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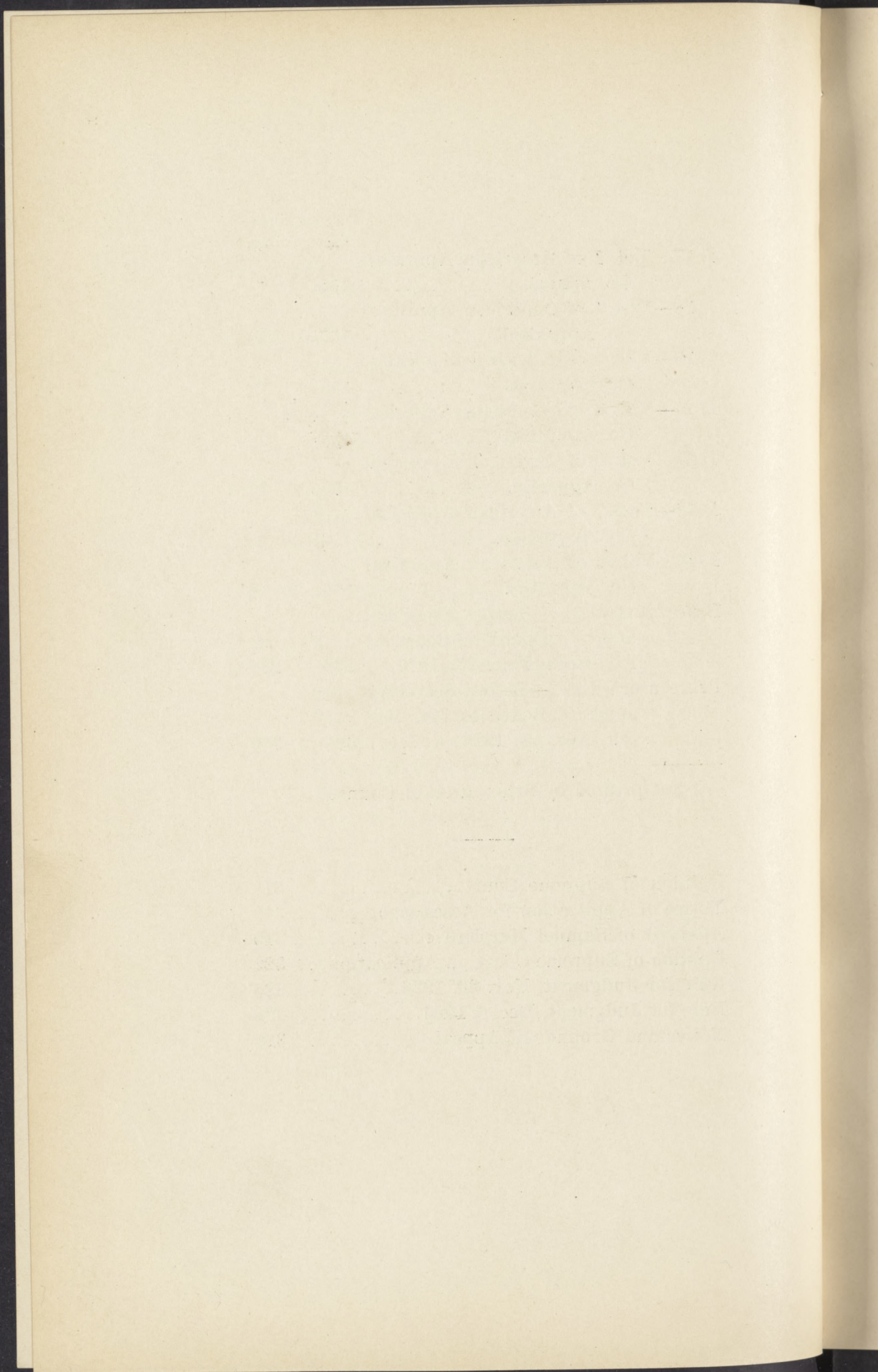
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Writ of Certiorari.

(Allowed April 23, 1926. Returnable May 4, 1926.)

NEW JERSEY, ss.:

10

THE STATE OF NEW JERSEY

TO

THE STATE BOARD OF TAXES AND ASSESSMENT,

(Seal)

Greeting:

WE, being willing, for certain reasons, to be certified of the judgment, order and determination of the State Board of Taxes and Assessment modifying and reducing the assessment of taxes on buildings and equipment for the year 1925 of Nairn Linoleum Company, a corporation, (of which Congoleum Nairn, Inc., is successor owner) situated in the Town of Kearny, in the County of Hudson and State of New Jersey, described for the purpose of taxation as follows:

20

Block 22, Plot 181

Block 23, Plot 1

Block 23, Plots 2 & 3

Block 24, Plots 111 & 111A

Block 25, Plot 190

Block 37, Plots 1-B & 1-C

30

DO COMMAND YOU that the judgment, order and determination, including the valuations upon which the same are based, all proceedings before the said The State Board of Taxes and Assessment, the final determination and judgment of said Board thereon, and all matters and proceedings touching and

40

Writ of Certiorari.

concerning the same, to our Supreme Court at
Trenton, on the 4th day of May, A. D. 1926, you
certify and send, together with this writ, that
therein may be done what of right and according
to the laws and constitution of this State ought
10 to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
Justice of our said Supreme Court at Trenton,
this twenty-third day of April, in the year of our
Lord one thousand nine hundred and twenty-six.

EDWARD J. KELLEHER,
Clerk.

JOHN H. COOPER,
HOBART & MINARD,
20 Attorneys.

—————
(Endorsed)

NEW JERSEY SUPREME COURT.

TOWN OF KEARNY, a municipal corporation,
Prosecutor,

vs.

30 THE STATE BOARD OF TAXES AND ASSESSMENT and
CONGOLEUM NAIRN, INC., a corporation,
Defendants.

On Certiorari.

WRIT OF CERTIORARI.

Returnable May 4, 1926.

40 JOHN H. COOPER,
HOBART & MINARD,
Attorneys of Prosecutor,
24 Branford Place,
Newark, N. J.

Writ of Certiorari.

I allow this writ. Let it be sealed.

Dated April 23, 1926.

JAMES F. MINTURN,
Supreme Court Justice.

10

State Board of Taxes and Assessment
Received April 23, 1926.
Chas. E. Cook, Secretary,
Per K. M. Flynn.

**Return of State Board of Taxes and
Assessment.**

(Filed April 29, 1926.)

20

NEW JERSEY SUPREME COURT.

TOWN OF KEARNY, a municipal
corporation,
Prosecutor,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT AND THE MAYOR
and CONGOLEUM NAIRN, INC.,
a corporation,

Defendants.

On Certiorari.

30

The State Board of Taxes and Assessment doth
herewith send to the Supreme Court of the State
of New Jersey the petition, judgment and proceed-
ings in the matter of the appeal of Congoleum-
Nairn, Inc., from the assessment of property lo-
cated in the Town of Kearny, County of Hudson,

40

Return of State Board.

for the year 1925, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

10 STATE BOARD OF TAXES AND ASSESSMENT,
By CHAS. E. COOK,
(Seal) Secretary.

Petition of Appeal to State Board.

(Filed September 19, 1925.)

BEFORE THE

20 NEW JERSEY STATE BOARD OF TAXES
AND ASSESSMENT.

IN THE MATTER

of

30 The application of CONGOLEUM-
NAIRN, INC., for the reduction
of tax assessment for the year
1925 on property situate in
the Town of Kearny, County
of Hudson and State of New
Jersey. } Petition.

To the State Board of Taxes and Assessment:

Your petitioner, CONGOLEUM - NAIRN, INC., of Kearny, in the County of Hudson and State of New Jersey, respectfully shows that it is the owner of certain property in the taxing district of Kearny in the County of Hudson, the particulars of which are shown in the schedule hereto annexed.

40

Petition of Appeal to State Board.

That an appeal from each assessment was filed with the Hudson County Board of Taxation, which said appeal said Board on August 25, 1925, disposed of as follows:

Affirmed without prejudice.

10

Your petitioner therefore has not paid the taxes so levied for the year 1925 and prays that said assessments be reduced to the true value of the property as shown in the schedule hereto annexed.

Dated August 26, 1925.

CONGOLEUM - NAIRN, INC.,
by L. W. FOGG, Treasurer,
Petitioner.

20

SCHEDULE.

BLOCK 22, PLOT 181:

That said property has been assessed for taxation for the year 1925 at a valuation of:

Land.....	\$ 17,450.00
Building.....	1,220,450.00
Personal.....	
Total.....	<u>\$1,237,900.00</u>

Which assessment your petitioner prays be reduced to the true value of the property to wit:

Land.....	\$ 17,450.00
Building.....	614,690.00
Personal.....	
Total.....	<u>\$ 632,140.00</u>

30

BLOCK 23, PLOT 1:

Land.....	\$ 65,000.00
Building.....	38,700.00
Personal.....	
Total.....	<u>\$ 103,700.00</u>

Land.....	\$ 63,750.00
Building.....	12,500.00
Personal.....	
Total.....	<u>\$ 76,250.00</u>

40

Petition of Appeal to State Board.

BLOCK 23, PLOTS 2 & 3:

	Land.....	\$ 35,000.00		Land.....	\$ 32,500.00
	Building	74,750.00		Building	68,800.00
	Personal.....			Personal.....	
10	Total.....	\$ 109,750.00		Total.....	\$ 101,300.00

BLOCK 24, PLOTS 111 & 111-A:

	Land.....	\$ 72,100.00		Land.....	\$ 66,850.00
	Building	3,106,250.00		Building	926,250.00
	Personal.....	2,500,000.00		Personal.....	1,468,500.00
	Total.....	\$5,678,350.00		Total.....	\$2,461,600.00

BLOCK 25, PLOT 190:

	Land.....	\$ 5,000.00		Land.....	\$ 5,000.00
	Building	190,500.00		Building	14,375.00
	Personal.....			Personal.....	
20	Total.....	\$ 195,500.00		Total.....	\$ 19,375.00

BLOCK 37, PLOTS 1-B & 1-C:

	Land.....	\$ 22,000.00		Land.....	\$ 20,625.00
	Building			Building	
	Personal.....			Personal.....	
30	Total.....	\$ 22,000.00		Total.....	\$ 20,625.00

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

JOHN J. MULVANEY, of full age, being fully sworn according to law, upon his oath, deposes and says:

40 For the purpose of the appeal I am the agent of Congoleum Nairn and Company. I have read the foregoing petition and know the contents there-

Petition of Appeal to State Board.

of. The statements set forth and content in said petition are true.

JOHN J. MULVANEY.

Sworn and subscribed before me
this 31st day of August, 1925.

10

THOMAS MCNULTY,
Attorney at Law of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

LOCKWOOD W. FOGG, being duly sworn according to law, upon his oath deposes and says: I am the Treasurer of Congoleum-Nairn, Inc., and agent of said Company. I have read the foregoing petition of appeal and know that the contents thereof are true.

20

LOCKWOOD W. FOGG.

Subscribed and sworn to before me
at Jersey City this 12 day of
September, 1925.

JOHN MILTON,
Master in Chy. of New Jersey.

30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

JOHN F. DRISCOLL, of full age, being duly sworn according to law, upon his oath, deposes and says:

I am a clerk and student at law in the office of John Milton, Attorney for Congoleum-Nairn, Inc. On September 12, 1925, I served the foregoing no-

40

Petition of Appeal to State Board.

tice upon the Hudson County Board of Taxation by leaving a true copy thereof at the office of said Board with the person in charge of said office.

JOHN F. DRISCOLL.

10 Sworn and subscribed before me
this 12 day of September, 1925.

JOHN J. MULVANEY, _____
Master in Chancery of New Jersey.

(Endorsed)

BEFORE THE NEW JERSEY STATE BOARD OF TAXES
AND ASSESSMENT.

20 _____
In the Matter

of

The application of CONGOLEUM-NAIRN, INC., for the reduction of tax assessment for the year 1925 on property situate in the Town of Kearny, County of Hudson and State of New Jersey.

PETITION.

30 _____
Filed September 19, 1925.

JOHN MILTON,
Attorney for Petitioner,
Congoleum-Nairn, Inc.,
1 Exchange Place,
Jersey City, N. J.

Service hereof acknowledged this Sept. 10, 1925.

40 JOHN H. COOPER,
Attorney for Town of Kearny.

**Report of Clerk and Field Secretary on
Inspection of Buildings.**

STATE BOARD OF TAXES & ASSESSMENT.

REPORT OF CLERK AND FIELD SECRETARY ON IN-
SPECTION OF BUILDINGS INVOLVED IN APPEAL
OF CONGOLEUM-NAIRN, INC. *vs.* TOWN
OF KEARNY.

10

Filed April 6, 1926.

After making a complete survey of all buildings owned by the Congoleum-Nairn, Inc., at Kearny, New Jersey, for the purpose of arriving at a correct assessed value upon the buildings included in their appeal to this Board, I would recommend as follows:

<i>Block</i>	<i>Plot</i>	<i>Buildings</i>	<i>Assessed</i>	<i>Recommended Value</i>
22	181	Nos. 16, 17, 18, 24 and 31,	\$1,220,450	\$ 841,000
23	1	No. 32,	38,700	20,378
23	2 & 3	Nos. 19, 20 and 23,	74,750	Affirm
24	111 & 111 A	Nos. 12, 9, 3, 14, 8 and 7, 2, 26, 22, 5, 29, 34, 15, 4, 6, 11, 30, 1, 10 and 13,	3,106,250	1,585,000
25	190	Nos. 21, 27, 28 and 33,	190,500	136,500
			<hr/>	<hr/>
			\$4,630,650	\$2,657,628

20

Respectfully submitted,

30

FRANK A. O'CONNOR,
Clerk and Field Secretary.

Judgment of State Board.

(Dated April 6, 1925.)

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND
ASSESSMENT.

10

IN THE MATTER

OF

Appeal of CONGOLEUM-NAIRN, INC., from the Assessment of Property in the Town of Kearny, County of Hudson, for the year 1925.	}	Judgment.
--	---	-----------

20

An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by said Board, by Congoleum-Nairn, Inc., in which it is alleged that an injustice has been done the said complainant by the assessment of its property for taxation for the year 1925, located at Kearny in the County of Hudson, consisting of land, buildings and personal property, and at the hearing of said appeal the said Congoleum-Nairn, Inc., withdrew its said appeal except so far as the same related to the value of the buildings on said property, and that said buildings are assessed higher than the true value thereof;

30

After hearing evidence produced on the part of said complainant and the said respondent, and the parties having stipulated that the Board through its Field Secretary, might examine the said buildings and make its own appraisal and valuation

40

Judgment of State Board.

thereof, and after hearing the argument of John Milton for the complainant and of Duane E. Minard for the respondent, it is on this sixth day of April, 1926, at a session of the State Board of Taxes and Assessment, ORDERED, ADJUDGED and DECREED, under and by virtue of Chapter 67 of the Laws of 1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of said buildings be and the same hereby is fixed as follows:

<i>Block</i>	<i>Plot</i>	<i>Assessed</i>	<i>State Board Action</i>	
22	181	Imps. \$1,220,450	\$ 841,000	
23	1	" 38,700	20,378	
23	2 & 3	" 74,750	Affirmed (74,750)	
24	111 & 111-A	" 3,106,250	1,585,000	
25	190	" 190,500	136,500	
		\$4,630,650	\$2,657,628	20

JAMES BAKER, President,
M. R. MARGERUM,
ISAAC BARBER,
F. D. WEAVER,
J. WM. HUEGEL,
State Board of Taxes and Assessment.

Attest:

CHAS. E. COOK,
Secretary.

30

Judgment of State Board.

(*Endorsed.*)

State of New Jersey

STATE BOARD OF TAXES & ASSESSMENT

10

In re Appeal of

CONGOLEUM-NAIRN, INC.,

VS.

Assessment of Property in the Town of Kearny,
County of Hudson, for the year 1925.

20

JUDGMENT.

Decided and Filed April 6, 1926.

CHAS. E. COOK,
Secretary,

30

State Board of Taxes & Assessment.

40

Transcript of Docket.

- Jan. 25 Hearing concluded and decision reserved.
Property to be inspected by Field Secretary, by agreement of counsel.
- Mar. 29 Property inspected by members of Board.
- Apr. 6 Report of Field Secretary received.
- 10 " 6 Judgment entered.

Minutes of State Board.

State House, Trenton, New Jersey,
Tuesday, October 27, 1925.

The Board met at 10.30 A. M. on the above date.
Present, Mr. Margerum, Dr. Barber, Mr. Weaver
20 and Mr. Huegel. In the absence of the President,
Mr. Margerum acted as President pro tem.

* * * * *

The Board fixed the following additional dates
for hearing appeals from local assessments:

* * * * *

Wednesday, December 2: Court House, Jersey
City, 41 miscellaneous Hudson County cases.

* * * * *

30 Court House, Jersey City, New Jersey,
Wednesday, December 2, 1925.

The Board met at 10.30 A. M. on the above date
for the purpose of hearing appeals.

Present, President Baker, Dr. Barber and Mr.
Huegel.

The following calendar of appeals was called:

* * * * *

Minutes of State Board.

31. Congoleum-Nairn, Inc. vs. Town of Kearny.

This case was adjourned without date on request of Mr. John Milton, counsel for the petitioner.

* * * * *

State House, Trenton, New Jersey, 10

Tuesday, December 22, 1925.

The Board met at 9.30 A. M. on the above date.

Present, President Baker, Mr. Margerum, Dr. Barber, Mr. Weaver and Mr. Huegel.

* * * * *

The Board fixed the following dates for hearing adjourned appeals:

* * * * *

Wednesday, January 13: Court House, Jersey City: 28 miscellaneous Hudson and 1 Bergen County case. 20

* * * * *

Court House, Jersey City, New Jersey.

Wednesday, January 13, 1926.

The Board met at 10.30 A. M. for the purpose of hearing appeals.

Present, President Baker, Commissioners Barber, Huegel and Margerum. 30

The following calendar of appeals was called:

* * * * *

2. Congoleum-Nairn, Inc. vs. Town of Kearny. Case partly heard, Mr. John Milton appearing for the petitioner and Mr. John H. Cooper and Messrs. Hobart and Minard appearing for the Town of Kearny. Mr. Milton, for the petitioner, stated that the appeal from the assessment on land and personalty would be withdrawn, and that the appeal on improvements only would be prosecuted. 40

Minutes of State Board.

The Board heard the testimony of Ralph R. Rumery and Francis A. Schneiders on behalf of the petitioner, and of Roy M. Taylor, Arthur Brokaw, Samuel W. Smith, Frank Odendahl and Samuel Marshall on behalf of the Town of Kearny. Further hearing was continued to Monday, January 25, 1926, at 10.30 A. M. at the Court House, Jersey City.

* * * * *

Court House, Jersey City, New Jersey,
Monday, January 25, 1926.

The Board met at 10.30 A. M.

Present, President Baker, Commissioners Barber, Huegel and Margerum.

The following appeal was called for hearing:

1. Congoleum-Nairn, Inc. vs. Town of Kearny.

Hearing of this case was concluded, Mr. John Milton appearing for the petitioner and Mr. John H. Cooper and Messrs. Hobart and Minard appearing for the Town of Kearny. The Board heard the testimony of Abraham Grossman, Marshall N. Shoemaker and John Enstice on behalf of the Town of Kearny.

It was stipulated and agreed by and between counsel for the Congoleum-Nairn, Inc., and the Town of Kearny, that following the suggestion of President Baker, Mr. Frank O'Connor, Field Secretary of the Board, visit the plant of the Congoleum-Nairn, Inc., at Kearny and report thereon as to the value thereof and the amount of a proper assessment.

* * * * *

Town Hall, Kearny, New Jersey,

Monday, March 29, 1926.

The Board met at 10.30 A. M. for the purpose of making an inspection of the buildings involved in

Minutes of State Board.

the appeal of Congoleum-Nairn, Inc. v. Town of Kearny.

Present, President Baker, Commissioners Barber, Huegel and Margerum.

The Board then proceeded to an inspection of the buildings involved in this appeal, accompanied by Mr. Samuel W. Smith, Mr. Frank Odendahl and Mr. Samuel Marshall, members of the Board of Assessors of the Town of Kearny, and by Mr. Louis Focht, Chief Engineer of the State Board of Taxes and Assessment. 10

* * * * *

State House, Trenton, New Jersey,

Tuesday, April 6, 1926.

The Board met at 10.30 A. M. on the above date. 20

Present, President Baker, Commissioners Barber, Huegel and Margerum. Absent, Commissioner Weaver.

* * * * *

The Board took up for consideration cases heard and awaiting decision, and ordered judgments entered as follows:

* * * * *

Congoleum-Nairn, Inc. vs. Town of Kearny.

The Secretary laid before the Board the report of the Field Secretary on his inspection of the buildings involved in this appeal. The report in full follows: 30

“After making a complete survey of all buildings owned by the Congoleum-Nairn, Inc., at Kearny, New Jersey, for the purpose of arriving at a correct assessed value upon the buildings included in their appeal to this Board, I would recommend as follows:

Minutes of State Board.

	<i>Block</i>	<i>Plot</i>	<i>Buildings</i>	<i>Assessed</i>	<i>Recommended Value</i>
	22	181	Nos. 16, 17, 18, 24 and 31,	\$1,220,450	\$ 841,000
	23	1	No. 32,	38,700	20,378
	23	2 & 3	Nos. 19, 20 and 23,	74,750	Affirm
	24	111 & 111 A	Nos. 12, 9, 3, 14, 8 and 7, 2, 26, 22, 5, 29, 34, 15, 4,		
10			6, 11, 30, 1, 10 and 13,	3,106,250	1,585,000
	25	190	Nos. 21, 27, 28 and 33,	190,500	136,500
				<hr/>	<hr/>
				\$4,630,650	\$2,657,628"

The Board then ordered judgment entered in this case as follows:

	<i>Block</i>	<i>Plot</i>	<i>Assessed</i>	<i>State Board Action</i>
	22	181	Imp. \$1,220,450	\$ 841,000
	23	1	" 38,700	20,378
	23	2 & 3	" 74,750	Affirmed
20	24	111 & 111-A	" 3,106,250	1,585,000
	25	190	" 190,500	136,500
			<hr/>	<hr/>
			\$4,630,650	\$2,657,628

* * * * *

30

40

Certificate of State Board.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT

I, CHAS. E. COOK, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTIFY, that the foregoing are true copies of the petition, judgment and proceedings in the matter of the appeal of Congoleum-Nairn, Inc., from the assessment of property in the Town of Kearny, County of Hudson, for the year 1925, as the same are taken from and compared with the originals, filed in the office of the State Board of Taxes and Assessment, on the nineteenth day of September and other dates, A. D. 1925 and 1926, and now remaining on file and of record therein. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-eighth day of April, A. D. 1926. 20

(Seal)

CHAS. E. COOK,
Secretary.

30

40

Reasons.

NEW JERSEY SUPREME COURT.

10	TOWN OF KEARNY, a municipal corporation, <div style="text-align: right; padding-right: 10px;">Plaintiff,</div>	}	On Certiorari.
	vs.		REASONS.
	THE STATE BOARD OF TAXES AND ASSESSMENT and CONGOLEUM NAIRN, INC., a corporation, <div style="text-align: right; padding-right: 10px;">Defendants.</div>		

20 The prosecutor presents the following reasons for setting aside the judgment and determination of The State Board of Taxes and Assessment modifying and reducing the valuation and assessment of taxes on buildings and equipment of Congoleum Nairn, Inc., brought before this Honorable Court by writ of certiorari in the above entitled cause:

30 1. Because said valuation and assessment, as determined by The State Board of Taxes and Assessment, is less than the true value of the property assessed, in violation of paragraph 12 of Section 7 of Article IV of the constitution of the State of New Jersey.

2. Because the judgment of said Board does not purport to determine the true value of said property.

3. Because the judgment of the said Board is not supported or justified by the evidence taken before said Board.

40 4. Because the judgment of the said Board on said assessments is against the clear weight of the evidence taken before said Board.

Reasons.

5. Because the judgment of said Board on said assessments is arbitrary.

6. Because the judgment of said Board is based upon an illegal and unlawful appraisal and valuation of said property arbitrarily made by said Board and not upon the evidence adduced at the hearings on said appeal. 10

7. Because said judgment does not represent the determination of said Board from the evidence, but is a determination based upon information obtained by the Board illegally and without authority and without notice to the prosecutor.

8. Because the judgment of said Board on said assessments was determined without any evidence to sustain said judgment and the assessment made by the Board of Assessors of the prosecutor was modified and reduced without any evidence to support such modification or reduction. 20

9. Because the judgment of said Board is illegally based upon information obtained by said Board outside of the record of the hearing on the said appeal of Congoleum Nairn, Inc., which the prosecutor had no opportunity to verify and concerning which it was denied the right of cross-examination, and the prosecutor was, therefore, denied the opportunity of a full, fair and complete hearing on said appeal, in violation of Section 1 of Article XIV of the Constitution of the United States. 30

10. Because the judgment of said Board was illegally based upon supposed information obtained by the members of the said Board, or some of them, and its Chief Engineer during an inspection of the buildings of the defendant, Congoleum Nairn, Inc., from which inspection counsel for the prose- 40

Reasons.

cutor was excluded by express direction of said Board.

10 11. Because the judgment of said Board is based upon an illegal and unauthorized appraisal and valuation by the Field Secretary of said Board and not upon the evidence.

20 12. Because the judgment of said Board was illegally based upon a report of its Clerk and Field Secretary filed April 6, 1926, which report was made without adequate or any examination of the property and without adequate or any qualification on the part of said Clerk and Field Secretary and which report was not submitted to the prosecutor and upon which the prosecutor was given no opportunity to be heard or to cross-examine.

13. Because said Board did not determine said appeal of the defendant, Congoleum Nairn, Inc., and render its judgment thereon as required by law.

30 14. Because the return of said Board filed herein reciting a stipulation and agreement "by and between counsel for the Congoleum Nairn, Inc., and the Town of Kearny, that following the suggestion of President Baker, Mr. Frank O'Connor, Field Secretary of the Board, visit the plant of the Congoleum Nairn, Inc., at Kearny and report thereon as to the value thereof and the amount of a proper assessment," is not supported by the record, and the terms of said stipulation and agreement, as so recited, are not complete or correct.

40 15. Because the finding of said Board in its judgment that the parties "stipulated that the Board, through its Field Secretary, might examine the said buildings and make its own appraisal and valuation thereof," is untrue, illegal, unauthorized and is not supported by the record.

Reasons.

16. Because said Board denied the request of the prosecutor, made at said hearing, to require and compel the attendance, at said hearing, of certain witnesses and the production, at said hearing, of certain books, papers and documents, and specific information pursuant to subpoenas duces tecum duly served upon said witnesses prior to the hearing, through and by the denial of such request the prosecutor was denied the right of a full, complete and proper hearing before the said Board, and due process of law, in violation of Article XIV of the Amendments to the Constitution of the United States and of the equal protection of the laws. 10

17. Because the judgment of said Board was made before the hearing upon said appeal had been concluded or the record thereon closed. 20

18. Because at said hearing said Board erroneously excluded the prosecutor's offer of testimony by witness Samuel W. Smith to show why the prosecutor's Board of Assessors adopted the cubic foot method as a basis for assessment.

19. Because at said hearing said Board erroneously excluded the testimony offered by the prosecutor's witness Samuel W. Smith, concerning a statement made to the prosecutor's Board of Assessors, at a meeting of said Board, by Mr. Alexander, Comptroller and Chief Financial Officer of the Nairn Linoleum Company, regarding the value of assessable property of the Nairn Linoleum Company, subject to the assessment in question, and the reasons given by him for refusing to furnish such statement. 30

20. Because at said hearing said Board after overruling prosecutor's objection to cross-examination of the prosecutor's witness concerning the 40

Reasons.

assessments of previous years, said Board erroneously excluded redirect examination of said witness, Frank Odendahl, regarding the fairness and justice of such assessments.

10 21. Because at said hearing said Board erroneously struck out the testimony of prosecutor's witness, John Enstice, regarding his allowance for depreciation in adopting the basis of computing values testified to by him.

22. Because the judgment of said Board is erroneous in law and in fact.

20 23. Because, for the reasons above stated, or one, or some of them, and in other respects, said judgment of said Board, modifying and reducing the assessments of the Board of Assessors of the prosecutor, is erroneous, unconstitutional and illegal.

JOHN H. COOPER,
HOBART & MINARD,
Attorneys of Prosecutor.

30

40

**Proof of Service of Subpoenas and Notices
to Produce Books, Papers and
Documents.**

STATE OF NEW JERSEY, SS.:

STATE BOARD OF TAXES AND ASSESSMENT
(Seal)

10

To C. L. BAILIE, Esq.

ROY M. TAYLOR, Esq.

CONGOLEUM-NAIRN, INC., a corpora-
tion of New York, through Corpo-
ration Bureau, its registered N. J.
Agent.

For certain reasons offered before the State
Board of Taxes and Assessment, we command you
that you personally be and appear before the State
Board of Taxes and Assessment at Court House, 20
Jersey City, on Wednesday, January 13, 1926, at
10.30 o'clock in the forenoon, to give evidence in
a certain appeal now pending before said Board
in relation to the taxes levied against Congoleum-
Nairn, Inc.

WITNESS, the State Board of Taxes and Assess-
ment, at Trenton, this fifth day of January, A. D.
1926. 30

CHAS. E. COOK,
Secretary.

Hobart & Minard, Attorneys.

40

Proofs of Service of Subpoena and Notice, etc.

BEFORE THE

10 NEW JERSEY STATE BOARD OF TAXES
AND ASSESSMENT.

 IN THE MATTER

OF

20 The application of CONGOLEUM-
NAIRN, INC., for the reduction
of tax assessment for the year
1925 on property situate in
the Town of Kearny, County
of Hudson and State of New
Jersey.

On Petition
of Appeal.NOTICE TO
PRODUCE.*Dear Sir:*

30 PLEASE TAKE NOTICE that at the hearing of this
appeal, on Wednesday, the 13th day of January,
instant, at the Court House at Jersey City at 10.30
A. M., or at such other time and place to which
said hearing may be postponed or adjourned, you
are hereby required to produce such books, papers
and documents that may be necessary to furnish
the following specific information:

1. All building contracts for the construction
of any of the buildings constituting the plant of
the Nairn Linoleum Company, at Kearny, N. J.,
as it existed October 1, 1924.
- 40 2. Books, records or documents showing, as of
October 1, 1924, the amount and value of the fol-

Proofs of Service of Subpoena and Notice, etc.

lowing articles on hand, at the Nairn Linoleum Company Plant at Kearny, N. J.:

- (a) Raw materials.
- (b) Materials in process of manufacture.
- (c) Finished product. 10

3. Books, records or documents to show book and appraised value, as of October 1, 1924, of the following features of said plant:

- (a) Lands and real estate.
- (b) Buildings and improvements thereon.
- (c) Machinery and equipment of plant.

4. A true copy of the appraisal of lands, real estate, raw materials, materials in process of manufacture, finished products, machinery and equipment, of Nairn Linoleum Co., made by the American (or some other) Appraisal Company, in or about the months of July, August or September, 1924, and referred to in the application made by Congoleum-Nairn, Inc., on October 15, 1924, for listing of securities on the New York Stock Exchange. 20

5. A true copy of the balance sheet of the Nairn Linoleum Company made as of September 30, 1924, as set forth in the application last mentioned. 30

6. A true copy of the application, above mentioned, which application was signed "Congoleum-Nairn, Inc., Frank B. Foster, Pres."

Respectfully Yours,

JOHN H. COOPER,
HOBART & MINARD, 40
Attorneys for Town of Kearny.

Proofs of Service of Subpoena and Notice, etc.

To:

C. L. BAILIE,
Asst. Secretary,
Congoleum-Nairn, Inc.,
Morris Bldg., Philadelphia, Pa.

10

ROY M. TAYLOR, Esquire,
Plant Manager,
Kearny Plant, Congoleum-Nairn, Inc.,
Kearny, N. J.

CORPORATION BUREAU,
133 West State St.,
Trenton, N. J.,
Registered New Jersey Agent
of Congoleum-Nairn, Inc.

20

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

AUGUSTINE J. KELLY, of full age, being duly sworn according to law, on his oath deposes and says that, he is employed in the office of Hobart & Minard, attorneys for the Respondent, the Town of Kearny; and that on the 8th day of January, 30 1926, he served the foregoing Subpoena and Notice to Produce, by showing the original subpoena to each of the persons herein mentioned and delivering to each of them, personally, a true copy thereof, together with the subpoena fee as required by law, and by delivery to each of them an original Notice to Produce of which the foregoing is a true copy:

Upon Roy M. Taylor, Plant Manager, Congoleum-Nairn, Inc., at his office in Kearny, N. J.

40

Proofs of Service of Subpoena and Notice, etc.

Upon C. L. Bailie, Assistant Secretary of Congoleum-Nairn, Inc., at his office in the Morris Building, Philadelphia, Pa.

Upon Congoleum-Nairn, Inc., a corporation of New York, through Corporation Bureau, its registered New Jersey Agent, at its office in Trenton, N. J., by delivering the same to Frank Transue, the person in charge of said office of the Corporation Bureau. 10

AUGUSTINE J. KELLY.

Sworn and subscribed to before me
this 12 day of January, 1926.

HAROLD F. DORGEVAL,
Master in Chancery of New Jersey.

(Endorsed)

20

BEFORE THE NEW JERSEY STATE BOARD OF TAXES
AND ASSESSMENT.

In the Matter

of

The application of CONGOLEUM-NAIRN, INC., for the reduction of tax assessment for the year 1925 on property situate in the Town of Kearny County of Hudson, and State of New Jersey. 30

PROOF OF SERVICE
SUBPOENA AND NOTICE TO PRODUCE.

JOHN H. COOPER, Esq.,
31 Clinton Street,
Newark, N. J.

HOBART & MINARD, 40
24 Branford Place,
Newark, N. J.

Attorneys for Town of Kearny.

Mailed to Sec'y St. Board Jan. 12/26.

Testimony.

STATE BOARD OF TAXES & ASSESSMENT

10		<p style="text-align: center;">CONGOLEUM-NAIRN, INC., Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">TOWN OF KEARNY, Respondent.</p>
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Court House, Jersey City, N. J.,
January 13, 1926.

20

PRESENT:

Mr. BAKER (Chairman),
Mr. MARGERUM,
Mr. HUEGEL,
Dr. BARBER.

30

APPEARANCES:

JOHN MILTON, Esq., Attorney for the Petitioner.
JOHN H. COOPER, Esq., Town Attorney.
Messrs. HOBART & MINARD, GEORGE S. HOBART, Esq.,
DUANE E. MINARD, Esq., Attorneys for the
Respondent.

40 Mr. Milton: If the Board please, the appeal as
originally filed asked for reductions upon lands,
buildings, equipment and personal property. My

Ralph R. Rumery—For Petitioner—Direct.

client has decided to waive any appeal from the land and personal property and to press at this time the appeal only from the valuation or assessment upon the buildings. I advised Mr. Hobart and Mr. Minard of that fact, and Mr. Cooper, and I think probably it will expedite this hearing very much. On the buildings the total assessment for 1925 is \$5,300,150. The amount to which we ask that be reduced, as disclosed by the appeal, is \$1,636,615, or a total reduction of \$3,663,535. We will call Mr. Rumery. 10

RALPH R. RUMERY, a witness called on behalf of the petitioner, being duly sworn, testified as follows: 20

Direct examination by Mr. Milton.

Q. Where do you live, Mr. Rumery? A. Short Hills, New Jersey.

Q. And your business or profession is what? A. Consulting engineer for the valuation of industrial and utility properties.

Mr. Milton: Is there any question about Mr. Rumery's qualifications, Mr. Minard? 30

Mr. Minard: I don't think so. I have known Mr. Rumery for quite a number of years and I have known his ability as an expert witness in tax matters. The only thing is, let us be sure he is familiar with buildings. That is the particular subject.

Mr. Milton: I am now going to ask him.

Q. You were asked some little while ago by the attorney for the Congoleum-Nairn Company to 40

Ralph R. Rumery—For Petitioner—Direct.

make an examination of the buildings and equipment of the plant at Kearny, New Jersey? A. Yes, sir.

10 Q. For the purpose of arriving at the valuation of such property as of October 1st, 1924? A. Yes, sir.

Q. With a view to testifying before this Board as to such value? A. Yes, sir.

Q. When was such examination made? Approximately how long a time was consumed in viewing the property and arriving at its appraisal value? A. I started the work about the middle of November and it took about three weeks to examine the buildings and compile the necessary records, and I think that perhaps we were figuring in the office
20 two weeks more; about five weeks in all.

Q. Where is the plant located? A. At Kearny, New Jersey.

Q. Now, will you be good enough to describe in a general way, and yet give it full enough to give the Board a picture of what the plant consists of?

30 A. The plant is a large manufacturing plant for the manufacture of congoleum and there are thirty-four buildings. The majority of the buildings are of fire-proof construction, brick and concrete, and in good condition. In addition to the buildings used in manufacturing, there are numerous dwellings and store sheds, also revervoirs, tanks, industrial track, yard sewerage, heating, sprinklers, power wiring and lighting, and numerous miscellaneous items.

Q. What is the business of the company? A. The manufacture of congoleum.

40 Q. And approximately how long has the plant been located in Kearny? A. The first buildings were built in '87, but the majority of the buildings, I think, have been built in the last fifteen years.

Ralph R. Rumery—For Petitioner—Direct.

	16	20,195	2,427	22,622
	17	46,570	2,965	49,535
	18	153,322	24,923	178,245
	19	56,637	1,928	58,565
	20	11,032	980	12,012
	21	24,948	4,765	29,713
10	22	1,434	293	1,727
	23	58,133	91,548	149,681
	24	264,834	24,272	289,106
			No	
	25	1,000	equipment	1,000
	26	10,340	1,319	11,659
	27	1,556	231	1,787
	28	1,273	144	1,517
	29	1,707	25	1,732
			No	
	30	709	equipment	709
	31	355,282	52,443	407,725
20	32	20,378	1,885	22,263
	33	108,570	24,235	132,805
	34	3,478	520	3,998
	Dwellings	2,980		2,980
	Sheds	7,116		2,980
	Reservoirs	10,544		10,544
	Tanks	20,014		20,014
	Scales	2,555		2,555
	Industrial Track	7,775		7,775
	Paving & Fencing	42,810		42,810
	Yard Sewerage			
	System		22,492	22,492
30	Heating Pipe in			
	Yard		285	285
	Sprinkler Pipe in			
	Yard		21,452	21,452
	Power Pipe in Yard		7,794	7,794
	Water Pipe in Yard		8,095	8,095
	Power Feed Wiring			
	in Yard		14,373	14,373
	Miscellaneous		12,014	12,014
	Totals	\$2,805,970	\$627,929	\$3,433,899

Ralph R. Rumery—For Petitioner—Direct—Cross.

Q. Mr. Rumery, forming part of that schedule and supporting it is the detail of the appraisal which was made as of October 1st, 1924? A. Yes, sir. There is a summary showing the reproduction cost and the present value of the items listed in the first summary, and a complete detailed appraisal of each building, divided into parts, together with the yard equipment. 10

Q. And forming part of this appraisal is a blue print or map which shows the locations of the buildings, and the numbers of each are given in the summary at the front of the appraisal? A. Yes, sir.

Q. And you find that the total value of the buildings and equipment as of October 1st, 1924, is \$3,433,899? A. Yes, sir. 20

Mr. Milton: Cross-examine.

Cross-examination by Mr. Minard.

Q. Mr. Rumery, in reaching these figures, where did you get the information from that was used as the basis of computation of value? A. From the plans of the company; from the records of the company.

Q. What did they consist of? A. They consisted of blue prints showing the various buildings, with the sizes; also lists of equipment and matters of that sort, the plant records in the office of the chief engineer. 30

Q. Were these plans the plans that had been prepared for the construction and the estimating of the cost of the building, and were they plans that had been prepared for this particular purpose? A. Now, they were records and plans in the chief engineer's office, layout plans of the various buildings, and I assume some of them were prepared at the time of construction. 40

Ralph R. Rumery—For Petitioner—Cross.

Q. Did you find plans and specifications for every building in the plant? A. Not for all of them, but the greater part of them.

10 Q. Now, how did you determine the value of the buildings? Just give us the process from the beginning. A. Well, the first thing I did was to get wages and material prices as of October, 1924, for that territory. We then took from the plans the dimensions and the character of construction of the various buildings and tabulated all of that, and after that was tabulated and checked on the ground, then I made my inspection of the buildings, and after I had familiarized myself with the buildings and taken such notes as I had needed, I sat down in the office and made the computation.

20 Q. And you used quantities of materials and labor, each kind separately, and applied unit prices as of October 1st, 1924? A. Yes, sir.

Q. Have you the details of those computations with you? A. I have some of them.

Q. Can you furnish the details of those computations? A. I think so.

30 Q. So that they can be checked by our engineers? A. I think so. I think, Mr. Minard, that I have separated these buildings so in the appraisal that they can check them very quickly. If there is anything in addition that they would like I think I can furnish it to them.

40 Q. Now, on this schedule there is equipment. What do you mean by equipment? A. What I have included as equipment is that portion of the equipment which is part of the buildings and in use in connection with the industrial process. There is a complete detail of what has been included in the equipment which is part of this appraisal. It shows just what has been included in each building.

Ralph R. Rumery—For Petitioner—Cross.

Q. So that this schedule offered here gives the detail of the equipment? A. Yes, sir.

Q. Now, then, in determining the value of the equipment, did you use the same method as you did in regard to the buildings? A. Equipment was valued by my mechanical engineer, Mr. Schneiders; he testifies to the value later. 10

Q. Did you attempt to reach any formula or rule of computation on the basis of square foot of floor area, or cubic contents of the building, or any other method? A. Yes, some of the smaller buildings, particularly some of the leantos, I figured on a square foot basis, and a great many of the buildings I cubed and some of the buildings I cubed and used actual conditions. For instance, a great many of the buildings, parts of the buildings are used as ovens, and those buildings are simply shells with a series of partition walls which are of brick or concrete or hollow tile, and they are spaced about 15 feet apart. It is where the linoleum is seasoned or cooked, although I am not an expert on the process, and in figuring those buildings I figured shell, amount of brick, hollow tile and concrete, and added that in. 20

Q. What unit of value did you arrive at per square foot? A. Well, it depends whether I was figuring brick or concrete or hollow tile. 30

Q. Give them from the different classes. A. Why, in figuring brick I figured brick at \$50 a thousand in place; on a 12-inch brick wall that would run about \$1.10 a square foot.

Q. That is a square foot of wall? A. That is a square foot of wall.

Q. \$1.10 you say? A. Yes, sir.

Q. Now, what about concrete? A. I have figured those partition walls, 10-inch concrete partition walls, I think I figured them at 85 cents a 40

Ralph R. Rumery—For Petitioner—Cross.

square foot. You understand, Mr. Minard, I am speaking now of partition walls in the ovens.

Q. Does that include exterior walls, too? A. No, sir.

10 Q. Well, did you reach any unit of value on exterior walls? A. No, I took the buildings, those ovens, I treated them as a shell and got the value by cubing the building, and then in addition to that the material in the partition walls and the foundations for those walls.

Q. You mean by that that you measured the exterior or the interior side to get the cubical foot contents? A. Measured outside dimensions.

20 Q. Now, what cubic foot unit rule did you apply? A. I applied what I considered to be proper prices per cubic foot.

Q. What was that? A. Each building would you like to know?

Q. Did you use a separate cubic foot rule on each building? A. Yes, sir.

Q. All right, let us have it. A. You want to start—

30 Q. May I interrupt you? Is there any table in this report of yours giving the cubical contents of the buildings? A. The three dimensions are given in each case.

Q. It is just a matter of computing— A. It is just a matter of cubing them. Building No. 1—these buildings, before I go on, these buildings are all split up in sections. You may have a building a thousand feet long and you may have four or five different kinds of construction in the building. There is a section of ovens, a section warehouse, a section between shops, and for that reason in figuring the buildings they have been broken up.

40 Q. Now, it is apparent then if there are several figures for each building and there are thirty-four

Ralph R. Rumery—For Petitioner—Cross.

buildings, it is quite a list. You haven't got it stated in a way that we could use without going into detail and going over— A. I have it in my own records; I have it in record form.

Q. And have you it in such shape as you can offer it in evidence or hand it in for the record? 10

A. I have it in such shape I can give it to your engineers. It is up to Mr. Milton if he wants it to go in in this shape.

Q. It was only to save time. If you cannot offer it in evidence we will have to go into it in detail. How do your cubic foot units run? Give us the lowest and give us the highest. A. I think the lowest cubic foot units that I have used is 12 cents.

Q. And that is for what kind of construction? A. And that is for the buildings where there are ovens and that simply represents the brick shell outside. In order to get the price of those buildings I have added to the price arrived at by using cubic feet measure, I have added the cost of all interior walls, partitions and foundations. 20

Q. What is the highest price you have mentioned? A. I think the highest price I have used is on building 18, where I have used a price of 30 cents a cubic foot.

Q. Now, do you think that any of those buildings can be reproduced on those units per cubic foot? A. Yes, sir. 30

Q. You think so? A. Yes, sir.

Q. Do you consider the cubic foot basis an absolutely infallible rule to go by? A. No, I don't consider it an infallible rule.

Q. Do you consider it a dependable rule? A. Yes, sir, if one is familiar with industrial buildings.

Q. What is the average of all of the cubic foot units that you have used there? A. Why, Mr. 40

Ralph R. Rumery—For Petitioner—Cross.

Minard, the average wouldn't amount to anything because the cubic foot simply applies to the part of the building it is applied to.

10 Q. Mr. Rumery, can you prepare and furnish us for the record a tabulation of the cubic foot rule that you applied to each building or section of building? A. Yes, sir.

Q. When can you have it before us? A. Why, I think perhaps in a couple of days, if that would be time enough.

20 Q. I don't know, we probably wouldn't have a chance to use it in that time. That will depend on whether we get through to-day or go to some other day. Perhaps we had better leave that until a little later. We would like to have it, but just what use we can make of it now I don't know. Now, I understand that in arriving at these values that you have given here you have used this cubic foot unit, plus the cost of partition? A. In some cases. Other cases I have taken a square foot unit.

Q. What was the square foot, of wall? A. Square foot of floor.

30 Q. How many cases have you used the square foot of floor basis? A. Why, in a great many cases, but where I have used the square foot of floor it has been for a one-story leanto. There are a great many toilets scattered around through the yard.

Q. What unit did you use for floor area? A. I think the lowest I used was \$3.50 and the highest was \$5.

Q. Then, in computing those values, you didn't use a constant formula, you used a different rule for each building as you thought advisable, is that correct? A. Yes, sir.

40 Q. Now, you speak of brick at \$50 a yard? A. \$50 a thousand.

Q. In place? A. In place.

Ralph R. Rumery—For Petitioner—Cross.

Q. Do you know any place now where brick is being put in place for \$50? A. Yes.

Q. Where? A. Delaware and Hudson Railroad.

Q. At what place? A. Well, they built some small buildings at the Binghamton yard.

Q. Small buildings at Binghamton. Where else, do you know? A. I don't know any actual construction where that price is on. 10

Q. Do you know whether the prevailing price of brick is the same at Binghamton as it is in this locality? A. No, sir; I have figured brick in that locality \$22 a thousand.

Q. They can be procured at Binghamton at that price? A. I am talking about Kearny.

Q. Delivered on the job at Kearny? A. Yes, sir.

Q. Delivered on the job? A. Yes, sir. 20

Q. Now, I ask you how the wages at Binghamton compare with wages here of bricklayers? A. The wages of bricklayers at Kearny in 1924, \$10.50 a day. I don't know what the wages of bricklayers in Binghamton is.

Q. So you have used the cost price in Binghamton as applicable in this situation without knowing the relation between the situation in— A. You asked me if I knew any place brick was being put in \$50 a thousand. I said in Binghamton. 30

Q. But you don't know the relationship of wages in Binghamton and here? A. I only know wages and material at Kearny.

Q. Do you know whether there is any difference, any material difference in the cost of brick in place now as compared with October 1st, 1924? A. There isn't a very large difference; I am not sure whether the new wage scales have gone into effect in Newark or not. I was told by the Building Trades Council that there was to be an increase. Whether that has gone into effect, I don't know. 40

Ralph R. Rumery—For Petitioner—Cross.

Q. Where did you get your figures from? A. My figures?

Q. Yes, on the prices of material and labor. A. I got my labor figures from the Building Trades Council in Newark, or rather, from the delegate,
10 and I got my material figures from the daily quotations, or rather, quotations in the "Engineering News," and various other places in Newark.

Q. Now, have you supervision or charge of any actual construction? A. No, sir.

Q. How long since you have had? A. I think the last construction work that I did was before the war. I don't make a practice of doing construction work.

Q. Your profession is consulting engineer and expert witness on engineering and construction
20 questions, isn't it? A. I am consulting engineer specializing in valuation of property.

Q. And you have a large practice of just this kind of appraisal for tax purposes? A. Part of my practice is tax work, part of it involves rate cases, part of it involves reports to banks in connection with securities.

Q. But you don't participate or supervise any actual construction of buildings? A. No, sir.

Q. Now, did they, in addition to all this detail,
30 plans and specifications of the buildings which the Congoleum-Nairn Company placed at your disposal, did they also place at your disposal the contracts, the building contracts for the building with the contractor's bid and contract price? A. No, sir; I saw no contracts of any kind.

Q. You saw none whatever? A. No, sir.

Q. Did you ask for any? A. No, sir.

Q. Now, have you seen the petition that was filed
40 for this appeal? A. No, sir.

Ralph R. Rumery—For Petitioner—Cross.

Q. Well, you haven't examined that at all? A. I have never seen it.

Mr. Milton: I didn't want to poison his mind.

Mr. Minard: I don't believe you could or anybody could. 10

Q. In making your figures of the value of these buildings, you, of course, had no regard then for the value of the buildings claimed by the petitioner in its petition for appeal? A. I had no knowledge of the claim or the assessment. I was simply asked to make a valuation of the property.

Q. Well, that is quite apparent, because I show you a tabulation of the assessed valuation—I am not asking you to verify those figures at all—but the assessed valuation of the Town of Kearny on the group of those buildings was \$4,630,650. The claimed value by the Congoleum-Nairn Company in this petition is \$1,636,615, and your estimate is three million, four hundred and forty some thousand. See? A. I see. 20

Q. In other words, you are more than twice as much as their sworn value, so it is quite apparent that you made an independent investigation. The fact is, gentlemen, the difference between Mr. Rumery's figures and the amount assessed by the Tax Board is approximately only a million dollars difference. 30

Mr. Baker: At this time the Board will divide for the purpose of hearing North Bergen appeals. Commissioners Margerum and Barber will hear the North Bergen matters and one Bergen County case in the office of the Grand Jury. 40

Ralph R. Rumery—For Petitioner—Cross.

Q. Mr. Rumery, on the first sheet of your report, we have there the summary of the present value of the buildings and equipment of buildings. That is the value which was determined by the method which you have explained so far? A. Yes, sir.

10 Q. Now, on the next sheet, summary of buildings and yard structures, does that differ? A. That simply gives the reproduction cost and the present cost of the buildings.

Q. Now, when you say reproduction cost, you mean the cost of reproducing those buildings—
A. As of October 1st, 1924.

Q. The present value before that means the value— A. After depreciation.

20 Q. Then, the reproduction cost is when? A. October 1st, 1924.

Q. Do you mean, then, that the difference between present value and reproduction cost is the depreciation which has occurred since the 1st of October, 1924? A. No, the present value represents the present condition of the building.

Q. In other words, the difference in value has disappeared since October 1st, 1924? A. Not at all, sir.

30 Q. Well, then, as of what date does the reproduction cost speak? A. Reproduction cost is based on prices as of October 1st, 1924.

Q. But not as of construction at that time? A. No. In getting your depreciation, of course, you have got to take into consideration the actual condition of the building together with the age. Now, for instance, building No. 1 was built in 1887 and in getting the reproduction cost I took prices as of October 1st, 1924, but in getting my depreciation to arrive at my present value I took the actual
40 condition of the building in connection with the age.

Ralph R. Rumery—For Petitioner—Cross.

Q. Now, let me ask you this: you say No. 1 was built when? A. 1887.

Q. What is the ratio of production cost in 1887 and the present time, October 1st, 1924? A. I will have to give you my best judgment.

Q. All right. A. I don't want to be held down too closely. I should say pretty close to 80 per cent. 10

Q. You mean in 1887 the building cost was 80 per cent. of 1924? A. No, I mean if you took index figures, if you added 80 per cent. to the cost of the building in 1887, you would arrive at approximately the replacement cost in 1924.

Q. In other words, the cost on October 1st, 1924, is 180 per cent. of the cost in 1887? A. 180 would be the index figure. I am giving you my best judgment. 20

Q. Now, let us put it the other way. The cost in 1887 would be 80 per cent.—that is right, would be 20 per cent., is that right? A. No, that isn't right right there.

Q. Tell me, I am not a mathematician. Tell me what you think a building that cost \$152,000 in October, 1924, would have cost in 1887? A. It would cost a little over \$80,000.

Q. So that a building, that according to your theory, cost \$80,000— A. I am referring, Mr. Minard, to that particular building. 30

Q. To that particular building. It cost \$80,000 when it was build? A. I should say so.

Q. And after you figure depreciation from the date of building down to 1924, you have a value of \$103,615 on it? A. Yes, sir.

Q. How do you explain such a high rate of depreciation? A. Such a high rate of depreciation or appreciation? 40

Ralph R. Rumery—For Petitioner—Cross.

Q. You say this represents depreciation? A. It certainly does, because in taking the building for assessment purposes as of October, 1924, I must assume replacement values as of that period.

10 Q. So that that rule applies then to all of these buildings? A. Yes, sir.

Q. So that your present value, even after all the depreciation has been applied, on many of them exceeds the cost of the buildings? A. By anywhere from 50 to 80 per cent.

Q. Now, then, what rate of depreciation did you use? A. I examined each building very carefully and used my best judgment as to the condition.

Q. You didn't apply any rule? A. I didn't apply any fast set rule.

20 Q. Aren't there recognized rules of depreciation? A. There are various rules of depreciation.

Q. That is, for brick structures and concrete structures and wooden structures? A. Yes, indeed, there are a great many theories.

30 Q. I mean, you may not know, and yet you may; isn't there a law in New Jersey, the Bonding Act, which determines the period for which bonds may run on different kinds of construction, for instance, on certain classes fifty years, which, of course, fixes the statutory rule of depreciation at 2 per cent. Isn't that so? A. I don't know about that, but I haven't used as much as that.

Q. You didn't use as much as that? A. No.

40 Q. What rate of depreciation did you use on concrete construction? A. On a brick and concrete industrial building, while I took the actual condition of the building as a result of examination, I always have in mind about a seventy-five-year life. In New York setting aside depreciation reserves, we figure $1\frac{1}{3}$ and $1\frac{1}{2}$ per cent. on that type of building.

Ralph R. Rumery—For Petitioner—Cross.

Q. Did you know that in the application to the Stock Exchange for the listing of the Congoleum-Nairn Company, when the Nairn property was purchased by them and they desired to exchange stock to accomplish this purpose, that they applied 4 per cent. depreciation on buildings from the original cost down to the 15th of April, 1924? Did you know that? A. No, sir. 10

Q. Well, now, then, look at that statement on depreciation down there. It is from the original cost (hands paper to witness). A. Well, I don't think—I have never seen this before—

Mr. Milton: The question is did you know that.

The Witness: No, sir. 20

Q. And they didn't tell you what rate of depreciation they were using? A. They simply asked for an appraisal of the property.

Q. You didn't include any machinery items at all in your estimate? A. Our equipment doesn't include any of the machinery used in the industry proper; it is merely buildings and equipment.

Q. Now, just turn to your record on building No. 33. Did you make any note by blocks, Mr. Rumery? You see, the position is based on block numbers and plot numbers. That is the way we have to follow it for identification. A. No, sir; I have not; simply have the number of the building. 30

Q. Now, on building No. 33, will you tell us at what value you appraised building No. 33? A. I appraised building No. 33, total for building 33, \$127,407.

Q. And that included then equipment; you included in that appraisal— A. No, sir; that doesn't include equipment. 40

Ralph R. Rumery—For Petitioner—Cross.

Q. What was the total of the building and equipment? A. On building 33 the present value of the building was \$108,570; the value of the equipment was \$24,235, a total of \$132,805.

Q. \$132,805? A. \$132,805.

10 Q. Now, I call your attention to the petition. There are four buildings in block 25, including building No. 33. The petition appraises, the sworn petition appraises all the buildings in the block at \$14,000. A. Which one is that?

Q. This block down here (indicating). You consider that a very conservative statement of the value of all the buildings in that block, don't you?

Mr. Milton: Objected to.

20 Q. Mr. Rumery, you said that in figuring the value of the walls you took brick at \$22 a thousand? A. Yes, sir.

Q. What was the daily wage of the mason that you used? A. \$10.50.

Q. \$10.50? A. Yes, sir.

Q. Don't you know that the rate was \$12 and is \$12? A. Well, I got my information, Mr. Minard, from the Building Trades Council, and if they don't know, I don't know who does.

30 Q. But not from any actual job? A. No, sir.

Q. What rate of labor did you use at that time? A. I think 60 cents.

Q. 60 cents? A. No, I am wrong, \$1.

Q. \$1 an hour, that would be \$8 for an eight-hour day? A. Yes, sir.

Q. How many brick will a mason and laborer set up in a day? A. I figured about 900 brick.

Mr. Baker: It depends on the character of the wall?

40 The Witness: I am speaking of these particular buildings.

Ralph R. Rumery—For Petitioner—Cross.

Q. Doesn't—it isn't your experience that they put up 800? A. Why, when I was active in construction work they put up a great many more than they do now.

Q. How long ago is that? A. The last one I did was Degnan Construction Company. There they were laying twelve to fifteen hundred brick. 10

Q. Let me show you this computation here. Go over that and tell me where that is wrong. A. That is figured on 800 brick instead of 900.

Q. That is the maximum all the way through? A. That is one reason.

Q. Now, let me ask you: do you know of any job where 900 brick has actually been laid within the last three or four years? A. Why, yes; I do.

Q. Where? A. The Glen Springs Company new buildings at Watkins, New York. 20

Q. When was this work done? A. They did the work in '23 and '24.

Q. '23 and '24. They built buildings and laid 900 brick a day per man? A. They laid more than that. That is at Watkins in the country.

Q. Now, do you know of any place where conditions are such as they are around Kearny, industrial conditions, labor conditions, where 900 brick has been laid in the last four or five years? 30
A. No, I can't say that I do of my own personal knowledge. I know what they used to lay when I was contracting.

Q. When was that? A. That was in 1907.

Q. So you have predicated your estimates on the performance of 1907? A. No, I have predicated on laying in the vicinity of 900 brick a day.

Q. That was the performance of 1907? A. No, sir.

Q. So far as your experience is concerned? A. 40
My last big brick building job was in 1907.

Ralph R. Rumery—For Petitioner—Cross.

Q. That is the last personal experience you have had in laying brick? A. On brick construction.

Q. So these figures then are correct on the assumption of 800 brick as against 900 brick? A. Yes, and they would be higher. The fewer brick
10 you lay a man the higher the figure. My figures contemplated laying in the neighborhood of 900 brick a day.

Q. Now, what have you to say—offhand, of course, I don't expect—but you see, you are approximately a million dollars apart, that is, the Tax Board and yourself, on this thing. Now, if they proceeded on a theory of 800 brick and you proceeded on a theory of 900, wouldn't that practically explain the difference between you? A. I
20 can't say, Mr. Minard.

Q. But generally speaking that ratio would represent about the difference, wouldn't it? A. Well, it would represent a good part of it, perhaps.

Q. Of course, you are talking now about \$10.50 a day for masons, bricklayers, as against twelve in this figure. A. Wait a minute; I beg your pardon. I am wrong. I have it here. I gave you \$10.50. \$12 is what I took for masons—bricklayers, masons, plasterers, tile layers, cement finishers, \$12.

30 Q. So there is no difference between you? A. The same wages.

Q. Then the difference is in the hundred extra brick that the men laid in 1907? A. No, I am not saying that. You asked me when the last actual experience I had on brick construction work was.

Q. Now, we were talking a while ago about building 33. I show you a detailed statement on building 33 and ask you if you have any criticism to make of that statement?

40 Mr. Milton: I object. I am not touchy about the form of the examination, but I

Ralph R. Rumery—For Petitioner—Cross.

don't think it is proper to submit a statement to a witness and ask him if he has any criticism.

Mr. Minard: I want to find out if there is any difference in that theory or formula by which he is determining values and that which Mr. Schumaker is determining. 10

Mr. Milton: Put Schumaker on the stand.

Mr. Minard: I want to find out if there is any difference in their theory of computation. We found out a difference of a hundred brick a day. That explains a good deal.

The Witness: Mr. Minard, are these reproduction figures or the present value?

Q. They are intended to be reproduction figures. 20

A. So that they would be subject to depreciation.

Q. Whatever rule of depreciation applies. A. I notice there are some percentages, 10 per cent. and 5 per cent. on top of that. There is no indication what that is.

Q. Of course, that is the usual percentages for what you engineers call it when you get through?

A. Overhead?

Q. Engineering contingencies; architects' fees or profits or anything of that sort. A. Does this percentage include something for contingencies? 30

Q. Builders' profit and architects' fees? A. My estimate is higher than that.

Q. But, as far as you know, there isn't any criticism? A. I should criticize the inclusion of the overhead that he has used there, although there is nothing to indicate what it means.

Q. Now, a while ago when you were talking about this proposition, you spoke of market value. Has that any significance in your estimate, or did you rely on cost of reproduction, less depreciation, 40

Ralph R. Rumery—For Petitioner—Cross.

or what theory did you proceed on? A. No, sir; in a number of the buildings wherever the building is used as an oven and separated by the brick or hollow tile and concrete partition walls, in getting at my present values, I have excluded the value of the partition walls, in addition to the depreciation.

10 Q. Why? A. Because those buildings would be of absolutely no value to anybody except for the specific purpose for which they were built, unless you took out those partition walls.

Q. Is it necessary to determine what value they would be to someone else? Isn't the value of those buildings in the use to which they are put by a going concern? A. Not to my mind.

20 Q. That is the earning value of the building, isn't it, its specific adaptation? A. In so far as that particular industry is concerned.

Q. And that is the only industry that is using it, isn't it? A. Yes, but if you are going to value buildings on market value you have got to consider for what purposes they could be used.

Q. Did you undertake to value them at market value? A. No; I did not.

30 Q. So you have excluded that thought from your estimate? A. No, I have not. That is, I have valued my building on reproduction less depreciation except in the parts of the buildings where the ovens are. In getting at my present value, in addition to the depreciation, I have taken out the value of the partition walls.

40 Q. Well, now, then, there is no constant factor in determining the value of any of these buildings, either in the rate of depreciation or whether you figure them on a square foot of floor area or a cubic foot of wall area or whether you figure them on a basis of reproduction less depreciation or mar-

Ralph R. Rumery—For Petitioner—Cross.

ket value. Is that right? There is absolutely no constant factor, true? A. There is no constant factor because no two buildings are the same, nor is the condition of any buildings the same.

Q. Now, that makes it necessary for us to have the detailed notes showing the detailed estimates that you made on each building, because we have got to find out when the horse changed his gait, so to speak. 10

Mr. Milton: I think they must find it out now in their examination.

Q. All right. Let us have your original records that show the detailed basis by which you reached this mere conclusion stated here on each building. He started with No. 1. 20

Mr. Milton: What is the question?

Mr. Minard: I want the detailed computation on each building to see by what theory or formula or what actual measurements he reached his conclusion.

Mr. Milton: That is objected to.

Mr. Minard: I don't see how the Commission is going to determine the value when he merely states a conclusion. 30

Mr. Baker: Well, Mr. Minard, the technique of this man's method or the principle that he adhered to in arriving at his figures is in no way reflective or illuminative of the value. That is, when the Board comes to appraise the value of his testimony—

Mr. Minard: Then, we get down to this proposition—

Mr. Baker: Isn't our objective here to take the testimony of this witness and measure it against the testimony of a witness 40

Ralph R. Rumery—For Petitioner—Cross.

qualified as he is, and determine the virtue one has against the lack of virtue of another. Aren't we here engaged in a sifting process without regard to the science he observed?

10 Mr. Minard: Assuming that statement is correct, we have this situation: then Mr. Rumery's testimony depends entirely upon how much you think of Mr. Rumery as an expert and not upon whether his basis is reasonable or not. Now, suppose I say to you that two and two is five and somebody else says to you two and two is six and Mr. Milton says two and two is four. Now, disregarding everything that you have learned in school; now, you say, "So and so is a very reputable man. I would believe 20 him in preference to somebody else." The result is you have an erroneous conclusion on the strength of his reputation rather than on the strength of his—I can prove to you two and two is four, but if my word is good that two and two is five—we don't ask you to say our expert is an honest man; therefore I think you must—call it that—nor do we expect you to say that a man of Mr. 30 Rumery's character, as in this suit, against somebody else who just shows you that his theory is correct and the other doesn't attempt to explain the theory. Now, you know we have five gaited horses; some pace, some single-foot, some trot, but you wouldn't determine the speed record of a horse on the track if he used all his gaits in one race. You wouldn't know whether he was a trotter or a pacer.

40 Mr. Baker: No, I would get then in the realm of metaphysics, and bordering on that,

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if I proceed to appraise the virtue of this man's work in arriving at his conclusion, and there is no judge sitting in any tribunal who wouldn't get into the same realm if he proceeded on that line of conduct.

Mr. Minard: Of course, I want to abide 10
by whatever you think is right.

Mr. Baker: I think our objective here is rather a narrow one, isn't it?

Mr. Minard: I suppose the only question you have got to decide is whether the County Tax Board taxed excessively.

Mr. Baker: I think, strictly speaking, our province is to determine whether the Kearny Tax Board in the exercise of its duty has followed the constitutional precept 20
in valuing that land, and to assist us to thresh that out, I think ought to be your rule of conduct here, and that is said not in criticism of anything that has been done here by you. I am seeking to expedite this thing. I am assuming that the Kearny Tax Board assessed the property in a manner consistent with the constitutional precept. I think the presumption is on the part of the Kearny tax officials. 30

Mr. Minard: My associates feel it is our duty to our client to examine Mr. Rumery about the details of his quantities and his formula or rule or to ask him to provide a statement of his record in that regard. In other words, for instance, such as we have here. Now, we have taken our quantities and every detail on each building so that when we produce our statement you can see exactly what we compiled and you can measure up and see whether two and two is four. 40

Ralph R. Rumery—For Petitioner—Cross.

10 Now, we think that no fair comparison can be made between the testimony of the two expert witnesses, equally intelligent and equally valuable, unless we are able to compare the theories on which they proceed. If one of them went by one rule and the other went by another and we don't know any of the elements of the rules, we are not able to compare anything. Now, in view of that situation—I don't want to make the proceeding tedious, but if Mr. Rumery can give us the figures which he testified to as a conclusion on each building, why we would like to have that.

Mr. Baker: Can you do that?

20 The Witness: You appreciate, your Honor, that it is a long proposition to figure all these buildings that run into three million dollars and a half; it is a tremendous amount of figuring. I can give them the figures I have used upon most of the buildings, but I don't know just exactly how much detail, your Honor.

30 Q. You had certain working sheets when you worked up each one of these units? A. Oh, yes.

Q. Can't you photostat these working sheets and make us copies of them? A. I don't know whether my notes are neat enough. I can give you an outline of what I have used on each one.

40 Mr. Milton: I must confess it is the first time that I ever heard that an expert or any other witness was required to produce and furnish the other side with the notes he employed, written formula he employed, written memoranda, so they might take it off in

Ralph R. Rumery—For Petitioner—Cross.

a corner and confer with their experts and then come back and examine him. He is here now. Examine him now.

Q. Very well. Take it page after page. Take the item, brick, two-stories, iron columns, wood flooring and roof, 63 feet by 111 feet by 31 feet high and 12 feet by 30 feet by 31 feet high. Now, I have got to stop and ask you how many brick there were, how much they cost, their value here in place, how many pounds of steel and what kind of steel it was and the price of it, and how much it cost to erect it, what kind of wood and how much, what price and rate did he employ in determining the cost of the floor and roof, every one of the elements in every single item here for page upon page. Now, that ought not to be necessary, but in order to reach these conclusions, that is a mere conclusion, in order to reach that conclusion he must have figured it up and he must have the notes to determine it. A. Why, Mr. Minard, if you asked me about that I would say there are 228,576 cubic feet which I have estimated at 15 cents a cubic foot, which gives me my value of \$34,286.

Q. Up to this point. A. The figures are all there. 30

Q. Why did you use 15 or \$12 a cubic foot?

Mr. Milton: Not dollars. If he did that, we would have a real case, based on my judgment, is that right?

A. On the type of building I estimated that to be the proper figure.

Q. It isn't based on any facts that you discovered at the place and time? A. It is based on almost thirty years' experience. 40

Ralph R. Rumery—For Petitioner—Cross.

Q. It is based on judgment and not fact? A. It is based on judgment and fact.

Q. What facts? A. Fact of the type of building, just as said to day here, iron columns, wood floor and roof, brick building.

10 Q. Don't you have any units, how many brick you figured or how much labor or anything like that? A. Mr. Minard, to go through that plant and take it off in detail, the number of bricks, concrete, steel, would take a big force of men for six months.

Q. In other words, to get an exact or accurate appraisal of those plants that could be tested by computation, it would take six months to do it? A. If you wanted to try to take a complete detailed inventory and attempted to price each individual article that went into each individual structure, but those buildings, there is nothing difficult about them except the ovens. You take the general type of construction, it is well known, they are almost standard; a man of experience who has figured out seven or eight times that inventory—

20

Q. Wait a minute; you are getting away from the subject. You say it would take six months to make a detailed accurate estimate of these buildings? A. To take a complete inventory of all of the material.

30

Q. Now, then, that isn't what you did? A. It certainly is not.

Q. Then, the result which you have handed us here is just the size of the building times your judgment of the cost? A. It is the size and character of the building and it is my best judgment of the cost reproduction of the present value of the building based on my experience as an engineer and appraiser.

40

Mr. Huegel: That is sufficiently plain.

Ralph R. Rumery—For Petitioner—Cross.

Q. But it is pure judgment? A. Yes.

Mr. Huegel: You admitted him as an expert.

Q. Well, a while ago we were talking about a statement you were going to furnish us of dimensions, qualities and so on, which you were going to furnish in a couple of days. A. You can do the same thing yourself. You have got the dimensions or figures. It would simply be making the same computation; it simply resolves itself into a square foot basis or cubic foot basis. 10

Q. In other words, the only data you have got is what you would get by working that problem backwards, dividing the feet into the result? A. Yes. 20

Q. Would that statement include the units that you used of the materials and labor? A. No, sir.

Q. It wouldn't include that? A. I have given a statement as to what I used for material and labor.

Q. So that none of these items were arrived at by actual computation of labor of some of the little buildings.

Q. Well, what unit did you use to reach that conclusion? You say you have translated area into dollars. You say the same element has to be used to transform quantities into money. What was the element that you used? A. The element that you must use is prices of your material and labor. 30

Q. Now, have you got the data on these items of that? A. No, sir.

Q. Where is that data? A. Why, it is in my mind. I know the prices of quantities, materials and labor. I must know that in order to arrive at a proper price per cubic foot. 40

Ralph R. Rumery—For Petitioner—Cross.
Francis A. Schneiders—For Petitioner—Direct.

Q. Does it appear anywhere on your working sheets, what figures you used? A. No, sir.

Q. Did you use the same rate all the way through this same computation? A. What do you mean
 10 “same rates”?

Q. It is the figure that is in your mind. A. Why, for brick work I used the same rate, \$12 a day for bricklayers and \$1 an hour for labor.

Q. The quantities in there; you have given the area of buildings in units of quantity of any element? A. No, sir. I haven't set up an inventory of the actual material in each building. I have
 20 stated the character of the building, the type of the construction, the size of the buildings and then used my best judgment in arriving at a value on that building.

Q. Mr. Rumery, when you estimated the cost on building 33, didn't they show you this building agreement of November 15th, 1923, where certain portions not complete of the building therein described was constructed for \$105,237? A. No, sir; I saw no agreement. My work was done entirely in the chief engineer's office.

30 Mr. Minard: That is all.

Mr. Milton: That is all.

FRANCIS A. SCHNEIDERS, a witness called on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. Milton.

40 Q. What is your address? A. 2386 Grand Avenue, New York City.

Francis A. Schneiders—For Petitioner—Direct.

Q. Your profession is what? A. Mechanical engineer.

Q. Graduate of what institution? A. University of Michigan.

Q. And have been associated with whom in business, Mr. Schneiders? A. You mean since graduation? 10

Q. Yes, since graduation. A. From July, 1911 to 1912, as assistant foreman and inspector on the New York Central Railroad; from April, 1912, to February, 1914, assistant foreman Adirondacks Electric Power Corporation; February, 1914, to August, 1914, inspector Gould Coupler Company; August, 1914, to August, 1916; mechanical engineer Public Service Commission of New York; August, 1916, to April, 1918, appraiser of the State Tax Commission of the State of New York; April, 1918, to date, mechanical engineer in the present occupation. 20

Q. How long have you been associated with Mr. Rumery? A. From April, 1918, to date.

Q. In that time you have appraised a great many properties, I assume? A. I have, sir.

Q. Equipment of buildings? A. Building equipment.

Q. Among them were Richmond Light and Railroad Company, the Gas, Electric and Steam Railway Company of New York State? A. Yes, sir. 30

Q. New York Central power house? A. Yes, sir.

Q. Utica Knitting Company? A. Yes, sir.

Q. Globe Wool Company? A. Yes, sir.

Q. Skenandoa Cotton Company? A. Yes, sir.

Q. And a number of others in New York and New Jersey? A. Yes, sir.

Q. Were you assisting Mr. Rumery in the appraisal of the plant of the Congoleum-Nairn Company? A. Yes, sir. 40

Francis A. Schneiders—For Petitioner—Direct.

Q. You had charge of the appraisal of the equipment? A. Yes, sir.

Q. And how much time did you spend on appraising the equipment, Mr. Schneiders? A. Field work approximately three and a half weeks and office work approximately a week and a half or two weeks.

Q. Forming part of the appraisal which Mr. Rumery has used as a schedule of the building equipment located in the various buildings which are numbered. The equipment is scheduled in the second schedule in the appraisal, isn't it? A. Yes, sir.

Q. The reproduction cost of the equipment is how much? A. The total reproduction cost of all the building equipment and all the yard equipment as of October 1, 1924, was \$988,217.24.

Q. And the present value as of October 1st, 1924? A. \$627,928.42.

Q. Now, accompanying that summary and following it in order, is the detail of the equipment in the various buildings segregated or classified by the building? A. Yes, sir.

Q. I assume these building numbers have the same relation or reference to the numbers as they bear on the print forming part of the appraisal? A. Yes, sir.

Q. And in your judgment and according to your opinion, the value of the equipment in these buildings as of October 1st, 1924, was \$627,928.42? A. That is the present value; yes, sir.

Mr. Milton: Cross-examine.

Cross-examination by Mr. Minard.

Q. How do you explain the difference between the figure nine hundred and some thousand and

Francis A. Schneiders—For Petitioner—Cross.

what you call present value? I am trying to find that schedule. A. It is approximately——

Q. How do you explain the difference in those two columns? A. The present or depreciated value of the equipment where the equipment was an integral part of a building, the present condition thereof was placed the same as the building. On the other hand, where equipment was not an integral part of the building an estimated value was placed on it based on observation and age of that equipment. 10

Q. Did you have any definite information from the industry as to the age of the equipment? A. Understand, we will have to make a distinction there. In reference to wiring and piping and equipment of that nature which is an integral part of a building, we depreciated it at the same rate as the building, using the building age to determine that in part. Equipment which is easily removable or which can be removed, as boilers and engines, the actual age thereof was one of the determining features. 20

Q. Well, did you appraise boilers and engines? A. Yes, sir .

Q. Well, where is the detailed list of the boilers and engines? A. In the first instance, you have boilers and engines in building 1, the seventh item. 30

Mr. Minard: Mr. Milton, are these figures Mr. Schneiders is testifying to, are they included in the estimates of Mr. Rumery?

Mr. Milton: Oh, no.

Mr. Minard: Well, where is the distinction drawn between personal and buildings in this thing? Is this the personal property? 40

Mr. Milton: Oh, no, no, no. This is what might be called equipment.

Francis A. Schneiders—For Petitioner—Cross.

Mr. Minard: Then, we add the figures of Mr. Rumery to the figure of Mr. Schneiders to get the aggregate estimate——

10 Mr. Milton: Which Mr. Rumery gave you in the beginning of his testimony. You see that if you take the first sheet.

Q. Now, I understand, Mr. Schneiders, that in all cases you gave the equipment the age of the building? A. That is the equipment that is an integral part of the building, yes.

Q. Well, is it possible that any of that equipment could have been built in after the building was constructed? A. Yes, sir.

20 Q. So that some of the material that you consider as being as old as the building may have been only a few years old, is that right? A. Yes, sir.

Q. So that then your method of depreciation, or rule of depreciation, or rate of depreciation, being the same as the building, may not necessarily apply to the building at all? A. If anything, the equipment would have depreciated more because generally equipment depreciates more rapidly than the building.

30 Q. But you use the same depreciation as for the building for the same number of years that the building had stood? A. Yes, sir.

40 Q. Now, what rule did you apply on boilers? A. Boilers, there is a distinction there, also. They have two kinds of boilers at the plant. They have a fire tube boiler and they have water tube boilers. The fire tube boilers were put in a scrap condition and the water tube boilers, which is the modern boiler, fairly high pressure, are depreciated based upon the age and also upon the general condition of the plant at the time of inspection.

Francis A. Schneiders—For Petitioner—Cross.

Q. Were the fire tube boilers in use? A. Yes, sir.

Q. And were performing their functions? A. They were performing their functions not in their full sense.

Q. Well, they were serving the purpose and were being used? A. I might say partially, yes. 10

Q. What do you mean, partially being used or partially serving their purpose? A. When a boiler arrives at a certain age the pressure must be reduced; that is, the operating pressure must be reduced.

Q. Were these boilers operating under reduced pressure? A. Yes, sir.

Q. What pressure? A. There was some of them operating about a hundred pounds and others around 110. 20

Q. And certain uses of boilers are served as well by a low pressure as a high pressure, aren't they? A. That is possible.

Q. But you junked those entirely? A. No.

Q. I thought you said you appraised them at scrap value. A. Yes. Not for that reason.

Q. I didn't ask you the reason, but you did scrap them entirely? A. Yes, practically.

Q. Now, how many boilers did you scrap? A. There were eight boilers in building 1 were practically scrapped. In other words, were put in 10 per cent. physical condition; fourteen boilers in building 9 were put in 50 per cent. condition. Those were the fire tube boilers. 30

Q. Any others? A. As I recall it, those are all the fire tube boilers.

Q. Now, this was as of October 1st, 1924? A. Yes, sir.

Q. Did they show you the inventory of the American Appraisal Company made as of September 30th, 1924? A. Yes, sir. 40

Francis A. Schneiders—For Petitioner—Cross.

Q. How were those boilers appraised in that inventory?

Mr. Milton: Objected to. Oh, I will withdraw the objection.

10 A. I don't know.

Q. You didn't look? A. I didn't bother to look at the prices.

Q. Now, on the aggregate, how did your figure of estimated cost of equipment compare with their figures in that inventory? A. I don't know.

Q. You didn't compare it? A. No.

Q. For what purpose did you look at the inventory? A. The purpose of looking at the inventory was to facilitate our work. They had a
20 complete list of all the properties and it facilitated our work immensely by taking that list and checking it over.

Q. Who had the list? A. The Philadelphia office.

Q. You mean of the Congoleum-Nairn Company?
A. Yes, sir.

Q. In other words, they had an itemized list of every element and item of value in the plant? A. As of the date of the American appraisal.

Q. What date was that? A. I thought—October,
30 1923.

Q. October, 1923? A. I am not sure of that date, but some time in 1923.

Q. 1924, wasn't it? A. I don't think so.

Q. All right. So you took the items from that list? A. Yes, sir.

Q. And applied your own values? A. Yes, sir.

Q. Now, have you got a list of those items that you used here? A. The inventory?

Q. Yes. A. I have. It is in the pencil form;
40 not with me here.

Francis A. Schneiders—For Petitioner—Cross.

Q. Is there any more information in that list than there is in your equipment schedule here? A. Yes, sir.

Q. What else does it contain? A. It contains the itemized amount of plumbing, piping, wiring and sprinkling.

10

Q. It contains actual quantities? A. Yes, sir.

Q. Does it contain the actual cost of construction and installation? A. I don't know.

Q. You didn't observe the unit values on that list then in making your estimates? A. I wasn't—I saw the unit values, but that was as far as it went. The unit values used in this estimate were not based in any ways or in any sense upon what the American Appraisal Company did.

Q. Now, these figures contain the cost of the various materials and everything? A. Yes, sir.

20

Q. Is that shown on your pencil list that you used to compute these results? A. Yes, sir.

Q. So that every element of quantity, rate of labor, quantity and so on are shown in detail on that list? A. Only the rate of labor will be shown. The amount expended——

Q. The amount of labor? A. Yes.

Q. But not the rate of labor? A. No.

Q. What rate of labor did you use? A. The prevailing rate.

30

Q. What is that? A. That schedule Mr. Rumery has explains it.

Q. You made those figures. What rate did you use? A. If I had that schedule I could tell you, but I cannot recall them.

Q. (Mr. Minard hands schedule to witness.) A. Plumbers, for instance, are \$10.50 per day; electricians, \$9 a day; millwrights, \$15 a day; steam fitters, \$10.50 per day; riggers, \$10 to \$15 a day. Those were the principal ones.

40

Francis A. Schneiders—For Petitioner—Cross.

Q. Were there any boiler makers or machinists or helpers or anything like that figured in? A. Helpers, \$1 an hour; no boiler makers or machinists.

10 Q. So those include all the rates that you used. Now, does the detailed statement that you have in pencil show the quantities of each of those different classes of labor that entered into this conclusion? A. Quantities in this sense, that—as an illustration, 6-inch pipe, to put up 6-inch pipe demands a certain amount of labor of a fitter, either plumber or steam fitter and a helper. That is figured out on the number of hours used in installing a certain pipe and the prevailing labor rates were applied to that, so that the total labor was added on to
20 the cost of the pipe and in that way the total cost of this particular piece of pipe was determined.

Q. So your detailed statements shows all of those quantities of labor and rates that you have mentioned? A. It doesn't show it exactly in the method I enumerated or cited just now, but that is what it consists of.

Q. Then, the fact is that this statement in the schedule here is merely the answer to a mathematical problem, isn't it, of quantities and so on?
30 A. Practically.

Q. It is pure mathematics? A. Practically.

Q. And you have the problem and the elements of the problem on those sheets of paper that you are talking about? A. Yes, sir.

Q. Well, can you give us those, produce them? A. It would be an infinite job. I can get them to you, but it would probably take about two weeks to get them in a form that you could understand them.

40 Q. You mean by that that the only question here is whether you have multiplied or added or divided

Francis A. Schneiders—For Petitioner—Cross.

correctly to get this result; whether your mathematics were correct? A. That is practically what it consists of.

Q. And all of the elements that you used in your problem were theoretical elements, weren't they? They weren't the actual cost of doing any of this job? A. No, that couldn't be. 10

Q. They were just theoretical figures for each item? A. That is correct.

Q. So that if your assumptions were correct and your mathematics were correct, your result is correct. That is saying the whole thing, isn't it? A. That is practically it.

Q. Now, in your experience have you ever found that in a factory building of this kind that lighting, the cost of lighting represents a certain percentage of the cost of the building, that heating represents a certain percentage and other elements of that kind that you refer to as equipment represent a certain percentage? A. They do bear a relationship, but that relationship is a fallible quantity. 20

Q. Is there any rule applied among practical builders or contractors about determining roughly how much these elements would cost? A. Approximately.

Q. Knowing the value of the building? A. Approximately, yes. 30

Q. What is that rule? A. I wouldn't want to state it at this time because I would be trusting too much to my memory at that.

Q. I will ask you this question: if you were a building contractor and you knew that a building would cost \$100,000, would you consider an additional charge of 25 per cent., roughly speaking, approximately correct, for heating and lighting and so on? A. I should say that would be approximately the figure. 40

Francis A. Schneiders—For Petitioner—Cross.

Mr. Minard: Approximately correct. No further examination.

Mr. Milton: We offer the appraisal and rest.

10 (Appraisal above testified to received in evidence and marked Exhibit P-1.)

PETITIONER RESTS.

Mr. Minard: Mr. C. L. Bailey.

(No answer.)

Mr. Minard: We served him.

Mr. Milton: Do you want Mr. Taylor or do you want the records?

20 Mr. Minard: I want the records and somebody to prove them.

Mr. Milton: Suppose I admit them?

Mr. Minard: All right.

(At this time Colonel Margerum and Dr. Barber returned from the Grand Jury room, where they had been hearing Bergen County tax appeals.)

30 Mr. Minard: The first thing is the building contracts. I have an abstract here, but we want the original.

Mr. Milton: We haven't got them.

40 Mr. Minard: The first request to produce is the building contracts, under which these buildings were erected, which we consider to be pretty good evidence of what they cost or were worth. We have abstracted all of them from the County Clerk's Office. We have asked them to produce the originals, and they say they haven't got them. The witnesses who are subpoenaed to produce them

Roy M. Taylor—For Respondent—Direct.

are not here. I will call the Congoleum-Nairn Company, who was served with a subpoena and notice to produce through the Corporation Bureau, which is the registered agent under the laws of the State of New Jersey, it being a non-resident corporation, and they have designated the Corporation Bureau of Trenton and they have been served with notice. Does the Congoleum-Nairn Company respond to the subpoena, or its registered agent? That subpoena was served and there is proof of service there, with the legal fee for service. 10

Mr. Minard: Mr. Roy M. Taylor?

Mr. Milton: Mr. Taylor is here. 20

ROY M. TAYLOR, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. Minard.

Q. Mr. Taylor, you were served with a subpoena to appear and notice to produce certain papers?

A. Yes, sir. 30

Q. And you were paid the legal fee? A. Yes, sir.

Q. Paid a fee of \$1? A. \$1.

Q. Will you produce all building contracts for the construction of any of the buildings constituting the plant of the Nairn Linoleum Company at Kearny, New Jersey, as it existed October 1st, 1924? A. It isn't possible; they didn't have them.

Q. You don't have them? A. No, sir.

Q. Did you produce the books and records and documents showing as of October 1st, 1924, the amount in value of the following articles on hand— 40

Roy M. Taylor—For Respondent—Direct.

we will waive that because that is personal property and that has been waived since. Books, records and documents to show the book and appraised value as of October 1st, 1924, of the following features of the plant: lands and real estate, buildings and improvements thereon, machinery and equipment of plant. Have you those books? A. No, sir.

10

Q. Do you know where they are? A. No, sir.

Q. There are such books, aren't there? A. Not that I have ever seen. I presume they are.

Q. You don't mean to say they haven't them? A. I presume there are.

Q. Don't you understand——

20

Mr. Milton: Don't you understand this man is a plant manager?

Mr. Minard: I understand.

Q. Now, then, did you produce a true copy of the appraisal of the lands, real estate, raw materials, materials in process of manufacture, finished products, machinery and equipment of the Nairn Linoleum Company made by the American Appraisal Company referred to in the application of the Congoleum-Nairn Company, Incorporated, of October 15th, 1924, for listing of securities on the New York Stock Exchange? A. No, sir.

30

Q. You didn't produce that? A. No, sir.

Q. Did you produce a true copy of the balance sheet of the Nairn Linoleum Company made as of September 30th, 1924, as set forth in the application last mentioned? A. No, sir.

Q. Did you produce a true copy of the application for the listing of stocks on the New York Stock Exchange? A. No, sir.

40

Q. This notice to produce was served upon you? A. Yes, sir.

Roy M. Taylor—For Respondent—Direct.

Q. What effort did you make to search for those papers? A. I personally searched and I took it up with our office manager——

Q. Where did you search? A. In the vault.

Q. At Kearny? A. Yes, sir.

Q. And you could find none of these papers? A. 10
That is correct.

Q. Are there no books or papers of your plant in the vault? A. No.

Q. Where else did you try to find them? A. Well, that is the only place that records are kept at the plant.

Q. That is the only place they are kept? A. That is, records of that nature.

Q. Did you undertake to procure them from the company? A. At our plant, yes. 20

Q. Nowhere else? A. No, sir.

Q. You considered then if you looked in the vault and didn't find them, you did your duty? A. I searched and the plant records aren't there. To the best of my knowledge, they have not been.

Q. What did you do to take it up with the officers of the company? A. I didn't say I took it up with the officers of the company.

Q. You said you took it up with the officers of the company? A. Our office manager. 30

Q. Did you communicate to any general officer the fact that you had received this subpoena? A. Yes.

Q. With whom? A. Mr. Richards.

Q. Who is he? A. Vice-president.

Q. Where is he located? A. Philadelphia.

Q. And did you undertake to procure the records requested? A. I told him that they weren't at the plant as far as I knew.

Q. And you took no other steps to procure them? 40
A. No, sir.

Roy M. Taylor—For Respondent—Direct—Cross.

Q. Well, now, let us see what you offer to produce.

Mr. Milton: I don't think you ought to leave this witness on this record——

10 Mr. Minard: I am through with him, that is all.

Mr. Milton: May I cross-examine him?

Mr. Minard: On the subject of direct testimony only.

Mr. Milton: Are you running this Board?

Mr. Minard: I am going to object.

Mr. Milton: That is your province.

Cross-examination by Mr. Milton.

20 Q. Mr. Taylor, what position do you occupy in the Congoleum-Nairn Company? A. Plant manager.

Q. As plant manager, have you any control, custody, possession or control of the financial records of your company? A. No, sir.

Q. Did you have anything to do with the acquiring of the appraisal by the American Appraisal Company? A. No, sir.

30 Q. Did you ever have it in your possession? A. No, sir.

Q. Did you have anything to do with the making up of the statement which the Congoleum-Nairn Company submitted to the New York Stock Exchange authorities so that the securities of the company might be listed? A. No, sir.

Q. Did you ever have that statement in your possession? A. No, sir.

40 Q. Have you ever had in your possession any of the records called for in the subpoena served upon you? A. No, sir.

Mr. Milton: That is all.

*Roy M. Taylor—For Respondent—Redirect.**Redirect examination by Mr. Minard.*

Q. Have you any superior officer at the Kearny plant? A. No, sir.

Q. You are the superior officer? A. Correct.

Q. Has the Nairn Linoleum Company or the Congoleum-Nairn Company any executive office at the plant? A. Any executive office? 10

Q. Yes. A. General office for the plant office, that is all.

Q. And you are in charge of that? A. Yes.

Q. Do you know whether the Nairn Linoleum Company is a corporation of New Jersey or was before it consolidated with the Congoleum-Nairn Company? A. I cannot say; I was not familiar with it. 20

Q. Are any of the corporate records of the company kept in your plant? A. No.

Q. Don't you keep any records or books at all at the plant? A. Production records.

Q. Haven't you any inventory of the plant property? A. As of October, 1924?

Q. Yes. A. No, sir.

Q. As of any time? A. There is an inventory taken now currently, yes. 30

Q. As of what date? A. That is all processed materials and it is taken each month.

Q. Each month? A. Yes.

Q. Wasn't there any taken last year each month? A. In 1925?

Q. 1924. A. Not to my knowledge; I wasn't there.

Q. So you are the highest official of the company at the Kearny plant? A. Yes.

Q. And all of the officers of your corporation have their offices in Philadelphia, is that right, the general offices? A. I wouldn't say that they all do. 40

Roy M. Taylor—For Respondent—Redirect.

Q. Well, your general offices are in Philadelphia?

A. Our general offices, yes.

Q. And do you have any general office in New Jersey? A. Just the plant office, I believe.

Q. The one you are in charge of?

10

Mr. Milton: We have here, if the Board please, an appraisal of this plant made by the American Appraisal Company and a copy of the application made to the committee of the New York Stock Exchange for the listing of the securities which I have and we will furnish them to Mr. Minard. The building contracts, I inquired at the Philadelphia office—the Board understands this is a merger, we are not the originators of the Nairn Company, we are the Congoleum Company and bought out a lot of other gentlemen and took the Nairn Company and took whatever we got.

20

Mr. Minard: If your Honor please, they could get them the same as we got them, from the county records. By the way, I want to say this, that this excusing of a corporation outside of the jurisdiction of the State when the unit involved, namely, the Nairn Linoleum Company, which is merely a consolidated unit is a New Jersey corporation, and yet their general office is in Philadelphia and there isn't anybody at the plant that can produce a record under subpoena from this Board.

30

Mr. Milton: Am I called upon to state to the Board we are not under any obligation to go to the County Clerk's Office to furnish Mr. Minard with contracts? Have I got to answer every fool statement like that?

40

Roy M. Taylor—For Respondent—Redirect.

Mr. Baker: No, you have not. You are plant manager?

The Witness: Yes, sir.

Mr. Baker: Will you briefly define for the benefit of the Board your duty as plant manager?

10

The Witness: Supervising the production of hard surface floor covering. Nothing to do with finances.

Mr. Baker: You are not a fiscal officer?

The Witness: No, sir.

Mr. Milton: I assume counsel having called for an exhibit from me and having examined it he must offer it under the rule.

Mr. Baker: I presume you acquiesce in that?

20

Mr. Minard: I am trying to find anything in here about buildings. That is the only thing I am looking for.

Mr. Milton: I want you to offer it.

Mr. Minard: I ask this Board to take whatever action it is authorized to take under the law to discipline the officers of this company who refuse to answer subpoenas of the Board.

Mr. Baker: Make note of that, Mr. Ste- 30
nographer.

Q. Mr. Taylor, do you know anything about this appraisal? A. No, sir.

Mr. Minard: I am perfectly willing to offer this, but I don't find anything in here.

Mr. Milton: You called for it. You have got it and now do with it.

Mr. Minard: I call attention to this fact: 40
it is volume No. 1. It has got nothing but

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personal property in it. Where is the rest with buildings and land in it?

Mr. Milton: I don't know. I haven't even looked at it.

Mr. Minard: This says it is volume No. 1.

10 Mr. Baker: And the inference is what?

Mr. Minard: That there are other volumes.

Mr. Baker: That isn't a matter for us to inquire into.

Mr. Minard: I still call upon the company to produce the building contracts and books, records and documents showing book and appraised values of these items that are mentioned in the subpoena, and I still call upon them to produce a true copy of the appraisal of lands, real estate, raw materials and so forth, under Item 4 of the subpoena; and I still ask them to produce the balance sheet of September 30th, 1924, which has not been produced——

20

Mr. Milton: You haven't given us a chance yet.

Mr. Baker: Balance sheet?

30

Mr. Minard: Yes, balance sheet of the Nairn Linoleum Company which was then in existence. It was in existence at the date of this assessment.

Mr. Milton: That includes both. This application for listing of securities contains the balance sheet.

Mr. Minard: Yes. I want to offer this in evidence.

Mr. Baker: That is what?

40

Mr. Minard: This is an application made by the Congoleum-Nairn Company to the New York Stock Exchange for listing of the

Roy M. Taylor—For Respondent—Redirect.

securities that it proposed to issue in exchange for the securities of the Nairn Linoleum Company and other companies when it bought those concerns, and this is the statement made by the Congoelum-Nairn Company over the signature of its president of the value of its plant and facilities for the purposes of stock issue. 10

Mr. Baker: When?

Mr. Minard: It is dated the 15th day of October, 1924. The financial statements in it are made as of October 30th, 1924, the day before this assessment—or September 30th, 1924, the day before the assessment was made. The assessment was made October 1st. I offer that in evidence. It gives a list of all the buildings, it gives the measurements, it gives the financial statement of the company, which shows the values of the buildings, equipment, and so on, as appraised by the American Appraisal Company, which we are supposed to have here. That I offer in evidence. 20

(Paper above referred to received in evidence and marked Exhibit D-1.)

Mr. Baker: I suppose all this is relevant? 30

Mr. Minard: No. Only that which is related to the Nairn Linoleum Company is relevant, but there are sections of it—I will just give your Honors a memorandum. Here is a summary of that statement so far as it relates to the Nairn Linoleum Company.

Mr. Baker: I hardly though that the Board had to go through all that is contained in this statement, including a history of the company. 40

Roy M. Taylor—For Respondent—Redirect.

Mr. Milton: I have no objections to it, although I don't think it is admissible.

10 Mr. Minard: Now, then, in this appraisal of the American Appraisal Company which has been produced volume 1 has been produced—there is eleven—that is, more than one—dated June 27th, 1923, addressed to the Nairn Linoleum Company, Kearny, New Jersey, by the American Appraisal Company, and in the last paragraph of that letter it says, "For convenient reference a plat plan showing the location and arrangement of the respective buildings included in this appraisal is placed in the back of this and immediately preceding the index of volume No. 2 of this report." Now, that shows there is a volume No. 2, and examination of the index in volume No. 1 will show that only personal property is included in this volume.

20 Mr. Milton: Mr. Minard, may I say this to you: If there has been any mistake about sending me only one volume of this appraisal I will see before this case is closed that there is delivered here for introduction and offer by you the other volume. You needn't have any disturbance over it; we will produce it for you.

30 Mr. Minard: Now, I call attention here to the appraisal certificate, which is page No. 3, at the top of the sheet, of the American Appraisal Company, June 27th, 1923, which gives a summary of the value of the plant property, land \$541,300, buildings \$4,331,268.05; machinery, equipment, delivery equipment, and so on. Now, it says here, "We believe seven million nine hun-

40

Roy M. Taylor—For Respondent—Redirect.

Arthur Brokaw—For Respondent—Direct.

dred eight thousand six hundred ten dollars and forty cents represents the actual serviceable value of the property appraised to a going concern under the market conditions prevailing April 1, 1923." Now, that isn't 10
October 1st, 1924, but it is evidential as showing before and after, because those other appraisals are shown after. I certainly offer that book, but I want the rest of it.

Mr. Huegel: Mr. Milton said he will give it to you.

Mr. Minard: All right.

(Volume 1 of the appraisal by the American Appraisal Company received in evidence 20
and marked Exhibit D-2.)

(At this time the hearing was adjourned until 2 P. M.)

AFTERNOON SESSION,

2 P. M.

ARTHUR BROKAW, a witness called on behalf of 30
the respondent, being duly sworn, testified as follows:

Direct examination by Mr. Minard.

Q. Mr. Brokaw, what is your profession? A. Civil engineer.

Q. How long have you been a civil engineer? A. Twenty-two years.

Q. Are you a graduate of any engineering college? A. No. Of the Newark Technical Institute. 40

Arthur Brokaw—For Respondent—Direct.

Q. And are you practicing your profession for municipalities in New Jersey? A. Yes. I am engineer for the Borough of North Arlington and engineer for the Tax Board for the Town of Kearny.

10 Q. How long have you been the engineer of the Tax Board of the Town of Kearny?

Mr. Milton: Perhaps I can save time. Are you qualifying him?

Mr. Minard: I am just showing his experience.

Mr. Milton: Go ahead, if you want to, but I am willing to agree—

Q. How long have you been a tax engineer? A. A period of about three years.

20 Q. Now, were you tax engineer on October 1st, 1924? A. I was.

Q. Were you asked by the Tax Board to make any surveys or measurements of the Kearny plant of the Nairn Linoleum plant? A. In conjunction with all industrial plants in the Town of Kearny.

Q. Just tell us what you did. A. Why, the actual work—I didn't actually do it; the man who made that, my assistant, is here. He made the actual measurements.

30 Q. Those were under your supervision? A. Under my supervision.

Q. Just tell us the work you supervised or did? A. Why, we went down there and examined all of the buildings and made measurements of them and made a calculation of the cubical contents of each building. That information was plotted up into map form showing the dimensions by scale of cubic feet.

40 Q. Now, you say you did that for all industries in Kearny? A. All industrials.

Arthur Brokaw—For Respondent—Direct.

Q. Now, when was this work done? A. Along in September—well, prior to October 1st, 1924.

Q. Prior to the assessment for that year? A. Prior to the assessing date.

Q. Now, did you make any original field notes or records? A. Yes. 10

Q. On the Kearny plant? A. On the Kearny plant.

Q. Have you them with you? A. Yes, sir. This represents all covering the Nairn Linoleum.

Q. And those are the original sheets? A. Those are the original sheets.

Q. How many are there there? A. Oh, there is thirteen.

Q. Is there any identification mark on those sheets—any heading or title? A. Yes. Nairn Linoleum Company, building No. 1, and so on, each building. 20

Q. Is there more than one building on a sheet in any instance? A. Well, I couldn't say without going all over it.

Q. Now, did you transcribe that data upon any map or record which was made? A. I did.

Q. Was that the official tax map of the Town of Kearny? A. Well, it was a special set of maps prepared for the Tax Board, consisting of these cubical contents of the different industrials. 30

Q. So they are the official maps showing all data of the Tax Board? A. Used by the Board in levying their assessment.

Q. Now, what did you do—what measurements did you make and what information did you collect? A. We made the measurements, exterior size, height, computed the cubical contents, and plotted them on a scale on those maps.

Q. You did that for the purpose of ascertaining the cubical contents? A. Yes. 40

Arthur Brokaw—For Respondent—Direct.

Q. Did you take into consideration partitions inside or uses inside or floors, or anything? A. No, we did not.

10 Mr. Minard: Now, we will produce the original data if the Board or Mr. Milton thinks it is necessary. Otherwise we will produce the result of that data in the form of the official tax map. Is that satisfactory?

Mr. Milton: Surely.

Q. Have you the official book of maps here? A. Right here. It is rather a cumbersome thing. That is the form in which we prepared it for the city assessors.

20 Q. Now, did you make any blue print copies, for the convenience of the hearing, of those maps? A. Yes, we made tracings, and from the tracings made prints of just this section, covering the Nairn plant.

Q. You made tracings, and then you made blue prints? A. Yes.

Q. Identify those which are the blue prints of the several sheets showing all the buildings—in other words, the complete record. A. (Witness produces sheaf of blue prints.)

30 Mr. Minard: Now, our purpose is, if it is agreeable to the Commission and Mr. Milton, to put in evidence the blue prints, which, in conjunction with Mr. Brokaw's testimony, will show it is an exact copy of the official record and is the result of his field notes.

Mr. Baker: The blue prints carry what?

The Witness: The blue prints are an exact copy of this data here.

Mr. Baker: Just as to lines I mean.

40 The Witness: Everything—that is, as to dimensions and all the figures, in fact.

Arthur Brokaw—For Respondent—Direct.

Q. Nature of construction and number of buildings— A. Exactly.

Q. Height, dimensions, and so on. Now, this is marked No. 21. Does that correspond with page 21 in your tax book? A. Yes, that is the same thing.

10

Q. Now, let me have that. Tell us first how many pages, and give us the number of the pages, page numbers relating to the Kearny plant of the Congoleum-Nairn Linoleum Company. A. 21, 22, 23 and 24.

Mr. Minard: Now, we offer page 21 as an exhibit.

(Blue print of page 21 received in evidence and marked Exhibit D-3.)

20

Q. Now, this sheet No. 21 shows what buildings by number? A. Building No. 1, No. 2, No. 3, No. 4, No. 5, and a hospital building, which has no number.

Q. Now, page 22, have you blue prints of that? A. Yes. That is 22.

Q. This is page 22, and covers what buildings? A. 7 and 8, 9, 10, 11, 12, 13 and 14.

Mr. Minard: I offer that.

30

(Blue print of page 22 received in evidence and marked Exhibit D-4.)

Q. Page 23? A. This is page 23.

Mr. Minard: This will be D-5.

(Blue print of page 23 received in evidence and marked Exhibit D-5.)

40

Arthur Brokaw—For Respondent—Direct.

Q. Now, is there another one, 24? A. Yes, one more, 24.

Mr. Minard: 24. That will be D-6.

(Blue print of page 24 received in evidence and marked Exhibit D-6.)

10

Q. Now, there maps are all drawn to scale? A. They are all drawn to scale.

Q. And all the information that they contain was collected by Mr. Noble, as your assistant, and under your supervision? A. That is right.

Q. What map do you call that? A. The title of it is, "Plant Map of the Industrial Plant Buildings in the Town of Kearny."

20 Q. Now, have you the official tax map besides? A. Yes, sir.

Q. Where is that—showing blocks and plots, and so on? A. These are two sheets of the official tax map.

Q. This is the original tracing? A. Yes. Covering that section of the Nairn Linoleum property. This is approved by the State Board.

Q. Now, have you blue prints of this map? A. Sheets 1 and 2.

30 Q. Here is sheet No. 1; is that right? A. Yes, that is it.

Mr. Baker: This all goes to show what?

Q. Then this is a blue print of that? A. This is a blue print of that tracing.

Mr. Minard: That will be D-7.

(Blue print of sheet No. 1 received in evidence and marked Exhibit D-7.)

40

Mr. Minard: While we hold the tracing for the disposition of the Board, we hold

Arthur Brokaw—For Respondent—Direct.

blue prints for the record if the Town wants theirs before. D-8 is the other sheet.

(Sheet No. 2 of the official tax map received in evidence and marked Exhibit D-8.)

Q. Now, have you a map of the plant? A. Yes, 10
sir.

Q. I show you a map entitled, "General Plan of Plant and Property of the Congoleum-Nairn Company, Inc., Kearny, New Jersey, dated Kearny, N. J., September 10th, 1924, and signed, 'Arthur Brokaw, Engineer, Board of Assessors, Kearny, N. J.,'" and ask you if you have the original tracing of that map? A. Yes.

Q. Just describe what it was made for and what it shows. A. Why, this shows the several blocks 20
which the Nairn Company has been divided into—that is the way they are noted upon the tax books in the Town of Kearny—and shows the form in which they receive their place. In block 25, lots 151 to 159, also plot 190 in the same block. In block 24 it shows plot 4, also plot 111. In block 22, plot 181 with the buildings outlined for each particular block.

Q. Without going into detail of plots and blocks that will appear in the map, is that drawn to scale? 30
A. Yes.

Q. And the scale is indicated on the map? A. Yes.

Q. Now, is this a blue print of that map? A. Yes, sir.

Mr. Minard: I offer this in evidence.

(Blue print of map above referred to received in evidence and marked Exhibit D-9.)

Mr. Minard: Cross-examine. 40

Arthur Brokaw—For Respondent—Direct.
Samuel W. Smith—For Respondent—Direct.

Mr. Milton: No cross.

10 Mr. Minard: I will call Richard Noble. I offer Mr. Noble as the engineer who did the work himself under the supervision of Mr. Brokaw. He has his field notes here.

Mr. Milton: Simply offer them. I don't care.

Mr. Minard: We offer them through Brokaw. He is merely to confirm the detail.

Mr. Milton: I don't care about that. I will stipulate he did it.

Mr. Baker: All right.

20 Mr. Minard: I will call Samuel W. Smith. I call Mr. Smith—he is not chairman of the Board at present, but was at the time that this assessment was made, so I call him for that reason.

SAMUEL W. SMITH, a witness called on behalf of the respondent, being duly sworn, testified as follows:

30 *Direct examination by Mr. Minard.*

Q. Mr. Smith, you are a member of the Kearny Tax Board? A. Yes, sir.

Q. How long have you been a member of that Board? A. A year last July.

Q. And at the time of this assessment, on October 1st, 1924, were you the chairman of the Board? A. I was.

40 Q. Now, I wish you would tell us how the Board proceeded for the purpose of making the assessment against the Nairn plant. A. We called upon the

Samuel W. Smith—For Respondent—Direct.

Nairn Linoleum Company, at that time so known, and visited Mr. Peter Campbell. We made known to him the fact that we were there to receive information and data that would enable us to place an assessment on his plant.

Mr. Milton: Just a minute, Mr. Smith. 10

Mr. Baker: Does that bind him?

Mr. Minard: He is vice-president of the company now before your Honor.

Mr. Milton: No, he is not.

Mr. Minard: He was on October 1st, 1924, as your Honors will see from Exhibit D-1. He is so stated to be vice-president of the company. He is still a director, or, at least, I assume he still is.

Mr. Milton: Mr. Smith is now proceeding to tell us what some man who rejoices in the name of Campbell said. 20

Mr. Minard: He was vice-president of the company.

Mr. Baker: Well, we will hear it. What did he say?

The Witness: He said that under the present conditions he was unable to give to us a statement.

Mr. Baker: Now, in what way is that illuminating or reflective in technique what this gentleman observed in making the assessment? 30

Q. Was Mr. Campbell the general manager of the plant at that time? A. He was.

Q. What date was this when you were there? A. 5th of October.

Q. 5th of October? A. 1924.

Mr. Minard: You see, we have got to show the method that the Board used to com- 40

Samuel W. Smith—For Respondent—Direct.

10 pute the value of these buildings and why that method was adopted, because the company was unable or unwilling to give them any information, and I merely want to lay the foundation to explain why a particular method of assessment was employed.

 Mr. Baker: Do you think that is a matter of obligation to you?

 Mr. Minard: Yes, I feel so.

 Mr. Baker: Isn't the presumption that the assessment was levied in a manner consistent and in accordance with the statutory and constitutional guide and precept?

20 Mr. Minard: Well, this assessment has been attacked, and it seems to me that the circumstances surrounding the making of it—now, it is attacked, if you please, by a company that refused to give any information as guidance to the Board. Now, the Board proceeds to make the assessment, and they attack it.

 Mr. Baker: I do not see, Mr. Minard, that it is your obligation to show that.

 Mr. Minard: Well, of course, I will abide by whatever ruling the Commission makes.

30 Mr. Baker: As I see it, the burden is on the opposite side to prove that the assessment was erroneously made.

 Mr. Minard: Now, if that were the actual position before the Commission, then it would be unnecessary for us to make any defense at all.

40 Mr. Baker: That is something for you to answer. How far would the testimony of Mr. Smith and his associates go in upsetting what has been offered by the appellants?

Samuel W. Smith—For Respondent—Direct.

Isn't that the purpose of the thing? Aren't we to balance one against the other? Isn't this to be the antithesis of what has been offered?

Q. Now, then, what did you use as a basis of the Board's assessment—what did the Board use as the basis of this assessment for that year? A. Cubical contents of the building. 10

Q. And that was the information that was testified to and presented by Mr. Brokaw? A. It was.

Q. Why did you adopt that method?

Mr. Milton: Objected to.

Mr. Minard: I want to justify the method and I want to explain the method. 20

Mr. Baker: I don't think that that would be at all helpful, Mr. Minard, if you did. I am assuming, and the Board assumes, that the method pursued by Mr. Smith and his associates was a proper one. It is seldom, if ever, that the respondent is required to show in the smallest way what you folks are endeavoring to show in this case. I presume this man adhered to lines that are very well known, very plausible and a proper line of conduct to pursue in making an assessment. 30

Mr. Minard: Well, whatever the Board rules, of course—

Mr. Baker: Well, it is my desire to expedite things. I think thus far we have been very prodigal in the matter of time.

Mr. Minard: Well, whatever the Commission says. We will talk it over, then. I offer this testimony, and if the Commission thinks it is incompetent or irrelevant or unimportant— 40

Samuel W. Smith—For Respondent—Direct.

Mr. Baker: It won't be illuminating. I will say that.

Mr. Minard: Well, whatever you say.

Mr. Baker: I am inclined to exclude it. Colonel, Mr. Huegel and Doctor?

10 (It is the unanimous judgment of the Commission that the objection be sustained.)

Mr. Minard: Note my exception to the ruling.

Q. Now, you say that the assessment was levied on the basis of a cubic foot content of the building?

A. It was.

Q. What rate per cubic foot was used? A. 25 cents for heavy type, reinforced or brick construction, and 10 cents for wood or corrugated iron, or
20 such type buildings as that.

Q. Now, then, did your Board prepare a tabulation from the tax map and the data furnished by the engineer? A. It did.

Q. Did you form a tabulation showing in one column the number of the building, the amount of cubic feet contents, the tax value at the rate per cubic foot, and the aggregate amount or value placed on that building, as a result of that computation? A. It did.
30

Q. And on the bottom is there a computation in ink showing the recapitulation of buildings, land and personal? A. There is.

Q. But the land and personal are not shown in the typewritten figures, are they? A. No, sir.

Q. So that the typewritten figures only show the buildings themselves? A. That is true.

Q. And the total of that assessment is what, for buildings alone? A. \$4,630,692.

40 Q. Now, was that the assessment used by the Town—was that the assessment levied? A. With

Samuel W. Smith—For Respondent—Direct.

a slight exception. There was a building, No. 25 or 26, that was omitted from this that was later added.

Q. And that is the reason why the figures are changed in pencil? A. Yes, sir.

Q. They are changed in pencil to— A. \$4,650,000. 10

(Discussion off the record.)

Q. Now, Mr. Smith, did these figures include anything for equipment? A. Nothing.

Q. And in measuring on the cubic content basis you didn't include plumbing or light, or any of the things that Mr. Rumery has testified to as equipment? A. We didn't so specify. We took the general trend of the building.

Q. In other words, you took it that whatever unit you measured it by would include those things? 20
A. Plumbing, heating, sprinkler system, or anything like that.

Q. In other words, you used a basic unit which you thought would be fair? A. Fair.

Q. For the building and equipment? A. Yes.

Q. Did it include any machinery or any personal property? A. None whatever.

Q. Your personal property was all included under another heading, was it not? A. Under another heading. 30

Q. I notice here, Mr. Smith, a variation of rates of some 20 cents a cubic foot, some 25 and some at 10 cents. Now, in assessing the other property in Kearny as a result of the measurements taken at the other plants was this rule used uniformly? A. Yes, sir.

Q. So this rule for the type of construction was applied to all of the industries that you taxed in Kearny? A. Yes, sir. 40

Samuel W. Smith—For Respondent—Direct.

Mr. Minard: I offer this statement in evidence.

(Statement above referred to received in evidence and marked Exhibit D-10.)

10 Mr. Baker: How many industries have you in Kearny?

The Witness: Roughly, about thirty.

Mr. Baker: This is the ruling you adopted in assessing them?

The Witness: All of them.

Mr. Baker: Part of the policy that the Board set to assess them?

The Witness: Yes, sir.

20 Q. Now, Mr. Smith, did you and the members of the Board make any personal inspection of these buildings? A. We did.

Q. For the purpose of adding your personal opinions? A. We visited each and every building.

Q. When? A. On or about the 5th of October and again with the County Board in the spring of 1925.

30 Q. Now, did you apply your rates per cubic foot before or after your personal inspection of the buildings? A. After.

Q. Did you meet any of the Linoleum Company people when you inspected the plant? A. Yes, sir.

Q. And did you make your inspection with them around the plant? A. Yes, sir.

Q. Who did you meet? A. Mr. William Joule.

Q. What is his position? A. Chief engineer.

Q. Did he furnish you information about the buildings and things? A. Yes, sir.

Q. For your appraisal? A. Yes, sir.

40 Q. Have you any knowledge of the application of such a rule as 25 per cent. that you used as a

S. W. Smith—For Respondent—Direct—Cross.

general method, elsewhere? A. It is used in other cities. I obtained my first thought by conferring with Mr. Berry of the Newark Tax Board.

Q. Do they use that method there? A. He so informed me.

Mr. Minard: Cross-examine.

10

Cross-examination by Mr. Milton.

Q. Mr. Smith, will you do me a favor? I didn't quite catch what you said. Repeat just what basic factor was used with regard to the various types of buildings in this plant. In what connection was 25 cents per cubic foot used? A. The very heavy constructed buildings, such as were made of 2-foot or 2-foot 6-inch walls, or a real newly constructed reinforced concrete building which bore a semblance of sturdiness, real value.

20

Q. Is that all? A. Of the 25-cent.

Q. Now, in what cases was any higher basic factor applied? A. In one particular case, that of a hospital building.

Q. What type of building is that? A. Reinforced concrete with inside tile finish, which appeared to be much more expensive.

Q. What cases was a factor used less than 25 cents? A. A building that was made of corrugated iron and iron framework.

30

Q. Or wooden building? A. Or wooden building.

Q. Those varying factors, then, were applied as the case might be regardless of the height of the building? A. Yes, sir.

Q. You applied a 25-cent cubic foot factor to a heavy reinforced concrete building if it were one story high or six stories high; is that right? A. Yes, sir.

40

Samuel W. Smith—For Respondent—Cross.

Q. Would you mind mentioning, Mr. Smith, some of the plants in Kearny other than the plant of the Congoleum-Nairn Company which were valued for 1924 tax purposes in the manner you have testified to?

10 Mr. Minard: We object to that. We don't understand that there is any claim against the assessment of this plant with relation to any other plant.

 Mr. Milton: The witness is proffered here by the Town and he has testified on direct examination that this method was applied universally and uniformly in the taxation of other property. I submit it is cross-examination and the door has been opened for me.

20 Mr. Baker: I think, too, in response to some of my questions you said substantially what Mr. Milton has said as to that. That ought to be allowed.

A. Marshall Linen Thread, Salmon Brothers, some Dupont.

Q. Why not all the Duponts? A. Because of the fact they were various types of buildings, reinforced concrete type that was so assessed.

30 Q. What other types of buildings were there in the Dupont plant that were not assessed on the basis of 25 cents per cubic foot? A. Small, one-story, lightly constructed individual buildings.

Q. Did you, however, appraise or value or assess them on a cubic foot basis, applying some other basic factor? A. Yes, sir.

Q. The 10-cent rate in that case? A. Yes, sir.

40 Q. So, I take it, in the case of the Dupont Company all of its buildings which were of heavy type construction you valued on the basis of 25 cents a cubic foot? A. Yes, sir.

Samuel W. Smith—For Respondent—Cross.

Q. Those which were of some other class or description you have mentioned were appraised or assessed on the basis of 10 cents per cubic foot? A. Yes, sir.

Q. Will you go on, please, and testify to the others you had in mind a few moments ago? A. 10
Martin Dennis Company, Ford—

Q. Weston Electric? A. Weston Electric didn't hop in until this year. It has been applied to Weston Electric, what buildings are completed.

Q. For 1925? A. 1926.

Q. As of October 1st, 1925? A. Yes.

Q. But for the 1925 assessment it was a construction value put on it? A. Yes, sir.

Q. Was the same method used? A. No, sir.

Q. How was that arrived at? A. We were supplied with information from their engineers as to the relative percentage— 20

Q. Amount of money actually invested? A. Invested or spent in it.

Q. What other plants have been appraised or assessed for 1925 on the basis you have described—or the method you have described? A. White Pine Tar, F. H. Lovell—

Q. Schupe? A. No, sir.

Q. Why not? A. Their type of construction was such that we couldn't seem to agree on a rate on that, and information is provided by Mr. Schupe. 30

Q. So you didn't assess the buildings of the Schupe Terminal Company by the same method? A. Not having any of that particular type of building.

Q. What method was used in that case? A. The information furnished us by Mr. Schupe.

Q. So you accepted Mr. Schupe's valuation of his own building? A. We did the same as we would with Nairn if they had done so. 40

S. W. Smith—For Respondent—Cross—Redirect.

Q. Don't tempt me too far. Now, will you exhaust your recollection in the number of plants in Kearny that have been assessed according to the methods that you have described here? A. About twenty, I would imagine.

10 Q. About twenty in all? A. Yes.

Q. Have you mentioned them all? A. I think so; pretty much.

Mr. Baker: Stern?

The Witness: No, we didn't apply that to Stern.

Mr. Baker: Public Service?

The Witness: Public Service we did.

Mr. Baker: Ford?

The Witness: Ford.

20

Q. Mr. Smith, if I should be able to ascertain the cubical contents of all of the heavy type construction buildings in the Dupont plant and apply 25 cents per cubic foot to that known quantity mathematically I ought to arrive at the assessment; is that right? A. Yes, sir.

Q. Assuming also the application of 10 cents to the light structures? A. Yes, sir.

30 Q. And that same assumption would apply with equal verity to the other plants you have mentioned? A. Yes, sir.

Mr. Milton: That is all.

Redirect examination by Mr. Minard.

Q. Mr. Smith, is it the practice of the Board to ask an industry for a statement of its value before you put your own value on it? A. It is.

40 Q. Did you ask Nairn Linoleum Company in 1924 for such a statement for the purpose of assessment? A. We did.

Samuel W. Smith—For Respondent—Redirect.

Q. Did you get such a statement? A. We did not.

Q. Why? A. Well——

Mr. Milton: Just a moment.

(Portion of testimony read by stenographer.) 10

Mr. Milton: I object to the question "Why."

Mr. Baker: Sustained.

Mr. Minard: If your Honor please, the point was made to the Schupe giving a statement and it being accepted. I want to show that this opportunity was offered to the Nairn Company just the same, and they refused it. 20

Mr. Baker: Is this policy of yours, Mr. Smith, applied to real estate? Do you seek the judgment of the owner of the real estate?

The Witness: No, sir. Only manufacturing industries.

Mr. Baker: And you take that as to the value of his real estate?

The Witness: We ask what he says is the value.

Mr. Baker: I thought the practice, according to the statute, was to inquire as to the value of the personal property. 30

The Witness: We do the personal and realty.

Mr. Baker: And you are justified in doing it. That is a method in evolution would amount to the owner actually making his own assessment if you accepted his figures.

The Witness: If we did, but we don't always. We have some judgment. 40

Mr. Baker: It is novel to me. That is why I asked you. I know the practice pre-

Samuel W. Smith—For Respondent—Redirect.

10 vails in almost every taxing district where they have personal property for the assessing officials to send out notices asking the amount of personal property, but I didn't know that the practice applied to the analysis of real estate. It seems to be the practice of your Board to ask the owner of the industrial plant what his improvements are. Is that the idea?

The Witness: That is the idea.

Q. Now, Mr. Smith, when you get that information do you subject that to your own investigation?

A. We do.

Q. By your tax engineer? A. Yes, sir.

20 Q. By the members of the Board? A. Yes, sir.

Q. Do they then exercise their own judgment as to whether that or some other value represents the true value of the property? A. We do.

Q. This is merely to facilitate your acquisition of information? A. Absolutely.

Q. Mr. Smith, did any officer or representative or any of the plant men come before your Tax Board regarding these taxes? A. They did.

30 Q. What was the man's name? A. Mr. Alexander.

Q. What is his connection with the company? A. Comptroller.

Q. Financial officer of the company. Did you ask him to make a statement? A. We did.

Q. Did he give you a statement? A. He did not.

Q. Did he say why? A. Yes.

Q. What did he say?

Mr. Milton: Objected to.

40 Mr. Baker: Isn't this whole line of inquiry irrelevant? Shouldn't we obscure

Samuel W. Smith—For Respondent—Redirect.

what has passed? Are we not sitting here to view things anew? Aren't we required even to be blindfolded to the judgment of the County Board?

Mr. Minard: All the philosophers say the past is the only guide we have for the present or the future. 10

Mr. Milton: I don't know about your future in view of the past.

Mr. Minard: I expect it to be very much like my past.

Mr. Milton: Excuse me.

Mr. Minard: Well, I press the question for whatever ruling the Commission wants to make.

Mr. Baker: Sustain the objection. 20

Mr. Minard: Note my exception, Mr. Stenographer.

(Exception noted for the respondent.)

Mr. Minard: This, by the way, is the fiscal officer of the company, whose statement binds the corporation.

Mr. Baker: You are proving that through Mr. Smith?

Mr. Minard: Yes. He was there. He was chairman of the Board. I am not appealing from the ruling of the Chair; I am merely showing why we are insisting upon it. He is the fiscal officer. 30

Mr. Baker: I don't think, to be candid with you, that the expression of its officer's judgment would form at all any part of our deliberations in the consideration of this case.

Mr. Minard: It isn't a question of his judgment. He has knowledge of the fact, and a corporation can speak only through 40

Samuel W. Smith—For Respondent—Redirect.

its officers. It is a silent entity, and if its officers don't speak, and if what they say cannot be heard, the corporation never speaks.

Mr. Baker: What is it to show?

10

Mr. Minard: Why, it is to show that this assessment was not objectionable or criticized or questioned by the officers of the company at that time.

Mr. Baker: Let us assume it was not, and they subsequently felt they had been unjustly dealt with. In what way is that reflective of value?

20

Mr. Minard: Well, in another form of jurisprudence the statement of a party in interest is evidential, but it is not binding, and the party in interest is not permitted to change his mind to an important fact unless he gives reasons satisfactory to the Court. Now, here we are before this Board without a single officer or representative of the corporation here; although three of them were subpoenaed, the plant superintendent appears. Now, if they can all stay away, and things that they said at some other time are not admissible, how is your Board ever to know anything of the facts? Why, all you have got to do is stay away and nobody can get any information.

30

Mr. Baker: Why, I don't think for the purpose of this inquiry, or for the purpose of giving us a beacon to guide our footsteps in arriving at a conclusion, that it is at all necessary to prove any conversation that may have been had.

40

Mr. Minard: I would like to make this statement to the Commission—

Samuel W. Smith—For Respondent—Redirect.

Mr. Baker: Yes, sir.

Mr. Minard: If there is anybody in the world that knows what this property is worth it is the officers of the corporation that owns it. If there is anything in the world, if there is any evidence, the best evidence in the world of the value is their financial records. If the comptroller, the fiscal officer, appears before the Town Board and makes a statement on that subject that is the voice of the company; that is evidential and important. 10

Mr. Baker: As to true value?

Mr. Minard: Yes, prima facie. Now, then, they attack this assessment and they come before this Board without an officer of the company here and they ask you to accept the conclusion based upon the judgment, not upon the fact or upon any actual figures, of an expert witness. Now, if the Board wants information, as it does, why, it seems to me the place to go to get the information is the place where the actual information is available. 20

Mr. Baker: Yes, from a thoroughly disinterested source. 30

Mr. Minard: How can the Board get such a thing as a disinterested source?

Mr. Baker: What would you say as to the judgment of someone familiar with land and improvement values in the Town of Kearny as distinguished from the judgment of this particular official, who, you say, was in conversation with the Board?

Mr. Minard: Well, the Tax Board acts in a ministerial capacity, or maybe semi-judicial, in determining those values. I would 40

Samuel W. Smith—For Respondent—Redirect.

10 say this, that when I declare my income under the Income Tax Law that is prima facie evidence of it, but no expert opinion is any evidence of it. The book value of this property is prima facie evidence of it in any branch of the service, in utilities, and not anywhere else. If you want to know the value of the thing you go into the book value records of the company to get your values. Now, experts may not agree as to the book values, so that is the starting place, and the utterance of an official of the corporation is binding upon the corporation, and if this Commission wants all the facts we want them to have them, and if they don't—

20 Mr. Baker: The book value of real estate or improvements is what?

Mr. Minard: Why, it is the value set up by the company against which they charge rates, against which they issue securities, against which they persuade the public to invest money or hire. Now, they are not permitted to repudiate that. That is the good faith that they offer to the public when they say, "Invest your money in our enterprise" like they did in that application to the Stock Exchange.

30

Mr. Baker: Would you say that book value jibes with the value that is brought about by the offer of the hypothetical seller and the acceptance by the hypothetical buyer?

40 Mr. Minard: No, I don't say that, because I don't know what that is. But I do say this, that a company that sets up on its books certain values and says that we are worth that when we ask for the sale of se-

Samuel W. Smith—For Respondent—Redirect.

curities, that is what we have got behind it, and that is *prima facie*.

Mr. Baker: I know, Mr. Minard, but this matter of book value, we have had it so often before us, and it has been our policy to exclude it, because book value, to my mind, is nothing more than the value that you might place upon your palatial reservation in Rockaway, but what the unsophisticated denizen of Jersey City would give for that thing, assuming you wished to sell it, is another matter. 10

Mr. Minard: We haven't heard about what somebody might do.

Mr. Baker: I am striving to adhere to the guides that the courts have laid down, to wit, the test is, what amount of money you would be given in exchange for this property, assuming the seller wants to sell and the buyer wants to buy. 20

Mr. Minard: Here is what the buyer did give the day before the tax assessment.

Mr. Baker: We will consider that. That is what a willing buyer—

Mr. Minard: Actually paid to a willing seller. 30

Mr. Baker: We are strangers on this subject of book value and we have ignored it.

Mr. Minard: All right.

Mr. Baker: We ignored it not later than a week ago in the matter of the Hackensack Water Company.

Mr. Minard: It seems to me in this case in this day of regulation where they cannot set up these things in their books except what the Public Service Board let them put you ought to accept book value. We offer 40

*S. W. Smith—For Respondent—Redirect—Recross.
Frank Odendahl—For Respondent—Direct.*

10 to show what the comptroller of the corporation stated to the Tax Board, and that, of course, I understand, has been objected to— at a time when he appeared before the Tax Board for the express purpose of dertermining this assessment. And he came there for that purpose, and his statement was germane to that purpose, and only to that purpose. That question of mine is ruled out?

Mr. Baker: Yes.

Mr. Minard: Mr. Reporter, will you note that exception of mine there to it?

(Exception noted for the respondent.)

20 *Cross-examination by Mr. Milton.*

Q. Did I correctly understand that you became a member of the Board of Assessors in July, 1924?

A. Yes, sir.

Q. So that you had nothing to do with the 1924 assessment, which was levied as of October 1st, 1923? A. No, sir, not 1923; 1924.

Q. Well, I am correct about that. You didn't go in that Board until July, 1924? A. 1924.

30

Mr. Milton: That is all.

FRANK ODENDAHL, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. Minard.

40 Q. Are you chairman of the Kearny Tax Board at the present time? A. I am not, sir. I am not the chairman. I am a member of the Board.

Frank Odendahl—For Respondent—Direct.

Q. Were you a member of the Board at the time the 1925 assessment of the Nairn Linoleum Company was made? A. Yes, sir. I am a member since 1923, July 1st.

Q. You have heard the testimony of Mr. Smith?
A. Yes, sir. 10

Q. Did you participate with Mr. Smith in all the investigations and inspections of the plant and the computing of these values of the buildings that has been testified to? A. I did.

Q. What is your business, Mr. Odendahl? A. I am a general contractor.

Q. What kind of work do you do as a general contractor? A. Construction work of buildings.

Q. All buildings—factory buildings? A. No. Residences. 20

Q. How long have you been in that business?
A. Fifty-five—fifty-four—about fifty-five years—I mean forty-four years. I am sixty years old.

Q. Have you general knowledge of construction costs for wooden structures, and that sort of thing?

A. I have, but I would like to state one thing: In 1916 I went into the United States Army, Ordnance Department, and I am still in the Government service, so the changes between 1916 and now, which are considerable in reference to the building changes, are quite—I can't testify, at least, because I wasn't in business yet. Of course, I can testify as to my ability as a builder, and so forth. 30

Q. You say you have been in the Ordnance Service of the United States Government for nine years?

A. Yes, sir.

Q. What are your duties in that connection? A. At the present time I am superintendent of the United States Shipping Board.

Q. Have you had anything to do with the determining of value or appraising buildings for the Government? A. I have, sir. 40

Frank Odendahl—For Respondent—Direct.

Q. To what extent? A. I was a member of the Claims Board that settled the claims between the Government and the contractors.

Q. The claims that arose from the Armistice? A. Yes, sir.

10 Q. What character of buildings were you engaged in appraising? A. Any building that was built for the purpose of manufacturing.

Q. How many of those buildings do you suppose you appraised? A. Why, hundreds of them.

Q. And in value how much, in round numbers? A. \$50,000,000.

Q. And you are at that work yet? A. No. It is all finished. After this was finished, this Claims Board, I was transferred to the Shipping Board.

20 Q. So now you are on the Shipping Board? A. On the Shipping Board.

Q. Now, Mr. Odendahl, did you consider the figures that were furnished by Mr. Brokaw and his engineers of the cubic contents of these buildings? A. We considered those, because that is the only way to figure buildings of the Congoleum Works.

Q. Did you examine the plant, that linoleum plant, to determine the type and character? A. I did, three years in succession.

30 Q. Did you go with them on the trip in the year 1924? A. 1923, 1924 and 1925.

Q. Now, we are speaking of the 1924 assessment for 1925. A. Right.

Q. Now, this tabulation that has been offered here as Exhibit D-10, does that represent your judgment as to the cubic foot value of the various buildings enumerated there? A. It certainly does.

Q. Based upon your experience of forty-four years as a building contractor? A. Yes, sir.

40 Q. Nine years in the Ordnance? A. I think it is very cheap.

Frank Odendahl—For Respondent—Direct.

Mr. Baker: Forty-four years as a builder, plus nine?

The Witness: It was nine years out of that forty-four.

Q. Now, Mr. Odendahl, do you know whether this rule of price per cubic foot is used pretty generally for the purpose of appraising buildings? A. There is several different rules used for the purpose of buildings. Some of them figure by square feet, some by cubic feet. Now, in the small buildings I figure by rooms in a private house, but in a big plant like the linoleum works it is absolutely necessary for anybody—building experts to figure these buildings as a whole, and this whole in my opinion was cubic contents, and therefore we asked our engineer to give us cubic contents of every building in the plant, and this we have, and then we sit together as two builders in our Board and figure out what would be the proper way and tax this property. 10 20

Q. Based upon your inspection? A. Based upon our inspection and experience.

Q. Now, what places or cities or services do you know of where the cubic foot rule is used? A. It is used in Newark, it is used in Bergen County, it is used in Rochester and several other big cities, I understand. 30

Q. Is it used in Syracuse? A. So it is. I think it is.

Q. Is it used in Government service? A. Yes, sir. I always used it.

Q. Is it used in builders' estimates? A. I think the majority use it.

Q. Now, then, have you in your experience of nine years with the Government had occasion to appraise buildings of a similar kind or character or construction as those in the Nairn plant? A. They 40

Frank Odendahl—For Respondent—Direct.

probably were not of the same kind than the Nairn Works; this was more what we call "war babies," and them buildings are all A-1 brick buildings, reinforced; I don't know better to be found. We found walls, 3-foot thick walls, nothing less than
 10 12 inches thick bricks at the highest point of the building. Now, this is different type of buildings as "war babies," we call, mostly concrete.

Q. What is your opinion of this 25-cent rule as applied here? A. Why, I must say, Mr. Chairman, that this 25-cent rule is in my opinion a small amount. It is—as Mr. Milton has told me, it is the smallest amount—

Mr. Milton: Now, listen. I am a very
 20 good lawyer—

Mr. Baker: What do you think it is?

The Witness: Very cheap.

Q. You consider that a very favorable rule to the industry? A. Absolutely very favorable. I like to state that Mr. Milton was in our Board one night representing this company and I said to him about this tax rate. He said, "That is certainly fair; it is the fairest thing I have seen in my life."

30 Mr. Baker: Strike it out.

Q. Now, this is a universal rule, this cubic foot rule, is it not, in your community? A. As far as I know, yes.

Q. Well, your whole tax map—you have made that whole map of industrials for the same purpose? A. It was made for this purpose, yes.

Q. And, based upon your experience as a builder in the Government service— A. I wasn't builder
 40 in the Government service.

Q. Not as a bulder, but in the Government service, is it your opinion that the assessment of

F. Odendahl—For Respondent—Direct—Cross.

\$4,650,000 for the buildings in the Nairn plant is a conservative and reasonable assessment? A. Yes, sir; absolutely.

Q. Have you any idea whether those buildings could be replaced for anything like that? A. I don't believe them buildings could be replaced— 10
not for four times the amount you have in this tax map.

Mr. Minard: Cross-examine.

Cross-examination by Mr. Milton.

Q. Mr. Odendahl, when did you first become a member of the Board of Assessors of Kearny? A. July 1st, 1923, after the death of one of the assessors. 20

Q. So that you participated in the making of the assessment for the calendar year 1924? A. Right.

Q. And did you apply the same method of valuing the property for 1924 as you did for 1925? A. We did, but it was a different atmosphere in that business. Do you want me to tell you the story?

Q. No, I don't care to hear any stories. I want to know if you applied the same rule, the same method? A. No. This rule didn't exist; this cubic feet didn't exist in 1924. 30

Q. You mean the practice of applying the cubic foot rule in order to jibe up the value of the building didn't exist in 1923? A. Not in Kearny. The assessors never used, in other words, this kind of a rule.

Q. So the Nairn Linoleum Company didn't have the privilege of enjoying the benefit of the application of that rule to its property for the assessment of 1924, did it? A. No, sir. 40

Frank Odendahl—For Respondent—Cross.

Q. Was the assessment for 1924 a proper assessment? A. It was not.

Q. It was not? A. It was not.

Q. You participated in the making of it? A. I did not, sir; I didn't vote for it.

10 Q. You were a member of the Board of Assessors? A. And I refused to vote for it.

Q. Was Mr. Marshall a member of the Board of Assessors? A. No, sir.

Q. He was not? A. No.

Q. You were familiar with the fact that these buildings which you assessed in 1925 at approximately, or substantially, \$4,600,000 in 1924 were assessed at less than a million and a half?

20 Mr. Minard: I object to that. There is no assessment for 1924 before this Board.

(Question read by the stenographer.)

Mr. Milton: The witness offered here is one of the assessors. Not only is he examined by counsel of the Town as to his general knowledge as a building contractor and as an expert for the United States Government, but also as the Town Assessor, and his personal opinion is put upon this record as to the correctness and fairness of the assessment. I say he is open for cross-examination.

30

Mr. Minard: He is not. The testimony up to that point that Mr. Milton comes to, and part of it was irrelevant, but we come to the point where he says he didn't approve of the assessment for 1924; that is wasn't right. Now, that is the end. What that assessment was is of no consideration to anybody.

40

Mr. Milton: Suppose it had been \$10,000,000?

Frank Odendahl—For Respondent—Cross.

Mr. Minard: It would be irrelevant, incompetent and unsanitary.

Mr. Milton: I thought it was unsanitary.

Mr. Baker: The Board is inclined to allow the question. You may have an exception. 10

Mr. Minard: I pray an exception.

(Exception noted for the respondent.)

(Question read by the stenographer.)

Mr. Minard: Yes or no is the answer to that.

A. Yes.

Q. And that had been assessed at substantially the same amount for two or three years prior to 1924 as it had been for 1924? 20

Mr. Minard: I object to the question for the reasons previously stated. We are going back into ancient history now.

Mr. Baker: Overruled.

Mr. Minard: I pray an exception.

(Exception noted for the respondent.)

(Question read by the stenographer.)

Mr. Minard: How does he know, when he was not on the Board? He wasn't on the Board. I object to it. 30

Mr. Baker: He doesn't know.

The Witness: I don't know.

Q. Didn't your work as the tax assessor for Kearny lead you into an examination of the records of your Board with respect to assessments upon this property for the year 1924 and years prior thereto?

Mr. Minard: I object to the question. If they want to prove that, that is part of their case. 40

Frank Odendahl—For Respondent—Cross.

Mr. Milton: Prove what? Prove what this man did to acquire knowledge?

Mr. Minard: No. Prove what the assessment was prior to 1925.

(Question read by the stenographer.)

10 Mr. Baker: That is objected to, and the objection is overruled. You may answer.

Mr. Minard: I pray an exception.

Mr. Baker: It is granted.

(Exception noted for the respondent.)

A. I don't understand.

Mr. Baker: Did you make inquiry as to the assessment of former years? Is that it, Mr. Milton?

20 Mr. Milton: Yes, practically so.

The Witness: I have made inquiries. The reason I voted against the assessment—

Mr. Baker: We are not asking you to explain your vote or to amplify or expatiate on anything.

The Witness: I did make inquiries of the previous year, yes, and found that that wasn't sufficient tax.

30 Q. At any rate, you found then—you must have found, Mr. Odendahl, did you not, that the figure which was put on for 1924 had been substantially the figure for two or three years prior thereto?

40 Mr. Minard: I object to the question as irrelevant. A while ago we heard a discussion of what the measure of value was from the Bench, and I submit that I didn't hear anything about the assessment of the property for several years past as being an element of the value of the property.

Frank Odendahl—For Respondent—Cross.

Mr. Milton: May I reiterate again that this man has been proffered by the Town and his opinion asked and put on the record, and I submit if we were in a court cross-examination would be granted to me to probe this man's mental processes to the farthest degree? 10

Mr. Minard: On the other hand, the Prosecutor knows he would not be permitted to cross-examine a man except on his direct examination, and the only thing Mr. Odendahl has testified regarding this matter is the assessment for 1925.

Mr. Baker: If there is an objection, and I think there is, it is overruled.

Mr. Minard: I pray an exception. 20

Mr. Baker: Exception allowed.

(Exception noted for the respondent.)

(Question read by the stenographer.)

A. They were substantial in my opinion. They were substantially, but they weren't substantial.

Mr. Baker: Were they the same?

The Witness: I can't say yes or no. I can't say yes or no. That they were substantial or not appropos this question. 30

Q. That settles that. Mr. Odendahl, has it been your experience that when a basic factor is arrived at as the fair price to be applied to determine according to cubic foot rule the value of the building that the price is applied to all classes of buildings? A. Well, we have a different price for brick buildings and a different price for concrete buildings, a different price for heavy constructed reinforced concrete buildings, a different price for frame buildings and a different price for shacks. 40

F. Odendahl—For Respondent—Cross—Redirect.

Q. Assuming the price of the concrete buildings was 25 cents a cubic foot, has it been your experience that a correct application, or following of the rule, would permit employing 25 cents with regard to all concrete buildings whether they were
 10 one story high or six stories high? A. It is the average price.

Q. And you would apply that price or a price determined to all of the buildings of concrete construction whether they were shells, four walls and roof, or whether they had floors or not? A. Oh, no. There is reinforced concrete and concrete. There is two different kinds of construction.

Q. Let us stick to one kind of concrete construction. I don't care which, either ordinary, simple
 20 concrete or reinforced concrete. Let us assume two buildings stood; let us assume that little black book of mine is one building and this yellow pad is another building. They are both reinforced concrete construction. The black book is six stories high, has a floor all the way up to the sixth story. My yellow friend here is two stories high and has no floors in it. Would you apply 25 cents per cubic foot to each of the cubical contents? A. I would.

Q. And you did in this case? A. I did.

30 Mr. Milton: That is all.

Redirect examination by Mr. Minard.

Q. Why?

Mr. Milton: Objected to.

Q. Why? A. Because these buildings at the linoleum works is such a type of buildings, workmanship, as I said before, they ought to be taxed twice,
 40 as well, but to make all like a nominal sum we made it 25 cents a cubic foot for brick.

Frank Odendahl—For Respondent—Redirect.

Q. In other words, you took the least common denominator instead of the highest? A. Exactly.

Mr. Milton: Objected to.

Q. Now, you have not been allowed to explain your inquiry into previous tax assessments against the Nairn Linoleum Works. Do you know how those assessments were made, on what basis, or how the information was obtained? 10

Mr. Milton: Will you answer yes or no to that?

A. No.

Q. Did you reach any conclusion of your own as to whether they were fair or just assessments or not? 20

Mr. Milton: Objected to.

A. I did.

Q. What was your opinion?

Mr. Milton: Just a minute.

A. Well—

Mr. Milton: Wait a minute. You don't understand. That is objected to. 30

(Question read by the stenographer.)

Mr. Baker: Sustain the objection.

Mr. Minard: I pray an exception, because that is exactly what the other side was permitted to inquire into. Now the door is shut on me.

Mr. Baker: I think it is time to close the portals for all time.

Mr. Minard: I don't want to be caught outside the doors. 40

*Frank Odendahl—For Respondent—Redirect.
Samuel Marshall—For Respondent—Direct.*

Q. Why did you attempt to raise the assessment of the Nairn Linoleum Works in 1925? A. I did.

Mr. Milton: Objected to.

Mr. Baker: Sustained.

10

Mr. Minard: I pray an exception.

Mr. Milton: I will withdraw it.

Q. Why did you raise the assessment? A. Because in my opinion the assessment was not high enough assessed.

SAMUEL MARSHALL, a witness called on behalf of the respondent, being duly sworn, testified as follows:

20

Direct examination by Mr. Minard.

Q. Mr. Marshall, are you a member of the Tax Board of the Town of Kearny? A. I am.

Q. When did you become a member of that board? A. 1924, July.

Q. Then the assessment for 1925 was the first assessment that you participated in? A. It was.

30 Q. Now, did you participate in the consideration of the measurements and information obtained by Mr. Brokaw and his associates? A. I did.

Q. And in the preparation of the list which is offered as Exhibit D-10? A. I did.

Q. Determining the values of this property? A. I did.

Q. Did you participate in the examination of the property? A. I did.

Q. In October, 1924? A. I did.

40 Q. And was the conclusion reached as shown in Exhibit D-10 as to the rate per cubic foot and the

Samuel Marshall—For Respondent—Direct.

aggregate value of each building and of all the buildings in accordance with your judgment of value, of the fair value of the buildings at that time? A. It was fair and reasonable in my estimation.

Q. Now, what is your business? A. Building contractor. 10

Q. What kind of buildings do you build? A. All types of buildings.

Q. Factory buildings? A. Yes, sir.

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

Q. And are you entirely familiar with the construction of buildings of the type that you saw at the Nairn plant? A. I am.

Q. And are you entirely familiar with the cost of construction of all the elements that enter into the cost of construction? A. Yes, sir, in the cost of construction of brick or reinforced concrete. 20

Q. Now, based upon your experience as a builder, what is your opinion of the assessment of the Nairn Linoleum Company plant for 1925? A. My opinion of the assessment is it is a fair and reasonable assessment.

Q. What is your opinion of the units per cubic foot used with relation to whether they are high or low as applied to the property to which they were applied? A. Very fair and reasonable. 30

Q. Are they the highest units you could have applied or are they the lowest? A. No, sir, they run anywhere from 45 cents up to 80 cents. We took a general average of 25 cents, or as to brick buildings under the scope of 25 cents.

Q. So there was no building in your estimation that was rated at 25 cents a cubic foot worth less than that? A. Absolutely not. 40

Q. But there were buildings worth more than that? A. Absolutely.

Samuel Marshall—For Respondent—Direct.

Q. In other words, you took the lowest rate in the class and applied it generally throughout for convenience? A. Yes, sir.

10 Q. Do you know anything about whether the cubic foot rule is applied in other places? A. The cubic foot rule is applied in Newark is the only place I know of.

Q. Do you know what cubic foot rate they apply there? A. No, I don't know the rate.

Q. In other words, you determined these rates according to your experience as to values? A. From my experience as a builder.

Q. Did you talk with any of the officers of the Nairn Linoleum plant about the assessment? A. I did.

20 Q. When? A. At the beginning of October.

Q. Who? A. Why, Mr. Alexander.

Q. And he is the comptroller that was referred to here a while ago? A. Yes.

Q. Did he give you any information about the materials or assessment? A. None at all.

Q. Did he express any opinion about the assessment?

Mr. Milton: Yes or no, Mr. Marshall, please.

30 A. Did he express any opinion about the assessment?

Q. Yes. A. He couldn't express anything about the assessment because he didn't know the assessment.

Q. Did you ask him to give you information about the value and number of buildings? A. We asked him to give us information to help us in our personal, but, as far as the buildings were concerned,
40 I told him we would take care of that ourselves.

Samuel Marshall—For Respondent—Direct.
Abraham Grossman—For Respondent—Direct.

Q. So you didn't ask him for any information about the buildings? A. No, sir, we did not.

Q. But about the personalty you were inquiring then? A. Yes, sir.

Mr. Minard: Cross-examine. 10

Mr. Milton: No questions.

(At this time the hearing was adjourned until Monday, January 25th, 1926, at 10.30 A. M.)

Monday, January 25th, 1926.

(TRIAL CONTINUED.)

20

ABRAHAM GROSSMAN, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. Minard.

Q. Mr. Grossman, what is your business? A. I am a title examiner.

Q. And did you examine the records of the County Clerk's office in Hudson County for building agreements of the Nairn Linoleum Company? 30

A. Yes, sir.

Q. I show you some yellow papers which are made up in your handwriting, I believe, is that so?

A. Yes, sir.

Q. Is that the abstract of the building agreements that you made? A. That is right.

Q. Now, I refer to one building agreement of November 15th, 1923, made between the Nairn Linoleum Company and Charles R. Heddon & 40

Abraham Grossman—For Respondent—Direct.

Company, Incorporated, for building No. 33; is that a correct abstract of the record? A. Yes, sir, that is. The number of that is 72999, filed December 8th, 1923; the consideration was \$105,237.

10

Mr. Baker: The consideration?

Mr. Minard: Yes, the building cost \$105,237. Now, I want to offer a copy of the abstract just as a memorandum into the record.

(Abstract of building agreement above referred to received in evidence and marked Exhibit D-11.)

20

Mr. Minard: There is a building that was finished within six months or so within the time of this appraisal and we are going to get some idea of it from the building contract.

Q. I show you an abstract of agreement No. 72596, dated November 20th, 1923, between Nairn Linoleum Company and Thomas Reynolds Sons, for building drying rooms in building No. 10, and ask you if that is a correct abstract of the agreement as you saw it? A. Yes, sir.

30

Mr. Minard: I offer that.

(Building agreement above referred to received in evidence and marked Exhibit D-12.)

Mr. Minard: Cross-examine.

Mr. Milton: No questions.

40

Marshall M. Shoemaker—For Respondent—Direct.

MARSHALL M. SHOEMAKER, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. Minard.

10

Q. What is your profession, Mr. Shoemaker? A. Architect and civil engineer.

Q. How long have you been an architect?

Mr. Milton: You needn't spend any time on his qualifications.

Mr. Minard: I won't be tedious about it, but I want the record to show the qualifications of this witness.

20

A. Twelve years.

Q. How long have you been an engineer?

Mr. Baker: Suppose we are satisfied?

Mr. Minard: I prefer to have him qualified.

Mr. Milton: Maybe I will try to disqualify him.

Mr. Minard: All right, go ahead.

Q. What positions have you held as an engineer and for what periods? A. I was engineer for the American Bridge Company for about ten years. 30

Q. With what duties? A. As an assistant to the vice-president in charge of engineering.

Q. And what was the scope of your work? A. Handling thirteen plants and engineering matters in the east.

Q. What others? A. I was vice-president and treasurer of the American Concrete Steel Company for ten years, having charge of all estimating and engineering work done by that company, and 40

Marshall M. Shoemaker—For Respondent—Direct.

since that time, twelve years, I have been practicing my profession.

Q. Where? A. In Newark.

Q. Now, that embraced the architecture as well as the engineering? A. Yes, sir.

10 Q. Have you had any experience with actual construction work? A. I have.

Q. For how long? A. Well, about twenty-two years.

Q. In all of these relationships that you have mentioned, were you in charge of the actual work? A. Yes, sir.

Q. The supervision of the construction and estimates of the cost? A. Yes, sir.

20 Q. Now, at the present time, what is the nature of your work? A. Designing buildings, principally factory buildings, office buildings, one or two small apartment houses, but principally factory work.

Q. What are the principal factory jobs that you had in charge recently? A. Dugan Bakery at Avon Avenue and 4th Street, that is in Newark; the Kroydon Company building at Hilton. I designed and supervised all of the construction of buildings for the Central Dye Stuff & Chemical Company in Newark; the bottling and power house for P.
30 Ballentine & Son.

Q. Now, during the year, without going into any further detail as to the particular jobs, during the year 1924 and for a number of years prior to that and ever since, has your work been connected with the actual construction of these buildings, including a knowledge of the price of the materials and of the labor and the extent of performance on these jobs? A. It has.

40 Q. So that in testifying as to the value of the buildings you testify from a knowledge of actual performance? A. I do.

Marshall M. Shoemaker—For Respondent—Direct.

Q. Rather than theoretical performance, but of actual performance as of the time of which you testify; is that correct? A. I do.

Q. Now, were you asked to examine the buildings of the Nairn Linoleum Company for the purpose of appraising them and defending the assessment of the Town of Kearny? A. I was. 10

Q. And when did you begin that work? A. October 29th, I think, was the day I visited the buildings.

Q. And how much time approximately have you given to the project since that time? A. About a month and a half.

Q. Did you make a personal inspection of the buildings? A. I did.

Q. Do you remember when? A. On October 20 29th.

Q. Did you obtain any information about the buildings from any officer of the Nairn Linoleum Company or Congoleum-Nairn Company? A. Only my observation.

Q. Did you go through the buildings of the plant? A. I did.

Q. With whom? A. Mr. Taylor, I think, the plant engineer or plant superintendent.

Q. Did you inquire for the plans and specifications, building plans and specifications for each of those buildings? A. I inquired for them at the plant but he said they had turned over a plan to the Tax Board of Kearny which gave all the information in reference to the buildings. 30

Q. Well, the plan they turned over to the Town of Kearny, is this the plan referred to? A. Well, I assumed it was, because that is all it showed; all the buildings in the different blocks and plots.

Q. So that is the plan which the town engineer gave you as the plan they had turned over to him? A. Yes. 40

Marshall M. Shoemaker—For Respondent—Direct.

Q. That is Exhibit D-9. Well, that plan doesn't give any detail from which you could estimate cost, does it? A. Only in an approximate manner.

Q. Well, did you ask them if they had any architect's plans or building plans for these buildings?

10 A. I don't recall that I did.

Q. You mean you don't recall that you asked for this particular kind of plans? A. Specifically. I asked him for any plans that they might have, but this plan, he said, had been turned into the Tax Board.

Q. Now, as a result of your inspection of these buildings and the information that you—by the way, did you obtain any information elsewhere with regard to the dimensions and character of the
20 buildings? A. The town engineer of Kearny had prepared an outlined sketch of each of the buildings on the plot.

Q. Did you have access to that plan? A. I did.

Q. And to the information which he testified to here at the other hearing of the actual measurements of the plans? A. I had.

Q. And buildings? A. I had.

Q. Now, then, based on that information, did you make an estimate or appraisal of the buildings?

30 A. I did.

Q. The paper I hand you, or the book that I hand you, dated January 21st, 1926, and addressed to Hobart & Minard, entitled "Congoleum-Nairn Plant," is that the report which you made on the plant? A. Yes, sir. They are blue print copies from the original typewritten sheets.

Mr. Minard: I offer this in evidence.

40 (Booklet above referred to received in evidence and marked Exhibit D-13.)

Marshall M. Shoemaker—For Respondent—Direct.

Q. Now, in order to give some explanation of the theory upon which you proceeded or the formula or rule by which you measured the value of these several buildings and their equipment, did you take a typical building? A. I did.

Q. What building was that? A. Building 31, I believe; 31. 10

Q. Now, are you sure it was not building 33, the one constructed by Heddon? A. The typical building which was used for arriving at the cost was building No. 31.

Q. Well, did you make any figure on building 33? A. I endeavored to make somewhat of a detailed estimate on building 33, I think.

Q. Let me ask you before we go any further in this record, did you follow plot and building numbers outlined in the petition for appeal to this board? A. I did. 20

Q. Then taking block 25, plot 190, have you got that? A. Plot 25?

Q. Block 25? A. Block 25?

Q. Plot 190. In the petition of appeal to this board, all of the buildings in that block or plot are appraised at \$14,375. Now, is building 33 located in that plot? A. It is.

Q. And building 33 is the one Heddon built under agreement of November 15th, 1923, at a cost of \$105,237, isn't it? A. Yes, sir. 30

Q. So that the one building alone, the one contract on it was one hundred and five thousand and over and there are how many other buildings in that block? A. Three other buildings.

Q. What did you determine to be the value of the buildings in that block? A. The buildings alone?

Q. Yes. A. I will have to give you them in items.

Q. No, no, no; I mean the building equipment. A. Building equipment? \$187,660. 40

Marshall M. Shoemaker—For Respondent—Direct.

Q. Now, that is the group of buildings which they say in their appeal is worth \$14,375, isn't it?
A. Yes, sir.

Q. Now proceed to explain, Mr. Shoemaker, your method of computation upon which these estimates
10 in Exhibit D-13 are based. A. All the way through?

Q. Well, take your typical examples whereby you obtained your unit that you used. A. For wall area I have prepared—which is shown on page 2—the typical unit of cost of wall area was taken from building No. 31. The quantities were taken off for one pilaster, seven spandrels, cement sills, windows and the brickwork. The items of cost were then applied to those units, figuring cement sills at \$1.50 per lineal foot, windows glazed at 90 cents per
20 square foot—

Q. Pardon my interruption. It is in evidence and if you will just tell us without giving us the rates, just give us the elements that you took under each, we can get the rates and quantities from this page 2 and give us the result. A. Cement sills, windows glazed, brickwork, pilasters and spandrels, which are lintels, making a total cost per square foot of wall of \$1.60. This is based on a distance
30 between the pilasters of 13 feet 3 inches and that building is 95 feet 4 inches high, making a total square feet of wall area of 1,263 square feet, a cost of \$1,679, adding 10 per cent. for contingencies and builder's profit 10 per cent. makes the cost per square foot per wall \$1.60.

Q. Now, did you apply the unit rule of \$1.60 in giving the computation in this report? A. In practically all cases of similar types of buildings.

Q. Did you apply a different rule where the type of building was different? A. Yes, sir.

40 Q. Now, did you make any other typical computations in this report? A. In order to arrive at the

Marshall M. Shoemaker—For Respondent—Direct.

cost of the floors, which in general were reinforced concrete, I took a typical unit which was a panel 20 foot square by 13 foot 3 inches. Materials were taken from that and we had items of concrete, lumber for making of forms, labor on the forms and the steel reinforcements. The cost of those items was \$386.34, the number of square feet covered by that panel were 265 square feet, making the cost per square foot \$1.46, adding 10 per cent. for contingencies and 10 per cent. for builder's profits made the cost \$1.76. To this floor construction should be added 10 cents per square foot to cover cement finish. However, in making up items of cost on floors we figured it at \$1.60 per square foot. 10

Q. Now, are these figures justified by actual prices of labor and materials as of the 1st of October, 1924? A. They are. 20

Q. And are they the prices or costs that were actually being incurred by you on the jobs at that time? A. They were.

Q. Did you make any estimates or figures to determine the value of these bins that have been talked about? A. I did.

Q. How did you get your information for those? Where did you start from? A. There were two bins, or drying rooms, I think they call them, added to building No. 10 in November, 1923. 30

Q. Under this agreement with Reynolds, marked D-12? A. Yes, sir. Those bins I took off somewhat in detail, checking off the excavations, concrete footings, concrete columns, concrete spandrels, concrete roof, concrete floor on the ground, together with the 12-inch brick enclosure walls and the iron balconies which are up near the top of the building. These cost \$47,870.71, or .214 cents per cubic foot, or based on a wall and floor area and roof area of \$2.11 per square foot. 40

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Q. Now, did you hear Mr. Rumery's testimony the other day that in regard to these ovens he had used a cubic foot rule of 12 cents a cubic foot because they were merely open spaces about 15 feet wide? A. I heard his testimony; I cannot swear to the item.

10 Q. I show you page 12 on there regarding that subject. A. I think the lowest cubic foot unit that I have used is 12 cents.

Q. And that I think you will find there says it is in connection with those ovens. Now, how does that compare with the unit price that you used on these ovens and found to have been paid for their construction by the agreement with Reynolds? A. Just about half.

20 Q. In other words, what they actually cost to build is twice as much as Mr. Rumery's estimate? A. I think so.

Q. Now, in your report have you predicated all of the cost or all of your figures, with relation to bins, on the prices of the Reynolds agreement? A. I have.

Q. Mr. Rumery testified that he predicated his computation of brick walls upon a rate of \$12 for bricklayers and \$1 an hour for labor; is that a proper basis? A. They are union rates.

30 Q. And he said that he predicated it upon a price of brick of \$22 a thousand. A. They were about \$22 a thousand at that time.

Q. And upon a performance of 900 bricks a day, what have you to say to that? A. I think the average is a little high at 900 brick. The average runs nearer 800 brick a day laid up by a mason and helper.

40 Q. And he said that he figured brick at \$55 a thousand in place. What is your experience as to that? A. Well, we average our brick work at \$60

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a thousand, depending, of course, entirely upon what kind of brick construction it might be.

Q. What is your opinion based upon your experience of the cost of brick work of the character in this plant? A. It would average about \$60 a thousand.

10

Q. So you think, based on actual performance, his price is \$10 a thousand too low in place?

Mr. Milton: 55 from 60 leaves what?

The Witness: \$5.

Q. 50, I figured. A. Oh, I thought you said 55.

Q. Now, he figures concrete at 85 cents a square foot. What have you to say to that? A. You can hardly base concrete on the square foot; on the estimates of cubic foot—

20

Q. I made a mistake about the page number of that.

Mr. Baker: Cannot we accept the testimony of the witness? I don't see how you can estimate concrete on a square foot basis.

Q. Assuming that he computed on a cubic foot basis what have you to say about the price? A. Well, I think it is low for a cubic foot price. Concrete is worth about 50 cents a cubic foot, or in other words, that would be \$13.50 a cubic yard.

30

Q. On page 10, "I have figured those partition walls, 10-inch concrete partition walls, I think I figured them at 85 cents a square foot." of course, that is on the basis of 10 inches thick. A. Well, in that he includes the form work which would be in a plastic state. That would also possibly include the cost of steel reinforcements which would necessarily be put inside the wall to stiffen up the wall.

40

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Q. Now, is that rate correct? A. I would consider it a very low rate.

Q. 85 cents a yard? A. 85 cents a square foot. I can figure it for you.

10 Q. All right, give it to us. A. I would say it was about 99 cents a square foot.

Q. Would be the proper price? A. Yes.

Q. Now, did you take Mr. Rumery's estimate and figure his dimensions into his reproduction cost for the purpose of finding out the rates? A. I did.

20 Q. And without going into detail as to the small buildings can you tell us generally going through it and point out to us where those rates are too low according to your estimate? A. Well, you cannot tell, Mr. Minard, from this detailed estimate just how the items apply. The reason that he has—building No. 1 is divided into something like ten different buildings. The gate house, for instance, which is brick and concrete, figures 22 cents a cubic foot; brick, two-story, wood roof figures .167 cents; boiler room and store house, 18 cents, brick, two-stories, iron columns, wood roof and floor, .158 cents; brick, two-stories first story steel and concrete, 25 cents—

30 Q. Without going into the details on that statement can you point out illustrations on major units where you have something to say about the rate, the cubic foot rate applied? A. Why, I notice on building No. 26—building No. 26 is figured at the rate of 22 cents. This was a machine shop and I was able to make a detailed estimate of that which is shown on the page, which I figured at \$21,037, which makes a price of about 40 cents a cubic foot.

Q. Now, what page of your estimate is that on? A. Page 20, 19 and 20.

40 Q. And that shows the detail of your computation there? A. Yes, sir.

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Q. Your estimate on that particular building was how much? A. A total of \$21,037.

Q. As against Mr. Rumery's estimate— A. I beg your pardon, that is \$21,037.

Q. As against Mr. Rumery's estimate of what? A. \$12,165. 10

Q. Were there any other illustrations in here where your own computation showed at a different rate? A. Building No. 27, that was a small laboratory. That was figured at 25 cents a cubic foot and I made a detailed estimate of that. The cost was \$2,334.69 against \$1,729.

Q. What building number is that? A. Building No. 27.

Q. Page what on your report? A. 38 and 39.

Q. Are there any other instances? A. Building No. 31, Mr. Rumery's figures is \$433,958 was taken off in detail on pages 29 to 32 inclusive and the cost of the building— 20

Q. On your report 29 to 32? A. Yes. \$513,926.

Q. Now, as a general rule all through do you find a similar difference in values between Mr. Rumery and yourself? A. They are, excepting in some cases, his estimates are higher than mine.

Q. Due to what reason? A. Well, I would assume that he had more detail to work from than I did. 30

Q. In other words, if he had the plans and specifications which he described as having been furnished to him that would give him information that was not visible to you in making your inspection? A. It was visible but I couldn't recall it.

Q. These differences that you describe, are they explained in any degree by the difference between 900 and 800 brick per day? A. Some would be explained that way. 40

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Q. And are there any other explanations? A. Well, there is one instance here of building No. 29 and building No. 30, both of which are storage sheds, made of corrugated iron on a wooden form with concrete floor. Mr. Rumery has figured that
 10 at 5 cents per cubic foot. If you take off the area of the walls and the area of the roof you will find that the cost per square foot of the walls and room is about 20 cents. The actual cost of galvanized sheathing alone is 25 cents so there was nothing included in there for the wood frame of the building.

Q. Now, are there any other instances of that kind that you can call attention to? A. Building
 20 No. 23 there is a boiler room, one-story brick, steel form, concrete floor and roof, 50 by 53 by 51 foot high, and a power house which is two stories high, of brick, steel frame, concrete floors and roof and two walls, corrugated iron, 46 by 53 by 41, and is a boiler room. Mr. Rumery figures it at .343 cents a cubic foot. The power house is figured at .184 cents. If the wall and floor and roof areas are taken off on both of these two buildings based on the boiler room the cost would be \$3.50 a square foot, equalling about \$34,000.

30 Q. As compared with— A. The power house, if you take it off the same way, taking floor and roof and floor areas, the cost would be about \$40,000 against \$19,000 which Mr. Rumery has figured.

Q. That is, taking the elements from his own book would make that computation? A. Yes, sir.

Q. Are there any other illustrations? There is one down at the bottom there. A. On building No. 19, building for cork storage, one-story, concrete floor, columns in the roof, 54 by 62 by 40 feet high
 40 and 60 by 60 by 40 feet high, according to Mr. Rumery's figures, the reproduction cost is \$34,460. A

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similar building, shaping room in the same building, No. 19, one-story, concrete floor, columns and roof, 62 by 162 by 14 feet high and 54 by 62 by 22 feet high cost \$29,909. You take off the walls, floors and roof areas of the cork storage building, based on the price of \$34,460 it would be 1.05 per square foot. The shaping room based on floor and wall areas would be at the same unit, 1.05 would be \$40,068, against \$29,909. 10

Q. Are there any other instances where taking Mr. Rumery's own formula the value is different from that stated? A. The hospital building, building No. 34 is a one-story brick and concrete building 23 by 32 by 15 feet high, figured by Mr. Rumery at 35 cents a cubic foot or \$3,864. I was able to take that off in detail. My cost, including contractor's overhead and profit, \$7,810.08. 20

Q. As against what? A. \$3,864.

Q. Those are illustrations of the computations which appear in detail in your book which explain the differences to some extent between your estimate and Mr. Rumery's, is that correct? A. Yes, sir.

Q. Now, what is the total appraisal of these buildings, according to your computation? That appears from a summary on page what of your report? A. General summary on page 2. 30

Q. What is the result? A. Amounting to \$5,702,825.

Q. Now, in reaching that conclusion, did you take reproduction cost as of October 1st, 1924, less depreciation? A. No depreciation was taken from that.

Q. Why? A. Because I found the buildings were very well kept up. There was very little depreciation on them. 40

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Q. In other words, did you feel that applying the prices or the cost price that you applied at that time that they were entitled to any depreciation at all judging from the condition that you found them in? A. Possibly a very slight depreciation because
 10 they had gangs of men repairing floors throughout the building, and patching up wherever there was any damage work, and so forth, to put the buildings in virtually the same condition they were when they were built.

Q. Did your observation show too that these buildings were kept in first class condition? A. They are.

Q. And for that condition you allowed no depreciation? A. No, sir.

20 Q. What have you to say about the depreciation shown in Mr. Rumery's report on these buildings?

A. Well, not knowing the date of the building—

Q. Isn't it shown in here? A. No, sir.

Q. For instance, you knew the date of some of the buildings, don't you, building No. 33, for instance?

A. Building No. 33 was possibly completed some time in the middle of 1924.

Q. In other words, a few months before this assessment was made? A. Yes, sir.

30 Q. Now, the actual cost of that building, according to the contract price, plus the equipment, was how much according to your estimate? A. Building 33, a total cost of \$144,508.

Q. As against Mr. Rumery's figure for building 33? A. His cost of the building was \$127,407. I think that is without equipment. There is equipment on that in a summary here. His equipment figured at \$25,553.50. Now, depreciation on the building is \$108,570 and equipment \$24,235, making
 40 a total value with depreciation, \$132,805.

Marshall M. Shoemaker—For Respondent—Direct.

Q. How much depreciation has he charged against that building? A. I will have to figure it for you. \$1,318.33 on the equipment and on the building \$18,837.

Q. In other words, there is \$20,000 approximately allowed for depreciation on that building? A. Yes, sir. 10

Q. Do you know when the building was completed? A. I would assume some time in 1924.

Q. A few months or perhaps half a year? A. Half a year or some time like that.

Q. That same year that the assessment was made? A. Yes, sir.

Q. Now, what was the condition of the building when you saw it? A. It had never been occupied. Some machinery was in the building. 20

Q. In other words, it was a brand new building that had never been occupied? A. Yes, sir.

Q. What is your opinion about that \$20,000 depreciation on a building before it has been used? A. I don't think there should have been any depreciation on that building.

Q. But the rest of the buildings, what do you consider a fair rate of depreciation for any depreciation? A. Well, on concrete structures I would say from one to one and a half per cent. a year. Brick construction about one and a half or two per cent. 30

Q. In going over the statement of Mr. Rumery did you make up a sheet here entitled, "Comparison of figures between Rumery and Shoemaker reports" on certain particular features where you had more or less exact elements of cost from building agreements on file or otherwise to check against Mr. Rumery's estimates? A. I did. 40

Mr. Minard: Now, I don't know as it is necessary to enumerate those, and they are

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stated there and I want to put that sheet in, if Mr. Milton is agreeable, just showing the instances where we have the building contract data to base figures on.

10 Mr. Milton: The difficulty about this, if the Board please, is that this statement, for instance, bears S, meaning Mr. Shoemaker's figures, 44,000 less than R, Mr. Rumery's figures, information concerning which was accessible to Mr. Rumery from plans and specifications furnished by C, meaning Congoleum, but not available to Shoemaker. He doesn't know anything about that.

Mr. Minard: Well, if you would rather have us testify to it, we will.

20 Mr. Milton: I want to see where he got the information.

(Discussion off the record.)

Mr. Milton: Well, ask him where he gets the information with respect to the furnishing of plans to Rumery.

Mr. Minard: Page 7 of the testimony, bottom of the page.

Mr. Milton: Well then, just have him say he didn't see those plans.

30 Q. Where you refer in this statement to plans furnished to Mr. Rumery and not furnished to you, you mean there, do you, that the plans referred to by Mr. Rumery in his testimony on pages 7 and 8 or so of the record were not shown to you, is that correct? These plans shown in the record were not shown to you? A. No, sir, they were not.

40 Q. Is it true, Mr. Shoemaker, that no plans were shown to you? A. I had no plans at all excepting the engineer's plans prepared by the Town of Kearny.

M. M. Shoemaker—For Respt.—Direct—Cross.

Q. But the Nairn plant's manager showed you no plans? A. No, sir.

Mr. Minard: Is that sufficient explanation?

Mr. Milton: Surely.

Mr. Minard: Then I will just offer that statement which will speak for itself. 10

(Statement above referred to received in evidence and marked Exhibit D-14.)

Q. Did you make a tabulation of the comparison between the Rumery cost and your cost? A. I did.

Q. Is that it? A. Yes, sir, it is.

Mr. Minard: Well, is there any objection to that going in? That is just taking them off and summarizing them together. We will offer this in evidence. 20

(Statement above referred to received in evidence and marked Exhibit D-15.)

Mr. Minard: Cross-examine.

Cross-examination by Mr. Milton.

Q. Mr. Shoemaker, referring to the exhibit last received in evidence which is a comparison of the reproduction cost as estimated by Mr. Rumery and the value of the building and equipment as estimated by you, it is a fact, is it not, that you have selected from Mr. Rumery's figure the reproduction cost as ascertained by him? A. I have. 30

Q. And you have not paralleled or compared with your value the value that Rumery arrived at as the present value of the property, isn't that so? A. I have not. I have not deducted any depreciation from any of my buildings. 40

Marshall M. Shoemaker—For Respondent—Cross.

Q. But in setting opposite one another on this exhibit you took Rumery's reproduction costs and not his present value figures? A. That is right.

10 Q. A greater comparison or a greater difference in figures would appear, would it not, if you had selected for contrast Rumery's present value figures as opposed to your value figures? A. That is right.

Q. And it is a fact that Rumery's reproduction cost is much higher than his present value cost, isn't it? A. Yes.

Q. Your visit on October 29th, 1925, I assume, was the first time you had been over to see the Congoleum-Nairn plant? A. I had seen it a number of times previous to that.

Q. In passing? A. In passing.

20 Q. You had never been through it before? A. No, sir.

Q. And that visit on that occasion was the first time you had ever examined the plant or inspected it? A. Yes, sir.

Q. And what time did you arrive there? A. About 9 o'clock—a little after that.

Q. What time did you leave there? A. About 1 o'clock.

30 Q. Did you have lunch in the interval? A. No, sir, they didn't invite me for lunch.

Q. So you spent about four hours in all? A. Yes, sir.

Q. And there are some thirty-three or thirty-four buildings? A. Yes, sir.

Q. And your testimony or your comments here with respect to the condition of repair of those buildings is what you gained in that four-hour visit at the plant? A. Yes, sir.

40 Q. So that your estimate as to the fairness of the values of depreciation is predicated upon this one examination, one inspection that you made on Oc-

Marshall M. Shoemaker—For Respondent—Cross.

tober 29th? A. I made other inspections after that, not inside the plant, but from the street that I could see some of the buildings.

Q. How many? A. I think I was over there about three times.

Q. Three times. And how long in all do you suppose you spent on these extra visits? A. Well, on one day I endeavored to get the data on building No. 31. I guess I was there possibly two or three hours from the outside. 10

Q. For the specific purpose of getting data on building 31? A. Yes, sir.

Q. On the other two occasions how long were you there? A. Possibly a couple of hours each time.

Q. A couple of hours each time? A. Possibly a day all told. 20

Q. There are a number of variety or different types of construction, aren't there, Mr. Shoemaker? A. Yes, sir.

Q. Some reinforced concrete buildings? A. Yes, sir.

Q. Brick with concrete and wood floors? A. Yes, sir.

Q. Hollow tile with concrete skeleton? A. Yes, sir.

Q. Corrugated iron? A. Yes, sir. 30

Q. And frame buildings? A. And frame buildings.

Q. Now, in arriving at the value of those buildings and their equipment you have in the manner you have testified ascertained their value by ascertaining what would be the reproduction cost per square foot of wall area? A. Wall, floor and roof area.

Q. And that you said was \$1.60? A. About \$1.60.

Q. About \$1.60. Then to that building cost you have added an equipment value of about 25 per cent.? A. 25 to 30 per cent., yes, sir. 40

Marshall M. Shoemaker—For Respondent—Cross.

Q. So that in arriving at the value of equipment in some thirty-four buildings of various types of construction as mentioned by you, you ascertained or fixed the value of that equipment by taking 25 per cent. of the cost or value of the building? A. That is right.

10 Q. Yes. Now, an illustration of that will be found, will it not, in page 1 of your report which is the first sheet after the report or letter to Messrs. Hobart and Minard? A. What page?

Q. The first page immediately following the letter, Mr. Shoemaker. A. Yes, sir.

Q. Will you refer to building No. 23 in the schedule? A. Yes, sir.

20 Q. The value of that building you have fixed at \$33,106? A. Yes, sir.

Q. The value of the equipment set opposite that is \$8,276? A. That is right.

Q. Right? A. Yes, sir.

Q. And I presume that figure is approximately 25 per cent. of the building value? A. Approximately so.

Q. What do the words or letters PH opposite 23 signify? A. Power house.

30 Q. What equipment is contained in the power house that you ascertained the value of it to be \$8,276 by taking 25 per cent. of the building cost? A. I couldn't arrive at what the cost of the boilers, engines—

Q. Will you please answer my question? (Question read by the stenographer.) A. Practically nothing but piping.

40 Q. Practically nothing but piping is contained in the power house? A. I don't say that. There is boilers in the power house but we had to apply a unit.

Marshall M. Shoemaker—For Respondent—Cross.

Q. Mr. Shoemaker, you and I are going to get along famously if you will just listen to my questions and answer them. I ask you the question what equipment was contained on the day of your examination in building No. 23, a power house, upon which equipment you appraised or placed a value of \$8,276? A. I say nothing but piping practically. 10

Q. Nothing but piping? A. Yes, sir.

Q. Isn't it a fact that in that building there is a very expensive and valuable turbine? A. Yes, sir.

Q. And is that turbine in fact worth less or worth more than \$8,276? A. Worth considerably more.

Q. Immediately following building No. 23 in the column is building No. 24 upon which you place a value of \$404,714, is that right? A. Yes, sir.

Q. And opposite that in the other column under the head of equipment you have a valuation of \$58,314? A. That is right. 20

Q. Which valuation was likewise obtained by applying the 25 per cent. factor, I assume? A. Yes, sir.

Q. What equipment was there in that building which you say is worth \$58,314? A. That includes the sprinkler systems, electric lighting, plumbing and its proportion of the cost of the boilers in the boiler house. 30

Q. Which I didn't ask you about. I ask you what equipment was there in there, not what part of the cost of some other property it had to bear. What equipment is in building No. 24 as set out in this schedule? A. Well, the sprinkler system, plumbing, electric lighting and the steam piping and radiator.

Q. As a matter of fact, Mr. Shoemaker, the value of the equipment in the respective buildings as those values appear in the schedule on page No. 1 is arbitrarily fixed by you at 25 per cent. of the cost of the building without reference to what equipment is in 40

Marshall M. Shoemaker—For Respondent—Cross.

the building. That is correct, isn't it? A. That is correct.

Q. So that when you say that a power house worth 33,000 and odd dollars contains equipment worth 8200 and odd dollars, that isn't an accurate statement, is it? A. No, sir.

Q. It is simply the result of the application of the 25 per cent. to the cost of the power house and in that way obtaining the value of the equipment in the building, right? A. That is right.

Q. So if the Congoleum-Nairn Company had sold me the power house building on the day before October 1st, 1925, I would be assessed, according to your notion, for the building as over there, the value of the building, and 25 per cent. of the cost of that building for the equipment regardless of what the equipment was actually in the building, right, wouldn't it? A. That is true.

Q. Prior to your visit on October 29th, 1925, you had no information with respect to the age of these various buildings? A. No, sir.

Q. And I assume in your subsequent two or three visits when you stood outside on the road or the street and looked at building 31 and the others that you acquired no information as to the age except what you might get from ocular examination, right? A. Mr. Taylor mentioned several instances of it, I think, on building No. 31, particularly that they had put an extension of a bin on that some time in 1922 but in general I don't know the age of the building.

Q. And your only information as to the ages of the buildings is what you gleaned from an examination of the copy of Mr. Rumery's appraisal? A. Yes, sir.

Mr. Milton: That is all.

M. M. Shoemaker—For Respondent—Redirect.*Redirect examination by Minard.*

Q. Mr. Shoemaker, when you made your estimates you had in your possession this abstract of 150 building contracts covering portions of the buildings on the linoleum plant, didn't you? A. I did. 10

Q. And in each one of those 150 building contracts is the date of the contract which is somewhat evidential in the date of the construction of the building, isn't it? A. Yes, sir.

Q. And you had also the type and character of the building as indicated in these building contracts and the contract price? A. I had.

Q. Now then, when you made the estimate on the equipment on this plant were you or were you not informed that the machinery was not included under the head buildings and in the assessment which the Town of Kearny made? A. I think I was informed that the equipment would be handled separately. 20

Q. You mean machinery equipment would be handled separately? A. Yes, sir.

Q. So that the estimate of 25 per cent. related only to the fixtures that became a part of the building themselves like piping, heating pipes, radiators, sprinkler systems and so on which you have mentioned and not any part of the machinery in the building? A. No machinery whatsoever, no manufacturing machinery. 30

Q. Now then, when you appraised this power plant, did you undertake to include engines and turbines and things like that? A. No, sir, I hadn't time.

Q. Now, we have here on page 53 of the testimony a statement of Mr. Schneiders', a witness for the petitioners, where he says, "Question: I will 40

M. M. Shoemaker—For Respondent—Redirect.

ask you this question: if you were a building contractor and you knew that a building would cost \$100,000, would you consider an additional charge of 25 per cent., roughly speaking, approximately correct for heating and lighting and so on?"

10 Speaking of improvements or equipment. "Answer: I should say that would be approximately the figure." Now, that is the figure that is commonly used, is it not, as Mr. Schneiders says, is approximately correct and as you have used for the purpose of determining the incidental equipment of a building necessary to heat it and light it and that sort of thing? A. Yes, sir.

Q. And those were the elements that you included in equipment in your assessment? A. Yes, sir.

20 Q. And not the turbine or any other of those parts of the machinery? A. That is no machinery—I don't think that is quite clear. The proportion of the turbines, the proportion of the boilers which you would have to have for current or other means had to go into each building. Therefore, there was no way for me to tell what the actual power house equipment consisted of, but the proportion was added to each one of the buildings.

Q. Then you didn't charge all of it to a building?

30 A. No, sir.

Q. Because that power equipment belonged to all the buildings? A. Belonged to a certain proportion of the building.

Q. So that represents the building proportion? A. Yes, sir.

Q. Now, you were asked on cross-examination whether your information, all of your information, as to the character of the buildings and their structure and so on, number of stories and the like, came

40 from your inspection of the plant. I understood you to say on direct examination that you had

M. M. Shoemaker—For Respt.—Redirect—Recross.

available the data of Mr. Brokaw, the engineer and his assistant who took the actual survey of the buildings? A. I did.

Q. And did that give you any information as to the stories and the character of construction and dimensions? A. It gave the general dimensions of the buildings, the height of the buildings, but nothing was stated on those drawings as to the number of stories in the building. I arrived at that by counting the number of steps as we went through the building and approximated pretty near the height of the stories. 10

Q. You were asked on cross-examination whether you used \$1.60 as a square foot price. I show you page 3 of your report which shows that there was an additional amount for profit so that the figure was \$1.75 or 6 cents? A. \$1.76 for floors. That didn't include the cement finish. 20

Q. For which you would add another 10 cents?
A. Another 10 cents.

Mr. Minard: Cross-examine.

Recross-examination by Mr. Milton.

Q. Mr. Shoemaker, I want to get clearly in my mind and on the record just what was done on this turbine. Do you mean you ascertained the value of the turbine in the power house and then allocated that value to the various buildings which were served with power? You don't mean that, do you? A. No, sir. 30

Q. You simply, in arriving at the value of the equipment, and for that I exclude from my mind and from the question any manufacturing machinery, in arriving at the value of the equipment in the power house you took the value of the building and having ascertained it in the method you described 40

M. M. Shoemaker—For Respondent—Recross.
John Enstice—For Respondent—Direct.

then took 25 per cent. of that and said that was the value of the equipment. That is so, isn't it? A. Yes, sir.

10 Q. Was that the turbine which I assume you will concede is part of the equipment, that is so, isn't it? A. Yes, sir.

Q. The turbine in the power house which might in fact have cost many thousands of dollars would in that way be valued as part of the equipment of that building at less than what it actually cost and was worth? A. That is right.

Mr. Milton: That is all.

20

JOHN ENSTICE, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. Minard.

Q. Where do you live, Mr. Enstice? A. Newark.

Q. What is your business? A. Building contractor.

30 Q. What kind of buildings do you construct? A. Industrial buildings, factories and so forth.

Q. How long have you been engaged in that business? A. Well, we have been contracting for thirty-eight years.

Q. And in that time have you built a number of factory buildings? A. We have.

Q. Are you engaged in the actual construction of buildings all the time? A. Yes.

40 Q. Have you had any experience in appraisals or determining the value of existing structures? A. Yes.

John Ensticé—For Respondent—Direct.

Q. Just state to us what that experience has been.

A. For a number of years I represented two or three or several insurance companies—

Mr. Milton: I will concede his qualifications.

Mr. Minard: I know, but I would like to put it in. 10

A. And the City of Newark, some for the County of Essex and private people.

Q. Have you been employed recently or within the last few years in the appraisal of buildings in connection with the market and other public improvements in Newark? A. Yes, we appraised all of the buildings where the market site it in the City of Newark. 20

Q. Had you anything to do with the widening of Washington Street? A. Yes.

Q. What did you do there? A. We appraised several of the buildings that had to be torn down and cut back for the City of Newark also.

Q. Now, were you asked to co-operate with Mr. Shoemaker in making an appraisal of the buildings of the Nairn Linoleum plant at Kearny? A. Yes.

Q. When did you begin your work on that job? A. I can't say definitely. I think some time in October. 30

Q. And how much time have you devoted to the subject since, approximately? A. Probably a couple of days altogether. That is besides the time I spent here in court.

Q. Did you from time to time confer with Mr. Shoemaker about the computation that he was making? A. I did.

Q. In other words, was it arranged between you and Mr. Shoemaker that he should make these com- 40

John Enstice—For Respondent—Direct.

putations, that is, his organization do the actual figuring on this work? A. Yes.

Q. Now, have you gone over with Mr. Shoemaker all of the details regarding these buildings and all of the details regarding the report of January 1st, 1926? A. Yes, I checked those over.

Q. Now, what is your experience about the accuracy of the rates of pay for labor of the different kinds involved in this report and the cost of materials figured in this report, are they correct according to your understanding? A. Yes. I approved them although they are lower than we would use for contracting to erect a building.

Q. In other words, if you were asked to bid on a contract they are lower than the figures you would use to bid on the contract? A. Yes, sir.

Q. Is it true they are more near actual than they are to a figure that would afford a profit to a builder?

Mr. Milton: Is this cross-examination of his own witness?

Mr. Minard: No.

Mr. Milton: That was a little disappointing to me.

Mr. Minard: I didn't disappoint anybody but you.

Mr. Milton: No, it would have pleased me considerably.

Q. Now, what have you to say regarding this report as to the accuracy of the conclusions and the details involved? A. I think it is as near as you can get with that kind of an appraisal. The only accurate way is to itemize and estimate each building but that could not be done unless it took considerable time in measurement, details, etc. The

John Enstice—For Respondent—Direct.

only way that we know of outside of the itemized estimate is the way this was taken off.

Q. Do you consider it a dependable, reliable computation and appraisal for the purpose of this case for tax purposes? A. I do.

Q. And you heard the testimony of the tax assessors that they had assessed these buildings approximately at 25 cents for some and 10 cents for others and so on? You heard that testimony? A. Yes. 10

Q. What is your opinion as to the adequacy of that rate of appraisement for buildings of this character? A. I can't see how they can get it very near on cubical contents on account of the different types of stories and different construction. One building might be 35 or 40 feet high with its roof and floor and another might have three or four floors. 20

Q. What I want to get at is do you consider that rate low enough so as not to do an injustice to the industry? A. It proves it by the figures.

Q. In other words, your figures are in excess of the town's figures? A. Yes.

Q. It has been testified here that in making Mr. Rumery's figures he used the price of brick at \$22 a thousand, the prices of a bricklayer at \$12 a day, the price of labor \$1 an hour. Are those figures correct according to your— A. They were at that time in October, 1924. 30

Q. Now, these figures on the basis of 900 bricks per man per day in place. What is your experience about that? A. We don't figure that.

Q. What do you figure? A. On a fairly size mill we figure as high as 800. It runs from six to eight hundred.

Q. On a big job you figure 800? A. If the walls are fairly thick. 40

John Enstice—For Respondent—Direct.

Q. Mr. Rumery has figured that brick wall cost \$50 a thousand brick in place. What is your experience about that? A. Well, we can't do it for that. We have a pretty close record and we cannot do it less than sixty.

10 Q. So that you would use a figure of sixty rather than fifty if you wanted to get actual cost? A. We wouldn't figure less than sixty.

Q. What is your opinion about the depreciations stated by Mr. Rumery with regard to those buildings, for instance, building 33 which was finished in the first half of the year 1924, and as of October of that date he charges off \$20,000 depreciation. What is your opinion of that on a building that has not been used for any purpose? A. I would consider that entirely too high.

20 Q. Have you looked over his depreciation figures generally on those buildings? A. Yes.

Q. What is your opinion about that? A. At the price they are put in, the depreciation is entirely too high. In passing on those figures my understanding was we weren't to allow any depreciation as we thought we had them low enough.

Q. In other words, then, these figures represented true value of the buildings as of October 1st, 1924?

30 A. Yes, that is the way I figured them, my understanding.

Q. That is the reason you put in no depreciation? A. Yes.

Q. Did you make any examination of these buildings? A. Not at this time. We erected one of the buildings and I have been through the plant a number of times.

40 Q. Your purpose then was merely to check up and corroborate Mr. Shoemaker's figures based upon your actual experiences as a building contractor?

John Enstice—For Respondent—Direct—Cross.

Q. What is your opinion, Mr. Enstice, about the rate of depreciation in buildings of that character?

A. We usually calculate on about 1 per cent. on a mill building, 1 per cent. a year.

Q. That would be your opinion. What does that apply to, reinforced concrete or brick? A. They are usually made of reinforced concrete walls or brick walls or heavy mill which is all wood inside. 10

Mr. Minard: Cross-examine.

Cross-examination by Mr. Milton.

Q. I caught something you said. I want to be sure I understood it correctly. Did you say you allowed no depreciaton because you understood you weren't to? A. No, in those figures I based it on its value as I saw it October, 1924, and figured out the value as then which would have taken depreciation off. In other words, we couldn't put up a brick wall as Mr. Schoemaker has here for \$1.60 now. Neither could we put in a floor for \$1.60. Actual reproduction. It comes down— 20

Q. I am trying to get at what you said just a moment ago about not allowing depreciation because you understood you weren't to. What did you say? A. We figured depreciation off in those figures. 30

Q. No, what did you say? A. I don't remember.

Q. Just a moment ago did you say— A. No.

Q. All right.

Mr. Milton: If the Board please, I got a lot of irresponsive answers which I would like to strike from the record.

Mr. Baker: They may be stricken.

Mr. Milton: I don't think I have any question. 40

John Enstice—For Respondent—Redirect.

Redirect examination by Mr. Minard.

10 Q. Mr. Enstice, just tell us what your understanding was about the depreciation on those figures so that we will have it clearly on the record?
A. I think I stated, Mr. Minard, that in making these figures it was based upon the actual condition of the buildings as existed at that time. That is what I intended to state and that is the way I figured it.

Q. Then do I understand you correctly that the figures that you used had already taken into consideration depreciation? A. It did.

20 Q. So, in other words, the figures that you used were applicable to the buildings as they were at that time? A. Yes.

Mr. Minard: That is all. I would like to offer from that appraisal all that relates to the value of buildings and equipment of the plant. I trust the Commission will impound the appraisal so that it will be available for determination later as to exactly what there is in there that is pertinent to the question.

30 Mr. Milton: Over my dead body impound papers which I have produced here.

Mr. Minard: We want in here the insurance summary which is a tabulated statement entitled "Summary to be used for insurance purposes of Nairn Linoleum Company," sheet No. 1, sheet No. 2, which shows an appraised value of the buildings and equipment on April 1st, 1923, at—

40 Mr. Milton: You have industrial equipment machinery—why don't you offer the insurance without criticizing it?

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Mr. Minard: I offer sheets 1 and 2 and the letter dated July 27th, 1923, contained in the front and such other information in this book entitled "Insurance Summary" as relates to the value of buildings and equipment. 10

(Books above referred to received in evidence and marked Exhibit D-16.)

Mr. Minard: We offer Volume No. 2 of the appraisal which contains the appraisal of building apparently throughout.

(Book above referred to received in evidence and marked Exhibit D-17.)

Mr. Minard: Volume No. 3, also relating to buildings throughout. 20

(Book above referred to received in evidence and marked Exhibit D-18.)

Mr. Minard: Volume No. 4 relating to buildings.

(Books above referred to received in evidence and marked Exhibit D-19.)

Mr. Minard: Volume No. 5 relating to equipment of the buildings, plumbing, lighting, sprinkling and so forth. 30

(Book above referred to received in evidence and marked Exhibit D-20.)

Mr. Minard: Volume No. 6, as far as it relates to buildings and equipment of the buildings.

(Book above referred to received in evidence and marked Exhibit D-21.) 40

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Mr. Minard: Volume No. 7 to the extent that it involves buildings and equipment.

(Book above referred to received in evidence and marked Exhibit D-22.)

10 Mr. Minard: The same with No. 8.

(Book above referred to received in evidence and marked Exhibit D-23.)

20 Mr. Minard: I guess when we get the witnesses that we subpoenaed and the rest of the data that is mentioned in that duces tecum I guess we are through. One was a statement of the book value of the buildings. We subpoenaed three witnesses and one of them appeared and the other two did not appear. No. 3 in our notice is books, records and documents to show book and appraised value as of October 1st, 1924, of the following features of the plant; plants and real estate, buildings and improvements thereon, machinery and equipment of the plant. We are interested now only in the buildings and equipment. That is the only thing that has been produced and the two witnesses which we have subpoenaed are not here. Now, when those witnesses and the data is produced, why, we will rest.

30 Mr. Baker: Well, I am frank to say, Mr. Minard, that for the purpose of a conclusion or a judgment, the Board has heard, I think, sufficient. The Board is inclined to think that it should have, too, the judgment of its field secretary. The testimony has been very voluminous and the Board feels its labors would be lessened and its pathway to its objective would be illuminated if we had the judgment of our own secretary, which,

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of course, will come from a thoroughly disinterested and absolutely candid source. It is the practice in hearings of this character where there is such an obvious conflict of testimony that the Board go to a source that is thoroughly disinterested. Our field secretary has had twenty-five years of experience in the examination of plants and industries. That is Frank O'Connor, who will be assisted by Mr. Volk and I suppose we will be required to visit the plant ourselves. 10

(Discussion.)

Mr. Baker: Do I understand you to say, Mr. Minard, that the case is still atmospheric? In other words, we have not concluded it? 20

Mr. Minard: We think they ought to have produced what we asked for. Now, they haven't done it and I don't feel like saying, "Well, we asked you to produce it and you didn't do it. We rest." Now, the Commission may rule that it is very improper or impertinent or unnecessary and if they do that, that is the end of the case as far as we are concerned. I don't invite the Commission to do that because I think they ought to answer to the Commission. I don't think the subpoena should be a spineless cactus. 30

Mr. Milton: I think, the other side not resting, I would not be obliged to put in any other proof. I suppose we are through for the day and I can go?

Mr. Baker: Surely.

(It is stipulated and agreed by and between counsel for the Congoleum-Nairn Company, the petitioner, and the Town of Kearny, the respondent, that following the 40

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10 suggestion of the president of the Board that Mr. Frank O'Connor, field secretary of the State Board of Taxes and Assessment shall visit the plant of the Congoleum-Nairn Company at Kearny, New Jersey, and make a report to the State Board of Taxes.)

20 I, J. VINCENT DONEGAN, the stenographer designated by the State Board of Taxes and Assessment to report stenographically the evidence given before said Board upon the hearing of the appeal of the Congoleum-Nairn, Inc., from the assessment of taxes made by the Town of Kearny, for the year 1925, do hereby certify that the foregoing are true and correct transcripts of the evidence given before said Board at the hearings on Wednesday, January thirteenth, and Monday, January twenty-fifth, 1926.

IN WITNESS WHEREOF, I have hereunto
(Seal) set my hand and seal, this twenty-eighth
day of April, 1926.

J. VINCENT DONEGAN.

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Case.

I, CHAS. E. COOK, Secretary of the State Board of Taxes and Assessment, do hereby certify and send to the Justices of the Supreme Court the foregoing transcript, as a true copy of the testimony on file in this office in the matter of the appeal of Congoleum-Nairn, Inc., from the assessment of taxes made by the Town of Kearny, said evidence having been submitted at the hearings in Jersey City on Wednesday, January thirteenth, and Monday, January twenty-fifth, 1926. 10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this twenty-eighth day of April, 1926. (Seal) 20

CHAS. E. COOK.

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Exhibit P-1.

10

Appraisal of
Buildings and Building Equipment
CONGOLEUM-NAIRN, INC.

20

Kearney Plant
Kearney, New Jersey.

30

RALPH R. RUMERY,
Consulting Engineer,
50 Church Street,
New York, N. Y.

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Exhibit P-1.

SUMMARY OF PRESENT VALUE OF BUILDINGS AND
EQUIPMENT OF BUILDINGS

Building	Building	Equipment	Total	
#1	\$103,615	\$32,382	\$135,997	
2	245,670	30,440	276,110	
3	236,938	18,000	254,938	
4	8,667	275	8,942	10
5	21,050	1,192	22,242	
6	2,219	30	2,249	
7	10,314	679	10,993	
8	37,217	13,162	50,379	
9	35,859	72,904	108,763	
10	288,662	34,277	322,938	
11	6,578	345	6,923	
12	335,773	32,121	367,894	
13	123,724	12,380	136,104	
14	81,262	57,177	138,439	
15	33,130	1,157	34,287	
16	20,195	2,427	22,622	
17	46,570	2,965	49,535	
18	153,322	24,923	178,245	
19	56,637	1,928	58,565	20
20	11,032	980	12,012	
21	24,948	4,765	29,713	
22	1,434	293	1,727	
23	58,133	91,548	149,681	
24	264,834	24,272	289,106	
25	1,000	No equipment	1,000	
26	10,340	1,319	11,659	
27	1,556	231	1,787	
28	1,373	144	1,517	
29	1,707	25	1,732	
30	709	No equipment	709	
31	355,282	52,443	407,725	
32	20,378	1,885	22,263	
33	108,570	24,235	132,805	
34	3,478	520	3,998	
Dwellings	2,980		2,980	30
Sheds	7,116		7,116	
Reservoirs	10,544		10,544	
Tanks	20,014		20,014	
Scales	2,555		2,555	
Industrial Track	7,775		7,775	
Paving & Fencing	42,810		42,810	
Yard Sewerage System		22,492	22,492	
Heating Pipe in Yard		285	285	
Sprinkler Pipe in Yard		21,452	21,452	
Power Pipe in Yard		7,794	7,794	
Water Pipe in Yard		8,095	8,095	
Power Feed Wiring in Yard		14,373	14,373	
Miscellaneous		12,014	12,014	
Totals,	\$2,805,970	\$627,929	\$3,433,899	40

Exhibit P-1.

SUMMARY OF BUILDINGS AND YARD STRUCTURES

<i>Building</i>	<i>Reproduction Cost</i>	<i>Present Value</i>
#1	\$152,484	\$103,615
2	411,672	245,670
3	384,243	236,938
4	17,035	8,667
10 5	39,784	21,050
6	2,958	2,219
7	17,190	10,314
8	59,670	37,217
9	49,580	35,859
10 10	544,812	288,662
11	9,397	6,578
12	558,805	335,773
13	159,691	123,724
14	112,913	81,262
15	54,049	33,130
16	25,101	20,195
17	62,004	46,570
18	191,669	153,322
19	75,826	56,637
20 20	14,881	11,032
21	33,264	24,948
22	2,008	1,434
23	78,778	58,133
24	442,453	264,834
25	3,333	1,000
26	12,165	10,340
27	1,729	1,556
28	1,716	1,373
29	2,438	1,707
30 30	1,012	709
31	433,958	355,282
32	28,818	20,378
33	127,407	108,570
34	3,864	3,478
Dwellings	4,784	2,980
Sheds	10,039	7,116
30 Reservoirs	14,915	10,544
Tanks	24,638	20,014
Scales	3,150	2,555
Industrial Track	10,250	7,775
Paving & Fencing	56,870	42,810
Total, Buildings & Yard Structures,	\$4,241,353	\$2,805,970

Exhibit P-1.

CONGOLEUM-NAIRN, INC.

KEARNEY PLANT

Appraisal as of October 1, 1924.

BUILDING #1		<i>Reproduction Cost</i>	<i>Present Value</i>	
	Cork Mill, Boiler Room, Engine Room, Store.			10
A-1	Gate House, Brick and Concrete, 16' x 20' x 18' h.	\$1,280	\$768	
A	Old Office, Brick, two story, wood roof and floors, 60' x 63' x 33' h.	18,711	11,227	
AA	Boiler Room and Store House, two stories; first story, concrete and steel, upper story, wood columns and roof, 63' x 95' x 33' h.	35,551	26,663	
B, C, D	Brick, two stories, iron columns, wood floor and roof, 63' x 111' x 31' h. and 12' x 30' x 31' h.	34,286	17,143	20
E	Brick, two stories; first story, steel and concrete, upper story, wood col- umns and roof, 27' x 45' x 38' h.	11,534	8,074	
E-1	Brick and Concrete, two stories, 45' x 56' x 34' h.	28,755	25,880	
B-1	Extension — North side — Brick, one story, concrete floor and roof, 20' x 40' x 20' h.	3,200	2,400	
C-1	Extension — North side — Brick, one story, wood floor and roof, 17' x 26' x 12' h.	1,105	829	
E-2	Extension—N. E. Corner—Brick, one story, concrete floor and roof, 10' x 40' x 15' h.	1,400	1,260	
	Canopy—Between #1 & #3—Concrete canopy and loading platform, 12' x 75' and 25' x 75'	4,162	3,121	30
	Stack—Radial brick, double lining, 140' x 15' dia.	12,500	6,250	
	Total for Building #1,	<u>\$152,484</u>	<u>\$103,615</u>	

Exhibit P-1.

BUILDING #2		<i>Reproduction Cost</i>	<i>Present Value</i>
	Mixing Calenders, Hanging Seasoning Rooms, Backing and Storage.		
10	P-1-6 Seasoning Rooms, Brick and concrete, no floors, two brick and three concrete partition walls, 93' x 122' x 54' h.	\$118,981	\$61,238
	O Storage—Concrete, five story warehouse, concrete roof, 34' x 58' x 71' h.	37,306	31,710
	N-1-6 Seasoning Rooms, Brick and concrete, no floors, five brick partition walls, 52' x 123' x 53' h. and 44' x 123' x 55' h.	103,235	41,218
	L-5 Machine Shop—Brick and concrete, one story, concrete roof, 50' x 55' x 28' h.	9,845	7,384
	L-4 Storage—Brick and concrete, seven stories, concrete roof, 50' x 55' x 85' h.	56,898	48,363
20	L-3 Storehouse—Brick and concrete—three stories, wood roof, 25' x 50' x 42' h.	11,025	8,269
	K-1 Storehouse—Brick, Mill type construction, wood floor and roof, 52' x 77' x 40' h.	25,909	15,545
	K, L-1-2, M Mixing Rooms—Brick, steel columns, wood roof, 45' x 210' x 40' h.	37,041	22,225
	Tower—Elevator and Stairway—East side, concrete, 7' x 26' x 76' h.	5,222	4,439
	S Brick and concrete—one story—above N-5-6 on West Side #2, 27' x 46' x 13' h.	6,210	5,279
	Total for Building #2,	\$411,672	\$245,670

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Exhibit P-1.

BUILDING #3		<i>Reproduction Cost</i>	<i>Present Value</i>
	Printing, Bed Seasoning Rooms, Trimming, Shipping, Block Cutting.		
O, P, Q	Bed Seasoning Room, Trimming and Shipping. Brick, iron columns, wood roof, no floors—galleries, 2 floors P & Q—97' x 112' x 63' h. and 65' x 132' x 63' h.	\$160,770	\$112,539
U	Shipping Room. Brick, one story leanto, wood roof, west side—27' x 136' x 16' h.	9,180	6,426
V	Shipping Room, Brick, one story leanto, concrete roof—west side, 24' x 175' x 14' h.	11,550	8,085
R	Trimming Room—Brick, one story, wood columns and roof, 45' x 175' x 23' h.	27,169	19,018
S	Printing Room—Brick, one story, steel and concrete gallery on north side, wood roof on steel beams, 82' x 144' x 25' h.	44,337	31,036
T-1-3	Seasoning Rooms—Brick, no floors, concrete roof, two brick partition walls, 66' x 97' x 23' h.	15,047	4,643
T-4-9	Seasoning Rooms—Brick, no floors, concrete roof, five brick partition walls, 76' x 192' x 29' h.	82,791	31,227
O-1-2	Fan Rooms—Extensions N. W. Corner. Brick, concrete floor and roof. 2—13' x 22' x 13' h.	2,002	1,502
	Toilet—Hollow tile, concrete floor and roof, 12' x 15' x 9' h.	565	424
	Tower—Elevator and Stairway. Brick, wood stairs, concrete floors, 17' x 25' x 94' h.	17,632	12,342
P-1	Shed—Hollow tile, steel beams, concrete floor and roof, partition wall, 19' x 40' x 12' h.	2,280	2,052
T-10	Extension—Brick, one story, leanto, wood roof, concrete floor, 10' x 65' x 18' h.	1,950	1,365
T-11	Extension—Brick, one story, leanto, wood roof, concrete floor, 10' x 50' x 18' h.	1,500	1,050
V-1	Corrugated Iron Shelters over Loading Platform—Roof concrete and corrugated iron, 60' x 63'	5,670	3,969
V-2	Garage—Corrugated iron on steel frame, one story, concrete floor, 30' x 40' x 15' h.	1,800	1,260
	Total for Building #3,	\$384,243	\$236,938

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	BUILDING #4		
	Oil Boiling Building. Brick, one story, roof part concrete and part corru- gated iron, two brick and two hollow tile partition walls, 25' x 82' x 15' h.	\$12,920	\$6,460
10	Concrete Platform on South side, cor- rugated iron roof, 15' x 82'	615	457
	Brick Stack on North side, square, double lining, 6½' x 6½' x 75' h.	3,500	1,750
	Total for Building #4,	\$17,035	\$8,667
	BUILDING #5		
	Oxidizing Sheds.		
	J-1-5 Oxidizing Rooms—Brick and concrete, one story, four brick partition walls, 42' x 120' x 32' h.	\$29,408	\$14,704
	H & I Tank Room and Scrim Room, Brick, wood roof, one story, one brick par- tition wall, 48' x 42' x 20' h. and one gallery 15' x 42'	8,694	5,216
20	J-6 Fan Room on East side, Brick, wood roof, 10' x 28' x 20' h.	952	619
	Toilet on south side, Brick, wood roof, 11' x 19' x 12' h.	730	511
	Total for Building #5,	\$39,784	\$21,050
	BUILDING #6		
	Oil Store House, Brick, wood roof, one story, 16' x 28' x 21' h.	\$2,958	\$2,219
	Total for Building #6,	\$2,958	\$2,219
30	BUILDING #7		
	Oxidizing Sheds, Brick and concrete, one story, wood roof, 58' x 62' x 37' h.	\$15,966	\$9,580
	Fan Room on East side, Brick, one story, wood roof, 10' x 36' x 14' h.	1,224	734
	Total for Building #7,	\$17,190	\$10,314

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #8				
	Cement Making, Engine Room.			
E-1-3	Cement Making, South end. Brick, concrete and steel, wood roof, two stories, gallery in E-1 and E-2, two brick partition walls, 62' x 120' x 37' h.	\$45,526	\$27,316	10
E	Engine Room, N. E. Corner, Brick, one story, steel columns, wood roof, 28' x 44' x 28' h.	6,554	4,588	
	Elevator Tower and Stairways, N. W. corner, Brick, four stories, 18' x 28' x 56' h.	7,320	5,124	
E-4	Blacksmith Shop, North end, Corrugated iron, wood frame, 20' x 27' x 10' h.	270	189	
	Total for Building #8,	\$59,670	\$37,217	
BUILDING #9				
A	Boiler House—One story, brick and steel, corrugated iron roof, 50' x 148' x 28' h.	\$29,008	\$20,306	20
A-1-2	Economizer Room on East side. One story, brick and corrugated iron, 18' x 82' x 20' h.	3,773	3,584	
B, C	Leantos on West side. Brick and corrugated iron. 19' x 46' x 14' h.	3,059	2,906	
A-3-4	Coal Chute and Motor Housing, on West side. Brick and corrugated iron, 15' x 52' x 15' h.	2,340	2,223	
	Brick Stack. Custodis. Radial brick, 15' dia. x 175' h.	11,400	6,840	
	Total for Building #9,	\$49,580	\$35,859	30

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	BUILDING #10		
	Printing, Hanging Seasoning Rooms, Trimming, Storage, Shipping.		
	B Storage Building. Brick and concrete, four stories, 38' x 58' x 55' h.	\$30,305	\$21,214
10	C Hanging Seasoning Rooms. Brick, no floors, ten brick and five hollow tile partition walls, 54' x 179' x 36' h. and 156' x 158' x 53' h.	336,865	126,411
	A Printing and Trimming. Brick and concrete, four stories, 74' x 86' x 59' h.	82,657	57,860
	D Trimming and Shipping. Brick and concrete, heavy construction, West end, hollow tile, 72' x 75' x 63' h.	78,617	70,755
	D-1 Delivery Platform and Shelter, on West side. Corrugated iron on steel frame and trusses, 20' x 64' x 20' h. and 26' x 26' x 20' h.	2,934	2,347
20	Tower—Stairway and Elevator, on South side. Brick and concrete, 14' x 40' x 70' h.	13,056	9,792
	Toilet—on South side. Hollow tile, concrete floor and roof, 9' x 12' x 8' h.	378	283
	Total for Building #10,	\$544,812	\$288,662
	BUILDING #11		
	A Starch House. Brick, 1½ stories, con- crete floor and wood roof, 28' x 73' x 20' h.	\$8,994	\$6,296
	B Extension on East side. Corrugated iron, wood frame, concrete floor, 16' x 28' x 18' h.	403	282
30	Total for Building #11,	\$9,397	\$6,578

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #12				
	Bed Seasoning Rooms, Trimming, Storage, Shipping.			
A	Shipping Room. One story, brick, wood roof, 38' x 104' x 18' h.	\$9,959	\$6,971	10
B	Trimming Rooms. Four stories, brick and concrete, 22' x 104' x 42' h.	26,347	18,506	
D	Trimming, Storage, Shipping. Six stories, brick and concrete, 60' x 127' x 68' h.	151,424	121,139	
C	Seasoning Rooms. One story, brick and concrete, 51' x 196' x 45' h. Two story, brick and concrete, 51' x 196' x 49' h. Two story concrete, 76' x 196' x 73' h. Eight brick and two concrete partition walls	355,776	177,682	20
	Tower—Stairway and Elevator on N. E. corner, four stories, brick, 12' x 26' x 76' h.	13,829	10,372	
E	Shed, on East side of C. Concrete, 14' x 35' x 12' h.	1,470	1,103	
	Total for Building #12,	\$558,805	\$335,773	
BUILDING #13				
	Moulded Inlaying, Tray Cutting, Sam- ple Room.			
D	Jute Storage. Brick and concrete, one story, 100' x 192' x 18' h.	\$57,255	\$48,667	30
B	Moulded Inlaying and Cutting Room. Brick and concrete, one story and gallery, 82' x 184' x 18' h.	50,922	38,192	
A	Press Room. Brick, wood columns and roof, 110' x 184' x 19' h.	46,147	32,303	
C	Leanto on North. Hollow tile, one story, 34' x 42' x 19' h.	4,855	4,127	
	Toilet. East of B. Hollow tile, con- crete floor and roof, 8' x 16' x 9' h.	512	435	
	Total for Building #13,	\$159,691	\$123,724	

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	BUILDING #14		
	Mixing for Building #13. Engine Room.		
	A Mixing Room. Brick, steel, and concrete, four stories, 60' x 68' x 53' h.	\$46,950	\$35,212
10	B Storage Building. Brick, steel and concrete, four stories, 44' x 50' x 54' h.	29,700	22,028
	C Engine Room. Brick, wood roof, two stories, 43' x 64' x 30' h. and 31' x 32' x 30' h.	20,832	14,582
	C-1 Panels and Transformer Rooms. Brick, steel and concrete, two stories, 8' x 12' x 22' h. and 12' x 25' x 22' h.	1,386	1,317
	Tower—Stairway and Elevator, South of B. Brick, wood roof, five stories, 14' x 27' x 71' h.	13,235	7,515
	Toilet, South of C. Brick, wood roof, two walls only, 12' x 27' x 11' h.	810	608
	Total for Building #14,	\$112,913	\$81,262
20	BUILDING #15		
	Oxidizing Sheds.		
	Brick and concrete, one story, concrete roof, four partition walls, no floors, 81' x 100' x 32' h.	\$54,049	\$33,130
	Total for Building #15,	\$54,049	\$33,130
	BUILDING #16		
	Machine Shop, 62' x 109'.		
30	A Machine Shop. One story, concrete floor, walls and roof, 62' x 87' x 20' h.	\$21,576	\$17,261
	C Blacksmith Shop Leanto on South side, concrete floor and corrugated iron roof, 22' x 62' x 16' h.	1,589	1,192
	Leanto on West side. Hollow tile, concrete roof, 11' x 44' x 10' h.	1,936	1,742
	Total for Building #16,	\$25,101	\$20,195
	BUILDING #17		
	Gatehouse, Pump House, Store.		
40	Brick and concrete building, two stories, four concrete and two brick partition walls, 63' x 118' x 36' h.	\$61,554	\$46,165
	Leanto on West side. Hollow tile, corrugated iron roof, 10' x 32' x 11' h.	450	405
	Total for Building #17,	\$62,004	\$46,570

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #18				
	Mixing, Straight Line Inlaying, 88' x 125' x 68' h.			
A	Straight Line Inlaying Rooms. Four stories, galleries on first and second stories, brick and concrete, 43' x 125' x 68' h.	\$88,150	\$70,520	10
B	Mixing Rooms. Five stories, brick and concrete, 45' x 125' x 68' h.	89,750	71,800	
	Tower for Elevator and Stairs on North side. Brick and concrete, five stories, 11' x 29' x 74' h.	11,414	9,131	
	Toilet Leanto on North side. Brick, concrete floor and roof, 10' x 15' x 8' h.	750	600	
	Store Shed on N. E. corner. Corrugated iron, steel frame, concrete floor, 15' x 30' x 10' h.	450	405	
	Retaining Wall on West side of Clark St. 77 cu. yds. concrete	1,155	866	
	Total for Building #18,	\$191,669	\$153,322	20
BUILDING #19				
	Storage and Shipping.			
A-4	Cork Shelter. Corrugated iron roof, steel columns and roof trusses, 62' x 105' x 45' h.	\$9,127	\$6,845	
A-1-2-3	Cork Storage. One story, concrete floor, columns and roof, 54' x 62' x 40' h. and 60' x 60' x 40' h.	34,460	25,845	
B-1-2-3-4	Shipping Rooms. One story, concrete floor, columns and roof, 62' x 162' x 14' h. and 54' x 62' x 22' h.	29,909	22,432	
B-5	Loading Platform and Shelter, concrete roof, 25' x 60'	2,330	1,515	30
	Total for Building #19,	\$75,826	\$56,637	
BUILDING #20				
A	Box-making. One story, reinforced concrete, concrete floor, columns and roof. South wall, corrugated iron, West wall, frame, 33' x 118' x 19' h.	\$14,125	\$10,594	
A-1	Leanto on West side. Corrugated iron, wood frame, concrete floor, wood roof, 13' x 110' x 9' h.	516	258	
	Toilet Leanto on North side. Hollow tile, concrete floor and roof, 5' x 12' x 9' h.	240	180	40
	Total for Building #20,	\$14,881	\$11,032	

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	BUILDING #21		
	Office. Two stories, reinforced concrete, concrete finish, 42' x 96' x 33' h.	\$33,264	\$24,948
	Total for Building #21,	\$33,264	\$24,948
10	BUILDING #22		
	Storage Shed. Corrugated iron, wood frame, concrete floor, 31' x 77' x 12' h.	\$1,432	\$1,002
	Toilet Leanto on North side. Hollow tile, concrete floor and roof, 9' x 16' x 8' h.	576	432
	Total for Building #22,	\$2,008	\$1,434
	BUILDING #23		
	Power House and Boiler Room.		
20	A Boiler Room. One story, brick, steel frame, concrete floor and roof. East wall, corrugated iron, 50' x 53' x 51' h.	\$34,530	\$25,898
	B Power House. Two stories, brick, steel frame, concrete floors and roof, two walls corrugated iron, 46' x 53' x 41' h.	19,396	14,547
	Stack on S. W. corner. Radial brick. Custodis. 130' x 15' diam. on brick base, 15'8" x 15'8" x 45' h.	19,432	13,602
	Coal Hoist, Hopper and Wood Trestle	5,000	3,750
	Toilet on S. W. corner. Brick, concrete floor and roof, 10' x 14' x 9' h.	420	336
30	Total for Building #23,	\$78,778	\$58,133

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #24				
	Hanging Seasoning Rooms, Trimming, Storage, Shipping.			
A	Storage Rooms. Four stories, brick and concrete, concrete roof, 44' x 122' x 46' h.	\$51,855	\$41,484	10
C	Trimming and Storage Rooms. Five stories, brick and concrete, concrete roof, 44' x 121' x 62' h.	65,006	52,005	
D-1-16	Seasoning Ovens. No floors, brick and concrete, concrete roof, eight brick and one hollow tile partition walls, 103' x 232' x 51' h.	288,364	141,753	
B	Shipping Rooms above D. One story, brick and concrete, concrete roof, 52' x 102' x 15' h. and 26' x 34' x 15' h.	16,708	14,202	
	Tower for Elevator and Stairway, North side of A. Five stories, brick and concrete, 11' x 30' x 72' h.	10,354	7,765	
	Tower for Elevator. South side of D. Five story, brick and concrete. 10' x 13' x 75' h.	3,470	2,603	20
	Shipping Platform and Canopy, on North side. Concrete roof, 31' x 108'	6,696	5,022	
	Total for Building #24,	\$442,453	\$264,834	
BUILDING #25				
	Storage Shed. Frame, open sides, 62' x 140' x 24'	\$3,333	\$1,000	
	Total for Building #25,	\$3,333	\$1,000	
BUILDING #26				
	Machine Shop. One story, hollow tile, wood block floor, concrete columns and roof, 48' x 72' x 16' h.	\$12,165	\$10,340	30
	Total for Building #26,	\$12,165	\$10,340	
BUILDING #27				
	Laboratory. Hollow tile, wood roof, cement floor, 19' x 28' x 13' h.	\$1,729	\$1,556	
	Total for Building #27,	\$1,729	\$1,556	
BUILDING #28				
	Garage. Hollow tile, concrete floor and roof, stucco finish, 22' x 26' x 11' h.	\$1,716	\$1,373	40
	Total for Building #28,	\$1,716	\$1,373	

Exhibit P-1.

		Reproduction Cost	Present Value
	BUILDING #29		
	Storage Shed. Corrugated iron on wood frame, concrete floor, 25' x 150' x 13' h.	\$2,438	\$1,707
	Total for Building #29,	\$2,438	\$1,707
10	BUILDING #30		
	Storage Shed. Corrugated iron on wood frame, concrete floor, 30' x 45' x 15' h.	\$1,012	\$709
	Total for Building #30,	\$1,012	\$709
	BUILDING #31		
	Mixing, Straight Line Inlaying, Hanging Seasoning Rooms, Trimming, Storage and Shipping.		
20	A		
	Mixing Rooms. Six stories, brick and concrete, fireproof, mill-type construction, 41' x 121' x 90' h.	\$89,478	\$80,530
	B		
	Inlaying Machine Room and Trimming. Six stories, brick and concrete, galleries on second and fourth floors, wall to A hollow tile, 41' x 121' x 90' h.	71,165	64,049
	C		
	Storage Rooms. Eight stories, brick and concrete, West wall hollow tile	81,639	73,475
	D-1-5		
	Seasoning Ovens. No floors, brick and concrete, two brick and two hollow tile partition walls, hollow tile side walls, 67' x 175' x 83' h.	187,376	133,358
	Tower on North side for two elevators. Brick and concrete, one brick partition wall, 16' x 20' x 100' h.	3,400	3,060
30	Toilet Leanto S. W. of A. Brick, concrete floor and roof, 15' x 15' x 10' h.	900	810
	Total for Building #31,	\$433,958	\$355,282
	BUILDING #32 *		
	A		
	Cafeteria. Two stories, brick, second floor wood, wood columns and roof, 45' x 138' x 22' h.	\$23,225	\$16,258
	B-B-1-2		
	Extensions on N. W. corner. One story, brick, wood roof, 22' x 30' x 14' h. and 22' x 28' x 20' h. and 19' x 19' x 14' h.	4,093	3,070
	Stack, on N. W. corner. Brick, 5' x 5' x 60' h., 3' flue	1,500	1,050
40	Total for Building #32,	\$28,818	\$20,378

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #33				
	Printing, Bed Seasoning Rooms, Trimming.			
A	Printing Room. One story, brick, steel columns and roof trusses, concrete roof, 82' x 123' x 24' h.	\$36,310	\$34,495	10
B-1-5	Seasoning Ovens. One story, brick and concrete, four partition walls, brick and hollow tile, 78' x 198' x 22' h.	66,976	51,160	
C	Trimming Room. One story, brick, steel columns, and roof trusses, concrete roof, 60' x 82' x 21' h.	20,836	19,794	
	Toilets, two, brick, concrete floor and roof, 2-15' x 15' x 8'	1,575	1,496	
	Loading Shed on West side, wood loading platform and corrugated iron shelter, 24' x 80' x 19' h.	1,710	1,625	
	Total for Building #33,	\$127,407	\$108,570	
BUILDING #34				20
	Hospital. One story, brick and concrete, concrete floor and roof, 23' x 32' x 15' h.	\$3,864	\$3,478	
	Total for Building #34,	\$3,864	\$3,478	
MISCELLANEOUS STRUCTURES				
<i>Dwellings</i>				
	West side of Clark Ave., south of Nairn St., two story, frame, brick foundation, 14' x 26' x 25' h.	\$2,184	\$1,420	
	West side of Passaic Ave., North of Building #32, one and a half story, frame, 20' x 30' x 16' h.	2,600	1,560	30
	Total Dwellings,	\$4,784	\$2,980	

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
<i>Yard Houses and Sheds</i>			
	Garage—Corner Passaic and Bergen Aves., corrugated iron on wood frame, concrete foundation and floor, wood roof, tar papered, 12' x 29' x 10' h.	\$480	\$360
10	Filter Tank House—Southwest of Building #25, corrugated iron, wood frame, concrete floor, 18' x 22' x 18' h.	428	321
	Vacuum Pump House—East side Passaic Ave., Southwest of Building #10, one story, brick, concrete floor and roof, 15' x 19' x 14' h. and 6' x 11' x 10' h.	1,755	1,316
	Oil Pump House #1—Southwest of Building #23, corrugated iron, wood frame, concrete floor and pit, 10' x 23' x 10' h. and 10' x 12' x 10' h.	375	282
	Meter Pit—Northeast of Building #15, and 20 ft. from Bergen Ave., concrete bottom and sides, wood top, 8' x 15' x 7' d.	491	393
	Transformer House—Southwest of Building #23, one-story, brick, concrete floor and roof, 12' x 20' x 10' h. and 8' x 5' x 10' h.	1,120	840
20	Storage Shed—North of Building #34, brick, wood roof, 10' x 12' x 8' h.	400	200
	Fire Truck Shed—Southeast of Building #25, corrugated iron, wood frame, concrete floor, 13' x 41' x 15' h.	400	260
	3 Hose Houses, #1-2-3—frame, concrete floor, 3 10' x 19' x 9' h.	921	645
	8 Hose Houses, #4, 6-12—frame, concrete foundation, 8-4' x 4' x 4' h.	280	238
	1 Hose House, #5—frame, concrete foundation, 9' x 18' x 8' h.	167	159
	5 Well and Storage Sheds—corrugated iron, wood frame, concrete foundation, 5-11' x 16' x 9' h.	705	529
	4 Sheds—East of Building #3—frame, concrete foundation, 18' x 28' x 10' h.	916	550
	2 Storage Sheds—brick and concrete, 10' x 10' x 10' h.	886	665
30	Tar Boiling Shed, East of Building #10, concrete foundation, brick floor, corrugated iron roof, 30' x 30'	715	358
Total Yard Houses and Sheds,		\$10,039	\$7,116
<i>Reservoirs</i>			
	#1—North of Building #1—stone and concrete masonry, brick cross walls, pipe railing, 30' x 60' x 10' d. and 26' x 42' x 14' d.	\$5,930	\$4,151
	#2—Between Buildings #12 and #13—concrete walls and bottom, one concrete cross-wall, 33' x 107' x 11' d.	6,904	4,833
40	#3—West of Building #17—concrete walls and bottom, iron cover, 19' x 32' x 6'6" d.	929	696
	#4—West of Building #17—concrete walls and bottom, two concrete cross-walls, 19' x 36' x 8' d.	1,152	864
Total Reservoirs,		\$14,915	\$10,544

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>	
<i>Tanks</i>			
5 Benzene and Kerosene Tanks—Steel, Bowser— 500 gal. capacity each	\$520	\$416	
1 Benzene Tank—Steel, Bowser, 5000 gal. capacity, 8' diam. x 18'	520	390	
8 Linseed Oil Storage Tanks—Northeast of Building #15—Steel, 4—20' diam. x 20', 2—20' diam. x 16', 2—20' diam. x 25', Brick and concrete foundations	15,680	13,328	10
5 Wood Stave Tanks—Total capacity, 58,630 gal.	5,863	4,104	
2 Steel Storage Tanks—open top, at Building #5-H	1,568	1,411	
1 Fuel Oil Tank—in basement Building #6—steel, one partition wall, 10' x 20' x 4' h.	487	365	
Total Tanks,	\$24,638	\$20,014	
<i>Wagon Scales</i>			
1 Fairbanks Morse 15 ton, platform scale, concrete pit, iron platform, 10' x 16'	\$700	\$595	
2 Fairbanks Morse 20 ton platform scales, concrete pit, iron platform, each 9' x 22'	1,800	1,440	20
1 Fairbanks Morse 11 ton, platform scale, concrete pit, iron platform, 10' x 16'	650	520	
Total Scales,	\$3,150	\$2,555	
<i>Industrial Track in Yard</i>			
7260 ft. single track (45# rail), 31 turnouts, 10 crossings, 5 turntables	\$10,250	\$7,775	
Total Industrial Track,	\$10,250	\$7,775	
<i>Paving and Fencing in Yard</i>			
Paving—168,020 sq. ft.	\$46,670	\$35,000	30
Fencing—4,750 lin. ft. wood, wire and steel fence	10,200	7,810	
Total Paving and Fencing,	\$56,870	\$42,810	
Total, Buildings and Yard Structures,	\$4,241,353	\$2,805,970	

Exhibit P-1.

SUMMARY OF EQUIPMENT OF BUILDINGS

<i>Building</i>	<i>Reproduction Cost</i>	<i>Present Value</i>
#1	\$113,928.64	\$32,382.46
2	40,587.21	30,440.43
3	27,143.48	18,000.44
4	418.91	274.65
10 5	1,973.22	1,192.01
6	40.00	30.00
7	1,096.72	678.73
8	26,588.74	13,162.23
9	135,478.54	72,904.31
10 10	47,106.23	34,277.24
11	492.33	344.63
12	41,060.93	32,120.59
13	16,139.64	12,380.29
14	91,483.34	57,177.02
15	1,495.50	1,157.37
16	3,047.76	2,427.06
17	3,933.53	2,965.15
18	32,245.55	24,923.04
19	2,570.95	1,928.21
20 20	1,323.65	979.51
21	6,219.70	4,764.78
22	412.05	292.56
23	155,728.24	91,547.75
24	29,242.70	24,271.45
25	No Equipment	
26	1,657.82	1,319.15
27	258.20	231.38
28	179.82	143.86
29	35.00	24.50
30	No Equipment	
31	60,186.95	52,443.01
32	4,604.70	1,884.93
33	25,553.50	24,235.17
34	578.20	520.38
30 Yard Sewage System	29,988.91	22,491.69
Heating Pipe in Yard	380.48	285.36
30 Sprinkler Pipe in Yard	28,603.00	21,452.25
Power Pipe in Yard	10,391.90	7,793.93
Water Pipe in Yard	10,792.80	8,094.60
Power Feed Wiring in Yard	19,163.40	14,372.55
Miscellaneous	16,085.00	12,013.75
Totals, All Equipment	\$988,217.24	\$627,928.42

Exhibit P-1.

BUILDING EQUIPMENT

BUILDING #1	Reproduction Cost	Present Value	
Plumbing, piping, 1 enamelled iron lavatory, 5 water closets, 5 sinks, 3 shower stalls, 1 white enamelled urinal	\$1,000.00	\$680.00	10
Heating, piping, coils and fittings	1,037.16	705.27	
173 Outlets, Lighting and wiring	945.00	642.60	
452 Sprinkler heads and piping	3,390.00	2,305.20	
1 Worthington duplex steam fire pump, 16" x 9" x 12"	1,600.00	1,200.00	
1 Delameter Iron Work fire pump, 12" x 8" x 12"	750.00	375.00	
6 150 H.P. Samuel Smith & Son Co. boilers, hand fired, stationary grate	27,000.00	2,700.00	
2 150 H.P. Samuel Smith & Son Co. boilers, Jones underfeed stokers	12,000.00	1,200.00	
1 Worthington 12" x 7" x 12" duplex feed pump, brass rods and piston	750.00	600.00	
1 B. F. Sturtevant, size 10, multivane fan, including flue and damper, belt connected to 35 H.P. Allis Chalmers motor	988.00	741.00	20
1 Green Fuel Economizer, 360 pipes, including damper and flue	4,500.00	2,250.00	
1 Sturtevant turbo vane fan, 1500 c.f., size #80, including 40 H.P. Westinghouse motor, 950 r.p.m.	686.00	514.50	
1 Watts Campbell 1000 H.P. engine Corliss tandem compound, 20" x 36" x 48", and 1 Hewes & Phillips 20" x 36" x 48"—28' dia. flywheel, 22 sheaves	35,000.00	8,750.00	
Power piping including valves and fittings	15,664.62	3,916.15	
Power wiring	1,272.30	318.07	
Shafting, Hangers and Pulleys	5,245.56	3,934.17	30
Ventilating—1 Richmond Mfg. Co. 7' dia. dust collector, 1 American Blower Co. exhauster #4V including piping, 2 American Blower Co. exhausters #8V including piping, 1 36" window fan, belt-driven, 6 54" dust collectors, belted, including piping, 2 J. M. Seymour 48" 8 wing window fans	1,750.00	1,312.50	
362' Overhead trolley tracks, 2" x 1 3/8" 4 switches, supports, hangers and stringers	350.00	238.00	
Total Equipment, Building #1	\$113,928.64	\$32,382.46	

Exhibit P-1.

		Reproduction Cost	Present Value
	BUILDING #2		
	Plumbing. Piping, 4 water closets, 1 sink, 4 slate stall urinals	\$1,122.60	\$841.95
	Heating, piping, coils and fittings	4,306.67	3,230.00
	600 Outlets, lighting and wiring	3,925.00	2,943.75
	1,419 Sprinkler heads and piping	10,642.50	7,981.88
10	1 Salem whip hoist belted 5' x 8' platform	750.00	562.50
	1 Special whip hoist motor driven, 4' x 6'6" platform	1,000.00	750.00
	1 Salem, 6 lift, 6000#, 5'6" x 8'10" platform, motor driven Elevator	4,500.00	3,375.00
	1 Salem, 4 lift, 6000#, 6'6" x 9'6" platform, motor driven Elevator	4,200.00	3,150.00
	Power Wiring	2,902.13	2,176.60
	Shafting, hangers and pulleys	5,073.31	3,805.00
	Ventilating—1 J. M. Seymour 48", 8 wing fan, 4 American Blower #3V Exhausters, 3 B. F. Sturtevant 36", 8 wing fans, electric, 1 B. F. Sturtevant 35", 8 wing fan, including piping, 1 B. F. Sturtevant 42" 8 wing fan, 4 cyclone dust collectors	1,715.00	1,286.25
20	36' 12" I beam trolley track		
	24' 8" " " " "		
	30' 12" " " " "		
	36' 10" " " " "		
	26' 8" " " " "		
	12' 10" " " " "		
	18' 8" " " " "		
	24' 10" " " " "	450.00	337.50
	Total Equipment, Building #2	\$40,587.21	\$30,440.43
	BUILDING #3		
	Plumbing, Piping, 3 closets, 5 porcelain sinks, 3 urinals	\$654.64	\$458.25
30	Heating, Piping, coils and fittings	5,599.79	3,919.85
	440 Outlets and wiring	2,540.00	1,778.00
	1,601 Sprinkler heads and piping	12,007.50	7,405.25
	Power piping	210.24	147.17
	Power Feed Wiring	650.77	455.54
	Shafting, hangers and pulleys	399.54	279.68
	Ventilating—2 B. F. Sturtevant #35 motor-driven fan, 1 72", 12 blade ventilating fan, belted	581.00	406.70
	Salem freight elevator, 6000#, 4 lifts	4,500.00	3,150.00
	Total Equipment, Building #3	\$27,143.48	\$18,000.44
	BUILDING #4		
40	Heating, piping, coils and fittings	\$75.00	\$38.25
	5 Outlets and wiring	40.00	20.40
	Power feed wiring	50.00	25.50
	Shafting, hangers and pulleys	253.91	190.50
	Total Equipment, Building #4	\$418.91	\$274.65

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #5			
Plumbing, piping, 1 glazed porcelain sink, 2 cast iron latrines, 3 cast iron standards, 3 24" x 48" x 1¼" slate partitions, 1 urinal	\$354.86	\$188.08	
Heating, piping, coils and fittings	31.40	16.64	
8 Outlets and wiring	54.10	28.67	10
102 Sprinkler heads and piping	765.00	405.45	
Power feed wiring	103.29	54.74	
Shafting, hangers and pulleys	664.57	498.43	
Total Equipment, Building #5	\$1,973.22	\$1,192.01	
BUILDING #6			
8 Outlets, and wiring	\$40.00	\$30.00	
Total Equipment, Building #6	\$40.00	\$30.00	
BUILDING #7			
Power piping	\$506.90	\$268.66	
Shafting, hangers and pulleys	229.82	172.37	20
46 Sprinkler heads and piping	360.00	237.70	
Total Equipment, Building #7	\$1,096.72	\$678.73	
BUILDING #8			
Plumbing, piping and 1 22" x 24" earthenware sink	\$121.50	\$75.33	
Heating, piping and coils	40.20	24.92	
67 Outlets and wiring	405.00	279.00	
270 Sprinkler heads and piping	2,025.00	1,255.50	
1 Salem Elevator, 4000#, 1 lift, 5' x 7'6" platform, motor-driven	2,056.00	1,274.72	
1 Watts Campbell Co. 16" x 30" x 44", 300 H.P. tandem compound, non-condensing engine, 14' diam. flywheel, 8 sheave drive to shaft	9,000.00	2,250.00	30
1 150 K.W. Crocker Wheeler D.C. Generator, 600 r.p.m., 230 volts, 600 amp. including 1 6' x 6' x 1½" slate panel board, complete with instruments, rheostats and wiring, installed	3,750.00	1,875.00	
Power piping	3,877.79	2,404.23	
Power feed wiring	1,031.25	639.38	
Shafting, hangers and pulleys	3,517.00	2,637.75	
Ventilating, 4 B. F. Sturtevant 36" window fans, incl. motor, 2 J. M. Seymour 44" window fans, belted	720.00	446.40	
Total Equipment, Building #8	\$26,588.74	\$13,162.23	40

Exhibit P-1.

BUILDING #9		<i>Reproduction Cost</i>	<i>Present Value</i>
	Plumbing, piping, 1 brown glazed sink 18" x 32", 1 water closet, 1 alberene stone shower	\$210.42	\$151.00
	67 Outlets and wiring	335.00	241.20
10	14 Samuel Smith & Son Co. 150 H.P. horizontal return tubular boilers, 6' x 18', equipped with Jones underfed stokers	84,000.00	42,000.00
	1 Worthington duplex 10" x 6" x 10" steam pump	340.00	255.00
	2 Worthington duplex 12" x 7" x 12" steam pumps	1,100.00	825.00
	2 Knowles 14" x 22" x 24" single steam vacuum pumps	2,500.00	1,875.00
	1 Green fuel economizer, 400 tubes, 4½" tubes 10'	4,500.00	2,250.00
	1 Green fuel economizer, 240 tubes, 4½" tubes 13'	6,000.00	3,000.00
20	1 B. F. Sturtevant 105" fan, 35000 c.f. per min., motor driven, two motors, Crocker Wheeler 50 H.P. motor each end of shaft	2,200.00	1,650.00
	1 Worthington duplex steam fire pump, 18" x 12" x 12", 1000 gal. per min., 70 r.p.m., including piping and con- nections	1,863.20	1,497.40
	Coal Conveyor Plant, consisting of 1 Link Belt 28" x 24" coal crusher, 1 coal bucket conveyor, 414 ft. long, 1 steel open top coal bunker 15' x 50' long x 12' deep, and 1 10' x 30' 1. x 12' deep, including all shafting, gears, pulleys and installation	12,990.00	9,392.00
	Power feed piping	19,222.92	9,611.46
	Power feed wiring	217.00	156.24
30	Total Equipment, Building #9	\$135,478.54	\$72,904.31

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #10			
Plumbing, piping, 2 cast iron latrines, 2 slate urinals, 4 24" x 48" sinks, 3 porcelain flush closets, 2 comp. show- ers, 2 porcelain urinals, 1 lavatory	\$1,954.96	\$1,485.77	
Heating, piping, coils and fittings	2,887.57	2,194.55	
524 Outlets and wiring	3,494.00	2,655.44	10
1,452 Sprinkler heads and piping	10,890.00	8,286.40	
1 Otis Elevator, 6000#, 4 lift, 6'6" x 11', motor driven	4,500.00	3,420.00	
1 Salem, 4 lift, 2000#, 5'6" x 11' belt driven	1,500.00	1,140.00	
1 Salem, 4 lift, 10000#, 6'3" x 11' mo- tor driven	5,000.00	3,800.00	
1 Hewes & Phillips, 150 H.P. simple engine, Corliss type, 16" x 36" inst.	3,300.00	1,650.00	
1 C. & C. Electric Co. 75 H.P. Motor (used as generator), 40 amp., 230 V., 300 r.p.m., driven by engine, includ- ing 1 48" x 48" x 2" slate panel board with instruments, switches and wir- ing	2,500.00	1,250.00	20
Power piping	6,457.07	4,907.37	
Power wiring	1,061.43	806.69	
Shafting, hangers and pulleys	2,299.20	1,724.40	
1 B. F. Sturtevant 72" fan, belted	250.00	187.50	
506 1. ft. 8" I beam overhead track	1,012.00	769.12	
Total Equipment, Building #10	\$47,106.23	\$34,277.24	
BUILDING #11			
Plumbing, 1 enamelled iron sink and piping	\$25.00	\$17.50	
8 Outlets and wiring	40.00	28.00	
32 Sprinkler heads and piping	240.00	168.00	
Power wiring	20.00	14.00	
Shafting, hangers and pulleys	167.33	117.13	20
Total Equipment, Building #11	\$492.33	\$344.63	
BUILDING #12			
Plumbing, piping, 1 cast iron latrine, 1 water closet, 1 slate stall urinal	\$416.72	\$329.21	
Heating, piping, coils and fittings	2,666.02	2,106.15	
1,305 Outlets and wiring	6,920.00	5,466.80	
2,967 Sprinkler heads and piping	22,252.50	17,579.48	
1 Volney Mason Elevator 10,000#, 5 lift, 6'10" x 10'2"	4,800.00	3,600.00	
1 Salem Elevator, 4000#, 4 lift, 4'6" x 9'2"	3,000.00	2,250.00	
Power wiring	866.69	684.70	
Shafting, hangers and pulleys	139.00	104.25	40
Total Equipment, Building #12	\$41,060.93	\$32,120.59	

Exhibit P-1.

		Reproduction Cost	Present Value
	BUILDING #13		
	Plumbing, piping, 5 sinks, 7 water closets, 3 stalls	\$686.58	\$528.67
	Heating, piping, coils and fittings	3,091.76	2,380.65
	273 Outlets and wiring	1,715.00	1,320.55
	991 Sprinkler heads and piping	7,432.50	5,723.03
10	1 Mason whip hoist, 6' x 4' platform, belt driven	750.00	562.50
	Power feed wiring	851.80	655.89
	Shafting, hangers and pulleys	1,612.00	1,209.00
	Total Equipment, Building #13	\$16,139.64	\$12,380.29
	BUILDING #14		
	Plumbing, piping, 1 Graham sink, 2 porcelain enamelled urinals, 3 water closets	\$390.53	\$281.18
	Heating, pipe, coils and fittings	36.16	26.04
	112 Outlets and wiring	610.00	439.20
	410 Sprinkler heads and piping	3,075.00	2,214.00
	1 Volney Mason whip hoist, 1500#, 6'7" x 4' platform	750.00	562.50
20	1 Volney Mason Elevator, 4 lift, 4000#, 11'9" x 4'5" platform	4,200.00	3,150.00
	1 Watts Campbell 24" x 44" x 48" tandem compound 750 H.P. Corliss engine, 20' flywheel, non-condensing	26,250.00	6,562.50
	2 C. & C. Electric Co. 150 K.W. D.C. Generators, 3 bearings, 660 amp., 225 V., 372 r.p.m. pulley	6,600.00	3,300.00
	1 G. E. Motor Generator Set, 435 K. V. A., 457 amp., 550 V., 1200 r.p.m., 60 cycle, 3 phase, motor direct connected to 300 K.W. G. E. Generator, 250 V.	5,400.00	4,320.00
	1 6 panel slate switchboard, 7'4" x 7'6" x 2", complete with instruments and wiring	1,800.00	1,440.00
30	2 slate panels, 36" x 5' x 1 1/2" with instruments and wiring	1,000.00	800.00
	1 distributing panel, 42" x 6'3" x 1 1/2" with instruments and switches	250.00	200.00
	3 Pittsburgh 1000 K.V.A., 60 cycle, 3 phase, 13,200/600 Volt transformers, oil cooled, outdoor type	18,000.00	15,300.00
	10 panel switchboard, 5 18" x 7'6" x 1 1/2" slate and 5 30" x 7'6" x 1 1/2" slate complete with instruments and wiring	4,250.00	3,400.00
	3 3 P.S.T. knife switches, 1200 amp., 600 volt, slate base, 24" x 24" x 1 1/8"	450.00	360.00
	1 Condit Electric Co. Oil Switch, type P-10-B, 600 A., 15,000 V., in 3 compartment brick cell, complete with current transformers and wiring	1,500.00	1,200.00
40	3 as above, 200 A., 600 V.	3,000.00	2,400.00
	Power wiring	7,319.50	5,270.00
	Shafting, hangers and pulleys	5,302.15	4,976.60
	4 B. F. Sturtevant 45" single exhausters including galvanized tin piping	1,300.00	975.00
	Total Equipment, Building #14	\$91,483.34	\$57,177.02

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #15			
104 Sprinkler heads and piping	\$795.00	\$632.00	
Shafting, hangers and pulleys	250.50	187.87	
2 J. M. Seymour 72" 12 wing, steel plate ventilating fans, belted to mo- tor	450.00	337.50	
Total Equipment, Building #15	\$1,495.50	\$1,157.37	10
BUILDING #16			
Plumbing, piping, 3 water closets, 1 enamelled iron lavatory, 1 18" x 18" sink, 1 cast iron latrine, 2 needle shower in stalls	\$686.36	\$549.09	
Heating, piping, coils and fittings	908.90	727.12	
66 Outlets and wiring	455.00	364.00	
80 Sprinkler heads and piping	600.00	480.00	
Power feed wiring	174.50	139.60	
Shafting, hangers and pulleys	223.00	167.25	
Total Equipment, Building #16	\$3,047.76	\$2,427.06	20
BUILDING #17			
Plumbing, piping, 1 porcelain water closet, 1 cast iron enamelled bowl	\$159.40	\$134.55	
Heating, piping, coils and fittings	1,246.98	935.24	
61 Outlets and wiring	405.00	303.75	
262 Sprinkler heads and piping	1,965.00	1,473.75	
Power feed wiring	157.15	117.86	
Total Equipment, Building #17	\$3,933.53	\$2,965.15	

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Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	BUILDING #18		
	Plumbing, piping, 2 18" x 30" Graham sinks, 4 alberene stone stalls, 2 al- berene stone urinals	\$658.80	\$527.04
	Heating, piping, coils and fittings	1,600.50	1,280.40
10	314 Outlets and wiring	1,985.00	1,588.00
	685 Sprinkler heads and piping	5,137.50	4,110.00
	1 Volney Mason Elevator, 4000#, 4 lift, 5'6" x 8'6" platform, motor driven	4,200.00	3,150.00
	1 Volney Mason whip hoist, 10" x 18" drum	750.00	562.50
	Power feed wiring	2,595.75	2,076.60
	Shafting, hangers and pulleys	1,413.00	1,059.75
	2 B. F. Sturtevant 20" electric driven fans	320.00	240.00
	Motor Generator Set, 1 A.C. synchro- nous motor, 470 H.P., 720 r.p.m., 550 V., 60 cycle, 3 phase, direct connected to type M.P.C. 1200 A. 250 V. Gen- erator, and M.P. 100 A. 250 V. ex- citer	7,200.00	5,400.00
20	1 5 panel switchboard 8'8" x 7'4" x 2" complete with instruments, switches and wiring	2,750.00	2,062.50
	1 24" x 24" x 1½" panel with 3 P.S.T. knife switch, 1000 amp.	185.00	138.75
	1 Eddy Electric Mfg. Co. lighting gen- erator, 100 A., 200 V., 950 r.p.m., with panel and switches	650.00	487.50
	1 10 ton, 25 foot span travelling crane, hand geared trolley and bridge mo- tion, G.E. 12 H.P. D.C. hoisting mo- tor	2,800.00	2,240.00
	Total Equipment, Building #18	\$32,245.55	\$24,923.04
30	BUILDING #19		
	60 Outlets and wiring	\$300.00	\$225.00
	269 Sprinkler heads and piping	2,017.50	1,513.13
	Power feed wiring	253.45	190.08
	Total Equipment, Building #19	\$2,570.95	\$1,928.21
	BUILDING #20		
	Plumbing, piping, 1 cast iron enamelled sink, 20" x 30", 1 porcelain enamelled closet, 1 porcelain urinal	\$195.90	\$144.97
	Heating, piping, coils and fittings	257.75	190.74
	32 Outlets and wiring	160.00	118.40
40	78 Sprinkler heads and piping	585.00	432.90
	Power feed wiring	125.00	92.50
	Total Equipment, Building #20	\$1,323.65	\$979.51

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>		
BUILDING #21				
Plumbing, piping, 6 porcelain water closets, 1 porcelain urinal stall, 2 double cast iron enamelled lavatories, 1 14" x 22" cast iron enamelled sink, 1 enamelled iron fountain	\$733.80	\$550.35	10	
Heating, piping, radiators, coils and fittings	3,213.40	2,510.05		
108 Outlets, fixtures and wire	1,080.00	810.00		
159 Sprinkler heads and piping	1,192.50	894.38		
Total Equipment, Building #21	\$6,219.70	\$4,764.78		
BUILDING #22				
Plumbing, piping, 2 porcelain water closets, 1 porcelain glazed sink, 2 porcelain urinals, 2 6" spray showers with stalls	\$382.05	\$271.26	20	
5 Outlets and wiring	30.00	21.30		
Total Equipment, Building #22	\$412.05	\$292.56		
BUILDING #23				
Plumbing, piping, 1 water closet, alberene stone, 1 urinal, 1 Graham sink	\$404.80	\$299.55	30	
Heating, piping, coils and fittings	130.00	96.20		
59 Outlets, wiring and switches	295.00	218.30		
1 Worthington 20" x 12" x 16" duplex steam fire pump, brass rods and cylinder lining, including intake piping and fittings	3,573.00	2,679.75		
3 Babcock & Wilcox 400 H.P. water tube boilers, 192 4" tubes, hand fired shaker grate, 2 42" drums each	66,000.00	36,300.00		
1 B. F. Sturtevant 84; draught fan	350.00	192.50		
1 Ganbert Mfg. Co. water tube feed water heater	1,500.00	825.00		
1 B. F. Sturtevant 480 pipe economizer	5,000.00	2,750.00		
1 Sprague 16 H.P., 1070 r.p.m., box type, hoist motor, including concrete ash hopper	2,400.00	1,560.00		
1 Worthington 8" centrifugal pump belted to G. E. induction motor 35 H.P., 550 V., 3 phase	950.00	685.00		
1 Southworth Fndy. & Mch. Co. Air Pump, 10½" x 24" steam slide valve engine and 24" x 24" air cylinder	7,500.00	4,500.00		
2 Union Steam Pump Co. exhaust pumps 4" x 6" x 5"	250.00	187.50		
1 Union Steam Pump Co. 6⅛" x 10" x 10" pump	250.00	187.50		
1 Prescott 5¼" x 4⅛" x 5" duplex oil pump	75.00	56.25		40

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	2 Effing Carpenter Co. 10" x 6" x 12" duplex outside packed plunger pumps	1,800.00	1,080.00
	Gould Mfg. Co. 11" x 12" triplex vertical pump	2,700.00	2,025.00
10	Allis Chalmers Mfg. Co. Parsons type steam turbo generator, 1000 K.W., 600 V., 1130 amps., 1800 r.p.m., 3 phase, 60 cycle, with D.C. shunt wound exciter, 25 K.W.	32,000.00	19,200.00
	1 Kerr Turbine Co. steam turbo generator, 50 K.W. direct connected to two Allis Chalmers D.C. generators each 125 volt, 200 amp., 1250 r.p.m.	2,500.00	1,750.00
	Panel switchboard of 12 panels, 20" x 7'6" x 2" each complete with instruments (partly dismantled)	3,000.00	1,500.00
	1 10 ton Maris Travelling Crane, 45' span, hand geared trolley, bridge motion, electric hoist	2,200.00	1,628.00
	Power feed piping	17,028.34	9,465.60
20	1 National Eng. Co. 50 H.P. duplex steam hoisting engine, 12" x 10", 2 36" x 14" drums, including 1 ton clam shell bucket, boom and struts	5,200.00	3,900.00
	1 Eck Dynamo Co. 2½ H.P. motor, 7.8 amps., 220 V., 760 r.p.m.	125.00	93.75
	Total Equipment, Building #23	\$155,728.24	\$91,547.75
BUILDING #24			
	Plumbing, piping, 1 porcelain water closet, 3 24" x 36" enamelled iron sinks, 1 floor urinal	\$292.85	\$243.07
	Heating, piping, coils and fittings	3,646.50	3,026.60
	565 Outlets and wire	3,005.00	2,494.15
	1,504 Sprinkler heads and piping	11,280.00	9,362.40
30	1 Salem Elevator, 4 lift, 8000#, 6' x 9'8" motor	4,200.00	3,486.00
	1 Salem Elevator, 4 lift, 10,000#, 6'10" x 11'2" motor	4,500.00	3,735.00
	Power feed wiring	568.35	471.73
	1 Lowerator, 52' lift (not used)	1,750.00	1,452.50
	Total Equipment, Building #24	\$29,242.70	\$24,271.45

BUILDING #25—No equipment

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #26			
Plumbing, piping, 3 porcelain water closets, 1 cast iron enamelled lavatory, 21" x 24", 1 brown glazed sink, 2 porcelain urinals, 1 nickel plated needle shower with enclosure	\$637.40	\$451.79	
30 Outlets and wiring	175.00	148.75	10
Power feed wiring	38.00	32.30	
Shafting, hangers and pulleys	177.00	150.45	
39 Sprinkler heads and piping	292.50	248.63	
Heating, piping, coils and fittings	337.92	287.23	
Total Equipment, Building #26	\$1,657.82	\$1,319.15	
BUILDING #27			
Plumbing, piping, 1 sink	\$55.00	\$48.50	
Heating, piping, coils and fittings	133.20	119.88	
14 Outlets and wiring	70.00	63.00	
Total Equipment, Building #27	\$258.20	\$231.38	20
BUILDING #28			
Plumbing, piping, 1 alberene stone sink, 1 brass bell trap	\$62.60	\$50.08	
Heating, piping, coils and fittings	87.22	69.78	
5 Outlets and wiring	30.00	24.00	
Total Equipment, Building #28	\$179.82	\$143.86	
BUILDING #29			
7 Outlets and wiring	\$35.00	\$24.50	
Total Equipment, Building #29	\$35.00	\$24.50	
BUILDING #30—No equipment			30

Exhibit P-1.

		<i>Reproduction Cost</i>	<i>Present Value</i>
	BUILDING #31		
	Plumbing, piping, 1 steel water tank, 18" dia. x 5', 6 Graham glazed porce- lain sinks, 5 urinals, 2 stall porcelain, 9 water closets, 2 vitrous china uri- nals, 2 needle spray shower baths	\$2,030.30	\$1,827.27
10	Heating, piping, coils and fittings	8,277.00	7,449.30
	576 Outlets, wiring and switches	3,956.00	3,560.40
	1,929 Sprinkler heads and piping	14,467.50	12,920.75
	1 Salem Elevator, 8 lifts, 10,000#, 13' x 7'6" motor	5,200.00	4,680.00
	1 Salem Elevator, 6 lifts, 10,000#, 13' x 7'6" motor	5,000.00	4,500.00
	Power feed wiring	2,964.15	2,667.74
	Shafting, hangers and pulleys	1,064.00	957.60
	Newark Cornice & Skylight Works 36" electric window fan, 3 H.P. motor	875.00	787.50
	B. F. Sturtevant 36" electric propelled fan	210.00	189.00
	1 motor generator set—A.C. synchro- nous motor, 470 H.P., 720 r.p.m., 550 V., 60 cycle, 3 phase, direct connected to type M.P.C. 2400 amp., 250 V. generator and M.P. 100 amp., 250 V. exciter	7,900.00	5,925.00
20	10 panel switchboard 8'8" x 7'4" x 2" complete with instruments, switches and wiring	2,750.00	2,062.50
	1 24" x 24" x 1½" panel with 3 P.S.T. knife switch, 1000 amp.	185.00	138.75
	American Engineering Co. type H-4, 4 ton, 8 wheel swivel trolley Lo-Hed hand geared hoist, operated by D.C. motor, 220 V.	1,108.00	997.20
	1 Lo-Hed hoist, type H-8, as above	1,400.00	1,260.00
	2 Maris Bros. 10 ton, 15' span, hand carriage and motor hoist cranes	2,800.00	2,520.00
30	Total Equipment, Building #31	\$60,186.95	\$52,443.01
	BUILDING #32		
	Plumbing, piping, 3 porcelain glazed urinals, 1 water closet, porcelain bowl and tank, 3 enamelled iron lavatories, 1 porcelain enamelled sink	\$515.00	\$363.08
	Heating, piping, coils and fittings	675.20	475.88
	1 heating boiler "Houus" National Radiator Co. #36-8B asbestos cover- ed, hand-fired	750.00	528.75
	1 David Nichols 75 H.P. fire tube boil- er, hand fired, shaker grate, 136 3" flues (not used)	2,250.00	225.00
40	Lighting open conduit, 15 drops, chain type, 12" opal dome	180.00	126.90
	24 drops, wire without shades	120.00	84.60
	770 ft. ¾" conduit with wire		
	225 ft. ½" conduit	114.50	80.72
	Total Equipment, Building #32	\$4,604.70	\$1,884.93

Exhibit P-1.

	<i>Reproduction Cost</i>	<i>Present Value</i>	
BUILDING #33			
Plumbing, piping, 4 porcelain water closets, 4 porcelain floor type urinals, 6 enamelled iron lavatories	\$3,045.00	\$2,892.75	
Steam heating, piping, coils and fittings	2,050.00	1,947.50	
Steam heat feed piping	2,803.50	2,663.33	
580 Sprinkler heads and piping	4,350.00	4,132.50	10
Sprinkler feed piping, valves and fittings	8,602.00	8,171.90	
63 drops and 21 arcs and wiring	903.00	817.19	
2 Yale chain hoists, 1 ton, hand carriage, electric hoisting	1,600.00	1,520.00	
2 6000# Lo Hed hoists with 12" rail I beam hand trolley and carriage, electric hoist	2,200.00	2,090.00	
Total Equipment, Building #33	\$25,553.50	\$24,235.17	

BUILDING #34			
Plumbing, piping, 1 wall type lavatory, 1 porcelain bowl and tank water closet	\$225.00	\$202.50	20
Lighting, 3 drops, 1 2-way base plug, including conduit and wire	85.00	76.50	
Heating, piping, radiators and fittings	268.20	241.38	
Total Equipment, Building #34	\$578.20	\$520.38	

SEWAGE SYSTEM IN YARDS

403'-24" Tile Pipe—8' deep	\$2,115.75	
997'-24" " " 5' "	4,436.65	
360'-20" " " 4' "	1,152.00	
560'-18" " " 5' "	1,618.40	
120'-16" " " 4' "	279.60	
558'-15" " " 4' "	1,188.44	
2034'-12" " " 4' "	3,498.48	30
1461'-10" " " 3'6" deep	2,030.79	
5428'-8" " " 3' "	5,970.80	
1332'-6" " " 3' "	1,132.20	
110'-4" " " 3'6" "	85.80	
16 Brick Manholes, 4' & 6' deep, 4' to 2' & 2' inside 9" walls, cement mortar	2,400.00	
57 Brick Catch Basins, 2' x 3'4" x 3'6"	3,705.00	
5 Concrete " " " "	375.00	
Total	\$29,988.91	\$22,491.69

HEATING PIPE

Heating, piping in Yard, 475 lin. ft. ¾" piping, installed	\$380.48	\$285.36	40
--	----------	----------	----

Exhibit P-1.

			<i>Reproduction Cost</i>	<i>Present Value</i>
SPRINKLER SYSTEM				
	550'	16"	Bell and spigot pipe, 4' deep	\$2,612.50
	468'	12"	" " " " 4' "	1,638.00
	801'	10"	" " " " 4' "	2,282.85
	4623'	8"	" " " " 4' "	10,864.05
10	5936'	6"	" " " " 3'6" deep	9,497.60
	20'	4"	" " " " 3'6" "	23.00
	19	6"	Fire plugs, 2 way	1,235.00
	6	8"	" " 3 "	450.
			Total	\$28,603.00
				\$21,452.25
POWER PIPING				
	300'	14"	Covered Pipe and fittings	\$3,150.00
	210'	10"	" " " "	1,837.50
	108'	8"	" " " "	637.20
	86'	6"	" " " "	301.00
	58'	5"	" " " "	160.50
	120'	4½"	" " " "	300.00
	1352'	4"	" " " "	2,366.00
20	136'	3½"	" " " "	204.00
	396'	3"	" " " "	554.40
	136'	2½"	" " " "	183.60
	274'	2"	" " " "	356.20
	128'	1½"	" " " "	160.00
	12'	1¼"	" " " "	15.00
	105'	1"	" " " "	126.00
	45'	¾"	" " " "	40.50
			Total,	\$10,391.90
				\$7,793.93
MAIN WATER SUPPLY PIPING				
	235'	12"	Bell and spigot water pipe and fittings	\$822.50
	156'	10"	" " " " " " " "	444.60
	5206'	6"	" " " " " " " "	8,329.60
30	452'	4"	" " " " " " " "	519.80
	506'	3"	" " " " " " " "	531.30
	1		Hersey disc. 3" water meter	145.00
			Total	\$10,792.80
				\$8,094.60

Exhibit P-1.

		Reproduction Cost	Present Value	
POWER FEED WIRING				
7,896# of	2,820'—800 M.	Weatherproof Wire, including insulators		
40,393#	" 14,950'—750 M.	"		
7,280#	" 4,125'—500 M.	"		
1,940#	" 1,792'—300 M.	"		
818#	" 1,131'—4/0	"		10
347#	" 591'—3/0	"		
771#	" 1,650'—2/0	"		
140#	" 372'—1/0	"		
1,200#	" 4,083'— 1	"		
411#	" 1,720'— 2	"		
45#	" 446'— 6	"		
62#	" 940'— 8	"		
85#	" 1,840'—10	"		
61,388 pounds Copper Wire, installed		\$18,416.40		
16 Cable Racks, installed		240.00		
6 Bracket Supports, installed		30.00		
11—30'—6" Wood Poles		165.00		
6—35'—7" Wood Poles		108.00		
4—40'—7" Wood Poles		84.00		
5—45'—8" Wood Poles		120.00		20
Total		\$19,163.40	\$14,372.55	
MISCELLANEOUS				
Heating Gate House #1		\$100.00	\$75.00	
Heating Filter House		135.00	101.25	
Oil Pump House #1—1 Foster 4" rotary oil pump, motor driven by 40 H.P. Westinghouse A.C. mo- tor, 3 p., 950 r.p.m.		950.00	712.50	
Oil Pump House #2—1 Foster Pump and motor, as above		950.00	712.50	
Pump House #3—1 Lout Weiler Co. deep well pump, geared cam type 1 $\frac{3}{4}$ " piston, 18" stroke, double acting, connected to G. E. 10 H.P. D.C. motor, 1150 r.p.m., 3 phase		1,400.00	980.00	30
Vacuum Pump House—2 Blake Mfg. Co. 10" x 14" x 18" single horizontal steam driven vacuum pump		1,100.00	770.00	
Pump House #5—Downie double acting, deep well pump, 6 $\frac{1}{4}$ " x 18", driven by Crocker Wheeler 10 H.P. 60 cycle, 3 phase induction motor		1,500.00	1,200.00	
Water Softening and Purifying System—W. B. Scaife & Sons Co. #400 water softening and purifying system, including mercury gauge panel, 2 7' dia. x 6' deep cypress tank, 3" thick, 1 3' dia. 2' deep $\frac{1}{4}$ " steel tank with hand power agi- tator, 1 3 H.P. vertical steam engine, 18" x 3" flywheel, 31' 2" shafting, pulleys and hangers, 3 17' dia. x 15' deep cypress tanks, 3" thick, in- cluding piping, valves and fittings		9,950.00	7,462.50	40
Total		\$16,085.00	\$12,013.75	
TOTALS, ALL EQUIPMENT,		\$988,217.24	\$627,928.42	

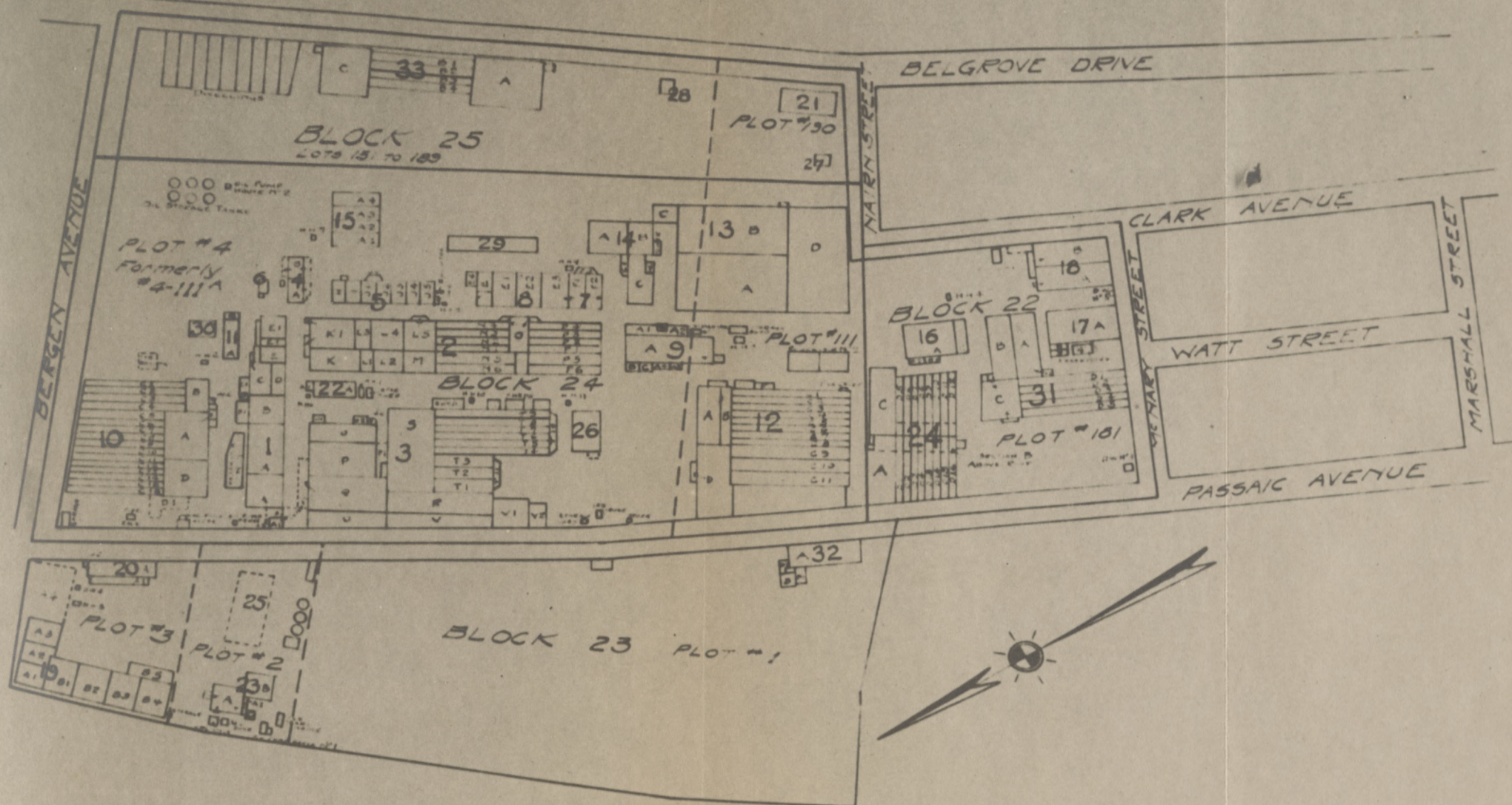
INDEX

	<i>Bldg</i>	
	1	Cork Mill, Boiler Room, Engine Room, Store
	2	Mixing, Calenders, Hanging Seasoning Rooms, Backing & Storage
	3	Printing, Bed Seasoning Rooms, Trimming, Shipping, Block Cutting
	4	Oil Boiling
	5	Oxidizing Sheds
10	6	Oil Store House
	7	Oxidizing Sheds
	8	Cement Making, Engine Room
	9	Boiler House
	10	Printing, Hanging Seasoning Rooms, Trimming, Storage, Shipping
	11	Starch House
	12	Bed Seasoning Rooms, Trimming, Storage, Shipping
	13	Moulded Inlaying, Tray Cutting, Sample Room
	14	Mixing for Bldg. #13, Engine Room
	15	Oxidizing Sheds
	16	Machine Shop
	17	Gate House, Pump House, Store
	18	Mixing, Straight Line Inlaying
	19	Storage & Shipping
	20	Boxmaking
	21	Office
20	22	Shed for Storage
	23	Power House, Boiler Room
	24	Hanging Seasoning Rooms, Trimming, Storage, Shipping
	25	Shed for Storage
	26	Machine Shop
	27	Laboratory
	28	Garage
	29	Shed for Storage
	30	Shed for Storage
	31	Mixing, Straight Line Inlaying, Hanging Seasoning Rooms, Trimming, Storage and Shipping
	32	Cafeteria
	33	Printing, Bed Seasoning Rooms, Trimming
	34	First Aid

30

10

GENERAL PLAN OF PLANT AND PROPERTY
 OF THE
CONGOLEUM-NAIRN CO., INC.
 KEARNY NEW JERSEY



SCALE = 1" = 150'

KEARNY, N.J. SEPTEMBER 10, 1924
 ENGINEER - BOARD OF ASSESSOR'S
 KEARNY N.J.

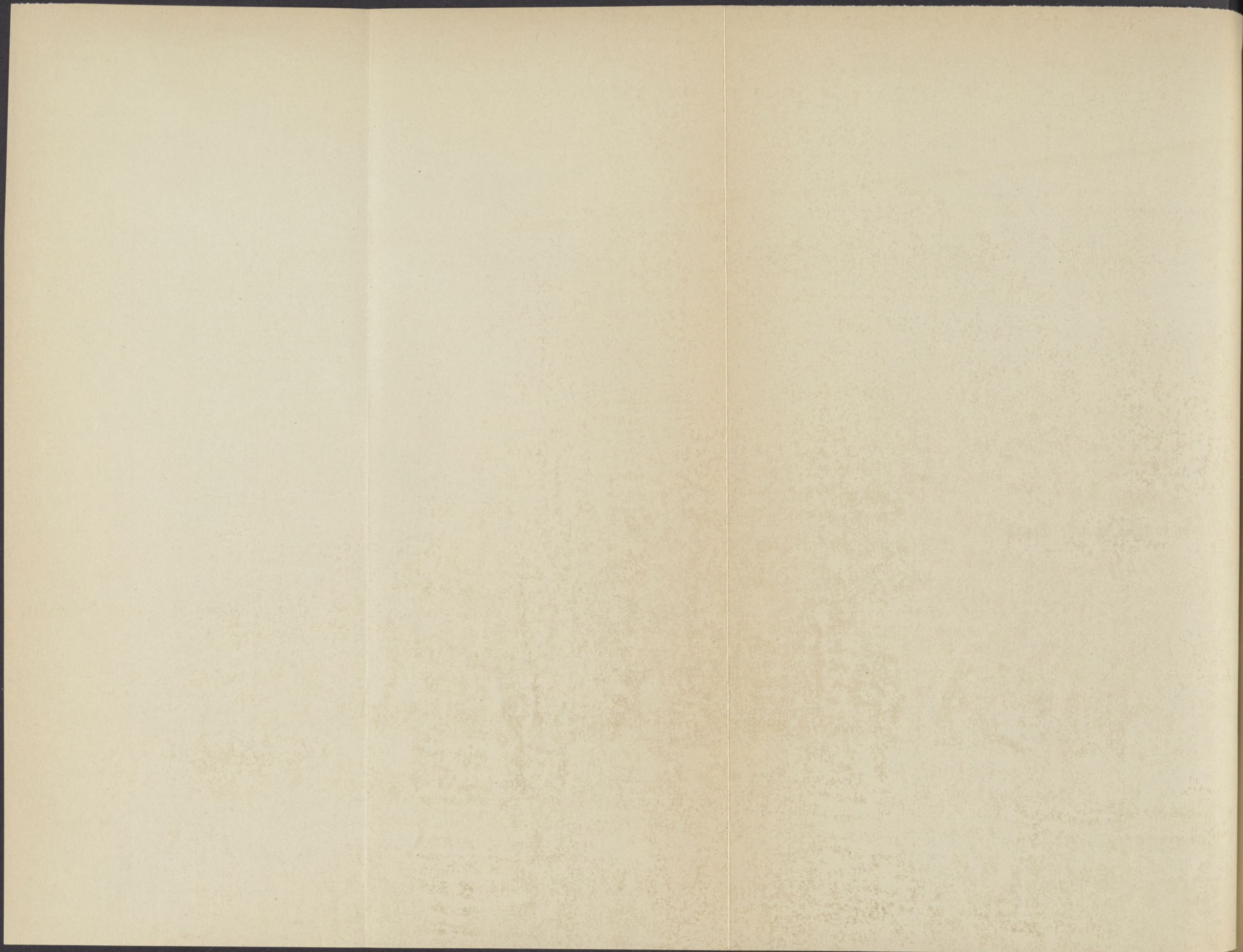


Exhibit D-1.

A-6452

COMMITTEE ON STOCK LIST,
NEW YORK STOCK EXCHANGE

CONGOLEUM-NAIRN INC.

(A holding and operating company organized
under the laws of New York) 10

COMMON STOCK WITHOUT NOMINAL OR PAR VALUE

Original Listing

Authorized Issue	1,750,000 shares
Amount Outstanding.....	None
Total Amount Applied For.....	1,650,000 shares
Authorized Stockholders.....	Sept. 8, 1924
Authorized by Directors.....	Aug. 21, 1924
Public Authority Requirements....	To be completed

New York, October 15, 1924. 20

Congoleum-Nairn Inc. hereby makes application to have listed on or after October 27, 1924, 1,641,026 shares of Common Stock without nominal or par value on official notice of issuance in exchange for present outstanding Common Stock of Congoleum Company Inc. (aggregating 960,000 shares) and in exchange for 681,026 shares of said Common Stock to be presently issued in the acquisition of The Nairn Linoleum Company. The Nairn Linoleum Company stock is to be exchanged for Common Stock of Congoleum Company on the basis of 6.81026 shares of Congoleum Company Common Stock for each share both Common and Preferred of the stock of The Nairn Linoleum Company after which exchange the then outstanding Common Stock of Congoleum Company is to be exchanged share for share for Common Stock of Congoleum-Nairn Inc. Application is also made to add 8,974 shares of Congoleum-Nairn Common Stock to the list on official notice of issuance and payment in full, making the total amount applied for 1,650,000

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40

Exhibit D-1.

shares of Common Stock without nominal or par value.

All of said stock when issued will be full paid and non-assessable and no personal liability will attach to the stockholder.

- 10 The Corporation was organized under the laws of the State of New York, June 21, 1919, as Congoleum Company, Inc., for the purpose of acquiring, and it has acquired, the assets and property of every sort whether tangible or intangible and including the name and goodwill of The Congoleum Company, a corporation organized under the laws of the Commonwealth of Pennsylvania in 1916, and assumed all its liabilities. It is proposed that The
- 20 Nairn Linoleum Company, a New Jersey corporation, be merged with and into the Farr and Bailey Manufacturing Company, (a subsidiary of Congoleum Company, Inc.), on October 24, 1924. It is further proposed that the name of Congoleum Company, Inc. be changed to Congoleum-Nairn Inc. on October 25, 1924. The duration of the charter is perpetual.

- 30 The business done under the charter is to manufacture and distribute felt and burlap base floor covering and kindred products.

AUTHORITY FOR ISSUE.

- 40 At a meeting of the Board of Directors held August 21, 1924, it was considered advisable to recommend to the stockholders an increase of the authorized Common Stock from 1,000,000 shares without nominal or par value to 1,750,000 shares without nominal or par value, and the issuance of up to 681,026 shares of the proposed increase in the acquisition of The Nairn Linoleum Company. At

Exhibit D-1.

this meeting the Board of Directors advised said increase and issuance of the following resolutions:

Voted: That the Directors hereby declare that the following amendments in the charter of Congoleum Company, Inc., are advisable for the purpose of acquiring the assets or stock of the Nairn Linoleum Company (of New Jersey). 10

To amend the Certificate of Incorporation of Congoleum Company, Inc., as follows:

First: Such a change and/or amendment of the certificate of incorporation of Congoleum Company, Inc., authorizing the corporation to issue in the aggregate 1,750,000 shares of its common capital stock without par value, that, should the change and/or amendment be made, the corporation then will be authorized to issue shares of its common capital stock without par value to the number in the aggregate of 1,750,000 shares. 20

Second: Such a change and/or amendment of the certificate of incorporation of Congoleum Company, Inc., increasing the number of its directors, that, should the change and/or amendment be made, the number of directors of Congoleum Company, Inc., then would be fifteen (15). 30

Third: Such change and/or amendment of the certificate of incorporation of Congoleum Company, Inc., changing its name, that should the change and/or amendment be made, then the name of Congoleum Company, Inc., would be changed to and be "Congoleum-Nairn Inc." 40

Exhibit D-1.

The stockholders, at a special meeting duly called, held on September 8, 1924, by a vote of more than three-fifths of the Common Stock, duly adopted the resolution in regard to the increase in the Common Capital Stock and, at an adjournment
10 of said meeting on October 6, 1924, by a vote of more than three-fifths of each class of stock, resolutions were adopted increasing the Board of Directors and changing the name of the Corporation as above mentioned. The proper officer was authorized to file with the Secretary of State of New York amendments of the Certificate of Incorporation as thus adopted and it is proposed that the amendments authorizing the increase in Common Capital
20 Stock and the increase in the number of the Board of Directors will be filed with the Secretary of State of New York on October 20, 1924, and that the amendment with respect to changing the name of the Corporation will be filed with the Secretary of State of New York on October 25, 1924.

In furtherance of the above plan, the Directors on August 21, 1924 passed the following resolution:

30 *“First:* The proper officers of this corporation are hereby authorized and empowered, so soon as such amendment shall be and become accomplished, to purchase the assets or to that end to acquire the whole or any part not less than 66 $\frac{2}{3}$ %, of the capital stock both common and preferred of ‘The Nairn Linoleum Company’ (of New Jersey), by issuing and giving in exchange for each share, either common or preferred of said stock of ‘The Nairn Linoleum Company’ (of New Jersey) 6.81026 shares of
40 the common capital stock without par value of Congoleum Company, Inc., and are hereby au-

Exhibit D-1.

thorized and empowered to use and employ such means and methods in effecting the acquisition of said assets or stock as they may deem proper. * * *.”

which resolution was adopted by the stockholders at an adjourned meeting of September 8, 1924, on October 6, 1924. 10

The stock of The Nairn Linoleum Company is exchangeable for Common Stock of the Congoleum Company, Inc. on the basis of 6.81026 of Congoleum Company, Inc. Common Stock for each share both Common and Preferred of The Nairn Linoleum Company.

* * * * *

HISTORY OF THE NAIRN LINOLEUM COMPANY. 20

In the year 1886 Sir Michael Nairn, of Michael Nairn Company, Kirkcaldy, Scotland, visited the United States for the express purpose of buying real estate in the City of New York so that Michael Nairn Company, of Kirkcaldy, might erect thereon a warehouse to be used as a distributing house for their Scotch goods.

A ten acre plot of ground was purchased in the town of Kearny, New Jersey, and buildings erected thereon under the name of The Nairn Linoleum Company with W. & J. Sloane, of New York, as sole selling agents. 30

The Company was incorporated in August, 1886, under the laws of the State of New Jersey with an authorized capital of \$300,000. Since that time the capital has been gradually increased, as the development of the business required, until today the authorized amount is \$20,000,000. The charter is perpetual. 40

Exhibit D-1.

The manufacture of plain and printed linoleums was commenced in 1888; towards the fall of that year the products of The Nairn Company were first placed on the market.

10 In 1895 the Company erected a plant for the manufacture of inlaid linoleum by the hydraulic press or moulded method and the following year the delivery of these goods was commenced, resulting in a very large addition to the Company's volume of business. The demand for inlaid goods continued to increase rapidly, and the Company made provision for a much larger output of that grade of linoleum by the erection of a rotary inlaying plant in 1908 to manufacture straight line inlaid.

20 This plant was equipped with the first machine of its kind to be in use in this country, and in 1921 another similar but more efficient rotary machine was added, so that today, The Nairn Linoleum Company is the largest producer of moulded and straight line inlaid linoleum in the United States.

In 1901 floor oil cloth was added to the output of the Company.

30 The plant manufacturing these lines is located in the town of Kearny, Hudson County, New Jersey, and consists of thirty-three well constructed, substantial buildings on a plot of ground comprising about fifty acres, with a large frontage on the Passaic River, affording a very desirable water service for the transportation of raw materials and finished goods from and to New York.

The Company produces linoleum in a great variety of grades and colors and of various types.

* * * * *

Exhibit D-1.

The Congoleum-Nairn Inc. owns the entire stock of the above companies except a small minority interest of Nairn Linoleum Mfg. Co.

* * * * *

10

PROPERTIES

The machinery and equipment in all plants is modern, well maintained and fully adequate for the needs of the business.

Congoleum-Nairn, Inc., and subsidiary companies own in fee the following properties:

Owned by Congoleum-Nairn, Inc.

* * * * *

20

PROPERTIES OF SUBSIDIARY COMPANIES

Nairn Linoleum Manufacturing Corporation

* * * * *

The Kearny Plant

The Nairn Linoleum plant is located at Kearny, New Jersey, on the Passaic River, where the Company owns over 1,000 lineal feet of shore property, the entire frontage having substantially built docks.

30

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Exhibit D-1.

DESCRIPTION OF BUILDINGS

<i>Building number</i>	<i>Size feet</i>	<i>Construction</i>	<i>No. of floors</i>	<i>Floor area square feet</i>	<i>Occupancy</i>	
1	63 x 336	Brick and concrete	1 to 2	38,500	Power house and manufacturing	
10	2	95 x 480	Concrete	1 to 7	94,040	Manufacturing and seasoning
	3	210 x 400	Brick	1 to 2	86,825	Manufacturing and seasoning
	4	25 x 85	Brick	1	2,250	Manufacturing
	5	40 x 170	Brick	1	8,540	Manufacturing
	6	15 x 25	Brick	1	450	Storage
	7	63 x 55	Brick	1 to 2	3,995	Manufacturing
	8	63 x 150	Brick	1 to 2	18,165	Manufacturing
	9	50 x 150	Brick	1	7,990	Power house
	10	220 x 210	Brick	1 to 5	91,335	Manufacturing and seasoning
	11	28 x 73	Brick	1	2,455	Manufacturing
	12	220 x 250	Brick	1 to 4	116,980	Manufacturing and seasoning
	13	190 x 280	Brick and concrete	1	56,380	Manufacturing
	20	14	60 x 105			
		40 x 85	Brick	1 to 5	35,115	Power house and manufacturing
15		81 x 100	Brick	1	8,120	Manufacturing
16		62 x 87	Concrete	1	7,260	Machine shop
17		62 x 118	Brick	1 to 2	15,430	Gate house and storage
18		89 x 125	Brick and concrete	2 to 5	37,775	Manufacturing
19		62 x 330	Concrete	1	29,075	Storage
20		33 x 114	Concrete	1	5,070	Manufacturing
21		43 x 98	Concrete	2	4,190	Office
22		28 x 85	Iron and tile	1	2,190	Storage
23		70 x 105	Brick and concrete	1 to 2	7,755	Power house
24		145 x 240	Brick and concrete	1 to 5	83,045	Manufacturing and seasoning
30		25	60 x 160	Frame	1	8,235
	26	50 x 74	Concrete	1	3,620	Machine shop
	27	19 x 28	Tile	1	525	Laboratory
	28	22 x 26	Concrete	1	585	Garage
	29	27 x 150	Iron	1	3,600	Storage
	30	30 x 45	Iron	1	1,350	Storage
	31	70 x 360	Brick and concrete	1 to 8	98,745	Manufacturing and seasoning
	32	45 x 140	Brick	1 to 2	13,515	Cafeteria and welfare
	33	84 x 380	Brick and concrete	1	27,605	Manufacturing

920,710

* * * * *

Exhibit D-1.

DEPRECIATION

The policy of the Corporation is to make ample provision for depreciation. During the past four and one-half years provision has been made for depreciation by writing off the value (original) of the various items at approximately the following rates: Buildings 4%, elevators 3%, heating and lighting 7½%, machinery 10%, furniture and fixtures 10%, automobiles 20%.

* * * * *

NAIRN LINOLEUM COMPANY
INCOME ACCOUNT FOR YEAR ENDING DECEMBER
31, 1923

Manufacturing profit after deducting cost of goods sold, including materials, labor and factory expense but exclusive of depreciation.....	\$5,398,831.88	
Add interest, dividends, etc.....	200,147.46	
	\$5,598,979.34	20
Selling, general and administrative expenses, exclusive of depreciation on office and selling equipment	2,454,064.51	
Operating profit.....	\$3,144,914.83	
Interest paid	56,838.55	
Profit before depreciation and Federal taxes.....	\$3,088,076.28	
Depreciation	350,057.80	
Profit exclusive of Federal taxes.....	\$2,738,018.48	30
Federal taxes for year ending December 31, 1923.	365,214.00	
Net profit.....	\$2,372,804.48	

Exhibit D-1.

SURPLUS ACCOUNT AS AT DECEMBER 31, 1923

	Earned surplus:	
	Balance, December 31, 1922.....	\$1,172,595.44
	Add: Excess tax reserve for previous years.	120,000.00
	Adjustment of supplemental compensa- tion of officers and staff.....	35,135.99
10		<u>1,327,731.43</u>
	Add: Net profit for year 1923... \$2,738,018.48	
	Less provision for Federal income taxes	365,214.00
		<u>2,372,804.48</u>
		\$3,700,535.91
	Deduct: Dividends paid:	
	Preferred Stock.....	\$15,000.00
	Common Stock.....	676,497.00
		<u>691,497.00</u>
		\$3,009,038.91
	Add: Appreciation arising from appraisal of fixed assets	4,172,082.37
20		<u>\$7,181,121.28</u>
	Deduct: Stock dividends.....	4,568,800.00
		<u>\$2,612,321.28</u>
	Balance, December 31, 1923.....	
	* * * * *	

NAIRN LINOLEUM COMPANY

CONSOLIDATED INCOME ACCOUNT FOR NINE
MONTHS ENDING SEPTEMBER 30, 1924

(Subject to adjustment at end of fiscal year)

30	Manufacturing profit after deducting cost of goods sold, including materials, labor and factory ex- pense, but exclusive of depreciation.....	\$3,785,175.92
	Add: Interest, royalties, dividends, etc.....	181,104.71
		<u>\$3,966,280.63</u>
	Less selling, general and administrative expenses, exclusive of depreciation on office and selling equipment	1,856,182.72
		<u>\$2,110,097.91</u>
	Operating profit	37,922.57
	Less: Interest paid.....	
		<u>\$2,072,175.34</u>
	Profit before depreciation and Federal taxes....	337,364.58
	Depreciation	
		<u>\$1,734,810.76</u>
40	Profit exclusive of Federal taxes.....	248,134.50
	Federal taxes for nine months, 1924 (estimated).	
		<u>\$1,486,676.26</u>
	Net profits	

Exhibit D-1.

CONSOLIDATED SURPLUS ACCOUNT AS AT
SEPTEMBER 30, 1924

(Subject to adjustment at end of fiscal year)

Balance, January 1, 1924.....	\$2,612,321.28	
Add: Net profit for nine months period ending September 30, 1924	\$1,734,810.76	10
Less: Provision for Federal in- come taxes (estimated).....	248,134.50	
	1,486,676.26	
	\$4,098,997.54	
Deduct: Dividends paid and de- clared:		
Preferred	\$12,500.00	
Common	547,187.50	
Common payable October 31, 1924	62,187.50	
	621,875.00	
Balance, September 30, 1924.....	\$3,477,122.54	

BALANCE SHEET AS AT SEPTEMBER 30, 1924

(Subject to adjustment at end of fiscal year)

Assets

Current assets:		
Cash	\$109,399.10	
Notes receivable.....	
Accounts receivable.....	2,450,168.18	
Inventories (cost or market whichever is lower):		
Finished merchandise and work in process.....	\$2,857,038.32	
Raw material and supplies..	421,186.67	
	\$3,278,224.99	
Total current assets.....	\$5,837,792.27	30
Investments and marketable securities.....	218,608.59	
Investments in affiliated companies.....	839,451.35	
Plant and equipment (as appraised):		
Real estate.....	\$562,849.00	
Buildings, machinery and equip- ment	10,125,831.60	
	\$10,688,680.60	
Less: Reserve for depreciation.	2,706,786.25	
	\$7,981,894.35	
Advances on new construction..	406,806.72	
	8,388,701.07	
Deferred charges to future operations.....	84,913.68	
	\$15,369,466.96	40

Exhibit D-1.

		<i>Liabilities</i>	
	Current liabilities:		
	Notes payable.....	\$200,000.00	
	Accounts payable—Trade.....	200,244.11	
	Accounts payable—Others.....	238,130.86	
	Accrued wages	48,975.28	
	Provision for Federal income taxes	349,280.48	
10	Dividend payable October 31, 1924	62,187.50	
	Total current liabilities.....		\$1,098,818.23
	Notes payable maturing 1925 (secured).....		468,924.24
	Miscellaneous reserves		324,601.95
	Capital Stock:		
	Preferred, authorized and issued:		
	2,500 shares par value \$100...	\$250,000.00	
	Common Stock:		
	Authorized 197,500 shares par value \$100		
	Issued 97,500 shares par value \$100	9,750,000.00	
			10,000,000.00
20	Surplus		3,477,122.54
			<u>\$15,369,466.96</u>

AGREEMENTS

Congoleum-Nairn, Inc., agrees with the New York Stock Exchange as follows:

30 Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies unless for retirement and cancellation, without notice to the Stock Exchange.

To publish semi-annually consolidated income account and balance sheet.

40 To publish once in each year and submit to the stockholders at least fifteen days in advance of the annual meeting of the Corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year; a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and

Exhibit D-1.

balance sheet of the parent Company and of all constituent, subsidiary, owned or controlled companies.

To maintain in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered. 10

To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amount of listed securities. 20

Not to make any change in listed securities of a transfer agency or of a registrar of its stock or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the Company.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities; so as to afford the holders of its securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable, and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York. 30

To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for listing thereof. 40

Exhibit D-1.

10 To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

To redeem Preferred Stock in accordance with the requirements of the Stock Exchange.

To notify the Stock Exchange if deposited collateral is changed or removed.

To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

The fiscal year ends December 31st.

20

GENERAL

The annual meeting of the stockholders of the Corporation is held at its offices, 295 Fifth Avenue, New York City, on the first Wednesday of June in each year.

30 The Directors (elected annually) are: Frank B. Foster, Haverford, Pa.; A. W. Erickson, Eversley Childs, Wm. H. Childs, E. W. Niver, all of New York City, New York; W. D. Flanders, Merion, Pa.; L. W. Fogg, Moylan, Pa.; P. D. Richards, Ardmore, Pa.; A. E. Van Bibber, Ardmore, Pa.; Peter Campbell, Newark, N. J.; Robert Campbell, Newark, N. J.; George McNeir, New York City, N. Y.; Sir Michael Nairn, Dysart, Scotland; Robert Spencer Nairn, Leslie, Scotland; William Collins Gordon Black, Kirkcaldy, Scotland.

40 The Executive Committee is: Frank B. Foster, A. W. Erickson, Peter Campbell, W. H. Childs, Eversley Childs, Sir Michael Nairn, Robert Spencer Nairn.

Exhibit D-1.

The Officers are: Frank B. Foster, President; A. W. Erickson, Chairman of the Board; Sir Michael Nairn, Vice-Chairman; P. D. Richards, Vice-President; W. D. Flanders, Vice-President; A. E. Van Bibber, Vice-President; Robert Campbell, Vice-President; L. W. Fogg, Secretary and Treasurer; C. L. Bailie, Assistant Secretary; L. H. Sanford, Assistant Treasurer. 10

The general office of the Company is located at Morris Building, Philadelphia, Pa.

Branch offices are located at Philadelphia, Pa.; New York City, N. Y.; Boston, Mass.; Pittsburgh, Pa.; Atlanta, Ga.; Chicago, Ill.; Minneapolis, Minn.; Kansas City, Mo.; Dallas, Texas; San Francisco, Cal.; New Orleans, La.

Foreign offices and warehouses are located at London, England; Paris, France; and Rio de Janeiro, Brazil. 20

The Transfer Agent is Central Union Trust Co., New York City.

The Registrar is Bankers Trust Company, New York City.

CONGOLEUM-NAIRN INC.,

FRANK B. FOSTER,

President. 30

This Committee recommends that on or after October 27, 1924, the above-described 1,641,026 shares of Common Stock without nominal or par value be admitted to the list on official notice of issuance in exchange for present outstanding Common Stock of Congoleum Company, Inc. (aggregating 960,000 shares) and in exchange for 681,026 shares of said Common Stock to be issued in the acquisition of the Nairn Linoleum Company, with authority to add 8,974 shares of said Common Stock 40

Exhibit D-1.

on official notice of issuance and payment in full, all in accordance with the terms of this application, making the total amount authorized to be listed 1,650,000 shares of Common Stock.

10

ROBERT GIBSON,
Chairman.

Adopted by the Governing Committee, October 22, 1924.

E. V. D. Cox,
Secretary.

20

October 25, 1924.

Certificate of Amendment of Certificate of Incorporation herein referred to changing name from Congoleum Company, Inc. to Congoleum-Nairn Inc. filed this day with Secretary of State of the State of New York.

30

CONGOLEUM-NAIRN INC.,
By FRANK B. FOSTER,
President.

40

Exhibit D-2.

THE AMERICAN APPRAISAL COMPANY.

June 27th, 1923.

The Nairn Linoleum Company,
Kearny, New Jersey.

10

Gentlemen :

We are herewith submitting to you our reports covering the appraisal we made as of the date of April 1, 1923 of your plant property and dwellings located at Kearny, New Jersey ; and parcel of land at West 38th Street and Loomis Place, Chicago, Illinois.

These reports consist of several individual sections comprising this, the summary volume, detailed working summaries and inventory volumes. Each typewritten sheet of these reports bears the water mark "The American Appraisal Co."

20

This volume contains the appraisal certificate of the total appraised sound values, a summary of the costs of reproduction new and sound values for the respective property classifications, and detail sheets as shown by the index preceding this volume covering the machinery and main units of equipment with itemized percentages of depreciation.

30

The large detailed working summaries showing the distribution of the costs of reproduction new and sound values for the respective classifications by buildings and other locations are furnished in a separate envelope which is contained in the pocket in the back of the summary volume. Percentages of depreciation are shown on the summary of sound values, except for such classifications as have the depreciation in detail.

The inventory volumes contain detailed descriptions and itemization of the units of the property

40

Exhibit D-2.

included in the appraisal priced in accordance with the cost of reproduction new as explained more fully in the following paragraph.

10 The cost of reproduction new as referred to in this report is determined in accordance with market prices prevailing April 1, 1923 for labor and materials, plus the cost of freight, cartage and installation, and represents the cost of replacing the property new in accordance with market conditions then prevailing.

20 The sound values are based upon the cost of reproduction new as defined, less depreciation resulting from age, service and deferred maintenance in accordance with the remaining expectancy of life at the date of April 1, 1923 based on the actual condition of the property as determined by personal inspection, and represent the actual serviceable value of this property to a going concern.

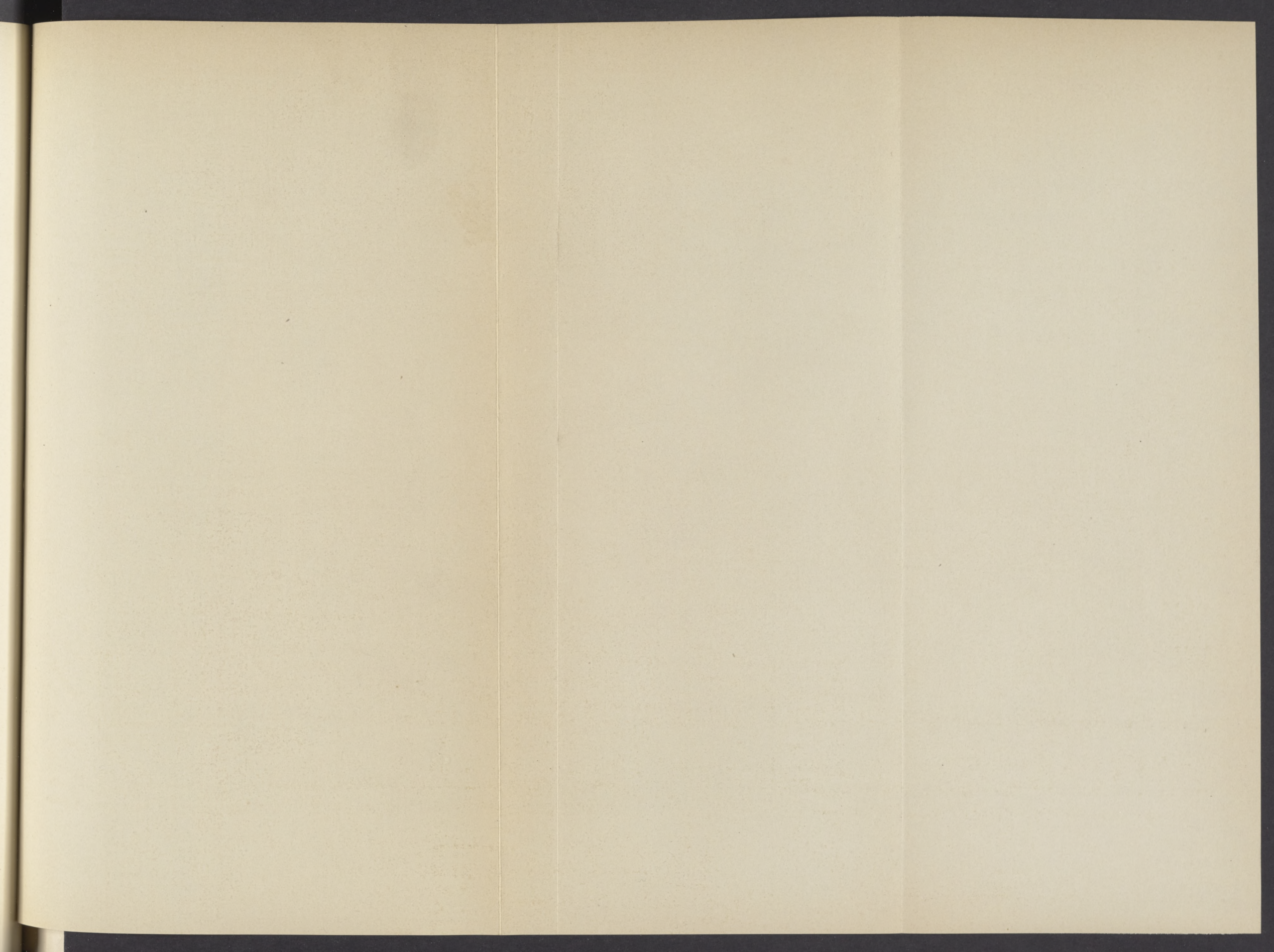
30 The accrued depreciation is designated by percentages of the cost of reproduction new representing the expired serviceable life of the property units, and is given by buildings and classifications on the detailed working summary of sound values, except for those classifications having the percentages of depreciation given in detail in this summary volume.

For convenient reference a plat plan showing the location and arrangement of the respective buildings included in this appraisal is placed in the back of this and immediately preceding the index of Volume No. 2 of this report.

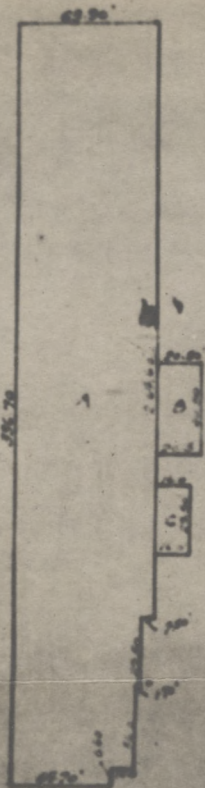
Respectfully submitted,

40 THE AMERICAN APPRAISAL COMPANY

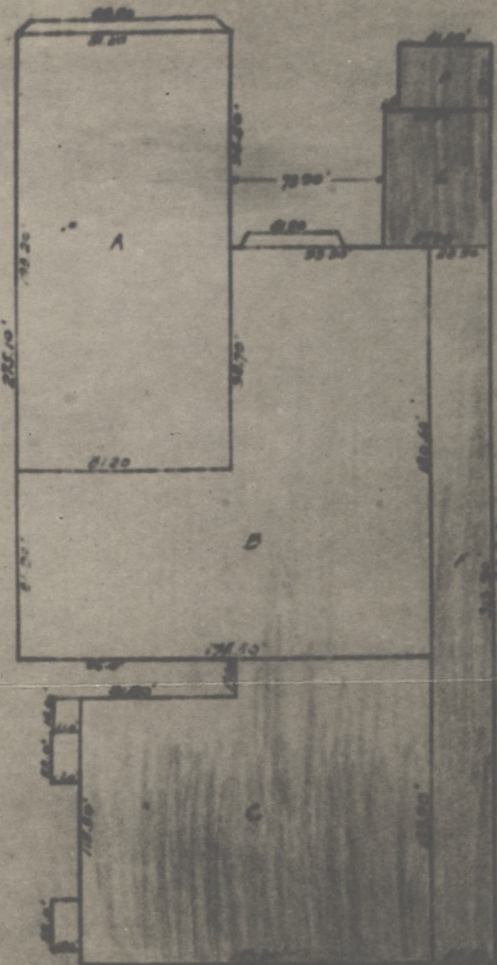
Per A. BAILY,
Vice-President.



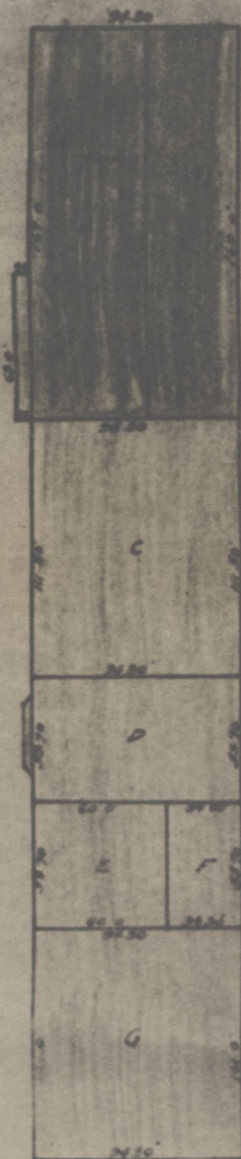
NO. 1 BUILDING
 BRICK - WOOD ROOF ON BULTUP
 TRUSSED GIRDERS - RE. CONC. FLOORS
 A - 2' TO ROOF -
 B - 2' TO ROOF
 C - 12' TO ROOF
 46,200 CUBIC FEET



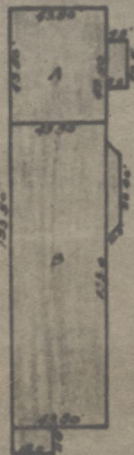
NO. 3 BUILDING
 BRICK - RE. CONC. FLOORS
 A - 25' TO ROOF - RE. CONC. ROOF
 B - 20' TO ROOF - WOOD ROOF
 C - 20' TO ROOF - WOOD ROOF
 D - 15' TO ROOF - CORR. IRON ROOF
 E - 15' TO ROOF - CORR. IRON ROOF
 F - 15' TO ROOF - RE. CONC. ROOF
 2,358,700 CUBIC FEET



NO. 2 BUILDING
 BRICK - RE. CONC. FLOOR & ROOF SYSTEMS
 A - 50' TO ROOF
 B - 50' TO ROOF (RE. CONC. BLDG)
 C - 50' TO ROOF
 D - 20' TO ROOF
 E - 25' TO ROOF
 F - 25' TO ROOF
 G - 25' TO ROOF
 1,254,900 CUBIC FEET



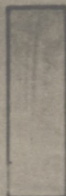
NO. 5 BUILDING
 BRICK - CONC. FLOORS
 A - 15' TO ROOF - RE. CONC. ROOF
 B - 35' TO ROOF - RE. CONC. ROOF
 240,700 CUBIC FEET



HOSPITAL
 BRICK & RE. CONC.
 35.5 x 25.0 - 15' TO ROOF
 3,250 CUBIC FEET



NO. 4 BUILDING
 BRICK - CORR. IRON ROOF
 86.5 x 24.7 - 25' TO ROOF
 50,800 CUBIC FEET



— RED BRICK CONSTRUCTION
 — GREEN STRUCTURAL STEEL
 — CRANGE-REINFORCED CONCRETE

NAIRN-LINOLEUM-CO.

KEARNY, N. J. SEPTEMBER 191924

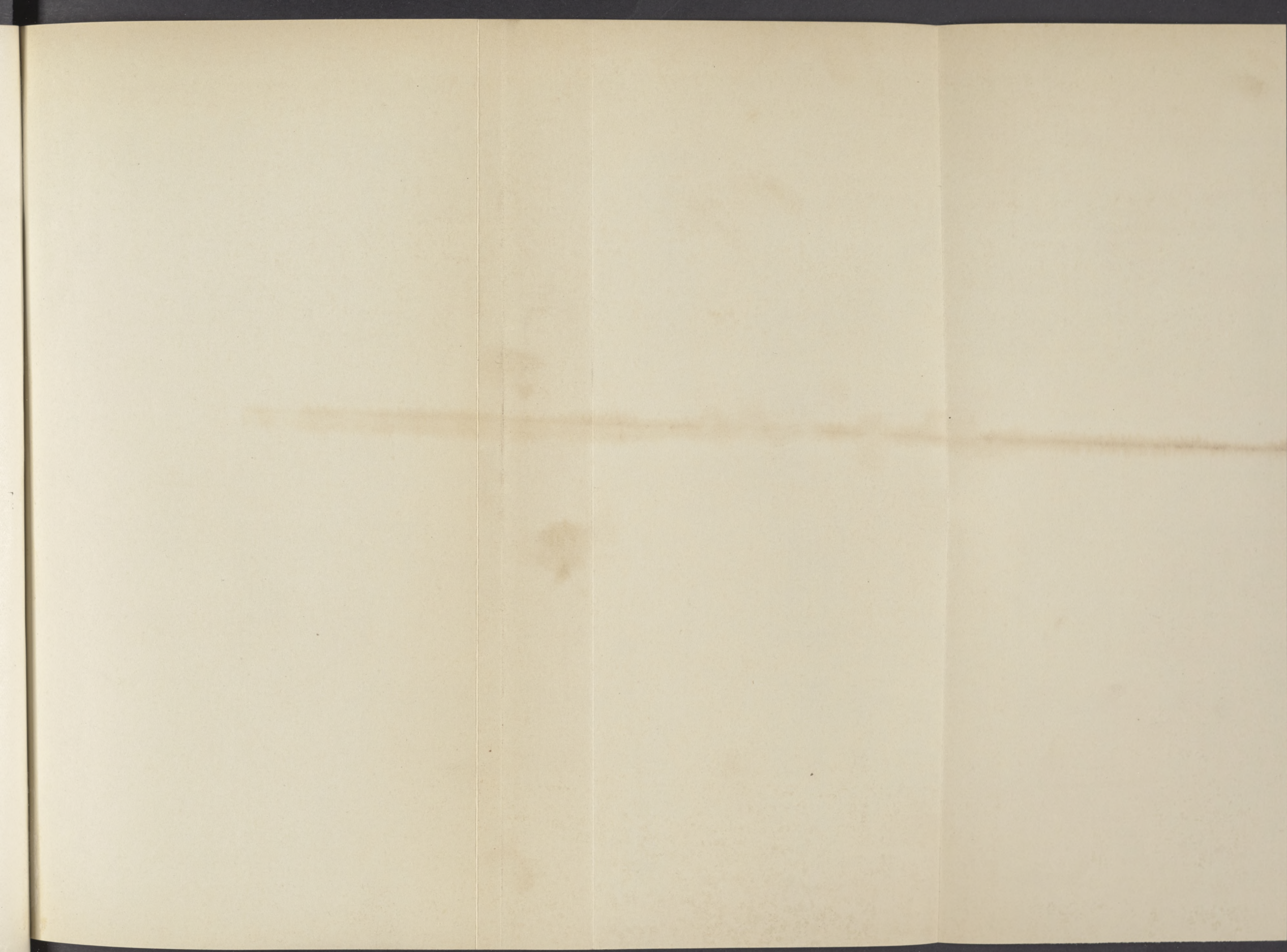
John B. ...

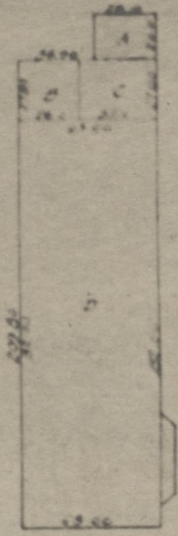
ENGINEER : BOARD OF ASSESSORS.

SCALE : 1" = 10'-0"

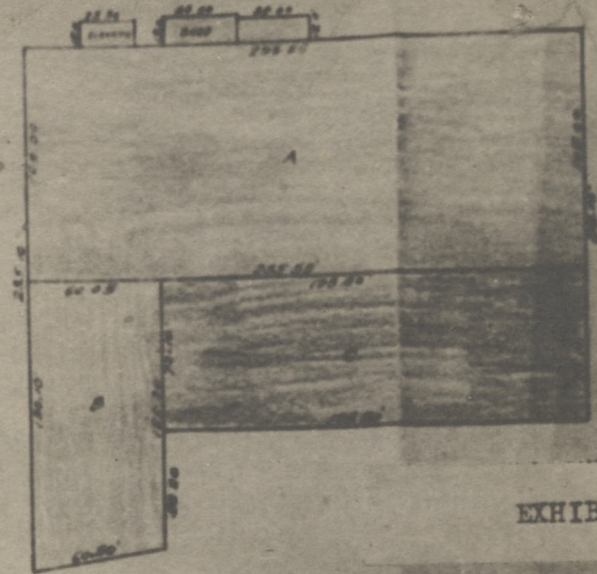
Exhibit D-3.

Exhibit D-4.



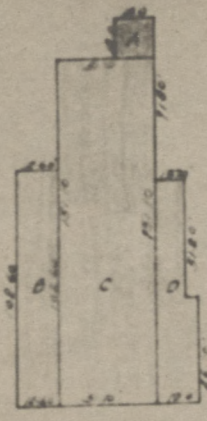


NO. 7-8 BUILDING
 BRICK - RE CONC FLOOR ON
 STEEL BEAMS - WOOD ROOF
 A - 6" TO ROOF
 B - 28" TO ROOF
 C - 28" TO ROOF
 D - 36" TO ROOF
 485,000 CUBIC FEET

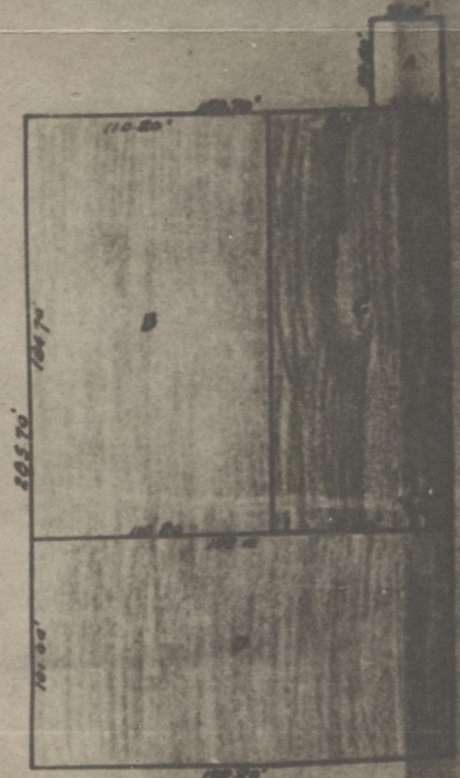


NO. 9 BUILDING
 BRICK - RE CONC FLOOR ON
 STEEL BEAMS - WOOD ROOF
 A - 28" TO ROOF
 B - 28" TO ROOF
 C - 28" TO ROOF
 225,000 CUBIC FEET

EXHIBIT D4



NO. 3 BUILDING
 BRICK - STEEL ROOF TRUSSES
 A - COAL ELEVATOR
 B - 18" TO BOT. CHORD
 C - 24" TO BOT. CHORD
 D - 10" TO BOT. CHORD
 225,000 CUBIC FEET



NO. 10 BUILDING
 RE CONC & BRICK
 ROOF & FLOOR CONC.
 A - 28" TO ROOF
 B - 28" TO ROOF
 C - 28" TO ROOF
 D - 28" TO ROOF
 E - 28" TO ROOF
 2,200,000 CU. FT.



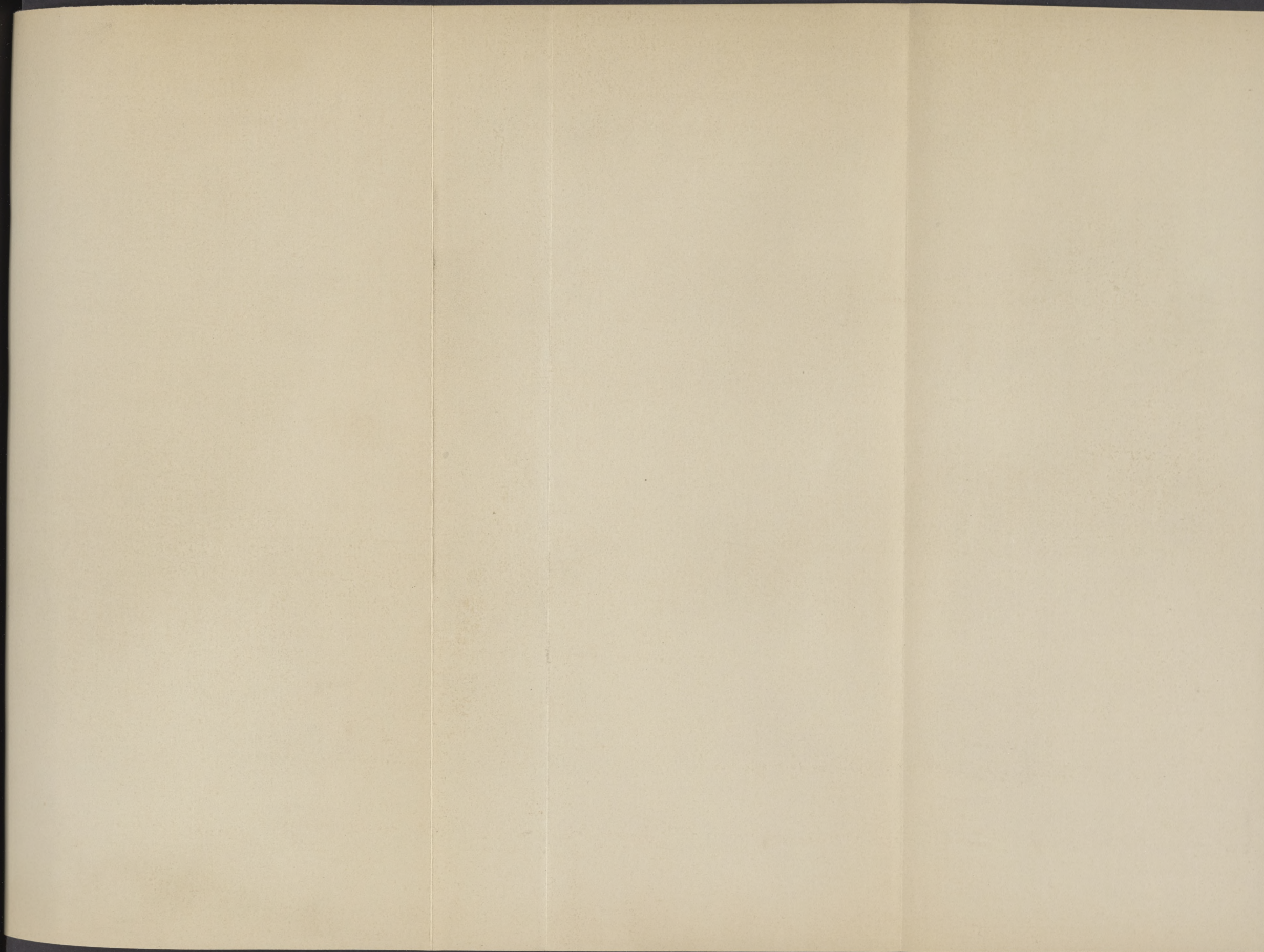
NO. 11 BUILDING
 BRICK - CONC FLOOR - WOOD ROOF
 28.30 x 77.30 - 28" TO ROOF
 9,000 CUBIC FEET

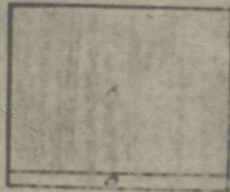


NO. 12 BUILDING
 BRICK - RE CONC FLOOR ON
 STEEL BEAMS - WOOD ROOF
 A - 28" TO ROOF
 B - 28" TO ROOF
 C - 28" TO ROOF
 2,200,000 CUBIC FEET

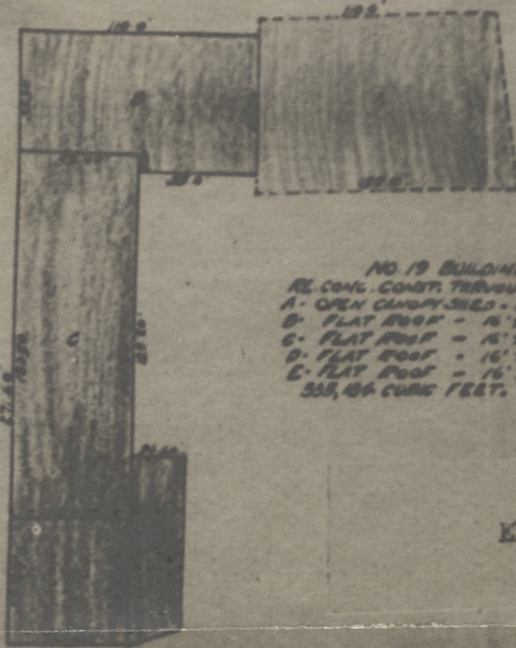
RED BRICK - EXTERIOR
 GREEN - STRUCTURAL STEEL
 GRAY - REINFORCED CONCRETE
 BLUE - HOLLOW TILE - EXTERIOR SILENE

NAIRN-LINOLEUM
 KEARNY, N.J. SEPTEMBER
 John Barkow
 ENGINEER : BOARD OF AS





NO. 15 BUILDING
 BRICK - RE. CONC. FLOOR &
 ROOF SYSTEMS
 A - 100.0 x 74.5 - 28' TO ROOF
 B - 100.0 x 60' - 12' TO ROOF
 215,800 CUBIC FEET

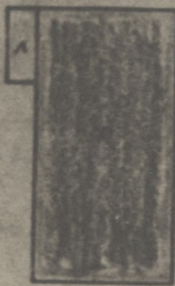


NO. 19 BUILDING
 RE. CONC. CONST. THROUGHOUT
 A - OPEN CANOPY SIES - 5 STEEL TRUSSES
 B - FLAT ROOF - 15' TO ROOF
 C - FLAT ROOF - 15' TO ROOF
 D - FLAT ROOF - 16' TO ROOF
 E - FLAT ROOF - 16' TO ROOF
 535,404 CUBIC FEET

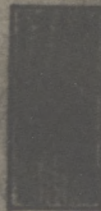


NO. 16 BUILDING
 RE. CONC. CONST. THROUGHOUT
 A - 87.0 x 63.0 - 22' TO ROOF
 B - 44.0 x 11.0 - 12' TO ROOF
 C - 63.0 x 21.0 - 16' TO ROOF
 117,540 CUBIC FEET

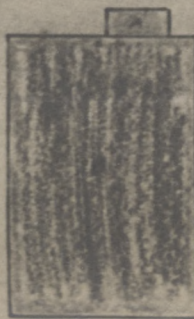
EXHIBIT D5



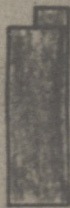
NO. 17 BUILDING
 RE. CONC. & BRICK - RE. CONC. FLOOR
 & ROOF SYSTEMS
 A - 32.5 x 14.0 - 15' TO ROOF
 B - 18.5 x 13.5 - 26' TO ROOF
 275,400 CUBIC FEET



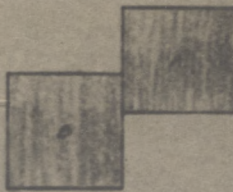
NO. 21 BUILDING
 RE. CONC. BUILDING - THROUGHOUT
 15.5 x 15.5 - 15' TO BOT. CHASE
 28,000 CUBIC FEET



NO. 18 BUILDING
 RE. CONC. & BRICK - RE. CONC. FLOOR
 & ROOF SYSTEMS
 A - 23.0 x 10.5 - 25' TO ROOF
 B - 124.5 x 0.65 - 20' TO ROOF
 887,540 CUBIC FEET



NO. 22 BUILDING
 CORR. IRON CASE - 1000' CORR. TRUSSES
 15.5 x 15.5 - 15' TO BOT. CHASE
 26,000 CUBIC FEET



NO. 23 BUILDING
 BRICK - STEEL TRUSSES
 1 - 30.0 x 9.5 - 15' TO BOT. CHASE
 D - 30.0 x 9.5 - 15' TO BOT. CHASE
 37,500 CUBIC FEET



NO. 20 BUILDING
 RE. CONC. CONST. THROUGHOUT
 A - 13.5 x 33.0 - 15' TO ROOF
 B - CORR. IRON EXTENSION
 55.0 x 1.30 - 3' TO ROOF
 67,500 CUBIC FEET



NO. 26 BUILDING
 RE. CONC. BUILDING THROUGHOUT
 20.0 x 20.0 - 15' TO ROOF
 35,000 CUBIC FEET



NO. 27 BUILDING
 RE. CONC. CONST. - FLAT WOOD ROOF
 28.0 x 13.0 - 12' TO ROOF
 6,300 CUBIC FEET

RED - BRICK CONSTRUCTION
 GREEN - STRUCTURAL STEEL
 ORANGE - REINFORCED CONCRETE

NAIRN - LINDLEUM - CO.

KEARNY, N.J. SEPTEMBER 10, 1926

John Bunker

ENGINEER - BOARD OF ASSESSORS

SCALE 1" = 40'

Exhibit D-5.

Exhibit D-6.

DEAN ...
ENGINEER, BOARD OF ASSOCIATES
John J. Thompson

MAIRN-LINOLEUM-CO.

- RED-PIEK CONSTRUCTION
- YELLOW-FRAME CONSTRUCTION
- GREEN-STRUCTURAL STEEL
- ORANGE-REINFORCED CONCRETE

NO. 31 BUILDING
 RE. CONC. CONST. - N.T. & DECK
 CURTAIN WALLS
 A-06 TO ROOF
 B-79 TO ROOF
 C-06 TO ROOF
 2,703,114 CUBIC FEET

NO. 28 BUILDING
 RE. CONC. CONST.
 20' x 20' - 20' HIGH
 1,100 CUBIC FEET

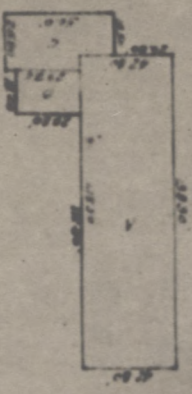
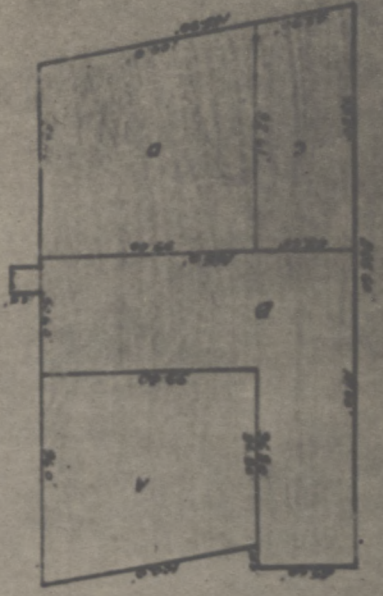
NO. 30 BUILDING
 CASE, ROOF ON WOOD TRUSSES - WOOD TRUSSES
 120' x 60' - 12' TO BOT. CHORD
 1,800 CUBIC FEET

NO. 29 BUILDING
 CASE, ROOF ON WOOD TRUSSES - WOOD TRUSSES
 120' x 60' - 12' TO BOT. CHORD
 1,800 CUBIC FEET

NO. 33 BUILDING
 RE. CONC. - ROCCURETUM WALLS
 FLOOR & ROOF SYSTEMS RE. CONC.
 AVERAGE - 25' HIGH
 60,152 CUBIC FEET

NO. 32 BUILDING
 DECK - WOOD FLOOR & ROOF SYSTEMS
 A-22 TO ROOF
 B-12 TO ROOF
 C-8 TO ROOF
 1,800 CUBIC FEET

NO. 24 BUILDING
 DECK - RE. CONC. FLOOR &
 ROOF SYSTEM
 A-54 TO ROOF
 B-48 TO ROOF
 C-54 TO ROOF
 D-54 TO ROOF
 1,100 CUBIC FEET



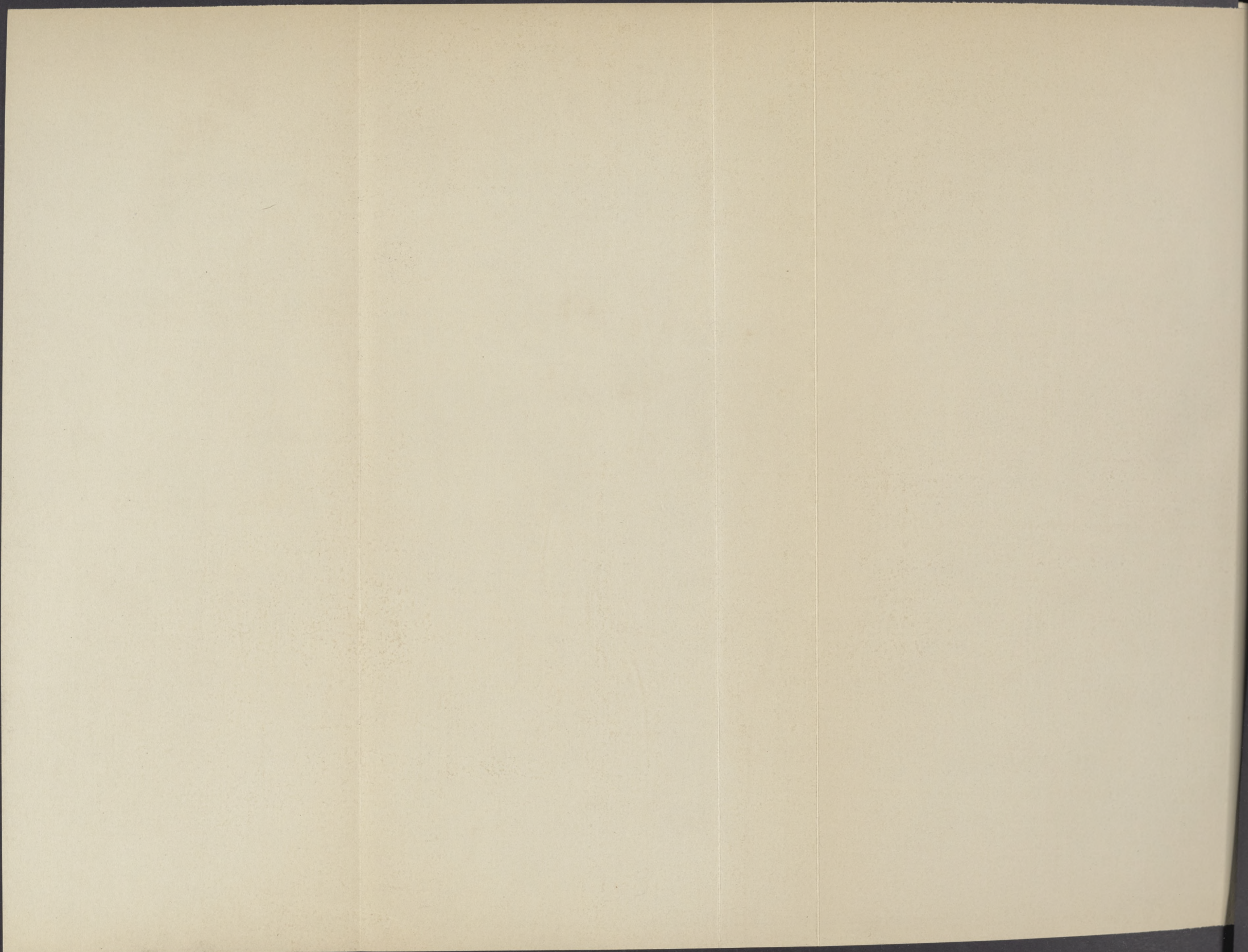


Exhibit D-7.

Exhibit D-8.

EXHIBIT D8

2

NOT TO SCALE
APPROVED BY THE BOARD OF ENGINEERS
COUNTY OF MORRIS
JAN 10 1918
H. P. KRAMER
MAY - 8 - 1918

PASSAIC

RIVER

1512

10
37
EXEMPT

3

NEW JERSEY HOME FOR DISABLED SOLDIERS

2400

2401

HILLSIDE

BELOOPE

DRIVE

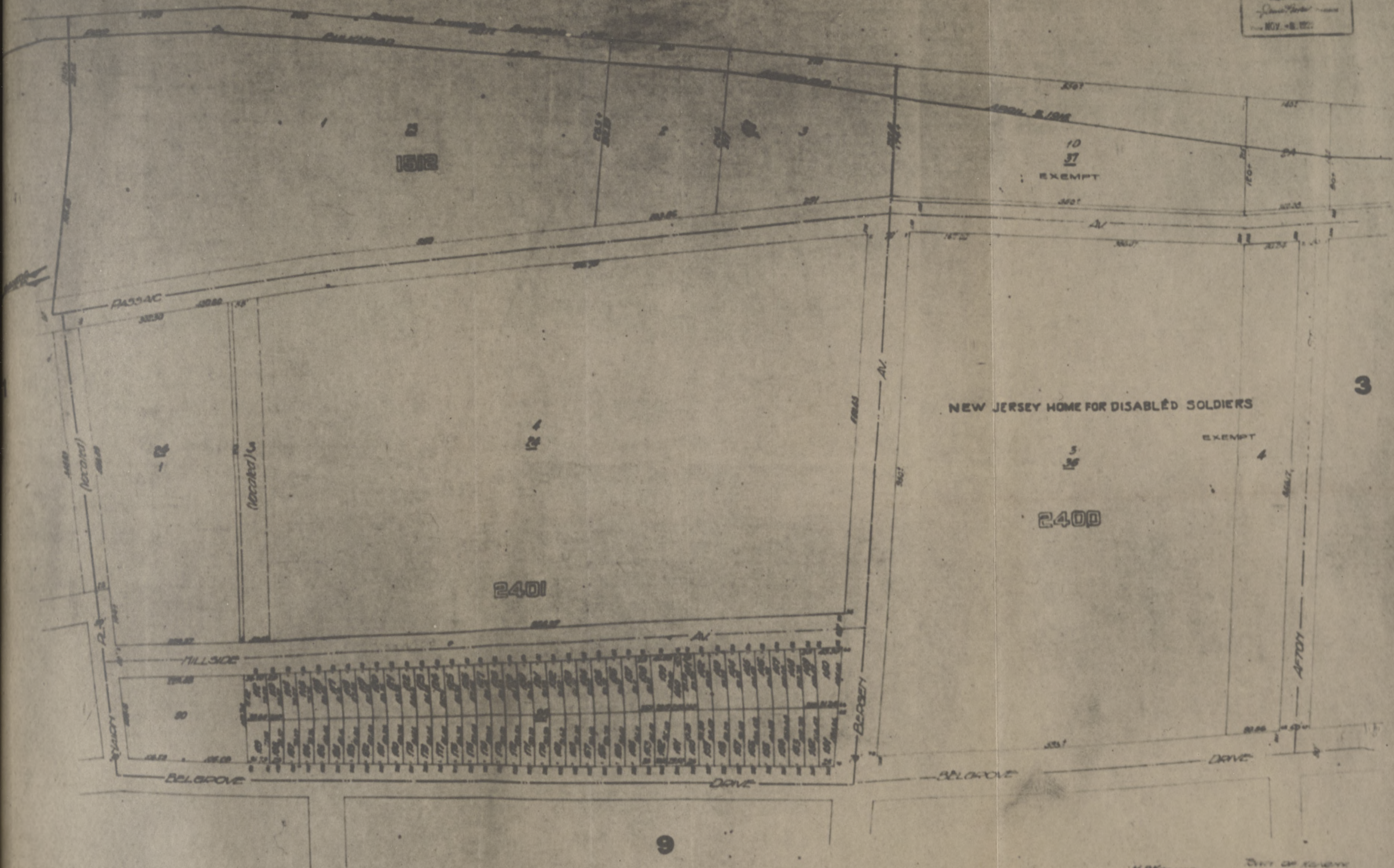
BELOOPE

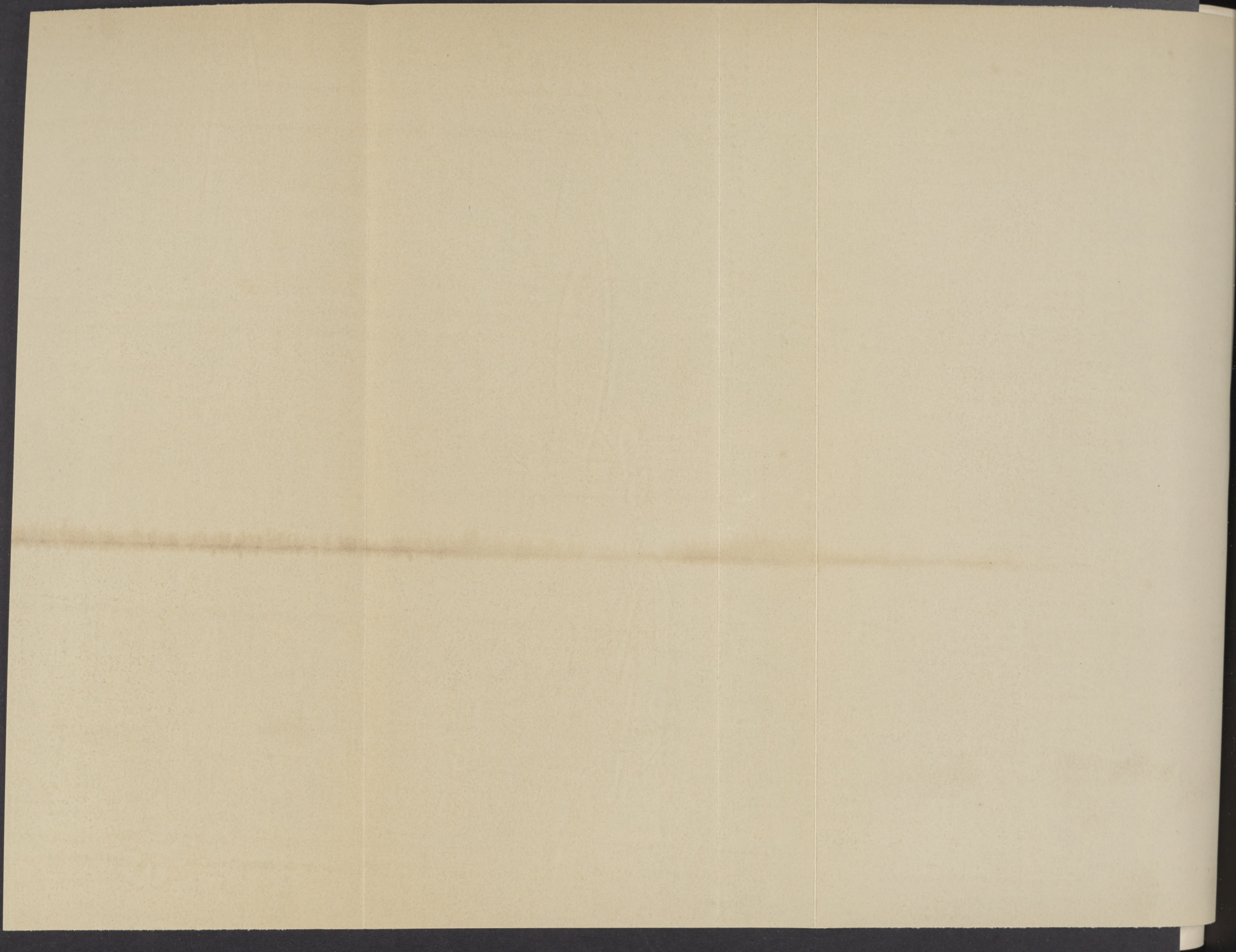
DRIVE

9

H. P. KRAMER
TOWN ENGINEER
MORRIS COUNTY, N. J.

DEPT. OF ENGINEERS
MORRIS COUNTY, N. J.
JAN 10 1918





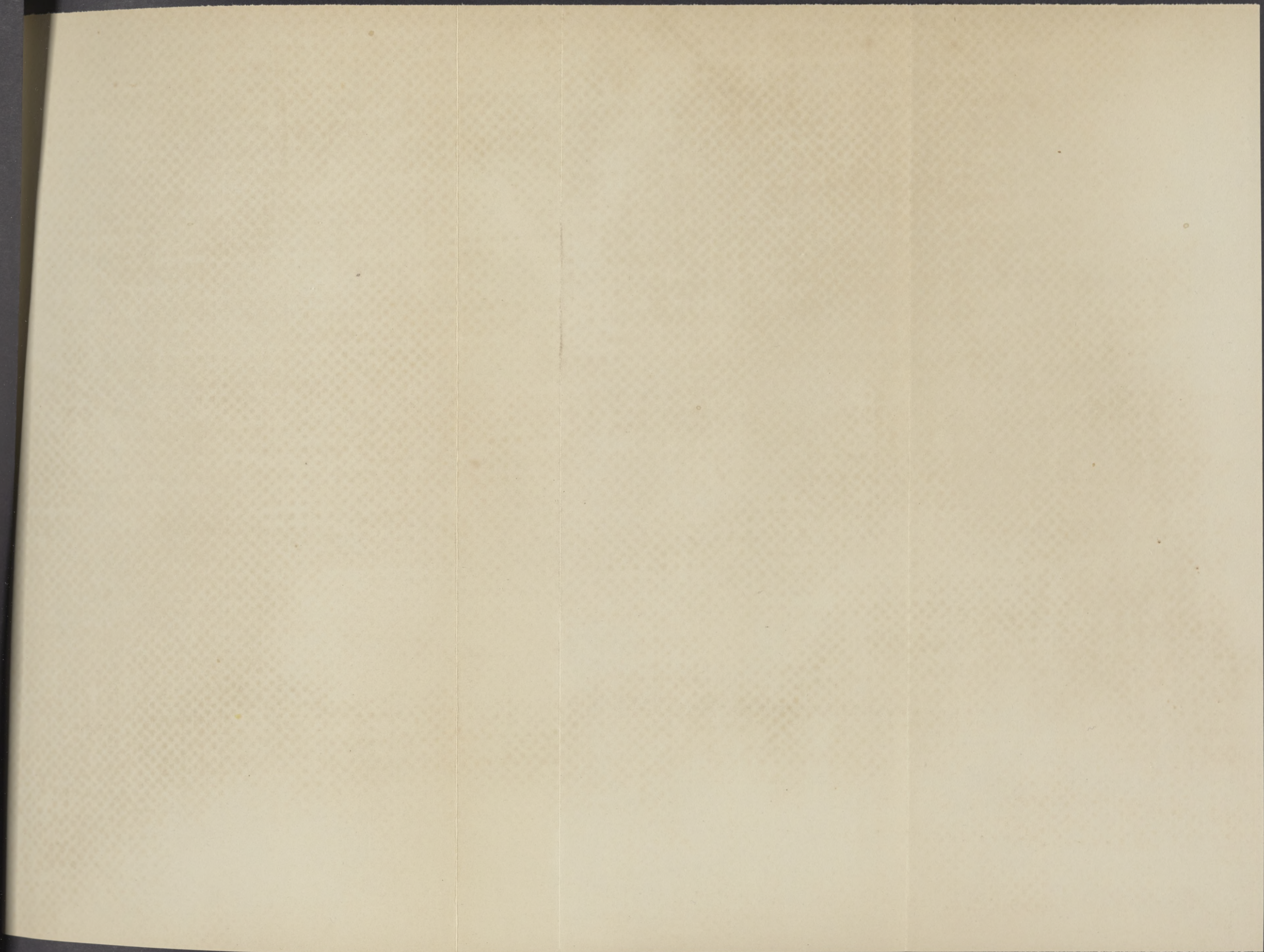
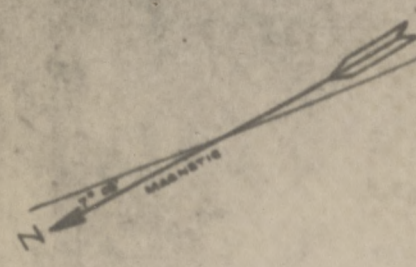
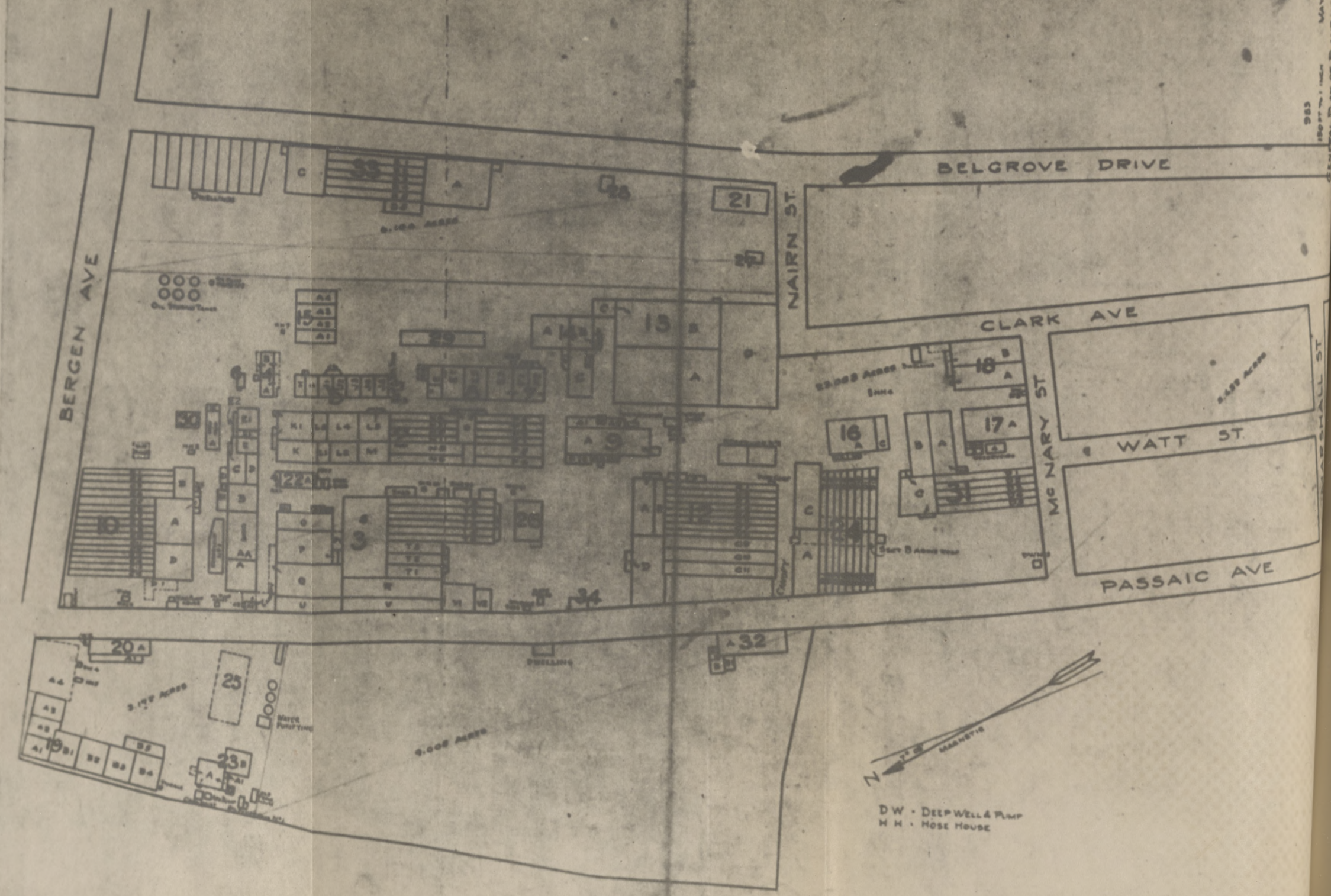


EXHIBIT D9

983
1907
MAY 27-1924
GENERAL PLAN OF PLANNING PROPERTY



DW - DEEP WELL & PUMP
H H - HOSE HOUSE

Exhibit D-9.

1887-1888 MAY 21-1924
GENERAL PLAN OF PLANTATION PROPERTY

WESLEY ST

03

01

Exhibit D-10.

THE NAIRN LINOLEUM WORKS, KEARNY, N. J.

Table of Rates for taxing purpose. Building valuation figured by cubic feet. October 20th, 1924.

	<i>Number of Building</i>	<i>Amount of Cubic Feet</i>	<i>Tax Valuation</i>	
10	Building Number 1	461200	@ .25¢ per Cubic Foot	\$115,300.00
	" " 2	1954900	@ " " " "	488,725.00
	" " 3	2566700	@ " " " "	641,675.00
	" " 4	50800	@ .20 " " " "	10,160.00
	" " 5	248700	@ .25 " " " "	62,175.00
	" " 6	9750	@ " " " "	2,437.00
	" " 7 & 8	485000	@ " " " "	121,250.00
	" " 9	225800	@ " " " "	56,450.00
	" " 10	2210000	@ " " " "	552,500.00
	" " 11	56000	@ " " " "	14,000.00
	" " 12	2292000	@ " " " "	573,000.00
	" " 13	1032900	@ " " " "	258,222.00
	" " 14	502272	@ " " " "	125,568.00
	" " 15	215800	@ " " " "	53,995.00
	" " 16	147560	@ " " " "	36,890.00
	" " 17	277130	@ " " " "	69,282.00
20	" " 18	887360	@ " " " "	221,840.00
	" " 19	335184	@ .10 " " " "	33,518.00
	" " 20	67300	@ .25 " " " "	16,825.00
	" " 21	91880	@ " " " "	22,970.00
	" " 22	26400	@ .50 " " " "	1,320.00
	" " 23	97520	@ .25 " " " "	24,380.00
	" " 24	1277500	@ " " " "	319,375.00
	" " 26	53650	@ " " " "	13,412.00
	" " 27	6380	@ " " " "	1,595.00
	" " 28	11440	@ " " " "	2,860.00
	" " 29	45000	@ .10 " " " "	4,500.00
	" " 30	19800	@ " " " "	1,980.00
	" " 31	2292430	@ .25 " " " "	573,000.00
	" " 32	154800	@ " " " "	38,700.00
	" " 33	691152	@ " " " "	172,788.00
30	TOTAL			\$4,630,700.00

This Bldg. Valuation were agreed upon by the Board of Assessors October 20th, 1924.

Recapitulation:	Bldg.	\$4,650,692.00
	Land	273,450.00
	Personal	2,500,000.00
		<hr/>
		7,424,142.00

Exhibit D-11.

No. 72599
 Date, Nov. 15, 1923
 Amt. \$105,237.00
 Filed, Dec. 28, 1923
 Comp. Apr. 15, 1924

NAIRN

To

10

CHARLES R. HEDDEN Co., INC.
 OF NEWARK, N. J.
 CHAS. P. BALDWIN, ARCH.

General works of the complete superstructure above and excluding the ground floor work of a reinforced concrete and brick mill building consisting of a printing section, pulling-out section, and four drying rooms, situated at the plant of (1) at said Kearny, N. J.—new building to be known as building No. 33. 20

Exhibit D-12.

No. 72596
 Date Nov. 20, 1923.
 Amt. \$45,795.00
 File, Dec. 28, 1923.
 Comp. 70 work days. 30

NAIRN

to

THOS. REYNOLDS' SONS, BLDERS OF
 IRVINGTON, N. J.
 CHAS. P. BALDWIN, ARCH.

Super structural work of 2 reinforced concrete and brick drying rooms to be known as Sections C-15 and C-16 at Bldg. No. 10, plant of (1) at Kearny, N. J. 40

Exhibit D-12.

- Build 2 additional drying rooms to westward of the present drying rooms. Do all necessary cutting, painting or building up of present construction; provide necessary ties, bonds and anchors and make proper connection between present finish and construction and new finish and construction such as roofing, fire escape, gutters, etc.

Exhibit D-13.

SHOEMAKER REPORT

January 21, 1926.

- Hobart & Minard,
20 24 Branford Place,
Newark, New Jersey.

CONGOLEUM-NAIRN PLANT

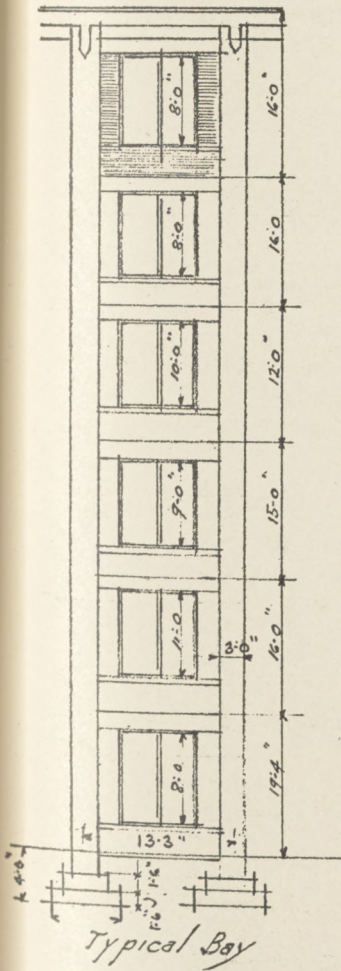
Gentlemen :

- In estimating the value of buildings and equipment of the Kearny Plant of Congoleum-Nairn, Inc., I have used the data prepared by the City Engineer, the general plans of buildings, the
30 heighths, dimensions and characters thereof insofar as obtainable from an examination of the plant made on October 29, 1925 with the Plant Manager, Mr. Taylor.

In preparing the cost of buildings, I estimated nearly all of the buildings by the area of walls, floors, and roofs of each structure, applying a unit of cost which in general would apply to any building of similar construction.

- 40 A typical unit of cost of wall area was taken from Building No. 31 (no foundations included):

Exhibit D-13.



TYPICAL WALL PANEL, FULL HEIGHT, NO FOOTINGS:

1 Pilaster 3'0 x 1'4 x 95'4—382 sq. ft.	826 sq.ft.	
1.9# 6 ³ / ₈ sq. x 95'4	1087#	
.48 96 ³ / ₈ sq. x 9.0	432	
7 Spandrels 1'8 x 1'0 x 10'3—123 sq. ft.	391 sq. ft.	10
3.4# 7-3-1" sq.—13'0	928	
.48 7-14- ³ / ₈ sq.—5'0"	245	
6 Cement Sills 10'3	61.5'	

<i>Windows</i>		
3—7'8 x 8'0	184.0	
1—7'8 x 10'0	76.7	
1—7'8 x 9'0	69.0	
1—7'8 x 11'0	84.4	
	<hr/>	
	414.1 sq.ft.	

<i>Brick Work</i>		
1—10'3 x 95'4	977	
—7—1'8 x 10'3	122	
—6—0'6 x 10'3	31	
—Windows	414	
	<hr/>	
	567	20

	410 x 21	8610 BR.	
<i>Costs</i>			
Cement Sills 61.5 @ \$1.50		92.20	
Windows Glazed 414 @ .90		372.60	
Brick Work 8610 @ \$60.00		516.60	

<i>Pilasters</i>			
Concrete 382 sq. ft. @ .50	191.00		
Forms 826 @ \$40.00	33.04		
Labor 826 @ 18¢	148.68		
Steel 1670# @ .06	100.20		
	<hr/>		
	472.92	492.92	

<i>Spandrels</i>			
Concrete 123 @ 50¢	61.50		30
Forms 391 @ \$40.00	15.64		
Labor 391 @ 18¢	70.38		
Steel 1300 @ .06	78.00		
	<hr/>		
	225.52	225.52	

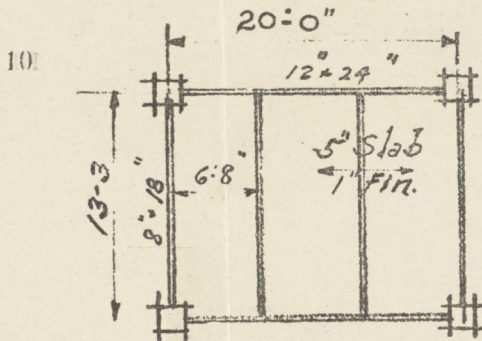
\$1679.64

<i>Area of Wall</i>			
95'4 x 13.3"—1263 sq. ft., cost per sq. ft.		\$1.33	
Add for contingencies		.13	

		<hr/>	
Builders Profit		1.46	
		.14	
		<hr/>	
		\$1.60	40

Exhibit D-13.

A typical unit of cost of floor and roof construction taken from this building is prepared as follows:



TYPICAL PANEL OF FLOOR

	1st	2nd	3rd	4th	5th
Cols	25	25	20	20	16
	19-4	16-0	15-0	12-6	16-0

20

Materials

1 Slab 20'0 x 13'3 x 5"
 3 Beams 8 x 1-6 x 13-3
 1 Girder 12 x 2-0 x 20-0
 1 Col 1-8 x 1-8 x 16-0

	sq. ft.	cu. ft.
	265	111
	160	39.75
	100	40.00
	107	48.00
	632	238

Steel

1—20'0 x 13-3 x 3#
 Beams 3-3-7/8 sq. 9# x 13.3
 Girders 1-5-1" sq. 20#
 Column 1-4 15#

	795#
	360
	400
	250
	1805#

30

Concrete—238 sq. ft. @ 50¢
 Lumber—632 sq. ft. @ \$40
 632 @ .18
 Steel—1805 @ .06 in pl.

	\$119.00
	25.28
	113.76
	128.30
	386.34

386.34 divided by 265 sq. ft. — 1.46 Cost per sq. ft.
 .14 10% Contingencies

	1.60
	.16 10% Bldgs. Profit
	1.76

Add for finish 10¢ per sq. ft.

40

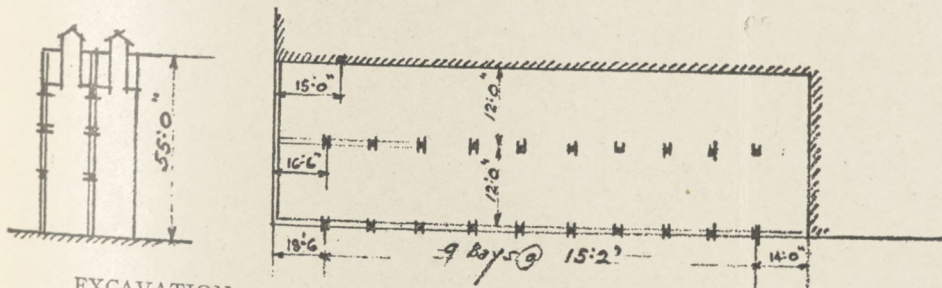
To be conservative, the cost of wall, floor and roof area was taken as \$1.60 per sq. ft.

Exhibit D-13.

To allow for the equipment such as heating, plumbing, electric and sprinkler systems this figure must be increased 25 to 30%. This percentage of increase, while approximate, is very close to actual cost of these items. Note that in adding this percentage to each building it covers the proportion of cost of boilers, pumps, engines, etc. that would have to supply these items of equipment of buildings.

10

In hanging, or seasoning rooms, there is but little data for comparison as regards the cost of similar structures, but I have made an estimate of two new rooms added to building No. 10 in November, 1923. This estimate was prepared as follows:



20

EXCAVATION

20—5'0 x 4'0 x 4'0	1600
2—15'0 x 2'6 x 1'0	755
1—35'0 x 2'8 x 4'0	378
1—24'0 x 2'8 x 4'0	259

30

2992 111 yds. @ \$2.50 277.50

CONCRETE FOOTINGS

20—5'0 x 4'0 x 1'4	433
20—4'0 x 3'0 x 1'4	320
1—70'0 x 2'8 x 1'4	252

1105 .40 442.00

CONCRETE COLUMNS

20—3'0 x 1'8 x 57'0	1140
---------------------	------

6.00 6840.00

CONCRETE SPANDRELS

8—2'0 x 1'0 x 12'6	100
72—2'0 x 1'0 x 12'2	878
4—2'0 x 1'0 x 18'6	74
4—2'0 x 1'0 x 16'6	66

40

1118 lin. ft. 3.00 3354.00

Exhibit D-13.

	CONCRETE ROOF—Incl. Roofing & Skylights			
	1—24'0 x 168'0	4032	1.50	6048.00
	CONCRETE FLOOR ON GROUND			
	2—11'0 x 168'0	3700 sq. ft.	.30	1110.00
	12" BR. ENCLOSURE WALLS—Incl. Windows			
	1—139' x 47'0	6533		
	1—137'0 x 47'0	6439		
10	1—25'0 x 53'0	1325		
		14297 300 M at	65.00	19500.00
	IRON BALCONYS			
	1—3'0 x 24'0 F. Escape	72 cu. ft.	2.00	144.00
	4—1'6 x 167'0	1002	2.00	2004.00
	4—167'0 Railings	668'	2.00	1336.00
				41055.50
		10%		4105.55
				45161.05
		Architect 6%		2709.66
				\$47870.71

20 Based on Wall and Floor Area—22361 sq. ft.
 equals 21.4¢ per cu. ft.
 \$2.11 sq. ft.

30 This, you will note, figures on the basis of 21.4¢ per cubic foot of the cubic contents of the rooms added, or \$2.11 per square foot of wall and floor area, and this unit has been used for buildings where seasoning rooms are connected to buildings such as buildings No. 2-3-10-12 and 31. Building No. 33 has also seasoning rooms but, as this building was estimated in detail, I have not found it necessary to use the unit, but as a check figure you will note attached to detail estimate a check figure. Seasoning rooms based on a unit of \$2.11 and for wall and floor area a unit of \$1.50 as the enclosing walls and roof are of light construction due to the use of structural steel for support of the roof, the walls generally being of brick 12" in thickness.

40 Yours very truly,

MARSHALL N. SHOEMAKER.

Exhibit D-13.

CONGOLEUM-NAIRN, INC. KEARNY PLANT

SUMMARY—VALUE OF BUILDINGS AND EQUIPMENT

MARSHALL N. SHOEMAKER,
15 Central Ave.,
Newark, N. J.

10

No.	Buildings	Equipment
PH 1	108410	27102
2	533207	44735
3	609966	105290
4	10263	
5	54096	13524
6	3946	486
7)		
8)	105137	26115
9	47296	11824
10	617815	33573
11	20219	5055
12	644618	44374
13	227970	56992
14	118690	29672
15	40676	9868
16	46607	11651
17	39864	14966
18	166717	41679
19	113940	23844
20	21488	4754
21	30469	6380
22	6852	
PH 23	33106	8276
24	404714	58314
25	2000	
26	17703	3334
27	2334	500
28	3469	
29	11700	
30	5340	
31	513926	80340
32	36701	5240
33	116932	27576
34	6820	990
Misc. structures in yard 3%	\$4,722,991	\$698,454
	141,689	Misc. piping in yard 20% 139,691
	\$4,864,680	\$838,145

20

30

40

Exhibit D-13.

SUMMARY—BLOCK No. 24

	Building No. 1	135512
	2	577942
	3	715256
	4	10263
10	5	67620
	6	4432
	7 & 8	131252
	9	59120
	10	653388
	11	25274
	12	688992
	13	284962
	14	148362
	15	50544
	22	6852
	26	21037
	29	11700
	30	5340
	34	7810
		<hr/>
20		3,605,658

GENERAL SUMMARY

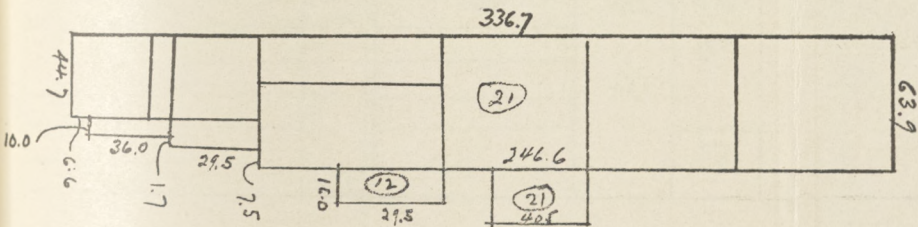
	No. 22—181	1,378,778	1,220,450	614,690
	“ 23—#1	41,941	38,700	12,500
	“ 23—#2 & 3	207,408	74,750	68,800
	“ 24	3,605,658	3,106,250	926,250
		<hr/>	<hr/>	<hr/>
		5,233,785	4,440,150	1,622,240
	“ 25	187,660	190,500	14,375
		<hr/>	<hr/>	<hr/>
30	Misc. structures & Piping in Yard	5,421,445	4,630,650	1,636,615
		281,380		
		<hr/>		
		5,702,825		

Exhibit D-13.

BLOCK No. 24

BUILDING No. 1—Brick, Wood Roof, R. C. Floors—
POWER HOUSE & MFG.

10



WALLS

1—336.7 x 21.0	7071
1—246.6 x 21.0	5179
5—63.9 x 21.0	6710
1—56.4 x 21.0	1184
2—44.7 x 21.0	1877
1—72.1 x 21.0	1313
1—40.5 x 21.0	850
2—29.5 x 21.0	861
2—16.0 x 12.0	384
1—29.5 x 12.0	354

20

FLOORS & ROOF

2—63.9 x 246.6	31512
2—44.7 x 72.1	6445
2—10.0 x 65.5	1310
2—1.7 x 29.5	100
2—16.0 x 29.5	944
2—20.5 x 40.5	1662

30

25783 @ \$2.00 \$51,566

41973 @ \$2.00 83,946

Equipment

67756 @ .40 27,102

Building

\$108,410

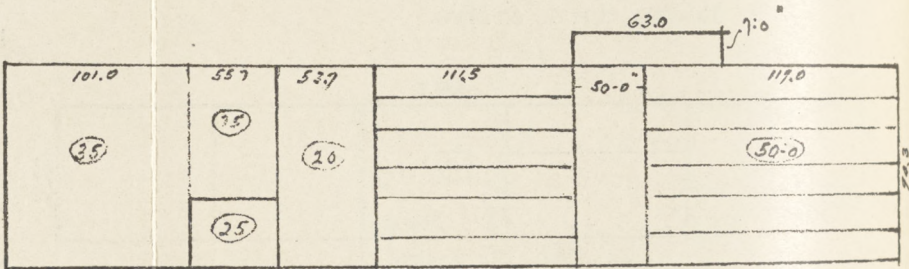
40

Exhibit D-13.

BLOCK No. 24

BUILDING No. 2—Concrete—7 Stories—Mfg.

10



20

DRYING LOFT

7 Walls	111.5 x 50.0	39025
7 "	119.0 x 50.0	41650
4 "	94.3 x 50.0	18860
2 "	7-0 x 50-0	700
1 "	63-0 x 50-0	3150

103385 @ \$2.11 218142.

FLOORS & ROOF

2—	111.5 x 94.3	21029
2—	119.0 x 94.3	22443
5—	50.0 x 94.3	23575
5—	7-0 x 63.0	2205

69252 @ \$2.11 146122. \$364,264.

BALANCE WALLS

2—	101.0 x 35-0	7070
1—	94.3 x 35-0	3300
2—	60-0 x 75-0	9000
2—	55.7 x 75-0	8355
1—	55.7 x 25-0	1393
1—	34.3 x 35-0	1200
1—	34.3 x 20-0	686
2—	53.7 x 20-0	2148

33152 @ \$2.00 66304.

FLOORS

8—	55.7 x 60.0	26736
4—	101.0 x 94.3	38097
2—	34.3 x 55.7	3821
2—	53.7 x 94.3	10033

78687 @ \$2.00 147374. \$213,678.

40

Equipment

111839 @ .40

577,942.

44,735.

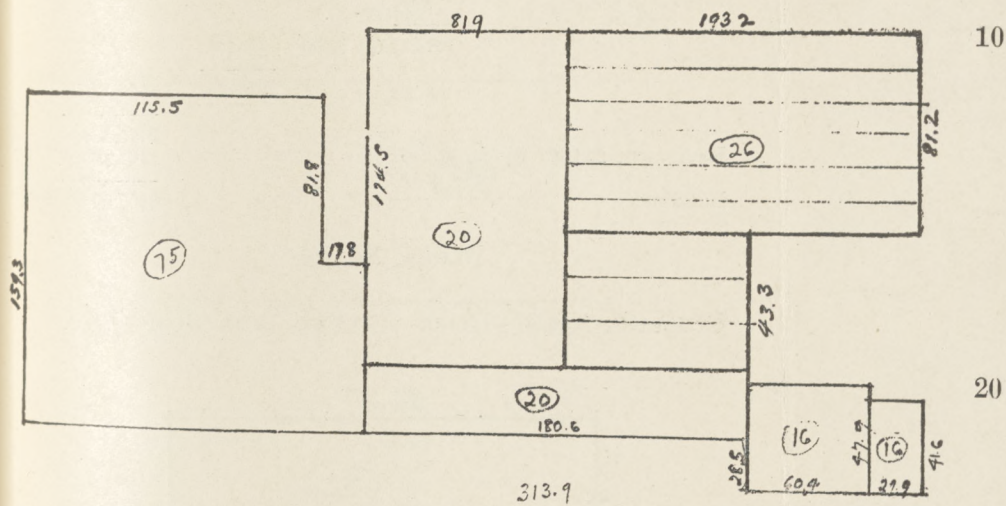
Building

\$533,207.

Exhibit D-13.

Block No. 24

BUILDING No. 3—Brick—Reinf.—MFG. & SEASONING.



BIN WALLS

7—193.2 x 26.0	35161
2—81.2 x 26.0	4222
3—100.0 x 26.0	7800
2—43.3 x 26.0	2252

FLOORS & ROOF

2—193.2 x 81.2	31375
2—43.3 x 100.0	8660

BALANCE WALLS

1—81.9 x 20.0	1638
1—174.5 x 20.0	3490
2—180.6 x 20.0	7224
1—12.5 x 20.0	430
2—60.4 x 16.0	1933
1—41.6 x 16.0	663
2—29.9 x 16.0	956
1—47.9 x 16.0	766
1—28.5 x 14.0	399
1—313.9 x 14.0	4395
2—133.3 x 75.0	19995
2—159.3 x 75.0	23895

89470 @ \$2.11 188782. \$188,782.00

65784 @ \$2.00 131568.

10

20

30

40

Exhibit D-13.

FLOORS

2—41.6 x 29.9	2488
2—60.4 x 47.9	5786
2—313.9 x 28.5	17892
2—180.6 x 21.5	7766
2—81.9 x 153.0	25061
7—115.5 x 159.3	128800
7—17.8 x 77.5	9660

197453 @ \$2.00 394906.

526474. 526,474.

Equipment 263,227 sq. ft. at .40

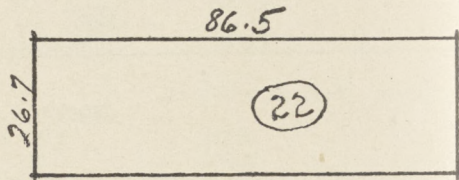
\$715,256.
105,290.

Building

\$609,966.

BLOCK No. 24

BUILDING No. 4—Brick—Corrug. Iron Roof—MFG.



Excavation	230.4 x 4'0 x 2.0	1843—70 @ \$2.50	175.00
Footings	230.4 x 2-0 x 1-0	461 @ .50	230.50
Walls	230.4 x 25.0 x 1-0	5760 @ 1.05	6048.00
Floor	86.5 x 26.7	2310 @ .35	808.50
Roof	29.0 x 88.5	2567 @ .60	1540.20

8802.20

10% 880.

Architect 6% 9682.
581.

\$10263.

BASED ON SQUARE FEET OF WALL AND FLOOR AREA

Floors & Roof
2—26.7 x 86.5

4619

Walls

1—226'-0 x 25'0

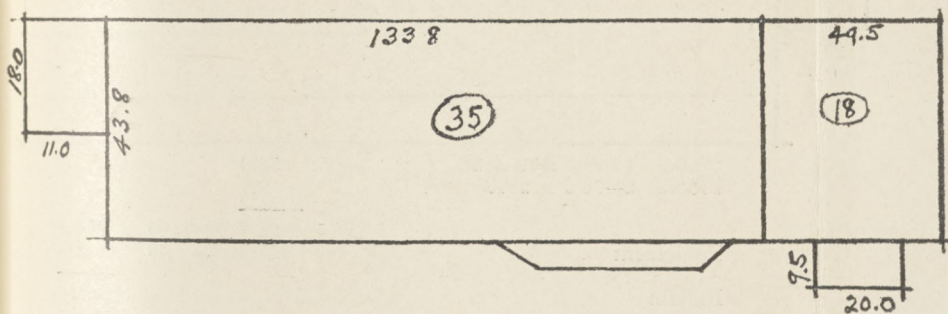
5650

10269 @ \$1.00 \$10269.

Exhibit D-13.

BLOCK No. 24

BUILDING No. 5—Brick, one story—MANUFACTURING



10

20

WALLS

2—133.0 x 35.0	9310
2—43.8 x 35.0	3066
1—40.0 x 35.0	1400
2—49.5 x 18.0	1782
1—43.8 x 18.0	788
1—39.0 x 18.0	702

17048 @ \$2.00 34096.

FLOORS & ROOF

2—11.0 x 18.0	396
2—133.0 x 43.8	11650
2—49.5 x 43.8	4336
2—9.5 x 20.0	380

16762 @ \$2.00 33524.

30

Equipment

33810 @ .40

\$67620. Total

13524.

\$54096. Building

40

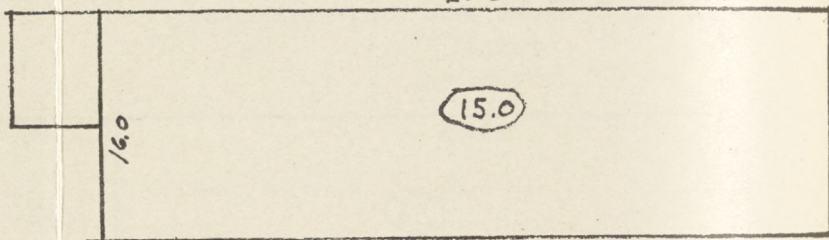
Exhibit D-13.

BLOCK No. 24

BUILDING No. 6—Brick—Wood Roof—STORAGE.

28.0

10



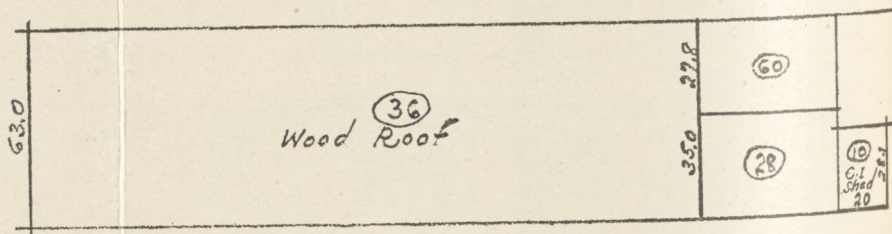
Walls	44-0 x 15.0 x 2	1320		
Floors	2—16'0 x 28.0	896		
			2216 @ \$2.00	\$4432.
Equipment		2216 @ .40		486.
Building				\$3946.

20

BLOCK No. 24

BUILDING No. 7 & 8—Brick—1 & 2 Stories—Steel & Concrete.

30



WALLS				
1—	63.0 x 36.0	2268		
2—	182.0 x 36.0	13104		
2—	27.8 x 60.0	3336		
2—	27.8 x 60.0	3336		
1—	35.0 x 36.0	1260		
1—	35.0 x 28.0	980		
1—	27/8 x 28.0	779		
1—	68.1 x 10.0	681		
		25,744	@ \$2.00	51488.
FLOORS & ROOF				
3—	63'0 x 182'0	34398		
2—	35.0 x 27.8	1946		
4—	27.8 x 27.8	3201		
		39545	@ \$2.00	79090.
SHED	20 x 28.1	1124	@ .60	674.
				\$131252.
Equipment		65289	@ .40	26115.
Building				\$105137.

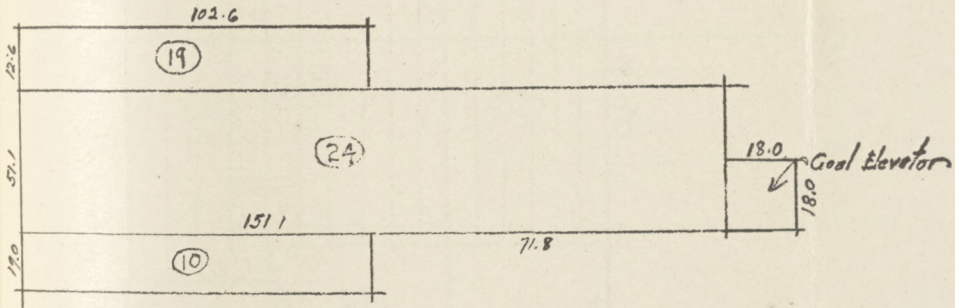
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Exhibit D-13.

Block No. 24

BUILDING No. 9—Brick—Steel Roof—POWER HOUSE

10



20

WALLS

2—151.1 x 24.0	7253
2—51.1 x 24.0	2452
2—12.6 x 19.0	481
1—102.6 x 19.0	1949
2—19.0 x 10.0	380
1—97.3 x 10.0	973

13488 @ \$2.00 26976.

FLOORS

2—51.1 x 151.1	10332
2—13.7 x 51.2	1403
2—19.0 x 46.0	1752
2—12.6 x 102.6	2585

16072 @ \$2.00 32144.

30

Equipment

29560 @ .40

\$59120.
11824.

Building

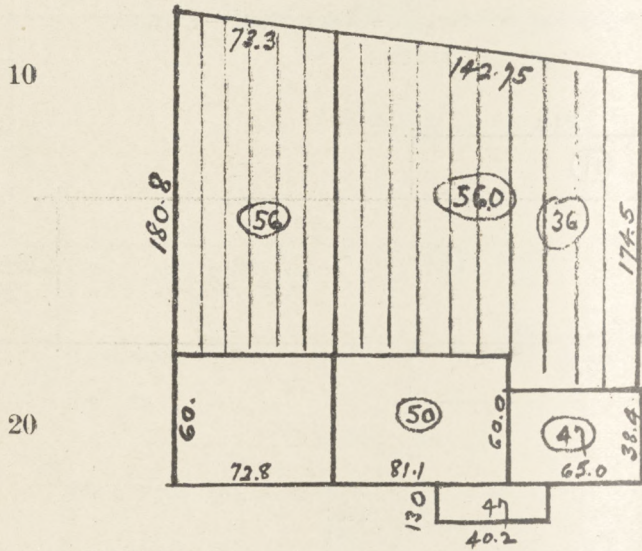
\$47296.

40

Exhibit D-13.

BLOCK No. 24

BUILDING No. 10—Brick, R. C. 1-5 Stories—
MANUFACTURING



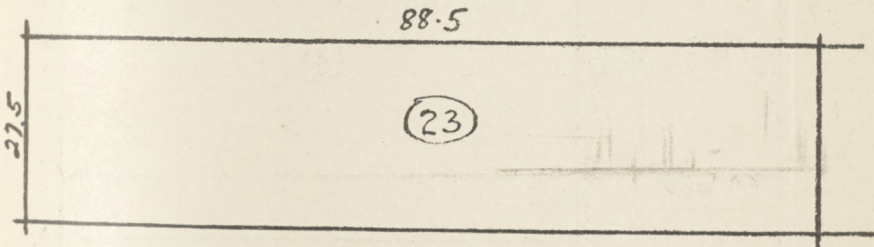
	BIN WALLS			
	13—171.9 x 56.0	125143		
	2—153.9 x 56.0	17237		
	4—174.5 x 36.0	26928		
	1—60.0 x 36.0	2160		
		171468	@ \$2.11	361,797.
	FLOORS			
	2—171.9 x 153.9	32910		
	2—60.0 x 174.5	20940		
30		53850	@ \$2.11	113,623.
	BALANCE WALLS			
	3—60-0 x 50-0	9000		
	1—153.9 x 50.0	7695		
	2—65.0 x 47.0	6110		
	1—38.4 x 47.0	1805		
	1—66.2 x 47.0	3111		
		27721	@ \$2.00	55,442.
	FLOORS			
	5—153.9 x 60.0	46170		
	5—65.0 x 38.4	12480		
	5—13.0 x 40.2	2613		
40		61263	@ \$2.00	122,526.
	Equipment	88934	@ .40	653,388.
	Building			35,573.
				<u>\$617,815.</u>

Exhibit D-13.

BLOCK No. 24

BUILDING No. 11—Brick—R. C. & Wood Roof—
MANUFACTURING

10



WALLS

2—88.5 x 23
2—27.5 x 234071
1265

20

FLOORS

3—27.5 x 88.5

7301

Equipment

12637 @ \$2.00
12637 @ .40\$25,274.
5,055.

Building

\$20,219.

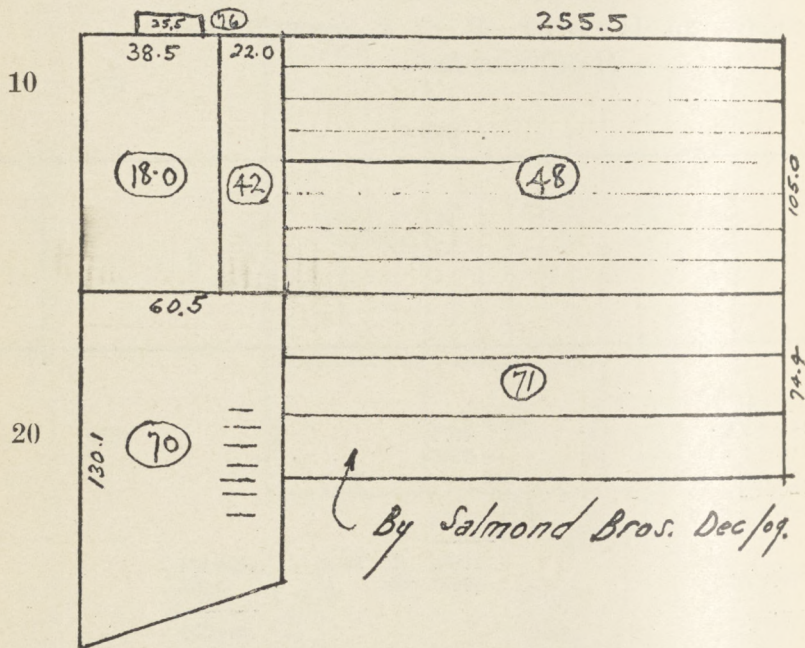
30

40

Exhibit D-13.

BLOCK No. 24

BUILDING No. 12—Brick—R. C. Floors & Roof—
4 Stories.



30

BIN WALLS

8—195.5 x 48.0	75072
2—105.0 x 48.0	10080
4—195.5 x 71.0	55522
2—74.4 x 71.0	10565
Floors 2—195.5 x 179.4	70145

221384 @ \$2.11 \$467,120.

BALANCE WALLS

1—49.5 x 76.0	3762
2—105.0 x 42.0	8820
2—22.0 x 42.0	1848
1—38.5 x 18.0	693
2—60.5 x 70.0	8470
1—130.1 x 70.0	9107
1—52.2 x 70.0	3654

36354 @ \$2.00 72,708.

FLOORS

7—128.3 x 60.5	54335
2—38.5 x 105.0	8085
5—22.0 x 105.0	11550
2—12.0 x 25.5	612

74582 @ \$2.00 149,164.

Equipment

110936 @ .40

Building

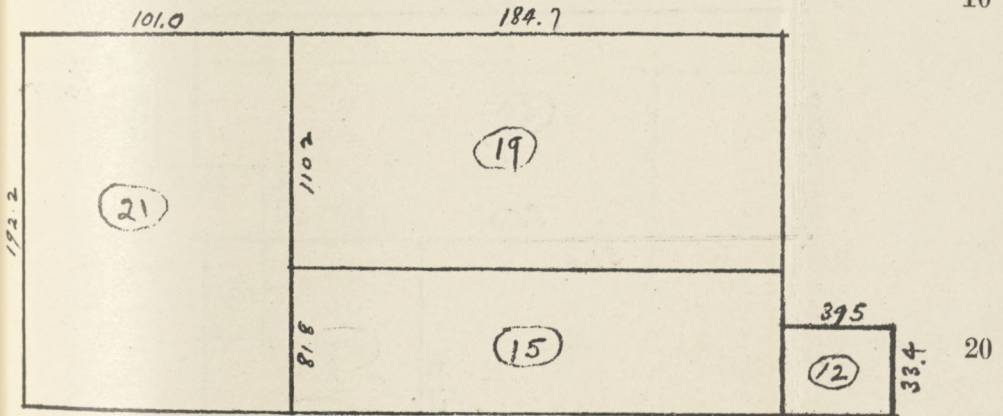
149,164.
688,992.
44,374.
\$644,618.

10

Exhibit D-13.

BLOCK No. 24

BUILDING No. 13—Brick & R. C.—One Story—
MANUFACTURING



WALLS

2—101.0 x 21.0	4242
2—192.3 x 21.0	8072
2—184.7 x 19.0	7019
2—110.2 x 19.0	4187
2—81.8 x 15.0	2454
1—184.7 x 15.0	2770
2—39.5 x 12.0	948
1—33.4 x 12.0	401

30093 @ \$2.00 \$60,186.

FLOORS

2—192.2 x 101.0	38824
2—184.7 x 110.2	40708
2—81.8 x 184.7	30217
2—33.4 x 39.5	2639

112388 @ \$2.00 224,776.

Equipment

142481 @ .40 56,992.

Building

\$227,970.

10

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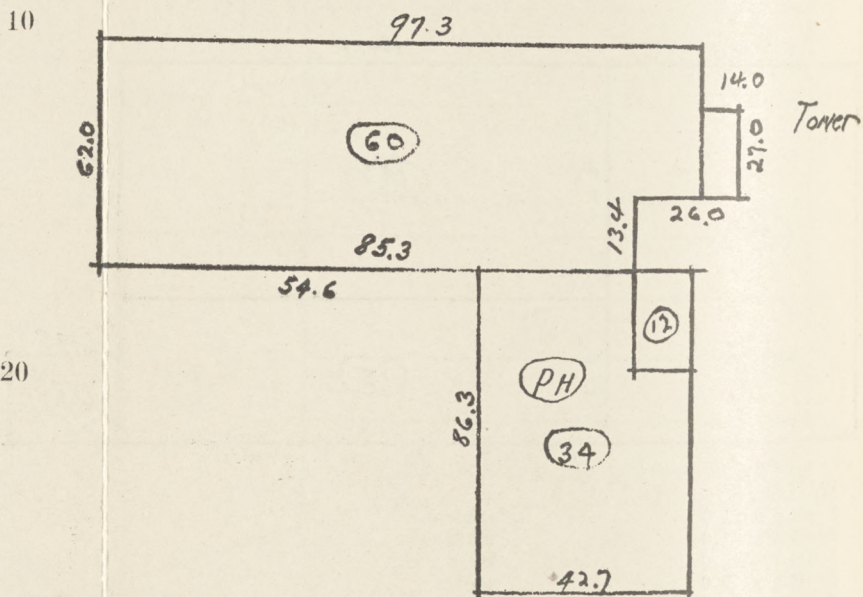
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Exhibit D-13.

Block No. 24

BUILDING No. 14—Brick, R. C. & Wood Roof—
5 Stories—P. H.



WALLS

2—62.0 x 60.0
2—97.3 x 60.0
2—14.0 x 60.0
1—27.0 x 60.0
2—86.3 x 34.0
1—42.7 x 34.0
1—12.0 x 34.0
1—12.0 x 12.0
1—27.0 x 12.0

7440
11676
1680
1620
5868
1452
408
144
327

30615 @ \$2.00 \$61,230.

FLOORS

6—62.0 x 97.3
2—86.3 x 42.7

36196
7370

43566 @ \$2.00 87,132.

\$148,362.
29,672.

Equipment

74181 @ .40

Building

\$118,690.

10

20

30

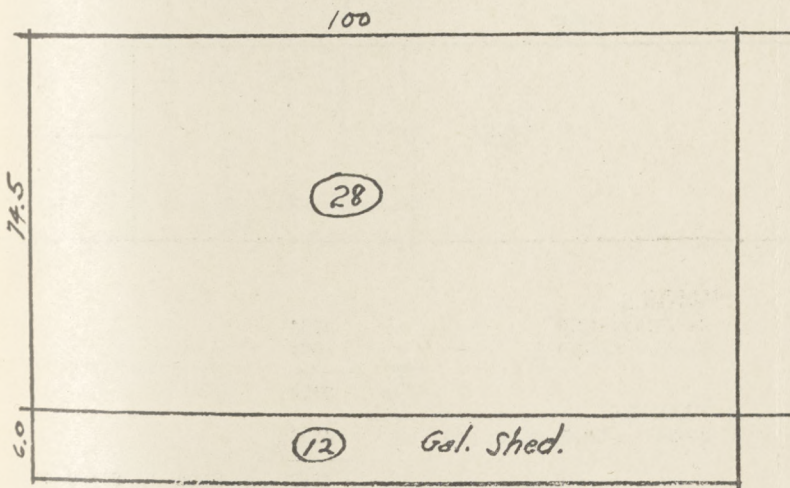
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Exhibit D-13.

BLOCK No. 24

BUILDING No. 15—Brick—One Story—R. C.—
MANUFACTURING

10



20

WALLS

2—100 x 28.0
2—74.5 x 28.0

5600
4172

9772 @ \$2.00 19,544.

FLOORS

2—74.5 x 100.0

14900 @ \$2.00 29,800.

30

LEAN TO
FLOOR AND ROOF
2—6'0 x 100

1200 @ \$1.00 1,200.

Equipment

24672 @ .40 9,868.

50,544.
\$40,676.

Building

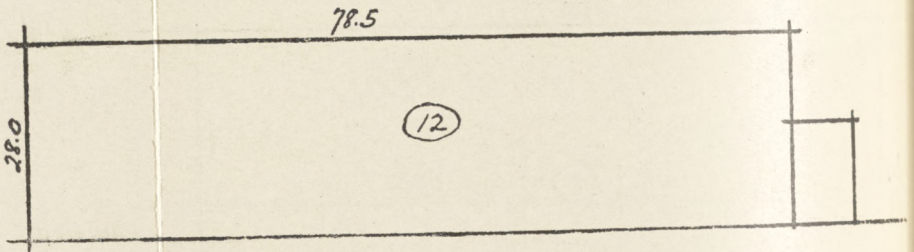
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Exhibit D-13.

BLOCK No. 24

BUILDING No. 22—Corrug. Iron Wood Roof—
STORAGE

10



20

WALLS

2—78.5 x 12.0
2—28.0 x 12.0

1784

672

2456

FLOORS

2—28'0 x 78.5

4396

6852 @ \$1.00 \$6,852.00

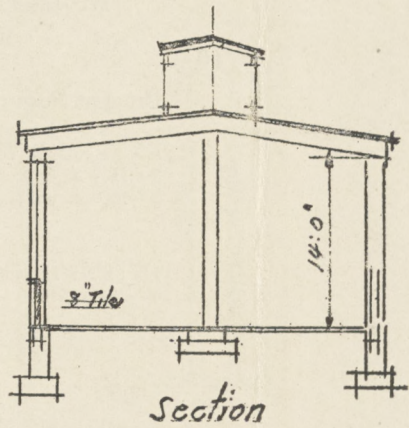
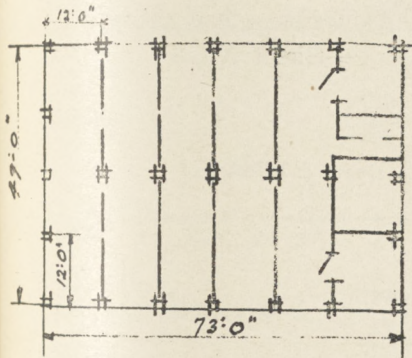
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Exhibit D-13.

BLOCK No. 24

BUILDING No. 26—Concrete—One Story—
MACHINE SHOP



10

20

EXCAVATION

7-3'6 x 3'6 x 1'6	129
18-2'6 x 2'6 x 4'0	450

CONCRETE FOOTINGS

7-3'6 x 3'6 x 1'0	86
7-2'6 x 2'6 x 1'0	44
18-2'6 x 2'6 x 10	112

579 21.5 @ \$2.50 53.75

CONCRETE COLUMNS

7-1-4 x 1-4 x 17'0	119
18-1-4 x 1-4 x 19'0	342

242 @ .50 121.00

CONCRETE ROOF

1-52'0 x 76'0	3952
---------------	------

461' @ 3.00 1383.00
3952 @ 1.60 6323.20

30

MONITOR SIDES

1-68'0 x 4'6	306
1-14'0 x 4'6	63

369 @ 1.00 369.00

CONCRETE FLOOR ON GROUND

1-72'0 x 48'0	3456
---------------	------

3456 @ .30 1036.8

6" TERRA COTTA PARTITIONS

4-12'0 x 14'0	672
1-48'0 x 14'0	576

1248 @ .92 1146.16

40

\$10,432.91

(Continued)

Exhibit D-13.

BLOCK No. 24

BUILDING No. 26—Concrete—One Story—
MACHINE SHOP—Sheet No. 2.

10

Brought Forward \$10,432.91

EXTERIOR WALLS (Incl. Doors & Windows)

1—48'0 x 16'3	1560		
2—72'0 x 15'6	2232		
	3792	@ \$1.20	4,550.40

INTERIOR DOORS—Kalamein

4—3'0 x 7'0	4	@ \$50.00	200.00
-------------	---	-----------	--------

\$15,183.31

10% 1,518.33

\$16,701.64

20

PLUMBING WORK

9—Fixtures at \$200. 1,800.

\$18,501.64

HEATING

1—3456 x 14.0			
60	806'	@ \$2.00	1,600.

ELECTRIC 34 @ \$10.00 340.

SPRINKLER 34 @ \$12.00 408.

\$19,849.

1,188.

30

Architect 6%

\$21,037.

Based on cu. ft. for check
Cost 53,650 cu. ft. — .40

21,460.

Building 17,703.

Equipment 3,334.

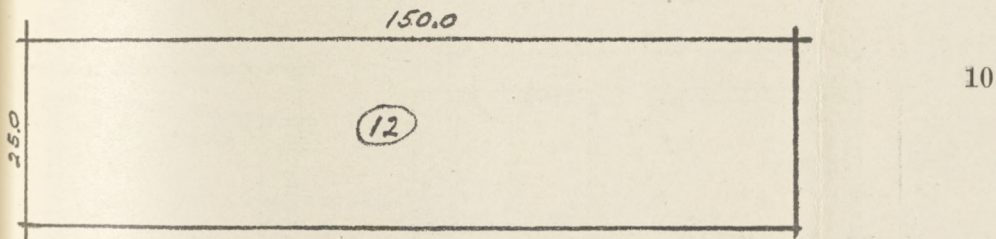
\$21,037.

40

Exhibit D-13.

BLOCK No. 24

BUILDING No. 29—Corrug. Iron on Wood—STY.



WALL

2—150.0 x 12.0	3600
2—25.0 x 12.0	600

 4200

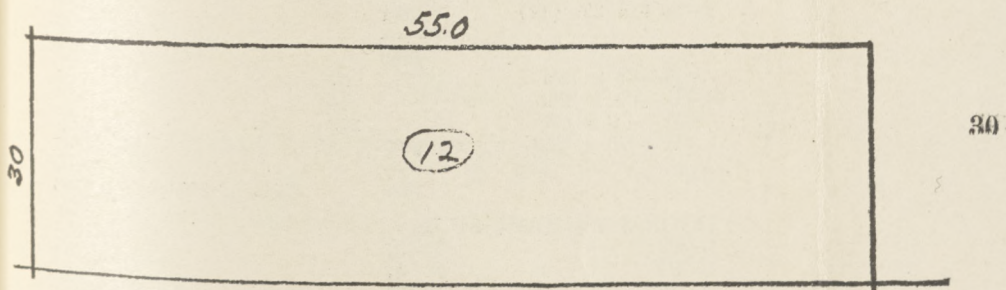
FLOORS

2—25'0 x 150'0	7500
----------------	------

 11,700 @ \$1.00 \$11,700.

20

BLOCK No. 24

BUILDING No. 30—Corrug. Iron—Wood Roof—
STORAGE.

WALLS

2—55'0 x 12.0	1320
2—30'0 x 12.0	720

 2040

FLOORS AND ROOF

2—30 x 55.0	3300
-------------	------

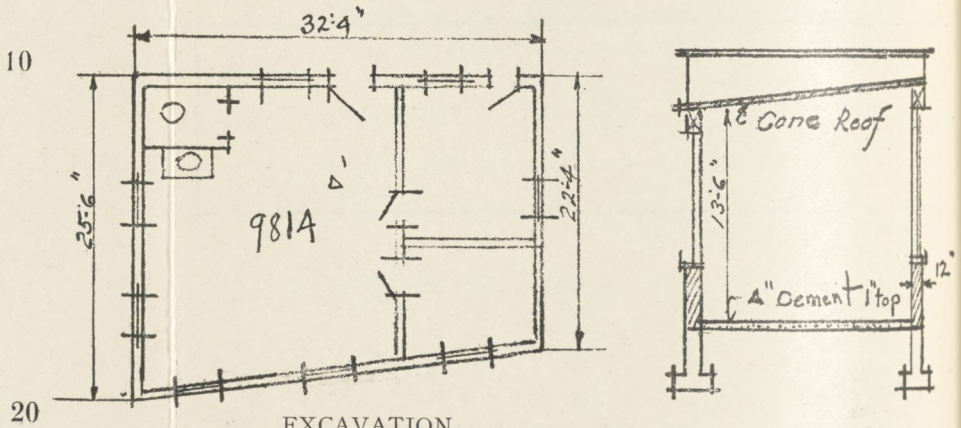
 5340 @ \$1.00 \$5,340.

40

Exhibit D-13.

BLOCK No. 24

HOSPITAL BUILDING—No. 34—Brick—Concrete Roof.



10

30

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EXCAVATION			
1—113'0 x 2'0 x 4'0	894	33 yds. @ \$2.00	66.00
CONCRETE FOOTINGS			
1—113'0 x 2'0 x 1'0	226	@ .40	90.40
CONCRETE WALL TO GRADE			
1—113'0 x 3'0 x (1'0)	340 cu. ft.	.80	272.00
BRICK WALLS			
1—112'8 x 13'6 (12")	1521		
1—80'4 x 2'0 (12)	161		
	1682		
—1D—3'0 x 12'6		37	
—1D—4'0 x 12'6		50	
—8W—4-0 x 8'6		272	
—1W—2-0 x 4'0	367	8	
	1315	27615 @ \$60.00	1656.90
DOOR & WINDOW SILLS			
1—3'8	37		
1—4'8	47		
8—4'8	383		
1—2'8	27		
		49.4 @ \$1.50	73.5
LINTELS			
Same lin. ft. as Sills		49 @ \$2.00	98.
CONCRETE ROOF			
1—24'8 x 31'0	766 cu. ft.	@ \$1.50	1149.
			\$3,405.80

(Continued)

Exhibit D-13.

HOSPITAL BLDG. No. 34—Block No. 24—Sheet No. 2

Brought Forward				\$3,405.80	
CINDER FILL					
1—24'0 x 30'4	727	@	.10	72.70	10
SLAG ROOF					
1—26'0 x 32'6	845	@	.12	101.40	
FLASHINGS & GRAVEL STOP					
1—109'0"	109	@	.20	21.80	
TERRA COTTA PARTITIONS (4")					
1—8'2 x 13'6	111				
1—22'0 x 13'6	297				
1—12'0 x 13'6	162				
	570	@	.40	228.00	
PLASTERING					
2—Area of Partitions	1140				20
1—105'0 x 13-6	1418				
1—24-0 x 30-6	732				
	3290	@	.17	559.30	
CEMENT FLOOR					
1—30'4 x 24'0	727	@	.30	218.10	
CEMENT BASE					
1—109'0	109				
1—24'0	24				
2—24'0	48				
2—8'2	16				
	197	@	.20	39.40	
INTERIOR DOORS & TRIM & HARDWARE					30
3—2'8 x 6'8		@	\$30.	90.00	
ROLLED STEEL WINDOWS & GLAZING					
8—4'0 x 8'6	272				
1—2'0 x 4'0	8				
1—3'0 x 5'0	15				
1—4'0 x 5'0	20				
	315	@	.80	252.00	
DOORS					
1—3'0 x 7'6					
1—4'0 x 7'6				80.00	
				\$5,068.50	40

(Continued)

Exhibit D-13.

HOSPITAL BLDG. No. 34—Block No. 24—Sheet No. 3			
	Brought Forward		\$5,068.50
	PAINTING		
	2—Area Windows & Doors	856	
	1—Area of Plastering	3290	
		<u>4146</u>	
		@ .06	248.76
10			<u>5,317.26</u>
	PLUMBING		
	1—Closet		
	1—Lavatory		400.00
	HEATING—Cu. Ft. Contents		
	1—24'0 x 30'4 x 13'6		
		<u>200</u> ft. Radiation @ \$1.50	300.00
		60	
	ELECTRIC		
	6 Outlets		72.00
			<u>6,089.26</u>
		Overhead 10%	608.92
			<u>6,698.18</u>
		Profit 10%	669.82
20			<u>7,368.00</u>
		Architect's Fee 6%	442.08
			<u>\$7,810.08</u>

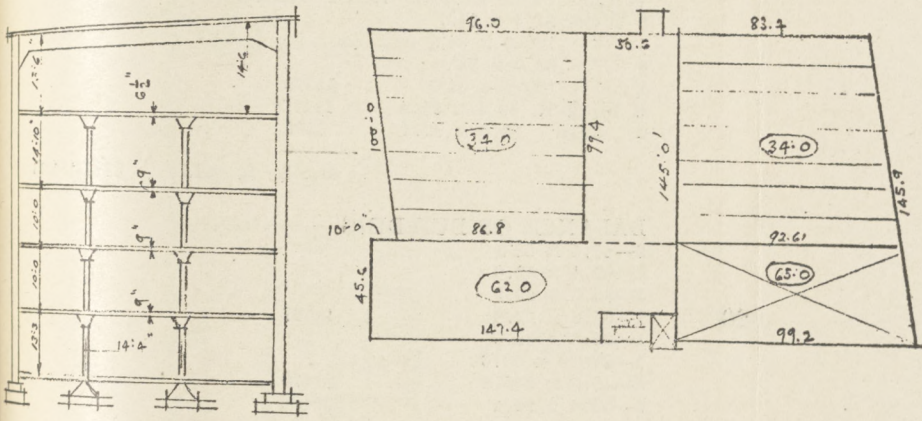
SUMMARY BLOCK No. 22

	BUILDING No. 24		
	Drying Rooms based on contract price awarded		
	November, 1923, (Reynolds) 2 rooms to Building		
	No. 10—balance of building based on wall		
	and floor area		\$463,028.
	Building		
30	BUILDING No. 31	\$440,760.	
	See detail estimate	44,076.	
	Builder's Profit		
		<u>\$484,836.</u>	
	Architect's Commission 6%	29,090.16	
		<u>\$513,926.16</u>	
	Heating 24,200 @ \$1.50	36,300.	
	Plumbing 5%	24,240.	
	Electric 900 @ \$12.00	10,800.	
	Sprinkler	9,000.	
		<u>\$594,266.</u>	
			594,266.
	Building No. 16		58,258.
	Building No. 17		54,830.
40	Building No. 18		<u>208,396.</u>
			<u>\$1,378,778.</u>

Exhibit D-13.

BLOCK No. 22

EXTENSION TO BUILDING No. 24—Mushroom Flat
Slab Type—Brick & Concrete—5 Stories.



10

20

Top, or fifth floor, used for storage and a new floor and roof was installed about 1912 over the old portion about 45 x 99'0" at the same time that extension was made.

Same general construction as Building No. 31, same cu. ft. should apply except for Drying Rooms on which use basis of addition to No. 10.

30

40

Exhibit D-13.

BLOCK No. 22

BUILDING No. 24.

DRYING ROOMS

10

WALL, FLOOR AND ROOF AREA

8 Walls	91.4 x 34'0			
1 "	100.0 x 34'0			
8 "	88.0 x 34'0			
1 "	100.0 x 34'0	55590		
2 Fl. & R.	99.4 x 91.4	18170		
2 ditto	88.0 x 99.4	7498		
			81,258 @ \$2.11	\$171,454.38

BALANCE OF BUILDING

2—45.5 x 62'0				
2—99.4 x 62.0				
1—50.6 x 62.0				
1—96.8 x 62.0		48137		
1—92.6 x 62.0				
1—246.6 x 62.0				
6—45.6 x 246.6		67470		
6—50.6 x 99.4		30180		
			145,787 @ \$2.00	291,574.
				\$463,028.
Equipment		145,787 @ .40		58,314.
				\$404,714.

30

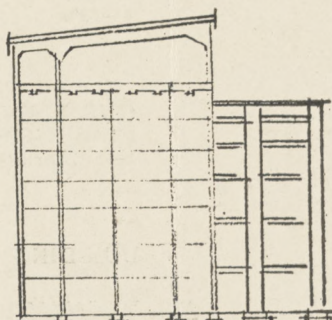
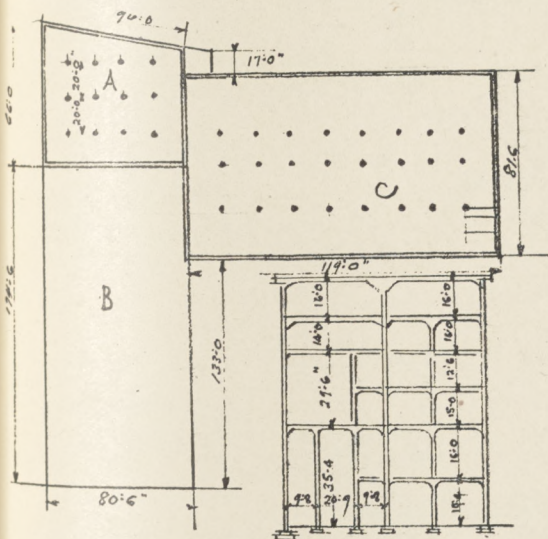
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Exhibit D-13.

BLOCK No. 22

BUILDING No. 31—Brick & Concrete—Eight Stories.

10



20

Section A-A

BUILDING "A"

EXCAVATION

1-257'0 x 4'0 x 3'0 3084 114 @ \$2.50 2850.

CONCRETE FOOTINGS

1-257'0 x 3'0 x 2'0 1542 @ .40 616.8

CONCRETE WALLS TO GRADE

1-257'0 x 2'0 x 2'0 1028 @ .70 719.6

WALLS

1-257'0 x 95'0 24415 @ 1.50 26622.

CONCRETE ROOF

1-64'0 x 80'6 5152

1-18'0 x 14'0 252

5404 @ 1.40 7565.60

CONCRETE FLOORS

7—Area of Roof 37828 @ 1.50 56742.

\$75,106.

30

40

(Continued)

Exhibit D-13.

BUILDING No. 31—BLOCK No. 22—Sheet No. 2.

	Brought Forward			\$75,106.	
	GROUND FLOOR PAVING				
	1—Area of Roof	5404	@	.30	2,121.2
10	INTERIOR COLUMNS				
	4—95'0	380			
	8—79'0	640			
		1020	@	4.00	4,080.
	ONE ELEVATOR				
	FIRE ESCAPE				
	1—8 Stories—\$300. Ea.				2,400.
					<u>93,707.2</u>
					\$93707.20
	BUILDING "B"				
20	EXCAVATION				
	72—7'0 x 5'0 x 4'0	400	@	2.50	1,000.
	FOOTINGS				
	72—7'0 x 5'0 x 1-6	5184	@	.50	2,592.
	72—5'6 x 3'6 x 1-0	16000	@	.06	960.
	CONCRETE WALL TO GRADE				
	66—1-0 x 2'0 x 11'4	1518	@	3.00	4,554.
	CONCRETE COLUMNS				
	72—(4'4 x 2'4) x 84'6	6084'	@	10.00	60,840.
30	CONCRETE SPANDRELS				
	396—(1'0 x 2'0) x 11'4	4475'	@	2.90	17,977.50
	10" TILE WALLS—PLASTERED				
	66—11'4 x 62'0	46200	@	.80	36,960.
	END WALLS 10" TILE				
	5—11'0 x 84'6	9295	@	.80	7,436.
	STEEL SUSPENDED WALKS				
	10—2'6 x 174'6	4362	@	2.20	8,724.
	RAILING 3'6" HIGH				
	10—174'6"	1745	@	2.00	3,490.
40					<u>\$144,533.</u>

(Continued)

Exhibit D-13.

BUILDING NO. 31—BLOCK No. 22—Sheet No. 3.

Brought Forward				\$93,707.	
"B"—CONTINUED					
Brought Forward				\$144,533.	
CONCRETE ROOF					
5—13'3 x 174'6	11605	@ \$1.00	11,605.		10
SKYLIGHTS—					
MONITOR TYPE 4' HIGH					
15—32'0 x 8'0	3740	@ 3.00	11,220.		
SLAG ROOF					
Area of Roof less					
Skylights	7865	@ .10	786.50		
FIRE ESCAPE					
16 Flights			4,800.		
CONCRETE FLOOR	11,000	@ \$3.30	3,300.		
				176,244.50	
				176,244.50	
				\$269,951.	20
BUILDING "C"					
EXCAVATION					
1—360'0 x 4'0 x 3'0	4320				
32—8'0 x 8'0 x 4'0	8192				
	12512	@ .10	1,251.20		
FOOTINGS					
1—360'0 x 3'0 x 2'0	2160				
32—8'0 x 8'0 x 2'0	4096				
32—6'0 x 6'0 x 1'6	1728				
	8084	@ .50	4,042.		
	16000	@ .06	960.		
CONCRETE WALLS TO GRADE					30
1—360'0 x 2'0 x 2'0	1440	@ .70	1,008.		
WALLS					
1—360'0 x 95'6	34380	@ 1.50	51,570.		
CONCRETE ROOF					
1—82'0 x 120'0	9840	@ 1.40	13,776.		
CONCRETE FLOORS					
3—81-6 x 119'0	29100				
1—52-0 x 119'0	6188				
1—50-0 x 119'0	5950				
	41238	@ 1.50	61,857.		
FLOOR ON GROUND					40
1—81-6 x 119'0	9698	@ .30	2,909.40		
				\$137,373.60	

(Continued)

Exhibit D-13.

BUILDING No. 31—BLOCK No. 22—Sheet No. 4.

	Brought Forward			\$269,951.
	"C" CONTINUED			
	Brought Forward		\$137,373.60	
	INTERIOR COLUMNS			
10	8—80'0	640		
	8—96'0	768		
	8—64'0	512		
	8—35'6	284		
		2204	@ \$4.00	8,816.
	TWO ELEVATORS 8 x 12			20,000.
	STAIRS			
	120 Risers 4'0"	480	@ \$3.00	1,440.
	FIRE ESCAPE			
	9 Flights			2,700.
	RAILING ON BALCONY			
	2—120'0"	240	@ \$2.00	480.
				<u>170,809.60</u>
				170,809.
20			Profit 10%	\$440,760.
				44,076.
				<u>484,836.</u>
			Architect's 6%	29,090.16
				<u>\$513,926.16</u>

BLOCK No. 22

BUILDING No. 31—Check figure based on 24 for
Drying Rooms.

	5 DRYING ROOMS			
	6 Walls 174'6 x 82'6	86376		
30	1 Wall 80'6 x 82'6	6641		
	2—80'6 x 174'6	28094		
		121111	@ \$2.11	\$255,544.
	WALLS & FLOORS—Balance of Buildings			
	9 Floors & Roof	5404	48636 sq. ft.	
	1—66'0 x 95'0			
	1—80'6 x 95'0			
	1—94'0 x 95'0		27600	
	1—50'0 x 95'0			
	2—119'0 x 95'6			
	1—81'6 x 95'6	30512		
	Roof	9840		
	Floors	41238		
	Floors	9698		
40		167,524	@ \$2.00	335,048.
				<u>\$590,592.</u>

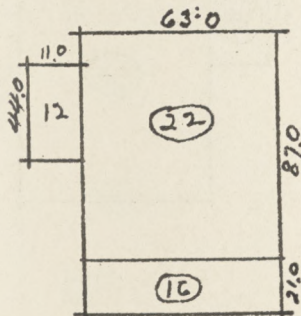
Exhibit D-13.

BLOCK No. 22

BUILDINGS No. 16-17-18.

BUILDING No. 16—Reinforced Concrete Through-
out.

19



20

WALLS

1—300'0 x 22'0	6600
1—66'0 x 12'0	792
1—105'0 x 16'0	1680

FLOORS

3—87 x 63'0	16443
2—63 x 21.0	2646
2—44 x 11.0	968

9072 @ \$2.00	18,144.
---------------	---------

20057 @ \$2.00	40,114.
----------------	---------

30

58,258.

29129 @ .40	
-------------	--

58,258.

11,651.6

46,607.6

Check by cu. ft.—147560 cu. ft. @ .40	\$59,024.
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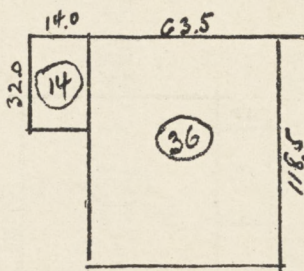
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Exhibit D-13.

BLOCK No. 22

BUILDING No. 17—Re. Concrete & Brick—Concrete
Floor, 1 & 2 Stories.

10



20

WALLS

1—364.0 x 36.0
1—6.0 x 14.0

13104

840

13944

@ \$2.00

27,888.

FLOORS

3—118.5 x 63.5
2—32.0 x 14.0

22575

896

23471

@ \$2.00

26,942.

Equipment

37415

@ .40

54,830.

14,966.

Building

26,942.
14,966.
\$39,864.

30

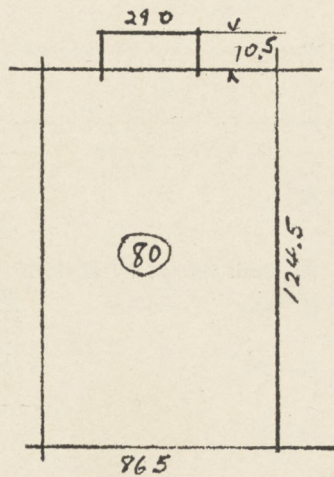
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Exhibit D-13.

BLOCK No. 22

BUILDING No. 18—Reinforced Concrete & Brick—
2-5 Stories.

10



20

WALLS

1—422'0 x 80'0
1—50'0 x 80'0

33760
4000

37760 @ \$2.00

\$75,520.

6—86.5 x 124.5
6—29.0 x 10.5

64614
1824

66438 @ \$2.00

132,876.

Equipment

104198 @ .40

\$208,396.
41,679.

Building

\$166,717.

30

40

Exhibit D-13.

SUMMARY BLOCK No. 25

	BUILDING No. 21—Office Building		
	Building	\$30,469.	
	Plumbing	2,400.	
	Heating	2,300.	
10	Sprinkler	840.	
	Electric	840.	
		<hr/>	\$36,849.
	BUILDING No. 27		
	Building	2,334.	
	Plumbing	200.	
	Heating	240.	
	Electric	60.	
		<hr/>	2,834.
	BUILDING No. 28		
	Building	3,469.	3,469.
	BUILDING No. 33—Built 1923-24 by Hedden		
26	Building	116,932.	
	Heating	17,280.	
	Plumbing	5,846.	
	Electric	1,540.	
	Sprinkler	2,910.	
		<hr/>	144,508.
			<hr/>
			\$187,660.

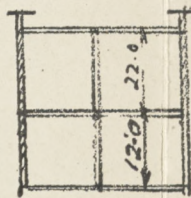
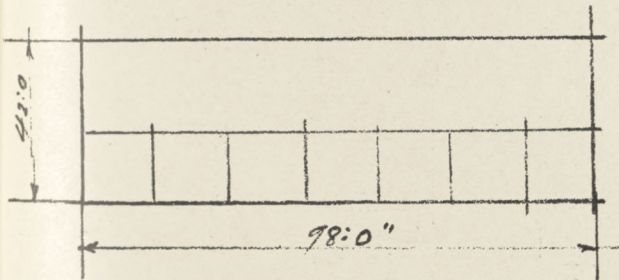
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Exhibit D-13.

BLOCK No. 25

OFFICE BUILDING No. 21—Concrete Brick Veneered
—2 Stories.



10

EXCAVATION

1—42'0 x 98'0 x 6'0	24700
1—280'0 x 4'0 x 2'0	2240

26940 yds. 1000 @ \$2.50 \$2,500.

20

CONCRETE FOOTINGS

1—280'0 x 2'0 x 1'0	560 @ .40	224.
---------------------	-----------	------

CONCRETE WALLS

1—280'0 x 3'0 x 1'0	840 @ .70	588.
---------------------	-----------	------

MAIN CONCRETE WALLS

1—280'0 x 34'0	9520 @ 1.00	9,520.
----------------	-------------	--------

BRICK VENEER

1—180'0 x 22'0	28000 @ \$70.	1,960.
----------------	---------------	--------

CONCRETE FLOOR ON GROUND

1—96'0 x 40'0	3840 @ .30	1,152.
---------------	------------	--------

REINFORCED CONCRETE FLOOR

1—96'0 x 40'0	3840 @ 1.20	4,608.
---------------	-------------	--------

30

REINFORCED CONCRETE ROOF

1—40'0 x 96'0	3840 @ 1.00	3,840.
---------------	-------------	--------

PARTITIONS PLASTERED

1—72'0 x 12'0	864
1—98'0 x 12'0	1176

PLASTER WALLS

1—280'0 x 22'0	2040 @ .50	1,020.
----------------	------------	--------

6160 @ .15 924.

10%

26,336.
2,633.

Architect's 5%

28,969.
1,500.

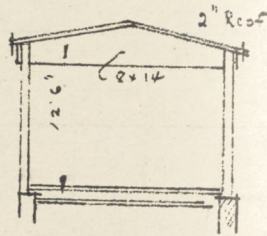
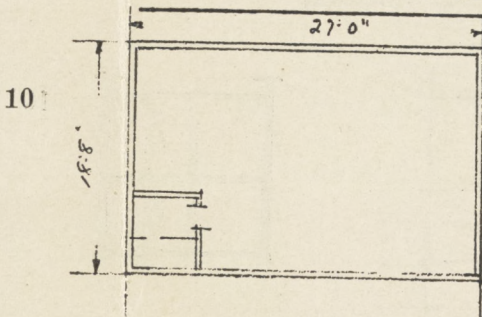
\$30,469.

40

Exhibit D-13.

BLOCK No. 25

CHEMICAL LABORATORY No. 27—Tile—One Story.



7/8" Nap. 0
1" pine 1/2" 0
2x4 Sleepers
4" Under Coar

20

EXCAVATION
8—2'0 x 2'0 x 4'0
1—92'0 x 1'0 x 2'0

128
184

CONCRETE PIERS

8—1-6 x 1-6 x 4-0

312 @ .10 \$31.20
72 @ .40 28.80

CONCRETE SPANDRELS

2—10" x 20" x 17'0

6—10" x 20" x 8'0

34
48

CONCRETE WALLS 8"

1—92'0 x 12'6

a { 4—1-6 x 3'0

{ 1—1-6 x 3'0

b—1—3'0 x 7'0

108
5
21
134

182 @ \$1.00 82.00

30

WINDOWS—D. H. SASH

1—A above

DOORS

1—b above

2—2-6 x 6'6

1016 @ .95 965.20
113 @ .80 90.40
21
33

ROOF

2—8" x 14—22'0

1—Ovl. pc. 6 x 8 x 18'0

1—2" x 4"—92'0

54 @ 1.00 54.00
411
144
64

ROOF PLANK 2"

(c) 1—21'6 x 30'6

619 @ 1.00 61.90
786 @ .80 62.89

40

SLAG ROOF

1—c above

655 @ .10 65.50

\$1,441.89

(Continued)

Exhibit D-13.

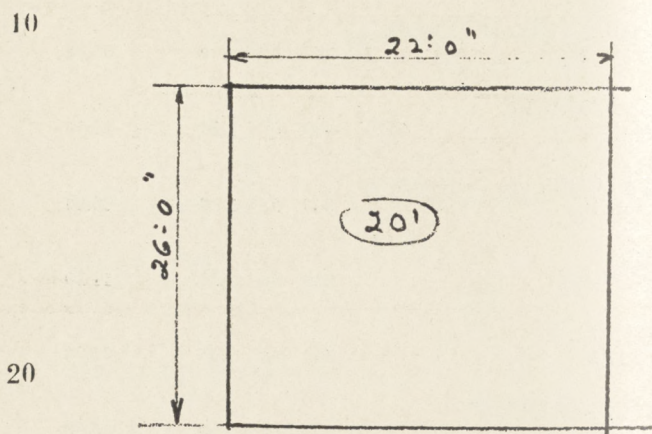
CHEMICAL LABORATORY No. 27—BLOCK No. 25—
Sheet No. 2.

Brought Forward				\$1,441.89	
PARTITIONS 4" PLASTERED					10
1—17'0 x 8'0	136	@	.50	68.00	
FLOOR— $\frac{7}{8}$ " MAPLE					
1—25'8 x 17'4	444	600	@ 1.20	72.00	
UNDER FLOOR					
1—25-8 x 17'4		600	@ 1.00	60.00	
SLEEPERS					
20—2" x 4"—18'0	240	@	.80	19.20	
CINDER FILL 2"					
1—25'8 x 17'4	444	@	.05	22.20	20
UNDER CONCRETE 4"					
1—25'8 x 17'4	444	@	.20	88.80	
FINISH POINTING EXTERIOR					
Area of 8" Walls	2030	@	.05	101.50	
WINDOW SILLS					
4—5'0	20				
1—2'0	2				
	22	@	1.00	22.00	
PAINTING					
2—Area of Windows					
2—Area of Doors	334	@	.05	16.70	30
GRAVEL STOPS					
1—104'0"	104	@	.10	10.40	
				2,022.69	
	10%			202.	
				2,224.69	
	5%			110.	
				\$2,334.69	

Exhibit D-13.

BLOCK No. 25

GARAGE BUILDING No. 28—Concrete—One Story.



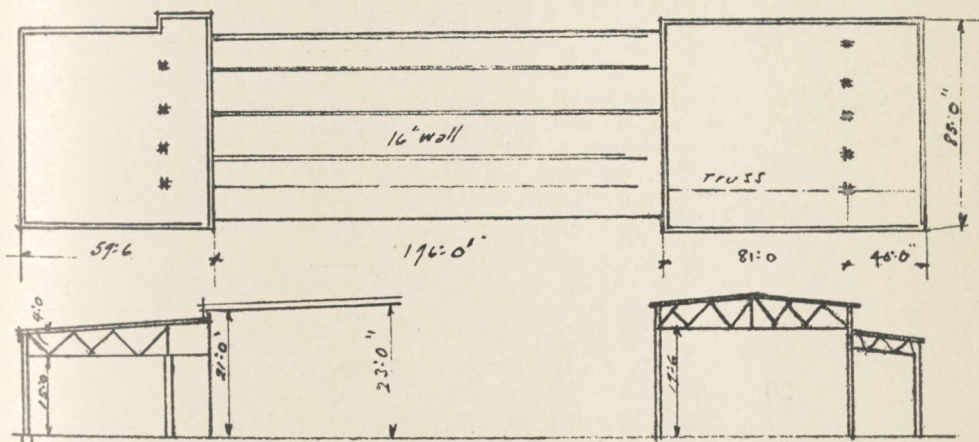
	EXCAVATION			
	1—96'0 x 4'0 x 2'0	786 @	.10	\$76.80
	CONCRETE FOOTINGS			
	1—96'0 x 2'0 x 1'0	192 @	.40	76.80
	CONCRETE WALLS TO GRADE			
	1—96'0 x 3'0 x 1'0	288 @	.70	201.60
30	CONCRETE WALLS			
	1—96'0 x 20'0	1920 @	.95	1824.00
	WOOD ROOF Incl. Slag Roof			
	1—24'0 x 28	672'	1.00	672.00
	CONCRETE FLOOR			
	1—21-8 x 24'8"	526'	.30	157.80
				3,009.00
		10%		300.09
				3,309.09
	Architect's fees			160.
				<u>\$3,460.00</u>

40

Exhibit D-13.

BLOCK No. 25

BUILDING No. 33—Attached to this building, galv.
iron enclosure (not incl.)—Brick &
Concrete—One Story.



EXCAVATION

1—1878' x 4'0 x 2'0 15024 600 @ 2.50 \$1,500.00

CONCRETE FOOTINGS

1—1878' x 2'0 x 1'0 3756 @ .40 1,502.40

CONCRETE WALLS TO GRADE

1—1878' x 3'0 x 1'6 8451 @ .70 5,915.70

BRICK WALLS (Incl. Windows & Doors)

1—290'0 x 19'0 (12) 5510

6—196'0 x 22'0 (16) 34496

1—250'0 x 25'0 (12) 6250

1—85'0 x 6'0 (12) 510

1—165'0 x 19'0 (12) 3135

49901

1,047,900 @ \$55.00 57,635.66

CONCRETE ROOF ON STEEL TRUSSES—

Incl. Slag Roof

1—60'0 x 85'0 5100

1—78'0 x 196'0 15288

1—81'0 x 85'0 6885

1—40'0 x 85'0 3400

30673

@ .80 24,538.40

CONCRETE FLOOR ON GROUND

1 Area of Roof

30673

@ .30 9,201.90

10%

100,294.06

10,029.

6%

110,323.

6,609.

\$116,932.

Exhibit D-13.

BLOCK No. 25

CHECK FIGURE—BUILDING No. 33.

	WALLS & FLOORS—DRYING ROOM			
	6—196'0 x 22'0	25872		
	2—78'0 x 196'0	15288		
	2—78'0 x 21'0	3276		
10		<u>44436</u>	@ \$2.11	\$93,760.
	BALANCE OF BUILDING			
	2—59'6 x 19'0	2261		
	1—85'0 x 19'0	1615		
	2—121'0 x 25'0	6050		
	1—85'0 x 25'0	2125		
	2—121'0 x 85'0	20970		
	2—59'6 x 85'0	10115		
		<u>43136</u>	@ \$1.50	64,704.
				\$148,464.

BLOCK No. 23—PLOT No. 1

BUILDING No. 32—Brick—1 & 2 Stories.

	WALLS OF BRICK			
	2—138.3 x 22'0	6085		
	2—42.8 x 22'0	1883		
	1—29.2 x 12'0	340		
	1—18.2 x 12'0	218		
	1—29.2 x 14.0			
	1—25.8 x 14.0	1729		
	1—18.5 x 14.0			
	1—50.0 x 14.0			
		<u>10255</u>	@ \$1.40	\$14,357.
30	FLOORS & ROOF—Wood & Concrete			
	3—138.3 x 42.8	17757		
	2—29.2 x 18.2	1062		
	2—50.0 x 25.8	2580		
		<u>21400</u>	@ .80	17,120.
				31,477.
				3,147.
				34,624.
				2,077.
				36,701.
				3,870.
				1,370.
40				41,941.
				5,240.
				36,701.

Exhibit D-13.

BLOCK No. 23—PLOT 2 & 3

BUILDING No. 23—Brick, One Story, POWER HOUSE,
1 Portion 2 Stories, Steel Trusses.

WALLS

1—200' x 19'0	3800
1—207' x 19.0	3933

10

ROOF & FLOOR

3—53.0 x 50.5	8029
2—53.0 x 46.5	4929

20691	@	\$2.00	\$41,382.
20,691	@	.40	8,276.

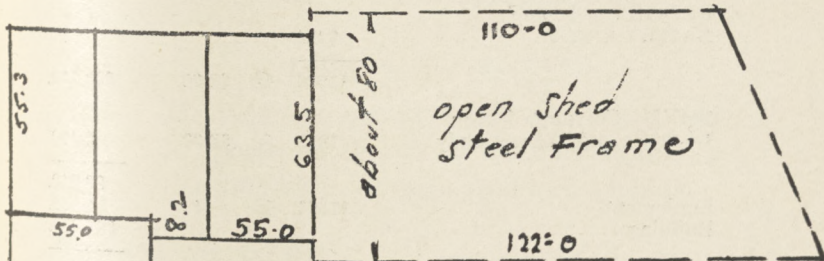
\$33,106.

BUILDING No. 25—STORAGE.

60'0 x 160'0 frame 8235 sq. ft.—Storage—this has not much value—Roof Only.

BUILDING No. 19—Concrete—One Story—STORAGE.

20



WALLS

2—63.5 x 16'0	2032
2—55.3 x 16'0	1770
1—110.0 x 16'0	1760
6—55.0 x 16'0	5280
1—160.5 x 16'0	2568
1—55.8 x 16'0	893
1—216.3 x 16'0	3461
1—76.0 x 16'0	1216
2—25.0 x 16'0	800

30

19780 @ \$2.00 \$39,560.

FLOORS

2—55.0 x 55.0	6050
2—271.6 x 55.0	29876
2—79.4 x 24.6	3906

39832 @ \$2.00 \$79,664.

40

SHED—9280 sq. ft. @ \$2.00 per sq. ft.
grand area

18,560.

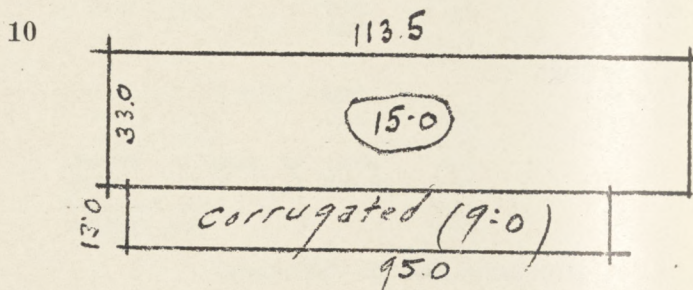
137,784.

23,844.

\$113,940.

Exhibit D-13.

BLOCK No. 23—PLOT 2 & 3

BUILDING No. 20—Reinforced Concrete—One
Story—Mfg.

	WALL			
	2—113.5 x 15.0	3405		
26	2—33.0 x 15.0	990		
	FLOORS & ROOF			
	2—113.5 x 33.0	7491		
		11886	@ \$2.00	\$23,772.
	SHED—Corrugated Iron			
	1—13'0 x 95'0—Area Only	1235	@ \$2.00	2,470.
				26,242.
	Equipment	11886	@ .40	4,754.
	Building			\$21,488.
				\$21,488.

30

SUMMARY—BLOCK No. 23

PLOT 2 & 3

Building No. 23	\$41,382.
Building No. 19	137,784.
Building No. 20	26,242.
Building No. 25	2,000.
	<u>\$207,408.</u>

40

Exhibit D-14.*Kearny ads. Congoleum-Nairn, Inc.*COMPARISON OF FIGURES BETWEEN RUMERY (R)
AND SHOEMAKER (S) REPORTS.BUILDING NO. 1. *Power House.*

10

S figures—\$44,000. less than R figures, due to foundations for boilers, separating walls and so forth, information concerning which was accessible to R from plans and specifications furnished by C-N but not available to S.

BUILDING NO. 2. *Drying Bins.*

S figures — \$364,264.

R “ 222,216.

20

 Difference — \$142,048.

The difference of \$121,535. between S and R figures on the whole building is due to the difference in estimated cost of bins.

BUILDING NO. 3. *Bins.*

S figures — \$188,782.

R “ 97,838.

30

 Difference — \$ 90,944.

Difference between S and R figures for whole building \$225,723.

BUILDING NO. 10. *Bins.*

S figures — \$475,420.

R “ 336,865.

40

 Difference — \$138,555.

Exhibit D-14.

Difference between S and R figures on total building \$73,003.

BUILDING NO. 12. *Bins.*

	S figures	—	\$467,120.
10	R	“	355,776.
			Difference — \$111,344.

Difference between S and R figures on the whole building \$85,813.

BUILDING NO. 31. *Bins.*

	S figures	—	\$205,500.
20	R	“	187,376.
			Difference — \$ 18,124.

BUILDING NO. 23. *Power House.*

R figures \$45,672. more than S figures due to foundations and boilers and so forth, disclosed to R by plans and specifications furnished by C-N but not furnished to S.

NOTE: Where R figures are higher, S believes it is due to interior walls, partitions, and so forth, which would be shown by the plans and specifications furnished to R but not furnished to S and which S would be unlikely to discover from an optical examination of the building itself.

BUILDING NO. 33.

	R figures for reproduction cost of building.....	\$127,407.
40	Present value.....	108,570.
		Difference \$ 18,837.

Exhibit D-14.

This building, No. 33, was contracted for November, 1923, was finished some time during the year 1924. Has never been used for manufacturing purposes, therefore the present value is entirely too low as there has been no depreciation on the building up to October 1st, 1924. 10

1/23/26

20

30

40

Exhibit D-15.**CONGOLEUM-NAIRN, INC.**

		Ralph R. Rumery		Marshall N. Shoemaker				
		Reproduction Cost		Summary—Value of Buildings and Equipment				
	No.	Bldgs.	Equip.	Bldgs.	Equip.			
10	PH 1	152,484	113,928.64	108,410	27,102			
	2	411,672	40,587.21	533,207	44,735			
	3	384,243	27,143.48	609,966	105,290			
	4	17,035	418.91	10,263				
	5	39,784	1,973.22	54,096	13,524			
	6	2,958	40.00	3,946	486			
	7	17,194	1,096.72					
	8	59,670	26,588.74	105,137	26,115			
	9	49,580	135,478.54	47,296	11,824			
	10	544,812	47,106.23	617,815	35,573			
	11	9,397	492.33	20,219	5,055			
20	12	558,805	41,060.93	644,618	44,374			
	13	159,691	16,139.64	227,970	56,992			
	14	112,913	91,483.34	118,690	29,672			
	15	54,049	1,495.30	40,676	9,868			
	16	25,101	3,047.76	46,607	11,651			
	17	62,004	3,933.53	39,864	14,966			
	18	191,669	32,245.55	166,717	41,679			
	19	75,826	2,570.95	113,940	23,844			
	20	14,881	1,323.65	21,488	4,754			
	21	33,264	6,219.70	30,469	6,380			
	22	2,008	412.05	6,852				
	PH 23	78,778	155,728.24	33,106	8,276			
30	24	442,453	29,242.70	404,714	58,314			
	25	3,333		2,000				
	26	12,165	1,657.82	17,703	3,334			
	27	1,729	258.20	2,334	500			
	28	1,716	179.82	3,469				
	29	2,438	35.00	11,700				
	30	1,012		5,340				
	31	433,958	60,186.95	513,926	80,340			
	32	28,818	4,604.70	36,701	5,240			
	33	127,407	25,553.50	116,932	27,576			
	34	3,864	578.20	6,820	990			
40				4,722,991	698,454			
	Misc. Structures in Yard	124,646	Misc. Piping in Yard	125,405.49	3%	141,689	20%	139,691
		4,241,353		988,217.24		4,864,680		838,145

Exhibit D-16.

APPRAISAL CERTIFICATE

THE AMERICAN APPRAISAL COMPANY, a corporation duly incorporated under the laws of the State of Wisconsin, hereby

13

CERTIFIES

that it has made an appraisal of the plant property and dwellings of

THE NAIRN LINOLEUM COMPANY

located at Kearny, New Jersey; and parcel of land at West 36th Place and Loomis Place, Chicago, Illinois.

20

This appraisal is made as of the date of April 1, 1923, is based upon a thorough personal inspection of the property, and includes land, buildings, machinery and equipment, office and laboratory equipment, delivery equipment, unused machinery, and rolling stock, but excludes stock, supplies, goods in process of manufacture, finished product and good will or other intangible assets.

The value of the land is in accordance with its utility and the market conditions. The sound values of the buildings, machinery and equipment are based upon the cost of reproduction new according to market prices prevailing April 1, 1923 for labor and materials, with allowance for accrued depreciation on the property resulting from age and service.

30

40

Exhibit D-16.

We accordingly find the appraised sound values to a going concern to be as follows:

PLANT PROPERTY			
	Land	\$ 541,300.00	
	Buildings	4,331,268.05	
10	Machinery & Equip- ment	2,950,755.56	
	Office and Laboratory Equipment	20,151.64	
	Delivery Equipment....	11,369.75	
	Unused Machinery....	1,972.50	
	Rolling Stock.....	30,963.25	7,887,780.75
	DWELLINGS	2,429.65	7,890,210.40
	LAND—Chicago, Illinois.....		18,400.00
	TOTAL		\$7,908,610.40

We believe SEVEN MILLION, NINE HUNDRED EIGHT THOUSAND, SIX HUNDRED TEN DOLLARS AND FORTY CENTS represents the actual serviceable value of the property appraised to a going concern, under the market conditions prevailing April 1, 1923.

THE AMERICAN APPRAISAL COMPANY

Per A. F. BAILY,

(Corporate Seal)

Vice-President.

Milwaukee, Wisconsin

June 27th, 1923.

30

40

Exhibit D-16.

SUMMARY			
showing			
COST OF REPRODUCTION NEW & SOUND VALUES			
by			
CLASSIFICATIONS			
April 1, 1923.			
	<i>Cost of Reproduction New</i>	<i>Sound Value</i>	
LAND	541,300.00		541,300.00
BUILDINGS			
Construction	4,575,559.91	3,663,013.36	
Stack	14,336.52	10,962.12	
Bulkheads	29,670.40	15,131.90	
Reservoirs	14,018.75	11,634.02	
Wells	8,856.00	6,000.80	
Plumbing and Sewerage.....	62,808.95	41,707.84	
Heating System.....	40,763.27	30,853.51	
Electric Lighting System.....	59,062.20	48,412.42	
Gas Lighting System.....	1,054.56	701.46	
Sprinkler System.....	216,332.94	164,712.18	20
Fire Protection Piping.....	1,915.43	1,663.80	
Building Elevators.....	69,105.98	55,451.28	
Foundations for Building Fix- tures	123.88	61.94	
Architects and Engineers Fees..	355,925.69	282,961.42	4,331,268.05
MACHINERY AND EQUIPMENT			
Foundations for Machinery and Equipment	78,045.57	48,661.03	
Power Plant.....	371,170.72	237,267.13	
Power Piping.....	104,002.94	70,620.26	
Motors	217,604.00	166,099.07	
Extra Motors.....	17,106.50	11,278.75	
Power Feet Wiring.....	73,626.37	69,935.34	
Machinery	2,198,277.97	1,514,027.75	30
Extra Machinery.....	60,535.00	42,474.79	
Cranes, Hoists and Trolleys....	76,015.00	68,506.65	
Water Softening and Purifying System	14,847.64	10,518.51	
Tanks	25,035.00	19,923.05	
Manufacturing Piping.....	258,292.89	189,695.81	
Line Transmission.....	43,085.71	35,337.71	
Factory Furniture and Fixtures.	209,380.57	161,911.68	
Factory Office Furniture and Fixtures	390.00	258.08	
Scales	9,212.20	7,529.35	
Trucks	13,818.00	9,884.25	
Fire Protection Equipment.....	13,158.20	11,870.26	
Perishable Equipment.....	21,504.00	15,592.85	
Tools	25,345.38	21,671.60	40
Printing Blocks, Zinc Patterns, Plates and Cylinders.....	389,889.00	247,691.44	2,950,755.56

Exhibit D-16.

	<i>Cost of Reproduction New</i>		<i>Sound Value</i>
OFFICE AND LABORATORY EQUIPMENT			
Office Furniture and Fixtures..	16,064.30		13,654.66
Laboratory Equipment.....	2,570.15		2,158.93
Service Equipment.....	6,049.50	24,683.95	4,338.05
			20,151.64
10 DELIVERY EQUIPMENT			
Automobiles and Wagons.....		19,710.00	11,369.75
UNUSED MACHINERY.....		5,635.00	1,972.50
ROLLING STOCK.....		38,905.00	30,963.25
Totals		10,300,011.09	7,887,780.75
DWELLINGS			
Dwellings	5,347.90		2,270.70
Fees	374.35	5,722.25	158.95
			2,429.65
Totals		10,305,733.34	7,890,210.40
LAND—Chicago, Illinois.....		18,400.00	18,400.00
26 GRAND TOTALS.....		\$10,324,133.34	\$7,908,610.40

P. 10-18

Sec.	A	Bldg.		<i>Cost of Reproduction</i>	<i>Sound Value</i>
"	B	1	\$36,139.00	\$25,594.46
"	B	1	1,083.00	1,028.85
"	B/1	"	1.....	7,972.01	3,986.01
"	C	"	1.....	46,375.00	23,187.50
"	D	"	1.....	500.00	250.00
"	E	"	8.....	12,750.00	7,012.50
"	A	"	9.....	88,425.00	71,655.50
"	A/1	"	9.....	8,404.70	5,446.06
"	A/2	"	9.....	6,546.95	5,223.87
"	A/3	"	9.....	1,475.00	1,401.25
"	B	"	9.....	4,672.00	3,551.70
"	B	"	10.....	3,325.00	3,125.50
"	A	"	11.....	475.00	261.25
"	C	"	14.....	35,000.00	19,250.00
"	A	"	23.....	68,656.35	37,573.49
"	B	"	23.....	49,371.71	28,719.19

30

40

Exhibit D-16.

INSURANCE SUMMARY—Volume

Letter July 27, 1923

Showing distribution of appraised sound values to be used for insurance purposes—classified as follows:

<i>Buildings</i>	<i>Equipment</i>	<i>Exclusions</i>	10
Construction	Foundations for	Excavation	
Stack	machinery &	Filling	
Bulkheads	equipment	Building foundations	
Reservoirs	Power plant & piping	Foundation for building	
Wells	Motors & wiring	fixtures and equipment	
Plumbing & Sewerage	Extra motors	below ground	
Heating system	Machinery	Basement walls	
Electric lighting system	Extra machinery	Gasoline motor vehicles	
Gas lighting	Cranes		
Sprinkler system	Hoists & trolleys		
Fire protection piping	Water softening &		
Building elevators	purifying system		
Foundations for build-	Tanks		
ing fixtures	Manufacturing piping		
Architects and engi-	Line transmission		
neers fees	Furniture & fixtures		20
	All equipment		
	appraised not		
	otherwise specified		

SUMMARY—Tabulated (2) sheets

	<i>Total</i>	<i>Exclusions</i>	<i>Value for</i>
	<i>Value</i>		<i>Insurance</i>
			<i>Purposes</i>
Buildings &c.....	4,333,527.24	345,577.29	3,987,949.95
Equipment	2,999,414.65	55,130.22	2,944,284.43
Oil tanks.....			15,966.51

Vol. 2—Inventory volume—8 volumes

<i>Inventory includes</i>	<i>but excludes</i>	30
Land	Stock	
Buildings	Supplies	
Machinery & equipment	Goods in process of	
Office & laboratory	manufacture	
equipment	Finished product	
Delivery equipment	Good will	
Unused machinery	Other intangible assets.	
Rolling stock.		

Order to Take Depositions.

NEW JERSEY SUPREME COURT.

10	TOWN OF KEARNY, a municipal corporation, Prosecutor,	}	On Certiorari.
	vs.		
	THE STATE BOARD OF TAXES AND ASSESSMENT AND CONGOLEUM- NAIRN, INC., a corporation, Defendants.		

On application made in behalf of the prosecutor,
 it is

20 ORDERED that either party have leave to take
 depositions on four days' notice to the other.

JAMES F. MINTURN,
Justice Supreme Court.

Rule entered this 23rd day of April, 1926.

On Motion of
 HOBART & MINARD,
 30 Attorneys of Prosecutor.

A true copy.

EDWARD J. KELLEHER,
 Clerk.

Served and filed, Apr. 23, 1926.

40

Notice of Taking Depositions.

NEW JERSEY SUPREME COURT.

TOWN OF KEARNY, a municipal
corporation,

Prosecutor,

10

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT AND CONGOLEUM-
NAIRN, INC., a corporation,
Defendants.

On Certiorari.

To:

HON. EDWARD L. KATZENBACH,
Attorney General,
State House,
Trenton, N. J.

020

JOHN MILTON,
Attorney for Congoleum-Nairn, Inc.,
1 Exchange Place,
Jersey City, N. J.

Gentlemen :

30

PLEASE TAKE NOTICE that pursuant to an order to take depositions made herein on April 23, 1926, we will take depositions before John P. Dengler, Supreme Court examiner, at the times and places following:

On Wednesday, May 12, 1926, at two o'clock P. M., at Room 703, Chamber of Commerce Building, 24 Branford Place, Newark, New Jersey.

On Friday, May 14, 1926, at eleven o'clock A. M., at the office of the State Board of Taxes and As-

40

Notice of Taking Depositions.

sessment, at the State House, in the City of Trenton, New Jersey.

Yours respectfully,

10

HOBART & MINARD,
Attorneys for Prosecutor.

Mailed to E. L. K., May 7, 1926.

Mailed to Clerk, May 13, 1926.

Depositions.

NEW JERSEY SUPREME COURT.

20

TOWN OF KEARNY, a municipal
corporation,
Prosecutor,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT AND CONGOLEUM-
NAIRN, INC., a corporation,
Defendants.

30

Newark, N. J., May 12th, 1926.

APPEARANCES:

GEORGE S. HOBART, Esq., DUANE E. MINARD, Esq.,
JOHN H. COOPER, Esq., for the Prosecutor.

JOHN MILTON, Esq., for the Defendant Congoleum-
Nairn, Inc.

40

James Baker—For Prosecutor—Direct.

DEPOSITIONS, on behalf of the Prosecutor in this cause, taken pursuant to notice before John P. Dengler, a Supreme Court Examiner, at the offices of Hobart & Minard, Esqs., Room No. 703, Chamber of Commerce Building, 24 Branford Place, Newark, New Jersey, on this 12th day of May, 1926, at 2 o'clock P. M. 10

IT IS CONSENTED that the depositions be reported in shorthand and thereafter transcribed, and that the signatures of the witnesses are waived.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss. : 20

JAMES BAKER, being first duly sworn, according to law, on his oath deposes and says:

Direct examination by Mr. Minard.

Q. You are the Chairman of the State Board of Taxes and Assessments, or, do you call it President?
A. I believe the statutory appellation is "President." I am not particular as to the title. 30

Q. Did you write or dictate the judgment of the Board rendered in this matter, the appeal of the Congoleum-Nairn, Inc., or originally the Nairn Linoleum Company? A. I did not.

Q. When did you first see it? A. The opinion?

Q. Yes. The judgment? A. When the Board met for the purpose of hearing the report of our Field Secretary.

Q. That was on what date? A. I think Tuesday three weeks ago, I am not sure. 40

Q. Was that the day that you adopted the matter in the minutes, at the meeting of April 6th? A. Yes, sir.

James Baker—For Prosecutor—Direct.

Q. Did you read the judgment at that time? A. Yes, sir.

Q. Did you sign it then? A. On that date?

Q. Yes. A. I am inclined to think I did.

10 Q. You signed it yourself at the same meeting, is that it? A. Oh, yes; yes, sir.

Q. When was Mr. O'Connor's report submitted?

A. The day the Board indicated its judgment.

Q. With regard to the official action of the Board adopting that judgment, when did Mr. O'Connor's report come before the Board? A. In advance of the meeting of that date.

Q. How long in advance, do you know? A. Two hours.

20 Q. Did you see it before the meeting? A. No, sir.

Q. How soon after Mr. O'Connor's report came to the Board did the Board enter its judgment, or what was the sequence of events? A. Subsequent to the reception of Mr. O'Connor's report the Board discussed it generally, for, I presume, a period of three-quarters of an hour or an hour.

Q. And then the Board adopted it as the decision of the Board? A. Yes, sir.

30 Q. Do you know what was the basis for Mr. O'Connor's figures? A. I do not.

Q. Was Mr. O'Connor present when you discussed his report? A. Yes, sir.

Q. Did he state to you the basis for his figures? A. In a general way, yes.

40 Q. What was the general way in which he stated it? A. That he felt that there should be a different process of admeasuring value. I assumed from what Mr. O'Connor said that there had been an arbitrary admeasurement placed upon each of the buildings without regard to their time of service, age, depreciation and the other elements that enter into it.

James Baker—For Prosecutor—Direct.

Q. You heard the testimony in this case? A. Yes, sir.

Q. And you knew what the bases of the appraisals were? A. Yes, sir.

Q. What you say now in regard to Mr. O'Connor's opinion is what you say you assume? A. No. I say he assumed. That was my inference from what he said. That was generally discussed, with that phase particularly, particularly that phase of his report that dealt with the fairness of the assessment, that is, stating the figures. 10

Q. Is there any part of his report that is not incorporated in the minutes here? A. I am unable to tell that.

Q. You see, here is an extract of the minutes. Is that all of Mr. O'Connor's report that the Board considered? A. The Board dealt only with Mr. O'Connor's figures. 20

Q. Only with the figures? A. Yes, plus a general statement.

Q. When you say "a general statement" do you mean something outside of his report? A. All that was in answer to questions by members of the Board.

Q. That was during the consideration of the report? A. Yes, sir. 30

Q. Was there any discussion among the members of the Board as to which basis should be adopted, whether it was Mr. O'Connor's or any of the others? A. I think there was, yes, sir.

Q. Do you remember what the discussion was? A. Yes; it assumed this phase; that, by reason of the conflicting testimony of the experts, it being at variance in such a large measure, that the Board felt justified to some extent in ignoring the testimony of the experts on both sides, and taking the judgment of its own trained appraiser. 40

James Baker—For Prosecutor—Direct.

Q. And that is what the Board did, is that right?

A. I would say, in the ultimate analysis, yes.

Q. Did you make an inspection of the plant yourself? A. In conjunction with the other members of the Board, yes.

10 Q. How many of the buildings did you examine?

A. Oh, several, two or three, I think.

Q. Did you undertake, during that inspection to reach any conclusion as to the value of individual buildings? A. No, sir.

Q. Did you undertake then to make any detailed inspection of any building as to measurement or thickness of walls? A. No, sir.

Q. That was just a tour of general observation? A. I should say, yes, sir.

20 Q. How long were you at the plant making this inspection? A. Three hours.

Q. I have here a letter from the Secretary of the State Board of Taxes and Assessments dated March 25th, 1924, addressed to the Board of Assessors, Kearny, New Jersey. Just look at that letter and see whether that letter was written by or dictated by your direction or pursuant to the instructions issued by the Board? A. It was.

30 Q. Was that letter written by express instructions? A. Yes, sir.

Q. Of whom? A. Myself.

Q. And the express instructions of yourself regarding the writing of that letter applies to the last paragraph of the letter? A. Specifically and emphatically, yes.

Q. Intentionally? A. Yes, sir.

Mr. Minard: I offer the letter in evidence.

40 (Admitted and marked "Prosecutor's Exhibit No. 1" of this date.)

It is as follows:

*James Baker—For Prosecutor—Direct.
Prosecutor's Exhibit No. 1.*

Prosecutor's Exhibit No. 1.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND
ASSESSMENT

10

Trenton, N. J., March 25, 1926.

In Re: Congoleum-Nairn Company vs. Town of
Kearny.

Board of Assessors,
Kearny, New Jersey.

20

Gentlemen:

On Monday, March 29, 1926, this Board will make an inspection of the property involved in the above entitled appeal.

I am directed to present to the Board of Assessors of Kearny an invitation to accompany the State Board on this tour of inspection, and you are requested to meet the Board at the Town Hall, Kearny, at 10.30 A. M. on the above date.

This invitation is extended only to the Board of Assessors of Kearny.

30

Very truly yours,

(Signed) CHAS. E. COOK,
Secretary.

Q. Do you mind telling us why you were so specific and emphatic and intentional in confining the inspection tour to only the members of the Tax

40

James Baker—For Prosecutor—Cross—Redirect.

Board? A. I discussed with my colleagues the wisdom of inviting counsel, and they thought it better that we should go without the aid of counsel, but we had on previous occasions inspected property, shore front property, railroad property without the aid of counsel and if I may be pardoned for making the remark, we thought that we could progress much better without the annoyance or the interference of counsel. I said, I am quite sure that I told Mr. Cook, who said that he has some request from Mr. Milton's office for the time set for making the inspection, and I said, "You better inform Mr. Milton that we intend to do this unaided."

Q. When you made that inspection did you make it for the purpose of using the information you obtained in reaching a conclusion as to the value of the property? A. That was our object.

Q. That was your objective? A. Yes, sir.

Cross-examination by Mr. Milton.

Q. I assume that the Board not only took into consideration such information as may have been obtained from your actual examination and inspection of the property and from the report made by Mr. O'Connor, but also that you gave due consideration to the testimony offered before the Board upon the hearing held before you? A. Yes, sir.

Redirect examination by Mr. Minard.

Q. But you have already said that you discarded or disregarded all the testimony of the experts who testified on the hearing? A. Not in its entirety. We gave it some consideration. We gave it a secondary consideration.

Q. But you disregarded their appraisals entirely, didn't you? A. Yes.

James Baker—For Prosecutor—Redirect.
J. William Huegel—For Prosecutor—Direct.

Q. Did Mr. Focht participate in this matter at all? A. Only to the extent of visiting the plant with the Board.

Q. Did he make any report? A. No, sir.

Q. Or express any conclusion? A. No. He made some comment during our visitation there. 13

Q. He made no conclusions, nor did he contribute anything to the Board's opinion? A. No. It was the idea of the Board to disassociate Mr. Focht as far as possible from Mr. O'Connor in the matter because we felt Mr. Focht's inquiries were on different lines entirely.

(The signature of the witness is waived.)

20

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

J. WILLIAM HUEGEL, being first duly sworn, according to law, on his oath deposes and says:

Direct examination by Mr. Minard.

Q. Did you write or dictate the judgment of the State Board? A. Did I write it? 30

Q. Yes. A. No. I did not write it.

Q. When did you first see it? A. The day of the meeting.

Q. Who presented it at that time? A. I had been out of the room at the time; when I came in it was under discussion. I had a little other affair outside and when I came in it was under discussion.

Q. Did you read it before it was adopted? A. During the meeting, yes. 40

Q. You read the judgment, the official judgment that was entered and signed? A. Yes.

J. William Huegel—For Prosecutor—Direct.

Q. Did you sign it? A. To the best of my knowledge and belief I did.

Q. Do you know whether you did or not? A. Well, we get so many judgments before us, as a general rule, we keep signing them right up.

10 Q. Do you know whether you signed this one or not? A. Yes, sir.

Q. When was Mr. O'Connor's report submitted? A. The day of the meeting.

Q. How long before the Board passed the motion to adopt its figures? A. Well, I should judge we discussed it there for about three-quarters of an hour.

Q. And that represents then the period that elapsed between the time you first saw Mr. O'Connor's report and the action of the Board upon it? A. Yes, sir.

Q. At that time did you have before the Board any other information about these values? A. Any other information?

Q. Yes. Besides Mr. O'Connor's report? A. Not that I recall.

Q. Did you have the stenographer's minutes before you? The stenographer's minutes of the hearing? A. Did I have the stenographer's minutes?

30 Q. Yes. A. No, I did not have them.

Q. Were they before the Board at that time? A. I do not recollect.

Q. Did you ever see the stenographer's report of the hearings? A. You mean the final report?

Q. No, the stenographer's minutes, or the testimony? A. You mean his testimony?

Q. Yes. A. You mean, did I read it over?

Q. Did you ever see it? A. No, I did not.

40 Q. In your discussion of three-quarters of an hour of Mr. O'Connor's report did you give consideration to the other appraisals offered at the hearing? A.

J. William Huegel—For Prosecutor—Direct.

Well, as far as I am concerned myself, I have my own opinion on those matters and I gave it my own judgment in my own way.

Q. Did you consider the figures of Mr. Rumley and Mr. Shoemaker and Mr. Enstice? A. I took everything into consideration, what I heard, testimony and all. 10

Q. Did you do what Mr. Baker says he did, disregard those figures? A. I just told you that I took things into consideration and rendered my own judgment as I saw it.

Q. Independent of those figures and of the record? A. Yes, sir.

Q. And your judgment was to adopt Mr. O'Connor's figures? A. Yes, sir.

Q. Do you know what basis Mr. O'Connor used in reaching his figures? A. Well, as far as I understand about it, he viewed the buildings. 20

Q. That is your understanding? A. Yes, sure.

Q. Do you know the amount of cubic feet he got or anything of that sort? A. No, I cannot recall that.

Q. Nor what cubic foot rate he applied? A. Well, I think he took into consideration that the whole proposition was done in a manner different, I presume, than what he would do it himself. 30

Q. As far as you are concerned, you do not know the basis upon which Mr. O'Connor made his report, do you? A. No, only in a general way.

Q. Did you make an inspection of the buildings? A. Yes, sir.

Q. With the rest of the gentlemen? A. Yes, sir.

Q. How long were you there? A. Some time. About three hours, I should judge.

Q. Did you examine all of the buildings? A. Well, pretty nearly all. 40

J. William Huegel—For Prosecutor—Direct.

Q. Did you make any detailed examination for the purpose of ascertaining the dimensions, thicknesses of the walls of anything of that sort? A. Well, we looked through several of the buildings there and I noticed some which were in pretty bad
10 shape, especially the engine house there, the engine, whatever you call it, there was great big cracks in the wall there, etc.

Q. You looked at several of the buildings you say?

A. Yes, sir.

Q. That was on the date, March 29th, was it, fixed by this letter? A. Well, whatever date we were there, we had one hearing and it was called off several times. I cannot exactly say what date it was.

20 Q. I think that is the correct date, is it not, March 29th, when you made the inspection? A. I presume that must be the date then.

Q. That last paragraph in the letter, Prosecutor's Exhibit 1, about confining the inspection to members of the Tax Board, was that your judgment also? A. Yes, it was positively.

Q. So that you were also definite and determined? A. Yes, the same as my associates.

30 Q. And, for the same reason. To avoid the interference of counsel? A. Yes, that is right. That is true.

Q. The word in the letter was annoyance, wasn't it, annoyance of counsel? A. I don't know whether that was the word or not.

Q. You intended that the information you got in making that inspection should be used in influencing your judgment about the values? A. Yes, sir.

40 Q. And did you use that information in reaching the judgment which you signed? A. I took everything into consideration.

J. Wm. Huegel—For Prosecutor—Cross—Redirect.

Q. Did you take that? A. Everything that I saw and weighed it in my own mind.

Q. And you took that into consideration? A. In conjunction with the report of the Field Secretary.

10

Cross-examination by Mr. Milton.

Q. As I understand it, first there were hearings held by your Board at which witnesses were produced by both sides? A. Yes, sir.

Q. Then your Board, in conjunction with the Town Appraisers of Kearny, made an actual inspection and examination of the property which was the subject of the assessment? A. That is it.

Q. Then you had Mr. O'Connor, the Field Secretary of the Board, make an examination and appraisal of the property and report his conclusions to your Board, is that right? A. Yes, sir.

20

Q. And based upon all those sources of information you predicated a judgment as to the fair assessable value of the property? A. I did.

Redirect examination by Mr. Minard.

Q. Did you attempt to reconcile the appraisals of Mr. Shoemaker and Mr. Rumley and Mr. O'Connor? A. Mr. Shoemaker?

30

Q. Yes. The witness before the Board at the hearings?

Mr. Milton: He probably does not remember the names.

Q. Marshall Shoemaker was the man who made the report and the appraisals for the Town of Kearny, do you remember him? A. I do not recall that name.

40

J. William Huegel—For Prosecutor—Redirect.

Q. Mr. Enstice— A. I remember Mr. Enstice. I cannot recall Mr. Shoemaker.

Q. They both testified the same day? A. I remember Mr. Enstice.

10 Q. Did you consider Mr. Shoemaker's figures at all? A. As I said before, I took into consideration everything.

Q. How did you reconcile, or attempt to reconcile the figures of Mr. Shoemaker and the figures of Mr. Rumley and those of Mr. O'Connor? A. Well, Mr. O'Connor is a man who has been tried and experienced, and I gave his judgment a whole lot of consideration.

Q. To the disregard of the other gentlemen? A. Well, I would not say in its entirety.

20 Q. But you adopted Mr. O'Connor's figures exactly, didn't you? A. Yes, sir.

Q. And that necessarily involved the exclusion of the figures of all the rest of the witnesses, didn't it? A. Well, if that is what you want to call it.

Q. Who was with you on the inspection on March 29th? A. Who was with me?

Q. Yes. Who was with you on that inspection? A. Why, Mr. Baker, Col. Margerum, Dr. Barbour, do you want everybody that was there?

30 Q. Yes. A. Mr. Cook, Louis Focht and myself.

(The signature of the witness is waived.)

Frank A. O'Connor—For Prosecutor—Direct.

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

FRANK A. O'CONNOR, being first duly sworn, according to law, on his oath, deposes and says: 10

Direct examination by Mr. Minard.

Q. You are the Field Secretary of the State Board of Taxes and Assessments? A. I am.

Q. Did you make the report of April 6th set up in the return? A. Yes.

Q. When did you make that report? A. Why, the morning that I brought the report there, the morning of the meeting. 20

Q. That was the date of the report? A. Yes, sir.

Q. You made the report on the morning of April 6th? A. Yes, sir.

Q. Where were you when you made the report? A. In the office of the Board.

Q. At what time in the day did you submit that report? A. Very early in the morning, at the beginning of the meeting, Mr. Cook, I handed the report to Mr. Cook. 30

Q. At what time? After the meeting began, or— A. Oh, no, before the meeting began.

Q. In the morning? A. Yes, sir.

Q. Was that report written up that morning? A. Oh, yes. We had calculated the figures before, before the actual signing of the report, but I signed the report that morning.

Q. Was a copy of that report sent to Town Attorney Cooper or the Mayor of Kearny or the Tax Collector or the Board of Assessors of the Town or to Hobart & Minard, the attorneys? A. Well, that 40

Frank A. O'Connor—For Prosecutor—Direct.

is something I don't know, because Mr. Cook usually attends to all that.

Q. As far as you are concerned? A. I don't think so.

10 Q. You were not given any instructions about sending the report out or not sending it out? A. No, sir.

Q. Where did you get the information from upon which you based that report? A. Well, the information that was furnished to me was a copy of the Appraisers or the Assessors' numbers of the buildings with the cubical contents of each building separately set out. It was agreed, I believe, that those figures were substantially correct so that we would not need to take any measurements, I assumed they were correct and based my assessment on those figures, that is the way I got the information as to the size.

20

Q. So that you based your estimate as to the size of the buildings on information you got from the report of the Tax Assessors of the Town of Kearny? A. Yes, sir.

Q. Where did you get those figures from? A. Mr. Cook gave them to me on a yellow sheet of paper, that was submitted and signed by the Assessors. I presume it was one of the exhibits in the case.

30

Q. Oh, yes; Exhibit D-10? A. Yes, I think that is it.

Q. That then gave you all of the information that you used in computing your figures? A. Oh, no. It only gave me the information as to the size of the buildings. That is all. And they were regarded upon both sides as being accurate, I believe; I think both sides agreed upon that, that they were accurate.

40

Q. You then took the cubic feet as given by Exhibit D-10? A. Right.

Frank A. O'Connor—For Prosecutor—Direct.

Q. And applied a unit figure per cubic foot? A. To each different building, yes. I first took the Assessors' figures and went over each particular building to see what I thought about the Assessors' judgment and I differed with them in some respects and in some respects I agreed with them.

10

Q. For some buildings you agreed with them?

A. Yes, sir.

Q. And in that case did you apply the same cubic foot measurement that they did? A. Exactly, and used the same measurements, yes. You mean the same unit?

Q. Yes, the same unit of value per cubic foot?

A. Yes. In two instances, I think those were the particular valuations of the assessments that were confirmed by the Board, those portions.

20

Mr. Hobart: Is this one of them on this sheet?

The Witness: I think that is one, one of them is on buildings numbers nineteen, twenty and twenty-three.

Q. That is the sheet that you refer to; in other words, that is a copy of the tabulation that you had? A. It looks very much like it, yes.

Q. Which of the buildings did you disagree with him on? A. Well, most all of them, except those three.

30

Q. All except those three? A. Yes. There was a slight difference in some cases and a large difference in other cases.

Q. What rates did you apply in place of the ones that they applied? A. Oh, very, very many different rates. For instance, I remember the first building, my recollection of it is—

Q. That is the building number one? A. Yes. That building the Assessors have put at twenty-

40

Frank A. O'Connor—For Prosecutor—Direct.

five cents a cubic foot, and my figures were twenty-three cents a cubic foot. Two cents difference.

Q. Did you include a tabulation of your figures or values with your report to the State Board? A. No, I did not.

10 Q. So that they never had any of your figures before them? A. Excepting in the aggregate as the report states them.

Q. Did you examine the property at Kearny? A. Oh, yes.

Q. When? A. I think it was April Fool's Day.

Q. The 1st day of April? A. I think it was. I am not positive. Because I talked about the necessity of working on Good Friday and I think that was it, the following day being a holiday, we worked
20 till nearly half-past five or six o'clock that night.

Q. Were any of the parties to the proceedings notified of your intention to examine the property? A. They were in this way: We, the Secretary and I, proceeded to the Town Hall and asked for the Board of Assessors, and the Clerk in charge in the Town Hall was not able to get in touch with any of the Board of Assessors, they were all out of town.

Q. Were the attorneys for the Town advised of your intended inspection? A. No. Not that I
30 know of. Not by me. But I did think, and I think that Mr. Cook thought, that it would not be a bad idea to have the Assessors with us. We were unable to get any of them, excepting the young clerk, and then we got the engineer, who I believe made the original assessment or made all the computations for it, and he informed us how the various plots were. In other words we had to go all through and find out how many buildings and what
40 numbered buildings were in each one of those separate appeals, there were a half dozen appeals and we had to segregate them.

Frank A. O'Connor—For Prosecutor—Direct.

Q. When you made your computations did you have before you the appraisals of the witnesses at the hearings? A. No, sir.

Q. So that you never took them into consideration at all? A. I merely took the Assessors' figures, and then, having been an assessor myself for a great many years and being familiar with a great deal of industrial property throughout the Oranges and all over the State, I sized up what I thought the cubical contents of each of them buildings should be. 10

Q. What the cubical contents should be? A. What the unit figure for each should be.

Q. Did you ever see the appraisals of the witnesses at the hearings? A. No. When I saw it, it was in book form there in the office, yes.

Q. Did you ever examine it? A. No, I did not peruse it. 20

Q. You just know that there was a book there with them in? A. Yes, sir.

Q. So that there is no explanation to make as to why you differed with them if you did not consider them at all, is there? A. No, excepting that I was primarily concerned with the Assessors' figures, and with whether I could coincide with them or differ with them.

Q. Did you make any effort to examine the figures of the appraisers who testified in the case before you made your report? A. No, sir. 30

Q. Were you asked to examine them? A. No, sir.

Q. There was no suggestion made to you with regard to that? A. Well, they were at my disposal, and Mr. Cook had them with him, yes, as a matter of fact, suggested that they were there if I wanted them and I said I would rather have my mind free from the whole matter and I would take the Assessors' appraisal and take my own judgment as to the difference. 40

F. A. O'Connor—For Prosecutor—Cross—Redirect.

Q. So you did not pay any attention to them at all? A. No, sir.

Cross-examination by Mr. Milton.

10 Q. How long have you been the Field Secretary of the State Board? A. Thirteen years this April.

Q. How long have you been an assessor of real estate? A. Well, I have been a taxing official since 1894, a period of thirty-two years.

Q. In your work as Field Secretary you are called upon frequently, I assume, to value property for the Board and assist the Board in its assessment of assessable value? A. Very frequently.

20 *Redirect examination by Mr. Minard.*

Q. In your report you say you made a complete survey. I understand that you did not attempt to make any measurements? A. Oh, no. That would have been a monumental job.

30 Q. What do you mean by the word "survey" in this report? A. Well, I asked to have some man in the establishment who was acquainted with the age of the buildings, when they were built, to accompany me through the whole plant and they detailed a Mr. Storack, I think the name is, or a name similar to that. He came with me through the whole plant and pointed out to me the age of each building, about the year when it was built, told me what it was for; then I considered that that building having been up so long and that was a part of the reasoning why I arrived at a unit price per cubic foot.

40 Q. Mr. Storack gave you the full detailed information about the age and condition of each building? A. Pretty nearly, yes, to the best of his recollection.

Frank A. O'Connor—For Prosecutor—Redirect.

Q. How long was he engaged with you in giving you that information? A. Oh, probably half a day.

Q. How long were you engaged in making your inspection? A. Nearly all day; all day.

Q. Did you examine every one of the thirty some buildings, thirty-four buildings? A. Every one. I was accompanied by Mr. Cook and accompanied by my own son, who works for the State Board of Taxes in the capacity of Investigator. 10

Q. Did Mr. Storack give you information as to each of those buildings? A. Each particular building. We took the list, that was this particular exhibit here, and I had him point out each building and give us the age when it was built. Some of them were built in 1887 and some of them as late as 1922. And we examined each building, looked it through, all through it, walked around it, inside and outside and upstairs, and took every one of the buildings. My boy accompanied us with a pad and he made the necessary memorandums as we looked them over. 20

Q. Did he take down the information that Mr. Storack gave you? A. Yes, sir.

Q. In detail? A. He made notes.

Q. Stenographically? A. Not stenographically. They were mostly figures. 30

Q. You know that he made a statement of the figures? A. Well, building number one, for instance, he would say it was built in 1887 and he would make a note of that building.

Q. That is just assuming for the purpose of illustration that it was built in 1887? A. That was my recollection, yes.

Q. In reaching your conclusion as to the cubic foot value of these buildings you relied upon the information that Mr. Storack gave you, did you? A. Well, yes, and I looked at the building, too. 40

Frank A. O'Connor—For Prosecutor—Redirect.

Q. But you relied mainly upon his information as to the age of the building? A. Yes; oh, yes. But I could tell pretty near when I seen a building whether it was built in 1887 or 1922.

10. Q. But, I mean, so far as the information about the age of the building was concerned? A. Yes, largely I did.

Q. And that contributed substantially to your conclusion as to the value per cubic foot? A. I agreed with him practically in nearly everything he told me, the evidence was before me, it was before my eyes, as he told me.

Q. Then your conclusions are based first upon the measurements from Exhibit D-10? A. Yes, sir.

20 Q. And second, upon the age of the buildings? A. Yes, sir.

Q. And the information that Mr. Storack gave to you? A. And the building's physical condition.

Q. I was coming to that. A. Yes, the age made some difference, but if the building was physically all right—I had three thoughts in mind, first was the reconstruction cost of the building, then the true value, the sound value of the building and the true value of the building.

30 Q. Your conclusion was intended to reflect the present value? A. The true value.

Q. The true value? A. The assessment value, that I thought was a fair assessable valuation for the buildings.

Q. Then your conclusions were predicated to a substantial degree at least upon the information that Mr. Storack gave to you? A. Oh, yes; yes, I took him to be a very truthful and reliable gentleman.

40 Q. In other words, you believed all he told you and you relied upon it? A. Yes, sir.

Frank A. O'Connor—For Prosecutor—Redirect.

Q. Do you know who he is? A. He told me he was the Construction Engineer of the Congoleum-Nairn, Incorporated. He was employed there.

Q. A construction engineer employed by the Congoleum-Nairn, Incorporated? A. Yes. He had been with them for a great many years and knew all about the buildings and their history and all that sort of thing. 10

Q. In making your report to the State Board did you give them any more information than the report itself contained? A. Why, nothing, excepting in a conversational way. We exchanged conversation.

Q. Did you attempt to give them any of the detailed information? A. Yes, I told them that I thought the assessment that the Assessor had fixed was twenty-five cents a cubic foot on all of the buildings, that it was an entirely erroneous method of figuring, and I told the Board that I could not at all agree with those figures because so many of the buildings were so different from other buildings, that it was an absurdity to take it on one— 20

Q. What I am asking you is this: Did you give the Board the detailed information which Mr. Storack gave you or did you merely use that for your own conclusions? A. Well, I think I told the Board that my reasons for having made the changes that I did was because of the difference in ages of the buildings and their physical obsolescence. Some of them were not fitted for the uses to which they were being put. That, of course, Mr. Storack informed me. 30

Q. And it was Mr. Storacks' then that you were giving to the Board? A. Yes. He showed me the reason why certain buildings could not be used.

Q. And it was on the information given by Mr. Storack, passed on to the Board, that you based 40

*Frank A. O'Connor—For Prosecutor—Redirect—
Recross.*

your conclusion? A. Oh, largely, yes. And another thing, I came to a conclusion and I totalled the whole thing up, I think it was something like, if I recall the figure, some eighteen million cubic feet, and the final figure that I arrived at averaged about fourteen cents a cubic foot, and in my whole experience with industrial plants I have thought that it was a very, very fair figure.

10

Q. So you used fourteen cents a foot as the average, did you? A. No, not as the average, but I say, it had some as low as three cents a cubic foot and some as high as twenty-seven cents a cubic foot and ten cents a cubic foot and nine cents a cubic foot and twelve cents a cubic foot and sixteen cents a cubic foot.

20

Recross-examination by Mr. Milton.

Q. Independently of the information given you by Mr. Storack as to the age of the buildings, you made your own actual examination of the buildings? A. I did. I had every reason to believe what he told me to be true.

30

Q. And your judgment as to the age and general condition of the buildings was formed as well upon this examination and inspection that you made? A. Yes. And besides, Mr. Storack, if I remember correctly, I am sure that he had a blue print of the entire plant, and on the blue print was marked "Building number so and so, constructed in such a year," "Building number so and so, constructed in such and such a year." So that there was written information as well as the oral information.

40

Q. Would you be able to identify that blue print if you saw it again? A. I think so. Mr. Cook and I both saw it.

Frank A. O'Connor—For Prosecutor—Recross.

Q. And, as I understand it, was it a schedule?
A. It was a sort of a plan of the plant that he had in his place and threw that out casually, drew it out and threw it over to us on the table.

Q. After looking at that plan, I take it you were all around, you went around and actually looked at each building? A. All over the whole plant, the four of us. 13

Q. And independently of whatever information he gave you with respect to the age and the construction of the buildings, you made up your own judgment? A. I did, based on the previous assessments I had made, and figures I had formed in the Board and figures I knew in Newark industrial plants and figures in the County Board in Newark for substantial plants all of which represented figures for similar plants. 20

Q. So that your valuation was based upon the examination you made individually? A. Absolutely.

Q. Do you think you would be able to identify that blue print if you saw it again? A. I ain't sure.

Q. If I try to get it? A. I think I could, yes.

By Mr. Minard.

30

Q. In regard to the similar plants that you inspected, were any of those plants linoleum works?

A. No, they were not, that I know of.

Q. Did you notice anything peculiar about the buildings in a linoleum plant differing from the general industrial manufacturing building? A. Well, they were more heavily constructed.

Q. More so than the general manufacturing industrial plant? A. Well, I should not say that, no. Some of the buildings, yes, they were very heavily constructed, because they use heavy machinery. 40

Frank A. O'Connor—For Prosecutor—Recross.

But all industrial buildings have to be built pretty heavily to carry the weight of looms and those things.

10 Q. But there was a difference— A. I have been all through Paterson and all those silk mills and all those places where they carry—well, I have had many, many visits in Paterson and Passaic.

Q. Did you notice in any of these buildings what is called the cooking or drying rooms? A. Yes, sir.

Q. They were very high rooms, and the walls thicker than usual on account of the height of the building? A. Yes. There were no floors in between so that the average price per cubic foot would not run as high, if I could consider it; shafts almost, with only four walls.

20 Q. Did they give you a copy of the map you saw? A. No, I did not ask to take it. It was spread out on the drafting table.

Q. The Board never saw that map, did they, as far as you know? A. As far as I know they did not, unless they saw it the day they were there.

Q. Do your figures apply only to the buildings themselves? A. No, the buildings and their contents.

30 Q. What do you mean by "contents"? A. Well, anything that I would consider a part of the building, that was fastened to the building; such as the plumbing work and lighting fixtures and the usual things that go with the building.

Q. Did you make any distinction of the value of the plumbing, the light and the sprinklers of the buildings? A. Well, if a building was very well constructed and very well plumbed and all that sort of thing it naturally made a higher cubic rate per foot.

40 Q. How did you distinguish the value of the equipment from the value of the buildings them-

Frank A. O'Connor—For Prosecutor—Recross.

selves? A. The value of equipment? Well, equipment, as I take it, the removable machinery, is personal property.

Q. Equipment as used in this case does not include any machinery? A. Yes.

Q. It only includes the plumbing and the lighting? A. I took all that into consideration. 10

Q. You did not attempt to separate them one from the other? A. Yes, because there is a great deal of difference in the price per cubic foot in my figures; they run from three and a half cents to twenty-seven cents. That is what made the difference.

Q. That is what made the difference? A. Yes, surely.

Q. That is the difference? A. Yes. Surely. The buildings that were more heavily constructed, naturally they were higher in the value. 20

Q. Did Mr. Focht participate at all in your consideration of the matter? A. No.

Q. Nor did he give you any expression of opinion on the subject? A. No, sir. I did not ask for any.

Q. And, as far as you know, he had nothing to do with the matter except to go with the Board? A. Well, I don't know that he did, but I was not with them. I think he was with them. But I don't know if he was with them even. I did not know he was in the matter at all, I did not consider him. 30

(The signature of the witness is waived.)

Charles E. Cook—For Prosecutor—Direct.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

CHARLES E. COOK, being first duly sworn, according to law, on his oath deposes and says:

10 *Direct examination by Mr. Minard.*

Q. You are the Secretary of the State Board of Taxes and Assessments? A. I am.

Q. You were present with Mr. O'Connor at the inspection of April 1st? A. I was.

Q. Your recollection of what occurred is the same as what he has testified to? A. Yes, sir.

20 Q. Do you know the name of the gentleman who gave him the information? A. I would not, but I know that he said he was the Chief Engineer of the Plant.

Q. And your recollection of the character and extent of the information which he gave is as described by Mr. O'Connor? A. Exactly.

Q. Did you participate in the conclusions that Mr. O'Connor reached? A. No, sir.

30 Q. You know that the information given by Mr. Storack, or whatever his name was, was taken down, or a memorandum taken by Mr. O'Connor, Jr.? A. Yes, sir.

Q. And used by Mr. O'Connor in his— A. I could not say that they were used by Mr. O'Connor. I did not participate in the figuring, only in this respect, that he done some estimating that day and I tallied the number of the buildings for him that were in the various grades so that he could aggregate together the various sums that he would come to as the appeal had ben filed.

40 Q. You wrote the letter of March 25th, 1926, announcing the date of the inspection of the building by the Board? A. I did, sir, I dictated it.

Charles E. Cook—For Prosecutor—Direct.

Q. And you wrote that last paragraph by the direction of the Members of the Board? A. By the direction of the President of the Board.

Q. Did you write or dictate the judgment of the Board? A. No, sir.

Q. Who did? A. The attorney representing the Congoleum-Nairn Company. That is an established practice of the Board. 10

Q. Where did you get it from? A. From Mr. Milton.

Q. It came to you by mail? A. Yes, sir.

Q. When did you receive it? A. I could not recall the date.

Q. Was it before or after the meeting of April 6th? A. I could not say. It was the week previous. Just previous to the time that the judgment was signed by the Board. I have not my memoranda here and I could not recall just what Tuesday that was when they signed the judgment. 20

Q. In other words, the judgment was written and received by you a week before the meeting of April 6th? A. I would not say it was a week before.

Q. Several days? A. During that week some time, from the last meeting of the Board, they signed it. 30

Q. The meeting of April 6th, I presume, was on Tuesday? A. Yes, sir.

Q. And you received that judgment from Mr. Milton during the week previous? A. Yes, sir.

Q. Did you have any knowledge of the statements made in that judgment or anything to do with their suggestion? A. No, I did not. I always turned those over to Mr. Weaver, who is the legal man of the Board. He reads all the judgments over very carefully and they also are taken care of by Miss Mason, who handles all the judgments in the same way. 40

Charles E. Cook—For Prosecutor—Direct—Cross.

Q. She is an employee of the Department? A. Yes, sir.

Cross-examination by Mr. Milton.

10 Q. Your practice in the Board is to send to the Attorney for the winning side, if I may use that expression, three copies of forms which are used by your Board, with the request that the judgment of the Board as indicated in your letter advising of the result, be drawn and returned to you? A. Always, sir.

Q. I assume, for the purpose of having a judgment which expresses the facts, and, perhaps, to save labor in your office? A. Yes, sir.

20 Q. And your practice in this particular instance was no different from that pursued by you in other cases which are decided by your Board? A. It was no different whatsoever.

Q. The judgment before it was adopted or actually signed by your Board was read to the Board, I assume, in meeting assembled? A. Yes, sir.

Q. And was regularly approved and adopted as the judgment of the Board? A. Yes, sir.

30 Q. And was then signed by the Board? A. Yes, sir.

Q. Your fixation of the dates when the judgment was received by you is necessarily from recollection? A. Yes, sir.

Q. As you now testify you do not have your minutes before you? A. No. Unless I can look at my records I could not testify positively to the dates.

40 Q. As a matter of fact, you did not expect to testify when you came here to-day? A. I did not, no, sir.

Chas. E. Cook—For Prosecutor—Cross—Redirect.

Q. Having been notified you would be expected to testify on Friday at Trenton? A. Yes, sir.

Redirect examination by Mr. Minard.

Q. When you wrote to Mr. Milton asking him to draw the form of the judgment, did you state the facts or any conclusions of the Board upon which that judgment was to be based? A. We would state the conclusions of the Board in detail as they are drawn for each separate individual appeal. The certain lots and plots number, the assessed value and what the Board's action was. 10

Q. And we do not want any confusion about it, when you say that you received this judgment a week previous to the action of the Board, how could you state the conclusions of the Board? A. I did not mean the action of the Board, I meant the time when they signed the judgment. 20

Q. Then you wrote Mr. Milton after the meeting of April 6th? A. Oh, positively, prior to the time they signed the judgment, when we considered the case as concluded.

Q. Did you send him a copy of the findings of the Board? A. No, just simply what the Board has made, it says lot blank block two or three, the assessed value so much of buildings and plot and what the Board's findings are, they may be reduced to. 30

Q. In other words, you sent him substantially a copy of Mr. O'Connor's report, is that right? Those figures that were in the report? A. No, according to the number of buildings and everything, I would say no.

Q. Did you send Mr. Milton anything more than is shown in this return from the minutes of the Board of April 6th, 1926? A. Well, I could not recall that from my mind. 40

Charles E. Cook—For Prosecutor—Redirect.

Mr. Milton: What he sent me is in a letter and I will give it to you.

The Witness: I will send you a copy of it, if you want it.

10 (It is consented that a copy of the letter shall be supplied by Mr. Milton and here taken into the record as Prosecutor's Exhibit No. 2.)

It is as follows:

Prosecutor's Exhibit No. 2.

STATE OF NEW JERSEY

20 STATE BOARD OF TAXES AND ASSESSMENT

Trenton, N. J., April 14, 1926.

John Milton, Esq.,
1 Exchange Place,
Jersey City, N. J.

My dear Mr. Milton:

30 In the matter of the appeal of Congoleum-Nairn, Inc., vs. Town of Kearny, I beg to advise you that this Board has ordered as follows for the year 1925:

<i>Block</i>	<i>Plot</i>	<i>Assessed</i>	<i>State Board Action</i>
22	181	Imps. \$1,220,450	\$ 841,000
23	1	" 38,700	20,378
23	2 & 3	" 74,750	Affirmed (74,750)
24	111 & 111A	" 3,106,250	1,585,000
25	190	" 190,500	136,500
		<hr/>	<hr/>
		\$4,630,650	\$2,657,628

40

*Prosecutor's Exhibit No. 2.**Duane E. Minard—For Prosecutor—Direct.*

You will recall that the appeal from the assessments on land and personalty was withdrawn at the hearing.

Kindly draw judgment in triplicate as of April sixth, and forward all copies to this office. I enclose blanks. 10

Very truly yours,

CHAS. E. COOK,
Secretary.

By Mr. Minard.

Q. Did you send him a copy of the minutes, a transcript of the testimony at all at that time? A. Oh, no. 20

Q. You sent him then, really, the conclusions of the Board? A. Just simply in a letter form.

(The signature of the witness is waived.)

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.: 30

DUANE E. MINARD, being first duly sworn, according to law, on his oath deposes and says:

DIRECT EXAMINATION.

I was one of the Attorneys for the Town of Kearny participating in the hearings before the State Board of Taxes and Assessments in the trial of the appeal of Congoleum-Nairn, Incorporated, successor to Nairn Linoleum Company, heard by the Board on January 13th and 25th, 1926. 40

Duane E. Minard—For Prosecutor—Direct.

Referring to the testimony as contained on printed page 157 of the record where the President suggested that the Board's Field Secretary make an examination of the plant; where the word "discussion" appears in brackets, there was a discussion
10 between myself and the President of the Board with regard to this examination by the Field Secretary. I called the President's attention to the rulings in Court that decisions in matters of this kind must be made upon the record and not upon information obtained outside of the record and asked that we would have an opportunity to see any report that the Field Secretary should make and to participate in any examination of the plant by the members of the Board, and to have the opportunity of cross-examination thereon if desired; and my understand-
20 ing was that we should have an opportunity to see any such report, to participate in any examination of the property by the members of the Board and to cross examine on such report or on such inspections if desired.

This is the substance of the "discussion" indicated by that word in brackets on page 157 of the printed record.

It was after this discussion, and the understanding that I have just stated that the stipulation recited at the bottom of page 157 and top of page 158 of the printed record was consented to. That stipulation reads:
30

"It is stipulated and agreed by and between Counsel for the Congoleum-Nairn Company, the Petitioner, and the Town of Kearny, the respondent, that, following the suggestion of the President of the Board, that Mr. Frank O'Connor, Field Secretary of the State Board of Taxes and Assessments, shall visit the plant of the Congoleum-Nairn
40 Company at Kearny, New Jersey, and make a report to the State Board of Taxes."

Duane E. Minard—For Prosecutor—Direct.

The stipulation referred to in the judgment is there stated as follows:

“And the parties having stipulated that the Board, through its Field Secretary, might examine the said buildings and make his own appraisal and valuations thereof.”

10

In the return of the State Board, in the minutes of the Board of January 25th, appears this alleged stipulation:

“It was stipulated and agreed by and between Counsel for Congoleum-Nairn, Incorporated, and the Town of Kearny that following the suggestion of President Baker, Mr. Frank O’Connor, Field Secretary of the Board, visit the plant of the Congoleum-Nairn, Incorporated, at Kearny, and report thereon as to the value thereof and the amount of a proper assessment.”

20

I made no such stipulation as that recited in the judgment or in the minutes of the Board of January 25th, 1926. The stipulation recited on pages 157 and 158 of the printed record was consented to after the discussion above mentioned.

(No cross-examination.)

(The signature of the witness is waived.)

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John H. Cooper—For Prosecutor—Direct.

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

10 JOHN H. COOPER, being first duly sworn, according to law, on his oath deposes and says:

Direct examination by Mr. Minard.

Q. Are you the Town Attorney of the Town of Kearny? A. I am.

Q. You were present and participated in the hearings on January 13th and 25th, 1926, on behalf of the Town? A. I did.

20 Q. Have you examined the record of that hearing in regard to the stipulation contained on pages 157 and 158 of the printed record? A. I have read the whole thing through.

30 Q. What can you say as to whether that stipulation contains the subject matter of what was agreed to between Counsel regarding the Field Secretary's Examination and report? A. I do not think the stipulation as in the record there is full enough. It might be that it was in the discussion, that part, but as I understood it, my recollection was that the understanding was that we should have the right to get a copy of the report if made and that we would have the right to examine or cross-examine the party making the report.

Q. And do you remember that part of the discussion that I have referred to between the President and myself on that subject? A. I do.

Q. And is that statement that I have made correct? A. I would say it was correct, yes.

40 Q. Did you ever participate in or know of any stipulation such as that contained in the judgment which authorized the Board through its Field Secretary to examine the buildings and make its own

John H. Cooper—For Prosecutor—Direct.

appraisal and valuation thereof? A. Not that would be binding on the Town of Kearny. President Baker said that he thought it would be wise to look the buildings over and make an examination of the place.

Q. Do you know of any stipulation which gave them permission to make their own appraisal and valuation? A. No. There was no such proposition. 10

Q. Do you know of any stipulation such as is reported in the minutes of January 25th, 1926, authorizing the Field Secretary to visit the plant and report thereon as to the value thereof and the amount of a proper assessment? A. No, I do not.

Q. Did you as Town Attorney have any other understanding or recollection than that the Town's Attorneys were to have an opportunity to see any report that was made and to cross-examine upon the report or upon any information obtained by the Board or its representatives outside of the hearing? A. I did not, no, sir. 20

(No cross-examination.)

(The signature of the witness is waived.)

IT IS STIPULATED by the Counsel representing the parties appearing at this hearing as follows: 30

That if Mahlon R. Margerum, Isaac Barbour and F. D. Weaver were sworn as witnesses, and examined, that they would testify in substance the same as Mr. Baker and Mr. Huegel (witnesses sworn and examined to-day) have testified; except that in the case of Mr. Weaver he would testify that he did not visit the plant with the other members of the Board. And this stipulation is received in lieu of having these witnesses sworn and examined. 40

Stipulation as to Other Witnesses.

ALSO that Louis Focht did not participate in the consideration or in the conclusion of the Board in this matter, and on this stipulation the testimony of Mr. Focht is waived.

10 ALSO that George S. Hobart, Esq., if called and sworn would testify in substance to the same effect as testified by the witness Duane E. Minard.

(Prosecutor's Depositions Closed.)

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

20 I, JOHN P. DENGLER, Supreme Court Examiner, of the State of New Jersey, DO CERTIFY that the foregoing is a true and accurate transcript of the examination under notice and consent of the witnesses called on behalf of the prosecutor, James Baker, Charles E. Cook, J. William Huegel, Frank A. O'Connor, Duane E. Minard, John H. Cooper, in the above entitled cause, taken before me at the time and place therein mentioned; that the said witnesses were first properly sworn according to law to tell the truth, the whole truth and nothing but the truth, and examined by counsel as set forth

30 in the said depositions, and that by stipulation entered into by counsel in open court the depositions were recorded stenographically and subsequently transcribed, and that this transcript fully, fairly and accurately sets forth the testimony so given and that by like stipulation the signatures of the witnesses were waived.

40 And I do also certify that by like stipulation the testimony of Mahlon H. Margerum, Isaac Barbour, F. D. Weaver, Louis Focht and George S. Hobart was waived as indicated on page 51 of the said deposition.

JOHN P. DENGLER,
Supreme Court Examiner.

Stipulation.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">TOWN OF KEARNY, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">STATE BOARD OF TAXES AND AS- SESSMENT and CONGOLEUM- NAIRN, INC., Respondents.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">On Certiorari.</p>
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It is hereby stipulated and agreed that the schedule of the ages of the buildings involved in this proceeding submitted to Frank O'Connor, Field Secretary of the Respondent State Board of Taxes and Assessment, by one Sturruck, associated with the Respondent Congoleum-Nairn, Inc., is the same as that submitted to and used by the witness Ramery, who appraised the buildings for the Respondent Congoleum-Nairn, Inc., and testified thereto before the State Board of Taxes and Assessment.

Dated, May 17, 1926.

HOBART & MINARD,
Attorney for Prosecutor.

JOHN MILTON,
Attorney for Respondent,
Congoleum-Nairn, Inc.

Opinion, Supreme Court.

(Filed October 7, 1926.)

NEW JERSEY SUPREME COURT.

No. 276. MAY TERM, 1926.

10

<p style="text-align: center;">TOWN OF KEARNY, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">THE STATE BOARD OF TAXES AND ASSESSMENT et als., Defendants.</p>	}	On Certiorari.
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Argued June 8th, 1926. Decided October 7th, 1926.
Before: Justices PARKER, BLACK and CAMPBELL.

For the Prosecutor: MESSRS. JOHN H. COOPER &
HOBART & MINARD.

For the Defendants: EDWARD L. KATZENBACH,
Atty. General, and JOHN MILTON.

Per Curiam:

30

The certiorari was allowed in this case, to review a decision of the State Board of Taxes and Assessment reducing the valuation of the property of the Congoleum-Nairn Co. made by the assessors of the Town of Kearny, for the year 1925. The decision of the State Board is attacked on the ground, that it is not supported by any legal evidence and, in support of that contention, the prosecutor cites, the testimony of the President of the Board at p. 281 of the record, viz; "that the Board felt justified to some extent in ignoring the testimony of the

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experts on both sides, and taking the judgment of

Opinion.

its own trained appraiser." The Board adopted in toto an appraisal of \$2,657,628 made by Mr. Frank O'Connor, the clerk and field secretary of the Board. No opportunity was given the prosecutor to examine it, rebut it, or cross-examine upon it before it was adopted as the judgment of the State Board. This is not the kind of a hearing that is required in a judicial procedure. The hearing must be a real, not a sham, hearing; the parties have a right to support their allegations, if need be, by proof, to determine whether there is need of proof the parties must know what they are to meet. 10

Long Dock Co. v. State Board, 86 N. J. L. 592.

Such a procedure as is shown by this record, is not due process of law. *Trenton &c. Traction Co. v. Mercer County Tax Board*, 92 N. J. L. 398, 402. The judgment to be sustained must be based upon evidence. *Gibbs v. State Board of Taxes and Assessment*, 3 N. J. Adv. R. 986. 20

For these reasons the judgment of the State Board of Taxes and Assessment in this case is reversed and set aside. 30

Notice of Application to Fix Assessment.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">TOWN OF KEARNY, a municipal corporation, Prosecutor,</p>	}	<p>On Certiorari. Application for Ascertainment, Determination and Fixing of Assessment.</p>
	vs.		
	<p style="text-align: center;">THE STATE BOARD OF TAXES AND ASSESSMENT AND CON- GOLEUM-NAIRN, INC., Defendants.</p>	}	<p>NOTICE. Served October 18, 1926. Filed October 22, 1926.</p>

To:

20 HON. EDWARD L. KATZENBACH,
 Attorney General,
 Trenton, N. J.,

and

JOHN MILTON,
Attorney for Congoleum-Nairn, Inc.,
Jersey City, N. J.

Gentlemen:

30 PLEASE TAKE NOTICE that we shall apply to the
Supreme Court, at its court room at the State
House, Trenton, on Friday, October 22, 1926, at
one o'clock P. M., or as soon thereafter as the court
can attend to the same, to have said court ascertain
and determine for what sum the defendant Con-
goleum-Nairn, Inc., and the property involved in
this proceeding is legally liable for taxation or
assessment in the above entitled matter and for an
order fixing the amount thereof.

40

Notice of Application to Fix Assessment.

At the time and place aforesaid we will present to the court the attached affidavit.

Respectfully yours,

HOBART & MINARD, 10
Attorneys for the Prosecutor.

Newark, N. J., October 18, 1926.

Affidavit.

NEW JERSEY SUPREME COURT.

TOWN OF KEARNY, a municipal corporation, Prosecutor, vs. THE STATE BOARD OF TAXES AND ASSESSMENT AND CON- GOLEUM-NAIRN, INC., Defendants.	}	On Certiorari. 20 Application for Ascertainment, Determination and Fixing of Assessment. AFFIDAVIT. Served October 18, 1926. Filed October 22, 1926. 30
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STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss. :

SAMUEL MARSHALL, of full age, being duly sworn, on his oath, deposes and says:

1. I am Chairman of the Board of Assessors of the Town of Kearny (prosecutor herein) and have been a member of said Board since July, 1924.
2. On October 1, 1924, said Board assessed the 40
buildings of Nairn Linoleum Company (the pre-

Affidavit.

decessor of the defendant Congoleum-Nairn, Inc.) at \$4,650,692.

10 3. Said assessment was appealed by Congoleum-Nairn, Inc., to the County Tax Board of Hudson County, where it was affirmed, and was then appealed to the State Board of Taxes and Assessment, where it was reduced to and re-assessed at \$2,657,628.

4. The assessment of the State Board was reviewed by this Court on certiorari, and by its decision filed October 7, 1926, this Court decided that said assessment should be set aside.

20 5. On October 1, 1925, and October 1, 1926, the same buildings were assessed by the Board of Assessors of the Town at the amount of the original assesment, to wit, \$4,650,692 for the years 1926 and 1927, respectively.

30 6. The assessment of October 1, 1925, was appealed by Congoleum-Nairn, Inc., to and affirmed by the County Tax Board of Hudson County, and was then appealed to the State Board of Taxes and Assessment, where said appeal is now pending. Until the assessment of October 1, 1924, is finally settled and determined, it is probable that all such assessments in the future will be likewise appealed.

40 7. From the taxes assessed for the year 1925, under the assessment of October 1, 1924, the said defendant deducted and retains the sum of \$67,694.37, and from the taxes assessed for the year 1926 under the assessment of October 1, 1925, said defendant deducted and retains the sum of \$67,640.98. There is, therefore, due and unpaid to said Town from the said defendant Congoleum-Nairn, Inc., as a consequence of said two appeals, the sum of \$135,335.35, the withholding of payment of

Affidavit.

which has seriously affected the finances of said Town and embarrassed it in its ability to meet its maturing obligations, and will continue to so affect and embarrass said Town until said appeals are finally determined and said withheld taxes paid. Said Town has been compelled to borrow money to balance its budget for the year 1926 and will be compelled to borrow more money to balance its budget for the year 1927. As a further consequence of said appeals said Town has been compelled to incur (and in the future will be compelled to incur) heavy expenses for counsel fees, expert witnesses and other items necessary for and incident to the trial of said appeals before the State Board of Taxes and Assessment and in connection with the review of the judgment of the said State Board before this Court.

8. It is, therefore, of the greatest importance to the prosecutor to have the amount of the assessment of October 1, 1924, on the buildings of said defendant definitely and properly ascertained, determined and fixed as soon as possible, and the prosecutor respectfully requests this Court to do so in the manner and form provided by law, and to make the conclusion of this Court as to the amount of the said assessment, as so ascertained, determined and fixed, a part of the judgment of this Court to be entered under its said decision.

SAMUEL MARSHALL.

Sworn and subscribed before me
this 18th day of October, 1926.

AUGUSTINE J. KELLY,
An Attorney at Law of N. J.

Opinion, Supreme Court.

(Filed, November 13, 1926.)

NEW JERSEY SUPREME COURT.

No. 276. MAY TERM, 1926.

10

TOWN OF KEARNY,
Prosecutor,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT et als,
Defendants.

Certiorari.
Application
for fixing
Assessment.

20

Argued, October 22, 1926. Decided, November
12th, 1926.

1.

30

The Supreme Court is empowered, if need be, to ascertain and determine the amount of the assessment of property for local taxation under the General Tax Act, P. L. 1918, p. 870, sec. 513, and the Certiorari Act, 1 Comp. Sts. of N. J., p. 405, sec. 11, which provides the court has power to determine disputed questions of fact as well as of law. This power should not be exercised to the exclusion of the State Board of Taxes and Assessment except upon some exceptional or special reason.

2.

40

The application to have the Supreme Court determine the amount of the assessment of the prosecutor's property to the exclusion of the State Board of Taxes and Assessment is denied.

Opinion.

Before: Justices BLACK and CAMPBELL.

For the Applicant: Messrs. HOBART & MINARD and
JOHN H. COOPER Esq.

For the Defendants: JOHN MILTON, Esq. 10

The opinion of the Court was delivered by
BLACK, J.

The judgment of the State Board of Taxes and Assessment, in this case, was set aside by the Supreme Court, *Town of Kearny v. The State Board of Taxes and Assessment*, 4 N. J. Misc. R. 834, on the ground that the procedure at the hearing before the State Board was illegal.

Thereafter, an application was made to have the Supreme Court ascertain and fix the amount of the assessment to be placed upon the property of the Congoleum-Nairn, Inc., located in the Town of Kearny, subject to taxation for the year 1925. While it may be conceded that the Supreme Court has the power not only under the General Tax Act of 1918, P. L. 1918, p. 870, sec. 513, to ascertain and determine for what sum such property was legally liable to taxation or assessment and by order or decree to fix the amount thereof, but also under the Certiorari Act, 1 Comp. Sts. of N. J. 405, sec. 11, the Supreme Court has the power to determine disputed questions of fact as well as of law. *Trenton &c. Traction Corporation v. Mercer County Board of Taxation*, 92 N. J. L. 398; *Gibbs v. State Board of Taxes and Assessment*, 3 N. J. Adv. R. 986. Notwithstanding, such power is lodged in the Supreme Court by the legislature, we think the application should be denied for two substantial reasons. The first is practical and the second is fundamental. As to the first, the Statute 20 30 40

Opinion.

is not mandatory or obligatory, the Supreme Court is "empowered, if need be, to ascertain and determine," &c. The business now pending before that part of the Supreme Court, in which municipal matters are heard and determined, is such that it would be impractical for that Court to hear and determine tax cases in which the principal and perhaps the only contentions are questions of fact.

The second or fundamental reason is the Legislature has provided a tribunal for that express purpose. This Board was created by the Act of 1915, p. 438, it and its predecessor, the State Board of Assessors, has had jurisdiction over the assessment of railroad property since 1884, P. L. 1884, p. 142, and it and its predecessor has had jurisdiction on appeal over the local assessments since 1891, P. L. 1891, p. 189. It occupies an important position in the system of taxation of the State, especially for the determination of disputed questions of fact. It was so designed by the legislature for that expressed purpose. In the absence of some exceptional or special reason, the normal functions of the State Board of Taxes and Assessments in determining disputed questions of fact, as fact finding board in the first instance should not be curtailed, suspended, interfered with or superseded by the Courts. No adequate reason is suggested why the Supreme Court in this case, rather than the State Board of Taxes and Assessment, should determine the value of the property under investigation for the year 1925.

This leads to a denial of the application.

A true copy.

EDWARD J. KELLEHER,
Clerk.

Rule for Judgment.

NEW JERSEY SUPREME COURT.

(On Opinion of November 13, 1926.)

<p style="text-align: center;">TOWN OF KEARNY, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">THE STATE BOARD OF TAXES AND ASSESSMENT and COMGOLEUM- NAIRN, INC., Defendants.</p>	}	<p>On Certiorari. 10</p> <p>On Application to Have Assessment Fixed by the Supreme Court.</p> <p>RULE FOR JUDGMENT.</p> <p>Entered Nov. 30, 1926.</p>
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This matter coming on to be heard upon applica- 20
tion for the prosecutor to have this court ascertain
and determine for what sum the defendant Con-
goleum-Nairn, Inc., and the property involved in
this proceeding is legally liable for taxation or as-
sessment, and for an order fixing the amount there-
of, and the court having read and considered the
affidavit annexed to the moving papers, and having
heard Messrs. Hobart & Minard for the applicant
and John Milton, Esq., for the defendants, and hav- 30
ing considered the arguments submitted for both
parties, and being of opinion that the application
should not be granted,

It is ordered that the said application be and
the same hereby is denied.

Let this rule be entered in the Minutes.

Dated, November 30, 1926.

Actually entered Nov. 30, 1926.

LUTHER A. CAMPBELL,
Justice of the Supreme Court, 40
for the Court.

Rule for Judgment.

Rule granted on motion of John Milton, Attorney for Defendants.

10 A true copy.

EDWARD J. KELLEHER,
Clerk.

Rule for Judgment.

(On Opinion of Oct. 7, 1926.)

20 NEW JERSEY SUPREME COURT.

TOWN OF KEARNY, a municipal
corporation,

Prosecutor,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT and CONGOLEUM-

30 NAIRN, INC., a corporation,
Defendants.

On Certiorari.

RULE FOR
JUDGMENT.

Entered
Dec. 6, 1926.

40 The Court having inspected the judgment of the State Board of Taxes and Assessment, dated April 6, 1926, in a certain proceeding entitled "In the Matter of Appeal of Congoleum-Nairn, Inc., from the assessment of Property in the Town of Kearny, County of Hudson, for the year 1925," wherein Congoleum-Nairn, Inc., was petitioner and the Town of Kearny, a municipal corporation of the

Rule for Judgment.

County of Hudson, was respondent, and having examined the testimony and exhibits offered before said Board, and all other proceedings concerned therewith returned with the writ of certiorari in this cause, and the depositions taken pursuant to the order of this Court, and the reasons for setting aside said judgment; and having heard the argument of counsel, and having duly considered the same, it is thereupon ordered that said judgment be reversed and set aside. 10

Entered December 6th, 1926.

On motion of Hobart & Minard, Attorneys for Prosecutor.

A true copy. 20

EDWARD J. KELLEHER,
Clerk.

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40

Notice and Grounds of Appeal.
NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">TOWN OF KEARNY, a municipal corporation, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">THE STATE BOARD OF TAXES AND ASSESSMENT and CONGOLEUM- NAIRN, INC., a corporation, Defendants.</p>	<p>On Certiorari.</p> <p>NOTICE AND GROUNDS OF APPEAL.</p> <p>Served Dec. 16, 1926.</p> <p>Filed Dec. 22, 1926.</p>
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20 To:

EDWARD L. KATZENBACH, Esquire,
Attorney General,
Attorney for Defendant
The State Board of Taxes
and Assessment.

JOHN MILTON, Esquire,
Attorney for Defendant
Congoleum-Nairn, Inc.

30 *Gentlemen:*

PLEASE TAKE NOTICE that the prosecutor appeals to the Court of Errors and Appeals from the judgment entered in this cause on November 30, 1926, denying the application of the prosecutor to have the Supreme Court ascertain and determine for what sum the defendant Congoleum-Nairn, Inc., and the property involved in this proceeding is legally liable for taxation or assessment, and for an order fixing the amount thereof, on the following

40 grounds:

Notice and Grounds of Appeal.

1. The Supreme Court, in denying said application, failed to perform the duty which the statute imposed upon it.

2. The Supreme Court should have granted said application. 10

3. The Supreme Court erroneously denied said application.

December 15, 1926.

Yours respectfully,

HOBART & MINARD,
Attorneys for Prosecutor.

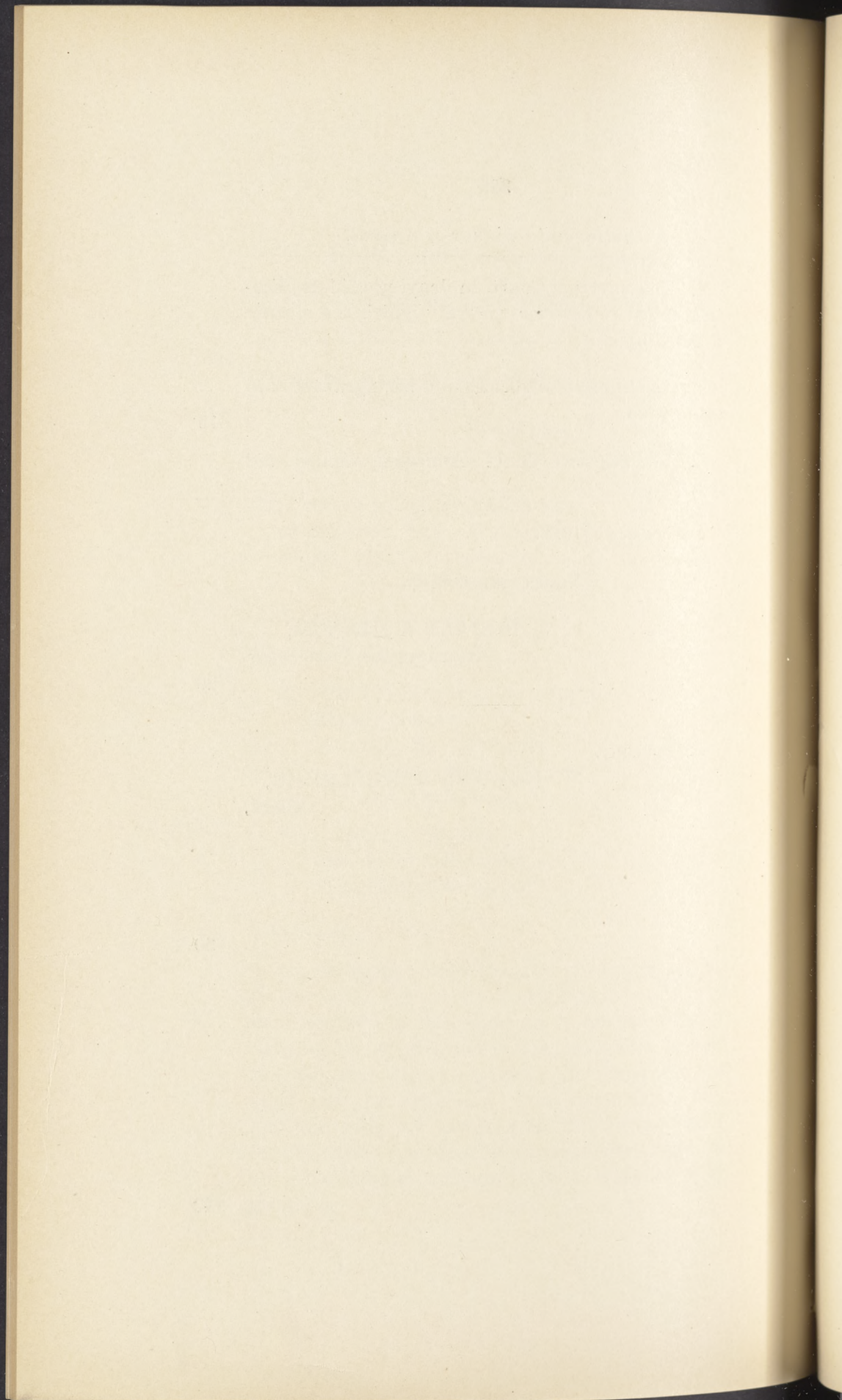
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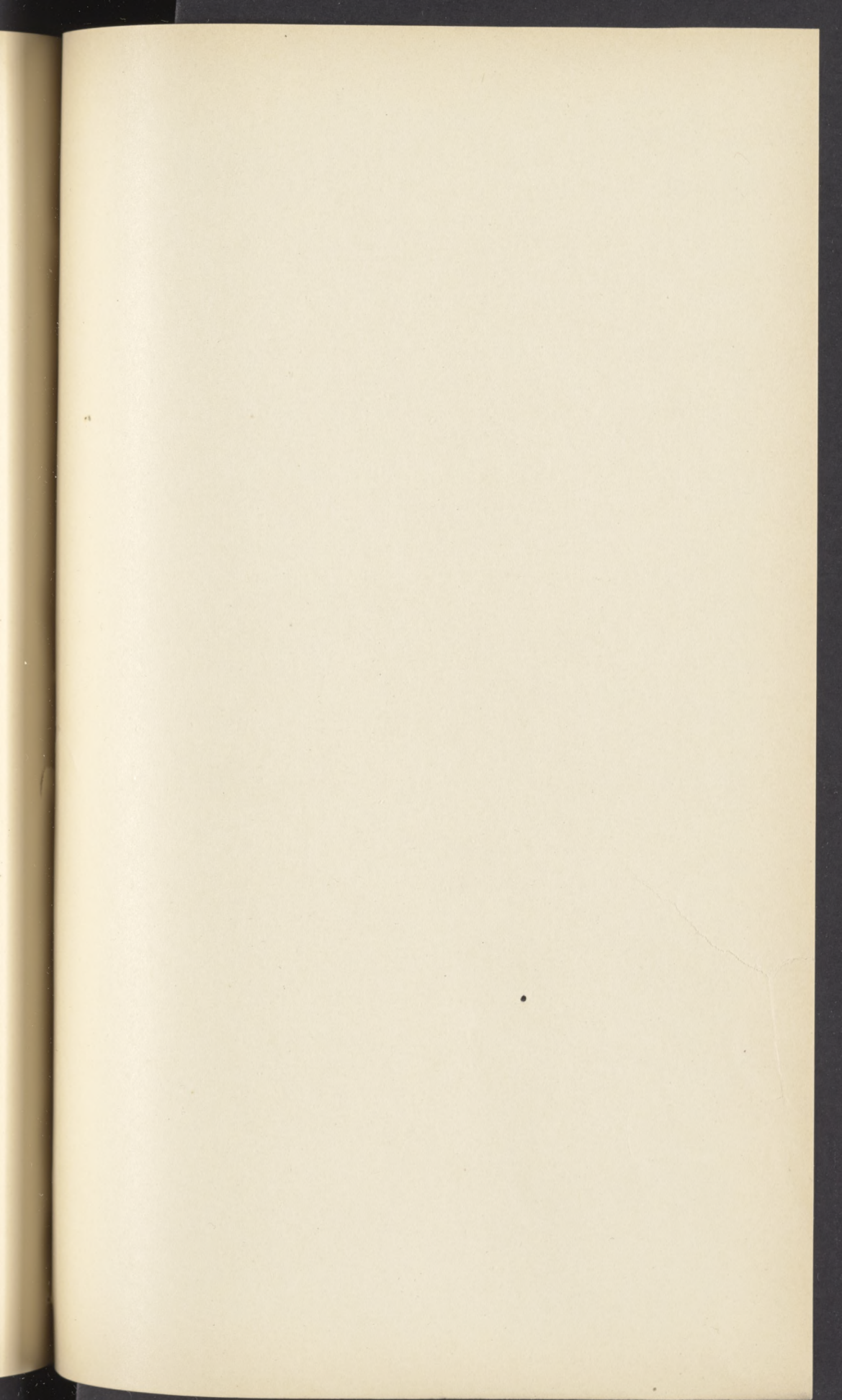
A true copy.

EDWARD J. KELLEHER,
Clerk.

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NEW JERSEY

Court of Errors and Appeals

THE TOWN OF KEARNY, a municipal corporation,
Prosecutor-Appellant,

vs.

THE STATE BOARD OF TAXES AND ASSESSMENT and CONGOLEUM-NAIRN, INC.,
Defendants-Respondents.

On Appeal
from the
Supreme
Court.

BRIEF FOR PROSECUTOR-APPELLANT.

(1)

Statement of the Case.

This is an appeal from a judgment of the Supreme Court entered November 30, 1926 (p. 325), upon the decision of said court filed November 13, 1926 (p. 322), denying the application of the prosecutor-appellant to have said court ascertain and determine for what sum certain property of the defendant-respondent Congoleum-Nairn, Inc., is legally liable for taxation or assessment and for an order fixing the amount thereof (135 A. 61).

At the May Term, 1926, the Supreme Court heard the appeal of the prosecutor-appellant from a judgment of the State Board of Taxes and Assessment

entered April 6, 1926, assessing the buildings of the Congoleum-Nairn, Inc., located in the Town of Kearny, for the year 1925 (involved in this proceeding), as follows:

<i>Block</i>	<i>Plot</i>	<i>Town Assessment</i>	<i>State Board Judgment</i>
22	181, Imps.	\$1,220,450	\$ 841,000
23	1 “	38,700	20,378
23	2 & 3 “	74,750	Affirmed
24	111 & 111-A “	3,106,250	1,585,000
25	190 “	190,500	136,500
		*\$4,630,650	\$2,657,628

On October 7, 1926, the Supreme Court filed its decision reversing and setting aside the said judgment of the State Board of Taxes and Assessment (p. 316) (134 A. 620).

In its brief filed with, and in its argument before, the Supreme Court, the prosecutor-appellant asked that court to—

(1) Decide that the judgment of the State Board is erroneous and should be set aside;

(2) Ascertain and determine for what sum the defendant company was legally liable to taxation and assessment as of October 1, 1924;

(3) Make a proper levy or assessment as of said date;

(4) And to that end restore the assessment as fixed by the Board of Assessors of the prosecutor.

* This amount was taken by the State Board from figures which had been previously corrected to \$4,650,692.

Since the Supreme Court, in its decision of October 7, 1926, merely set the judgment aside, without ascertaining and determining for what sum the defendant-respondent Congoleum-Nairn, Inc., was legally liable to taxation and assessment as of October 1, 1924; or making a proper levy or assessment, as of said date, the prosecutor-appellant, on due notice and affidavit served upon the defendants-respondents (p. 318), made application on October 22, 1926, to the Supreme Court to have it so ascertain and determine such sum and make such a proper levy and assessment. Argument was heard and briefs filed upon that application, and on November 13, 1926, said court filed its decision denying that application. On November 30, 1926, on motion of the attorney for the defendant-respondent Congoleum-Nairn, Inc., a rule for judgment was entered on that decision (p. 325), and it is from that judgment that the prosecutor-appellant appeals to this court, by notice of appeal dated December 15, served December 16, and filed December 22, 1926 (p. 328).

(2)

The Questions Before This Court.

1. Was there evidence before the Supreme Court upon which to base an ascertainment and determination of the value of the property involved, for the purpose of such an assessment and to enable it to fix the amount thereof? and
2. Should the Supreme Court have so ascertained and determined such value and fixed the amount thereof?

Grounds of Appeal.

The grounds of appeal (p. 328) are as follows:

1. The Supreme Court, in denying said application, failed to perform the duty which the statute imposed upon it.
2. The Supreme Court should have granted said application.
3. The Supreme Court erroneously denied said application.

(3)

BRIEF OF THE ARGUMENT.

History of the Litigation.

The Assessment.

The original assessment in this case, made as of October 1, 1924, for the year 1925, by the Board of Assessors of the Town of Kearny, upon the property of the Nairn Linoleum Company, was as follows (Exhibit D-10, p. 220) :

Buildings.	\$4,650,692
Land.	273,450
Personal.	2,500,000
	<hr/>
Total.	\$7,424,142

Change of Name of Company.

On October 24, 1924, Nairn Linoleum Company, a New Jersey corporation organized in August, 1886, was merged with the Farr & Bailey Manufacturing Company, a subsidiary of Congoleum Company, Inc., into The Nairn Linoleum Manufacturing Corporation.

On October 25, 1924, the name of the Congoleum Company, Inc., was changed to Congoleum-Nairn, Inc., and, by exchange of shares of stock, it acquired ownership and control of the Nairn Linoleum Manufacturing Company, and has since operated, and now operates, the plant formerly of the Nairn Linoleum Company in the Town of Kearny, N. J. (Exhibit D-1, p. 195).

The Appeal to the County Board.

On June 9, 1925, the defendant-respondent Congoleum-Nairn, Inc., appealed from said assessment to the Hudson County Board of Taxation, which sustained the assessment and dismissed the appeal. An appeal was taken on August 26, 1925, to the State Board of Taxes and Assessment and that appeal was heard on January 13 and 25, 1926.

The Dispute in Values before the State Board.

The petition of appeal to the State Board sets up what the defendant-respondent company claimed was the true value of its property on October 1, 1924, and the following table shows that value as compared with the assessed value:

<i>Subject</i>	<i>Assessed Value</i>	<i>Petitioner's Value</i>	<i>Difference</i>
Buildings	\$4,650,692	\$1,636,615	\$3,014,077
Land	273,450	206,175	67,275
Personal	2,500,000	1,468,500	1,031,500
Total	\$7,424,142	\$3,311,290	\$4,112,852

Waiver of Appeal on Land and Personal Property.

On January 6, 1926, the defendant-respondent company announced its intention to, and, at the hearing on January 13, 1926, did, abandon the ap-

peal on land and personal property, and the hearing before the State Board proceeded with respect to the assessment on the buildings and their equipment, only.

The controversy before the State Board, therefore, consisted of the following difference between the company and the town:

<i>Subject</i>	<i>Assessed</i>		<i>Petitioner's</i>	<i>Difference</i>
	<i>Value</i>	<i>Value</i>		
Buildings	\$4,650,692	\$1,636,615		\$3,014,077

The Hearings.

The hearing before the State Board was held January 13th and 25th, 1926, and was concluded on the latter date, except for the testimony of certain witnesses who failed to respond to subpoenas or to produce certain papers and information called for in notices to produce issued by the Board and duly served upon them.

Thereafter on April 6, 1926, the State Board rendered and entered its judgment as above recited.

That judgment was brought before the Supreme Court on writ of certiorari, duly allowed April 23, 1926, and the case was argued (as stated), on behalf of the prosecutor-appellant, before the April Term, 1926, upon the following grounds:

I.

The judgment is invalid because:

- (a) *It determines a value that is less than the true value of the property.*
- (b) *It is contrary to the evidence.*
- (c) *It is contrary to law and is arbitrary.*

(d) *The Board refused to compel the attendance of witnesses and the production of pertinent information, duly subpoenaed.*

(e) *The Board improperly admitted certain testimony over the objection of the prosecutor and excluded certain testimony offered by the prosecutor.*

(Reasons 1, 2, 3, 4, 5, 8, 13, 16, 17, 18, 19, 20, 21, 22 and 23.)

II.

The judgment is invalid because it is based upon information obtained outside the record without notice to the prosecutor.

(Reasons 6, 7, 9, 10, 11, 12, 14, 15, 23.)

The reasons filed under said writ of certiorari are printed at pages 20 to 24 (both inclusive) of the record.

POINT 1.

The Supreme Court had before it sufficient evidence upon which to base an ascertainment and determination of the value of said property and to enable it to fix the amount thereof.

The defendant having waived its appeal from the assessment on land and personal property, the questions before the Supreme Court were whether the assessment made by the Board of Assessors of the prosecutor, \$4,650,692 upon the buildings of the company, was correct, and whether the judgment

of the State Board of Taxes and Assessment, reducing the same, was justified.

1.

If, as the defendant-respondent company contended in its brief before the Supreme Court, there was no proper evidence before the State Board of the value of this property (a contention which repudiates all the testimony of its own witnesses), then the legal presumption of the validity of the assessment made by the prosecutor-appellant's Board of Assessors prevails and the State Board should have affirmed it.

In *Estell v. Hawkens*, 50 N. J. L. 122, 125, the Supreme Court said, with regard to the legal presumption in favor of the correctness of an assessment:

"In this line of fact the presumption is in favor of the correctness of the estimation made by the assessor, the sworn officer, and before a tax can be disturbed on the ground alleged (overvaluation), the burden is put upon the objector to show by his proofs a clear error in such estimation.

When the testimony does not decidedly bear against the correctness of the assessor's action, the court cannot disturb it."

Other decisions of like import are:

State, Howell v. Metz, 31 N. J. L. 365.

State, Cossitt v. Reimenschneider, 39 N. J. L. 625.

State, Wharton v. Abbott, 42 N. J. L. 109.

State, Bloomfield Tp. v. Pierson, 47 N. J. L. 247.

It follows that the defendant-respondent company failed to sustain its burden of proof and its appeal should have been dismissed.

For the same reason, the Supreme Court should have fixed the assessment at the original amount.

2.

But we contend that there was proper evidence of value within the meaning of Section 401 of the General Tax Act (2 Cum. Supp. 3492). That section provides:

“The assessor shall ascertain the names of the owners of all real property situated in his taxing district, and shall, after examination and inquiry, determine the full and fair value of each parcel of real property situated in the taxing district at such price as, in his judgment, such parcel would sell for at a fair and bona fide sale by private contract on the first day of October next preceding the date on which the assessor shall complete his assessments, * * *.”

The above provision, describing how and on what basis the assessor shall assess real property, is identical in language with Section 6, Article 2 of the Tax Law of 1903 (4 Comp. Stat. 5085).

The buildings in question (thirty-four in number) taken together constitute the linoleum manufacturing plant owned by the Nairn Linoleum Company on or prior to October 1, 1924, when this assessment was made.

Exhibit D-1 (p. 195) shows “the acquisition of the Nairn Linoleum Company” on or about October 15, 1924, by the defendant-respondent Congo-leum-Nairn, Inc., on the basis of the value of the property of the former as shown by its balance

sheet of September 30, 1924 (p. 205). The value of the buildings was shown on that balance sheet as predicated upon an appraisal (Exhibit D-2, p. 211) plus subsequent new construction. This valuation, called "sound value," was \$4,766,354.30.

If the test of value, for the purpose of taxation, is the price at which the property "would sell for at a fair and bona fide private sale by private contract on the first day of October next preceding the date on which the assessor shall complete his assessments," how much nearer could the prosecutor have gotten to it than the price for which the self-same property was sold at a *bona fide* private sale by private contract on September 30, 1924, the very day before the assessment in question was made?

This property was sold as of September 30, 1924, for.....	\$4,766,354.30
It was assessed as of October 1, 1924, at.....	4,650,692.00
	<hr/>
Difference.....	\$ 115,662.30

In *Royal Mfg. Co. v. Board of Equalization of Taxes* (76 N. J. L. 402), this ^{Supreme} court reviewed on certiorari an assessment of a manufacturing plant. It appeared (p. 407) that at the approximate date of the assessment in that case, the owner of the plant had sold it for \$100,000 in stock. The Supreme Court said, in an opinion delivered by Mr. Justice Parker:

"No fraud of the directors in over-valuing the property is shown or alleged; so that this figure may fairly be considered as the judgment of a willing buyer and a willing seller as to value."

(Affirmed, 78 L. 337.)

We respectfully submit that the record shows that the Board of Assessors of the prosecutor-appellant did assess the property in question at its full fair value as required by Section 401 of the General Tax Act.

At least, they did not over-value it, since they valued it at \$115,662.30 less than it was sold for at a *bona fide* sale only the day before the assessment was made.

3.

This assessment covered thirty-four separate buildings comprising the ensemble of a large linoleum plant. It was contended by defendant-respondent Congoleum-Nairn, Inc., in the Supreme Court that there was no evidence to show their "market value," and the case of *Turnley v. Elizabeth* (76 N. J. L. 42) was cited to support this contention.

In that case the Supreme Court was called upon to determine the value of a dwelling house in which the owner had incorporated "a number of features and fancies that, while adding greatly to its cost, have added little or nothing to its selling price or market value," and for this reason, Mr. Justice Garrison, in delivering the opinion of that court, said (p. 43):

"Under the peculiar facts of the present case, the difference between such cost and such value is of *more than usual importance*, * * *." (Italics ours.)

Also (p. 44):

"We are not disposed, however, to give much force to the argument that because

there are very few actual buyers for so costly a residence the valuation to be placed upon it under the statutory criterion should be correspondingly depreciated.

The criterion established by the statute is a hypothetical sale, hence the buyers therein referred to are hypothetical buyers, not actual and existing purchasers."

There is no evidence in this case that the buildings involved contained any "features or fancies" which added to their cost without adding to their selling price or market value. They were matter-of-fact buildings designed and built for a particular purpose without superfluities, and highly valuable and useful, and were being used by a going concern, for the purpose. Hence the *Turnley* case is not against us, but, rather, for us, in that the Supreme Court states that only a hypothetical sale and hypothetical buyers are contemplated by the statute.

In *Royal Mfg. Co. v. Board of Equalization, etc.* (76 N. J. L. 402) the Supreme Court reviewed an assessment of a factory plant at Rahway consisting of six or seven factory buildings, especially adapted to the business of the company, and a dwelling house.

The County Tax Board had raised the value of the buildings from the original assessment of \$12,000 to \$46,800 upon the testimony of a professional builder it employed for that purpose. This new assessment was affirmed by the Board of Equalization, etc. It appeared from the evidence before the Supreme Court that these buildings had been constructed at a cost of between \$50,000 and \$60,000, but the prosecutor contended, and attempted to show by expert testimony, that factory prop-

erty was worth, for sale purposes, ordinarily about 50 per cent. of its cost, and that these buildings were of the usual type, constructed especially for the purposes of the company and unsuited to ordinary manufacturing purposes, and, therefore, in case of sale would command a still less percentage, which was placed by one of the witnesses as low as 40 per cent., of the cost.

In spite of the prosecutor's contention for the application of the principle of the *Turnley* case, the Supreme Court affirmed the increased assessment. While conceding the soundness of the *Turnley* decision as applied to a private residence "with expensive features to suit the whim of a wealthy owner and which features added little or nothing to its market value," the court found that (p. 406):

"No question of disposing of the property as a second-hand factory plant had arisen or seemed likely to arise. While it may be true that a disused factory property is liable to depreciate in value from year to year, and may be unsalable as compared with other classes of property or with a factory property used by a going concern, neither the county board nor the state board was called on to treat a factory plant just completed on any such basis. Hence most of the expert testimony as to the sale value of second-hand factory properties was irrelevant and useless."

That decision of the Supreme Court was affirmed by this court in a decision reported in 78 N. J. L. 337.

If there had not been an actual sale of these buildings to fix their values, the prosecutor-appel-

lant would have suffered the disadvantage of dealing with a class of property for which there is no market, in the usual sense of that word, and no sales by which to determine "market value." Nevertheless, there is still ample evidence of "market value" to enable the court to determine and fix a proper assessment.

Section 401 requires the assessor, "after examination and inquiry," to determine the full and fair value of property. The record shows that the three members of the Board of Assessors of the prosecutor-appellant called upon the Nairn Linoleum Company on October 5, 1924, and visited Mr. Campbell, the general manager of the company, and made "inquiry" as to the value of the property. This information (although available) was refused (pp. 88, 89). Thereupon they made a personal "examination" of each building, accompanied by Mr. Joule, the plant chief engineer, who gave them information about the buildings (pp. 94, 107, 108). Afterwards, Mr. Alexander, comptroller of the Nairn Linoleum Company, when requested by the Board of Assessors to give a statement of the value of this property, refused to do so (p. 100).

Section 403 of the General Tax Law made it the duty of the defendant-respondent Congoleum-Nairn, Inc., or its predecessor, when so requested, to "render full and true account of his name and real property," and provides that "if he shall refuse so to do, * * * the assessor shall estimate his property at the highest value he has reason to suppose it may be placed" (2 Cum. Supp. 3493). This is a different criterion of value from that described in Section 401, and an assessment made under such conditions was sustained in *Young v. Parker* (34 N. J. L. 49), in which case the Supreme Court said (p. 51):

“it was clearly the duty of the assessor to assess the property of the prosecutor at its highest estimated value.”

In *Sharp v. Apgar* (31 N. J. L. 358), it was held that a property owner who declined to give such information was not entitled to appeal from the assessment.

Having fully complied with the statutory requirement to make “examination and inquiry” and the owner having twice refused to give any statement of value, the assessors proceeded to determine the full and fair value of the buildings. All three of these assessors had peculiar and special qualifications for the task, as will appear from their testimony (pp. 88 to 120, incl.).

The fact that they adopted the cubic foot multiple as a means of arriving at their determination of value makes no more difference than whether they used a foot rule or a yard stick, or whether we buy potatoes by the peck or the pound at the grocer’s. They did determine what they considered, in the light of their examination, inquiry, knowledge and expert experience, to be the full and fair value of the buildings, and the testimony of each of them, showing all the facts and circumstances, is in the record (pp. 88 to 120, incl.).

The two expert witnesses for the defendant-respondent Congoleum-Nairn, Inc., used the method of cost-of-reproduction-less-depreciation to determine what they called “present value,” as of October 1, 1924. They were engineers by profession and had had considerable experience in appraising buildings for tax purposes. Their appraisal of present value was \$3,433,898.42 (pp. 31 to 70, incl.).

The two expert witnesses for the prosecutor-appellant were experienced engineers and builders.

One of them had wide experience in appraising buildings in condemnation cases. They appraised the buildings on the basis of their condition as of October 1, 1924, at \$5,702,825. How they arrived at this value is shown in detail in the record (pp. 118 to 154, incl.).

These appraisals, even though some of them were based upon the cost-of-reproduction-less-depreciation method, are evidential of "market value," under the circumstances of this case. In *Long Dock Co. v. State Board*, 89 N. J. L. 108, 113, Mr. Justice Parker said:

"Cost of reproduction. That this is properly an element to consider we think needs no argument."

The usual test is applicable only to usual conditions. An ordinary house and lot, or an ordinary standard-construction factory and lot, have a "market value" in a general sense. But in this case, these thirty-four buildings had no individual "market value" in the usual sense of that term. Like those in the *Royal Mfg.* case (*supra*), they could not be sold to and used by thirty-four different buyers, because none of them was a complete manufacturing unit. Each was a component part of one complete plant. Like the links in a chain, each depended on the others to enable it to function in a useful way. Individually they had no practicable value; collectively they were valued by their owner at nearly \$5,000,000. One domino has no value, but a full pack of twenty-eight pieces, properly assorted, brings a full price. "In union there is strength"—and value.

It may be said, as was urged in *Pennsylvania State Co.* case (*infra*), that because there was no

other linoleum plant in the town, or because a linoleum plant is not sold frequently, the assessors could not determine the market value of these buildings. That there must be a limited market for linoleum plants, is indicated by the fact that at the close of the year 1923 there were but seven such establishments in the United States (Statistical Abstract of U. S., 1924, p. 733).

Cases like this have arisen before and have been decided. We will endeavor to show how the courts have dealt with the question of "market value" respecting property of a special character or purpose and which, because of its particular nature or use, has such infrequent sale as to furnish no established market value. In this respect this and the *Turnley* case (*supra*) are similar. The property involved in each was unlikely (for different reasons) to have many customers. On this point (in the *Turnley* case), the Supreme Court said (p. 44):

"We are not disposed, however, to give much force to the argument that because there are very few actual buyers for so costly a residence the valuation to be placed upon it under the statutory criterion should be correspondingly depreciated. The criterion established by the statute is a hypothetical sale, hence the buyers therein referred to are hypothetical buyers, not actual and existing purchasers. If this be not so, a citizen by the erection of a residence so costly that no one could buy it, would escape all taxation, which is obviously not the intent of the legislature or the proper interpretation of its statute. Taxation normally bears some relation both to the degree of protection required by the taxpayer and to his ability to

contribute to such public burden as manifested by the permanent improvement of his real property. Mere costliness, therefore, cannot rationally be made the basis of exemption from taxation."

Applying this doctrine to the present case, the defendant-respondent company cannot escape that proportion of the burden of taxation which bears a proper relation to the degree of fire, police and other municipal protection required of the prosecutor-appellant by its establishment, simply because its collection of well constructed, highly maintained and highly useful buildings are not severally marketable for miscellaneous individual use. The balance sheet, above referred to, showing that the stock of the company was worth 150 per cent. of its par value, and the value of its plant as therein stated, leave no doubt of its ability to contribute proportionately to the public burdens.

In *Mayor and Aldermen of Jersey City v. New York Bay R. Co.*, 13 Fed. (2nd) 982, the United States Circuit Court of Appeals had before it the question of the value of certain lands, and said (p. 984) :

"True, cost of construction and of reproduction is ordinarily an element in ascertaining the market value of land."

In *United New Jersey R. & Canal Co. v. State Board* (100 N. J. L. 131), this court reviewed on appeal the decision of the Supreme Court. In the opinion, written by Mr. Justice Black, the court said (p. 134) :

"The only question that is presented to us for decision in the record of these cases is:

Is there evidence to support the findings of fact made by the Supreme Court? (Citing cases.) We think there is no evidence to support the findings of fact made by the Supreme Court."

* * * * *

(p. 135) :

"It is also clear that the lands assessed by reason of their use as railroad lands and large plots do not change hands in the open market, so that their market value can be ascertained by the usual method applicable to city lots. It is also clear that there have been no other lands of like acreage or use in the locality sold in the open market from time to time, to which the market value of these lands can be compared. The criterion established of market value is a hypothetical sale; hence, the would-be buyers are hypothetical buyers, not actual and existing purchasers." (Citing *Turnley v. Elizabeth*, *supra*.)

In *State &c. v. Metz* (31 N. J. L. 378), the Supreme Court reviewed the assessment by the City of Phillipsburg of that portion of the Easton-Phillipsburg toll bridge which existed within the limits of the State of New Jersey.

On the question of the value of the bridge the court said (p. 384) :

"The 14th section of the supplement of March 28th, 1862, makes it the duty of the assessor to assess and value property at its full and fair value, and at such prices as, in his judgment, said property would sell

for at a fair and *bona fide* sale by private contract, at the time such assessment is made. It may be difficult to apply this test, as it is hardly probable that the bridge would be sold independent of the franchises of the company. That clause in the act was intended as a general test of values, and in many cases its application would, in the nature of things, be difficult. If it could not be satisfactorily applied it would still be the duty of the assessor to get the *full* and *fair* value of the property, according to some other more practical way; but, applied to this case, the bridge should be taken separately from the franchises and the income derived thereby. The test would not necessarily require the separate sale of the bridge. The sale would be based upon the idea that a purchaser could be found who wished to buy it as a bridge, and a willingness on the part of the owners to sell. A dwelling-house would be valued at what the owner could get at an ordinary *bona fide* sale, from a person who wanted to buy it—the owner being willing to sell. The company, desiring to sell, might not find purchasers for the bridge without the franchises, unless it be sold to the public authorities, who might in justice be obligated to maintain it for the public necessities. The test could only practically be applied upon the possibility of purchasers being found who desired to buy. Such purchasers would, in all probability, be confined to those who would buy in connection with the franchises or to the public authorities. Supposing, then, the company were willing to sell the bridge and the franchises, and purchasers were found willing

to buy, the consideration of the sale on the part of the vendors would have the two elements of value—the franchises and the bridge. The value of the bridge, as such, could be computed, it being a material thing—and the value of the franchises would depend upon the profits that might be derived from their enjoyment. In such a case it would be fair to consider that the bridge would be used and maintained as a bridge, but the profit of the use under the franchises should not be considered in the estimate of the bridge.

If the test of a sale to the public authorities is taken, they being the most likely purchasers without the franchises, then the question would be, as to what would the bridge sell for at a fair and *bona fide* sale to them, without the franchises, to be used as a bridge for the public?"

(p. 386) "2. The one half of the bridge, including the abutments and piers to the centre of the river upon the New Jersey side, should be estimated at its *full and fair value* at the time of the assessment, as part of the structure used as a bridge, without reference to the extent of travel upon it, or the profits derived therefrom; but taking the fact that it is a bridge, the ingredients of value are the materials and labor that would be necessary in its construction, as constructed, and its condition as to soundness."

In *United New Jersey R. Co. v. State Board* (134 A. 672), objection was raised to the assessment of railroad property by the State Board on the ground that it was based upon the opinion of experts

rather than upon actual sales of the property. The Supreme Court, in reviewing that assessment, said:

“One criticism aimed at the opinions of all the experts by each side to this controversy is that such opinions were not based on sales of property similar in character. But these voluminous records demonstrate the difficulty of fixing values of property, by a comparison of sales of other properties, located as these properties are. Such a comparison often depends upon a bewildering variety of circumstances. Such is shown to be the situation in these cases. These properties are in one sense *sui generis*. Little or none of it is sold in the open market owing to the fact that it is located in the harbor of New York. It is held by railroad and steamship corporations, which seldom part with such property once acquired, in that locality, because of lack of quantity of such land and its urgent necessity to such corporations.”

* * * * *

“How in the absence of actual sales can the value be better demonstrated than by the testimony of persons who are well acquainted with its location and the use to which it can be put, and who are familiar with the property of like character * * *.”

In *Sultan v. London Assurance Corp.* (135 A. 58), the Supreme Court considered the admissibility of evidence concerning the price that the few goods which remained after a fire, but which were considerably damaged thereby, brought at a public auction sale, as indicative of their value. The Supreme Court said (p. 59):

“As a general rule, the proper method of proving the value of chattels is to show what they would bring as between a willing seller and a willing buyer and if they have no market value, then to prove what they are worth by the opinion of experts.”

“*Market Value*,” 3 *Words and Phrases* (2nd Series) :

(p. 301) “In view of the difficulty of forming a proper conception of the word ‘value’ and of ascertaining what is called ‘market value’ where there is no open market recording numerous transactions, courts have adopted as the equivalent of ‘market value’ the phrases ‘what the property is worth or will sell for as between one who wants to purchase and one who wants to sell.’

Milwaukee Trust Co. v. City of Milwaukee,
138 N. W. 707, 710.

The ‘market value’ of land is the price that would in all probability result from fair negotiation, where the seller is willing to sell and the buyer desires to buy.

Maxson v. Gates, 116 N. W. 758, 765.”

(p. 305) “While the ‘market value’ of property is the price for which it may be sold in the market, it is often difficult to determine ‘market value’ because there may be no general demand for the property, or it may be such as is only valuable for a specified purpose because of its formation, location, or other specific natural or artificial adaptability to a particular use, so that where no general market value can be ascer-

tained, such elements may be considered in arriving at its general value.

Portneuf March Valley Irr. Co. v. Portneuf Irrigating Co., 114 Pac. 19, 20."

"*Market Value*," 5 *Words and Phrases* 4384:

" * * * Testimony as to the value of property is not necessarily based upon sales of the same or similar property.

Montana R. Co. v. Warren, 12 Pac. 641.

'Market value,' as used to signify the value for which the owner of goods will recover for their loss in transportation due to the negligence of the railroad company transporting the same, should not be construed to mean that there must be an actual market for the article in order to entitle the owner to a recovery for its destruction. If there is no market at the place for articles destroyed, some other criterion of value must be adopted.

Atchison T. & S. F. R. Co. v. Stanford, 12 Kan. 354, 380; 15 Am. Rep. 362."

In *Philadelphia & R. Coal & Iron Co. v. Northumberland County Com'rs.* (79 A. 109), the Pennsylvania Supreme Court considered on review an assessment of coal lands. The laws of Pennsylvania regarding the method of valuation of taxable property are substantially the same as Section 401 of the Tax Law of 1918, since the Pennsylvania law requires real property to be assessed according to the actual value thereof and at such rates and prices as the same would bring at a *bona fide* sale after due notice.

In that case the court said (p. 111) :

“As has been well said by some of our lower courts, the only measure of valuation recognized by law is market value as distinguished from actual value; or, differently expressed, actual value limited and defined by market value. It is true, as is contended for appellant, that the general rule in Pennsylvania is that market value means the price or value of an article established or shown by sales, public or private, in the way of ordinary business. * * * If, however, there have been no recent sales of the lands under consideration (coal lands), or of other lands of a like quality similarly situated, or no general asking or selling price in the neighborhood is shown, an assessor must of necessity use his best judgment in determining what he believes the land would sell for at a bona fide sale after due notice. The authority of an assessor to exercise his judgment based upon a belief of what he considers the bona fide selling price to be is expressly conferred by the statutes above referred to. In the absence of evidence of actual sales, the assessor, as well as every other taxing authority should take into consideration all elements tending to appreciate or depreciate market value. * * * Whenever it can be ascertained by sales of lands of like quality similarly situated, or by recent sales of the lands being assessed, the statutory rule contemplates this method of establishing market value. If, however, there were no sales from which the general selling price might be ascertained, the market value may be established by the testi-

mony of persons acquainted with the property, and whose knowledge and experience qualify them to form an intelligent judgment as to its proper valuation. In such cases it is proper to adduce evidence upon all matters affecting probable selling price, such as location, condition, improvements, quality of land or coal, and any other element of value that would influence the mind of a purchaser. (Citing cases.) This rule is recognized in many cases as applied to condemnation proceedings, and we see no reason why it should not be applied in the valuation of lands for assessment purposes. In the present case the market value was shown by the testimony of mining engineers, and under the circumstances it was the best evidence available."

In *Re Appeal of Pennsylvania State Co.* (84 A. 761), the Supreme Court of Pennsylvania considered on review an assessment of a manufacturing plant consisting of a sawmill, houses, barn and sheds, all substantially built on permanent foundations, although located on leased ground. These buildings were assessed against the owner thereof who was the lessee of the land. The court considered two questions; first, whether the manufacturing plant, consisting of the structures above mentioned, were subject to assessment as real estate, and, second, whether under the law a proper valuation was made. The court held that the structures were taxable as real estate under the definition of that term in the Pennsylvania law.

After restating the law regarding the assessment of real property and market value (citing *Philadelphia & R. Coal & Iron Co. v. County*

Com'rs., supra), the court proceeded as follows (p. 763):

“Something is said in the opinion of the learned court below about uniformity of taxation, which, as a general rule, is a controlling principle. It is difficult to give effect to this principle in the case at bar, because there is no other property in the township or county like that here involved, and with which a comparison can be made. The property in question here is taxed as real estate; but there is no other real estate of the same kind in the taxing district, and hence no standard by which to measure its value as compared with the value of other property of like character. In such a case the assessable value must be determined by taking into consideration those elements which give it a market value. Cost value of such property is not, as a rule, a proper measure of market value, and under our statutes should not be given controlling effect in ascertaining assessable value. All elements of intrinsic value tending to give the property a market value should be considered, such as machinery, equipment, and permanent improvements, to the extent that they may affect selling price.”

We respectfully submit that (independent of the sale that actually did take place) “market value” in such a case is necessarily hypothetical; that under the circumstances all the available elements essential to the determination of such hypothetical market value are in the record; that the testimony of the expert witnesses contains all the elements of intrinsic value tending to give the property in question a market value, such as size, type and char-

acter of construction, condition, suitability to their purposes, equipment, permanent improvements, to the extent that they may affect selling price; that, in the absence of actual sales of buildings of this character, the assessors did take into consideration all elements tending to appreciate or depreciate market value; and that the "market value" (or its equivalent, a hypothetical market value) was established by the testimony of persons acquainted with the property and whose knowledge and experience qualified them to form an intelligent judgment as to their proper valuation. The evidence adduced covers matters affecting probable selling price, such as location, condition, improvements and any other elements of value that would influence the mind of a purchaser.

"This rule is recognized in many cases as applied to condemnation proceedings, and we see no reason why it should not be applied in the valuation of lands for assessment purposes."

Phila. & R. Coal & Iron Co. v. Northumberland County Comr's, 79 A. 109, 111.

We therefore submit that the Supreme Court had before it sufficient evidence upon which to base an ascertainment and determination of the value of said property and to enable it to fix the amount thereof.

POINT 2.

The Supreme Court should have ascertained and determined the value of said property and fixed the amount thereof.

Under this heading we will argue the grounds of this appeal.

1. The Supreme Court, in denying said application, failed to perform the duty which the statute imposed upon it.
2. The Supreme Court should have granted said application.
3. The Supreme Court erroneously denied said application.

In a *per curiam* opinion filed October 7, 1926, the Supreme Court decided that said judgment of the State Board should be reversed and set aside (134 A. 620).

The Application to the Supreme Court.

The prosecutor requested that court to exercise the power conferred upon it by law to ascertain and determine for what sum the defendant Congoleum-Nairn, Inc., and the property involved in this proceeding, to wit, said buildings, is legally liable for taxation or assessment, and to fix the amount thereof as a part of the judgment of that court to be entered under said decision.

The Supreme Court's Authority.

Section 513 of the General Tax Act (P. L. 1918, p. 870) provides:

“No tax or assessment imposed or levied in this state shall be set aside or reversed in any court of law or equity in any action, suit or proceeding for any irregularity or defect in form, or illegality in assessing, laying or levying any such tax or assessment, or in the proceeding for collecting the same if the person against whom or the property upon which such tax or assessment is assessed or laid is, in fact, liable to taxation or assessment in respect to the purposes for which such tax or assessment is levied, assessed or laid; and the court in which any action, suit or proceeding is or shall be pending to review any such tax or assessment is required to amend all irregularities or errors, or defects, and is empowered, if need be, to ascertain and determine for what sum such person or property was legally liable to taxation or assessment, and by order or decree to fix the amount thereof; and the sum so fixed shall be the amount of tax or assessment for which such person or property shall be liable, * * * ; it shall be the duty of the court to make a proper levy, imposition or assessment in all cases in which there may lawfully be an assessment, imposition or levy; and such court is hereby given full and ample authority to make a lawful levy, assessment or imposition.”

In Section 13 of the act for the taxation of railroads and canals (4 Comp. Stat. 5270) there is a

similar provision with respect to assessments which appear to be "excessive or insufficient," in which case it is provided that the court shall correct the same and reduce or increase it or refer it back to the Board of Assessors for correction or reassessment in accordance with the instructions of the court. (Its relation to Section 513 of the General Tax Act will later appear.)

Section 11 of the Certiorari Act (1 Comp. Stat. 405) provides:

"In all cases of writs of certiorari now pending or hereafter brought to remove any tax or assessment, * * * or to review the proceedings or any special statutory tribunal, * * * the court shall determine disputed questions of fact, as well as of law, * * *. The court may reverse or affirm, in whole or in part, such tax or assessment or other order or proceeding, finding or determination, * * *."

Under Section 11 of the Certiorari Act, the Supreme Court is *required* to determine disputed questions of fact, as well as of law. Under Section 513 of the General Tax Act, that court is empowered to ascertain and determine for what sum the defendant-respondent Congoleum-Nairn, Inc., or the buildings in question, was legally liable to taxation and assessment, and by its order to fix the amount thereof, and it is the "duty" of the court to make a proper assessment, pursuant to the "full and ample authority" therein conferred.

The Decision Appealed From.

There is no doubt about the power of the Supreme Court to correct an assessment, accord-

ing to the evidence. The Supreme Court "concedes" this in its decision below (135 A. 61), as it has in other cases.

P. R. R. v. State Board, 134 A. 722.

L. V. R. R. Co. v. State Board, 134 A. 724.

Chas. Warner Co. v. State Board, 1 Misc. R. 26.

It admits its *duty* to do so in

United N. J. & R. C. Co. v. State Board,
128 A. 427.

Hoboken Ferry Co. v. State Board, 128 A.
418.

N. J. Hedge Co. v. Craig, 51 N. J. L. 437.

(All hereinafter discussed.)

Royal Mfg. Co. v. Rahway, 75 L. 416.

But that court proceeds as follows:

"Notwithstanding such power is lodged in the Supreme Court by the Legislature, we think the application should be denied for two substantial reasons. The first is practical, and the second is fundamental. As to the first, the statute is not mandatory or obligatory. The Supreme Court is 'empowered, if need be, to ascertain and determine,' etc. The business now pending before that part of the Supreme Court in which municipal matters are heard and determined is such that it would be impractical for that court to hear and determine tax cases in which the principal, and perhaps the only, contentions are questions of fact.

The second or fundamental reason is, the Legislature has provided a tribunal for that express purpose. This board was created by the Act of 1915, p. 438. It and its prede-

cessor, the state board of assessors, has had jurisdiction over the assessment of railroad property since 1884 (P. L. 1884, p. 142), and it and its predecessor has had jurisdiction on appeal over the local assessments since 1891 (P. L. 1891, p. 189). It occupies an important position in the system of taxation of the state, especially for the determination of disputed questions of fact. It was so designed by the Legislature for that express purpose. In the absence of some exceptional or special reason, the normal functions of the state board of taxes and assessment in determining disputed questions of fact, as fact finding board in the first instance, should not be curtailed, suspended, interfered with, or superseded by the courts. No adequate reason is suggested why the Supreme Court in this case, rather than the state board of taxes and assessment, should determine the value of the property under investigation for the year 1925."

Our purpose is to show that the Supreme Court misconceived its "duty" to be a "privilege." Taking the two reasons given by that court, in their order:

The "Practical" Question.

What is meant by the word "impracticable," or why this is thought "impracticable," the court does not explain. The determination of such questions by that court in the past has been found to be "practicable," and held by this court to be "necessary," as the cases hereinafter discussed will show.

The "Fundamental" Question.

The court seems to predicate its supposed discretion upon the words "if need be" in Section 513 of the General Tax Act.

THE HISTORY OF THE STATUTE.

This section came into existence by the enactment of Chapter CLVII (Laws 1881, p. 194) and remains to-day exactly as it was then enacted, except that the reference in the original act to water rates was omitted when it was incorporated into the General Tax Act of 1903 as Section 39 thereof (Laws 1903, p. 419).

It forbids the setting aside or reversal of a tax or assessment imposed or levied in this state, for any irregularity or defect in form, or illegality in assessing, laying or levying thereof, or in the proceeding for collecting the same, if the person or property involved is in fact liable to taxation or assessment in respect of the purposes for which such tax or assessment is levied or assessed, and the court is required to amend all such irregularities, defects or illegalities if it finds them to exist.

If, however, the court should find that the person or property involved is in fact liable to taxation or assessment in respect to the purposes for which such tax or assessment is levied or assessed, but that there were irregularities, defects in the form, or illegality in assessing or in the proceedings for collection, which affected the amount of the tax or assessment, it was empowered to amend the same "if need be" (i. e., if necessary) to preserve the assessment and avoid the necessity of setting the tax or assessment aside (*in toto*) on account of any such irregularity, defect or illegality.

Considering the purpose of the act, namely, to remedy the old evil of setting aside a tax or assess-

ment on the merest technicality of form or procedure, it seems to us that the words "if need be" mean that if the court should find that the property involved was *not* legally liable to taxation, there would be no "need" to ascertain and determine for what sum it should be taxed or assessed, but if such property was legally taxable, and the court found irregularities or defects or illegalities in the amount of the assessment, it should not set the tax or assessment aside on mere technicalities, but amend the irregularities, defects or illegalities found to exist, and avoid the entire defeat of the assessment by ascertaining and determining for what sum the person or property was legally liable to taxation or assessment and fix the amount thereof.

Considering the evil which the legislature undertook to remedy and the means provided in the act to accomplish that remedy, it amounts to a total defeat of that purpose and remedy for the Supreme Court to say that it may, or may not, as it chooses, apply the remedy in a case where it has already decided that an irregularity, defect or illegality in the assessment existed.

But there is an *additional* (not an alternative) provision in the act which clearly, definitely and unequivocally (as if the legislature, having due regard for the interest of the taxpayer and assessor alike, and for the simplification of procedure in such cases, intended, expressly, to avoid the misinterpretation of the power conferred upon the court as a mere optional privilege) says that "in *all* cases in which there may lawfully be an assessment, imposition or levy," "*it shall be the duty*" of the court to make a proper levy, imposition or assessment, and expressly confers "full and ample authority" to do so. (Italics ours.)

For forty-five years this has been the exact language of the statute. In 1903 and again in 1918 the legislature re-enacted the same provision in the same language, yet now, for the first time, so far as we can find from a careful examination of the reported decisions, has the Supreme Court announced the conclusion that its exercise of this power is merely optional.

THE POSITION OF THE SUPREME COURT.

The second ground, which it terms "fundamental," upon which the Supreme Court denied the application, is that since the State Board was created with jurisdiction on appeal over local assessments, and especially for the determination of disputed questions of fact, that court should not, in the absence of some exceptional or special reason, curtail, suspend or interfere with, or supersede the normal functions of the State Board in determining disputed questions of fact, and that no adequate reason is suggested why the Supreme Court in this case, rather than the State Board, should determine the value of the property in question.

This is not a new position for the Supreme Court to take, since it has taken the same position before in a number of cases hereinafter discussed, but in every single instance, as we also show, this court has corrected this misapprehension and directed the Supreme Court to do the very thing we have asked it and which it now (again) has declined to do.

In so far as the alleged intention of the legislature is concerned, we have already pointed out what we consider to be the intention of the legislature, to the contrary, as repeatedly interpreted and established by the decisions of this court, as we show later in this brief.

Of the cases herein cited in support of the "duty" of the Supreme Court to ascertain, determine and fix the assessment—

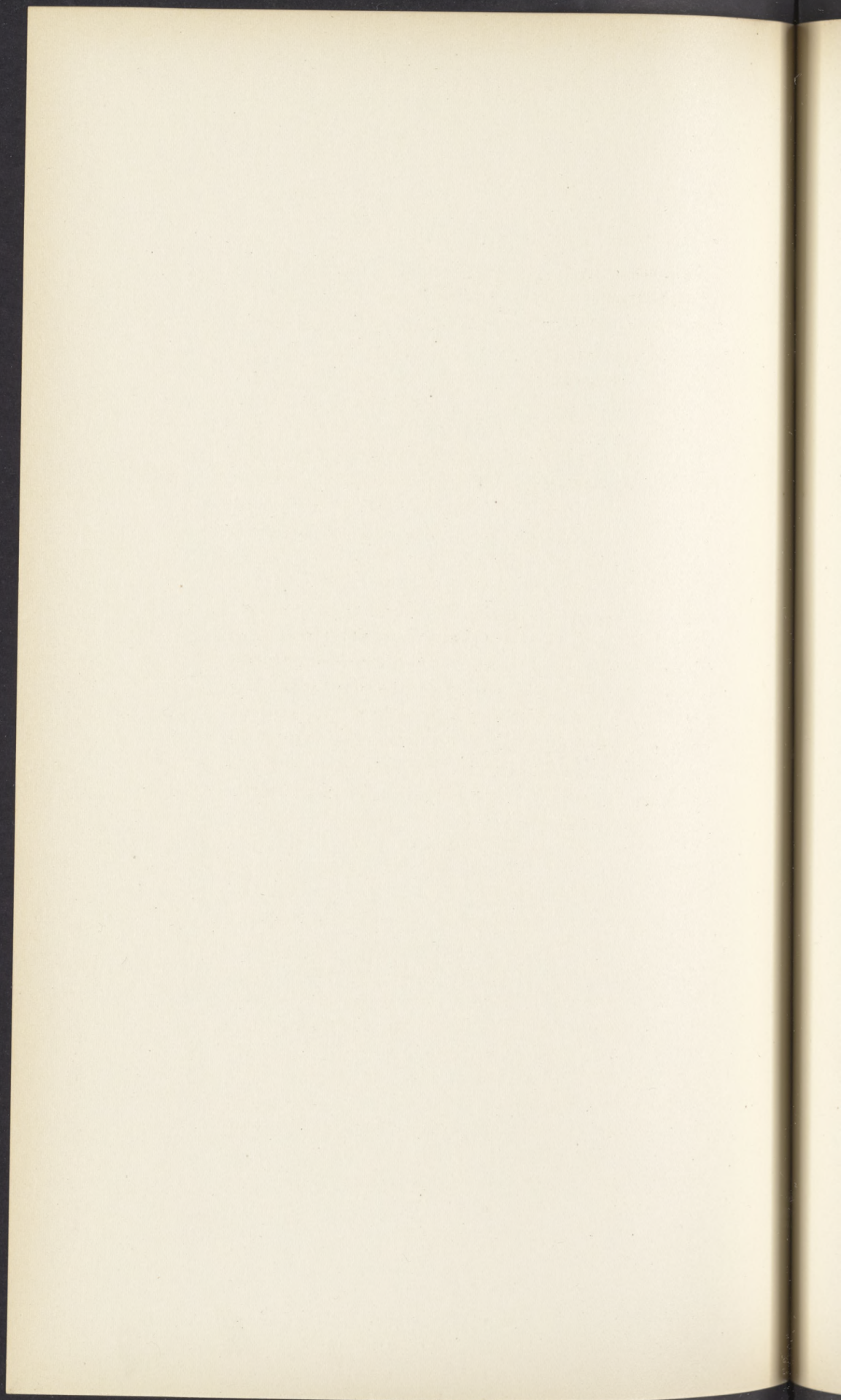
N. J. Hedge Co. v. Craig, 51 L. 437, was decided 1889.

Royal Mfg. Co. v. Rahway, 75 L. 416, was decided Nov. 11, 1907.

L. D. Co. v. Hendrickson, 85 L. 536, was decided Mar. 4, 1914.

L. D. Co. v. Hendrickson, 86 L. 592, was decided Nov. 16, 1914 (reversing Sup. Ct., 85 L. 536).

Hence between the original enactment of Section 513 in 1881 and its re-enactment in 1903, the *Hedge Co.* case was decided, and between its re-enactment in 1903 and its re-re-enactment in 1918, the two *Long Dock Co.* and the *Royal Mfg. Co.* decisions were rendered. It must be presumed that the Legislature knew this and their two re-enactments therefore amounted to a ratification of this Court's interpretation of the law.



"EXCEPTIONAL OR SPECIAL REASON."

As for any "exceptional or special reason" for the requested action of the Supreme Court (if it were not the duty of the court to do so), we showed in our brief and argument before that court in the certiorari proceedings that for some unknown reason the State Board ignored every word of testimony offered at its hearings on the appeal of the taxpayer on the part of both the prosecutor-appellant and the taxpayer. The president and members of the Board so stated in their testimony taken on the rule (pp. 281, 288, 289). The members did not even read the testimony before rendering their judgment (p. 286), and that judgment was taken from the report of one of the Board's employees who not only did not testify and was not present at the hearings (p. 290), but who likewise disregarded entirely the testimony of the witnesses (p. 295). The Board refused to enforce the attendance of material witnesses served by the Board's own subpoena and desired on behalf of the prosecutor-appellant (p. 70) and refused to discipline such witnesses as provided by Section 2 of the Act of 1905 (Laws 1905, p. 124) and Section 701 of the General Tax Act, when they contemptuously ignored the subpoenas (p. 77).

There seems to be sufficient "exceptional or special reason" for the court to ascertain, determine and fix the amount of a proper assessment in this case when the State Board manifests such lawless and wanton disregard of the rights of the prosecutor-appellant, and because of which (at least the refusal of the Board to regard the evidence) the Supreme Court set the assessment aside. Under these circumstances, especially after the rebuke administered by the Supreme Court's decision, what reason has the prosecutor-appellant

to expect a more reasonable regard for its rights upon a second hearing before the State Board?

Moreover, as we showed in our brief and in the affidavit of Samuel Marshall, the Chairman of the Board of Assessors of the prosecutor-appellant, filed on our application before the Supreme Court to have a proper assessment ascertained, determined and fixed by that court, the particular assessment, for the year 1925 now in question, has been in litigation since June 9, 1925, when the taxpayer's appeal to the County Board was taken. If we are relegated to the State Board, additional months (it required from September 9, 1925, to April 6, 1926 [pp. 4, 6] to obtain action by that Board on the appeal) will elapse and if, on such a rehearing, the prosecutor-appellant should then receive no higher consideration of its legal rights than before, it would be compelled to again resort to the courts for relief. How long we would be playing "battledore and shuttlecock" in this way we do not know. Meanwhile, the taxpayer, as a result of the erroneous judgment of the State Board, retains in its possession and use \$67,694.37 from its taxes for 1925. It has appealed from the assessment for 1926 and likewise retains therefrom \$67,640.98, causing a present deficit in the finances of the prosecutor-appellant of \$135,335.35 which it is required to refinance from year to year by means of borrowing money to balance its annual budget. Undoubtedly a similar amount will be retained each year by the taxpayer until the disputed assessment for 1925 is finally settled by the courts (pp. 318-321).

Assuming, for the sake of argument, that the prosecutor-appellant can borrow money from year to year to cover this deficit, suppose it should be finally determined, after years of litigation, that

the assessment is too high, and should be reduced in whole or in part as claimed by the taxpayer. It can then no longer borrow to cover the deficit. It must charge off the amount of the deficit thus determined, and include the aggregate—of the accumulated retained sums (for a number of years) in the very next year's budget and raise it by increasing the rate of taxation. Since the property of Congoleum-Nairn, Inc., in the Town of Kearny amounts to approximately one-tenth of the total ratables in that municipality, and the buildings in question constitute approximately 63 per cent. of the total assessed valuation of this taxpayer's property therein (p. 220) (the assessed valuation on the remainder is not disputed), it is plainly discernible what an unfortunate plight the prosecutor-appellant would find itself in, if such a final determination against it should leave it in debt for borrowings to cover the amount thus retained for three or four years.

Of all the cases in which there might be an "exceptional or special reason" for the requested action of the Supreme Court, this would seem to be chief.

If there ever was a case deserving of Mr. Justice Parker's statement (in *Long Dock Co. v. Hendrickson*, 89 N. J. L. 108, 116),

"But this litigation has been before the courts for several years and ought to be settled so far as an ascertainment of facts can settle it,"

this is one, and a similar conclusion by the court in this case will doubtless avoid a very unfortunate crisis in the public affairs of the prosecutor-appellant.

It was just such experiences as this that the legislature tried to remedy when it first enacted, and subsequently (twice) re-enacted, Section 513 requiring the Supreme Court to stop such legalistic juggling by fixing and determining the amount of a proper assessment.

THE DECISIONS OF THE COURTS.

Having given attention to the Supreme Court's decision and to the reasons therein assigned for denying our application, we will proceed to discuss some of the cases which, we think, demonstrate the errors in which that court fell; pausing, however, only to suggest that if there be any "practical" or "fundamental" difficulties about our contention, they lie in the statute and are for the legislature, and not the court, to correct.

The judgment of the State Board was set aside by the Supreme Court on the authority of three decisions of this court, viz.:

Long Dock Co. v. State Board, 86 N. J. L. 592.

Trenton &c. Tr. Co. v. Mercer Co. Tax Bd., 92 N. J. L. 398.

Gibbs v. State Board, 129 A. 189.

All three of these cases contain the same elements of want of adequate hearing and of arbitrary determination by the State Board without evidence in the record to support it, that the Supreme Court found to exist in this case.

In all of them it was suggested and urged, and assumed by the Supreme Court, that it was the function of the State Board, and not of that court, to fix assessments and that the task should be left to the State Board. Yet in all of them this court

sent the case back to the Supreme Court with instructions to weigh the evidence and find the facts as to a proper valuation, precisely as we asked that court to do in this case.

In *Long Dock Co. v. Hendrickson* (85 N. J. L. 536), the Supreme Court held (p. 537) :

“ * * * That this court will not in settling the question of fair value, oppose its judgment to that of an administrative board, entrusted by law with the duty of fixing the fair value or market value of land for the purposes of assessing the same for taxes, where there is testimony before the board, the weight and value of which it is required to determine, * * *.”

On appeal, Mr. Justice Swayze, in writing the opinion of this court in the same case (86 N. J. L. 592, 594), said :

“We think the Supreme Court in adopting this view of its functions, and thereupon affirming the assessment, failed to perform the duty which the statute imposed upon it.”

After reciting the provisions of Section 13 of the Railroads and Canals Tax Act, and the history of the legislation on the subject, and referring to the case of *Royal Manufacturing Co. v. Rahway* (75 L. 416) (~~supra~~), that opinion continues (p. 595) :

“Such was the rule as to the review on certiorari of general taxes when the Railroad Tax act was enacted, and we cannot entertain a doubt that the legislature in its desire to avoid any question that the new

legislation accorded to the railroad companies the equal protection of the laws, *gave them the same right to review by the Supreme Court that was accorded to other taxpayers by the act of 1852*. Our decisions prior to the present case are in accord with this view." (Italics ours.)

The Act of 1852 above referred to (3 Gen. Stat. 3390) was carried into the general tax revision of 1903 (Sec. 38, P. L. 1903, p. 418; 4 Comp. Stat. 5121), and thence into Section 512 of the present General Tax Act (P. L. 1918, p. 870; 2 Cum. Supp. 3499), and required the court to amend and reduce to a proper and just amount an assessment which was "too great."

Section 513 of the present General Tax Act originated in an act respecting taxes, etc., approved March 23, 1881 (P. L. 1881, p. 194), and, with a single exception with reference to water rates, has been carried down through the revision of 1903 (Sec. 39, P. L. 1903, p. 419; 4 Comp. Stat. 5124) into the present act (P. L. 1918, p. 870; 2 Cum. Supp. 3499), as a parallel to Section 512, with which it differs, substantially only in that it applies not alone to assessments that are "too great," but to all "irregularities or errors, or defects" in an assessment or proceeding under review. For this reason, we think the language of this court above quoted respecting Section 512, applies equally to Section 513. The equal protection of the laws would seem to require such an application.

Further on, the same opinion says (p. 596):

"In both cases the court dealt with the weight of evidence on the question of valuation, properly requiring that the evidence should preponderate against the valuation

of the state board before it was set aside. We are not without precedent in this court. *The question is the same that arises under the General Tax act*; we have held that it is the duty of the Supreme Court under that act to reweigh the evidence and amend the assessment when satisfied that the valuation of the taxable property for which the tax payer is assessed is erroneous. *Millville Gaslight Co. v. Millville*, 84 *Id.* 409. In the pending case the opinion makes it clear that the court did not reweigh the evidence *but limited itself to a review of the legal principles* on which the state board had acted. But on that narrow ground, also, there was error." (Italics ours.)

The judgment of the Supreme Court was accordingly reversed and the record remitted for further proceedings. After reconsideration of the case, that court considered the sufficiency of the evidence and reduced the valuation on some of the parcels involved (89 N. J. L. 108).

The *Long Dock* case was very much like ours, in that the judgment of the State Board was not based upon any evidence before it but upon an arbitrary increase of 20 per cent. which the Board made without evidence and the basis of which they refused to disclose.

In *Trenton and Mercer Co. Tr. Corp. v. Mercer County* (92 N. J. L. 398) this court again reversed the Supreme Court on the same ground. In the opinion, delivered by Mr. Justice Swayze, this court said (p. 399) :

"The Supreme Court took too narrow a view of its functions in this case."

(p. 400) "In the present case the Supreme Court failed to make an independent determination of facts and contented itself with finding that there was a legal basis for the result reached by the county board of taxation, whether or not that result was right in fact. This error makes it necessary to reverse the judgment and remit the record to the Supreme Court in order that it may find the facts."

That case was like ours in this very important particular, viz., that while the county board had before it various estimates of expert witnesses, it totally disregarded them all and took the valuation of its own expert, who did not testify at the hearing, and added 20 per cent. thereto (p. 400).

In *Gibbs v. State Board*, 129 A. 189, this court, reversing the decision of the Supreme Court, said:

"The Supreme Court in its decision did not attempt to analyze the evidence. It stated that—

'There was ample evidence on which the judgments of these boards are based. We cannot therefore disturb the valuation so ascertained and fixed.'

Our examination of the evidence leads us to an opposite result. We find in the record no evidence which justifies the placing of an assessment of \$65,000 upon the appellant's lands."

* * * * *

(p. 190):

"The highest value placed upon the land which we can find in the testimony is \$20,000. We think there was no evidence before

the State Board, and consequently none before the Supreme Court, which justified and supported a valuation of \$65,000. But assuming that there was, it was then the duty of the Supreme Court to weigh the evidence upon certiorari, and to render such a decision as it thought proper according to the view it entertained of the evidence (citing cases). * * * The Supreme Court did not determine any question of fact as appears from the language of its opinion above quoted. The testimony taken in the case should, in our opinion, be reviewed. The case will therefore be remanded to the Supreme Court with the direction that it determine the disputed questions of fact."

In *United N. J. & R. C. Co. v. State Board* (and other cases), 128 A. 427, the Supreme Court reviewed, on certiorari, the assessments of certain railroad properties. At page 429 that court said:

"The Supreme Court is therefore called upon, in the exercise of its duty, not only under the Certiorari act (P. L. 1907, p. 95; 1 Comp. Sts. N. J., p. 406, § 11), but also under the railroad tax act (4 Comp. Sts. N. J., p. 5270, § 457; P. L. 1888, p. 277, § 13), to examine and analyze the evidence, to reverse or affirm, in whole or in part, for 'palpable error' appearing in the record (*Long Dock Co. v. State Board of Assessors*, 89 N. J. Law 110, 97 A. 900, affirmed 90 N. J. Law 701, 101 A. 367); to ascertain whether the amount of the tax is excessive or insufficient, or whether the principles upon which the assessments are made are erroneous (*Long Dock Co. v. State Board*

of Assessors, 86 N. J. Law, 592, 92 A. 439; Long Dock Co. v. State Board of Assessors, 82 N. J. Law 21, 81 A. 568).

We proceed, therefore, to examine, compare and analyze the evidence under which the state board fixed the values and made the assessments."

After considering the evidence the Supreme Court affirmed the assessment of the State Board on some parcels and reduced the assessment on others.

In *Charles Warner Co. v. State Board*, 1 Misc. R. 26, the Supreme Court reviewed, on certiorari, an assessment of the Borough of Paulsboro. That court said (at p. 28):

"The Tax act (Revision of 1918, section 512) gives this court the right to fix assessments where the state board has, in its opinion, erred. Evidence taken under the writ of certiorari will be considered. *Trenton and Mercer County Traction Corporation v. State Board of Taxes and Assessment et al.*, 92 N. J. L. 398. In this case it seems to us that evidence shows that the assessment fixed by the state board is excessive. In our opinion it should be reduced to \$8000 for the land and \$500 for the improvements thereon. The record will be remitted for the making of corrections in pursuance of this opinion."

Likewise, in *Hoboken Ferry Co. v. State Board*, 3 Misc. R. 361, 128 A. 418.

In *New Jersey Hedge Co. v. Craig*, 51 N. J. L. 437, the Supreme Court reviewed an assessment of

the Township Collector and, finding the assessment illegal, said (p. 438) :

“It is now the duty of the court, under the act of March 23, 1881 (Rev. Sup., p. 602), to ascertain that value and make a proper levy therefor.”

In *P. R. R. Co. v. State Board* (134 A. 722) the Supreme Court reviewed the assessment by the State Board of certain lands of the railroad company, but not used for railroad purposes, and were hence assessed under the General Tax Act. .

After asserting its power under Sections 512 and 513 of the General Tax Act (Laws 1918, p. 870) and Section 11 of the Certiorari Act (Laws 1907, p. 95) to review and determine disputed questions of fact as well as of law (citing *Trenton &c. T. Co. v. Mercer County*, 92 N. J. L. 398), the Supreme Court proceeded to determine whether the evidence of value of the property did sustain the assessment, and found as a fact that the assessments in question were supported by the evidence, except with respect to certain parcels, which the court proceeded to reassess.

In *Lehigh Valley R. Co. v. State Board* (134 A. 724) the Supreme Court reviewed another assessment of the State Board upon the same class of property as in the case last above cited, and repeated the assertion of its power under the General Tax Act and the Certiorari Act to determine questions of fact as well as questions of law, and that to be sustained the assessment must be based upon evidence. It also said (p. 725) :

“ * * * the Supreme Court has the power when satisfied that the value of taxable property is assessed too high to reduce the same

to the proper and just amount, as shown by the evidence.”

The court then proceeded to inquire into the evidence and ascertain and determine the proper value of the several parcels involved and to affirm the State Board as to some and to fix a different assessment for the others.

In *Millville Gas Light Company v. Millville*, 84 N. J. L. 409, this court reviewed the *per curiam* opinion of the Supreme Court, stating:

“The practical proposition is that this court is asked to re-weigh and pass upon the effect of evidence taken before a body specially organized for this very purpose, and to set aside its action as not justified by the weight of the evidence. There is nothing to show that the board of equalization has not carefully discharged the duties imposed upon it by law, and its findings should not be disturbed unless it is manifestly erroneous.”

Concerning that decision of the Supreme Court, this court said in a *per curiam* opinion (p. 410):

“We agree in the views expressed in the opinion of the Supreme Court except so far as the opinion intimates that the Supreme Court will not re-weigh the evidence. Under the present statutes it is the *duty* of the Supreme Court in cases of taxation to amend the assessment when satisfied that the value of the taxable property for which the tax payer is assessed is erroneous. *Royal Mfg. Co. v. Rahway*, 46 Vr. 416.” (Italics ours.)

In another case between the same parties, reported on page 411 of the same volume (and immediately following the case last above cited), the Supreme Court delivered another opinion of like import as the one above, and, in reviewing it, this court said (p. 412) :

“The judgment is affirmed, with costs, for the reason stated in the judgment of the Supreme Court *with the qualification* set forth in our memorandum in the case of *Millville Gas Light Co. v. Millville*, ante, p. 409.” (Italics ours.)

(4)

CONCLUSION.

We, therefore, respectfully submit that the Supreme Court, under Section 513 of the General Tax Act, as well as under Section 11 of the Certiorari Act, should have considered the facts as well as the law in this case and made a proper assessment of the property involved, and we therefore urge that the judgment of the Supreme Court entered November 30, 1926, upon its decision filed November 13, 1926, denying the application of the prosecutor-appellant to have said court ascertain and determine for what sum the defendant-respondent Congoleum-Nairn, Inc., and the property involved in that proceeding, is legally liable for taxation or assessment in said proceeding and for an order fixing the amount thereof, be reversed and that the record be remitted to the Supreme Court with instructions to find the facts and ascertain

and determine the value of said property for taxation and make an order fixing the amount thereof.

Respectfully submitted,

HOBART & MINARD,
Attorneys for Prosecutor-Appellant.

JOHN H. COOPER,
GEORGE S. HOBART,
DUANE E. MINARD,
of Counsel.

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New Jersey Court of Errors and Appeals

TOWN OF KEARNY, a municipal
corporation,
Appellants,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT and THE CONGO-
LEUM-NAIRN, INC., a corpora-
tion,
Respondents.

On Appeal
from Supreme
Court.

BRIEF FOR RESPONDENT CONGOLEUM- NAIRN, INC.

This is an appeal from an interlocutory order of the Supreme Court in a tax *certiorari*. The matter was before the Supreme Court in a proceeding brought to review a decision of the State Board of Taxes and Assessment reducing an assessment for taxes for 1925, made by appellant on buildings owned by this respondent.

October 7, 1926, the Supreme Court filed its opinion (Case, p. 316) reversing and setting aside the decision of the Board upon the ground that there had not been, before that Board, a hearing such as the law required. The facts are that at the hearing before the State Board, after a number of witnesses had been heard, counsel for appellant complained of non-obedience to some subpoenas, the following took place (p. 156):

“Mr. Minard: I guess when we get the witnesses that we subpoenaed and the rest

of the data that is mentioned in that *duces tecum* I guess we are through. One was a statement of the book value of the buildings. We subpoenaed three witnesses and one of them appeared and the other two did not appear. No. 3 in our notice is books, records and documents to show book and appraised value as of October 1st, 1924, of the following features of the plant; plants and real estate, buildings and improvements thereon, machinery and equipment of the plant. We are interested now only in the buildings and equipment. That is the only thing that has been produced and the two witnesses which we have subpoenaed are not here. Now, when those witnesses and the data is produced, why, we will rest.

Mr. Baker: Well, I am frank to say, Mr. Minard, that for the purpose of a conclusion or a judgment, the Board has heard, I think, sufficient. The Board is inclined to think that it should have, too, the judgment of its field secretary. The testimony has been very voluminous and the Board feels its labors would be lessened and its pathway to its objective would be illuminated if we had the judgment of our own secretary, which, of course, will come from a thoroughly disinterested and absolutely candid source. It is the practice in hearings of this character where there is such an obvious conflict of testimony that the Board go to a source that is thoroughly disinterested. Our field secretary has had twenty-five years of experience in the examination of plants and industries. That is Frank O'Connor, who will be assisted by Mr. Volk and I suppose we will be required to visit the plant ourselves.

(Discussion.)

Mr. Baker: Do I understand you to say, Mr. Minard, that the case is still atmospheric? In other words, we have not concluded it?

Mr. Minard: We think they ought to have produced what we asked for. Now, they

haven't done it and I don't feel like saying, 'Well, we asked you to produce it and you didn't do it. We rest.' Now, the Commission may rule that it is very improper or impertinent or unnecessary and if they do that, that is the end of the case as far as we are concerned. I don't invite the Commission to do that because I think they ought to answer to the Commission. I don't think the subpoena should be a spineless cactus.

Mr. Milton: I think, the other side not resting, I would not be obliged to put in any other proof. I suppose we are through for the day and I can go?

Mr. Baker: Surely.

(It is stipulated and agreed by and between counsel for the Congoleum-Nairn Company, the petitioner, and the Town of Kearny, the respondent, that following the suggestion of the president of the Board that Mr. Frank O'Connor, field secretary of the State Board of Taxes and Assessment shall visit the plant of the Congoleum-Nairn Company at Kearny, New Jersey, and make a report to the State Board of Taxes.)"

Pursuant to this stipulation the Field Secretary made his investigation and reported to the Board a valuation less than was testified to by the other witnesses before the Board. This valuation the Board adopted without notice to any of the parties (pp. 280, 286, 305).

The decision of the Board was reviewed on *certiorari*. The reasons filed (pp. 20 *et seq.*) attack the method followed by the Board and complain that appellant had been deprived of a full and fair hearing, that the decision had been reached without due process of law, and that "the judgment of said Board was made before the hearings upon said appeal had been concluded or the record thereon closed" (Reason 17, p. 23). Under the

rule for affidavits counsel for appellant were sworn (pp. 309, 312) and confined themselves to a repudiation of the stipulation above copied, solely on the ground that it did not reserve to appellant the right to inspect the report of the Field Secretary and cross-examine him thereon.

It is quite evident that there was a misunderstanding between the Board and Counsel for appellant, not only as to the scope of the stipulation, but also as to the situation in which the case rested at the conclusion of the last sitting of the Board.

The opinion of the Supreme Court of October 7, 1926 reversed the decision of the Board on the ground that appellant had not been given an opportunity to examine the report, cross-examine upon it and rebut it (p. 316). The opinion is silent upon the situation created by the colloquy above quoted.

October 18, 1926, eleven days after the filing of the opinion, counsel for appellants served a notice returnable October 22, 1926, of a motion before the Supreme Court to have "said court ascertain and determine" the amount at which the property should be assessed (p. 318). This application was denied and rule to that effect duly entered November 30, 1926. Rule for judgment final was entered December 6, 1926 (p. 326). No appeal was taken from the final judgment, the pending appeal affecting only the interlocutory judgment of November 30.

Discussion.

At the outset we respectfully suggest that a decision of this Court sustaining this appeal would be nugatory, because it would leave the final judgment of the Supreme Court undisturbed and in full force.

The Supreme Court held that appellant was not accorded a legal hearing before the Board, and hence merely set aside the decision to the end that a complete and legal hearing might be had. This was the sum and substance of the complaint of appellant embraced in its entire twenty-three reasons. Only one of them (the first) alleges that the value found by the Board was less than the true value. This statement is nullified by reference to paragraph 12 of Section VII of Article IV, which section throughout applies only to the legislature and its enactments.

Almost all the reasons advanced to the Supreme Court are directed to two points; first, that the hearing was still open when the decision of the Board was rendered (Reasons 13 and 17); and secondly, that the decision was based on a report which appellant was not permitted to inspect, and upon which it had no opportunity to cross-examine.

In that situation the Supreme Court did what the circumstances required—set aside the decision and left the case where it was at the last sitting of the Board, unfinished and open for the presentation of further testimony. There was in the case ample circumstantial evidence to justify the conclusion that the officials of appellant had adopted a valuation by a method utterly illegal and (as we point out later) no competent evidence to sustain the local assessment. The Court therefore could not justly sustain that assessment, and having no satisfactory evidence before it on which to find a value, very properly declined to burden itself with the duty of making an assessment in the first instance—a duty imposed by law on the Board.

The situation at the time of the Board's decision was that the Board and Counsel were not in

agreement as to whether the case had been closed and submitted for decision. We quote again for convenience:

“Mr. Minard: I guess when we get the witnesses that we subpoenaed and the rest of the data that is mentioned in that *duces tecum* I guess we are through” (p. 156, line 13).

“Mr. Minard: * * *—the two witnesses which we have subpoenaed are not here. Now, when these witnesses and the date is produced, why, we will rest” (p. 156, line 29).

“Mr. Baker: Well, I am frank to say, Mr. Minard, that for the purpose of a conclusion or a judgment, the Board has heard, I think, sufficient” (p. 156, line 33).

“Mr. Baker: Do I understand you to say, Mr. Minard, that the case is still atmospheric? In other words, we have not concluded it?”

“Mr. Minard: We think they ought to have produced what we asked for. Now, they haven't done it and I don't feel like saying, 'Well, we asked you to produce it and you didn't do it. We rest' ” (p. 157, line 17).

“Mr. Milton: I think, the other side not resting, I would not be obliged to put in any other proof, I suppose we are through for the day and I can go?” (p. 157, l. 33).

It is apparent from this incident that counsel believed the case to be still open and unfinished, and that the Board believed it to be closed, so far as concerned the presentation of further testimony by the parties. Then followed the stipulation, made after Counsel for the respondent here had left the room, and for which, of course, he was not responsible.

After the reasons were filed, and for the first time at the argument before the Supreme Court, appellant made a complete change about front, and insisted on the Supreme Court eliminating the testimony of the Field Secretary of the Board,

then closing the unfinished case before the Board, and finally ascertaining a value based upon testimony before the Board, which was conflicting, and in some instances incompetent and illegal, and which when compared with the assessment, demonstrates conclusively that the value assessed by the local authorities was not the result of properly applied legal principles.

The property consists of thirty-four buildings, differing in cost, size, material, character, purpose, and because of differing uses, containing machinery, apparatus and equipment which also differed in the same particulars. These buildings were erected on four separate city blocks (Exhibits P-1, p. 194, D-9, p. 219). They were assessed in five different parcels at a total of \$4,650,692 (pp. 5, 6). It was appraised by respondent's witness at \$3,433,899 (p. 160) and by appellant's witnesses at \$6,042,118 (p. 195), \$5,702,825 (p. 222) and \$4,331,268 (p. 211). The report of the Field Secretary rejected by the Supreme Court was \$2,657,628 (p. 9).

The contention of respondent with respect to the testimony of appellant's witnesses is unreliable because it is founded on illegal principles. Indeed, counsel for appellant, very early in the case, during the cross-examination of respondent's witness, indicated quite clearly that appellant intended to maintain its assessment according to methods not sanctioned by the law. That attitude is expressed by the remarks of counsel as follows:

"Isn't the value of those buildings in the use to which they are put by a going concern?" (p. 52).

"That is the earning value of the building, isn't it, its specific adaptation?" (p. 52).

"The book value of this property is *prima facie* evidence of it in any branch of the ser-

vice, in utilities, and not anywhere else" (p. 104).

"Why, it is the value set up by the company against which they charge rates, against which they issue securities, against which they persuade the public to invest money or hire" (p. 104).

The American Appraisal Company, for appellant, expressly states (p. 81) that its appraisal represents—

"the actual *serviceable value* of the property appraised as a *going concern*."

This mental attitude of counsel permeated to such an extent that it saturated the whole case with a tincture of error and fallacy. Even the witnesses were misled.

Our own witness Rumery took replacement value as of 1924 and then applied depreciation from 1887, reaching a value 50% to 80% higher than actual cost (p. 46), ignoring market value (p. 52).

The American Appraisal Company expressly states that its appraisal represents—

"the actual *serviceable value* of the property appraised as a *going concern*" (p. 212).

Mr. Smith (p. 91) says that the local board took the cubical contents of the buildings.

Mr. Shoemaker admits (p. 135) that the basis of his appraisal was the reproduction cost as of October 1, 1924, *without any allowance* for depreciation, because he found the buildings very well kept up. Yet it is a matter of common knowledge, even in public utility rate making cases, the element of reproduction cost as of the time of the application is always discounted by an allowance for depreciation based upon the assumed life and known age of the structure or appliance.

Again (pp. 142, 144) he adopts an arbitrary figure of 25% of the *cost* of the building as the *value* of the equipment and admits that this method is inaccurate.

Mr. Enstice (p. 149) collaborated with Mr. Shoemaker, and notwithstanding his qualification, it is fair to assume that his methods were as unsatisfactory and inaccurate as Shoemaker's. He points out the practical fallacy of the cubical contents theory (p. 151) adopted by the Board (p. 91).

He assumes an air of fairness (p. 150) in saying he approved the Board's assessment although the figures were lower than his contracting firm "would use for contracting to erect a building" overlooking the duty to assess for taxes upon the basis of market value.

The persistency in error is strikingly shown in the testimony of Mr. Odendahl (p. 116), who blithely insists that cubical contents theory is correct, regardless of height or number of floors, and explains this by saying his Board on average for *all* the buildings—applied a "common denominator" (p. 117). This was to be expected of a witness whose only qualifications were as a contractor for residence buildings (p. 107), and as a member of the Claims Board (p. 108) that settles claims against the Government for "war babies" (p. 110).

Section 401 of the Revision of the Tax Act of 1918 (p. 859) requires the assessor to "determine the full and fair value of each appraisal of real property situated in the taxing district at such price as, in his judgment, such appraisal would sell for at a fair and *bona fide* sale by private contract." Further on in the paragraph the State Board of Taxes and Assessment is authorized to enact rules requiring the local assessors to return the land and buildings separately and to carry

out the total as the assessed value of the appraisal.

That none of appellant's witnesses were guided by correct legal principles is evident upon a consideration of the rule stated in *Turnley vs. Elizabeth*, 76 N. J. L. 42, that—

“The selling price—that is, the market value—and not the cost price, whether of original construction or estimated reproduction, is the criterion for the value of real property established by Revised Tax Act of 1903.”

Other cases on the subject are:

State vs. Tunis, 23 N. J. L. 546, 552, held that stock in the possession of a shareholder, must be assessed at its market, not par, value, under a tax act requiring such stock to be assessed at its “actual” value.

State vs. Danser, 23 N. J. L. 552, 553, as to stock of a foreign corporation held by a resident of this State. The statute provided for an assessment at the “actual value”. The court said, “The actual value of such property is its price in the market.”

To the same effect is *State vs. Randolph*, 25 N. J. L. 427.

State vs. Collector, 24 N. J. L. 108, 118, involved real estate and the owners proved that the income bore no comparison to the interest upon the amount assessed. The court said:

“But the income is not the criterion”,

and the syllabus (32) summarizes the opinion that “such lots are properly assessed at their value in the market.”

State vs. Metz, 31 N. J. L. 378, a valuation of a toll bridge was set aside because it was based in part on the profits derived from the tolls.

State vs. Abbott, 42 N. J. L. 111, held, as to real estate, that property is to be valued in the actual condition in which the owner holds it, at the price for which it would sell at a fair private sale.

State vs. Cook, 60 N. J. L. 70, held that the standard for tax purposes is a consideration of market value at a fair sale by private contract. This case intimates that annual rental may be taken into consideration as an *element* of value, where the property is so situated that the rental reflects upon value, but that income is not a criterion of value.

That "going concern" value or revenue production, is not the true criterion for ascertaining market value, is apparent on a moment's reflection. In the first place, it depends upon that intangible element called "good will", which in turn is dependent on the personality of its possessor as well as upon economic, production, and selling policies which vary as greatly as individuals; secondly it assumes an added derivative value from its association with other buildings and integral parts of the plant, and (as in this case) association with other plants of the same owner; thirdly, it ignores the character and condition of the buildings.

The going concern value in an industrial plant is somewhat analogous to the franchises of public utility corporations which all the authorities agree are not proper subjects of local taxation. Where this intangible value results from a grant by the State it may properly be subjected to taxation by the State, but where, as in private concerns, this intangible value is created by individual effort, resulting in the elements above stated, it is not the subject of taxation.

The fallacy of taking going concern value as the criterion for ascertaining taxable value arises

from the confusion caused by the acceptance of this value in determining rates which public utility corporations are permitted to charge their customers. In those cases the objective is solely the question of income and the allowance of charges which will produce an income suitable to the value of the investment. So, too, in the application for listing the stock on the New York Stock Exchange (Exhibit D-1, pp. 79, 195) the offering of the stock is made to investors who are more likely to be influenced by the question of net income and payment of dividends than by the value of the tangible property.

So, too, the cost of reproduction, while a proper element to be considered in arriving at value, yet is nothing more than an *element*. It is not even standing alone a criterion of value.

The close similarity of the figures of the assessment with those of the appraisals of appellant's witnesses justifies the conclusion that the local assessors must have proceeded along the same erroneous lines, and hence that the assessment had no legal foundation to support it.

Before the Supreme Court appellant discussed and criticized at some length the rulings of the State Board on offers of evidence and objection thereto. We do not find these points discussed in the brief before this court and therefore feel justified in assuming that a discussion thereof would be supererogatory. We mention the matter in passing merely for the purpose of inviting attention to the fact that before the Supreme Court appellant was still clamoring for an unfinished hearing still open before the State Board, while on this appeal it insists on the matter being closed upon testimony selected by it, the unsatisfactory nature of which is above pointed out.

In conclusion, we respectfully submit that under the circumstances in this case the application which is the subject of this appeal was a matter resting in the sound discretion of the Supreme Court. If the evidence were satisfactory the Supreme Court might ascertain a taxable value. If, however, the evidence returned with the writ did not permit of a just ascertainment of assessable value the court in its discretion might proceed to ascertain value by a remand to the State Board.

The decision appealed from should be affirmed.

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