir, I haven't.

Q. What do you mean then by saying that in your opinion the rental value of the Merselis property and the Nash property would not be affected by the dirty condition of the river in the summer?

A. I class that as farm property, same as any other place.

Q. That is the only reason you give?

A. Well, that is the only reason.

Q. Have you any other?

A. I placed a valuation on the property, and as farm land, and it is worth so much to rent no matter whether it is in Passaic, New York or Newark or any other place; they are only worth what they will bring in, what you can get for

them; that is the only way you can find the valuation of property.

Q. Your method seems to be to assume first of all that the Merselis and the Nash properties are farm properties and then say what, in your opinion, they would be worth to rent for farm purposes?

A. To rent for farm purposes, that is the way I placed my valuation on the rental, to rent as farm property.

Q. When you say you think the rental value of those properties would not be injured by the condition of the river, you make that assumption, considering their adaptability or suitability for rental as farm properties?

A. Yes, sir, farm property, rent them as farm properties, rent all those farms where there is acreage as farm land.

Q. Did you have any other reason?

A. There isn't any other particular reason, no, I think that would cover the bill.

Q. Is that the same view you had about the Terhune property?

A. Yes.

Q. Now, let us pass over—

A. The Terhune property wasn't farm; I placed the valuation on the rent a little more than as a farm, because it only had a small lot, as suburban residence.

Mr. Merrey.—I will suggest to the Court that this witness is not as familiar perhaps as the rest of us are with the names of the particular farms.

The Court.—Well, the witness was manifestly confused, but he corrected himself;

he says the Terhune property is not farm property.

A. No, that is not farm property. I don't want to tell only what I know to be facts, that is all.

Q. Now, Mr. Sherman, are you familiar with the rental values of properties in Paterson?

A. No, sir, I am not; only some of the tenants, I heard them speak about fifteen, twenty dollars a month, that is all.

Q. Are you familiar with the rental values of properties on the east side of the Passaic river, between the village or borough or township of Hawthorne down to the dam, the Dundee dam?

A. The only thing I know about them is when we went over the ground down there there were several of the farms being rented at the present time and they told us what they were paying, some twenty-five dollars and some as high as six or seven hundred dollars a year.

Q. You never dealt in that kind of property, either for the purposes of sale or for the purposes of renting?

A. Yes, I have, but not in that particular vicinity, I am dealing in that property all the time, that kind of property.

Q. You never had any dealings in any property along the Passaic river below Paterson, had you?

A. No, sir, not below Paterson.

Q. Have you been accustomed to go along the Passaic river below the Falls in summer time?

A. I have been down that way a good many times in the summer; I lived in Little Falls for thirty years, and that is not far from Paterson; we often go down that way.

Q. I am talking about the locality below the Falls at Paterson?

A. Below the Falls?

Q. Below the Falls, whether you have been accustomed in the summer time to go through there?

A. Well, we couldn't go to Paterson without going through there very well, and I often go to Paterson.

Q. You mean you cannot get from Little Falls to Paterson without going below the Falls?

A. Below the Falls? Why, the Falls is up on this side of Paterson, between Little Falls and the City Hall.

Q. (*By the Court*) You pass the Falls as you enter Paterson from Little Falls?

A. We pass the Falls on the way down.

The Court.—You speak of the land below the Falls?

Mr. Parker.—To the dam.

A. You asked me if I was acquainted with property below the Falls.

Q. (*By the Court*) Well, below the Falls and north of the Dundee dam?

A. Yes, I am acquainted.

Q. You are familiar with that territory during the summer time?

A. I am quite familiar with it; I never done any active business there, but I have been down through that section of the country; I lived in Paterson one time and I am quite familiar with all of Paterson, I ran a business in Paterson.

Q. Is it your general opinion that the condition of the river in the summer has not had any evil effect upon the values, either for renting or selling property, below the Falls down to the dam?

A. May have some effect on the immediate buildings adjoining the river, as I stated before it may have some effect during the mid-summer when the river is very low and bad smell.

Q. I asked you whether or not you were of the opinion that the condition of the river during the summer time had any effect upon the values for renting or selling the properties between, say the Broadway bridge and the Dundee dam, on both sides of the river?

A. Why, if you want to take the other side of the river where the farms are it would not have any material difference whatever on the valuation whether the river is clean or not, to use them as they are and what they are valued at to-day as farms exclusively and nothing else; they are not developments and they will not be for a great while yet to come, that is my opinion, and it would not make any difference on the valuations to-day whether the river is clean or not, as farm lands.

Q. And hasn't made any difference I suppose for the last twenty years?

A. I don't believe it has; I don't believe the farms would make five dollars more if the river is clean or not.

Q. How about the properties on the other side of the river, west side?

A. Well, on the other side there isn't very many properties there that is in contest that I looked over, there are only a few, four or five, and it wouldn't make so very much difference to those properties, they have quite some acreage with them.

Q. And you mean to say also that the condition of the river has not arrested or postponed the development of the properties along the river

there at Saddle River Township during the last, say five or six years or before?

A. Think it has postponed the sales of the property, that is what you want me to say?

Q. I say, your opinion is it has not postponed it?

A. My opinion is it is not postponed any at all; as I stated before, there is too much of that land lying around the outskirts of the city which is more desirable than that property, in fact up in Totowa and Haledon, around the high lands there.

Q. Do you think it has had any effect on the Rosemont development?

A. I am not acquainted with that, I don't like to say.

Q. Do you think it had any effect on the so-called Clifton Heights, I think that is the name of it?

A. I don't know much about it.

Q. Do you know of a development there?

A. I saw it advertised, but I have never been over the property and never attended any sales.

Q. Well, did you consider the prices?

A. No.

Q. I think the name of that should be Columbus Heights; did you look over that?

A. Yes, I saw that property.

Q. Do you think the development of that has been arrested at all by the condition of the river?

A. I don't think so.

Q. Do you know what the prices, or did you inquire and learn what the prices of lots around Bergen avenue were?

A. No, I didn't inquire about the prices along there.

Q. Didn't inquire as to what was the price of

lots that fronted on the river or fronted on the the road along the river?

A. No, sir.

Q. I understood you to say that you thought that possibly there might be some hope for those Bergen County farms if one person could get the ownership of all, and could lay them out on a connected plan with restrictions, is that right?

A. Yes, that is right, that is the only way I can see it.

Q. Tell us what that hope would be?

A. Well, that is the only thing I could see, then you would have absolute control over the property, and eliminate all those two hundred dollar shanties going up and keep the factories out, and put in what improvements you wanted.

Q. If one party should not own them all, and if say the owners of all should agree on a common method of suitable development, what in your opinion, would the farms then be worth per acre?

A. You mean to-day, to buy them now?

Q. Yes.

A. Well, they would be good prices at two hundred dollars, if I wanted to buy them.

Q. I understand you to say they were worth from two to three hundred dollars?

A. I said that is an approximate estimate I am placing on them from two to three hundred dollars, and I wouldn't want to give that for them, personally I wouldn't, not for development.

Q. They would be worth less if they acted conjointly than if they acted separately?

A. Yes, I think so, to the developer, a man that wanted to develop; I wouldn't go in there and buy one of those farms and try to develop it, and I

don't think any other active man would, unless there were other operators doing the same thing right along with you, in conjunction; they are too narrow and too long.

Q. Do I understand you to say then that the chief reason why development is not to be looked for in those farms is because there are so many separate ownerships, and because of the locality, of the poor class of development in the neighborhood of the Dundee dam; is that right?

A. That is right, yes.

Q. Any other reason?

A. Yes, there are other reasons.

Q. What?

A. It hasn't the elevation that we have up on the other side of the river, up north-west of Paterson, or south-west rather; we have lots of tracts up there lying there hung waiting for somebody to come and buy.

Q. Your opinion is that the condition of the river hasn't anything to do with it at all?

A. No; we have the river up above, deep water along there, and it is all lying there idle.

Q. Suppose the river up there, as you call it, in this deep water, was foul, could you develop?

A. I don't think it would make any material difference.

Q. Why not?

A. Because they don't seem to class the river as the whole thing when they are buying a lot, they don't consider the river the whole thing.

Q. Do you mean to say people do not consider the existence in a neighborhood of a nuisance, in purchasing property?

A. Well, some people can put up with a nuisance a little while; they may not want it every day. That river is not polluted all the year round, I

was down there the other day and it had eighteen or twenty inches of water running over the dam.

Q. Is that the reason why you think the river is not a nuisance in summer?

A. No, it is not; I think the reason why it is a nuisance in the summer is because there isn't enough flow of water to carry it off.

Q. Then you admit it is a nuisance?

A. That is what they claim, I don't know much about it; as I stated before, I never saw it, I have been down there and never took any notice of it.

Q. You referred to the Beatty house in your direct examination; how far is that from the Beatty mills?

A. From the Beatty mills? About seven hundred feet, seven or eight hundred feet, probably maybe more.

Q. How is it situated with reference to the canal?

A. It is situated right on the canal, borders on the canal.

Q. Where is the river with reference to the canal?

A. Right along side of it.

Q. Can you point out on the map where it is?

A. I may be able to, if you can locate Little Falls.

Q. Government map?

A. Right on the corner of Union avenue and the road that runs out to Preakness, just over the river, out there near the Water Works.

Q. Now put the letter "B" where you think that is?

A. It is on the west side of the road going from Little Falls to Paterson, Union avenue.

Q. Witness has put "B" where the Beatty house is. Now where are the mills?

A. The mills are on this south side of the river.

Q. Across the river from the Beatty house?

A. Across the river from the Beatty house.

Q. (*By the Court*) Where are the purification works?

A. Down there, just below the Falls.

Q. (*By the Court*) How far from the Beatty house?

A. About one thousand feet.

Q. Do I understand that this is in the neighborhood of the pumping station of the Newark City supply or the East Jersey?

A. The East Jersey.

Q. The East Jersey Water Company?

The Court.—It supplies Paterson and all those little towns around Paterson from that source.

Re-direct Examination by Mr. Merrey:

Q. Mr. Sherman, in talking about the farms on the east side of the river near the dam, you said if they were all taken by one owner and developed together you could make a restricted development of high class property?

A. I think we could.

Q. Well, could that be done in a short time?

A. No.

Q. How long would that take?

A. Why, it would probably take ten years to get that going and opened up right; my idea was that I thought there was enough land after we took all the farms together to get away from the mills

and those little small houses they are building all around.

Q. Would that bring the biggest return to develop it in that fashion or to let it go into the mill properties?

A. I think it would be about as well to let it go the way it is.

Q. You think there would be quicker sale?

A. Yes, there would be quicker sale that way; I am only referring to that property as it could be developed as suburban homes if some man owned it all, or corporation, and put it into restricted sections.

Q. Didn't want us to understand that that was the desirable way to do it?

A. No; I only answered his question why they could not get those desirable homes, why they were not there, and all such as that.

Re-cross Examination by Mr. Parker:

Q. How many years would it take to get it developed, under the present condition, in your opinion?

A. As a factory, as tenant houses?

Q. Yes.

A. It may take a hundred years, I can't see in the future as far as that.

Q. What did you mean by saying it was just as well to let it go as at present rather than to attempt to develop it altogether?

A. Yes.

Q. What did you mean by that?

A. I think the best thing to do with it is just the way it is to-day, rent it as a farm until it is ready for development; it is not ready yet, that property is nothing but farm land, and I want somebody to show me anything else.

Q. Well, have you any opinion as to when it will be ready for development?

A. No, I haven't; I don't think, from my knowledge at the present time, that it will be ready in the next twenty years.

ARTHUR C. CLEMENT, sworn.

Direct Examination by Mr. Merrey:

Q. What is your business?

A. Real estate and insurance and auction business.

Q. What is the name of your firm or your different firms?

A. William J. and Arthur C. Clement.

Q. What is their business?

A. Real estate, selling real estate at auction and auctioneer's in general.

Q. Where are your offices?

A. Paterson, Passaic and Newark.

Q. Who is in that busines with you?

A. My father, been in it over forty years.

Q. What is the other firm that you are connected with?

A. Clement & Farrell.

Q. Where is their office?

A. Paterson, New Jersey.

Q. What is their business?

A. Real estate and insurance.

Q. You say your father has been auctioneering real estate for forty years?

A. Since 1870.

Q. In what neighborhood?

A. Why, Passaic, Paterson, Garfield.

Q. Has your firm sold much property in Garfield?

A. I guess we have sold more property in Garfield than any other firm, that is, at auction.

Q. (*By the Court*) You are a member of the firm, you say, of Clement & Karl?

A. Clement & Farrell, and William J. & Arthur C. Clement of Newark, Paterson and Passaic.

Q. How long has Clement & Farrell been organized?

A. About two years.

Q. That is a separate business from the auctioneer business?

A. Yes.

Q. Where is the main business of auctioneering?

A. Why, Passaic and Paterson and Garfield, all through that section.

Q. Have you bought and sold farms?

A. Yes.

Q. Have you bought and sold lots and plots in Garfield?

A. Oh yes; own property now at the present time right on the river in Garfield at a place called Robertford.

Q. How extensive has been your business in selling real estate; have you sold many farms?

A. Yes, I have sold quite a number of farms.

Q. How long have you been in business with your father?

A. Well, I have been connected with him all my life practically, in active business with him about twenty years, little over twenty years.

Q. How many of those farms have you sold at Garfield?

A. Why, we sold the majority at Robertford there, and what is known as the Robertford tract right next Robertford mill, and Roosevelt tract, that is at Plauterville, and all through, Bogert

Heights, in fact I think we sold most all of Garfield, I don't think there is a street in Garfield we haven't sold property on.

Q. Your firm has been really the active sellers in the Garfield section?

A. Yes.

Q. And a great deal of it has been sold at auction?

A. As I said before, I guess the majority of it has.

Q. Do you advise developers as to the methods of developing property?

A. Yes.

Q. And as to the methods of laying out the property?

A. Yes.

Q. And then sell it?

A. And then sell it for them.

Q. Do you advise them where to purchase at times?

A. At times, yes.

Q. Did you advise as to the purchase of several of those farms you have mentioned in Garfield?

A. The one there I referred to on the river, the Robertford tract, and then we bought a tract ourselves at Plauterville, that is right in back of Robertford, and I own now right on the river, on the river road, corner of River Road and Columbus, right next to the Robertford mill.

Q. Tell us about that piece of property that you own right on the river you say?

A. Yes.

Q. Near the Robertford mills?

A. Right on the corner there.

Q. What is that worth, about?

Mr. Parker.—Is that below the dam or not?

A. It is just below the dam, the next farm is the Ackerman farm, and then the new mills there.

Q. Tell us about what that is worth?

A. I refused $2500. for those lots last year.

Q. How many lots?

A. Four on the River road, and two on the back, making six lots in the plot.

Q. Has there been any change in the value of those properties lately?

A. Why the street in back, the lots there have advanced considerable, back from the river, on account of the mill being there, making it a shorter cut into Garfield.

Q. What you mean is a couple of years ago you were on the main road?

A. Yes, and we expected that—

Mr. Parker.—Let him testify; I object to the question.

A. (*Continuing*) We expected that to be the main thoroughfare along on the main road at that time, but it seems to have taken a changed course, it goes one street back, on account of the mill being back of the river the help take this other street down.

Q. What is the name of that street?

Mr. Parker.—I tried to make an objection, but the witness was so fast, and Mr. Merrey too. I would like to have the question and answer read.

(Question and answer read.)

Mr. Parker.—Well, I do not care to press the objection, except that the question I objected to was leading and it put something in the witness's mouth which the wit-

ness, however, has not said yet in so many words.

Q. What is the name of the street that you refer to?

A. Jewel street.

Q. Has that been macadamized?

A. I believe so.

Q. You say the help from this mill, which mill?

A. The Forstman Huffman mill.

Q. Comes down there into Garfield?

A. Comes across to Garfield.

Q. What is the condition of the River road now?

A. Along there it is in pretty bad condition.

Q. That is, as to pavement?

A. It is not paved at all, it is washed out along there, that is, just around this property here.

Q. And Jewel street has been macadamized since?

A. Oh yes.

Q. Are there many people walk along the River road?

A. Well, not as many as walk along this other street.

Q. How long ago was the Robertford mill built?

A. Well, that I can't say; it has been there I guess, oh, twenty years or more.

Q. And is there any mill between that and this new mill of the Forstman Huffman Company?

A. No; the Brick Yard used to be next to it, you know.

Q. The development up the river, has that been very fast?

A. Not until this new mill came there; of course just before the new mill came there of course then different people got busy and thought of develop-

ing on account of the mill coming, and since the mill came there, there has been some development, and in the back of the mill.

Q. But before the erection of the Forstman Huffman mill did the development spread up the river very fast?

A. No, no.

Q. Where did Garfield develop, say in the last ten years?

A. Well, in the last ten years, why, it has developed between there and down towards the main street in Garfield, Passaic street, and over back on the Heights, that is, over towards the other mill that was put up there, towards Lodi.

Q. You spoke about several tracts that were developed in Garfield, can you refer to them and tell us how long ago the development commenced?

A. Well, there was the Belmont tract, that is next furthest down that way.

Q. That is next furthest below Robertford?

A. Below Robertford, that is down at the round house.

Q. Who sold that tract?

A. My father developed that.

Q. How long ago?

A. That must be twenty, twenty-five to thirty years ago.

Q. What other tract around there that you know of, as to when it was developed and sold?

A. This Bogart Heights.

Q. Where is that with reference to Belmont?

A. That is away back, that is over towards Lodi.

Q. How long ago was that developed?

A. I should say that was about the same time, that is, around that time, before or after.

Q. What new development has there been in

cutting up farms into building lots there within the last ten years?

A. Within the last ten years?

Q. Yes.

A. Why, there has been some over on Midland avenue, but that has nothing to do with over in this section.

Q. But in this section, towards the river?

A. Oh, towards the river?

Q. Yes.

A. I don't know of any, outside of that Robertford tract.

Q. Well, and the Forstman Huffman?

A. Oh yes, since then; I thought you were referring to before that.

Q. No. Then prior to the Forstman Huffman and about the last ten years there has been no new tracts brought into the market?

A. No, only Robertford and Ackermans.

Q. Except the Robertford?

A. Yes.

Q. The property you refer to as owning, what tract was that on?

A. Where I own the lots you mean?

Q. Yes, on the River road?

A. I have a map here of it.

Q. What is the name of the farm?

A. That was the Brick Yard, Moses & Pressburger.

Q. Is that the one marked "Brick Yard" on this map marked D 2?

A. Back off this way (indicating).

Q. How far below the part marked Passaic Brick Yard, on map D 2, is it?

A. It is considerable.

Q. Have you a map of it there?

A. Yes, but it doesn't show the river.

Q. It is a little distance below the Passaic Brick Yard?

A. Yes, a couple of farms.

Q. Are there any farms in between that and the Forstman Huffmann mill?

A. Between where?

Q. Between the farm which you referred to, on which you own the lots?

A. Yes.

Q. What farms are those?

A. Ackerman farm, that was adjoining this, and another one there, there is another small farm which shows on the map here, was right into this Brick Yard, I believe that is the Brick Yard property there (indicating on map), and this runs around it, farm right in the center of it.

Q. When were they developed?

A. Those here (indicating)?

Q. No, the two farms between the Forstman Huffman and this?

A. Right after the Robertford.

Q. How long ago was that?

A. I guess they came into the market about 1908, I guess a little after Robertford, I think that was the date, I don't remember just for certain.

Q. So that the spread of Garfield to the north has not been so fast, has it?

A. No, because there are no mills down there to draw it, until this mill came there.

Q. (*By Mr. Parker*) What is the mill that came there?

A. Forstman-Huffman.

Q. They had been developing that property for years before, had they?

A. Oh yes.

Q. The population has increased rapidly in Garfield, has it not?

A. Yes, it has.

Q. Is Garfield a large section, in area?

A. Well, that I don't know, just how much area it covers, but quite an area there, it goes all the way over to Lodi.

Q. I mean the developed section in Garfield, where there are houses?

A. Well, that is right in the heart of Garfield, more than anything else; the development of houses down here on this tract I spoke of, they hadn't done much building until this mill came there and then of course they started to put up buildings; there were some there, but not many.

Q. Have you looked over the properties on the west bank of the river, just above the dam, and between there and Market street?

A. Yes.

Q. What is your opinion as to the development of that property?

A. Which one?

Q. Take first the Cadmus property?

A. Well, that is in line for development now.

Q. It is?

A. Yes.

Q. And what character of development?

A. Well, that Cadmus property, why, the rear of it, going along on Lakeview avenue there.

Q. I am referring to the Cadmus property on the Bergen County side?

A. Oh, on the Bergen County side. I was thinking of Merselis. On the Cadmus property, no, I don't think it is, because there are two farms before you get to the Cadmus property.

Q. Two farms where?

A. If I remember right there is Hillman and Hillman and son has a farm just between.

Q. That is marked on D 2 as farm of Herman Hillman, one farm, isn't it?

A. Yes.

Q. There are two houses on that farm, one occupied by the father and the other by the son?

A. Yes, and then comes the Cadmus farm; well, this farm would have to come into the market first—

Q. Just a moment. What farm would have to come into the market first, before the Cadmus farm?

A. Hillman farm.

Q. Why?

A. Because it is getting to the mill, getting down that way, it is nearer to the mill, and it is the mill that makes demand for lots.

Q. Until the Herman Hillman farm is developed it would not be feasible to develop the Cadmus property then?

A. I don't think it would, no.

Q. How about the Richard Van Riper property next above?

A. Well, as I was saying, I class all those farms along there as just farm land, that is all you can get out of them.

Q. Do you think they are in line now for development?

A. Not unless there was another mill came there then they would be, but you can't tell when another mill will come along, maybe ten or twenty years.

Q. Now take those farms, would the developer or purchaser get any value beyond their present value at the present time?

A. I don't think so, not at the present time; I wouldn't buy them for development.

Q. Don't you think if there is the possibility of mill development there, that that development adds something to the value of those farms?

A. Yes, if there was a mill built there, but they have to buy one of those farms to get the mill there.

Q. Doesn't the fact that there is the possibility now of a mill coming there some time in the future add something to the farms beyond their farm value?

A. No, it doesn't, because you haven't got any guarantee that a mill would come there.

Q. Do you know anything about the value of those properties as farm properties, or what is their sale value at the present time?

A. Well, I should say about $200 an acre, as farm land.

Q. Are they worth more than that for any purpose, at the present time?

A. Not at the present time, they are only worth as farm land.

Q. How is the value of those farms affected by the condition of the river?

A. I don't know as they are affected at all.

Q. Well, are they affected at all?

A. No.

Q. Do you think that if the river was clean you could get a higher price for them?

A. No, I don't.

Q. What has been your experience in Garfield as to the effect of the river on development?

A. I didn't have any trouble in selling those lots along the river there at Garfield, and I sold all along there, in fact I sold a piece of property the

other day on the river front in Garfield.

Q. Does the smell from the river deter sales there or make prices lower?

A. I don't think so, with the class of people that buy the lots over there.

Q. (*By the Court*) Which lots are most in demand, the lots along the river or the lots say one, two or three blocks away from the river?

A. When we developed that tract there of Moses & Pressberger the lots away in the back, those we sold as low as forty-five dollars, and when we got up on to the knoll of course all that land was about on the same grade, a rolling land, and there we got as high as $100 for them, and along on the river I got there $100 for lots.

Q. Was it more difficult to sell them along the river than it was further back?

A. No.

Q. In that sale, did it take you long to sell that property?

A. Well, we had a number of sales.

Q. Over what period of time would they spread?

A. Two or three years, and then sold it out to a man named Moffitt, the balance of it that was left.

Q. How long before you started to sell this Pressberger & Moses tract had it been laid out?

A. It wasn't laid out before that, it was the Brick Yard.

Q. Who laid out the Brick Yard?

A. That was a company, Pressberger & Moses bought it from the company.

Q. Where was the Weiss & Watson tract?

A. The tract I bought?

Q. The tract that Weiss & Watson laid out?

A. Weiss & Watson laid this out.

Q. How long before Moses & Pressberger bought it did they lay it out?

A. They didn't lay it out until after he bought it.

Q. They didn't?

A. No.

Q. Do you know anything about the rental values of those farms along there?

A. What I have been told what they paid for them along there, when I went over them.

Q. Do you have any business in renting farms, in renting houses?

A. Not along there.

Q. Any place, in the rental of farms?

A. Oh, in the rental of farms?

Q. Yes.

A. No, I have never rented any farms.

Q. Have you any experience in selling other properties further up the river?

A. Yes, we sold a tract up at Ryle Park, just above Paterson, that is right on the river.

Q. Did you get any more for the river lots than those back from the river?

A. No, not as much there; we sold lots on the river there last summer for $85 a lot, and the ones inland we sold those as high as $150 if I am not mistaken.

Q. Is there a trolley near that?

A. Trolley runs right along in front of the ground, Little Falls trolley.

Q. That is between Paterson and Little Falls?

A. Yes.

Q. Is it near the Little Falls station?

A. Well, I should judge it is about half way.

Q. What kind of land is that?

A. Level land.

Q. Is it good land for suburban houses?

A. Oh yes.

Q. Who owned that property?

A. Why, Ryle, Thomas Ryle, it was the Ryle Park, and then afterwards it was a ball ground.

Q. Mr. Ryle had it as a fine country home in his time?

A. Yes.

Q. You have sold farms all over Passaic and Bergen County?

A. Yes; I have sold farms pretty much all over Jersey; I sold the Hall farm up in Midvale, and the McLoughlin farm I sold to—

The Court.—Well, never mind that.

Q. Are you familiar with all the sales of real estate around the city of Paterson for building lots?

A. Yes.

Q. The prices that they get for all of it?

A. Pretty much.

Q. And property that is ready for development?

A. Yes.

Q. What is your idea as to when this property on the other side of the river, in Paterson, between the dam and Market street, will be ready for development?

A. That you couldn't say, there is no chance for it at all, there is property there to be developed before you get to any of these properties that is in this suit.

Q. Is there considerable property in the city of Paterson awaiting development?

A. Yes, a lot of it.

Q. You are familiar with all these tracts Mr. Lee testified to where failures have been made?

A. Yes, and I can mention more that Mr. Lee didn't mention, other ones.

Q. In selling property of this kind is it possible to sell it profitably, unless it is done quickly?

A. No; that is where you have got to turn it over quick, otherwise you lose money, if you don't turn it over quick.

Q. How about the properties just above Market street, the Mary Van Saun property and Zela Doremus property, what is the character of those?

A. Farm land; kind of low there.

Q. What are they worth, about?

A. Well, those along there, why, I should not put them over $150 an acre.

Q. If the river were clean would that make them any more valuable?

A. No, I don't think it would, as farm land.

Q. Do you think the fact that the river has been polluted has prevented their development into building lots?

A. No, that has not prevented them, because as I said before, I have developed lots, with the river in the condition it is in now, right along the river.

Q. Whereabouts?

A. There at Garfield.

Q. Taking now the Gelderman property, what is the character of that?

A. Gelderman property, that is pretty nice property.

Q. You are familiar with that, are you?

A. Oh yes, familiar, yes, I was there a number of times.

Q. What is the character of that property?

A. Well, that property there—

Mr. Parker.—That has all been testified to; what is the good of repeating it?

The Court.—Yes, we have heard it so many times.

Q. What do you think the value of that property is?

A. I should judge that property there—

Q. About twenty acres of land?

A. About $10,000 I should judge.

Q. How much do you think that is affected in value by the condition of the river?

A. Affect it a little there, but not the house, it sits so far back from the river I don't think they would get much odor from the river there, not such a great deal.

Q. You have been over there in summer time, have you?

A. I have been there in the summer time and winter time too.

Q. Very much nuisance from the river at that point where the house is?

A. I didn't notice any.

Q. Taking the Outwater property, is that a farm or is that ready for development?

A. Why, as it is now it is a farm but of course it is near to development there, the Columbia Heights.

Q. Columbia Heights is adjacent to it, is that the idea?

A. Yes.

Q. And what is the value of that per acre, about?

A. Well, that land there now I should judge about between two and three hundred dollars an acre.

Q. How is it affected by the river, how much in value?

A. How much in value is it affected by the river?

Q. Yes.

A. Well, as I say, I don't think that it is affected such a great deal by the river, of course it might be affected some, but the class of people that builds around there, why, it doesn't seem to have much effect upon them.

Q. Now, coming into Paterson and taking the Terhune property, what is the value of that property?

A. About, I should judge around seventy-five hundred.

Q. Seventy-five hundred dollars?

A. Yes.

Q. Have you any idea as to its rental value?

A. What it should rent for?

Q. Yes.

A. I should think about, well, if they got forty dollars a month they would be getting good money for it.

Q. Do you think the sale value of that property is affected by the condition of the river?

A. Probably a little bit, not to a large extent; I can show you a piece of property that I compare with that right up on the top of the hill, over on Trenton avenue.

Q. What is that property?

A. That is property 150x150, thirteen room house, bath, all modern improvements.

Q. Who owns it?

A. A man by the name of Norman now, used to be Willam Berdan's property; cost $16,000 to build.

Q. What do they get for that?

A. He could have rented it for forty dollars, that is the most he can get for it; I will rent it now for fifty dollars a month to anyone.

Q. Is that on the trolley line?

A. Within a block of the White Line.

Q. That is the line that passes the Merselis property?

A. Yes, same line.

Q. How near is it to the railroad station?

A. About four blocks.

Q. What station is that?

A. Lakeview station.

Q. On the main line of the Erie?

A. On the main line of the Erie.

Q. Is this house situated high?

A. Oh yes, overlooking all the ground below there.

Q. Is it affected by the river?

A. No, it is not affected by the river.

Q. It is on the other side from it?

A. It is right over it, when you get on Lakeview avenue you start to go down there.

Q. How would you compare that with the Terhune property, as a gentleman's residence?

A. I should think those would be every bit as good as the Terhune property, if not better, it is a higher elevation.

Q. Take the Merselis property, are you familiar with that?

A. Yes.

Q. Have you gone there for the purpose of trying to buy it?

A. I believe my father did.

Q. That is long before you expected to testify in this suit?

A. Oh yes, that is three or four years ago.

Q. What is about the value of that property per acre?

A. I should judge around $12,000 an acre, or $1,200 an acre rather.

Mr. Merrey.—I would like to offer in evidence map of the Township of Acquakanonk, prepared by Robinson & Company, one sheet of which I think was put in.

Mr. Parker.—We have no objection to it.

Mr. Merrey.—That is, sheets 14 and 15 which show Acquackanonk Township, between Paterson and the City of Passaic.

Q. Are you familiar with the Kipp property in that neighborhood?

A. This is Kipp, and Kipp runs right on down here (indicating).

Q. Do you know what that was bought for?

A. I understood it was $1,200 an acre.

Q. How long ago was that?

A. That is only a couple of years ago.

Q. How does that compare with the Merselis property?

A. It is about, all that property there runs about the same until you get up to about here, and then it starts to go up hill.

Q. That is, on Lakeview avenue?

A. Yes.

Q. That is on the property marked Charles Curey?

A. Yes.

Q. How does the Kipp property that you refer to compare with this Merselis property?

A. About the same.

Q. And as far as being affected by the nuisance from the river?

A. No more than Merselis that is back here, in fact that is where the line of development is going, right up along Lakeview avenue.

Q. Why is that, do you know?

A. I can't account for it; the only way I can account for it is on account of the mills here; now take here, the Dougherty mills.

Q. The Dougherty mill on Main street and Central avenue?

A. Yes.

Q. Is that a large mill?

A. Yes.

Q. How large is it?

A. I guess that takes in a whole block, more than a block; then there are other mills along there that doesn't show on this map.

Q. Do you know where the Grucock property is on this map, which was referred to by Mr. Karl?

A. Yes.

Q. Just point that out?

A. This here (indicating).

Q. It is on this plot 15, isn't it?

A. Right here.

Q. Where the name Samuel Grucock appears, and runs out here to Main street?

A. Yes.

Q. And is the main street or main thoroughfare between Paterson and Passaic?

A. Yes.

Q. Is that the most traveled thoroughfare?

A. Most traveled.

Q. How does it compare with the Dundee drive, in travel?

A. Main street, there is more traffic there, ten to one, than the Dundee drive.

Q. Is that the shortest road from Paterson to Passaic?

A. Yes.

Q. The Dundee drive is more used by automobiles?

A. Automobiles, yes.

Q. And wagons, to get away from the trolley?

A. Yes.

Q. What is your idea of the value of this Merselis tract per acre?

A. $1,200 an acre, about.

Q. How would that be affected if the river was not polluted by the sewage of the city of Paterson?

A. Well, as I said before, the development here—

Q. Just say where?

A. On Lakeview avenue, the development is going right up along Lakeview avenue, it is not coming up this way.

Q. Not coming up the drive?

A. No, it is going up Lakeview avenue, on both sides.

Q. Go ahead.

A. So that would not affect the rear of the property; now if it has any effect upon it it would be right along the river, the front there.

Q. In developing these farms into building lots what becomes of the old farm buildings, generally?

A. Why, some times they are sold and some times torn down. Now take for instance this here tract here.

Q. That is the Merselis tract?

A. Merselis tract; in laying it out there if it

don't come on a street that way you would have to cut your ground up in such a way that it would not be profitable, so that it would be more profitable to tear it down.

Q. Looking at the Merselis property, and the development of the streets in the vicinity, how would that tract be developed, so that the house could be saved?

A. That house is so old that it wouldn't do much, you can touch the ceilings with your hand.

Q. You think the house wouldn't be of much use?

A. No, in fact in buying it I wouldn't take the house into consideration at all.

Q. That is if you were buying it for purposes of development?

A. No, I wouldn't figure on the house or the buildings.

Q. This plot then is something more than farm land, is it?

A. Yes.

Q. Is it ready for development now?

A. That is ready for development now.

Q. What is the character of the development in that neighborhood?

A. Back here (indicating)?

Q. Yes, that is to the southwest of it?

A. Why, there are pretty fair development of houses back in through here, sell for about thirty-five hundred to four thousand dollars.

Q. Now, taking the Nash property, and take up the cottage at the corner, with an acre of ground, what is the rental value of that?

A. The rental value?

Q. Yes.

A. Well, I got a cottage, I have a small house that I have—

Mr. Parker.—Well, answer the question.

A. Ten or twelve dollars a month.

The Court.—I do not think the witnesses disagree on that.

Mr. Parker.—They say if the river was clean they would get $25.

A. I have a five room house on the Ryle tract, short distance from the river, on the trolley, that I rent for ten dollars a month, has gas and city water in it, and there is four lots with it.

Q. What do you think would be the rental value of that house if the river was not polluted?

A. I am just saying that I rent one, where the river is not polluted, for $10 that has city water and gas in it, five room house.

Q. You think if the river was clean it would not raise the rental value of that house, is that the idea?

A. I don't think it would raise it much, no.

Q. What is it worth to sell that house, with a quarter of an acre of ground?

A. With a quarter of an acre; cost about $1,800 to $2,000 to build; why, about $2,500.

Q. What would that bring if the river was clean?

A. It wouldn't bring a great deal more.

Q. Now take up the double house down on Lexington avenue, what is the rental value of that?

A. They told us there they were renting it for ten and twelve dollars a month.

Q. That is twenty-two dollars?

A. Yes.

Q. Is that a fair value?

A. I think it is all it is worth, in the condition

it is in, it is all dilapidated inside, the kitchen, the walls are all falling down there on that one side.

Q. If the river were clean would it be worth more than that?

A. That is away from the river.

Q. Well, would it be worth more than that if the river was clean?

A. No, not in the condition it is in.

Q. What would that plot sell for?

A. There is about an acre in there, isn't there?

Q. (*By Mr. Parker*) Per acre?

A. I should judge about $2,500.

Q. Now, take up the residence of Mr. Nash, with about eight acres of ground surrounding it, what should that rent for?

A. I think it would be hard work to rent that house in the condition it is in, taking it from the outside appearance.

Q. (*By Mr. Parker*) Suppose it was put in tenantable condition what do you think it would be worth?

A. I should judge around forty dollars a month.

Q. What should that plot sell for in its present condition, of eight acres?

A. Oh, about eight or nine thousand dollars.

Q. If the river were clean what should it rent for?

A. About the same price, you couldn't get any more.

Q. Would it sell for more if the river was clean?

A. Might possibly sell for more if the river was clean, a little.

Q. What would that be used as, a gentleman's residence or for building lots?

A. I don't think it would be used as a gentle-

man's residence, you would have to tear that down and put up another one.

Q. Now, taking the ten acre plot between Lexington avenue and the River Drive, shown on plate 14, what is the character of that property?

A. It is low here, and runs up on a knoll, that property there is worth about a thousand dollars an acre.

Q. If the river were clean how much would it be worth?

A. I wouldn't care about giving over $1,200 an acre for it now.

Q. If the river were clean?

A. Yes.

Q. What is the character of the development to the south of it?

A. Why, it is down here all cheap buildings, all in through here (indicating).

Q. That is between the property and Passaic?

A. Yes, that is not Passaic; you mean in Acquackanonk.

Q. In Acquackanonk Township?

A. Yes, well, that has the mill help there, and through here all cheap buildings, all through.

Q. Would that have any effect on it if you attempted to develop it as a gentleman's residence?

A. I think it would.

Q. What would be the effect?

A. They wouldn't care to associate, get in that class of people.

Q. Would it reduce the value of the property?

A. Certainly.

Q. If it was cut up into building lots could it be done profitably?

A. There would be a good deal of expense there, you would have to take that knoll off, and fill in all this hollow.

Q. Fill up that pond?

A. Yes, because you couldn't sell with that pond there.

Q. Does that detract from its value as a building proposition?

A. Yes; it would cost you almost as much again to fill it up, it would cost considerable to fill that in there, and that would depend on how much you had to cart, if you had to cart from other places.

Cross-examination by Mr. Parker.

Q. Do you know whether or not this piece of ground back of the Merselis property, marked Merselis Land Company on page 15 of this map of Acquackanonk Township has been sold?

A. That piece of property there was sold years and years ago, and laid out into lots; in fact I was negotiating to buy it myself some years ago.

Q. Do you know whether it has been sold recently?

A. I believe it has.

Q. Do you know what the price was?

A. I know what the price of the place next to it was sold for, and I know what I offered for it.

Q. How much was that sold for?

A. That was sold at a Master's sale in 1907 for $8,750 and the next day I offered a $500 profit, and a couple of days after that offered a $1,000 profit, and then they wanted $2,000 profit on it, and when I went to them with the $2,000 profit then they said they were going to form a company and develop it themselves.

Q. How many acres?

A. Sixteen acres, takes in both sides of Lake-

view avenue and right in back of the Nash property.

Q. That was sold at a Master's sale five years ago?

A. Yes; and a great number of years ago it was sold for $1,000 an acre to a promoter who promoted ground, in fact I can show a number of tracts through Paterson there that he had promoted that never amounted to anything.

Q. Now I understand your opinion to be that the property on the front of the Merselis tract and the Nash tract could not be advantageously utilized for suburban purposes, as distinguished from the city lot development which we have been talking about?

A. No, I don't think it could; in fact all that property along through here (indicating) couldn't.

Q. You don't think that any of the frontage of Merselis or Nash could be utilized advantageously for suburban or country residences of the better class, say with a fair plot of ground around the houses, provided the river was clean from the defendant's pollution?

A. No, I do not; I think this coming up along on Lexington avenue and Randolph avenue, coming up along here, seems to be cheaper class of houses.

Q. Your opinion then is based on the fact that there are cheap houses built along Lexington avenue?

A. Yes.

Q. Or south of Lexington avenue?

A. South of Lexington avenue or on the east of Lexington avenue, all along that section coming

up along the river and Randolph avenue there is the cheaper class of houses.

Q. Have you any other reasons?

A. You are getting away from there, that is for railroad stations and like that; that is the only reason I can give; and right opposite there when they are looking across of course they face large mills over there and those smoke stacks.

Q. Now on the other side of the river, that is, on the east side of the river you are of the opinion that the only property that is suitable for development purposes is the Outwater property, which is the extreme northerly one in connection with the Columbus Heights?

A. Yes.

Q. And you say that property is only worth from two to three hundred dollars per acre?

A. About $300 an acre, that is all I would care about giving for it, $400 the most.

Q. You say also that the front portions of the various tracts of the complainants, in the Township of Saddle River, could not be utilized with the houses, dwelling houses thereon for country or suburban residences, to advantage?

A. I don't think it could, I don't think so, not in that neighborhood.

Q. When you give the rental value of the farms do you include the buildings?

A. Oh yes.

Q. And would the various properties be rentable without the buildings?

A. They do rent farms, of course, without buildings.

Q. I mean just the ground itself, could it be rented for farming ground, without the buildings?

A. Why certainly, why couldn't it be rented without the buildings?

Q. Well now, take for instance the Cadmus property, what, in your opinion, is the rentable value of that farm, without the buildings?

Mr. Merrey.—The witness didn't testify anything about rentable value.

A. I haven't much experience in renting farms.

The Court.—He expressly disclaimed any knowledge of the rentals of farms, he said he never rented any.

Q. Didn't you express an opinion as to whether or not the rental values of those various farming properties was injured by the condition of the river?

A. Not the renting value; I said I didn't see where the river hurt them as farming properties, as a farm.

Q. You didn't mean to express any opinion as to whether the present condition of the river and the pollution by the defendant did any injury to the rentable value of the various properties in the Township of Saddle River?

A. No, I don't think so, because it is a farming proposition, and that is all they can be used for, and it doesn't hurt the farms, so I don't see where it can hurt the rental of them, if it doesn't hurt them for farming.

Q. Have you given all your reasons for that opinion?

A. That is what I say, it is just farming property right through there.

Q. Your answer, as I understand it, is that since they are farming properties you do not think the condition of the river in summer would have any effect on the rental value of farming property, as farming property?

A. As farming property, no.

Q. Would it have any effect on that same property when considered as country property or suburban property?

A. You mean to cut that up into building lots?

Q. No, no, I mean for utilizing the front of the property with the buildings for country or suburban use, would the condition of the river have any injurious effect on the rental value of the property under such circumstances?

A. Why, it might, but that property is not identified in the market for residences or country sites.

Q. Why not?

A. On account of the mills along there, on both sides of you you have mills.

Q. Do you mean to say the mills down at Garfield?

A. Yes, and the mills up at Market street, the dye works.

Q. And the dye works at Market street?

A. Yes.

Q. And what other mills are there along there? Do you know of any mills between Market street and up here (indicating)?

A. Broadway?

Q. Yes.

A. Oh yes, there are different mills along there.

Q. Which side?

A. On the other side of the river.

Q. On the Paterson side, aren't they?

A. Yes.

Q. There is none on the Bergen County side?

A. Why, those mills are all on the Bergen County side, the Botany mills.

Q. Oh, I mean between Market street and Broadway?

A. Oh, between Market and Broadway. Well, the dye works are there between Market and Broadway.

Q. But they are not used?

A. They are not? They are used to-day.

Q. What is the name of it?

A. National Silk Dyeing Works.

Q. Where are they situated?

A. Right on Market street.

Q. On the Bergen County side?

Q. On the Bergen County side, yes.

Q. Then it is your view that the location of those dye works and of the mills down here in Garfield, and the other mills which you have spoken of, would make it impossible for the various properties of the complainants to be utilized for suburban or country use; is that right?

A. I think so, yes.

Re-direct examination by Mr. Merrey.

Q. Have you any reason to believe that the farmers do not pay any less for their farms on account of the river smell?

A. I asked them and they told us what they paid for it, and said that the smell from the river didn't hurt them at all, and they never noticed it.

Q. What ones, mention the name?

A. The party on the Cadmus farm, I just forget their name, Rheingold.

Defendants Rest.

CASE CLOSED.

Adjourned until July 2nd. at 10 A. M. for argument.

(Filed Jan. 23, 1913.)

IN CHANCERY OF NEW JERSEY.

Between
HENRY W. DOREMUS *et al.*,
Compl'ts,

and

THE CITY OF PATERSON,
Def't.

FINAL OPINION.

MR. J. EDWARD ASHMEAD and MR. CHAUNCEY G. PARKER, for Complainants;
MR. EDWARD F. MERREY, for Defendants.

STEVENS, V. C.

This case has been before me on several previous occasions, 18 Dick., 606; 20 Dick., 711; 3 Robb., 175; 4 Robb., 296; 3 Buch., 476. I shall not repeat what has been said, nor shall I attempt any further discussion of the merits than is necessitated by the new evidence. The question is, what award shall be made to the complainants for the injury done and to be done to their respective properties because of the continuance, for four years, of the pollution of the Passaic River by the defendant's sewage.

The prayer of the bill was, originally, for an injunction only, but, in accordance with the decision of the Court of Errors (15 Dick., 385), it was so modified that it prayed for an injunction unless and until the defendant made such compensation

to complainants respectively, for the diminution in value of their said lands and property rights, as should be ascertained to be just." The city elected to make compensation and an award was made accordingly. The final decree, made June 26, 1908, awarded compensation on the basis of a continuance of the nuisance until March 26, 1911, and then provided that an injunction should issue on that date with, however, the following proviso:

"If notwithstanding the exercise of due diligence, the Mayor and Aldermen of the City of Paterson is unable to cease polluting the river by the time aforesaid leave is reserved to apply to this court, upon such terms as this court may deem equitable, to postpone the time of issuing said injunction to a day to be fixed by this court."

The city at first applied for a further term of five years but subsequently changed it to four.

On the former hearing, as a convenient means of reaching a definite result, I prepared a table of the annual or rental values of the various properties. It will be found in 3 Buch. on page 506. I then, arbitrarily, for reasons there explained, estimated the diminution in annual value caused by the pollution of the river, attributable to Paterson alone, (for I found pollution from other sources) as follows: For the year 1892, five per cent of the sums named in the table and for each succeeding year, one per cent in addition. The amounts computed on this basis were promptly paid. The gradually increasing percentage was given because of the admitted fact that as the city increased in population and built new sewers, the pollution also increased.

From this table, it would have been possible to have computed the probable injury for the four years period now under consideration, but the

complainants, with a view of showing that the compensation thus ascertained would be inadequate, introduced new evidence.

At the former hearing, although the complainants put in a great deal of evidence on other points, they did not introduce testimony as to annual or rental values. I, necessarily, took as my guide on that subject, evidence of the defendant's experts. On this hearing, the complainants have, themselves, called experts and as their testimony differs widely from that of the city's, I am obliged to subject the above mentioned table to revission.

Counsel for defendant argues that the matter is res judicata, but it is evident that it is not. The injury to be inflicted on the complainants by the wrongful acts of the defendant for the four years beginning March 26, 1911, will be, no doubt on the whole, greater year by year than that inflicted upon them in the five years immediately preceding that date. The adoption of an arbitrary standard for the ascertainment of the probable amount of injury that would be suffered in the earlier period, could not operate to prevent the court from making a new finding as to the later period, if the evidence justified it:—the injuries both in point of time and of quantity being distinct.

On the former hearing, I gave compensation only for loss in annual values. It is now very earnestly argued that the evidence demands an additional award that will compensate the complainants for the injury to be suffered in not being able to sell their respective properties except at greatly depreciated prices.

Mr. Harrison Van Duyne, and the other experts called by complainant thus estimate this

loss. They say (taking the property of Mr. Cadmus, on the Bergen County side of the river, as an illustration) that thirty acres of his land, excluding the frontage, which they estimate on a different basis, "is materially damaged in its selling value by the present condition of the river. If the river was clean it would be worth $800 per acre, or $24,000; under present conditions it would not sell for over four hundred dollars per acre, or $12,000 making a loss of $12,000, in value." They then calculate interest on $12,000, at six per cent. or $720 per year. This multiplied by four amounts to $2,880 and is, they say, the compensation Mr. Cadmus should receive for the four year period. They make a similar estimate in the case of other complainants.

The defendant's estimate is altogether different. Mr. Lee and other witnesses for the city say that the Cadmus property is nothing but a 'farming proposition,' worth $200 per acre and that it has, at present, little if any speculative value.

Two of the complainants' five witnesses on this point, Mr. Mercer and Mr. Coe, come from Bergen County. Mr. Allen comes from Passaic, Mr. Van Duyne from Newark, and Mr. Karl from Garfield. Newark is growing more rapidly than Paterson, and the increase in population in Garfield, Passaic and Bergen County is phenomenal. Mr. Coe testifies that there are very few farms left in Bergen County except along the Passaic; that "they are most all cut up" and either developed or awaiting development, except in the Northern part, which is rocky and mountainous. The optimistic testimony given by these witnesses is very naturally ascribable to the rapid rise in values in the localities with which they are most familiar. On the other hand, the witnesses for

the city come either from Paterson itself, where it would seem rents are very low, or from the the farming districts of Passaic County, west of Paterson, where good farm lands may still be had for $100 per acre. It is not unlikely that the judgment of the various witnesses on both sides has been colored by the development, or lack of development, of the districts from which they come. Now such of the complainants' lands as lie in Bergen County, east of the Passaic River and which, with the exception of the Gelderman property, are still farmed, and, apparently, with success seem from their situation at its western exteremity, to be quite as much affected by conditions in Paterson, which they immediately adjoin, as by those resulting from the New York overflow. It would, however, seem that even these lands are not altogether exempt from the immense rise in values which are taking place in that county. It would seem too, as I have pointed out in my former opinion, that at no very distant day they, or a considerable part of them, are destined to be used for factory purposes. There is a steady advance of this character up the river from Passaic, and perhaps not so marked an advance down the river from Paterson. This might, in the estimation of buyers, give them some added value, although the witnesses for the city will hardly admit it.

In view of the conflicting evidence, it is hard enough to assign a value to the lands, even under present conditions. It is harder to say what they would be worth if conditions were such as prevailed thirty years ago, and still harder to guess their additional value (over present values) if the factory pollution, for which Paterson is not responsible and which I have heretofore found to

amount to from one-quarter to one-third of the total pollution, should be admitted as a factor in making an estimate:—that is, an estimate based upon the assumption that the river would be free from the Paterson pollution but fouled by the factory pollution.

The properties which lie on the east bank of the Passaic have been for two hundred years or more utilized as farms; they were so utilized thirty years ago when conditions were perfect and they are now so utilized. The witnesses for complainants, notwithstanding, divide each tract into two separate parts. They convert the front parts, which include the farm houses and six or seven acres adjoining the river, into suburban residences assigning a rental value to them as such, and they give to the rear parts, embracing much the larger acreage, a price such as it would have if ready for speculative development.

Basing their valuations, as they do, upon assumptions which are so problematical and incapable of verification, I do not feel justified in making them the basis of an assessment. The principle of Hetfield v. Central R. R. Co., 4 Vr., 252, referred to in my former opinion, would seem to apply.

There is another fallacy (at least from a legal standpoint) in complainants' estimates. They are all, evidently, based upon the assumption that the injury will continue after the lapse of four years. Defendant, in its amended answer, says:

"2. That defendant has not taken the respective lands and property rights of the complainants except so far as the injury to them, if any such injury there may be through or by means of its sewerage system in the complainants' bill mentioned, may be considered as such taking, and that such injury or taking is to be temporary and

is to continue no longer than five (now four) years from the date of the filing hereof" &c. It is apparent that the assumptions made by the witnesses and those which must be made by the court are different. If I am to assume that the pollution is to cease on March 26, 1915, as the answer says it will, an estimate that the property will be worth in the market at any time prior to that date $400 per acre, and thereafter $800 is altogether unreasonable. I shall revert to this subject hereafter in another connection.

My conclusion as to these farm properties is that they must be dealt with as such. They are farm properties now and they are likely to remain so for an indeterminate time longer.

Notwithstanding all this, I would not be justified in disregarding the testimony of complainants' witnesses altogether. It is given by gentlemen of intelligence and large experience. At the former hearing, I had only the defendants' witnesses to guide me; now I have experts on both sides. It is unquestionable that the value of a property is one of the factors which goes to fix the amount of rent to be asked and it is, on the other hand, equally unquestionable that a farmer cannot afford to pay a rent that will prevent him from making a profit. In view of all the facts and of those considerations which will be found in my former opinion, I have come to the conclusion that the rental values in the table should be somewhat increased for the purpose of estimating the injury, and that the sliding per centage heretofore adopted should be applied to these values thus corrected.

There are some exceptional cases.

First. The Gelderman property. This is the only suburban residence property on the east side of the river. It has been considerably improved since the last hearing and its rental value has been increased. Mr. Lee, testifying for the city, says that it is now $500, and with the river free from pollution, not more than $600. Mr. Van Duyne and some of the other witnesses for complainant say that, on an eight per cent. basis, the rent should be, if the river were pure, $1,080. Considering the value they place upon the building this would seem high. For the purposes of estimating the injury, I will assign to it and to the land appurtenant to it a rental value of $650.—more than double my former estimate.

2. The Nash property. This is on the west side of the river. My previous estimate of its annual or rental value was $850. In view of the new evidence, this is manifestly too low. $1,200 for the three houses is not, I think, excessive. In addition to the three houses, Mr. Nash has a separate tract of twelve acres, fronting on the lake and unimproved. Since the last hearing and in consequence of the rapid growth of the City of Passaic northward, it would seem that this lot has become ripe for development. Its advantageous disposition is unquestionably affected by the pollution. Mr. Lee, a witness for Paterson, and Mr. Van Duyne a witness for the complainants, agree that, with the pollution it is worth $1,200 per acre; without $2,000. But $1,200 represents the value, not on the basis of a pollution to cease on March 26, 1915, but on an indefinite continuance of it. This is what Mr. Van Duyne says:

Q. Suppose that assurances were given that within three years, that nuisance would be removed, what effect would that have on the purchaser?

A. It would depend somewhat upon how the purchaser looked at that matter. My own judgment is against all possibility of removing the nuisance in three years, even if the sewage is taken out.

Q. Answer the question as it is put now. I am asking you how, if there was assurance given that the nuisance would be removed in three years what effect would that have upon a possible purchaser? Would he give more with that assurance than he would under the theory on which you testify?

A. If he had positive assurance that within three years, the river would be clean—why, I think that the difference then would not be one-half, the way we have concluded that it would be in a num- of these cases.

* * * * * * *

Q. With the effects removed now, a person knowing it would be done within a certain time, he would give a great deal more than the one-half you mention?

A. Then I think he would give more.

Q. A great deal more too?

A. Well considerably more.

Mr. Lee giving evidence from the city's standpoint, after saying that $1,200 would represent the value, in the polluted condition of the river, and $2,000 in the unpolluted says:

Q. Suppose assurance were given to you that within three years the sewage would cease to flow into the river, what would you consider the present value per acre?

A. Well, then I would get down to figures. I would try to establish what it was going to cost me to hold that property for three years. I would take into consideration the interest and the taxes. I would arrive at it in that way, I think.

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Mr. Van Duyne's way of arriving at the amount of injury, on the basis of pollution to continue indefinitely, I state in his own words:

In my judgment if the river were clear it (12 acres) would be worth $2,000 per acre or $24,000. With the present condition of the river, I don't think it is worth over $1,200 per acre, or $14,400. Loss in value $9,600, interest on same at six percent. $576.00." Multiplying $576 by four, we have $2,304 as Mr. Van Duyne's estimate of Mr. Nash's injury during the four year period. But it is perfectly apparent that if the nuisance were to cease at the end of the period, the loss would be less. A purchaser who pays $1,200 for what in four years he will be able to sell for $2,000 not only gets back his interest which, at six per cent. would amount to $288, but gains, in addition, over $500. From this, however, should be deducted taxes, which would amount, perhaps, to from $50 to $75. A purchaser paying $1,550 for the property at the beginning of the four year period would be fully reimbursed for his outlay at the end of it, if he could realize $2,000. Taking $1,550 and applying Van Duyne's method of computing the injury, we would have the following; subtract $18,600. (i. e. 1550 x 12) from $24,000 and there is left $5,400, which multiplied by six gives $324 as the annual loss. This multiplied by four ($1,296) would represent Mr. Nash's compensation for his injury thus estimated. If we take into account the fact that he not only loses interest on his investment but also pays taxes, that sum would not appear to be excessive. I doubt whether the factory pollution alone would materially affect values at this point. Mr. Van Duyne very properly estimates the loss of annual interest not on $2,000 but on that sum diminished by what he regards as the present selling price.

3. The Mercelis property. This property is on the west bank of the Passaic not far from the Nash property. It is a single tract extending from the river to Lake View avenue. For the rental value of the house and land, about 26 acres,—I gave at the former hearing $350. I am inclined to think that this is a fair rental for the house, considering its character, and for the ground immediately adjoining it. It fails, as the evidence now stands, to represent the injury to the remaining property, which is according to the testimony, ripe for development. The tract is somewhat injured by the nuisance, though not to the same extent as the Nash property just considered, for it is back from the river. The sum to be given for the injury is necessarily an arbitrary one. $150 per annum on this account would not, I think, be too much.

4. The Outwater property. The evidence will not justify an addition to the sum heretofore allowed. It is argued that the amount is excessive. Taking into account the effect of the nuisance—less here, however, than on the lake—it does not seem to be so, as applied to the property remaining unsold.

The table of values will then be as follows:

Nash	$1,200
Mercelis	350
Terhune	900
Cadmus	560
R. Van Riper	550
H. Doremus	550
Alyea	450
G. Van Riper	1,150
Edo Van Riper	700
Mary Van Saun	425

P. Doremus	550
Gelderman	650
Outwater	450

To which must be added the sums allowed to Mr. Nash and Mr. Mercelis for arrested development.

I now come to the consideration of a subject that is not without difficulty. The Court of Errors, in the Simmons case, 15 Dick. 385, uses, in reference to these property owners, the following language; "The relators are here asking equity (i. e. an injunction) and they must do equity. A substituted remedy by giving them adequate compensation for their injury would be a just disposition of the controversy." According to this decision, on which all the subsequent proceedings have turned, the compensation must be full. In the paragraph of the City's amended answer, heretofore quoted, it is said, not that Paterson will cease emptying its sewage into the river at the date mentioned, but that such injury or taking ("through or by means of its sewerage system") "is to be temporary and is to continue no longer than five (now four) years from the date of the filing hereof." The city therefore in substance, avers that the injury will cease at that time. The decree was that if, notwithstanding the exercise of diligence, the city was "unable to cease polluting the river by the time aforesaid" (March 26, 1911) leave was reserved to apply to the court upon such terms as it deemed equitable to postpone the issuing of the injunction.

To cease emptying sewage into the stream and to cease polluting it are two different things. The evidence makes it probable that the injury will continue after Paterson ceases to empty its sewage into the river. When it first began to do this,

in the decade beginning with 1870, Jersey City and Newark obtained their drinking water from the lower Passaic at Belleville. In the beginning so little did the sewage affect its purity that Passaic took its drinking water from a point not far below Paterson until 1882, and Jersey City took its lower down, until 1898. Now more than one hundred million gallons of water are taken daily, from the river and its tributaries above Paterson, and the amount is constantly increasing. The result is that the volume of the flow of the stream past Paterson is much less than it formerly was. There is more sewage and less water to carry it off. Then we have the fact that Dundee Lake is formed by damming the river just above Passaic. With these conditions, it is no wonder that the diminished flow of water retarded by the dam is insufficient to carry off the polluted matter which, in large quantities, is being deposited, not only on the shores of the river and lake, but throughout its bed. It is these deposits which are, now, largely responsible for the nuisance. Even if the sewers cease to discharge their contents into the stream at the time named, these deposits will remain; but how long no one can undertake even to guess. As I have shown in my former opinion (3 Buch. on pg. 478) the flow of water through Paterson varies enormously, not only at different seasons of the year but in different years. If a freshet should occur, such as inundated Paterson several years ago, a great deal of this accumulated matter would, I suppose, be swept out in a few days. On the other hand, if there should be several years of comparatively even flow, the nuisance might last for a long time. I do not feel qualified to express an opinion as to how far it would be possible to abate the nuisance by opening

the gates of the Dundee canal, or resorting to other artificial methods. This much is certain; that the property owners would not get 'the adequate compensation for their injury' to which, in the Simmons' case, they were declared to be entitled, if after the four years period the polluted matter thus accumulating should continue to create a nuisance.

Where the right depends upon the happening, in future, of some contingent event, it is a common practice for this Court, not to pass upon it until the contingency occurs. This principle would here seem applicable. First, because Paterson says it will not pollute after the date named, and it must here be assumed that it will make its averment good. Second, because of the impossibility of estimating the injury, even approximately, at this time. If it be competent for the Court to assess damages at all, it is competent for it to determine when it will assess them, and if there be an obvious propriety in deferring the assessment, in part, until at least some idea can be formed as to what it is likely to be,—I see no legal difficulty in the way. The city, by its submission, has given this Court power to make an award, and therefore a complete award.

This course will avoid a real difficulty and be just to both sides. As a matter of law, I have been obliged to assume the existence of a condition which, as a matter of fact, may not be present in March, 1915, and which the witnesses say they cannot assume because of its extreme improbability. I think, therefore that leave should be reserved to apply to this Court for further compensation when the city shall cease to empty its sewage into the stream, if the pollution shall

then continue; but without prejudice to the raising by the city of such legal or other objections to any further award, as it may see fit. This will safeguard the right of the city, if it desire to contend that no further award should or can be made.

A true copy.

SAM'L K. ROBBINS, *Clerk.*

(Filed February 19, 1913.)

IN CHANCERY OF NEW JERSEY

Between
HENRY W. DOREMUS *et al.*,
Complainants,
and
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *et al.*,
Deft's.

On Bill, &c.
On Petition.

SUPPLEMENTAL DECREE.

This matter coming on to be heard in the presence of J. Edward Ashmead and Chauncey G. Parker, of counsel with the complainants hereinafter mentioned, and Edward F. Merrey, of counsel with the defendant the Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, and the final decree in this cause having provided among other things than an injunction should issue according to the prayer of the bill of complaint, restraining the Mayor and Aldermen of the City of Paterson, its officers, agents and employes, from polluting and continuing to pollute the waters of the Passaic River above the respective lands and properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or other matter or thing which may contaminate or pollute the waters of the Passaic River into the said river above the respective lands and properties of the complainants in said cause, and from interfering in any way with the enjoyment by the

complainants of their rights as riparian owners in the manner in the bill of complaint set forth, from and after the twenty-sixth day of March, in the year one thousand nine hundred and eleven. And said decree having further provided that if the defendant, notwithstanding the exercise of due diligence, was unable to cease polluting the said river by the time fixed, it should have leave to apply to this court upon such terms as this court might deem equitable, to postpone the time of issuing said injunction to a day to be fixed by the court. And the said defendant having by its petition filed herein on the fourteenth day of March, Nineteen hundred and eleven, applied to the court to postpone the issuing of the said injunction until the twenty-sixth day of March, Nineteen hundred and sixteen, and alleging in said petition that it had not been able, notwithstanding the exercise of due diligence, to cease polluting the said river at the time mentioned in said decree and that such further injury or undertaking should be temporary and should continue no longer than five years from the twenty-sixth day of March nineteen hundred and eleven. And the said complainants hereinafter named having consented in open court to the granting of the said petition of defendant upon terms that the defendant pay to them severally such compensation for the diminution in the rental or other value of their said land by reason of the continued pollution of the said river during the period of said pollution as should be fair and equitable, the same to be fixed and determined by this court in this proceeding. And pursuant to an order made herein on the sixteenth day of January, nineteen hundred and twelve, proof having been taken as to what would be fair and equitable compensation

to the said answering complainants severally for the diminution in the rental or other value of their said land which will result to them by reason of the continued pollution of the said river by the discharge of the sewage of the City of Paterson into the same during the period mentioned in said petition. And the defendant having afterwards duly amended its said petition so as to allege that such injury or taking should be temporary and should continue no longer that four years from the said twenty-sixth daw of March, nineteen hundred and eleven, instead of five years from said last mentioned date and consenting in open court to the assessment of damages against it on such basis. And proofs having been taken and read, and the arguments of the respective counsel having been heard and the court having duly considered the same and being of the opinion that the said complainants are entitled to the amounts hereinafter named as a fair and equitable compensation for the diminution in the rental or other value of their said lands which will result to them, respectively, by reason of the continuance of such injury or taking from March twenty-sixth, Nineteen hundred and eleven, to March twenty-sixth, Nineteen hundred and fifteen;

It is, thereupon, on this fifteenth day of February, One thousand nine hundred and thirteen, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this court doth hereby order, adjudge and decree, (1) that the defendant the Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, has been since the twenty-sixth day of March,

Nineteen hundred and eleven, and now is wrongfully and illegally polluting the waters of the Passaic River above the respective lands and properties of the complainants hereinafter named, by dicharging therein sewage and other deleterious and polluted matter to the injury of the said lands and premises and in violation of the rights of the respective complainants therein.

And it is further ordered, adjudged and decreed (2) that the diminution in the rental or other value of the respective lands and property rights of the complainants hereinafter named through the said continued pollution of the Passaic River by the said defendant since the twenty-sixth day of March, Nineteen hundred and eleven, amounts at the present time upon the basis that the injury resulting therefrom will wholly cease on the twenty-sixth day of March, Nineteen hundred and fifteen, to the following sums, respectively:

To the lands and property rights of the complainant Scotto C. Nash, two thousand five hundred twenty-nine dollars and thirty-six cents (2,529.36); to the lands and property rights of the complainants John H. Mercelis and Edwin Mercelis, nine hundred fifty-nine dollars and seventy-three cents ($959.73); to the lands and property rights of the substituted complainant John Terhune, nine hundred twenty-five dollars and two cents ($925.02); to the lands and property rights of the substituted complainants Catherine Cadmus, Emma Cadmus Doremus, John E. Cadmus, Cornelia E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien and Margaret Cadmus Andrews, heirs at law of Edo Cadmus, deceased, five hundred seventy-five dollars and fifty-seven

cents ($575.57); to the lands and property rights of the substituted complainant Charlotte Jane Van Riper, individually and as executrix of the last will and testament of Richard H. Van Riper, deceased, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the substituted complainant Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the substituted complainant H. Charles Hillman, four hundred sixty-two dollars and fifty-one cents ($462.51); to the lands and property rights of the substituted complainants Catherine Van Riper and Selah Van Riper, individually and as executrix and executor of the last will and testament of George G. Van Riper, deceased, one thousand one hundred eighty-one dollars and ninety-seven cents ($1,181.97); to the lands and property rights of the complainants Edo Van Riper, seven hundred nineteen dollars and forty-six cents ($719.46); to the lands and property rights of the complainant Mary Van Saun, four hundred thirty-six dollars and eighty-two cents ($436.82); to the lands and property rights of the substituted complainants Emma Doremus, individually and as administratrix of Garrett M. Doremus, deceased, Peter H. Doremus, Catherine Doremus and Harvey Doremus, heirs at law of the said Garrett M. Doremus, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the complainant Frederick H. Gelderman, six hundred sixty-eight dollars and seven cents ($668.07); to the lands and property rights of the complainant Richard Outwater, fifty-one dollars and thirty-

nine cents ($51.39); to the lands and property rights of the substituted complainants Sarah E. Outwater and Richard Outwater, executors, Sarah E. Outwater, widow of Albert A. Outwater, deceased, Peter W. Outwater, Eliza Bogart, Garrett Outwater, Richard Outwater, trustees for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, devisees under the last will and testament of Albert A. Outwater, deceased, four hundred sixty-two dollars and fifty-one cents ($462.51).

And it is further ordered, adjudged and decreed (3) that there be allowed to the said complainants as a counsel fee to be included in their taxable costs the sum of twenty-five hundred dollars.

And it is further ordered, adjudged and decreed (4) that the said defendant pay to the said complainants, respectively, or to their solicitors, the said sums of money hereinbefore mentioned with their costs of these proceedings to be taxed, including costs of stenographers' transcript and copy thereof, on or before the fifteenth day of March, 1913, with legal interest on said sums from January 28, 1913, and that in default thereof an injunction do issue according to the final decree heretofore entered in this cause, restraining the said defendant The Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, its officers, agents and employes, from polluting and continuing to pollute the waters of the Passaic River above the respective lands and properties of the complainants heretofore named, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or

any matter or thing which may contaminate or pollute the waters of the said Passaic River into the said river above the said respective lands and properties of the said complainants and from interfering in any way with the enjoyment by the said complainants of their rights as riparian owners in the lands aforesaid, respectively.

And it is further ordered, adjudged and decreed (5) that an injunction do issue according to the final decree heretofore entered in said cause restraining the said defendant The Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, its officers, agents and employes from polluting and continuing to pollute the waters of the Passaic River above the respective lands and properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or any matter or thing which may contaminate or pollute the waters of the said Passaic River into the said river above the said respective lands and properties of the said complainants and from interfering in any way with the enjoyment by the said complainants of their rights as riparian owners in the lands aforesaid, respectively, from and after the 26th day of March which would be in the year of our Lord one thousand nine hundred and fifteen. If notwithstanding the exercise of due diligence the Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, is unable to cease polluting the said river by the time aforesaid, leave is hereby reserved to apply to this court upon such terms as this court may deem equitable to postpone the time of issuing said injunction to a day to be fixed by this court. (5) And leave is hereby reserved to the said com-

plainants to apply to this court for further compensation, when the said defendant shall cease to empty its sewage into the said river, if injury or damage from the pollution before that time shall then continue; but without prejudice to the raising by the said defendant of such legal or other objection to any further award as it may see fit.

Respectfully advised,

FREDERIC W. STEVENS, V. C.

E. R. WALKER, C.

(Filed February 26, 1913).

IN CHANCERY OF NEW JERSEY.

HENRY W. DOREMUS *et al.*,
Compl'ts,

and

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Defendant.

On Bill, &c.

NOTICE OF APPEAL.

The defendant, City of Paterson, hereby appeals from the supplemental final decree made in the above cause on the fifteenth day of February, nineteen hundred and thirteen, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated February 26, 1913.

EDWARD F. MERREY,
Solicitor and of counsel with defendant,
City of Paterson.

I conceive there is a good cause for appeal in the above stated cause.

EDWARD F. MERREY,
Of counsel with the defendant,
City of Paterson.

(Filed, April 7, 1913.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
HENRY W. DOREMUS *et al.*,
Complainants,

and

THE CITY OF PATERSON *et al.*,
et al.,

On Bill, &c.

PETITION OF APPEAL.

To the Honorable Court of Errors and Appeals in the last resort of all causes:

The petition of the City of Paterson, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a supplemental final decree made in the Court of Chancery by his Honor Edwin R. Walker, Chancellor of New Jersey, bearing date the fifteenth day of February, nineteen hundred and thirteen, wherein Henry W. Doremus and others were complainants and the City of Paterson and others were defendants, in this respect, to wit: that the said decree adjudges that the defendant, The Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, has been since the twenty-sixth day of March, nineteen hundred and eleven, and now is wrongfully and illegally polluting the waters of the Passaic River above the respective lands and properties of the com-

plainants hereinafter named, by discharging therein sewage and other deleterious and polluted matter to the injury of the said lands and premises and in violation of the rights of the respective complainants therein.

Your petitioner humbly appeals from that part of the decree of the Chancellor which decrees aforesaid upon the ground that the same is erroneous, in that, this appellant has not since the twenty-sixth day of March, nineteen hundred and eleven, and was not at the date of said decree, wrongfully and illegally polluting the waters of the Passaic River above the respective lands and properties of the complainants in the said decree named, but was rightfully so doing subject, however, to making compensation to the defendants for such injury as accrued to the value of their lands by reason thereof.

And the said petitioner also appeals from that part of the decree which adjudges that the diminution in the rental or other value of the respective lands and property rights of the complainants hereinafter named through the said continued pollution of the Passaic River by the said defendant (this appellant) since the twenty-sixth day of March, nineteen hundred and eleven, amounts at the present time (the date of said decree) upon the basis that the injury resulting therefrom will wholly cease on the twenty-sixth day of March, nineteen hundred and fifteen, to the following sums, respectively:

To the lands and property rights of the complainant, Scotto C. Nash, two thousand five hundred twenty-nine dollars and thirty-six cents ($2,529.36); to the lands and property rights of the complainants, John H. Mercelis and Edwin Mercelis, nine hundred fifty-nine dollars and sev-

enty-three cents ($959.73); to the lands and property rights of the substituted complainant, John Terhune, nine hundred twenty-five dollars and two cents ($925.02); to the lands and property rights of the substituted complainants, Catherine Cadmus, Emma Cadmus Doremus, John D. Cadmus, Cornelia E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien and Margaret Cadmus Andrews, heirs at law of Edo Cadmus, deceased, five hundred seventy-five dollars and fifty-seven cents ($575.57); to the lands and property rights of the substituted complainant, Charlotte Jane Van Riper, individually and as executrix of the last will and testament of Richard H. Van Riper, deceased, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the substituted complainant, Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the substituted complainant, H. Charles Hillman, four hundred sixty-two dollars and fifty-one cents ($462.51); to the lands and property rights of the substituted complainants, Catherine Van Riper and Selah Van Riper, individually and as executrix and executor of the last will and testament of George G. Van Riper, deceased, one thousand one hundred eighty-one dollars and ninety-seven cents ($1,181.97); to the lands and property rights of the complainant, Edo Van Riper, seven hundred nineteen dollars and forty-six cents ($719.46); to the lands and property rights of the complainant, Mary Van Saun, four hundred thirty-six dollars and eighty-two cents ($436.82); to the lands and property rights of the substituted complainants, Emma Doremus, in-

dividually and as administratrix of Garrett M. Doremus, deceased, Peter H. Doremus, Catherine Doremus and Harvey Doremus, heirs at law of the said Garrett M. Doremus, five hundred sixty-five dollars and twenty-nine cents ($565.29); to the lands and property rights of the complainant, Frederick H. Gelderman, six hundred sixty-eight dollars and seven cents ($668.07); to the lands and property rights of the complainant, Richard Outwater, fifty-one dollars and thirty-nine cents ($51.39); to the lands and property rights of the substituted complainants, Sarah E. Outwater and Richard Outwater, executors, Sarah E. Outwater, widow of Albert A. Outwater, deceased, Peter W. Outwater, Eliza Bogart, Garrett Outwater, Richard Outwater, trustees for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, devisees under the last will and testament of Albert A. Outwater, deceased, four hundred sixty-two dollars and fifty-one cents ($462.51); for the reason that the sums of money, and each and every one of them awarded to the various complainants in and by said decree are excessive and in each case are more than the diminution in the rental and other values of the lands and property rights of said complainants caused by the pollution of the said Passaic River by this petitioner for the time specified in the said decree.

The defendant also appeals from that portion of said decree that adjudges that there be allowed to the said complainants as a counsel fee to be included in their taxable costs the sum of twenty-five hundred dollars, for the reason that such allowance is excessive.

This defendant further appeals from that part of the decree which adjudges that the said de-

fendant pay to the said complainants, respectively, or to their solicitors, the said sums of money hereinbefore mentioned with their costs of these proceedings to be taxed, including costs of stenographers' transcript and copy thereof, on or before the fifteenth day of March, 1913, with legal interest on said sums from January 28, 1913, and that in default thereof an injunction do issue according to the final decree heretofore entered in this cause, restraining the said defendant, The Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, its officers, agents and employes from polluting and continuing to pollute the waters of the Passaic River above the respective lands and properties of the complainants heretofore named, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or any matter or thing which may contaminate or pollute the waters of the said Passaic River into the said river above the said respective lands and properties of the said complainants, and from interfering in any way with the enjoyment by the said complainants of their rights as riparian owners in the lands aforesaid, respectively, for the reason that it is inequitable that an injunction should issue as in said part of the decree mentioned unless the defendant should pay the sums mentioned, for the reason that such sums are excessive.

And the defendant further appeals from that part of the decree which adjudges that an injunction do issue according to the final decree heretofore entered in said cause restraining the said defendant, The Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, its officers, agents and employes from polluting and continuing to pollute the waters of the

Passaic River above the respective lands and properties of the complainants, and from pouring and emptying and continuing to pour and empty its sewage or any sewage, filth or any matter or thing which may contaminate or pollute the waters of the said Passaic River into the said river above the said respective lands and properties of the said complainants and from interfering in any way with the enjoyment by the said complainants of their rights as riparian owners in the lands aforesaid, respectively, from and after the twenty-sixth day of March which would be in the year of our Lord one thousand nine hundred and fifteen. If notwithstanding the exercise of due diligence the Mayor and Aldermen of the City of Paterson, now known as the City of Paterson, is unable to cease polluting the said river by the time aforesaid, leave is hereby reserved to apply to this court upon such terms as this court may deem equitable to postpone the time of issuing said injunction to a day to be fixed by this court, for the reason that in the event that if the defendant desires to further continue to pour and empty its sewage into the waters of the Passaic River on and after the twenty-sixth day of March, which will be in the year of our Lord one thousand nine hundred and fifteen, it should be allowed to do so upon condition that it make such compensation to the complainants for the diminution in the value of their lands as shall be ascertained to be just.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

EDWARD F. MERREY,
Solicitor and of Counsel with Defendant.

(Filed April 30, 1913.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
HENRY W. DOREMUS *et al.*,
Complainants-Appellee,
and
CITY OF PATERSON *et al.*,
Defendant-Appellant.

ANSWER.

To the Honorable Court of Errors and Appeals of the last resort in all Causes.

The answer of Scotto C. Nash, John H. Mercelis, Edwin Mercelis, John Terhune, Catherine Cadmus, Emma Cadmus Doremus, John D. Cadmus, Cornelia E. Cadmus, Bertha Cadmus, Laura Cadmus Van Dien and Margaret Cadmus Andrews, heirs at law of Edo Cadmus, deceased, Charlotte Jane Van Riper, individually and as executrix of the last will and testament of Richard H. Van Riper, deceased, Charity V. D. Doremus, individually and as executrix of the last will and testament of Henry W. Doremus, deceased, H. Charles Hillman, Catherine Van Riper and Selah Van Riper, individually and as executrix and executor of the last will and testament of George C. Van Riper, deceased, Edo Van Riper, Mary Van Saun, Emma Doremus, individually and as administratrix of Garret M. Doremus, deceased, Peter H. Doremus, Catherine Doremus and Harvey Doremus, heirs at law of the said Garrett M.

Loremus, Frederick G. Gelderman, Richard Outwater, Sarah E. Outwater and Richard Outwater, executors, Sarah E. Outwater, widow of Albert A. Outwater, deceased, Peter W. Outwater, Eliza Bogart, Garrett Outwater, Richard Outwater, trustees for Albert Outwater, and the said Albert Outwater, Edo Outwater, Sadie Outwater and Clifford Outwater, devisees under the last will and testament of Albert A. Outwater, deceased, to the petition of appeal of the City of Paterson, defendant-appellant:

The said respondents not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit, that a supplemental final decree was made in the Court of Chancery on the date and of the purport mentioned in the said petition, but as to the substance and form thereof the said respondents pray to refer thereto when the same shall be produced. And the said respondents are advised and believe that the said decree appealed from by the said defendant-appellant is just and agreeable to equity and the said respondents pray that the said portions of the said decree may be affirmed with costs to be adjudged to the respondents.

LINDABURY, DEPUE & FAULKS,
Solicitors for and of Counsel with Scotto C. Nash et als., Complainants-Appellee.

CHAUNCEY G. PARKER,
Of Counsel.

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