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**NOTICE OF APPEAL.**

Filed August 6, 1927.

# New Jersey Supreme Court

In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company.

*Notice of Appeal.*

Before Honorable THOMAS W. TRENCHARD, Justice of the Supreme Court.

To Edward L. Katzenbach, attorney-general of the State of New Jersey.

SIR: Please take notice that Marion D. Hallowell hereby appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the determination, order and judgment entered in the above-entitled matter.

Respectfully yours,

E. W. HUNT,
Attorney of Marion D. Hallowell.

Service of the within notice is hereby acknowledge this 6th day of August, 1927.

EDWARD L. KATZENBACH,
Attorney-General.

## ORDER CONFIRMING REPORT OF COMMISSIONERS.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | *Order Confirming Report of Commissioners.* |

The State of New Jersey by its Board of Conservation and Development having presented to me a petition to be heard upon the claims to the ownership of the stock above-mentioned, to determine the validity of such claims, to settle the interests of all parties claiming any interest in any of said shares of capital stock, the amount of damages to be paid therefor, and the amounts to be apportioned among the claimants thereof, according to their interests in such capital stock, and

I having appointed Charles V. D. Joline, Frank C. Ferguson, and Percy A. Gaddis to be commissioners to advise me, and to appraise the full market value of said stock, and what damages, if any, should be assessed for the taking of the same, and

The said commissioners having caused notice to be given of hearing before them, in the manner directed by me in said order of appointment, and

The said commissioners having made their report appraising the full market value of said stock, and the damages to be assessed by the taking of the same at the sum of $183.00, and



*Order Confirming Report of Commissioners.*

It further appearing to me by due proof on behalf of the petitioner and said claimants that the shares of stock above-mentioned are now held and owned as follows:

Certificate number 6420.

Number of shares 9.

Name of owners Marion D. Hallowell.

It is on this eighteenth day of July, 1924, on motion of Edward L. Katzenbach, attorney-general of the State of New Jersey, ORDERED that the said report of said commissioners be and the same hereby is confirmed, and it is FURTHER ORDERED that the said report be filed in the office of the Clerk of the Supreme Court of the State of New Jersey, and

It is FURTHER ORDERED that the ownership of the stock above-mentioned be and the same hereby is determined to be as follows:

Certificate number 6420.

Number of shares 9.

Name of owners Marion D. Hallowell, and

It is FURTHER ORDERED that the amount of compensation to be paid to the owners of said stock be and hereby is determined to be one hundred eighty-three dollars, to be paid to the said Marion D. Hallowell.

THOMAS W. TRENCHARD,
Justice Supreme Court.

Entered July 20, 1927.

On motion of

EDWARD L. KATZENBACH,
Attorney-General.

JOHN MILTON,
Attorney for L. V. R. R. Co.

*Clerk's Certificate.*

I, EDWARD J. KELLEHER, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above-stated cause.

In testimony whereof I have set my hand and the seal of said Court at (SEAL) Trenton, this thirtieth day of August, A. D. nineteen hundred and twenty-seven.

EDWARD J. KELLEHER,
Clerk.



**PETITION.**

Filed November 13, 1924.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | *Petition.* |

*To Honorable Thomas W. Trenchard, Justice of the New Jersey Supreme Court.*

The application of the State of New Jersey, by the Board of Conservation and Development respectfully shows:

1. The State Board of Conservation and Development is the State Commission or Agent charged with the control and management of the property acquired by the State of New Jersey from the Morris Canal and Banking Company, a corporation of the State of New Jersey.

2. By Chapter 112 of the Laws of 1923, as amended by Chapter 80 of the Laws of 1924, the Board of Conservation and Development is authorized and empowered to acquire by condemnation any or all of the capital stock of the Morris Canal and Banking Company, either consolidated or preferred, not owned by the State of New Jersey.

3. On June 23, 1924, the Board of Conservation and Development did by resolution desig-

*Petition.*

nate the following capital stock of said corporation to be acquired, namely:

Certificate Number 6420

Number of Shares 9 Preferred

Name of Owner Marion D. Hallowell

4. Said Board has filed in the office of the Secretary of State a statement of the capital stock so to be acquired and has also filed a duplicate copy of said statement with the registered agent in this State of the Morris Canal and Banking Company.

5. The said registered agent has forwarded a copy of said statement to the owner and holder of said capital stock above mentioned as her name and address appears on the stock books of the Morris Canal and Banking Company.

6. No application has been made for the transfer of said shares of stock since the filing of said statement.

7. Notice of these proceedings, copies of which notices are annexed hereto and made part hereof, known as Exhibits "A" and "B" have been served, filed, published and mailed as appears by the return of the Sheriff of the County of Mercer filed with the Clerk of the Supreme Court of this State.

8. Answer has been filed by the said Marion D. Hallowell with the Clerk of the Supreme Court of the State of New Jersey setting out in full the nature of her claim or interest in said capital stock and the amount of her damages which she claims will be sustained by her by reason of the taking or acquiring of said stock.



*Petition.*

Your petitioner therefore respectfully applies for leave to bring before your Honor, upon a day to be fixed by you, a hearing upon the claims so filed and to fix the amount to be paid for such stock, and to determine the validity of such claims and settle the interests of the parties claiming any interest in any of said shares of capital stock, the amount of damages to be paid therefor and the apportionment of such damages according to the interests of the claimants in said stock.

BOARD OF CONSERVATION &
DEVELOPMENT,

By EDWARD L. KATZENBACH,
Attorney General.

Dated November 13, 1924.

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

HENRY B. KUMMEL, of full age, being duly sworn upon his oath deposes and says:

That he is Director and Agent of the Board of Conservation and Development of the State of New Jersey, petitioner named in the foregoing petition; that he has read the same, and the matters and things therein contained are true.

HENRY B. KUMMEL.

Sworn and subscribed to before
me this seventh day of November, 1924.

SARA COOLEY,
Notary Public of N. J.
My commission expires Sept. 13, 1927.

*Petition.*

NEW JERSEY SUPREME COURT.

State of New Jersey to MARION D. HALLOWELL, Bethares, Pa. YOU ARE HEREBY NOTIFIED that there has been filed in the office of the Secretary of State a statement or (SEAL) list of certain shares of the capital stock of the Morris Canal and Banking Company in which you may have or claim to have an interest, which shares of stock are to be acquired by or on behalf of the State of New Jersey.

You are hereby required within twenty days after service of this notice upon you to file in the office of the Clerk of the Supreme Court of New Jersey, at Trenton, an answer hereto, setting out in full the nature of your claim or interest in the said shares of capital stock, and likewise the amount of damages which you claim will be sustained by you by reason of the taking or acquisition of said shares of capital stock.

The shares of capital stock of said Morris Canal and Banking Company in which you are said to claim an interest are as follows:

Certificate Number 6420

Number of Shares 9-Preferred

WITNESS, WILLIAM S. GUMMERE, Esq., Chief Justice of the Supreme Court at Trenton, this twentieth day of August, 1924.

Attest:

Clerk, New Jersey Supreme Court.

Attorney General.



*Petition.*

To the above-named Marion D. Hallowell:

Inasmuch as you have no residence or place of business within the State of New Jersey, I, the undersigned, in pursuance of the authority of Chapter 112 P. L. 1923, in lieu of the requirement that you file your answer to the above within twenty days after service of the above notice, do hereby fix November 1, 1924, as the date on or before which such answer must be filed.

Sheriff, Mercer County.

NEW JERSEY SUPREME COURT.

In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company.

To all persons having an interest in the following shares of capital stock of the Morris Canal and Banking Company, namely

Certificate Number 6420

Number of Shares 9-Preferred

Name of Owner Marion D. Hallowell

TAKE NOTICE that the New Jersey State Board of Conservation and Development has filed in the office of the Secretary of State a statement or list of the above described capital stock of the Morris Canal and Banking Company and pro-

*Petition.*

poses to acquire the same for public use and if you claim any interest therein, you are required to file in the office of the Clerk of the Supreme Court of New Jersey, at Trenton, within twenty days after the date hereof an answer setting out in full the nature of your claim or interest in the said capital stock and likewise the amount of damages which you claim will be sustained by you by reason of the acquiring or taking of said capital stock.

Dated August 20, 1924.

Sheriff of Mercer County.

To Whom It May Concern:

I, the undersigned, in pursuance of the authority of Chapter 112 P. L. 1923, in lieu of the requirement that you file your answer to the above within twenty days after service of the above notice, do hereby fix November 1, 1924, as the date on or before which such answer must be filed.

Sheriff, Mercer County.

Notice of filing petition duly served by Chas. H. Reichert, Sheriff of Mercer County, and filed September 23, 1924.



**ANSWER.**

Filed October 28, 1924.

NEW JERSEY SUPREME COURT.

In the Matter of the Condemnation by the State of New Jersey of certain shares of capital stock of the Morris Canal and Banking Company owned by Marion D. Hallowell.

*Answer.*

The answer of Marion D. Hallowell, pursuant to the statute, in the above-entitled matter.

This respondent, saving and reserving her right to assert in any court of competent jurisdiction that the Lehigh Valley Railroad Company, as lessee of the property, owner of the majority of the capital stock, and in control of the policies of the Morris Canal and Banking Company, has so dealt with the property, assets and rights of said Morris Canal and Banking Company as to benefit itself at the expense and to the detriment of said Morris Canal and Banking Company and of the minority stockholders thereof, and saving and reserving her right to pursue any legal or equitable remedy that may be open to said Morris Canal and Banking Company or to herself and others as stockholders thereof, in respect or by reason of the matters aforesaid, makes answer herein as follows:

1. The nature of respondent's claim or interest in the stock of the Morris Canal and

*Answer.*

Banking Company involved in this proceeding is that respondent is the absolute owner thereof in her own right.

2. The amount of damages which respondent claims will be sustained by her by reason of the taking or acquiring of said stock is the sum of forty-five hundred dollars ($4,500).

Respectfully submitted,

SPENCER WEART,
Attorney for Respondent.



**ORDER.**

Filed November 13, 1924.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | *Order.* |

The State of New Jersey by the Board of Conservation and Development having applied to me in the above-entitled matter for a hearing upon the claims filed with the Clerk of the Supreme Court, for a determination of the validity of such claims and to fix the amount to be paid for such stock and the damages to be paid therefor and to apportion said damages among the claimants therefor according to their interest in said stock,

It is on this 13th day of November, 1924, ORDERED, that the said petition be filed in the office of the Clerk of the Supreme Court.

And it is further ORDERED, that Monday, the eighth day of December, 1924, at ten o'clock in the forenoon (Daylight Saving Time) and the State House in the City of Trenton, be and the same hereby are assigned as the time and place for the hearing of the said petition.

THOMAS W. TRENCHARD,
Justice Supreme Court.

**NOTICE.**

Filed November 25, 1924.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | *Notice.* |

To Marion D. Hallowell:

MADAM:

TAKE NOTICE, that on November 13, 1924, the State of New Jersey by the Board of Conservation and Development applied to Honorable Thomas W. Trenchard, Justice of the Supreme Court, for a hearing upon the claim filed by you with the Clerk of the Supreme Court for a determination of the validity of such claim, to settle the interests of the party filing such claim, to fix the amount to be paid for such stock and the damages to be paid therefor, and to apportion said damages among the claimants therefor.

TAKE NOTICE FURTHER, that the said justice did fix Monday, December 8, 1924, at ten o'clock in the forenoon at the State House in the City of Trenton as the time and place when he will hear and consider such application.

TAKE NOTICE FURTHER, that at said time and place I shall apply to the said justice to appoint commissioners or appraisers to appraise the full market value of said stock and what damages, if any, should be assessed for the taking of the same.



*Notice.*

TAKE NOTICE FURTHER, that at said time and place I shall apply to the said justice to fix directions and rules to be followed by the said commissioners or appraisers.

Dated, November 17, 1924.

Yours truly,

EDWARD L. KATZENBACH,
Attorney General.

Acknowledgment of service of copy of within notice is hereby made this day of November, 1924.

SPENCER WEART,
Attorney of Marion D. Hallowell.

## ORDER APPOINTING COMMISSIONERS.

Filed December 12, 1924.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | *Order Appointing Commissioners.* |

The State of New Jersey by the Board of Conservation and Development having applied to me in the above-entitled matter for a hearing upon the claims filed with the Clerk of the Supreme Court, for a determination of the validity of such claims and to settle the interests of the parties filing such claims and to fix the amount to be paid for such stock and the damages to be paid therefor and to apportion said damages among the claimants therefor according to their interests in such stock,

It is on this 8th day of December, 1924, on motion of the Attorney General of the State of New Jersey, ORDERED, that Russell Watson of New Brunswick, Percy A. Gaddis of Jersey City and Frank C. Ferguson of East Orange, be appointed commissioners or appraisers to appraise the full market value of said stock and what damages, if any, should be assessed for the taking of the same.

And it is further ORDERED, that the said commissioners before entering upon the performance of their duties do severally take and subscribe an oath or affirmation faithfully and impartially



to examine the matter in question and to make a true report according to the best of their skill and understanding.

And it is further ORDERED, that the said petitioner do give to the said Marion D. Hallowell, owner of said shares of stock, at least six days notice of the time when and the place where the said commissioners will meet to consider the matters above referred to them, such notice may be served personally or by registered mail addressed to the said Marion D. Hallowell, as such address appears on the books of the Morris Canal and Banking Company.

And it is further ORDERED, that the said commissioners do make and report to me in writing on or before the fifteenth day of March, 1924.

THOMAS W. TRENCHARD,
Justice, Supreme Court.

## ORDER APPOINTING COMMISSIONER.

Filed May 8, 1926.

| | | |
|---|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | | *Order Appointing Commissioner.* |

Before Honorable THOMAS W. TRENCHARD, Justice of the Supreme Court.

I having by order dated December 8, 1924, appointed Russell Watson, Percy A. Gaddis and Frank C. Ferguson, commissioners or appraisers to appraise the full market value of the stock of Marion D. Hallowell and what damages, if any, should be assessed for the taking of the same.

And the said Russell Watson having thereafter declined such appointment,

It is on this May 6, 1926, on motion of Edward L. Katzenbach, Attorney-General of the State of New Jersey, ORDERED, that the said declination of the said Russell Watson be and the same hereby is accepted.

And it is further ORDERED, that William D. Lippincott be and he is hereby appointed in the place and stead of the said Russell Watson, to act with the said Percy A. Gaddis and Frank C. Ferguson as commissioner or appraiser to appraise the full market value of said stock and what damages, if any, should be assessed for the taking of the same.

And it is further ORDERED, that the said commissioners before entering upon the performance



of their duties do severally take and subscribe an oath or affirmation faithfully and impartially to examine the matter in question and to make a true report according to the best of their skill and understanding.

And it is further ORDERED, that the said petitioner do give to the said Marion D. Hallowell, owner of said shares of stock, at least six days' notice of the time when and the place where the said commissioners will meet to consider the matters above referred to them, such notice may be served personally or by registered mail addressed to the said Marion D. Hallowell as such address appears on the books of the Morris Canal and Banking Company. Service upon the attorneys who have already appeared shall be sufficient.

And it further appearing that in said order of December 8, 1924, the said commissioners were directed to report to me in writing on or before March 15, 1925,

And thereafter the said time was extended to a date coincident with thirty days after the final decision of the New Jersey Supreme Court upon certiorari to review said order of December 8, 1924, or the decision of the Court of Errors and Appeals pending appeal from said decision of the Supreme Court, and compliance with said order as to time having been prevented by the said declination of Mr. Watson,

It is ORDERED, that the said commissioners do make their appraisal and report to me in writing on or before the 31st day of July, 1926.

THOMAS W. TRENCHARD,
Justice, Supreme Court.

## ORDER APPOINTING COMMISSIONER.

Filed May 19, 1926.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company. | *Order Appointing Commissioner.* |

Before HON. THOMAS W. TRENCHARD, Justice of the Supreme Court.

I having by order dated December 8, 1924, appointed Russell Watson, Percy A. Gaddis and Frank C. Ferguson commissioners or appraisers to appraise the full market value of the stock of Marion D. Hallowell and what damages, if any, should be assessed for the taking of the same.

And the said Russell Watson having thereafter declined such appointment, and I having appointed William D. Lippincott to fill the vacancy caused by the declination of the said Russell Watson, and the said William D. Lippincott having also declined,

It is on this May 20, 1926, on motion of Edward L. Katzenbach, Attorney-General of the State of New Jersey, ORDERED, that the said declination of the said William D. Lippincott be and the same hereby is accepted.

And it is further ORDERED, that Charles V. D. Joline be and he is hereby appointed in the place and stead of the said Russell Watson to act with the said Percy A. Gaddis and Frank C. Ferguson as commissioner or appraiser to appraise the full market value of said stock and



what damages, if any, should be assessed for the taking of the same.

And it is further ORDERED, that the said commissioners before entering upon the performance of their duties do severally take and subscribe an oath or affirmation faithfully and impartially to examine the matter in question and to make a true report according to the best of their skill and understanding.

And it is further ORDERED, that the said petitioner do give to the said Marion D. Hallowell, owner of said shares of stock, at least six days' notice of the time when and the place where the said commissioners will meet to consider the matters above referred to them, such notice may be served personally or by registered mail addressed to the said Marion D. Hallowell as such address appears on the books of the Morris Canal and Banking Company. Service upon the attorneys who have already appeared shall be sufficient.

And it further appearing that in said order of December 8, 1924, the said commissioners were directed to report to me in writing on or before March 15, 1925.

And thereafter the said time was extended to a date coincident with thirty days after the final decision of the New Jersey Supreme Court upon certiorari to review said order of December 8, 1924, or the decision of the Court of Errors and Appeals pending appeal from said decision of the Supreme Court, and compliance with said order as to time having been prevented by the said declination of Mr. Watson,

*Order Appointing Commissioner.*

It is ORDERED, that the said commissioners do make their appraisal and report to me in writing on or before the 31st day of July, 1926.

THOMAS W. TRENCHARD,
Justice, Supreme Court.



## OATH OF COMMISSIONERS.

Filed May 29, 1926.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| In the Matter of the Condemnation of Capital Stock of MARION D. HALLOWELL in the Morris Canal and Banking Company. | *Oath of Commissioners.* |

STATE OF NEW JERSEY, COUNTY OF MERCER. } *ss.*

We, CHARLES V. D. JOLINE, PERCY A. GADDIS and FRANK C. FERGUSON, commissioners appointed in the above-entitled matter by Honorable THOMAS W. TRENCHARD, Justice of the New Jersey Supreme Court, being duly sworn on our and each of our oaths do depose and say we and each of us will faithfully and impartially examine the matter in question and make a true report thereon to the best of our skill and understanding.

C. V. D. JOLINE,
PERCY A. GADDIS,
FRANK C. FERGUSON.

Sworn and subscribed to before me at Trenton this 28th day of May, 1926.

NICHOLAS W. BINDSEIL,
Master in Chancery of N. J.

NEW JERSEY SUPREME COURT.

In the Matter of the Condemnation of Capital Stock of
ADA M. STEARNS,
CLARISSA E. LANDELL,
FREDERIC SEFTON,
GEORGE M. FLINT,
MORRIS F. MILLER,
E. ESTELLE RICHARDS,
MARION D. HALLOWELL,
SAFE DEPOSIT AND TRUST COMPANY,
in the Morris Canal and Banking Company.

Transcript of testimony taken before C. V. D. Joline, Percy A. Gaddis and Frank C. Ferguson, commissioners appointed in the above-entitled matter by the Honorable Thomas W. Trenchard, Justice of the New Jersey Supreme Court, on Friday, the twenty-eighth day of May, 1926, at the State House, Trenton, New Jersey.

Appearances:

Attorney General, by John Milton and John J. Mulvaney, representing the Lehigh Valley Railroad Company.

Henry F. Stockwell, representing Ada M. Stearns, Clarissa E. Landell, Frederic Sefton and George M. Flint.

Edgar W. Hunt, representing Morris F. Miller, E. Estelle Richards, Marion D. Hallowell and Safe Deposit and Trust Company of Baltimore.



Mr. Charles V. D. Joline was selected to act as chairman of the commission.

Mr. Nicholas W. Bindseil was sworn as stenographer.

Adjourned to June 22, 1926, at the same place, at 10:30 A. M.

---

Hearing continued June 22, 1926.

Same appearances.

It is stipulated and agreed by and between the attorneys for the respective parties that the testimony of the witnesses shall be taken stenographically by Mr. Bindseil, and the signatures of the witnesses thereto waived.

Mr. Hunt: I would like to state that Mr. Charles A. Malloy, of the New Jersey Bar, is associated with me.

Mr. Mulvaney opened for State.

Mr. Hunt opened for respondents.

Hearing adjourned.

---

Hearing continued September 14, 1926.

Same appearances. Charles A. Malloy, Esq., appearing for Edgar W. Hunt, Esq.

Commissioner Joline: Now, I want to say that the Board has determined that it will not submit the questions suggested at the last hearing to the Judges of the Supreme Court, or to Justice Trenchard, representing the Supreme Court, so we will go on with the hearing of the testimony

in this case and decide any questions that come up itself.

At this time the hearing was adjourned until October 13, 1926, at 10:30 o'clock in the morning.

---

Hearing continued October 13, 1926.

Same appearances.

Hearing adjourned to October 22, 1926.

---

Hearing continued October 22, 1926.

Same appearances.

Mr. Mulvaney: Mr. Hunt some days ago asked me to produce here this morning copy of the lease made by the Canal Company to the Lehigh Valley Railroad Company in 1871.

The only copy that we have available is contained in this pamphlet, which is the memorandum presented to the commission in 1903. That is the Governor's Commission for the abandonment of the canal, and contains the history of the canal, its charter, amendments to the charter, and various other acts in reference to decided cases.

Commissioner Joline: On what page is that lease found?

Mr. Mulvaney: The charter of the Canal Company is on page 22. There are various supplements. The lease is printed beginning page 98.

Commissioner Joline: Exhibit 1 respecting page 98.



Mr. Mulvaney: We may also want to refer to some provisions of the original charter or the amendments to the charter, and in that case I will point out the page as the references are made.

(Pamphlet marked Exhibit P. 1.)

Mr. Mulvaney: I have here a list of purchases of stock of the Morris Canal by the Lehigh Valley Railroad Company, beginning December, 1922, and ending April, 1923, taken from the books of the company.

Mr. Hunt: I object to the offer.

Mr. Mulvaney: I ask counsel if we may use this copy, supplemented by oral testimony.

Mr. Stockwell: For what purpose?

Mr. Mulvaney: For the purpose of showing the prices.

Mr. Hunt: We will object to the offer of evidence relating to any such purchases.

Mr. Mulvaney: Do I understand counsel's objection to go to the fact that this is a copy?

Mr. Hunt: No, counsel's objection goes to the point that purchases of this stock made by the Lehigh Valley are not evidential on the question of the value of the stock.

Commissioner Joline: You don't object to the paper?

Mr. Hunt: I have no objection because it is a copy. I do object to the introduction of any evidence of this character. If Mr. Mulvaney will put his witness on the stand, and the Court will permit us to cross examine, I will lay a proper ground, I think, to support the objection.

Mr. Mulvaney: May we have that marked for identification?

Mr. Hunt: This paper purports only to contain certain names and dates and certain number of shares and amount paid opposite each item; that doesn't mean anything. It cannot be of any assistance to this Court, even to prove what they are trying to show.

Mr. Mulvaney: What this paper is, is a list of purchases, as to which we shall produce a witness on the stand. It is merely produced for the convenience of the commission.

Chairman Joline: Let it be marked Exhibit P. 2 for identification.

(Marked Exhibit P. 2 for identification.)

"PURCHASE OF STOCK OF MORRIS CANAL & BANKING COMPANY BY LEHIGH VALLEY RAILROAD COMPANY, December, 1922, to April, 1923.

CONSOLIDATED.

| Date Purchased | | No. of Shares | Amount |
|---|---|---|---|
| 1922 | | | |
| Dec. 6 | Edward T. Stotesbury.... | 85 @ 50 | $4,250. |
| " 8 | Est. Caroline D. Paxton.. | 3 " | 150. |
| " 11 | T. Ellis Barnes..... | 6 " | 300. |
| " 15 | Bertha Lea Low..... | 6 " | 300. |
| 1923 | | | |
| Jan. 12 | E. Winslow Taylor..... | 4 | 200. |
| Feb. 1 | Edith Pardee ..... | 10 | 500. |
| | | 114 | $5,700. |





PREFERRED.

| | | | |
|---|---|---|---|
| 1922 | | | |
| Dec. 13 | Presbyterian Hospital .... | 41 @ 125 | $5,125. |
| 1923 | | | |
| Jan. 12 | Winslow Taylor ..... | 2 " | 250. |
| Jan. 20 | Estate Geo. A. Vroom..... | 1 " | 125. |
| Feb. 1 | Edith Pardee ..... | 20 " | 2,500. |
| " 16 | Mary Hartshorne ..... | 1 " | 125. |
| " 24 | Estate of Wm. H. Taylor. | 37 " | 4,625. |
| Mar. 5 | Hannah McK. Rudolph... | 10 " | 1,250. |
| | | 112 | $14,000. |
| May, 1923 | | | |
| Clara A. Price ..... | | 26 | |
| | | 138" | |

JOHN MILTON, sworn for petitioner.

*Direct examination* by Mr. Mulvaney.

Q You are attorney for the Lehigh Valley Railroad Company? A I am.

Q And in the matter of the acquisition of stock of the Morris Canal & Banking Company did you act for them in that capacity? A I did.

Q Did you attempt to acquire outstanding stock of the Morris Canal & Banking Company for the Lehigh Valley Railroad Company?

Mr. Hunt: Objected to as irrelevant.

Chairman Joline: Objection overruled.

A I did.

Q Did you as a matter of fact acquire any of the outstanding stock of the Morris Canal & Banking Company?

Mr. Stockwell: May we have a statement from Mr. Mulvaney as to his purpose in offering this line of examination? Certainly it is not clear at the present time that it

could have any value, or that it has any relevancy to the matter under consideration by your Honors.

Mr. Hunt: It is immaterial to us how many they acquired. We know they acquired some.

Mr. Mulvaney: The question here is what is the value of this stock. I am trying to establish that in the only competent way possible.

Chairman Joline: The commission cannot force Mr. Mulvaney to make a statement. I think we had better proceed with the testimony.

Mr. Stockwell: We enter our objection to all such evidence.

Q Can you tell about the time you acquired any of this stock? A Yes.

Q What times? A In April and May, 1923.

Q Can you tell from whom you acquired it? A I can.

Q Please do so.

Mr. Hunt: I object to that and I ask leave to examine this witness with a view to bringing out whether or not the circumstances surrounding the sale and purchase of these shares are of such a character as to make the price that the Lehigh Valley paid legally admissible in evidence, or of any probative value on the question of the value of the shares.

Chairman Joline: You can do that on cross examination.

Mr. Hunt: I think with due deference, we should be permitted, first, to bring out



whether or not there is any foundation for permitting the witness to say the Lehigh Valley at such a time bought such and such stock, and paid so much for it. If it is not competent evidence, then it ought not to be in the record, and we should not be prejudiced by it.

Mr. Mulvaney: As I stated before, it is not only competent, but proper.

Mr. Stockwell: May I also just say this word?

Mr. Hunt: I wanted to say one word, if Mr. Stockwell will permit, that I am sending to the Law Library for three cases, with one of which I am myself familiar, and the other two Mr. Malloy has examined, which we will lay before the commission as establishing that prices paid by the Lehigh Valley for stock bought by it are not properly admissible in evidence in such a proceeding as this. I think in consideration of the rights of our clients and our right to be protected from any prejudice, there should at least be a pause at this time, unless if the commission, to save time, will permit me to go on with my cross examination.

Chairman Joline: Wait until Mr. Mulvaney gets through.

Mr. Hunt: I want to cross examine as to the competency of the evidence that is sought to be put in; that is all.

Mr. Stockwell: One word further. We don't wish to take up undue time, but we are getting right down to the meat of this controversy, and we are getting down early. I understand Mr. Mulvaney, without any

statement of the purpose, is endeavoring to find out from the attorney for the railroad company what the railroad company paid for certain shares of this stock. That is his question. That is the burden of his examination today, and that is the matter with which your Honors have to deal.

Let us assume, for a moment, that the sale and market price for stock, if established, would govern it. He certainly cannot establish the market price for this stock by finding out what the Lehigh Valley went and paid to Thomas Jones for a few shares. That cannot be the market value of this stock. But more than that, we contend that the value of the shares which are being taken here cannot be established by simply showing what was the price—market value for that stock.

The question goes much deeper, and our contention, of course, is that you must go into the value of the assets, and we are entitled as stockholders to our proportionate share of the value of the net assets at the time this scheme was instituted. That is the issue here. But even on their own theory, this examination, in my judgment, is entirely incompetent.

Mr. Hunt: We also offer to prove, if the commission please, that there is no market, and hasn't been for a long period of years, any market for this stock, in the commonly accepted or the legally accepted meaning of that term.

I have examined the listings on all the prominent stock exchanges, in New York and Philadelphia. I don't find this stock



listed anywhere; I don't find any reports made of its having been dealt in, and it will be a surprise to me if the witnesses can demonstrate that this stock is listed or is dealt in on any exchange.

I have here a letter coming to us in due course, a circular signed by the president of the Lehigh Valley, dated October, 1921—that is five years ago—in which it is stated that out of 22,000 shares outstanding, the Lehigh Valley owned all but 680 at that time. How can there be a market, when one person owns all but 680 shares out of 22,000? Any sales made then wouldn't demonstrate market value, because under such circumstances there cannot be a market—two per cent. in the hands of outsiders, 98 per cent. in the hands of the Lehigh Valley.

Chairman Joline: Shall we wait for the books?

Mr. Hunt: I would like to press for my right to examine into the competency of the testimony that Mr. Milton proposes to—

Chairman Joline: You may do that on cross examination.

Mr. Hunt: But then he will give the testimony. Our point is, he is not entitled to give it.

Chairman Joline: We think he should be entitled to give it.

Mr. Mulvaney: I don't suppose you want me to reply.

Chairman Joline: We have made the ruling.

Mr. Hunt: May we note an exception?

Chairman Joline: Yes.

Chairman Joline: We will admit the testimony.

Mr. Hunt: May our objection be noted?

Chairman Joline: Yes, and we will allow you an exception.

Q Will you give the names of the stockholders, the number of shares of stock, the kind of stock and the prices paid by you? A I purchased from one Josephine Wray preferred stock, paying $125 per share. My recollection is that I purchased either one or two shares, in April, 1923, from a woman named Clara Price. I purchased 25 shares of preferred stock in the same month, paying $125 per share; and from the Bucks County Trust Company of Bucks County, Pennsylvania, which was a trustee for one Johnston, I purchased preferred stock, paying $125 per share—either one or two shares. Those are all the shares I succeeded in purchasing after negotiations with all of the other stockholders.

Chairman Joline: Wouldn't the other stockholders sell?

The Witness: They did not.

Chairman Joline: Was this stock listed on the market?

The Witness: Not that I know of.

Q You say that the other stockholders would not sell. You mean by that all the other stockholders? Have you knowledge whether or not the Lehigh Valley acquired directly any other stock? A The Lehigh Valley Railroad Company acquired stock prior to the time that I



took up negotiations with the stockholders. I think after the early part of 1923 the negotiations were exclusively by me.

Chairman Joline: Is the stock in this case preferred stock or common stock?

Mr. Milton: In the acquisition of the stock by the company?

Chairman Joline: That we are to assess the value of.

The Witness: Both kinds.

Chairman Joline: Does the rule or the order or any paper show which is preferred stock and which is common stock?

The Witness: I think the petition shows; I have forgotten.

Mr. Hunt: I think the petition in each case shows.

Mr. Mulvaney: In those cases Morris F. Miller owns 50 shares of Consolidated stock.

Chairman Joline: What is Consolidated stock?

Mr. Mulvaney: Synonymous with Common stock. All the other shares being condemned are Preferred; 62 in all.

*Cross examination* by Mr. Hunt.

Q Mr. Milton, you say that so far as you know, this stock is not listed or dealt in on any Exchange? A That is correct, my knowledge of stock listings on Exchanges being mighty limited.

Q I call upon you as attorney for the Lehigh Valley Railroad Company now, if this stock is

listed and dealt in on any Exchange, to produce evidence to that effect before this proceeding is closed. A You may call all you like.

Mr. Hunt: If you fail to do so, I shall argue the matter at its close on the assumption that it is not listed or dealt in on any Exchange.

The Witness: Which is your privilege.

Q That is fair, isn't it? A Certainly; you wouldn't want me to characterize what might or might not be fair on your part.

Q I wrote you as attorney for the Lehigh Valley Railroad Company, asking you to have Mr. E. E. Loomis, president of that company, here today. Is he here? A Not yet. We anticipate Mr. Boles will be here, prepared with all the information that you requested, and possibly knowing more about the details than Mr. Loomis does. I think in fairness counsel ought to permit me to say I notified you a day or two ago that Mr. Loomis would not be available.

Mr. Hunt: Yes.

The Witness: But when he got here, if he would give us the information he wanted to elicit from Mr. Loomis—

Mr. Hunt: I will let Mr. Loomis know when he is in this chair, but not beforehand.

Q You said you bought these shares; to whom were the certificates endorsed, when they were handed over to you? A My recollection is that they were endorsed over to the Department of Conservation and Development of the State of New Jersey.



Q Whose check paid for the shares? A I think that originally I advanced the money and obtained it from the company.

Q Now, did you go out to Doylestown to see the officers of the Bucks County Trust Company? A I did not.

Q Where did you see them? A I never saw them.

Q Why, did you carry on the negotiation by correspondence with them? A Yes.

Q Have you here your correspondence with them? A I think so.

Mr. Hunt: May I see it, please?

Mr. Mulvaney: I don't concede the right of counsel to look at the correspondence between Mr. Milton and these people. I simply say that I am producing it, although I think he has no right to it.

The Witness: I have no objection to his seeing it.

Q Did you carry on your negotiations with Josephine Wray and Clara Price face to face or by correspondence? A By correspondence.

Mr. Hunt: Then I would like to see that correspondence, too.

Q At the time that you made these purchases, how many shares of Lehigh Valley stock of each class, belonging to owners other than the Lehigh Valley, persons holding in trust for the Lehigh Valley, the Board of Conservation and Development, or persons holding in trust for it or other boards, or persons holding in trust for the State of New Jersey or any of its agencies; in other

words, how much of the stock was in the hands of rank outsiders at the time you made these purchases? A I don't know.

Q Are you familiar with the circular put out by the president of the Lehigh Valley Railroad Company under date of October 1, 1921? A I read it, Mr. Hunt, as a part of my work in connection with the proceedings to bring about the condemnation of the canal, yes.

Q I read from it as follows: "The capital stock of the Morris Canal & Banking Company—

Chairman Joline: What page?

Mr. Hunt: These are not paged. It is next to the last one.

Q (Continuing.) "The capital stock of the Morris Canal & Banking Company, owned by the Lehigh Valley Railroad Company, consists of 9,921 shares of consolidated stock and 11,399 shares of preferred stock, each having a par value of $100, or a total par value both both issues of $2,132,000. There are in the hands of the public 329 shares of consolidated stock and 351 shares of preferred stock." Was that statement a true picture of the stock holdings as of that time? A Mr. Hunt, obviously, I cannot say.

Q You don't know? A But may I say this to you, that I assume Mr. Loomis is a fair-minded, truthful gentleman; he wouldn't misrepresent a situation, and if you are anxious to prove what the fact is, or have it established on this record, we will undoubtedly ascertain it and concede it.

Mr. Hunt: That is all; I simply wanted to show how many of those 680 shares of



both classes which were in the hands of the public on October 1, 1921, had been acquired by the Lehigh Valley or the State of New Jersey, or anybody acting for either of those parties, between October 1, 1921, and the date when you set about the task of trying to pick up the residue that was still outstanding.

The Witness: That is my difficulty; I don't know. There was some acquired.

Q Have you got here, perhaps, a list which will show how many shares of each class of stock were outstanding at the time that the authority to acquire the stock was turned over to you? A I rather think so. I will look for it. If I haven't, I think Mr. Boles, who is coming on a later train, will have it.

Chairman Joline: Did I understand you to say that the stock that you acquired was all preferred stock?

The Witness: Yes.

Chairman Joline: That doesn't show the value of the common stock. Some of this stock was common stock.

The Witness: I appreciate that.

*Cross examination* by Mr. Stockwell.

Q Mr. Milton, in endeavoring to buy the stock, to how many stockholders did you write? A My recollection, Mr. Stockwell, is I wrote to every stockholder of both classes remaining on the books of the company as the list showed them which was furnished me, either by the legal department of the Lehigh Valley Railroad or by

the Department of Conservation and Development.

Q And you had favorable responses from three, I understand, and three only? A I purchased stock from three stockholders.

Q They are the only three from whom you did purchase? A That is right.

Q Before you circularized these stockholders, had the company also circularized them in their endeavor to buy the stock? A I cannot tell you that; I think so; I am not sure.

Q But did it cease its efforts when you took over the purchase? A I think so; yes, sir.

Q Having exhausted its effort, then you made the attempt, is that correct? A I wouldn't so characterize it.

Q You did make the attempt? A Yes, but don't ask me to say that the company concluded it and exhausted its efforts.

Q I understood you to say on your direct examination that the company ceased its efforts to buy stock when you undertook to buy. A You are right in that statement.

Mr. Hunt: May we recall Mr. Milton for cross examination after looking at this correspondence?

The Witness: Some of the information which Mr. Hunt requested that we procure for him; in fact, all of it, is being brought by Mr. Boles, who, in order to get the balance of it, which he couldn't get yesterday, had to stop at his office this morning. He has taken the 10:03 train and will be here in ten minutes; he is at the station now.



Q From how many of these stockholders to whom you wrote did you receive replies? A I couldn't say.

Q Well, approximately? A I cannot even tell you that.

Q From more than the three who ultimately sold? A Oh, yes.

Q Did the majority of them reply? A I wouldn't hazard a guess; I don't know.

Q As to those who did reply, did they refuse to sell under any conditions, or did they simply object to the price you offered? A I think in a great majority of cases there was some objection to the price; a few may have refused to sell under any conditions, but that is a mere speculation.

Q The chief objection was to the price you offered? A I wouldn't say that. You are trying to probe my mind—

Q Your recollection. A Probe my recollection of correspondence which is over three years old, and I certainly have written and read a great many letters.

Q I thought you were pretty good at remembering the names of the three and the number of shares and the dates. A I looked at the list before I took the stand.

Commissioner Gaddis: What guarantee, if any, was there on the outstanding stock by the Lehigh Valley to these outstanding stockholders?

The Witness: The same guarantee that existed with respect to all of the stock of the Morris Canal & Banking Company, namely, a guarantee of the dividends for the remainder of the life of the charter of the Morris Canal & Banking Company.

Commissioner Gaddis: Is that contained in any exhibit?

The Witness: That is in document proof which has been or will be offered.

Mr. Mulvaney: That is contained in the list.

The Witness: Four per cent. on consolidated and ten per cent. on the preferred.

Chairman Joline: When you say consolidated, you mean the common stock?

The Witness: It is synonymous with the present-day common stock as we understand it.

*Further cross examination* by Mr. Hunt.

Q I show you what is apparently a carbon copy of a letter dated April 18, 1923, addressed to Josephine Wray, initialed at the bottom JM:GW but not signed; can you tell us what that letter is? A I can.

Q What is that; is that the letter you wrote Mrs. Wray, in the endeavor to acquire her stock? A It is.

Mr. Hunt: I offer that for identification.

(Marked Exhibit D. 1 for identification.)

"April 18, 1923.

Josephine Wray,
c/o Alfred B. Wray,
111 Orchard Place,
Ithaca, N. Y.

Dear Madam:

As you are perhaps aware, a contract was made on November 30, 1922, between certain



commissioners acting on behalf of the State of New Jersey, and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, regarding the acquisition by the State of New Jersey of certain property of the Canal Company. That agreement contemplates that all of the stock of the Morris Canal and Banking Company shall be acquired by the Railroad Company and turned over to the State. In the event of the Railroad Company being unable to purchase the stock at a price satisfactory to it, power is given by legislation enacted in 1922 and further legislation enacted in 1923 to condemn said stock in the name of the State of New Jersey.

I am acting on behalf of the Attorney General of the State of New Jersey, who has been directed by the Board of Conservation and Development of the State to proceed to condemn the stock held by you, which, according to the records of the Company, is two shares of preferred. At the suggestion of the Attorney General, I am writing to ascertain whether or not you care to sell your stock at the price offered you heretofore by the Company, which is $125.00 per share. If you do not desire to accept the price so offered, it is the intention of the Attorney General to proceed to acquire the stock through condemnation.

I would appreciate a reply to this communication on or before April 25.

Very truly yours,

JM:GW"

Q I show you another copy of a letter, dated Ithaca, N. Y., April 21, 1923, and addressed to Mr. John Milton, and signed "A. B. Wray"; is that the reply you had to the copy you just identified? A It probably is a copy of it.

Mr. Hunt: I offer that for identification.
(Marked Exhibit D. 2 for identification.)

"111 Orchard Place, Ithaca, N. Y.,
April 21, 1923.

Mr. John Milton,
c/o Treacy & Milton,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:

This will acknowledge your letter of April 18th addressed to Josephine Wray in my care. I am referring to stock she holds in the Morris Canal and Banking Company. I understand you are offering for her stock $125. per share. This, I think, is more than the Lehigh Valley R. R. Co. offered. I have power of attorney for my sister and am willing to accept your offer. Josephine Wray now Josephine Wray Fisher resides in Yokahama, Japan. Her stock certificate has been lost and at the present time, I am securing from her an affidavit waiving all claims if the stock certificate should later be found. I am making out a similar certificate myself. The Lehigh Valley R. R. Co. thought they could accept something of this kind instead of going through their ordinary proceedure of having a new certificate



issued. I would be glad to have you advise just how you would prefer to handle this.

Very truly yours,

A. B. Wray."

Q I call your attention to the fact that this paper, which you think is a copy of a letter which you got from Mr. Wray, is addressed "Mr. John Milton, c/o Treacy & Milton, 1 Exchange Place, Jersey City, N. J." Had you had any acquaintance with A. B. Wray or Josephine Wray? A None.

Q And this had been your first correspondence with them? A The correspondence on this subject may have been the first I ever had with these people, but whether or not those are the first letters, I don't know.

Q I take it that the fact that Mr. Wray addressed "Mr. John Milton, c/o Treacy & Milton, 1 Exchange Place, Jersey City," may be understood to indicate that your letter to Josephine Wray was written on the letterhead of the firm of Treacy & Milton? A I think so.

Q You are quite clear that it was not written on a letterhead of the Lehigh Valley Railroad Company, or that it served in any way to identify yourself or your firm with the Lehigh Valley Railroad Company? A So far as the letter paper is concerned, no; my recollection is it was the ordinary office paper.

Q Neither was there anything printed or engrossed on the letterhead that served to identify you with the State of New Jersey? A No.

Q I will read from your letter of April 18, 1923. (Reading Exhibit D. 1.) You gave here then just one week to answer it, didn't you, Mr. Milton? A Whatever the dates are.

Q From April 18th to the 25th. It was the Lehigh Valley Railroad Company, you said a few moments ago, that had directed you to take up the burden that it laid down, of attempting to acquire this stock, wasn' it? A I said that.

Q You said that here, to Mrs. Wray; you say that the State of New Jersey directed you to do it. A Which was the fact.

Q Now, show us the evidence that that was the fact, Mr. Milton, under the contract.

Mr. Mulvaney: I think the witness' own statement that that was the fact is sufficient.

Chairman Joline: We will take the testimony.

A Under the contract between the State of New Jersey, as represented by the Commissioners, consisting of Mr. Sommer, Mr. Focht and Mr. Young, and the company, it is my recollection that the company obligated itself—

Mr. Hunt: I object to evidence being given of recollection of a contract between the State and the Lehigh Valley.

Chairman Joline: Go on and give your answer.

Mr. Milton: It is very difficult to remain a quiescent witness and forget that I am a lawyer.

A (Continuing.) I might point out to Mr. Hunt, that he brought forth this answer by his question of asking me for the evidence. It is provided under that contract, that the company shall acquire the outstanding stock or continue or to pay the guaranteed dividends. After the con-



tract was executed and acting on behalf of the company, I discussed with the former Attorney General, now dead, Thomas F. McCran, whether or not he would have any objection, he being the legal representative of the Department of Conservation and Development, to my acting in the name of the State or in the name of his office in the acquiring of this stock, inasmuch as the Railroad Company had to pay the cost of the acquisition, and in my file, if the filing system is worth anything, will be found a letter from Mr. McCran, advising me that I was authorized to proceed in his name as Attorney-General to acquire the stock. I believe the railroad was my client and was to pay my bill. After Mr. McCran's death, appreciating that the new Attorney-General might not desire to have me roaming around purporting to represent the Attorney-General's office, I communicated with the present Attorney-General, Mr. Katzenbach, who reaffirmed the arrangement I had with Mr. McCran.

Mr. Hunt: I would like to see those letters.

Commissioner Gaddis: What was the par value of the two stocks?

Mr. Mulvaney: Both kinds $100.

Mr. Hunt: May I have the two letters that were marked for identification, now marked as exhibits?

Mr. Mulvaney: I have no objection.

(Letter marked heretofore Exhibit D. 1 for identification now marked Exhibit D. 1.)

(Exhibit D. 2 for identification now marked Exhibit D. 2.)

Q I show you now what purports to be a carbon copy of a letter addressed to Clara A. Price, Washington, D. C., dated April 18, 1923. Did you sign and send such a letter to Mrs. Price? A I have no doubt I did.

Q That is a copy of it? A Yes.

Q That is in exactly the same form as the letter to Mrs. Wray, which I have just read? A I would assume so; it starts out the same way.

Q And the second paragraph is the same? Look at it and assure yourself. A I think so.

Q Are all the letters sent out to stockholders in the same form? A My recollection, Mr. Hunt, is that I wrote each and every stockholder, consolidated and preferred, a letter of the same date, April 18, 1923, of the same character; yes, sir.

Q The only difference between them was that you offered $125 for preferred stock and $50 for common stock? A Yes.

Q In the case of Mrs. Wray, by the way, you stated that according to the records, she held two shares of preferred, whereas you paid her for common? A Yes.

(Letter to Clara A. Price offered and marked Exhibit D. 3.)

Q I show you a letter addressed to you and signed "Clara A. Price," and ask you if that is the answer that you got from Mrs. Price. A Yes.

Mr. Hunt: I read the letter:



"Washington, D. C., April 24, 1923.

To Mr. John Milton.

Dear Sir:

I have your favor of the 18th inst. and in reply beg to say that while I do not wish to sell my stock in the Morris Canal and Banking Co. at the price offered by the Lehigh Valley Railroad Co. $125 per share, according to your letter I do not see what else I can do, and if you will let me know to whom I should send the stock, and to whom it should be assigned, I will forward it.

Yours truly,

Clara A. Price.

(Mrs. Butler D. Price)."

I offer that in evidence.

(Marked Exhibit D. 4.)

Q Where are your replies from other stockholders to whom you addressed such letters? A We would be glad to furnish them to you.

Mr. Mulvaney: I don't think we should be required to furnish any correspondence with any stockholder.

The Witness: I have no objection.

Chairman Joline: The witness says he is willing to do it.

The Witness: I don't think there is any objection to it.

*Re-direct examination* by Mr. Mulvaney.

Q With respect to the Wray stock, I show you carbon copy of letter dated September 10, 1923;

does that refresh your recollection as to the character of that stock? A Yes; earlier in my testimony, I said that the stock which I had acquired from Josephine Wray was preferred stock; that was wrong. Upon looking at my correspondence and stock list, I find that the stock which I acquired from Josephine Wray was two shares of consolidated, or common stock, represented by certificate No. 3029, for which I paid her $50 per share, or $100 in all.

Q I show you a two-page list, headed, "Morris Canal Stockholders," and ask you what that represents? A It is a list of holders of consolidated and preferred stock in the Morris Canal and Banking Company, brought down or corrected to March 1, 1923. The names which appear ruled out in red lead pencil are the names of those stockholders whose stock was acquired by the Lehigh Valley Railroad Company itself prior to the job being turned over to me.

Mr. Mulvaney: We offer that in evidence. (Marked Exhibit P. 2.)

"MORRIS CANAL STOCKHOLDERS

| | Shares |
|---|---|
| 1. Holders of CONSOLIDATED STOCK | |
| ~~T. Ellis Barnes, 147 So. 4th St., Philadelphia~~ | ~~6~~ |
| ~~Bertha Lea Low, c/o Provident Trust Co., Philadelphia~~ | ~~6~~ |
| Morris F. Miller, 2931 No. Broad St., Philadelphia | 50 |
| ~~Edith Pardee, Hazleton, Pa.~~ | ~~10~~ |
| John H. Pratt, 209 W. Heather Road, Wildwood Crest, N. J. | 26 |
| ~~Provident Trust Co. of Phila., Suc. Trustee u/w of Caroline D. Paxson, Decd., Philadelphia~~ | ~~3~~ |
| ~~Edward T. Stotesbury, Philadelphia~~ | ~~85~~ |
| ~~E. Winslow Taylor, Falls of Schuylkill, Philadelphia~~ | ~~4~~ |
| Wm. R. Ward, c/o Anna D. Ward & Henry L. Poinier, Gdns., 21 So. Munn Ave., East Orange, N. J. | 9 |



| | Shares |
|---|---|
| Annie M. D. White, Newtown, Pa. | 25 |
| Geo. N. Fleming, Philadelphia | 50 |
| Wm. W. Fogarty, Philadelphia | 50 |
| Alfred B. Wray, 111 Orchard St., Ithaca, N. Y. | 3 |
| Josephine Wray, c/o Alfred B. Wray, 111 Orchard St., Ithaca, N. Y. | 2 |
| ~~Lehigh Valley Railroad Co.~~ | ~~9,921~~ |
| Total | 10,250 |

| | |
|---|---|
| 2. Holders of PREFERRED STOCK | |
| Margaret Agnew, 31 Smith St., Paterson, N. J. | 6 |
| Mary M. Agnew, 28 Church St., Paterson, N. J. | 6 |
| Susan Agnew, 31 Smith St., Paterson, N. J. | 6 |
| ~~Commercial Trust Co. of N. J., Trustee Residuary Estate u/w Geo. A. Vroom, decd., 15 Exchange Place, Jersey City.~~ | ~~1~~ |
| Anna H. Condict, Essex Fells, N. J. | 5 |
| George M. Flint, 35 Gorham St., Boston, Mass. | 3 |
| Ethel L. Fogarty, 1824 Shunk St., Philadelphia | 6 |
| Mary Agnew Haley, 31 Smith St., Paterson, N. J. | 6 |
| Marian D. Hallowell, Bethayres, Pa. | 9 |
| ~~Mary Hitchcock, 80 Broadway, New York, N. Y.~~ | ~~1~~ |
| Annie E. Kellog, 122 So. Main St., Phillipsburg, N. J. | 37 |
| Clarissa E. Landell, 5814 Drexel Road, Philadelphia | 11 |
| ~~Elizabeth E. Miller & Sarah E. Beenken, Executrices u/w of Wm. H. Miller, decd., c/o Guarantee Trust & S. D. Co., 316 Chestnut St., Philadelphia~~ | ~~37~~ |
| ~~Edith Pardee, Hazleton, Pa.~~ | ~~20~~ |
| John H. Pratt, 209 W. Heather Road, Wildwood Crest, N. J. | 25 |
| ~~The Presbyterian Hospital in Philadelphia, c/o Fidelity Trust Co., Philadelphia~~ | ~~41~~ |
| Clara A. Price, The Cairo, Washington, D. C. | 25 |
| M. Estelle Richards, 6600 Lawnton Ave., Philadelphia | 3 |
| ~~Hannah McKeen Rudolph, 129 West Weaver St., Gtn., Philadelphia~~ | ~~10~~ |
| Safe Deposit & Trust Co. of Baltimore, Trustee u-w Elizabeth Fort, decd., subject to the order or the Circuit Court No. 2 of Baltimore City, 13 South St., Baltimore, Md. | 5 |
| Frederic Sefton, c/o The Pines, Auburn, N. Y. | 10 |
| Mary J. Smith Estate, Sarah R. Johnson, c/o Bucks Co. Trust Co., Doylestown, Pa. | 1 |

| | Shares |
|---|---|
| Ada M. Sterns, 103 Asylum St., Hartford, Conn. | 21 |
| Jane Agnew Synot, 34 So. Fullerton Ave., Montclair, N. J. | 6 |
| ~~E. Winslow Taylor, Falls of Schuylkill, Philadelphia~~ | ~~2~~ |
| Annie M. D. White, Newtown, Pa. | 48 |
| ~~Lehigh Valley R. R. Co.~~ | ~~11,399~~ |
| Total | 11,750" |

The Witness: And I may add, it was to those persons that I sent the communication of the nature of the one Mr. Hunt produced here, dated April 18, 1923.

*Re-cross examination* by Mr. Stockwell.

Q In writing to these stockholders, did you in the opening letter in each case, fix the price, or name a price at $125 for preferred and $50 for common for this stock? A If any price was fixed, Mr. Stockwell, it will appear by reference to that letter of April 18th, which was $50 for consolidated and $125 for preferred. If you will look at that letter, you can tell; I don't know.

Q I show you the letter of April 18th. You did name there $125 per share? A Yes, and the letter would vary; it would depend on whether or not the stock holding was consolidated or preferred, and in the case of Josephine Wray, I made the error of assuming her to be a preferred stockholder.

Q In each of those original letters, you named the price of $50 for common or $125 for preferred, according to whether the party had preferred or common; is that correct? A Correct.

Q Did the company in sending out its communications also name this price for common





and preferred? A I don't know; I don't think I saw that correspondence.

Q Do you know at what price or prices the company acquired the stock prior to the time it was turned over to you for purchase? A I think at similar prices, and I am inclined to think you are right about the company having named in its correspondence the same prices, because these prices were the result of arithmetical or methematical calculation.

Q I didn't ask you that, of course. A I am telling you why I think so.

Mr. Stockwell: Don't you think you had better let your own attorney bring that out, if you wish it brought out?

The Witness: I think your question called for it.

Mr. Mulvaney: We will prove it.

*Re-cross examination* by Mr. Hunt.

Q Mr. Milton, the acquisition of a part of the Morris Canal and Banking Company property by the State and another part by the Lehigh Valley was by virtue of an agreement dated the 29th of November, 1922, and appearing on page 8 of this pamphlet issued by the State Department of Conservation and Development in 1924? A Yes, that is so.

Q And the date at which the Lehigh Valley and the State exchanged deeds and documents, so as to put each in the exclusive possession of its share of the Morris Canal and Banking Company property, was as fixed in that agreement, paragraph 18, page 17, the first day of March, 1923? A That is my recollection.

*Edgar H. Boles, direct.*

EDGAR H. BOLES, sworn for petitioner.

*Direct examination* by Mr. Mulvaney.

Q Mr. Boles, you are an officer of the Lehigh Valley Railroad Company? A Yes, sir.

Q What office or offices do you occupy? A Vice-president and general counsel.

Q Did you on behalf of the Lehigh Valley Railroad Company after the abandonment contract was executed with the State, make any efforts to acquire the outstanding stock of the Morris Canal and Banking Company? A Yes, sir.

Q I show you a paper marked Exhibit P. 2. Mr. Milton has testified that that was a list of outstanding stock corrected to March 1, 1923. A number of names are crossed out in red pencil on that list; what do those names signify? A Well, this original typewritten paper is the total number of shares, and the red lines indicate that the stock has either been purchased or turned over to the State. The Lehigh Valley Railroad Company stock, 9,921 of consolidated and 11,399 shares of preferred, were turned over to the State of New Jersey. The other lines indicate that that stock was purchased by the Railroad Company and turned over to the State sometime after December, 1922.

Q Can you recall what price or prices the company paid for stock in each particular case?

Mr. Hunt: Objected to as before.

Chairman Joline: Objection overruled and exception allowed.

A I can.

Q Tell us, please, was a uniform price paid for all of it?



*Edgar H. Boles, direct.*

Mr. Hunt: It does not appear yet that this gentleman conducted these negotiations or knows anything about it of his own knowledge, who negotiated the negotiations for the purchase of this stock on behalf of the Lehigh Valley Railroad Company.

A It was all done under my direction, Mr. Milton's, you and others.

Q I mean before you turned it over to Mr. Milton. A I did.

Q And you made the offers of prices? A Yes, sir.

Q Was a uniform price paid for each class of stock from these stockholders? A Yes.

Q What was it? A $50 for the common and $125 for the preferred.

Q How were those figures arrived at?

Mr. Hunt: Objected to; it would only be a self-serving declaration.

Chairman Joline: We will allow it and grant an exception.

A I fixed the figures as a matter of judgment, when the offer was made to shareholders; sometime after the time that the abandonment contract was signed with the State—I think the date of that contract was around November, 1922—shortly after that, I came to the question of what we should pay for the outstanding shares, such shares as we might be able to acquire by purchase, and I reached those figures by this process.

Mr. Hunt: We object, if the Commission please, to his stating the process by which he arrived at these figures.

Chairman Joline: We will take the question and allow an exception.

Mr. Hunt: It is entirely irrelevant on the question of the value of the stock, and we may have an exception noted?

Chairman Joline: Yes.

A (Continuing.) I used those elements which I thought were relevant to the value of the stock, and they were these: In the first place, the property of the Canal Company left the Canal Company in 1871; therefore the stock of the Canal Company, seemed to me, just had one element of value in it, and that element of value was the right to receive the income which had been guaranteed by the lease made by the Railroad Company. The Railroad Company, in 1871, in consideration of the lease of the property to it, guaranteed to pay $10 a share on the preferred and $4 on the common as long as the stock stayed in existence in conformity with the charter of the Canal Company. There were two dates, upon either of which that stock might go out of existence; one was in 1924, the date fixed in the charter for the acquisition of the property by the State upon the payment of a compensatory amount due to whoever had the property then, the shareholders or the railroad, or whoever it might be. The other date was 1974, when the charter expired and the stock became extinguished by the terms of the charter. Now, the 1924 date was necessarily thrown out of consideration by the contract which was made in November, 1922, by the State between the Railroad Company and the State. In other words the 1922 settlement might be considered as an anticipatory settlement as against the terms and provisions in the charter for 1924. Therefore that meant that the Railroad Company had to continue to pay the dividends



guaranteed by the lease in accordance with the agreement which we made with the State. The lease itself was cancelled by agreement with the State. By agreement with the majority of the stockholders the lease itself was cancelled and the State said that we must continue and we agreed with the State of New Jersey to continue to pay the dividend during the life of the stock, or until the stock was acquired and turned over to the State of New Jersey.

Any man who held a share of the stock became entitled thereunder to receive—and if he held consolidated he had a right to receive four dollars a year until 1974, or approximately fifty-two years—fifty-one years; if he held preferred stock, he had a right to receive ten dollars a share.

Chairman Joline: That was on the par value?

The Witness: Per share. After that it became a question of mathematics and then a question of two additional elements with mathematical allowance. If you take your ten dollars a year, for the sake of this case, fifty years you get $500; take a man who holds a share of preferred stock. If he were to put that ten dollars in the bank every year as he received it, and let it stay there and draw interest, then at the end of fifty years, he would have a certain amount of money, which we will call X. That assumes that he is going to take every dividend and deposit it in bank and let it stay there and draw interest and let the interest pile up. Then you can turn to your logarithm tables and find out that that amount of money has a present value of a certain amount. In

other words, if you were to take a commuted amount—we will say $125—in respect to these preferred shares, and put that $125 in the bank today, or put it into a good investment, and let the money continue to bear interest and accumulate, then at the end of fifty years you would have a sum which would correspond with that first sum. That is largely a matter of mathematics.

There were two additional considerations. If he took his ten dollars a year, which he received on the preferred stock and simply put them in bank, at the end of the fifty years that would end his ten dollar a year income, he would have no further income, because the shares become extinguished.

On the other hand, if he receives $125 as an exact tangible amount of money at the present time, he has an investment which can go on forever, unless he puts it in a bad investment. At least he has $125, which if put in a United States bond or something of the highest type, would continue to accumulate and be a perfectly good investment of the principal, if it was invested wisely, for all time, as against the fact that his Canal stock would go out of existence in 1974.

The other element was that he has $125 which he can put in, we will say, to a government bond, which is a great deal better security than a guarantee of the Lehigh Valley Railroad Company.

Today the Lehigh Valley Railroad Company is in a fairly substantial financial condition; ten or fifteen or twenty years from now it may not be, and if the guarantee of the Lehigh Valley Railroad Company, be-



cause of the financial condition of the railroad, became of no value, then this stock certificate of his correspondingly would become of no value, because the railroad couldn't make good on its guarantee.

Those two things, plus this mathematical computation that I mentioned first, were the things that I took into consideration, and at that time I considered $50 a fair amount to pay on the common shares and $125 on the preferred.

Worked out on the mathematical tables, the amount for the common shares on the basis of 52 shares, it comes to about fifty-four or fifty-five, as I remember it. The preferred shares comes to somewhere around one hundred and thirty.

For the other two reasons which I indicated, I discounted those to make them $50 and $125 respectively.

There is a third element in the thing. A great many shares were acquired back in 1911, at the time the Fielder bill was introduced in the New Jersey Legislature, and there was a fair prospect at that time that that bill might pass, and the shares would have to be acquired, and at that time the company offered $70 and $170 respectively for the shares. In other words, eleven years prior to this last offer, a little over eleven years prior to the last offer. Considering the fact that eleven years' dividends had been paid in the meantime, and that this stock year by year is on a depreciable basis, in other words, year by year it becomes just one-fiftieth as valuable—now, it would be one-forty-eighth, now we are in 1926, as val-

uable as it was the year before, and as the year 1974 is reached, it goes out of existence and these certificates become matters of history.

Q Have you the tables, these commutation tables that you spoke of a moment ago, on which you arrived at this? A Not here.

Q I ask you whether as a matter of fact you did attempt to acquire the stock of Morris F. Miller, Alfred B. Wray, Josephine Wray, George M. Flint, Marian D. Hallowell, Clarissa E. Landell, M. Estelle Richards, Safe Deposit & Trust Co. of Baltimore, Trustee of the Estate of Elizabeth Fort, Frederic Sefton, and Ada M. Sterns? Those are the names of the parties against whom we are condemning. A I sent a written offer to everybody named on that list and I assume that they received it. I have reason to believe that they all received that written offer.

Q Did you get replies to any of them before you turned the matter over to Mr. Milton? A Yes.

*Cross examination* by Mr. Hunt.

Q Are you familiar with the first circular issued by Mr. E. E Loomis, president of the Lehigh Valley, under date of October 1, 1921? A Yes, I am; I recollect it.

Q By the way, I ask you to furnish three copies of this for the use of the commissioners, will you? I have only this one A I have one here; I will be glad to send more.

Chairman Joline: That hasn't been marked as an exhibit yet.



The Witness: (Producing copy.)

(Copy produced by the witness, marked Exhibit D. 5.)

Q Are you, Mr. Boles, the person referred to in that letter as the vice-president and general counsel of the Lehigh Valley Railroad Company? A Yes, sir.

Q And is the letter which this circular states was issued by such official of the Lehigh Valley, your letter? A Yes, sir.

Q And is correctly reproduced in this circular, is it? A I believe so; I am willing to say that it is.

Q Do you claim to possess any personal knowledge as to the value of certain parts of the Morris Canal and Banking Company property which are referred to in your letter quoted here? A Well, in the same sense that all personal knowledge is claimed, yes, based on expert opinions furnished to me.

Q Your knowledge is only hearsay knowledge, derived from others, as far as that goes, is it not? A The same as the law of gravity and any other knowledge.

Q Suppose I should ask you to go to Jersey City and make for me a valuation of the Pennsylvania Terminal there, would you feel competent to do it? A No, sir.

Q And you would not feel competent to value the Lehigh Valley Terminal in Jersey City? A Yes, I would; that is another matter.

Q But the difference is due to the fact that from your peculiar knowledge of the Lehigh Valley affairs and properties, you have acquired an opinion as to the value of its terminal? A Yes.

Q You don't claim to have and possess knowledge for forming an opinion as to the value

of all waterfront property in Hudson County? In other words, you don't pose as a real estate expert? A No, sir; my personal transactions have always been unprofitable.

Q This letter of yours, reproduced in Mr. Loomis' circular really contains in general and in substance the basis upon which the agreement between the State and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company was eventually arrived at, does it not? A In part.

Q This plan was generally followed, but there was ingrafted upon it that obligation that the Lehigh Valley must pay the State a certain sum of money? A That was one of the things.

Q What other things? A My recollection is that we asked for a little more property than the State allowed. We asked for the Little Basin, for one thing, which is considerably more.

Q You mean you got more than you asked for in this letter. A No, in this letter we ask the State to let us retain the Little Basin, which they finally did not agree to, in addition.

Q I ask you—this is an appropriate time—if you will just produce a map or blue print showing what you did get out of this arrangement between yourself and the State and the Morris Canal and Banking Company? A (Producing two maps.) This is the Hudson end of the canal, and this is the Delaware end.

Mr. Hunt: I offer these maps in evidence.

(Hudson River end marked Exhibit D. 6.)

(Delaware end marked Exhibit D. 7.)

The Witness: There is an explanatory statement to be made about D. 6.



Q Have you any maps that show on a larger scale the property to which the Lehigh Valley acquired title, especially the Jersey City property? A I suppose there are in the office.

Q At our next session, just produce them, won't you, Mr. Boles? A I don't know about that. I don't know that we have to supply you with exhibits.

Q Mr. Boles, I point you to a red curved road on this map, D. 6, beginning near the Hudson River and winding back for a considerable distance over the map, and I ask you how many miles that line represents on that map? A I used to know; I think about six.

Q From the Hudson River to the Hackensack, with all these meanders, is only six miles? A I can tell you exactly.

Commissioner Gaddis: The basin would add about 2,500 feet, I presume.

The Witness: He is asking from Washington street back to the Hackensack.

Q Following meanders, following the canal, the red line shows the canal as—

(Discussion.)

Q Did you have anything to do with the drafting of the circular letter put out over the signature of Mr. Loomis, dated October 1, 1921? A Yes.

Q To what extent did you have to do with it? Are you really the author of the letter to which Mr. Loomis' name was attached? A No, sir.

Q Are you part author? A Yes.

Q To what extent are you responsible for the statements in the letter? A I will be responsible for all of them.

Q You are? A I will be; I cannot tell you now; that is four or five years ago. I interpolated sometimes here and there.

Q I want to learn what the fact is. Did you compose this letter and lay it before Mr. Loomis, who made such changes as he perhaps wanted made, whereupon he signed it; is that the situation? A No; I cannot tell you exactly; we both composed it, but I will stand responsible for any statement in it.

Q You assisted in composing it? A Yes.

Commissioner Gaddis: You are dealing with the letter in its entirety?

Mr. Hunt: Yes.

Q Is Mr. Loomis a lawyer? A No.

Q The comments upon the legal situations set forth in this letter, do you assume responsibility for them? A I do.

Q I read the following extract from the letter: "While an issue on this question has not been decided by the highest court in New Jersey, decisions in which the point was collaterally in question afford strong reasons for believing that a contest would result in a decision affirming the Railroad Company's absolute and perpetual ownership." What do those words refer to, "absolute and perpetual ownership," the Morris Canal and Banking Company property? A No, sir.

Q What do they refer to, then? A What is known as the Big Basin property?

Q What is the Big Basin property? A Well, it is a tract of land about—



Q Just indicate it on the map Exhibit D. 6, please. A It is a tract of land marked in the red rectangle on Exhibit D. 6.

Q That red rectangle isn't all big basin property? A Yes, it is more, because it has a State waterway through the center.

Q I put my question in an obscure way; I meant to say that the Big Basin does not comprise all the land embraced in the red rectangle. The red rectangle includes the Big Basin and it includes something else? A No, sir.

Q Now, how large is the Big Basin property which you say in the Loomis circular there is strong reason "for believing that a contest would result in a decision affirming the Railroad Company's absolute and perpetual ownership"? A You mean in acres?

Q Yes. A About forty acres.

Q Now, the Lehigh Valley, regardless of what previous title it may have had to that property, became the owner of the property in fee simple on the 1st of March, 1923, as a result of the consummation of the agreement entered into between the Lehigh Valley and the State and the Morris Canal, did it not? A I don't know; I hope so.

Q You believe so? A If you say "became," I will have to answer you "No"; it was a confirmatory grant.

Q Then you say here today what is said in that Loomis circular, that prior to March 1, 1923, there were "strong reasons for believing that a contest would result in a decision affirming the Railroad Company's absolute and perpetual ownership," do you? A Yes, sir.

Q To what extent does the decision of Vice-Chancellor Stevens, in 78 Equity, page 346, in a

proceeding brought by the State of New Jersey against the Lehigh Valley Railroad Company influencing you in asserting that there is "strong reason for believing that the Railroad Company has absolute and perpetual ownership in the Big Basin"? A May I read the extract you refer to?

Q I don't refer to any extract; I ask you about that clause in general.

The Witness: May I have the question read?

(Next to the last question read to the witness.)

Q You are familiar with the case of McCarter, Attorney-General, against the Lehigh Valley? A There are several of those Big Basin opinions. Let us see the one you refer to.

Mr. Hunt: As I understand this opinion, it holds that the rights of the Lehigh Valley under the lease were not perpetual, but came to an end whenever the Morris Canal's ownership of its property came to an end, whether in 1923, as a result of purchase by the State, or in 1974, as the result of the termination of its charter.

The Witness: I think that opinion is probably correct, although I hesitate to put that on the record. You ask me to say whether I agree with the opinion of the Vice-Chancellor.

Q You say you think this opinion of Vice-Chancellor Stevens is sound? A I think so.

Q You were familiar with this case as it was being tried, were you not? A No, sir.

Q Were you connected with the Lehigh Valley Railroad in February, 1911? A Yes, that is when the case was decided; I was then.



Q What was your position with the Lehigh Valley at the time the case was decided? A I was just one of their attorneys in the law department.

Q The Lehigh Valley didn't take any appeal from this decision, did it? A No, sir.

Q Did you know of the existence of this opinion at the time that you took part in the preparation of the Loomis circular, October, 1921? A I did.

Q Well, if you believe the opinion to be sound, how could you say in that circular, that "decisions in which the point was collaterally in question afford strong reasons for believing that a contest would result in a decision affirming the Ralroad Company's absolute and perpetual ownership"? A Well, there were a good many points involved in that decision.

Q This decision, so far as it goes, holds that the Railroad Company did not have absolute and perpetual ownership, but only a right extending for the life of the Morris Canal and Banking Company, whether that came to an end in 1923 or in 1974? A That is correct.

Q I also read from the circular—

The Witness: May I say that there were other bases for making that statement in the circular that hadn't anything to do with Vice-Chancellor Stevens?

Q I will read a further extract from the circular: "The Lehigh Valley Railroad Company is not only the lessor (in perpetuity, it is confidently believed) of the canal property and water rights, but also is the owner of practically all of the stock of the Morris Canal and Banking Company." Now, Mr. Boles, if this decision

of Vice-Chancellor Stevens is sound, and you said a few moments ago that you thought it was—
A I thought it was on the point that you raised.

Q —then it is not possible to confidently believe that the Lehigh Valley is lessor in perpetuity of the Morris Canal rights, is it? A It certainly is.

Q How do you explain that, when this decision holds that if the State takes over the Morris Canal in 1923, the Lehigh Valley's rights under that lease come to an end in 1923, and if the State acquires the Morris Canal upon the expiration of its charter in 1974, the Lehigh Valley's rights under the lease come to an end at that time? When this decision holds that, how can you say that you confidently believe that the Lehigh Valley had a perpetual right in the Big Basin? A Because I confidently believed that the State of New Jersey would hold the act of its bona fide agents to be proper acts. The State of New Jersey, through a commission established, I think, about 1889, for a consideration which was fixed by that commission, purported to give, and we all thought gave, to the Lehigh Valley Railroad Company the base title to that Big Basin, the fee title, after 1974.

Commissioner Gaddis: That was by conversion of a lease the State had given before under special charter?

The Witness: Yes, we paid the amount prescribed by those commissioners and received our deed. One of the attacks that was made upon that deed was, that these commissioners did not have the authority to deal with water front within certain prescribed limits along the Hudson River. I



think Vice-Chancellor Stevens' opinion in that respect is wrong, and still think so.

Q But Vice-Chancellor Stevens, when he wrote that opinion, in 1911, was the competent judicial arm of the State of New Jersey, was he not?

Mr. Mulvaney: Objected to.

A I am privileged to disagree with him, sir.

Chairman Joline: Answer his question.

The Witness: I suppose so. I am not a member of the Bar in New Jersey; I will admit that he was.

Q The Lehigh Valley Railroad Company was represented in this proceeding by Mr. William H. Corbin and Mr. Charles L. Corbin, and Mr. Richard V. Lindabury, according to the report; that is correct? A Yes.

Mr. Hunt: We regard them in New Jersey as competent lawyers.

Q The point I want to make clear is, that from that voice of the State of New Jersey, pronounced by Vice-Chancellor Stevens, in 1911, your company never took an appeal; that is true, isn't it? A I think so; I don't know. I think they never appealed; I don't know.

Q The reports of decisions in the courts of the State contain no reference to any appeal? A You say so.

Commissioner Gaddis: The money that was paid—expected and paid by you was never tendered or returned?

The Witness: No, sir.

Q What you mean, when you refer to the faith of the State of New Jersey, is, that you thought that you could go back to the Legislature and get some relief? A No, sir.

Q Against this decision of the Court, isn't it? A No, sir.

Q Then what did you mean? A I meant that as a proposition of law, these commissioners did have the right to make that deal.

Q As a proposition of law, that is decided against you, in this opinon, from which you never took any appeal; isn't it? A I never had any opportunity to take an appeal. I disagreed with it and still do.

Q Your company, of which you are vice-president, never took any appeal? A I don't know; maybe they did, and maybe they didn't; I never looked it up.

Q Whose opinion do you think fixed the legal status of the Lehigh Valley in respect to this Big Basin property, your opinion or the opinion of Vice-Chancellor Stevens?

Mr. Mulvaney: Objected to.

Chairman Joline: Isn't that a matter of law? Aren't we bound by the opinion of the Court?

Mr. Hunt: Exactly.

Chairman Joline: What is the use of asking such a question?

RECESS.



Q Now, Mr. Boles, if your theory, as expressed in this Loomis letter, that the Lehigh Valley was lessee in perpetuity of the Morris Canal and Banking Company, is correct, then of course you would have had to continue to pay rent in perpetuity, would you not? A No.

Q How could you remain lessee in perpetuity and not continue to pay rent in perpetuity? A The rent was commuted by the payment that was made to the State.

Q I mean if there hadn't been any deal with the State. If there hadn't been any deal with the State, and you are correct, as you say in this letter, that you confidently believe that you have a perpetual lease, then you would have had to go on and pay rent perpetually? A That was evident.

Q This circular is dated October 1, 1921. There hadn't been any deal made then? A Yes, I base my remarks there upon the deed that was given by the State in 1889.

Mr. Milton: When you speak of deal, you mean the agreeemnt of 1922, and Mr. Boles doesn't mean that, when he says a deal. You two gentlemen are talking about different deals.

Q When I said "deal," I meant the agreement of 1922. If there had not been any agreement in 1922, and things had just gone on as they were, but you had remained lessee in perpetuity of the Morris Canal Company's property, then you would have had to pay rent in perpetuity, too? A It was all paid; it was paid and commuted for.

Q Tell us what property the Morris Canal and Banking Company owned on the Hudson

River and between the Hudson and the Hackensack prior to the deal with the State in 1922, or rather prior to the deal with the State in 1923—I think it was 1923 that that was made. A The contract was 1922; the actual exchange of deeds was sometime in 1923.

Q (Last question repeated.) A It didn't own any.

Q Didn't it have any kind of right, title or interest in any property in there prior to that deal? A I don't know how to define it, Mr. Hunt. I will tell you my understanding of the situation, and then you will have to define it yourself. The company had leased— the Morris Canal and Banking Company had leased all its property to a lessee for the full length of its charter existence, and at the end of that lease the property was to go to the State. What title was left in the lessor under these circumstances, I don't know.

Mr. Hunt: The question was what property prior to the deal with the State in 1923 was affected by that lease. The commission can decide for itself in what manner it was affected. That is a question of law.

Chairman Joline: Aren't you asking him for opinions and not facts?

Mr. Hunt: No, sir, I am asking him what property was there.

Chairman Joline: You are asking him his opinion.

Mr. Hunt: No, I didn't mention opinion. I said tell us what property the Morris Canal owned.

Chairman Joline: The result in his opinion?



Mr. Hunt: No.

Chairman Joline: I call your attention to it, that I think we should get facts instead of opinions.

Mr. Hunt: That is what I want.

Mr. Milton: Might it be pointed out that the question was what property was affected by the lease? Possibly that might call for a conclusion by the witness, but the obvious objection to it is, that the lease itself, which is in evidence, is the best evidence of what property was affected.

Mr. Hunt: The lease doesn't describe the property at all, except by saying all the property belonging to the Canal Company extending from the Delaware River to the Hudson River. That is no description.

Chairman Joline: I think that it is a description.

Mr. Hunt: If I make a deed to you of all the property that I own lying between the Delaware and Hudson, that wouldn't give you any description.

Chairman Joline: Go ahead and answer the question.

Q (Repeated.) Tell us what property the Morris Canal and Banking Company owned on the Hudson River and between the Hudson and the Hackensack River prior to the deal with the State in 1922, or rather prior to the deal with the State in 1923—I think it was 1923 that that was made? A You mean affected by the lease of 1871?

Q Yes. A The so-called Little Basin property, about twenty acres, which lies in Jersey City, just off Washington street, off of the south

end of Washington street, and then the Morris Canal right-of-way through Hudson County over to the Hackensack River, and then the Morris Canal right-of-way between the Hackensack River and the Passaic River, and then jumping over to the other side of the Passaic River, the Morris Canal right-of-way right through Newark, up through Bloomfield, Paterson, Boonton, on down by the Musconetcong River, part of the distance being on the bed of the Musconetcong River and on down to Phillipsburg.

Chairman Joline: Where is the Big Basin which you call it?

The Witness: The Big Basin was not affected by the lease of 1871.

Q By what instrument did the Morris Canal acquire such rights as it ever had in the Big Basin? A The act of the Legislature of 1869.

Q By what instrument did the Lehigh Valley acquire such rights as the Morris Canal had possessed in the Big Basin? A Well, it was by a deed along about 1887—my recollection is 1887 or 1888; I think the deed ran to the Jersey City Terminal Railway Company, if my recollection is right, a subsidiary, which was incorporated at that time to build a line through the lower part of Hudson County.

Q When was that deed made? A My recollection is about 1887. I may have something here to show that.

Q The lease was made to the Morris Canal and Banking Company for the Big Basin, and then assigned to the Lehigh Valley and converted by them; those were the steps, speaking now of the grant? A The act of the New Jersey Legislature was March 14, 1867.



Q What did that act do or provide for? A That was a grant to the Morris Canal and Banking Company of the so-called Big Basin property.

Mr. Stockwell: Grant or lease? It says here by grant. It was a grant during the life of the charter of the Canal Company. I suppose in effect it is a lease. It was a lease, and runs to whom?

The Witness: To the Morris Canal and Banking Company, 1867.

Q Now, in what manner and to whom did that pass out of the Morris Canal and Banking Company? A Well, now, that—I said a while ago that the lease of 1871, which was authorized by the Legislature, did not affect the Big Basin. I am wrong about that; it did, because this grant was 1867, and then the 1871 lease covered the Big Basin as well as the Little Basin and the other Morris Canal property. Then that property, the Big Basin property, was then affected by the grant of the commissioners. That was referred to in the opinion of Vice-Chancellor Stevens, which I believe was 1889.

Commissioner Gaddis: Board of Commerce and Navigation?

The Witness: Some riparian board.

Q Raparian commission which succeeded it? A Yes, that was 1889, and as a result of that deed, the title was conveyed by the Morris Canal and Banking Company and the Lehigh Valley Railroad Company as lessee, to the Jersey City Terminal Railway Company in June, 1890,

and in 1903 the Jersey City Terminal Railway Company, by merger, all these subsidiaries of New Jersey were all merged into one company—there were a dozen or so of them—into the Lehigh Valley Railroad Company of New Jersey.

Q Which was a subsidiary of the Lehigh Valley? A Yes, one hundred per cent. subsidiary.

Q Prior to the deal with the State in 1923, what use was the Lehigh Valley or its subsidiaries that you have just named, making of the various parts of the Morris Canal property? Take the property in Hudson County, first, what were you doing with that Big Basin—Little Basin right of way? A On the Big Basin property we had constructed a series of piers.

Q Were they used in the loading and discharging of ocean-going steamers? A Oh, I don't suppose an ocean-line steamer came in there.

Q Lighters, then, that went alongside of steamers, to load and discharge? A Lighters and car floats. I think on that Big Basin property there were about—there was a series of eight piers there, and I think about four of them were within the limits of the so-called Big Basin property.

Q And these piers were used as— A Five of them were within the limits.

Q They were used as the connecting link, so to speak, between the rails of the Lehigh Valley and ocean-going ships? A Yes.

Q Lighters being the means of exchange through the harbor? A Lighters and car floats proper going to New York City, in and around up to the East River, and also the boats, ocean-going boats.

Q That property thus used formed a very essential link in the transportation system of the



Lehigh Valley, of course, didn't it? A Important, I would say; I wouldn't call it essential; quite important.

Q Certainly, without it, the Lehigh Valley couldn't have carried on the terminal business at the Port of New York that it did, or it couldn't have handled the volume of business, without the physical facilities that were installed in the Big Basin; isn't that correct? A No, it could have carried it on; it would have been more expensive.

Q Where else could you have carried it on? A At the other piers, back along the tide water basin, at Claremont Terminal property, at the Black Tom property.

Q But you couldn't load and discharge as many lighters and car floats in these other properties alone, as you could in these other properties used in connection with the Big Basin, could you? A Yes.

Q You could? A Yes.

Q It is not the case, then, that the Lehigh Valley's Terminal facilities at Jersey City are fully occupied? A No, sir, it is our constant hope.

Q That they will be? A Yes.

Q What use were you making of the Little Basin? A None, for railroad purposes; it was largely leased out to people who wanted to carry on business there. There was a dry dock there and some fellow had a little lumber yard there, two or three little different industries carried on on the property.

Q And you were in receipt of rentals? A Yes.

Q And it was the situation of the Little Basin on the navigable water that gave it a

value for such uses as the tenants were making of it, was it not? A On the dry dock lease, yes; not the others.

Q The lumber yard, didn't that receive and dispatch lumber by barges or lighters? A I cannot say; I don't know; it is possible.

Q Perhaps they handled sand and gravel from Long Island in the lumber yard also? A I don't remember, Mr. Hunt, it is possible; it was a valuable piece of property, and still is.

Q The Lehigh Valley in receipt of the rents now and prior to the deal with the State? A I think we collected every month the rents that were due.

Q Can you tell the commissioners what the annual income from leases of sites on the Little Basin was? A Offhand I cannot; it was a good many years ago.

Q Prior to the deal with the State, that land lying on the Little Basin was assessed at above $100,000 an acre for taxation purposes? A No, I don't think so, not that high; it was bad enough, but I don't think it was quite that bad; I think it was about eighty or eighty-five.

Mr. Hunt: I have a Court opinion affirming the last assessment by the State Board—the last local assessment, as assessed by the State Board.

Mr. Milton: Didn't we give you that information? You asked for it.

Mr. Hunt: All right, if you did.

The Witness: The total assessment on the Little Basin for 1923 was $2,218,900.

Q That is how many acres? A That is about twenty-one acres; it would run over $100,000 an acre; you are right.



Q And while you are at the assessment, what was the assessment on the Big Basin at the same time, 1923? A It is divided up here; the main stem assessment was $184,275.

Q Meaning the part used for railroad purposes, occupied by tracks? A No, it is an arbitrary 100-foot right-of-way established with the State Board. The second-class assessment, which is the principal amount, 38.38 acres, was $2,494,700. The third-class assessment was $86,081.00.

Q Are they the assessed valuations on which taxes were paid that year, 1923? A Yes.

Q Then they were made as of October 1, 1922? A Right.

Mr. Milton: The main stem on the Big Basin would be made as of October 1, 1922.

Mr. Hunt: That would be made as of January 1, 1923?

The Witness: January, 1923, on main stem property.

Q As of March 1, 1923, all of those properties would have been worth at least as much as their value at the previous October or previous January, wouldn't they; there was no depreciation in that period? A I should not think so.

Q Unless that period witnessed a departure from all other periods of time in relation to riparian front property in the last ten years, it would be an increase in value? A I cannot tell; it is over a period of three or four months.

Q In some parts of Jersey City land has been appreciated at the rate of two per cent. or three per cent. per month, has it not, for a period of four or five years last past continuously, isn't that so?

Mr. Milton: Do you know? If you do, say so.

A I cannot tell you; I don't believe it is true.

Q Do you know anything about the appreciation of land values in the Summit Avenue Terminal section of Jersey City in the last four or five years? A No, sir.

Q I suppose you do know something, or think you do, about river front appreciation? A I know it in respect to some properties, but there has been no appreciation in the last eight or ten years.

Q In the last eight or ten years there has been a great increase in assessed valuations? A Oh, yes,

Q And the railroads have consistently carried those increased assessments to the State Board for Review, and from the State Board to the Supreme Court? A Yes, and we have been consistently defeated.

Q You anticipated my next question. In other words, assessments running higher from year to year have been sustained by the State Board and the Supreme Court? A They have been sustained by the Supreme Court as far back as 1891; they are not through yet; the fight is not over yet.

Q Have you seen the decision handed down by the Supreme Court on October 7, 1926, about two weeks ago? A Yes.

Q That makes the fight over? A No, sir.

Q It does for the years involved? A No, sir.

Q You mean you are going to the Court of Errors? A Absolutely, and further.



Q The dispute before the Supreme Court related wholly to questions of fact, did it not? A No, sir.

Q You referred to the legal question that the Supreme Court characterized as fanciful, since it had not been raised before in all these years? A Among others.

Q What use is the Lehigh Valley or was the Lehigh Valley prior to the deal with the State making of the canal property in Hudson County other than the Big Basin and the Little Basin?

Chairman Joline: Are both basins in that county?

Commissioner Gaddis: Side by side.

A The only other use, Mr. Hunt, is what is called the milk branch, running back of the gap, which encroached, I think, on or overlapped the Morris Canal property here and there, a single track which we used for the delivery of milk down to the platform by Warren Street, in Jersey City. Those tracks there overlapped a few feet here and there on that branch.

Q Have you got the assessed valuations for October, 1922, on those other properties aside from the Big Basin and Little Basin? A Yes, the State Board assessed the main stem of the canal as a whole from Washington street, Jersey City, all the way to the Delaware River, at Phillipsburg, and all I can give you is the total figure.

Q All right, that will do. A That figure is for the main stem $2,780,035; the second class in Jersey City, there are just a few outlying parcels, $3,783; the third class in Jersey City, $68,900. The second class, through the balance of the State—there are some outlying parcels up around Lake Hopatcong—$187,396. Third class,

in the balance of the State, that is, outside of Jersey City, $172,175; an assessment of $1,000 on the franchise, and an assessment of $27,200 on tangible personal property.

Q The classifications that you have given as through the balance of the State, includes Phillipsburg? A Yes.

Q What use was the Lehigh Valley making of the terminal property at Phillipsburg prior to the deal with the State? A None whatever. Wait, I will qualify that; there was a bridge abutment, where we cross the main road, by Green's Bridge, one of our abutments was over on the property for a few feet there.

Q Since the deal with the State has the Lehigh Valley's use of the properties in Hudson County to which it acquired a fee simple title, been the same as the use which it was previously making of those properties? A Substantially the same; almost exactly the same; up until a few month ago, it was exactly the same. But Jersey City finally gave us the right to reconstruct our milk platform, and shoved it over. They passed a resolution here two months ago, and we changed that Edgewater branch a little bit, but otherwise, just the same. In Phillipsburg there has been no change so far as the railroad used is concerned at all. I am sorry I ever asked for that strip of property down there.

Q Of these properties which you have mentioned, to which of them did the Lehigh Valley acquire fee simple title in consequence of the deal with the State, in 1922 and 1923? A As I told you this morning, so far as the Big Basin is concerned, I consider that the deeds of March, 1923, did no more than give us a confirmatory grant.



Q We will take that at your own description. You say that is a confirmatory grant? A As to the strip from Washington street to the Hackensack River, we secured a deed of the State's reversionary right

Q That gave you fee simple, didn't it? A I hope so.

Mr. Milton: You might call Mr. Hunt's attention to the possible reversionary claims there on the part of the adjacent landowners along the street. Not that we admit there are any. There is a possibility of it.

The Witness: There is one old family in particular that claimed that its original grant of its predecessor was to the canal only for canal purposes, and there is a nice legal question raised there as to whether there is a reversionary right or whether we have to acquire those rights.

Q In the Little Basin did you get any title or interest? A No, sir; that all went to the State.

Q Is the Little Basin shown on this Exhibit D. 6? A It is shown, but it is not outlined; you asked for an outline of the property that the railroad acquired. It lies here, immediately north (indicating).

Chairman Joline: Pointing to the bottom of the map, near the middle.

Mr. Hunt: (Pointing.) It is immediately north of the Big Basin, which is outlined in the red rectangle.

The Witness: And about half the area of the Big Basin.

Q The agreement of November 29, 1922, between the Morris Canal and the Lehigh Valley and the State was, I presume, strictly and fully carried out in every one of its provisions, was it not? A I believe so.

Q You attended to the consummation of the agreement for the Lehigh Valley, did you? A Yes.

Q And you know of nothing that was left undone? A No, sir.

Q Now, Mr. Boles, can you give us the assessed valuations for 1923 of the same properties in respect of which you gave the assessed valuations for 1922? A I can give you the assessment on the parts that stayed in the possession of the Railroad Company. Of course, the part between the Hackensack River and Green's Bridge I cannot.

Q That went to the State and wouldn't have been assessed? A A little basin, right there.

Q Give me the parts that stayed in the possession of the Railroad Company. A The Big Basin, the main stem, an area of 2.83 acres, is $212,625; the second class, an area of 26 acres, $2,156,800.

Q In stating the assessment for 1922 you said second class 38.38 acres? A Yes.

Q Just now you said 26 acres? A That is right; the waterway came out.

Q That remained to the State? A Yes.

Q Third class? A Third class, 71 acres, $86,081.

Q The Phillipsburg property? A The third class property in Jersey City, there were a few outlying lots, the same as twenty-three, $68,900. The strip between Washington street and the Hackensack River, in Jersey City, was assessed separately by the State Board for $375,000.



Q There had been no separate assessment of that before? A No. The strip between Green's Bridge and the Delaware River, in Phillipsburg, $12,900. And then there is a small area of third class property attached to that strip, assessed for $900.

Q Whereabouts can the commissioners and ourselves find a statement of the preferences that attached to the preferred stock of the Morris Canal and Banking Company? A In the charter, if you have one; that is all.

Q Are the preferences set forth in the charter? A If there are none in there, I know of none, except the right to get ten dollars a year for awhile.

Q That was a right created by the lease? A Lease of 1871.

Q You don't know why the lease gave to the preferred stock a ten dollar annual return and to the consolidated only four? A No, I do not; I have often wondered.

Q You are familiar with the lease of 1871; I call your attention to clause 5, the 1903 report of the committee appointed by the Legislature, Exhibit P. 1. Is it your construction of the fifth paragraph of the lease, that it requires the Lehigh Valley to pay the rentals by way of dividends on Morris Canal shares in perpetuity, or not? A No, sir; during the length of the charter.

Q Now, I suppose that when you undertook in behalf of the Lehigh Valley to purchase the outstanding shares in the hands of the public, you wrote a letter identical in form to each shareholder? A Yes, sir.

Q Have you a copy of that with you? A I don't believe I have; no, I haven't.

Q The agreement of November 29, 1922, between the Morris Canal and the Lehigh Valley and the State was, I presume, strictly and fully carried out in every one of its provisions, was it not? A I believe so.

Q You attended to the consummation of the agreement for the Lehigh Valley, did you? A Yes.

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Q Now, I suppose that when you undertook in behalf of the Lehigh Valley to purchase the outstanding shares in the hands of the public, you wrote a letter identical in form to each shareholder? A Yes, sir.

Q Have you a copy of that with you? A I don't believe I have; no, I haven't.

Q At our next session, will you please produce a copy of that letter and bring all replies that you received from any shareholders? A Yes, sir.

Q I believe you said that the agreement eventually entered into with the State and afterwards carried out, embodied in substance the plan set forth in your letter, which is embodied in Mr. Loomis' circular, that certain changes, the principal one being that the Lehigh Valley did not get the Little Basin, as you had proposed, and the Lehigh Valley did have to pay to the State a certain sum of money, which you had not proposed? A Yes, sir.

Q They are the main changes? A Yes.

Q What was that sum? A $875,000.

Q Where is one to look for the genesis of the plan set forth in your letter embodied in the Loomis letter, in the mind of yourself or other officials of the Lehigh Valley or in the mind of the representatives of the State, who prefer to express themselves through you rather than direct? A I will answer the first part of that. I will say that I don't know what the latter part means.

Q Answer the first part. A The first part you will have to look to the deceased president, E. E. Loomis, and myself; he and I worked on the subject along over about, I should say, 1914 or 1915, along in there. Mr. Loomis came to the railroad in 1910, and then he and I worked on it from then on.

Q Perhaps this will be a plainer question. This letter of yours which is embodied in Mr. Loomis' circular as the creation of your own mind, the plan set forth in that letter was not suggested to you by the State of New Jersey? A No, sir.



Q But was devised and originated by yourself; is that correct? A In collaboration with the president of the company.

Q In other words, the officials of the Lehigh Valley seeing the year 1923 approaching, sought to lay before the State some plan to dispose of the problem in 1923 or before? A You say they did.

Q That is correct? A I understand further that as far back as around 1890—I think the thing started around 1890.

Q At any rate, they did in 1921? A Yes.

Q Your letter and Mr. Loomis' letter, which embodies yours, were intended to induce—I don't mean to reflect improperly upon your efforts, but they were intended in a fair enough kind of a way, if you say so, to induce the State to come to some agreement with the Lehigh Valley and the Morris Canal about this property? A Yes.

Q Now, I refer you to the original charter of the Morris Canal and Banking Company, as passed on December 31, 1824, and ask you if Section 25 didn't provide this—26 rather (p. 40, Exhibit P. 1): Be it enacted that

> "At the end of ninety-nine years from the passing of this act, it shall and may be lawful for this state to take to itself and on its own account, the said canal and its appurtenances, paying to the said company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by this state and the said company; or, in case that it shall not be done at that time, or within one year thereafter, this charter shall continue, so far as it respects its canal operations and privi-

leges for the further term of fifty years, when it shall cease and the said canal with its appurtenances, become the sole property of this state."

Now, if that provision of the charter of 1824 had been carried out, and the ten appraisers had determined the value of the canal property to be $22,000, and the canal had been turned over to the State at that valuation, the result would have been that there would have come into the Canal Company's treasury $22,000, which would have been one dollar per share on every share of stock outstanding; that is correct, isn't it? A No.

Q Why isn't that right? A Because the Canal Company had leased its property to the railroad.

Q When did the canal lease its property to the railroad? It leased it subject to the provisions of the charter under which the Canal Company held the property, didn't it? A Yes, and the damages for taking the property in 1924 belonged to the railroad.

Q That is a question of law. A You asked me the question.

Q It is a question of law, isn't it? A I don't know; I don't think lawyers will differ much about it.

Q On what theory would the money have gone to the railroad? A Because the Canal Company had leased all its property for the full life of its charter to the Railroad Company. And if anybody was deprived of the use of the property fifty years in advance of the termination of the charter, it was the lessee, not the lessor.

Q Would the lessee have suffered any damage by being deprived of the use of the property? A It certainly would.



Q Then, it is not true, as I thought was suggested in this circular of Mr. Loomis, that the property was a burden and not a benefit to the Lehigh Valley? A Keeping it up was a burden.

Q Where did the neck of the matter lie, on the side of burden or the side of advantage? A I think perhaps it was on the side of advantage, if you take into consideration the use that was made of the Big Basin property.

Q And since the deal with the State has been consummated, where does the balance lie, with the Railroad Company, on the side of burden or on the side of advantage? A Well, inasmuch as I have to account to the officers of our company, I should say that it lies on the side of advantage. I feel sure that it does. It is to the advantage of all parties.

Q Except the minority stockholders of the Morris Canal? A They are entitled to their fair compensation for their shares.

Mr. Hunt: I am glad to hear it.

The Witness: We have offered it.

Q I just want to get a certain thing straightened out beyond any possibility of doubt. When I speak of the question of burden or advantage, in the first case that I put, you said if the use of the Big Basin was taken into account, it would be an advantage to the railroad. In the second case I put, you said it was an advantage to the railroad, without any such qualification, leaving the Big Basin out. A You cannot leave the Big Basin out. I will not sit here and answer hypothetical questions for you. You cannot leave it out.

Q When you answered my first question you left it out, or rather you took it in? A Yes,

that is different; you have to take it in. The use of the Big Basin property to the Railroad Company was worth the manifold disadvantages it had in retaining the rights of the canal.

Q And how much per annum, in addition? A I don't know.

Q A million dollars? A Oh, by no means. Sometimes it was very much considered that they might as well throw over the thing and build the terminal somewhere else, and in 1916 we bought about 500 acres down in Claremont with that in mind. We came to the point of thinking the whole thing was hopeless, and prepared to say, "Take the canal, we are through with it, Big Basin and everything else."

Q Looked at in the view that you have just given voice to, the loss of possession in consequence of the State having taken the property over in 1923, according to the plan provided in the original charter, it wouldn't have meant any loss to the Railroad Company, would it? A We can use the property; it is an advantage to have it there, but it was worth a certain price, and if the State of New Jersey, in connection with this contract of 1922, said, "You cannot have it unless you pay us, for example, a million and a half," we said we wouldn't pay it, and we did say that, and we argued for nights and nights—I think it was somewhere around twelve or one o'clock at night when we finally came to an agreement on that thing—for days and days and nights and nights.

Mr. Hunt: I will ask Mr. Bindseil to read that question and answer.

(Question and answer read to the witness.)



The Witness: I have answered it in the first part of my answer, and it stands. I think we made a good bargain and I think the State of New Jersey made a good bargain, and I think both parties came out of the transaction as beneficiaries. I don't think there is any doubt about it. But it was worth so much to us, and I think the State got the full limit of it.

Q Since you and the State have both got an advantage from the transaction, why should not the minority stockholders be fairly compensated? A They should.

Q In the light of what is fair compensation to them, does not the question that I put to you a while ago govern, that if this property had been taken according to the original charter provision, $22,000 had been paid for it, then there would have been one dollar for every share of Morris Canal stock? A No, sir; quite the contrary.

Q You say your lease stands in there and prevents the application of any such doctrine as that? A Yes.

Q Notwithstanding your lease was a burden to you? A I don't see that that has anything to do with the minority stockholders.

Q Suppose, once more, that the property had been taken according to the previous scheme, and the appraisers had fixed on it a value of $22,000, which incidentally would represent one dollar per share for all the stock? A That is all we were getting.

Q On what principle do you justify dividing the $22,000 between the State of New Jersey, on the one hand, and the Lehigh Valley, on the other,

and giving no part of it to the minority stockholders—the Morris Canal and Banking Company I mean?

Mr. Milton: That is objected to. Mr. Hunt's questions are predicated upon the assumption that the State would have elected to exercise the option conferred upon it by the section of the charter of this Morris Canal and Banking Company to which he refers, when that right didn't accrue to us in 1924. That is just pure speculation. The State did not do that. No intimation in the case that the State wanted to do it. Quite a different story is presented to this Commission, and it seems to me it is just a pure waste of time to speculate what might have been the rights of stockholders if the State had elected to exercise an option in 1924.

Q (Repeated.) On what principle do you justify dividing the $22,000 between the State of New Jersey, on the one hand, and the Lehigh Valley, on the other, and giving no part of it to the minority stockholders—the Morris Canal and Banking Company, I mean?

Chairman Joline: He may answer the question. Do you understand the question?

The Witness: I do not.

Q (Repeated.)

The Witness: I understand the words, but I don't understand what he means by dividing the $22,000 between the State and the Morris Canal and Banking Company.



Q I ask you to assume that instead of the plan that has been carried out, the State had acquired the property under the provision of the charter of 1824, with ten Commissioners mutually appointed by the two sides to value this property; these Commissioners find that the value of the property was $22,000, and the reason I use the sum $22,000 is because you have 22,000 shares outstanding in the Morris Canal and Banking Company, so that makes an easy figure to deal with—suppose that plan laid down in the original charter to have been followed and to have resulted in the Commissioners of appraisals valuing the property at $22,000, on what theory do you justify dividing the $22,000 between the State, on the one hand, and the Lehigh Valley on the other, instead of putting it into the treasury of the Morris Canal and Banking Company, in respect of whose property it was awarded?

Mr. Milton: Objected to on the ground that it is based upon an unwarranted assumption of fact.

A I cannot answer that question. I will give you my counter idea.

Chairman Joline: The Commission has told you to answer. We have admitted the question, but what he has answered is, we cannot say what that will be.

The Witness: I cannot answer it. It is based upon your assumption that the State would fix a compensation according to property values, if they took over that property in 1924.

Q If the State had taken over the property in 1923, pursuant to the charter plan, on what other basis besides property values could they have fixed the compensation? A Now, I can answer you. They authorized the lease in 1871; the State of New Jersey authorized that lease by an act of the Legislature. Therefore, when 1924 came along, they would have had to conduct their condemnation proceedings according to their own acts of the Legislature, and they would have condemned the lease.

Q I think, Mr. Boles, that they would have had to conduct the proceeding according to the charter of 1824, which under the doctrine of the Dartmouth College case became a contract between the State, the corporation and the shareholders. That is correct, it is not? A No, sir.

Q You think that the doctrine of the Dartmouth College case does not apply here? A No, sir.

Q Why not? A I said I don't think so.

Chairman Joline: I will rule that question out.

Q Mr. Boles, in the negotiations that you in behalf of the Lehigh Valley Railroad Company carried on with the State, did you ever request those representing the State to proceed according to Section 26 of the 1824 charter of the Morris Canal and Banking Company?

Chairman Joline: Is that charter in the book?

Mr. Hunt: Yes.

A I don't think so. I am fairly sure we never did; I don't think the subject was ever mentioned.





Q No suggestion of that kind is mentioned in the letter of Mr. Loomis, in the writing of which you had a hand, I believe? A No suggestion of that kind is made?

Q Yes. A I don't believe so.

Q Why didn't you, instead of endeavoring to induce the State to follow the plan set forth in your letter, try to induce it to follow the plan set forth in the 1824 charter? A We didn't want them to do so.

Q You didn't what? A We didn't want the State to take that course.

Q Who didn't want the State to take that course? A The Lehigh Valley Railroad Company.

Q Did the Lehigh Valley Railroad Company ever consult the owners of the minority stock of the Morris Canal and Banking Company as to what course they might wish the State to follow? A No, sir, there wasn't the slightest legal, moral, ethical or any other ground for doing so.

Q The corporate charter granted by the State of New Jersey in 1824 is regarded in law as a contract between the State and the corporation and the stockholders, is it not?

Chairman Joline: That is a question of law.

Mr. Hunt: He says there is no legal question.

Mr. Milton: He is a good lawyer, but he may be wrong.

Q The Morris Canal and Banking Company continues to exist as a corporation, doesn't it, Mr. Boles? A Well, you will have to ask Dr. Kummel that; I believe so.

Q You had in mind, in the plans that you worked out, that it should continue to exist as a corporation? A That was a suggestion to the State which we considered worth making.

Q You considered that a valuable suggestion to the State? A Yes.

Q The reason being, or at least one of the reasons being that it is supposed to remove an embarrassment that might otherwise exist, if the State of New Jersey, as a sovereign State, should assert rights of ownership in the waters of Greenwood Lake, which lies partly within the State of New York; that was one of the things you had in mind? A Well, the water rights, the question of preserving the water rights was one of the things, yes.

Q And the Greenwood Lake water right was the principal one that you had in that connection, was it not? A No, I don't think so; no, no more so than other watershed rights.

Q I believe you said that you would stand sponsor for the matters stated in your letter, which is quoted in Mr. Loomis' letter; is that correct? A Yes.

Chairman Joline: Isn't that a question of law too, what he says in that letter?

Mr. Hunt: He makes a statement of fact.

Chairman Joline: Are we bound to take it or not bound to take it?

Mr. Hunt: You can at least take the statements in his letter as admissions against interest.

Chairman Joline: Well, offer the letter in evidence; it is there.

Mr. Hunt: Can't I cross examine him and all about it?



Chairman Joline: Yes, go ahead; the cross examination is going so far afield.

Q In regard to the value of the water rights possessed by the Morris Canal and Banking Company, you say that these waters, if used for non-potable purposes, would yield an income which capitalized at five per cent. would make the water worth $4,678,100, but if used for potable purposes, of which it is all capable, a very much larger income, establishing a much higher value, would be obtainable. What would be the income obtainable if this water were used for potable purposes? A Selling it to the City of Newark and Jersey City.

Q You say a very much larger income would be obtainable. How much larger? A I don't know now.

Q You judge a very much higher value would be established?

Chairman Joline: Isn't that just an opinion?

Mr. Hunt: He claims to possess knowledge about all the facts stated in his letter.

A I will answer you. I suppose everybody in this room knows that the State of New Jersey and the cities sell water for potable purposes at a higher rate than for non-potable purposes.

Q That doesn't answer any question that I put to you. A I thought it did.

Q You say a very much larger income would be obtainable. How much larger? A You mean today?

Q You meant what you said when you wrote this letter? A At that time my recollection is that the potable water was being sold by the

State of New Jersey for potable purposes at somewhere around $5.50 for a million gallons.

Q You say in this letter that non-potable raw water is being sold at $15 a million gallons, unfit for potable purposes—

Chairman Joline: Has it ever been used for potable purposes?

The Witness: Yes.

Chairman Joline: By Newark?

The Witness: Oh, yes; the Pequannock—this new Pequannock reservoir is largely Morris Canal water.

Q I will read you what you did say, because you don't seem to know what you did say. You say:

"Raw water, unfit for potable purposes, is sold in northern New Jersey at $15 per million gallons, and therefore the Morris Canal waters if used solely for non-potable purposes, would yield an income which if capitalized at 5%, would make the water alone worth $4,678,100, instead of $3,000,000 for both land and water. If used for potable purposes, of which it is all capable, a very much larger income, establishing a much higher value, would be obtainable."

You signed your name to that and I want you to tell this commission how much larger income would be obtainable and how much higher value would be established. A You mean you want the exact figures?

Q Approximate it. A The rate for potable water at that time—I am not sure that I remember it, but I will tell you what it was a little later.



Commissioner Gaddis: Where is the relevancy of the value of the water? Whatever it has been worth has gone into the State.

Mr. Hunt: It is only on the theory that the value of the water rights is part of the value of the whole property, and it makes no difference to these minority stockholders whether it was the State or the Lehigh Valley that stole this apple or that apple. The minority stockholders are entitled to be paid their share of both apples. We don't care which one has got it.

Commissioner Gaddis: Wouldn't that be a quarrel with the State?

Mr. Hunt: No; under the contract the Lehigh Valley has contracted and agreed to pay the whole shot.

The Witness: What did they do towards keeping up the orchard?

Mr. Hunt: Invested their money in it; you had the active management.

Mr. Milton: What section of the contract?

Mr. Hunt: I am just looking for it.

Page 14 of the pamphlet that you gentlemen have before you, section 9:

"The Lehigh Valley Railroad Company will acquire and assign, transfer and set over to the State of New Jersey all of the remaining outstanding stock, consolidated and preferred, of the Morris Canal & Banking Company not now owned by said Lehigh Valley Railroad Company. If the

said Lehigh Valley Railroad Company cannot, on or before March 1, 1923, purchase such remaining outstanding stock at a price satisfactory to it and it therefore becomes necessary to condemn said shares of capital stock in order to acquire the same, said company shall request the Board of Conservation and Development of the State of New Jersey to bring proceedings in the name of the State to condemn said stock, and said proceedings shall be taken in accordance with subdivision 5 of the first section of this agreement and in conformity with the provision of Chapter 212 of the Laws of 1922 aforesaid.

"Pending the acquisition, by purchase or condemnation, and the transfer of said remaining outstanding shares of consolidated and preferred stock of the Morris Canal & Banking Company, the said Lehigh Valley Railroad Company will continue to pay the dividends thereon in accordance with its existing guaranty."

The Lehigh Valley if it cannot produce these shares and turn them over to the State, is to condemn.

There is another provision in here, which says more expressly that the Lehigh Valley shall pay the awards in condemnation and shall be privileged to take part in the condemnation proceedings by counsel. Can you tell me what that section is?

Commissioner Ferguson: While that is being looked up, I will ask you a question.

Is any of this stock now listed on the market?

The Witness: No.



Commissioner Ferguson: When was it last listed?

The Witness: I don't think it was ever listed; I never heard of it.

Commissioner Ferguson: Did it ever have a market value?

The Witness: Never, except what might be established by the purchases that we made in 1923.

Commissioner Ferguson: But they were not sales on market, they were all sales by reason of the letter and the offer.

In 1923, if anyone tendered the stock to you, would you have purchased it?

The Witness: Yes.

In 1911 we offered $70 a share for the consolidated and $170 for the preferred, and that offer stood in effect for several years.

In 1913 that was cancelled. Then there were no other offers. I know there was no stock purchased between 1916 and 1922.

Chairman Joline: I understood that you were to pay dividends on this what we call consolidated stock; what was the dividend?

The Witness: Four dollars per year per share.

Chairman Joline: How much would that be; how much per cent.?

Commissioner Gaddis: That would be eight per cent. on the price they offered and four per cent. on par.

Chairman Joline: Four per cent. on $100?

Commissioner Gaddis: If par was $100.

Chairman Joline: What were the dividends to be paid on the preferred?

The Witness: Ten dollars a share.

Chairman Joline: That would be ten per cent. on par?

The Witness: Yes.

We offered $125 a share for that stock. The stock is the same value, in my judgment; it is the same base.

Chairman Joline: You paid four per cent. on the consolidated and ten per cent. on the preferred?

The Witness: Yes.

Q You say the two stocks have the same value, in your judgment? A Yes.

Q You were offering $50 for one and $125 for the other; which is the true value of the two, in your judgment? A Both.

*Examination* by Chairman Joline:

Q You said they have the same value. A I say so again; one was paying $4 dividend and the other paying $10 dividend, guaranteed until 1974.

Q I don't understand when you say that they have the same value. A The same base.

Q You mean those figures are arrived at by the same method of calculation?

Commissioner Gaddis: Four on $50 is eight per cent.; ten on $125 is about eight per cent., isn't it?

The Witness: Is eight per cent.

Q What was the value of the consolidated? A $100 par.

Q $100 is the par value of each one? A Yes.

Q You were to pay four per cent. on one and ten per cent. on the other? A Yes.



Mr. Milton: I don't know what section of this contract you can have in mind.

Mr. Hunt: I have it; Mr. Stockwell has just found it; it is on page 9 of the pamphlet, paragraph 5, at the foot of the page. To get an understanding of it, one must go back and read the beginning, which occurs on page 8, as follows:

"First. On behalf of the State of New Jersey the said Commissioners agree as follows:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) To institute and proscute to completion, when requested in writing by the Lehigh Valley Railroad Company, proceedings for the condemnation of any stock, consolidated or preferred, of the Morris Canal & Banking Company, the cost and expense of such proceedings, including the payment of the award for such stock, to be borne by said Railroad Company. Notice of the institution of any such condemnation proceedings shall be given to said Railroad Company and said Company shall be permitted to participate through its attorneys in the conduct thereof."

I say that it makes no difference to us which boy got the apple. The Lehigh Valley has agreed to pay.

Chairman Joline: The witness can answer that at the next session.

Adjourned to Friday, November 5, 1926, at 10:30 A. M.

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Hearing continued November 5, 1926.

Same appearances.

EDGAR H. BOLES, recalled for further

*Cross examination* by Mr. Hunt.

Q Mr. Boles, these are the maps you produce in response to my request? A Yes, sir.

Q Can you identify them to the Commissioners, please?

Commissioner Joline: How many maps are there altogether?

Q Can you answer that? A I cannot.

Q Can you identify them one by one to the Commissioners as maps showing certain parts of the lands acquired by the Lehigh Valley as the result of the arrangement with the State regarding the disposition of the Morris Canal Company? A Yes, sir.

Q Will you do that please, Mr. Boles? A Number one shows the key to this series of maps, and also the strip of canal—

Commissioner Joline: That is marked Exhibit S. 1, I suppose, of this date.

(Marked Exhibit S. 1.)



Q You said this was not only the key map, but also showed a strip of the canal extending from where? A From a point just west of Washington street—rather, a point about the foot of the Little Basin. No; it is from Washington street, the actual foot of the Little Basin, to a point about five hundred foot west of Grove street, Jersey City. You can mark this one S. 2, which is the outline of the Little Basin and the Big Basin.

(Marked Exhibit S. 2.)

A And showing the waterway reserved to the State of New Jersey. The next map will be S. 3.

(Marked Exhibit S. 3.)

A S. 3 then extends from the point just mentioned west of Grove street, to about four hundred feet west of the Mill Creek Bridge—or the Mill Creek Aqueduct.

(Marked Exhibit S. 4.)

A S. 4 extends from the point last mentioned to a point about a thousand feet west of Bishop street. No; it wouldn't be that far; it would be about five hundred feet west of Bishop street.

(Marked Exhibit S. 5.)

A S. 5 extends from the point last mentioned, Union street. This is all Jersey City.

Mr. Hunt: Gentlemen, perhaps I could shorten this matter somewhat. Now, if the Commission is content, we are content to

have the remainder of these maps marked as one exhibit under the remark that they show all the lands acquired by the Lehigh Valley out of property formerly belonging to the Morris Canal Company, extending from the Hudson River on the east to the Hackensack River on the west.

Commissioner Joline: How can he mark them all as one?

Mr. Hunt: He can say there are so many maps. There are thirteen other maps, all of which can fall under the Exhibit Number S. 5.

Commissioner Joline: All right.

Mr. Hunt: Then under the Exhibit number S. 6—

Commissioner Joline: That hasn't been marked.

(Marked Exhibit S. 6.)

Mr. Hunt: Two maps marked S. 6, and these two maps show the lands acquired by the Lehigh Valley, formerly belonging to the Morris Canal, in Phillipsburg, Warren County, New Jersey.

The Witness: Between Green's Bridge and the Delaware River.

Q Mr. Boles, do any of the maps showing lands in Hudson County, show the territory known as Fiddler's Elbow? A Yes, sir.

Q On which one does that appear? A S. 1. That is on the key map. We never had a surveyed map of that property in Bayonne. It is just shown on the key map.

Commissioner Joline: On which map?



The Witness: On the key map, S. 1. There is no map here—we have no such map on a scale of one inch to fifty feet such as these other maps, for this property which Mr. Hunt has just referred to as Fiddler's Elbow.

Q The Lehigh Valley did acquire the Fiddler's Elbow property? A Yes; this key map shows this all as one.

Q That is in the muncipality of Bayonne? A Yes, sir; in Bayonne, yes. It is partially in Bayonne and partially in Jersey City.

Commissioner Gaddis: It is at the dividing line. The center line goes through the canal.

Q Mr. Boles, at the time the contract between the Lehigh Valley and the State respecting the disposition of the Morris Canal property was entered into, were you a director or officer of the Morris Canal and Banking Company? A I think I was a director. I don't think I was an officer. I don't remember that.

Q Were you at that time a director of the Lehigh Valley? A No, sir.

Q Are you now a director of the Lehigh Valley? A No, sir; not of the parent company.

Commissioner Joline: Not of what?

The Witness: The parent company.

Q At the time that the contract between the State and the Lehigh Valley was entered into, were any of the directors of the Morris Canal and Banking Company directors of the Lehigh

Valley? A Well, Mr. Loomis was probably on both boards.

Q He is president of the Lehigh Valley? A Yes.

Q He was on both boards? A I think so. I won't be positive about that; I think so.

Q Well, that is one of the bits of which we would like to have positive information. Could you confirm that later? A Yes, sir.

Q Any others? A I can't tell you just this minute. I will find out.

Q Were any of the directors of the Morris Canal and Banking Company at that time officers of the Lehigh Valley? A Yes.

Q All of them were officers of the Lehigh Valley, were they not? A Oh, my, no. There was a big board. The Morris Canal board, as I remember it, under the charter was a good size board, somewhere around twenty-four or twenty-five directors.

Q Well, will you supply us with the names of the directors of the Morris Canal and Banking Company at the time this contract was entered into? A November, 1922?

Q Yes. A Yes, sir.

Q And indicate what position, if any, each of them held with the Lehigh Valley, whether as director, officer, employee, stockholder, or otherwise? A Yes, sir.

Commissioner Joline: They had to be stockholders, didn't they?

Mr. Hunt: Whether they were stockholders of the Lehigh Valley.

Q Also state the number of shares held by each director of the Morris Canal and Banking



Company at the time the contract was entered into? A Number of shares of Morris Canal stock, you mean?

Q Yes; owned by the respective directors of the Morris Canal. Perhaps you can tell us that each director owned only one qualifying share, is that the case? A Whether it was only one or two or three, they were only qualifying shares.

Q The beneficial ownership of those shares was in the Lehigh Valley? A Exactly.

Q Dividends paid on those shares were returned by the directors who received them as stockholders, to the Lehigh Valley? A They were, if any dividend checks were issued, but I doubt if any were issued.

Q I call your attention to the contract between the State and the Lehigh Valley and the Morris Canal and Banking Company.

Commissioner Joline: Is that an exhibit?

Mr. Hunt: Yes; it is the compilation of the laws relating to this matter, published by the State Department of Conservation and Development. A copy of it has been put before you, I know. Apparently not marked, but given to you.

Q The signatures to that contract appear on page 18. I ask you whether it isn't true that Mr. Loomis, as president, signs in behalf of the Morris Canal and Banking Company? A Yes, sir.

Q And you, as vice-president of the Lehigh Valley, signed in its behalf? A Yes, sir.

Q And at that time what office did Mr. Loomis hold in the Lehigh Valley? A President.

Q At that time who was secretary of the Morris Canal and Banking Company, do you know?

A I can't tell you definitely. I am pretty sure it was Mr. D. G. Baird.

Q He was also secretary of the Lehigh Valley? A The officers were largely in common. They were practically the same officers throughout.

Q There is no dispute that at the time this contract was entered into, and for a long time before, the Lehigh Valley, by virtue of its ownership of almost all the capital stock of the Morris Canal and Banking Company, had absolutely dominated the policies and managed the affairs of the Morris Canal and Banking Company? A We think so.

Q You think there is no question? A I think there is no question. If it wasn't true, it should have been.

Q Now, you said that extensive negotiations took place between the representatives of the Lehigh Valley and representatives of the State that eventuated in the drafting of this particular contract? A Yes, sir.

Commissioner Joline: What particular contract?

Mr. Milton: Of November 30, 1922.

Mr. Hunt: The contract of November 30, 1922, providing for the disposition of the property of the Morris Canal and Banking Company.

Q Now, the Morris Canal and Banking Company was a party to that contract, wasn't it, and signs it? A Yes, sir.

Q Who represented it in those negotiations with the State? A Well, I suppose the real representation was by myself.



Q Well, it doesn't have to be a matter of supposition. You were present at all of the negotiations, were you not? A I think so.

Q Who appeared at the negotiations for the Morris Canal and Banking Company? A I did.

Q Who appeared for the Lehigh Valley Railroad Company? A I did.

Q Anybody else appear for the Lehigh Valley Railroad Company? A You mean as attorney?

Q In any way. A Mr. J. A. Middleton was present at some of the negotiations.

Q Who was he? A He is vice-president of the railroad.

Q Did he hold office in the Morris Canal and Banking Company? A I can't tell you now. Probably a director.

Q Now, there was present on behalf of the State, Mr. Frank H. Sommer, Mr. Louis Focht and Mr. F. L. Young, that is true, isn't it? A Yes.

Mr. Milton: E. L.

Mr. Hunt: It is signed here "F."

A Yes; they were present at every meeting.

Q Who, besides yourself and Mr. Middleton, was present at any time on behalf of the Lehigh Valley? A I don't remember anybody else.

Q I ask you to search your memory. A Well, I am giving you the best answer I can. I don't think Mr. Loomis ever came to any of the negotiations. Mr. John Duffey may have been at some of the negotiations.

Q Who was Mr. Duffey? A He is an assistant of the president in the railroad company.

Q Who was present in behalf of the Morris Canal and Banking Company? A I don't know of anyone except my representation.

Q Except yourself? A I think so.

Q Now, at any of these negotiations were you accompanied by any technical experts or advisors who had investigated any of the questions that entered into the negotiation between these two companies and the State? A I forget whether Mr. Vermeule ever accompanied me or not, but when it came to the question of the valuation of the water rights I relied entirely upon Mr. Vermeule's expert reports and opinions, and I am not sure whether he ever went to a meeting or not.

Q Who was Mr. Vermeule? A C. C. Vermeule.

Q Mr. C. C. Vermeule? A Mr. C. C. Vermeule.

Q What is his business? A He is an expert water engineer and surveyor of the State of New Jersey.

Q What standing or authority is he commonly reputed to have upon questions relating to the water resources of the State of New Jersey, and their value?

Mr. Milton: I might say he has been used by Mr. Hunt.

A The highest. I employed him on that basis. He is considered the best in the State.

Mr. Hunt: I also employed him on that basis. Now, before I go further, I would like to make a statement in justice to Mr. Vermeule. I have tried twice to employ Mr. Vermeule for our side of this case, and he has not only declined employment, but he has declined to give me any information. I owe that to Mr. Vermeule whom we both know



and respect and admire, so I say frankly, and you can call on Mr. Malloy for verification. Being unable to get anything from Mr. Vermeule, Mr. Malloy set to work very diligently, and he got certain clews which led me into this cross examination, and which would lead me further, but I do want to absolve Mr. Vermeule from any responsibility.

The Witness: Well, I hold him under none.

Mr. Hunt: Mr. Vermeule has worked with me in this Ringwood case for the last couple of years, and I thought you might think I had been able to get him to tell me.

The Witness: There is no reason why he shouldn't.

Mr. Hunt: If you want to bring him here I would be very glad.

Q Now, Mr. Boles, you said that you relied absolutely on the information that you got from Mr. Vermeule as regards the value of the water rights? A Yes, sir; in the final negotiations I did.

Q Let me put this to you; did the representatives of the Lehigh Valley in these negotiations with the State, act in what they believed to be a sincere, honest, straightforward way? A Yes, sir.

Q Well, putting forth representations which to the best of the knowledge and belief of the Lehigh Valley's representatives were true and honest representations, that is correct, isn't it? A I think so.

Q Now, you put forth certain representations as to the value of the water rights, didn't you? A Yes, sir.

Q They were based upon the information of Mr. Vermeule? A Entirely.

Q What was the value that you represented these water rights to possess? A As to the value which had been—of water which had already been put to use by the City of Newark under what is known as the Pequannock contract.

Q No; I refer to the value of the water rights which the Lehigh Valley represented the State would acquire under the agreement which the Lehigh Valley proposed should be entered into between the State and Lehigh Valley and the Morris Canal? A Well, I am answering that.

Q I see; all right. A That Pequannock contract had a certain number of years to run—I forget just how many at this time—

Q I want just the lump sum. A They represented, based on Mr. Vermeule's opinion, that that Pequannock contract was worth to the State of New Jersey approximately $16,000,000 in round figures.

Q What value did you represent the other water rights to possess? A The next was Greenwood Lake, plus what is known as Pompton rights, Pompton River diversion, we stated that the value of those, based on Mr. Vermeule's opinion, was $11,600,000 in round figures.

Q Now, can you separate that as between the Greenwood Lake rights and the Pompton rights? A Well, it is diversion from the Pompton River.

Q Can you separate those two items? A No, you cannot; they are altogether.

Q I simply wanted the fact. A No; the water diverted from the Rockaway River, that was water which the canal then diverted and used and was using for canal purposes, valued at $4,500,000 and Mr. Vermeule put an additional



state value on that, by reason of license fees, something which I am not familiar with, of $449,000.

Q That is additional value to the State which did not obtain while the property was in Morris Canal ownership? A Yes.

Q $449,000? A $449,000. That is approximately $33,000,000. Now, then, he had another set of values which he called additional potential values—

Q What did he call this $33,000,000? A Immediately available value.

Q Immediately available value he calls that. All right. Additional potential values, he says? A To Jersey City on account of the full use of the Rockaway watershed.

Q Yes. A $10,925,000.

Q $10,925,000. Now, any other additional potential values? A To other communities, $26,688,000.

Q Yes.

Commissioner Joline: What was that?

The Witness: $26,688,000. And then to the State Treasurer on account of license fees, $1,616,000.

Q All would be capitalized values? A Oh, yes; these are all capitalized values.

Q Any others, Mr. Boles? A That is all.

Q Well, now, the $33,000,000 was arrived at by Mr. Vermeule as a current then existing value, was it not? A Yes; about half under the Pequannock contract which Newark was already working under, and the other half immediately available value.

Q While the other items are more or less of a speculative character? A Oh, I cannot answer that. He simply calls them potential values.

Q Have you before you a copy of Mr. Vermeule's reports seting up these values and sustaining them? A Yes, sir.

Q Would you object to supplying the commissioners with a copy of that? A Well, I will turn this one over for their use. I don't think Mr. Vermeule would like to have it public without explaining it. I would be glad to have the commission use this one.

Q May I be at liberty to see it also? A Yes, sir.

Commissioner Joline: Just mark it as an exhibit.

Mr. Hunt: And then it will be returned to Mr. Milton.

Mr. Milton: Then if the Commission wants it you will notify me.

Mr. Hunt: The Commission will want it, I presume, without doubt.

Commissioner Joline: Well, we have got these figures, anyway.

Mr. Hunt: I suppose that the report contains a statement of facts to support these figures.

The Witness: Yes; it is in two parts, A and B.

Mr. Hunt: To demonstrate the method by which the figures are arrived at.

Commissioner Joline: Have you the original there?

Mr. Hunt: They are both original, but they are two different documents.



The Witness: One is supporting data in reference to the water used by the canal and the other is the value of the water rights.

Commissioner Joline: Then they are two exhibits.

Mr. Milton: But it is really one report.

The Witness: Yes; it is to be taken as one report.

Q It is one report in two parts? A Yes.

(Marked Exhibits S. 7A and S. 7B.)

Mr. Stockwell: How is it going to be possible for counsel to inspect those?

Commissioner Joline: At Mr. Milton's office. You have a right to inspect any exhibits.

*By Commissioner Gaddis.*

Q Mr. Boles, since the canal has been under the Lehigh Valley control, were there ever any dividends paid? A Well, the dividend which was guaranteed by the lease was always paid to the outstanding stock, but it was never earned.

Commissioner Joline: Well, before that time were there any dividends paid?

The Witness: I can't tell you, Judge.

Commissioner Joline: I wish you would look that up. I would like to know about dividends on this stock.

Q Isn't that matter gone into in the Godfrey report, whether it paid or didn't pay in all the time of its existence? I am under the impression it did. I have a copy of it here. A I am not

quite sure whether it is in that report, but it is in another report that you had last time.

Commissioner Joline: I would like to know about the records of this canal company, whether it ever paid any dividends?

The Witness: Well, those old records are now in Doctor Kummel's possession.

Mr. Milton: We have the information across the street. We will get it for you.

Commissioner Joline: Well, when he comes on the witness stand you remember that, Mr. Milton?

Mr. Milton: Yes, sir.

Commissioner Joline: As I understand it, you guaranteed to pay four per cent. on the common stock?

The Witness: We guaranteed to pay four dollars a share on the common stock and ten dollars on the preferred, and that is all that has been paid since.

*By Mr. Hunt.*

Q Mr. Vermeule, by the way, is now consulting engineer for the State in respect of this canal property, is he not, Mr. Boles? A I don't know.

Q I see Doctor Kummel here and I suppose he is here to be on the stand later. He will answer that. Now, Mr. Boles, I refer to an article in the Newark Evening News of Thursday, August 10, 1922, and will read from it what purports to be a literal quotation of certain statements made by you, and ask you to state whether you are correctly quoted? Now, if you are incorrectly quoted it might not be fair for me to read it first, so perhaps you would like to read it first and be able to stop me if you consider it unfair. A (Witness reads paper.)



Q "In discussing the water rights claimed to be owned and controlled by the railroad, Mr. Boles says"—Mr. Boles, may I interpose a question here? This phrase "by the railroad" should really read "by the Morris Canal and Banking Company," should it not? A No.

Q Or "by the railroad by virtue of its rights in the Morris Canal and Banking Company"? A No, sir.

Q Do you mean this article refers to water rights that the Lehigh Valley Railroad Company owned separate, distinct and aside from its control of the Morris Canal and Banking Company? A No; I refer to the water rights which it controlled under the 1871 lease.

Q They were water rights originally possessed by the Morris Canal and Banking Company? A Largely.

Q "Mr. Boles says, 'The rights of flowage and diversion have been maintained by the companies' "—what did you mean by "the companies"? That is plural, "ies." What did you mean? A It should be "company."

Q What company? A Lehigh Valley Railroad.

Q "At a great annual expense, and we wish to emphasize the fact that one great thing can be said in favor of the existence up to this time of the Morris Canal as a canal—that is to say, before the municipalities of northern New Jersey had fully realized the importance of their needs as to potable water, and the Morris Canal had been abandoned, and its rights of flowage and diversion had been consequently lost, only to be

acquired again at great expense, these municipalities would have capital charges imposed on them in the near future running into many millions of dollars. Moreover, the canal company and its lessees have caused to be gathered and kept together, and are now able to transfer through the State primarily to its various municipalities for immediate tangible use, the last remaining supplies of pure potable water in northeastern New Jersey.'' Now, are you correctly quoted in that statement I have just read? A Yes, sir. Except the plural use there in two cases ''companies'' should be ''company,'' and ''lessees'' should be ''lessee.''

Q I see. And the phrase, ''Moreover, the canal company and its lessees'' refers to the Morris Canal and Banking Company and the Lehigh Valley Railroad Company? A Yes, sir.

Q And then certain matters of detail that are further stated are as having been put forth by yourself are really taken from the Vermeule report which has been put in evidence, are they not? A Well, all my data came from the Vermeule report, and if it is correctly quoted in there it came from the Vermeule report.

Q Did you at the former session give us an estimate of the value of the Fiddler's Elbow property? A No; I don't think I was asked that. I gave you the assessments.

Q Did you give the assessment on Fiddler's Elbow separately?

Mr. Gaddis: By Fiddler's Elbow you mean the right of way west of Washington street to the Hackensack River?

(Discussion off of the record.)



Q Now, Mr. Boles, in fairness to you, I want to point out that the Newark News article of August 10, 1922, sets out at the head what purports to be a statement concerning the values placed by the Lehigh Valley on the properties that it wished to retain and upon the properties that it wished to see passed over to the State, and in that statement the value of the water rights is stated at $12,500,000. Now, which is correct, the $12,500,000 stated in the Newark News, or the $26,000,000 of present day value, plus some possible additional potential values stated in the Vermeule report? A Both.

Q Both are correct? A Yes, sir.

Q I don't understand how $12,500,000 can be correct if the immediate available value as found by Mr. Vermeule is really $33,000,000. How do you explain that? A Because depending upon water rights which the canal company drew upon and used, there were additional water shed rights which were available to the State and the municipalities.

Q You mean $12,500,000 represented value that the Morris Canal was presently drawing upon and using? A Yes.

Q And formed a part of the $33,000,000 which Vermeule states is the immediately available value? A He would better perhaps put it this way, that the canal water rights that were immediately drawn upon by the canal were sort of a keystone to an arch and the whole arch was dependent on those particular water diversions, that is, the use of all the water in the arch was dependent upon, and, as stated in the record somewhere, of practically all the potable supply in New Jersey.

Q In your negotiations with the State you wanted to retain the Little Basin for the Lehigh

Valley but didn't succeed in doing so? A Correct.

Q Will you inform us what the progress of the negotiations in respect of the disposition of the Little Basin was? You wanted it. You didn't get it. Now, how did it happen that you didn't get it? A I don't know just how to describe it. It extended over a long period.

Q How long a period? A You might describe it as the usual contract negotiation where there is bargaining back and forth, and ultimately we said that we would give up our claim for the retention of the Little Basin. I don't know just what date that was, or hour.

Q But in return for giving that up what did you get? This was kind of a *quid pro quo* arrangement? A Well, there were two things that came out of the negotiation which weren't—at least in my contemplation when it started. One was we gave up the Little Basin. The other was we paid the State $875,000.

Commissioner Joline: What for?

The Witness: Well, I don't know. Because they made us do it, Judge, and we considered that it was a fair part of the deal. I think, as I remember it, the State representatives said that they would impose a cash payment upon us because we were relieving ourselves of an annual cash outlay in connection with the maintenance of the canal, and they balanced up the values which they considered to be in the Big Basin, a strip through Hudson County, and the little strip in Phillipsburg, as against all other things—but I forget. I think they started somewhere around a million and a half they wanted us



to pay in cash first, and we finally argued that down in connection with giving up the Little Basin, to $875,000.

Commissioner Joline: I understand you own the Big Basin and Little Basin?

The Witness: Well, we own it up until 1974—

Commissioner Joline: You will own it up until 1974?

The Witness: At the present time? We own it absolutely now.

Mr. Hunt: But Judge Joline refers to the time prior to the consummation, or the entering into of the contract. Now, prior to that contract being entered into, according to the decision of Vice-Chanellor Stevenson, you owned it only up until 1974?

The Witness: Yes, sir.

Commissioner Joline: How did you obtain the property in there?

The Witness: Well, it was obtained by reason of the lease of the Morris Canal, plus a deed given by the Riparian Commissioners in 1887.

Commissioner Joline: Has any attempt ever been made in the courts to set that aside?

The Witness: Well, there was the case that was referred to at the last hearing which was the case which was brought to set aside the deed from the Riparian Commissioners on the ground it was technically defective. That is Vice-Chancellor Stevenson's opinion.

Commissioner Joline: And he held that you owned it until 1974.

The Witness: But that the deed for the reversion was defective.

Q He held that you were entitled to possession until 1974, but not longer? A Yes, sir.

Commissioner Gaddis: In other words, the limitation on it was concurrent with the limitation on the rest of the canal property?

The Witness: The charter, the expiration of the charter.

Q At what sum did you, as representative of the Lehigh Valley, value the Little Basin in the negotiations that you were carrying on with the State? Just approximately. A I forget that now. I think it was $1,200,000. It is in this circular. $1,211,000.

Q $1,211,000? A Yes.

Q Now, please explain to the Commissioners, Mr. Boles, what you got out of this triangular deal—what the Lehigh Valley got out of this triangular deal in which the State, the Lehigh Valley and the Morris Canal were parties, that was considered by the Lehigh Valley to possess sufficient value to warrant the Lehigh Valley in giving up to the State water rights worth $33,000,000., and in addition paying to the State $875,000., while not getting the Little Basin which you valued at $1,200,000, and had earnestly desired to get? A Well, there are a couple of premises in your question, Mr. Hunt, that I wouldn't admit. In the first place you say water rights worth $33,000,000. They weren't worth a darned cent to the Lehigh Valley Railroad Company. We couldn't use them. It was the value to the State. Those water rights had a value



to the State which enabled us to go to the State and say, "Here is an extremely valuable asset."

Q They had a value that the Morris Canal and Banking Company— A We tried to work that out since 1871 and couldn't find it. It was an annual burden to us.

Q Well, you had never made any effort to realize any money from the water rights, had you? A We have no right to sell water. We had no charter right to sell water.

Q No, but you could have organized another company which had the right to sell water, and impound water, couldn't you? A I can't say that. I should say not.

Q And you did have the right to control the rate of discharge down certain streams from certain reservoirs, did you not? A Yes, sir; for canal purposes only.

Q But on the lower courses of those streams were such concerns that did have the right to sell water, as for instance, the East Jersey Water Company, isn't that true? A But we had no right to sell it.

Q Isn't that true? A No.

Q Isn't it true on the lower courses of some of the streams that you could have affected, by your flowage rights, the East Jersey Water Company was drawing water that it sold to its customers? Of course, you know that is true. A On the lower courses?

Q Yes. A It may be; I don't know. I don't see what it has to do—

Q There wasn't any traffic on your canal, was there? A Yes, sir.

Q Canal boat traffic? A Yes, sir.

Q To any great extent? A No, sir.

Q And heavier traffic would have occasioned the discharge of more water down the canal, wouldn't it, because you would have been using more water in lockage? A No, sir.

Q Why, it took an enormous amount of water to lock boats through your numerous locks and work them up your numerous planes? A A large amount.

Q That is the reason you needed so many water rights. The machinery that dragged the boats up the planes was propelled by waterpower, wasn't it? A Mostly.

Q And any water that might have been used in propelling that machinery, or might have been used in locking boats, would have passed on down the canal and eventually reach the intakes of the East Jersey Water Company and other concerns that had a right to sell water? A When you state that I don't think that is true. I think the water—take for example the plane through Newark, the water would have gone right into the river.

Q What river? A The Passaic.

Q Well, the East Jersey has water rights in the Passaic? A Not south of Newark.

Q But further up the Passaic River? A Well, that isn't what you said. You said this water that went through the locks and planes.

Q I refer to the length of that canal in general, Mr. Boles? A Well, I don't think what you said is correct.

Q You, as a matter of fact, had no planes in Newark, or near Newark. You had your entire planes in the mountainous sections of the State in Morris County, Passaic County and Warren County?



Mr. Gaddis: There is a plane in Newark that Plane street takes it name from.

The Witness: Quite a considerable one.

Q According to your statement there were thirty-two canal locks and twenty-two incline planes along the canal, weren't there? A Yes, sir.

Q And one plane was in Newark. How many locks were in Newark? A I don't know.

Q Now, if you had been using the twenty-two planes and thirty-two locks in the movement of canal boat traffic, you would have had to discharge a great deal more water out of the canal than you were discharging, wouldn't you. A Yes, sir.

Q And the East Jersey Water Company would have been very glad to do it, so the water might come to its intake at Little Falls?

Mr. Milton: That is objected to. How can Mr. Boles know what the East Jersey Water Company—

A I don't know, but I don't think it is true anyway.

Q You never looked into it? A I did not.

Q Now, then, we will go back to the question which resulted in this diversion, and I put this to you: you wanted from the State the Big Basin and Little Basin, the line of the canal to the Hackensack River and the property at Phillipsburg? A Yes, sir.

Q That is correct, isn't it? A Yes, sir.

Q You proposed that the State should give you those four pieces of property in return for a release on your interest in the remainder of the property, and without the payment of any money either way? A Yes, sir.

Q You represented to the State that the water rights which it would acquire were worth $33,000,000? A To them.

Q And a little while ago, in explaining the discrepancy between $33,000,000 and the $12,500,000 which you mentioned in the Newark News article, you said $12,500,000. was the value of the water rights to the Lehigh Valley and the Morris Canal as they were then being worked. A No; not exactly that. I said that was the value of the water which was actually used for canal purposes.

Q That was the value of the water actually used for canal purposes. Now, Mr. Boles, explain to this Commission why you handed over your rights in property which included as one item $12,500,000. as the value of the water actually currently used for canal purposes, and as another item the Little Basin, which you had valued at $1,200,000., and you paid in addition $875,000. Why did you do that against the delivery to you only of the Big Basin, the Phillipsburg property and the line of the canal through Hudson County—the reversion in the Big Basin, I should have said. Now, what value did you see in this reversion that caused you on the one hand to pay the State $875,000. and on the other hand to give the State, amongst other things, water rights measured at your own current use valuation of $12,500,000? A Well, I will have to go back a little in history. When the canal was leased by the Lehigh Valley Railroad Company in 1871, it was leased because the Lehigh Valley Railroad then terminated at Easton, Pennsylvania. Coal came down to Easton and was there turned over to the Jersey Central Railroad, or Pennsylvania Railroad, for further transportation. There was quite a rate quarrel going on. The Jersey Central Railroad, we thought, was charging exhorbitant amounts for carrying coal from there down, charging us because we were responsible for the full transportation through, and we looked—the railroad company looked around for an outlet. The only one that was immediately available, as I read the history of it through the old records, was this Morris Canal, over which a great deal of Lehigh Valley coal was moved. So they leased that canal in 1871, and made a great mistake, and the mistake was this: that just at that time there was in development the hard steel rail. Prior to that time there was a soft rail, a rail which used to bend up and go through the bottom of the cars and throw trains off the tracks, and was a very expensive mode of operation. That hard steel rail came into effect about 1871, and proved itself along about that time. In anticipation of building a railroad across the State of New Jersey, the old Easton and Amboy Railroad was chartered in 1871, and we then built a railroad to Perth Amboy, which was subsequently extended, and during the course of that extension was the time when the railroad company considered the possibility of getting a final title to that Big Basin property, because it looked like an ideal site for the location of the new eastern terminal of the Lehigh Valley system on the Hudson River. Then the negotiations took place with the Riparian Commissioners, and a deed was secured which was the moving cause for extending the railroad up through the eastern counties of the State from Perth Amboy to Jersey City, and little by little that railroad was built into Jersey City. Now, you will see, if you look in one of those reports that you have before you, that up until 1870 the Morris Canal made money—

Mr. Milton: Mr. Boles, may I stop you? I have been waiting to hand you this schedule of operation.

The Witness: Yes; it is on page 129 of the report book dated June, 1903, which you have a copy.

Commissioner Joline: Is it offered in evidence?

Mr. Milton: If it isn't, it is now.

Commissioner Joline: This book given to Mr. Boles is offered in evidence and marked.

(Marked Exhibit S. 8.)

Mr. Milton: Being the report so-called of the three Governors, George T. Werts, John W. Griggs and Foster M. Voorhees. Under resolution of the Legislature adopted at the session of 1903.

A Now, the principal traffic of the canal at that time—I don't know about the earlier years, but at that time was anthracite—hard coal. Now, if you go back to those earlier years, the results being shown on page 129 of this Exhibit S. 8, there was an operating loss in '71, and '72, but there were operating profits in '73, '74, '75 and '76. From there on the canal has always operated at a loss every year, simply due to the fact that it was no longer an economic thing to carry coal on the Morris Canal taking four to five days when it could move across the State by rail in four to five hours, and it wasn't very long before negotiations were taken with the State for their taking over the canal, or for the railroad, by legislation, trying to dispose of it. Those negotiations continued, I should say, almost annually until the termination in November, 1922. Now, we had a valuable keystone in this arch of water



rights that I have spoken about, with other water rights and other water privileges depending upon it which were, as Mr. Vermeule reported, worth some thirty million dollars. To us they were worth nothing. They represented a liability so far as the railroad was concerned, and the Morris Canal and Banking Company. The Big Basin property was worth something to us, and the Little Basin property would have been, but the State very naturally said, "If you want these rights you pay us. If you want these right in this property, these two pieces of real estate, you pay us the fair valuation on this, and then it is only fair that you should pay us something on account of the fact that we are relieving you from an annual obligation." And after the course of many days and weeks of negotiation, we considered that that was a necessary adjustment to the final settlement of the thing, and agreed to pay the State $875,000. Now, by the contract and the consummation of it, we were relieved of the annual operating deficit of keeping up canal locks and planes. There were men on all the locks and planes; there were men on all the locks; plane tenders had to be on hand; there was a heavy maintenance bill for the banks of the canal and we were relieved of a tax burden, a certain amount of annual taxes that had to be paid, and we considered it a good bargain for us, and the more it has been studied, the more satisfied I am that it was a good bargain for the Lehigh Valley Railroad Company, and at the same time I think I am safe in saying that the State considers the same thing. As they look back upon it they think it was a very good bargain for the State of New Jersey. Now, each party had something that the other did want, but it wasn't particularly useful

to the party that did possess it. Now, there was an ideal situation for a trade, and that is what happened under this contract of November, 1922.

Commissioner Joline: Can you tell me how many shares of stock the canal company had?

The Witness: At the time of the trade?

Commissioner Joline: Yes.

The Witness: We had—

Commissioner Joline: How many shares of stock were issued altogether by the canal company?

Mr. Hunt: 22,000.

The Witness: Yes, twenty-two thousand.

Commissioner Joline: Was that common?

Mr. Hunt: Both. I have it here, Judge.

The Witness: That is both.

Mr. Hunt: Nine thousand—one moment—I can't answer it.

The Witness: I have the exact figure here somewhere.

Commissioner Joline: I want the common and the preferred.

Mr. Hunt: I think I have it right here.

Commissioner Joline: I have forgotten whether it has been testified to or not.

Mr. Hunt: Judge, I can give it to you in just one minute, just as soon as I get an addition.

Commissioner Joline: Has it been testified to?

Mr. Milton: What?

Commissioner Joline: The number of shares the canal company issued.



Mr. Milton: I think it has.

Mr. Hunt: I think it has too, but I can give it to you now. This is from Mr. Boles' own figures prior to the commencement of negotiations with the State, there were outstanding 10,250 shares of consolidated or common stock, of which the Lehigh Valley owned 9,921, and there were in the hands of the public 329. There were outstanding 11,750 shares of preferred stock, of which the Lehigh Valley owned 11,399, and in the hands of the general public were 351. Therefore, the total number of shares outstanding was 22,000.

Commissioner Joline: That is all right.

Q Now, Mr. Boles, at the conclusion of your interesting historical review of the Morris Canal situation you remarked that what was done was, in your opinion, a good bargain for the Lehigh Valley and a good bargain for the State of New Jersey. What kind of a bargain was it for the minority stockholders of the Morris Canal and Banking Company? A Very good also.

Q Why, it didn't make any provision for them at all, dit it? A Yes, sir.

Q What was the provision that their stock should be condemned by the State with the Lehigh Valley paying the bill, that is it? A Yes, sir.

Q Now, prior to the condemnation the Lehigh Valley offered $125. for the preferred stock and $50. for the common stock? A Yes, sir.

Q Do you think that that is a good bargain for the stockholders in a company whose assets to a valuation of approximately and conserva-

tively $22,000,000. have been divided between the State and the railroad company? A Yes, sir.

Q Now, if the value of the assets acquired by the State out of the former Morris Canal property, and the value of the assets acquired by the Lehigh Valley out of the former Morris Canal Company amounted approximately to $22,000,000., that was $1,000. per share for both classes of stock of the Morris Canal and Banking Company, wasn't it? A No, sir.

Q Why wasn't it? A Because you fail to take into consideration a lot of other very important factors.

Q I am only going to take into consideration— A Answer your own question then.

Q If we have got $22,000,000 of assets to divide, and 22,000 shares to divide it amongst, that is $1,000 a share? A Academic, yes.

Q Did your charter of the Morris Canal and Banking Company, granted by this State in 1824, provide that the State might acquire the property on the first of January, 1923, or within twelve months thereafter, by a negotiation between the State and the canal company, in which each should appoint appraisers, and in which the fair value should be ascertained and paid? That provision was in the charter, wasn't it? A Substantially.

Q Isn't that what was done when the representatives of the State and the Lehigh Valley people met together to dispose of this property? A No, sir.

Q What was done then? A Just what I told you a few minutes ago.

Q I believe this is in the record before, but I want to get it plain. What are the preferences that attach to the preferred stock of the Morris



Canal and Banking Company, so far as the charter of the banking company, or any supplement or amendment to the charter is concerned? A Well, I am not versed in New Jersey laws. I suppose that under the New Jersey law, however, they would have a preference in the distribution of assets.

Q I think that supposition is wrong. What I was coming to, have you got here the charter, together with its supplements and amendments? A That is in that Exhibit S. 8.

Q Can you point to any provision in it which states what the preferences of the preferred stock shall be? A I believe there are none.

Q No; there are none. Now, the preferreds, if you might call them that, are to receive a six per cent. dividend on the preferred stock as against a four per cent. dividend on the common stock as preference. That is derived from the lease of the canal property to the Lehigh Valley, isn't it? A Yes, sir.

Mr. Hunt: Simply to get it on the record, on that we can produce a decision of the Court of Errors and Appeals that holds that because it is preferred stock gives it no preference whatever, and unless the certificate of incorporation or charter states what the preferences of the preferred stock are, there are no preferences.

Commissioner Joline: Have you got that decision now?

Mr. Hunt: No, sir; but I remember having to have to cite it in a case and I know Justice Swayze wrote the opinion. Preferences are made by statute.

The Witness: Well, they were a matter of lease, so far as our offer for these two stocks were concerned. They were a matter of this lease. Why that was made I cannot tell you.

Q You can't tell that? A I don't know.

Q Mr. Boles, looking again at the problem in an academic light, if the preferred has no preference in the matter of the distribution of the assets, and if the assets on a liquidation do properly represent $22,000,000 for 22,000 shares of stock, then each share of stock, whether common or preferred, would be worth $1,000, wouldn't it?

Commissioner Joline: Read that question again.

Mr. Milton: Well, it is simply a mathematical calculation of Mr. Hunt, or the Court, or witness.

Q (Question read by the stenographer.) A If you say so, I guess it is correct. It sounds correct.

Commissioner Ferguson: Did the preferred stock carry with it a preferred dividend in any way?

The Witness: Prior to the lease?

Commissioner Ferguson: Yes, prior to the lease.

The Witness: I don't know that, Mr. Ferguson. I think that it did not.

Commissioner Ferguson: There must have been some reason for the Lehigh Valley to differentiate between these two stocks.



The Witness: I think the reason must have been—this is merely a supposition on my part—that there had been some time in the past when the directors of the Morris Canal and Banking Company had considered there was a valid reason for paying a higher dividend on what was called preferred stock and what was called common. There are no preferences stated in the charter.

Q The charter contains no statement of preference so far as I have been able to discover. A I had always assumed, until Mr. Hunt said it was not correct, I had always thought the preferants might have preference in liquidation.

Mr. Hunt: Our Court of Errors and Appeals has held that preferred stock has no preference in liquidation, except as the certificate of incorporation provides for, and this certificate provides nothing.

Commissioner Gaddis: Isn't it so that preferred stock has preference as to financial benefits, but doesn't participate in voting or actual handling of the company?

Mr. Hunt: Well, Justice Swayze said in this case just to call a stock preferred stock gave that stock no preference whatever; that the law attached no definite meaning to the phrase "preferred stock." The incorporators of the corporation must state what preference they mean it to have, or otherwise it has no preference.

Commissioner Gaddis: It would have no voting power?

Mr. Hunt: It would have voting power along with the common stock unless the certificate disqualified it.

Commissioner Ferguson: Is there anything in the certificate of incorporation which subordinates the consolidated stock to the preferred stock?

Mr. Hunt: I haven't been able to find anything regarding that.

Mr. Milton: When you come to consider it—

Mr. Hunt: I suppose it is a question that could be dealt with in the briefs, without taking your time now.

Mr. Milton: The charter is in.

The Witness: Section 2—

Commissioner Joline: Will you have that opinion here this afternoon?

Mr. Hunt: Judge, I am afraid I can't get it here this afternoon. I remember it very distinctly because I embodied it in an opinion I wrote five or six years ago. I could find it for my brief, but I wouldn't want to promise it for you this afternoon.

The Witness: On page 77 of this Exhibit S. 8 you will find a supplement to the Morris Canal charter approved February 9, 1849, and section 2 of that supplement says, "It shall be lawful for the said company to issue 11,750 shares of new stock"—you see, that was later—"to be issued as preferred stock and to bear such rates of dividends as the board of directors may prescribe, to enable said company to perfect their canal." Now, as I say my supposition is that they must have some time in the past have paid a higher rate of dividend on the stock than they did on the other, based on that provision of the charter.



Commissioner Gaddis: This occurred approximately at the time of the reincorporation after the so-called Dutch mortgage?

The Witness: Yes.

Mr. Hunt: That language, under Judge Swayze's opinion which I have referred to, that language would fall clearly within Swayze's opinion to which I have referred, to be known as preferred stock. Now, that means nothing under this opinion unless you say what these preferences are.

Commissioner Joline: If the Legislature gives it the right.

Mr. Hunt: But a corporation may issue two or more classes of stock with such preferences as stated in the certificate of incorporation. Now, we organize a corporation, and we say there will be a thousand shares of preferred stock, and we say there will be a thousand shares of common stock, and we do not say what the preferences of the preferred shall be there on dividends and on the rights on winding up. The result of our failure to say is that the preferred has no rights whatever than from those of the common. The two stand on even keel. I will produce that case, Judge.

The Witness: Of course, the Legislature did say there that the board might fix a higher rate of dividend on this new stock. Now then, any common shareholder of the consolidated stock, which was the new stock, could not object if this new stock paid a higher dividend. To that extent it was preferred if the directors saw fit to prefer it.

Mr. Hunt: As I read that the directors might have made the dividend rate higher in

one year and no higher in another. That we intend to go in here. Our claim will be that this is a matter of winding up, and as we are concerned with the value of the assets upon liquidation, and as the charter contains no provision stating what the preferences in that event shall be, it follows that there are no preferences. It follows therefore that the common stock and the preferred stock are of equal value. On liquidation all of the assets would be divided equitably and evenly amongst all the stocks of both classes.

Q Mr. Boles, has any part of the property in which the Morris Canal Company formerly had an interest, but which became the property of the Lehigh Valley by virtue of the agreement that was entered into, since passed into the ownership of the Lehigh Valley Harbor Terminal Railway Company? A No, sir. It is just possible that that strip—not, it hasn't.

Q Then you are quite sure that the security back of a ten million bond issue of the Lehigh Valley Harbor Terminal Railway Company announces in a circular dated January 7, 1924, does not include any of the property that the Lehigh Valley acquired as a result of this Morris Canal deal? A Yes, sir; that property that is security for the mortgage you refer to, is the property I referred to at the last hearing as the Claremont Terminal. We began to accumulate along in 1915-'16 in the thought at that time that this canal question was never going to be settled. When we turned this canal back to you shareholders one of these days you would have your own deficit to hang and we would proceed with our development down there.



Mr. Milton: That is on New York Bay?

The Witness: Yes.

Q And doesn't include any of this former Morris Canal property? A It does not.

Q Now, Mr. Boles, just to get the record straight on one thing, it wasn't within the power of the Lehigh Valley to turn this property back to the stockholders of the Morris Canal? A It was. We could have cancelled our lease at any time and continued to pay dividends on the outstanding shares.

Q I understand you could pass it back on our clients? A We could, and you would have had an annual deficit of one hundred fifty to two hundred thousand dollars to handle it.

Q If you will give it back to us now we will be very glad to handle it. A You will have to talk to Doctor Kummel about it.

Commissioner Ferguson: When Mr. Vermeule figured your water rights did he figure you would lose them in a few years?

The Witness: Oh, yes; they would have gone back to the State.

Commissioner Ferguson: He figured in his calculations that you had a right for fifty years, or thereabouts?

The Witness: No; he capitalized the annual rights on the water rights for potable purposes, so that capitalization is really in perpetuity. There is no assumption in there for the fact that the water rights would go to the State anyway in 1974.

Commissioner Ferguson: No estimate of that at all?

The Witness: No estimate of that at all, but the figures there, which you will see clearly, are worked out on capitalization to the State and the cities of available water supplies which was both used and tied up—water that was used and tied up because of this canal.

Commissioner Ferguson: Mr. Vermeule—the point I am trying to make is that Mr. Vermeule didn't take into consideration that the State would get these same rights in '74?

The Witness: No; he wasn't asked to. The report clearly speaks for itself on the ground that he simply capitalized the current value of those water rights, that is all.

Commissioner Gaddis: Not for your use but for potable purposes?

The Witness: Potable purposes.

Q Mr. Boles, I have in my hand what purports—and is certified, for that matter, by the Pennsylvania Company for Insurance on Lives and Granting of Annuities—to be a photostatic copy of certificate 6426 for eleven shares of the preferred stock of the Morris Canal and Banking Company, issued under the act of February, 1849. Can you identify that as a photostat of your preferred certificates? A I don't think I ever saw a preferred certificate in my life, but I would take the certificate of the Pennsylvania Company.

Q Have you any objection to my putting it in? A Not the slightest.

Commissioner Joline: Maybe Mr. Milton would object.

Mr. Milton: No; I do not.

(Marked Exhibit S. 9.)



Q "This stock is issued as a preferred stock and is entitled to dividends at the rate of ten per cent. per annum, payable semi-annually on the first Tuesday of February and August in each year, in pursuance of the articles of subscription dated February first, 1850." A There is your answer right there.

Q There is your answer why you paid ten per cent. on one and four on the other?

Commissioner Joline: What is the purpose of offering this in evidence?

Mr. Hunt: Simply to show that the preferred stock isn't given any preference as to distribution of the capital assets.

Commissioner Ferguson: Have you got the common or consolidated certificate?

Mr. Hunt: No, sir; I have not.

Commissioner Ferguson: This is simply, as I understand—

Mr. Milton: We will have one furnished by the Conservation Board.

Q Mr. Boles, I refer to page 1559 of the New Jersey Advanced Reports, pamphlet volume number 4, number 42, issued October 16, 1926, and call your attention to certain properties described in the taxation case in which this is the Supreme Court's opinion, between the Lehigh Valley Railroad Company, and others, and the State Board of Taxes, the properties to which I direct your attention being described under the caption "Morris Canal and Banking Company." Will you just read that and then I will put the question.

Commissioner Joline: What page is this on?

Mr. Hunt: Page 1559.

Q "Block 2, Lot C, location of Hudson Street, 6.96 acres, assessed years 1921-22 at $757,000, or $108,920 per acre. This property was acquired by the State of New Jersey and not assessed for the years 1923 and '24. Affirmed."

Q And the next one. A "B Block 33, Lot L, location Hudson Street, .577 acres, assessed years 1921-22 at $50,200, or $87,120 per acre. This property was acquired by the State of New Jersey and not assessed for the years '23 and '24. Affirmed. C Block 60, lot 37, location Hudson Street, 11.25 acres, assessed years '22-'23 at $1,239,150, or $108,920 per acre. This property was acquired by the State of New Jersey and not assessed for the years '23 and '24. Affirmed."

Q Now, what are those properties, with reference to the Morris Canal and Banking Company? A It sounds like the Little Basin.

Q That is the Little Basin, isn't it? A Part of it.

Q That is the Little Basin that you valued at $1,200,000? A 6, 11, 17, that is the Little Basin.

Q So we find the Supreme Court affirming annual assessments placed against this property prior to the State's acquisition, at $2,044,050, do we not?

Commissioner Gaddis: That is substantially twenty-two and a half acres in the Little Basin?

The Witness: Yes.

Commissioner Joline: When it says affirmed down here, what does that mean?



Mr. Hunt: The Supreme Court affirms the State Board of Taxes assessment. That opinion deals with a great many assessments that were carried up by waterfront property owners and disposed of by the court in one opinion.

Commissioner Joline: But it says the property was acquired by the State of New Jersey and not assessed in the years 1923 and 1924. What does it mean, that that is affirmed?

Mr. Hunt: No; it means that the 1922 assessments, the amount which is stated there, is affirmed. It simply shows the court affirmation of the value found by the State Board of Taxes and Assessment for the last year in which this property belonged to the Morris Canal and Banking Company prior to its passage to the State, which is the date, of course, as of which value is to be ascertained in this proceeding.

Commissioner Joline: Now, do all these three represent the Little Basin?

The Witness: Yes; they are taken together.

*Re-direct examination* by Mr. Milton.

Q Mr. Boles, so as to prevent the forming of an erroneous impression with respect to the property shown on the map, exhibits which are offered here this morning, will you be good enough to state whether or not they show only Morris Canal property, that is, the property acquired by the railroad company in this deal, or whether they show other property as well, both of the railroad company and of other owners?

A Yes, they do show other properties. They show all the adjoining property. We had to do that in order to make the canal property identifiable. The property of the canal company is the part marked there as the canal right of way, plus a towpath.

Commissioner Gaddis: If it isn't clearly indicated, it might be well to take a red crayon and line it, unless it clearly shows up the boundaries.

The Witness: No; it doesn't show its boundary clearly. The boundary, for all essential purposes, is the right of way, the waterway shown on the map, plus the towpath.

Mr. Milton: Would you want us to have the towpath outlined in red?

Commissioner Gaddis: For my part I don't need it, but to prevent any confusion, if there is any question, I think everything included in the lands intended to be shown, at least be superimposed by crayon. I wouldn't undertake to do it myself, but—

Mr. Hunt: I am perfectly willing to have it withdrawn for that purpose.

Mr. Milton: We will mark them.

*Re-cross examination* by Mr. Hunt.

Q Referring again to the assessments mentioned in the Supreme Court opinion which I just laid before you, the Little Basin properties as you said they were, were assessed to the Morris Canal and Banking Company, were they not? A I don't know about that.



DR. HENRY B. KUMMEL, sworn for petitioner.

*Direct examination* by Mr. Milton.

Q You occupy what position in the state service, doctor? A State geologist, director of the Department of Conservation and Development; general manager of the Morris Canal and Banking Company.

Q You became general manager of the Morris Canal and Banking Company when, approximately? A In March, 1923, shortly after the State took over the property.

Q Now, legislation that was passed supplementary to the agreement made by the Commission— A Yes.

Q And the company? A Yes.

Q At the request of Mr. Milton have you produced a certified copy of the resolutions providing for the acquisition by the State of the shares of stock owned by the parties respondent in this proceeding? Have you produced that? A Yes; I have.

Mr. Milton: We offer it.

(Marked Exhibit S. 10.)

Q Did you file in the office of the Secretary of State, and with the registered agent of the Morris Canal and Banking Company, the statements called for by this resolution? A I did; copy of the resolution and statement of the stockholders.

Q And the statement of the stockholders is appended to the resolution? A Yes; on the second sheet.

Q At the request of Mr. Milton have you produced the statement or list of the names of the

persons involved in this proceeding and certificate numbers of their shares or certificates of stock, and the date of the acquisition of those? A I have.

Q Is this the list? A This is the list.

(Marked Exhibit S. 11.)

Q What sum of money, doctor, was expended by the Morris Canal and Banking Company between March, 1923 and March, 1924, in the upkeep or maintenance of the canal? A Approximately $100,000.

Mr. Stockwell: We object.

Mr. Hunt: This is after the State got the property?

Mr. Milton: Yes, sir.

Mr. Hunt: I don't think it is competent. I think it should be stricken out. Our rights must be determined as of the date when this scheme became effective. I think that was March 1, 1923, didn't you testify, Mr. Boles? We are not concerned with anything the State has done since.

Mr. Milton: We are not attempting to charge you with anything the State has done; it is offered for the purpose of corroborating to some degree, Mr. Boles' testimony as to the cost of maintaining this canal.

Mr. Hunt: It isn't competent for that purpose at all. Mr. Boles has only said in general terms that the maintenance of this canal was a burden to the Lehigh Valley. He hasn't told you how much it cost a year. The State may be maintaining it better, it may



not be maintaining it as well. What the State has paid in maintenance charges since its acquisition of the property is not competent at all.

Mr. Milton: I submit it can be brought out on cross examination what extent it should be—

Mr. Hunt: But the subject has no business in the evidence.

Commissioner Joline: The Commissioners do not think that this question is relevant.

Q Doctor Kummel, have any negotiations been conducted between the Morris Canal and Banking Company, or the Department of Conservation and Development, for the sale of the Little Basin to the City of Jersey City? A Preliminary negotiations have been entered into.

Mr. Hunt: I don't think that that is competent if the Court please. Now, after the State has acquired that property, it enters into negotiations to sell it. We are not concerned with that.

Commissioner Joline: You made your objection after he answers the question.

Mr. Hunt: I object to that line of inquiry being further pursued.

Mr. Milton: I will ask Doctor Kummel not to answer this question until Mr. Hunt has had a chance to reflect and object to it.

Q Do you know whether or not Jersey City has refused to buy the Basin for the value assessed by it?

Mr. Hunt: Objected to as immaterial, irrelevant and incompetent. The rule in con-

demnation cases is that offers are not admissible in evidence. Now, certainly any offer is not admissible—if an offer is not admissible the refusal of an offer is not admissible either.

Commissioner Joline: Repeat the question.

Q (Question read by the stenographer.) A I do.

Q Has it?

Mr. Hunt: Objected to.

Commissioner Joline: What was the question?

Mr. Milton: Has it refused to pay for the Basin a price equal to that fixed by it as the assessable value of the property for 1923 or 1924.

Commissioner Joline: The question is admitted. The question now is whether Jersey City has refused.

A I am going to answer that question.

Mr. Hunt: That question can be answered yes or no, Doctor Kummel.

Commissioner Joline: You have got no right to say that.

The Witness: To answer either yes or no wouldn't be a fair answer to either side. I think you had better let me answer it.

Mr. Hunt: I think any answer but yes or no would not be a responsive answer.

Commissioner Joline: You may answer it fully, Doctor Kummel.



The Witness: The gentlemen representing Jersey City, with whom I had preliminary negotiations preceding formal action by the authorities of Jersey City, and formal action by my board, told me very emphatically that Jersey City would under no consideration pay the assessed—price at which it had been assessed.

Commissioner Gaddis: Did he indicate what price he would pay?

The Witness: No.

*Cross examination* by Mr. Hunt.

Q And you are in no way connected with the city government of Jersey City, are you, Doctor Kummel? A No.

Mr. Milton: That is the one regret of the doctor's life.

Q Do you know whether Jersey City has been offered and has accepted or declined, the opportunity to purchase the water front property of the Lehigh Valley Railroad at its assessed valuation? A I don't know.

Q Or the Pennsylvania Railroad? A No.

Q Or the Central Railroad of New Jersey? A No.

Q Or the Delaware, Lackawanna and Western? A No.

Q You don't know whether Jersey City is setting out to buy riparian property located within its borders at assessed values or not, do you? A No.

Q Now, are you looking for a purchaser for the Little Basin? A Yes.

Q Have you offered it to the Lehigh Valley? A Under the law we must settle with Jersey City before we can enter into negotiations with any other purchaser. In other words, Jersey City has a prior right to purchase, priority under the law to purchase property if they can come to agreements with the State.

Q This general provision that gives every municipality through which the line passed the first right to purchase that part of the canal property which is within its borders, is that the one? A Yes.

Commissioner Joline: How long?

The Witness: The law specifies that they must indicate their desire to negotiate with the canal company previous to the first of January, 1925, that law having been passed in April or March, 1924. Jersey City, according to that provision of the act, did file with the canal company a resolution desiring—expressing its desire to negotiate. The law is silent as to the length of time subsequent to January 1, 1924, that that property must be held open.

Mr. Milton: Do you mean '24 or '25?

The Witness: '25. The board has—the canal company has interpreted the act in the spirit that full opportunity must be given to the municipalities to lay plans for the future use which they may wish to devote the property to, but that after negotiations when the canal company has finally set a price upon the property the municipality must act within a reasonable time, either accepting it or declining it. Failing to take such action after what would be interpreted



as a reasonable time, the board is then free to advertise it for sale to any purchaser. Negotiations with Jersey City are still under way.

Q Now, Doctor Kummel, the board, under that provision of the law that you have just referred to, did call for tenders sometime last year from parties other than the municipalities within whose borders the land lay, for a small piece of land abutting on Greenwood Lake, did it not? A Yes.

Q Was that a few acres or only a fraction of an acre? I don't remember. A I think it was two or three acres.

Q And your tender was at the rate of somewhere approximately ten thousand dollars per acre, was it not? A No; the lump sum, was, as I recall, $15,000.

Q $15,000 lump sum? A Lump sum, and my recollection is it was about three acres was involved.

Q Now, how did that offer of $15,000 compare with the assessed value of that piece of property in the last year in which it was assessed for taxation, that is, the year prior to the State's becoming the owner of it?

Mr. Milton: Fix the time, please.

Q Well, the last assessment would be 1922. A That piece of property was never assessed separately. The canal company owned, as I recall, several hundred acres of land under Greenwood Lake, and this very small tract of land adjoining the dam at Greenwood Lake. The property there was all assessed as one lump piece of property. I don't recall—I could find out, but I don't recall the lump assessment which

was made upon that whole property. I know I recall the tax for that year was somewhat in excess of $2,000.

Q That is the tax on several hundred acres, including lands under water? A Yes.

Q And including also the dam and the structures at the foot of Greenwood Lake? A I presume the dam was included in that general assessment of the property at the south end of Greenwood Lake.

Q Now, Doctor Kummel, would you be good enough to look that up and send a copy to me and Mr. Milton and Judge Joline, as chairman of this commission, stating the assessment on that land under water and the—

Commissioner Joline: Why can't he testify to it some day?

Mr. Hunt: I thought you might not meet again, Judge Joline, that is all.

Commissioner Joline: And you say you have some other testimony?

Mr. Hunt: Oh, no. We are practically through.

The Witness: You want the facts in relation—

Mr. Hunt: To the lands of Greenwood Lake.

The Witness: The assessment of land and so forth.

Mr. Hunt: Yes. Of course, if there is an assessment on land and a separate assessment on structures, and so on, then it would be only the land assessment we deal with. I want to see how the assessed value compares with the tender of the $15,000 that you had



for this tract, and you could state the exact size of this track that you offered.

The Witness: I can give that.

Q Now, wasn't there another small tract some distance above that one on the shores of Greenwood Lake that you also asked for tenders for? A No. May I say, incidentally, that no sale was consummated there.

Q I understand that. That was because it was asserted by other interested parties that there was a defect in your advertisement, was there not? A Yes.

Q And you contemplate offering the property at resale? A The board has taken no action at all in regard to that.

Q I believe that the parties who protested against the consummation of the sale that you might have made as a result of these tenders, offered to guarantee you at least as good a bid if the property were offered again, did they not? A No. I don't recall that they did. I am very sure they did not.

Q Have you sold some other parcels out of the canal right of way as it extends across the State? A Yes; a large number.

Q Have you sold to parties other than the municipalities? A Yes.

Q In which the lands lie? A Yes.

Q Now, with regard to the Little Basin property in Jersey City, have you had offers for that from any other concern? A Immediately after taking possession of the property in March, 1923, I received one or two letters from real estate persons in New York City asking if the Little Basin property was for sale. I remember answering one of those letters with a counter

question to the effect how much were they prepared to bid for it, and I received an answer to that—of course, the purpose of that inquiry was plain—under the law we couldn't consider it—but I wanted to get a line as to what it could possibly be sold for.

Q Did the party indicate what he would be willing to pay? A Yes.

Q It was a less price than you were proposing to ask in Jersey City, wasn't it? A At that time we had no—

Q Well, it was less than the assessment? A Oh, yes; very much less than the assessment.

Q It wasn't an offer that you for a moment entertained any thought of accepting? A Well, knowing that under the law that we couldn't accept any offer or couldn't consider it, I didn't take it seriously whether we would if we could.

Q Aside from your legal inability to accept that offer, you wouldn't as a practical matter, receive it?

Mr. Milton: He hasn't the right to accept or refuse it, as a matter of fact.

Mr. Hunt: Well, Doctor Kummel is a member of the board.

Mr. Milton: He is not a member of the board.

Q Then Doctor Kummel as general manager or state geologist or president of the State Board of Conservation and Development, would Doctor Kummel in any capacity have recommended the acceptance by the State of New Jersey of this offer made by a real estate agent in New York of a sum much less than the tax assessment? A I can't say what I would have done in March,



1924, if we had been at liberty to sell at that time. In the light of my present knowledge I can say if that offer were repeated at this present time, and we were free to accept it, or reject it, I would recommend the board to reject it.

Q Has the Lehigh Valley made any offer, or tried to enter into negotiations to acquire the property, Doctor Kummel? A No; not with me.

Commissioner Gaddis: Has there been any income or dividend earned or received other than the money that is received from the sale of property, since it has been in your care?

The Witness: Yes; there has been rentals for portions of the Little Basin; rentals from some other parts of the property. Payments for privileges such as location of telegraph and telephone poles along the right of way, wire crossing.

Commissioner Gaddis: That is the Vulcan Iron—

The Witness: We took over everything and we continued at the same rate for the various leases. There have been a good many changes since then with people surrendering leases and my negotiating a new one where I could.

Q Does the Vulcan Iron Works carry on on the shores of the Little Basin the business of ship repair?

Commissioner Gaddis: The Little Basin—

Mr. Milton: They are out now; everything at a standstill.

Commissioner Joline: Doctor, are you willing to give us the amount that these people in New York offered you for the Little Basin?

Mr. Hunt: We would object to that as not competent when it appears from Doctor Kummel that the State was not at that time free under the law to sell the property, and he has said that the offer was one which in the light of his present knowledge he would advise the State to reject. Somebody might come along and offer a thousand dollars for the property. We ought not to be prejudiced by that.

Commissioner Joline: Well, we are going to take it for what it is worth.

The Witness: My recollection is that the man wrote me that he thought he would have no difficulty in finding a customer for the property at $1,250,000.

Commissioner Joline: Do you know anything about whether the operation of this canal has shown a deficit for a great many years or not?

The Witness: I have no personal knowledge. I have only the knowledge which I gleaned by going over very carefully that book which has been referred to so frequently, which I think you have before you.

Commissioner Joline: The one by the Honorable George B. Werts, Griggs and Voorhees?

The Witness: Yes, the report—on the latter part there is a table.

Commissioner Joline: That is page 129?



The Witness: That is the table. I have no knowledge as to the accuracy of those figures whatever. Whatever knowledge I would have as to the profits or deficits of the canal company would be derived from that information supplemented by such information as I might glean from going over the minute book of the canal company.

Commissioner Joline: That shows they lost money for a great many years, does it not?

The Witness: Yes, it does. I might say that the canal company, that is the present canal company acting as trustee for the State, has no financial records of the old canal company. There were a great many records stored in a building in the Little Basin. A fire cleaned them all out. I don't think they were any records of value. I think all the papers of value, of great value, title papers and so forth, had been carefully culled out and turned over to us, but there may have been old account books which would verify those figures, in that building.

Commissioner Gaddis: Isn't there a serious question as to the validity of the titles and some portions of that continuous right of way now that it has ceased to be used for canal purposes?

The Witness: That is perhaps a legal question I am not perhaps competent to answer, but there are different classes of titles. There is certain portions of that strip acquired by condemnation proceedings in accordance with the terms of the charter. There was other portions which were acquired by deed which contained reversionary

clauses. So long as used for the purpose of the canal, so long as used in accordance with the terms of the charter, there was several different forms of consideration used. There are also portions of the property which were acquired by warranty deeds in fee simple. There are also some portions of the property for which the only basis of the title is a promise to convey, in case the canal is located across the man's farm, and there are a few strips of the property for which we can find no paper title. In other words, they are held by occupancy of a hundred years.

Q Dr. Kummel, none of those difficulties of title apply to the Little Basin property, do they? A No. It is my understanding that we have a title fee to the Little Basin.

Q Or the Big Basin property? A I know nothing about the title of the Big Basin.

Q Or the title of the property in Phillipsburg acquired by Lehigh Valley? A I never looked into that.

Q Or the title to the property in Hudson County retained by the Lehigh Valley? A I don't know. I assume that is like the balance of the main stem through Newark, part by condemnation, part in fee, part by deeds with reversionary clauses.

Q But you don't know? A No; I don't know.

Q Now, before you offered this property to Jersey City did you have it examined and appraised by any real estate experts? A We had it appraised by a gentleman whom we had reason to believe was thoroughly familiar—



Q With values there? A With values there. He is not a real estate man.

Q May I ask who that was? A J. J. Mantel.

Commissioner Ferguson: What was his report?

Q What is his business? A He is vice-president, I think, of the Erie Railroad, and during the war he was in charge of the government of all harbor front properties in New York City.

Q Now, was his appraisal of the property less than the tax assessment, or more? A Less.

Commissioner Joline: What was it, do you remember?

The Witness: He appraised it on two different basis. By one it was $1,614,000. The other method of reaching the valuation was, as I recall, $3,000 either more or less than that figure. The two methods were within $3,000 of each other.

Q Was the Erie Railroad a possible purchaser of the property? A No. We sought Mr. Mantel out because we had been advised that he was a man thoroughly familiar with water front properties. He had no affiliation, so far as we knew, with the government of Jersey City, and had appraised this property before.

Q But he was vice-president of the Erie Railroad? A Yes.

Q Now, you know, do you not, that for many years past that the railroads entering Jersey City have combined in contesting local assessments, carrying the assessments by the local assessor first to the Hudson County Tax Board,

then to the State Board, and then to the courts for review, and always contending that the assessment was too high? A It is a matter, I believe, of common report. I don't know beyond what I see, allusions in the papers of the appeals.

Mr. Hunt: Are you willing—

Mr. Milton: We will concede that the Erie Railroad has joined in such an offer.

Mr. Hunt: With the Lehigh Railroad Company?

Mr. Milton: Certainly.

Q Dr. Kummel, since the State's acquisition of part of the Morris Canal property, it is true, is it not, that Mr. C. C. Vermeule has been retained by the State Board of Conservation and Development as its engineer and technical advisor in respect to that property? A Let me set you straight; he has been retained by the Morris Canal and Banking Company.

Q Since the acquisition of the shares of that company by the State of New Jersey, is that correct? A It is; as its consulting directing engineer in the dismantlement work of the canal. His duties are rather sharply limited to that extent, but he has charge of all the dismantlement work for the canal company. We make a sharp distinction between the canal company and the Board of Conservation and Development.

*Re-direct examination* by Mr. Milton.

Q Will you say, Doctor Kummel, whether you have called upon any stockholders of the Morris Canal and Banking Company to pay any part



of the cost of operating or maintaining the canal, or expenses of Mr. Vermeule, or anyone else in connection with the operation or maintenance of the canal?

Mr. Hunt: That is objected to. We admit our clients haven't paid. The thing which our clients own is shares, but haven't owned any of this property since March 1st, 1923.

Commissioner Joline: We are going to admit the question.

Q (Question read by the stenographer.) A We have not.

Q In other words, doctor, the property which was acquired by the State of New Jersey, its upkeep has been wholly, exclusively and entirely at the expense of the State of New Jersey? A Yes, sir.

Q Less whatever may have been derived in revenue from the property, that is right? A Yes; that is right.

Q The stockholders of the Morris Canal and Banking Company have not been called upon to contribute any part of such cost? A No.

Q Other than the State, of course, as stockholders? A Yes.

Commissioner Ferguson: Did the State acquire the stock of the Lehigh Valley?

The Witness: Yes.

Commissioner Ferguson: So it stands in the shoes of the Lehigh Valley so far as stock ownership in the Morris Canal and Banking Company?

The Witness: Yes; all of the stock which was owned by the Lehigh Valley, either di-

rectly or was held by its officers and employees as directors of the canal company, was all signed over to the State, and by the act of the Legislature the Board of Conservation and Development is the State agent in voting and holding that stock.

Commissioner Ferguson: Where do you get your hundred thousand dollars yearly to maintain the canal?

The Witness: Whatever money the canal company has spent since March 1, 1923, has been appropriated to it by the Legislature in the annual appropriation bill. Most of the money that has been appropriated has been the $875,000 which has been paid, all except the final payment, by the Lehigh Valley. In addition to that we have had the income from rentals which have varied from about $75,000 down to about $50,000 a year.

Commissioner Ferguson: What you are really doing is eating up the $875,000?

The Witness: Nearly almost eaten. To prevent misapprehension on the part of the previous answer, the hundred thousand dollars which I spoke of annually was merely the cost of the maintenance of the first year. Because at the end of the first year the Legislature passed additional legislation that the canal should be abandoned as a navigable waterway, and directed the canal company to go to very great expense in taking down the old bridges, draining the canal, putting dams at the various reservoirs in shape, and we have spent already $750,000 in that dismantlement work in addition to the cost of engineering and the overhead. Until the bridges are removed,



we had to, of course, maintain them, so we have had the two costs, the cost of dismantling and cost of maintenance going on; the maintenance cost steadily growing less, the dismantlement work, of course, constantly increasing. We have spent in the neighborhood of one and a quarter million dollars since we took over the property.

Q This came exclusively out of revenue from the property or payments made by the Lehigh Valley Railroad Company, or from moneys from the State of New Jersey, advanced by it through the medium of legislative appropriation, the State being stockholders in the Morris Canal and Banking Company, that is right, is it? A Yes. May I make this clear? That the canal company cannot use any of its income except by legislative authority as voiced in the annual appropriation bill, but each annual appropriation bill has given us authority to use whatever we have derived from rents, plus a specified amount of money which has already been paid, or shall be paid by the Lehigh Valley, and in addition to that we have had $200,000 appropriated from the general treasury.

Q None of the moneys expended in the manner you have described aggregating over a million dollars, has been contributed by any stockholder of the company other than the State of New Jersey? A That is correct.

Commissioner Ferguson: How do you treat these other stockholders, doctor, do you have an annual meeting of stockholders and do you allow these stockholders to vote?

The Witness: Certainly.

Commissioner Ferguson: Treat them the same as any stockholders of any corporation?

The Witness: Absolutely. The annual meeting is held on the—the annual meeting met pursuant to notices sent out to all of the stockholders. I think at two of the annual meetings the minority stockholders were represented. I think at the last meeting held last April, nobody—no minority stockholders. Some of the minority stockholders sent in proxies.

Commissioner Ferguson: And the Lehigh Valley pays to the Moris Canal Company, through you—

The Witness: Lehigh Valley makes payments to the minority stockholders direct. I have no knowledge that the minority stockholders ever have received anything; personal knowledge. Whatever they have received has been directly through the Lehigh Valley, not through me.

Mr. Boles: That is in accordance with the contract of 1922. We agreed to take care of those dividends.

*Re-cross examination* by Mr. Hunt.

Q Doctor Kummel, most of the expenditures that have been made on the property since it came under your charge have been made in connection with a course of conduct or treatment of the property directed by the Legislature, or by the State Board, and entirely different from the treatment accorded it by the Lehigh Valley Railroad Company, isn't that the case? A Everything, except the first year.



Q Yes. You have been taking down bridges and diverting water from canal channels into their original channels? A Yes.

Q And so on and so on? A Yes.

Q Absolutely different. You cannot say that the greater bulk of this money that you have spent has been spent for the upkeep and maintenance of the property as it was, can you? A No.

Q On the contrary, to the extent of perhaps ninety-five per cent. it has been spent otherwise than in maintenance as it was, isn't that so? A I don't think the percentage is as high as that, but by far the larger amount has been spent in dismantlement work.

Q The property in the hands of the State is considered by the State's representatives, of whom you are one, to possess enormous value, is it not? A No. Not enormous value. If we can wind up the work and turn back a small surplus to the State over and above the expenses, I think we have been doing very well.

Q But you wouldn't contemplate, in your winding up, parting with the water rights. Those the State would possess forever, wouldn't it? A If they haven't already been forfeited.

Q Assuming they have not been forfeited, it isn't the intention of the State Board of Conservation and Development to part with them, is it? A My recollection of the law is that the Board of Conservation and Development, or the Morris Canal and Banking Company, I forgot which, does have the power to grant to the various municipalities or State agencies which are engaged in providing themselves with a water supply, the rights to take these waters. In that sense the State may part with those.

Q And you make these in consideration of the annual payments to be made by the grantees? A We haven't made any yet, so—

Q I thought you were recently contemplating charging the City of Trenton a considerable sum of money in consideration of its drafts of water from the Delaware River? A That has nothing to do with this.

Q But the same thing will apply to this water, you will get payment for this water under that legislation? A As I look at it, whatever income the State may derive from what we call excess diversion charges the State would get regardless of those Morris Canal rights, because that is automatic, as a municipality increases its consumption of surface water over and above certain amount, it pays the State at the rate of one dollar a million gallons, so regardless of whether water comes from a stream which was formerly a source of supply for the Morris Canal, or comes from some other source, the State gets this revenue.

Q Now, doctor, was it your business in your official capacity to see to it that the provisions of the agreement dated the 29th of November, 1922, between the Commissioners representing the State and the Lehigh Valley and the Morris Canal and Banking Company, were carried out? A No.

Q Have the provisions of that agreement been carried out? A So far as I know, yes; except the Lehigh Valley still owes the State one payment which is due on December 15th. I presume we will get it.

Mr. Boles: I saw the check the other day.



Q Reading from page 10 of the publication issued by the Department of Conservation and Development, entitled "Laws providing for the Acquisition of the Morris Canal," "The Companies"—the Morris Canal and Lehigh Valley—"will convey or cause to be conveyed in fee, except as hereinafter noted, to the State of New Jersey by deed of bargain and sale, with covenant by the Lehigh Valley Railroad Company against its own acts and the acts of the Morris Canal & Banking Company, all the lands, lands under water and premises comprised within the Canal Terminal Basin in Jersey City, commonly called the 'Little Basin,' with the docks, wharves, slips and improvements appurtenant thereto," and so on. Was that conveyance made, Doctor Kummel? A It was.

Q I read also from page 11. "The Companies"—Lehigh Valley and Morris Canal—"will convey to the State of New Jersey by like deed with like covenant, for the purposes of a public waterway, all their right, title and interest in and to a strip of land and land under water located in Jersey City and partly within the limits of the "Big Basin" and bounded and described as follows." Was that conveyance made? A It was.

Q I read also from page 12. "The Companies"—Lehigh Valley and Morris Canal—"will convey, or cause to be conveyed, to the State of New Jersey by like deed with like covenant all lands and right of way of the Canal Company between the westerly shore or bank of the Hackensack River in the Town of Kearny and the southerly line or side of Main street adjacent to Green's Bridge in the Town of Phillipsburg aforesaid, and further, all the right, title and

interest of said companies or either of them or any subsidiary company of, in and to all that part of the canal property and its feeders between the said westerly shore or bank of the Hackensack River in the Town of Kearny and the southerly line or side of Main street adjacent to Green's Bridge in the Town of Phillipsburg, together with all the lands which said companies last mentioned own which are appurtenant to or used in connection with the aforesaid part of the canal, and its feeders, and also all lands, land under water, water and water rights, rights of flowage, pondage and diversion of water appurtenant to the canal, together with all rights of the Canal Company and of its lessee, the Lehigh Valley Railroad Company, or of any one claiming under them or either of them, appurtenant to, or used in connection with the canal, to take, use, impound, divert, sell and dispose of water. The deed to be given to the State to embrace the surrender to the State by the Morris Canal and Banking Company and the Lehigh Valley Railroad Company of all the right and title acquired by or vested in said companies or either of them to impound, divert or take water at any point within the State for any use or purpose in any way incident or pertaining to the canal or to the operation of the canal, its feeders, works or appurtenances." Was that conveyance made? A A conveyance was made which purported to do all of that. I presume it did.

Q Well, it was provided further in this agreement that these instruments of conveyance, and so on, should be approved as to form by the Attorney-General of the State of New Jersey. Were they so approved? A They were, and bear his signature.



Q Now, I read further from page 13, paragraph 6, "The said companies"—Morris Canal and Lehigh Valley—"will assign, transfer and set over to the State of New Jersey all personal and mixed property of the said companies used in connection with said canal." Was that done? A It was. I got twenty-one mules.

Q I read further, "The Lehigh Valley Railroad Company will, at its own expense, maintain the said Morris Canal as a canal in the usual manner until the 1st day of March, 1923." Was that done? A It was.

Q I read further, "The said companies—"

Commissioner Joline: Can't you ask him a general question?

Mr. Hunt: No, sir; I think this is important, Judge. I am almost through.

Q "The said companies will assign, transfer and set over, or cause to be assigned, transferred and set over to the State of New Jersey by a proper instrument in writing all existing leases, licenses and undertakings covering any part of any of the property to be conveyed or transferred to the State of New Jersey, and will deliver, or cause to be delivered, to the State of New Jersey all documents, maps, records, deeds and muniments of title relating to any of the property to be conveyed or transferred to the State of New Jersey." Was that done? A It was.

Q And "The Lehigh Valley Railroad Company will, in each of the several deeds of conveyance and instrument of transfer to be delivered hereunder by said company to the State of New Jersey, covenant that the property and

rights to be conveyed or transferred are free fom encumbrances, except as the same may be encumbered by rights created by and existing under the leases, agreements and other writings enumerated in the schedule attached hereto and marked 'Schedule A,' and except the mortgage securing the payment of bonds in the amount of five hundred thousand dollars.'' Was that done? A It was.

Q And then ''The Lehigh Valley Railroad Company hereby covenants that all debts of the Morris Canal and Banking Company have at the time of the execution hereof been paid and satisfied, except the $500,000 bond issue.'' Is that correct? A It is.

Q And all these deeds and other instruments are to be delivered on the 1st day of March, 1923, at your office. That was done? A What is that last?

Q The deeds were to be delivered the 1st day of March, 1923, at the office of the Board of Conservation and Development? A They were delivered into the office of the Attorney-General.

Q Now, Doctor Kummel, I was laughed out a few minutes ago for saying that the company in which our clients own stock no longer owns any property. Now, you tell these gentlemen what property the Morris Canal and Banking Company now owns?

Commissioner Joline: Who laughed at you?

Mr. Hunt: These gentlemen here laughed at me. He said, ''That is fine; we will take Mr. Hunt's statement.''

Q After these deeds were delivered, I ask you what property the Morris Canal and Banking



Company owns in the whole world? A I know of no property that the Morris Canal and Banking Company owns in its own rights.

Q Do you know of any property that stands in the name of the Morris Canal and Banking Company? A All of that property which you refer to was by law, title was vested in the Morris Canal and Banking Company as trustee for the State of New Jersey.

Q When was that done against these conveyances that you have just admitted were made? A The day before the conveyances were made.

Q Well, when the Morris Canal and Banking Company made these conveyances, to whom did the conveyance run, to the State of New Jersey? A My recollection is they ran to the State of New Jersey.

Q Could you produce them before the commission—

Mr. Boles: We will admit they did.

Mr. Hunt: It is true all this property has been conveyed by the Morris Canal Company to the State of New Jersey?

Mr. Boles: No; that isn't true.

Mr. Hunt: Produce the conveyances, Doctor Kummel. Of course, certain other parts of the property were conveyed to the Lehigh Valley. Is that the reason you cannot make the full admission?

Mr. Milton: You seem to resent our offer to get you straightened out on some of your facts which I think someone has confused for you, Mr. Hunt.

Mr. Hunt: Well, here is the agreement.

Mr. Milton: You were all mixed up on your details; you are confused about this. I don't want to be offensive to you.

Mr. Hunt: You were never offensive, but your client negotiated this agreement and signed it in behalf of the Lehigh Valley Railroad Company—

Mr. Milton: Please don't take this on the record, a speech to me.

Mr. Hunt: Mr. Kummel has just testified that these various conveyances called for by this record have been actually made. Now, I ask if these conveyances have been made, what property there is left vested in the Morris Canal and Banking Company.

Mr. Milton: Mr. Hunt, as one lawyer to another I want to give whatever information I have. I think you may agree upon the effect of it, but perhaps you have overlooked the effect of Chapter 11 of the Laws of 1923.

Mr. Hunt: What page is that?

Mr. Milton: Page 19 of this pamphlet that you have been looking at.

Q Doctor Kummel, since the making of the conveyances to the State which you have testified to a few moments ago had been made, has the State conveyed any of the property covered by these conveyances to anybody or any organization? A Yes.

Q All right; to whom—to what? A To some municipalities and to a large number of individuals.

Q Well, except for conveyances to municipalities and individuals of parts of that property has the State conveyed— A I don't believe I get



your question. We have conveyed a considerable number of parts of the right of way. We have also conveyed certain parcels of the property outside of the right of way to individuals. We have also conveyed certain portions of the right of way and parts outside of the right of way to municipalities. We have given deeds in every case.

Q You have given deeds to those third parties who have bought? A Yes.

Q But with respect to the bulk of the property which has not been bought by third parties, you haven't given deeds and the situation remains as these conveyances left it? A Title rests where those conveyances and that law leaves it.

Q There is no doubt, is there, that the title to the property which you have not conveyed to third parties, now rests either in the State of New Jersey or in some other agency as trustee for the State of New Jersey?

Mr. Milton: Objected to on the ground it calls for a conclusion of law.

Commissioner Joline: Objection sustained.

Mr. Milton: Mr. Hunt asked that we produce correspondence with some of these purchasers of stock. We have it all here, and Mr. Ferguson asked that we produce all of the purchases and sales of stock of the Morris Canal and Banking Company, and we have that list here, beginning in 1871 and continuing right down to June, 1923. It is a complete full list of all of the purchasers of stock of the Morris Canal and Banking Company, made by the Lehigh

Valley Railroad Company, both preferred and consolidated. We offer that.

(Stock list marked Exhibit S. 12.)

(Correspondence marked Exhibit S. 13.)

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EDGAR H. BOLES, recalled for further

*Direct examination* by Mr. Milton.

Q Mr. Boles, you were asked to investigate the records of your company to ascertain what purchases and sales of stocks of the Morris Canal and Banking Company had been made, were you? A Yes, sir.

Q You have done that? A Yes, sir.

Q And you produce the list of purchasers of consolidated and preferred stock of the Morris Canal and Banking Company made by the Lehigh Valley Railroad Company? A From 1871 to date.

Q Yes. Which are Exhibits S. 12 of this date? A Yes. We show in red the price per share. That has been added in red ink.

Q Did you also ascertain at the request of the commission, whether or not there had been any sales of stock of the Morris Canal and Banking Company made by the Lehigh Valley Railroad Company? A Yes.

Q What is the fact about that? A There were sales—they were of many years ago, and the detail is lacking, but I can give you the prices per share.

Q How many years ago? Can't you give us the dates? A Yes; sales of preferred stock, there were 639 shares of the preferred—that is



the total amount sold between May, 1873, and May, 1891, and the prices during that period ranged from $119 to $205. And between January, 1872, and November, 1892, 56 shares of the consolidated stock were sold and the price ranged between $48.50 and $80.

*Cross examination* by Mr. Hunt.

Q In this correspondence with stockholders as far as I have been able to look over, I find no copy of the letter that you must have sent out first to each stockholder. I find stockholders' replies to a letter from you, and then your answers to their replies, but I do not find the original. Do you find anything like a circular? I would like to see what representations were made in the first notice you must have sent out to shareholders. You said you sent the same letter to each one. Now, I don't see any copy of any such letter. A I thought I had given it to you. Here it is, Mr. Hunt, the letter and the people to whom it was sent are all there together.

Mr. Hunt: I would like to read from the circular that the Lehigh Valley sent out to minority stockholders, dated January 11, 1923. "Dear Sir: The Lehigh Valley Railroad Company recently negotiated an agreement with the State of New Jersey under which the old Morris Canal is to be abandoned. In accordance with the agreement we have turned over to the State authorities all the stock of the canal company in our possession.

"According to the records you are the owner of shares of the preferred stock of

the Morris Canal and Banking Company which leased the canal to this railroad, for which we will pay you $125 per share. As you undoubtedly are aware, the stock represents no actual value and its earning power furthermore is only for a limited period because of the expiration of the canal company charter. This offer is made to you now because our only other alternative is to begin condemnation proceedings, which we will have to do if you are not disposed to accept this proposition. If further information is desired I shall be glad to furnish it.''

Commissioner Joline: That was the preferred stock.

Mr. Hunt: And the letter to the common stockholders bears the same date, January 11, 1923, and is in the same language, I think Mr. Boles said, except you will pay $50 a share?

The Witness: Yes, sir.

Mr. Hunt: Now, I have looked over some of the answers that these letters drew from stockholders, and I think they are very informative and I think the Commission should read them.

(Hearing closed.)

BOTH SIDES REST.



(ORIGINAL.)

Filed May 19, 1927.

In the matter of the application of the State of New Jersey to condemn shares of capital stock of the Morris Canal and Banking Company owned by

George M. Flint,
Marion D. Hallowell,
Clarissa E. Landell,
Morris F. Miller,
E. Estelle Richards,
Safe Deposit & Trust Company of Baltimore, Maryland,
Frederick Sefton,
Anna M. Stearns.

Report to Honorable Thomas W. Trenchard, Justice of the Supreme Court.

By Commissioners Charles V. D. Joline, Frank C. Ferguson, Percy A. Gaddis.

All the shares held by the above persons are preferred stock, except those held by Morris F. Miller, which are consolidated or common stock.

Edward L. Katzenbach, Attorney-General, John Milton and John J. Mulvaney, for the State.

Edgar W. Hunt and Charles A. Malloy for Marion D. Hallowell, Morris F. Miller, M. Estelle Richards, and the Safe Deposit and Trust Company of Baltimore, Maryland.

Henry F. Stockwell of Bleakly, Stockwell & Burling for Clarissa E. Landell, Ada M. Stearns, Frederick C. Sefton and George M. Flint.

The Commissioners met on May 28th, 1926, were duly sworn as required by the order appointing them; heard testimony from time to time, which we herewith return to the Court; heard oral arguments; considered the briefs presented by respective counsel, and herewith make our report.

The position of each party may be summed up briefly as follows:

## THE STATE.

Liability for the value of stock based on the earning capacity computed on the dividend return guaranteed by the Lehigh Valley Railroad Company.

## THE STOCKHOLDERS.

The claim was that they were entitled to a proportionate share of the value of the assets of the Morris Canal and Banking Company at the date of abandonment.

The stockholders based their contention on their rights under the original charter of 1824, under which they claim that on dissolution of a corporation all stock be it consolidated or preferred, participates equally in a pro rata or proportionate share of the assets.

They cite the "Dartmouth College" case and others which apparently support that contention. The State insists that no change was made in the charter of the Morris Canal and Banking Company except in the manner of acquisition of stock which is only a matter of procedure, but it contends that the minority shareholders waived those rights, if they existed, by accepting the guarantee of the Railroad Company to pay dividends, at the time when the Morris Canal and Banking Company leased their entire property to the Lehigh Valley Railroad Company in 1871.



The lease was authorized by Act of Legislature. Terms and remedies were contained in said act for the protection of minority stockholders. (The Lehigh Valley owned approximately 97% of all outstanding stock at the time the lease was made.) There is no evidence before us of any protest having been made by minority stockholders.

## FINANCIAL SITUATION.

The financial situation of the Canal Company as shown by Statement of Operation, page 129 of Three Governors Report, shows net earnings of Canal Company in 1864 to have been $353,936. Decreasing each year to $107,003 in 1870, and showing a deficit of $176,257.33 in 1871.

There was an aggregate deficit amounting to $8,489,393.59 during the 32 years from 1871 to 1902, inclusive, or an average of $265,290.73 per annum, which deficit was met by the Railroad Company under the terms of lease.

The evolution in transportation methods rendered the canal unprofitable for more than fifty years past. This brings us to the consideration of what were the physical assets at the time of abandonment.

## ASSETS.

The assets consisted of land in right of way, terminal facilities between tidewater on the

Hudson River in Jersey City to tidewater on the Delaware River at Phillipsburg, New Jersey, and some obsolete equipment, the actual canal ditch, right of way for feeders, certain rights to draw water for maintenance and operation of the canal as such, granted by the State through the charter.

The assets were burdened under the charter by the requirement to maintain the property in navigable condition. The information at hand tends to show that, that obligation cost between $250,000 and $500,000 per year to perform.

The portion of the assets deeded to the Lehigh Valley Railroad under abandonment agreement consisted of the land in right of way from Washington street to the Hackensack River, all in Jersey City and Bayonne, New Jersey, and certain land in the Town of Phillipsburg from a point near Green's Bridge to the Delaware River. The approximate value of which land was less than $875,000 or the amount of cash paid the State by the Lehigh Valley Railroad under the abandonment agreement.

The next valuable asset remaining was the so-called Little Basin, the old tidewater canal terminal located on the Hudson River in Jersey City, containing 12,541 acres, which land is now owned by the State and assessed by Jersey City for $2,156,800. It was appraised for the State by Mr. Mantall, Vice-President of the Erie Railroad, for $1,614,000.

The next claim by the stockholders to be an asset was the so-called Large Basin, consisting approximately of 40 acres of land under water in Jersey City. It was leased by the State to the Canal Company in 1867 for an annual rental of $25,000 per year and never used. The lease



was sold by the Canal Company to the Lehigh Valley Railroad in 1889 for $500,000, then converted to a grant by the Railroad Company and developed by it. We do not consider that the Canal Company has any equity therein.

The stockholders claim that the largest and main assets are the water rights that were owned by the Canal Company and passed to the State on abandonment.

In a report made by C. C. Vermeule, an eminent engineer, the water rights for potable purposes were worth in excess of $12,500,000; allowing that estimate to be true, we are of the opinion that the charter did not give the right of use or sale of water for potable purposes but only carried the right of use, for maintenance and operation of the canal.

The State of New Jersey now holds approximately 97% of the stock of the Canal Company assigned to it by Railroad Company under agreement of November 29, 1922.

It appears by the testimony of Henry B. Kummel, Director of the Department of Conservation and Development, and general manager of the Morris Canal and Banking Company, that over $750,000 has been spent on dismantlement work, in addition to cost of engineering and overhead, or a total of over one and a quarter million dollars since taking over the Canal by the State, and is still expending large amounts in care and dismantlement.

In view of the situation as above set forth, it is our opinion that the stockholders are entitled to an amount representing the present day cash value of an expectant installment income represented by the dividends guaranteed by the Lehigh Valley Railroad Company for the balance of the life of the charter ending in 1974.

The value of such sum computed according to "Inwoods Tables," 30th edition, published in 1920, a recognized authority for valuing estates, revision, annuities, etc., is as follows:

The present day value of an income of one dollar per year received in semi-annual payments for a period of 48 years on a 5% investment basis is $18.30.

Therefore, each Consolidated Share having a guaranteed annual income of $4.00 per share, its value is four times that of $1.00 or 4 times $18.30 ..... $73.20

Likewise, each Preferred Share having a guaranteed annual income of $10.00 per share, its value is ten times that of $1.00 or 10 times $18.30 ..... $183.00

Respectfully submitted this ninteenth day of May, 1927.

CHARLES V. D. JOLINE,
FRANK C. FERGUSON,
PERCY A. GADDIS,
Commissioners.



## REPORT OF COMMISSIONERS.

Filed May 19, 1927.

NEW JERSEY SUPREME COURT.

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| In the matter of the condemnation of capital stock of Marion D. Hallowell, in the Morris Canal and Banking Company. | *Report of Commissioners.* |

We, Charles V. D. Joline, Frank C. Ferguson and Percy A. Gaddis, Commissioners appointed by Honorable Thomas W. Trenchard, Justice of the New Jersey Supreme Court, on application of the State of New Jersey by its Board of Conservation and Development made in writing by petition to the said Justice to appraise the full market value of stock in the Morris Canal and Banking Company owned by Marion D. Hallowell, and what damages, if any, should be assessed for the taking of the same.

And it having been duly proved to our satisfaction that Marion D. Hallowell, the owner of said stock and all persons interested therein having duly been notified, as directed by the order of said Justice bearing date the 8th day of December, 1924, and that we had fixed the 28th day of May, 1926, at 10:30 o'clock in the forenoon (Daylight Saving Time) at the State House in Trenton, to appraise the full market value of said stock, and what damages, if any, should be assessed for the taking of the same.

And the said, the State of New Jersey, petitioner, and the owner of said stock having been represented before us at the time and place

aforesaid, we did meet and have heard the said owners of said stock, as well as the petitioner, and having fully considered all that was offered before us by the respective parties.

Now, after a full hearing on all said matters pertaining thereto we have made a just and equitable appraisement of the full market value of said stock, and what damages, if any, should be assessed for the taking of same.

And we do appraise the full market value of said stock, and do assess the damages for the taking of the same at the sum of $183.00 for each share of stock.

Dated: May 19th, 1927.

CHARLES V. D. JOLINE,
FRANK C. FERGUSON,
PERCY A. GADDIS,
Commissioners.



## ORDER TO SHOW CAUSE.

Filed May 25, 1927.

NEW JERSEY SUPREME COURT.

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| In the matter of the condemnation of the capital stock of Marion D. Hallowell, in the Morris Canal and Banking Company. | *Order to Show Cause.* |

The commissioners heretofore appointed to advise me and to appraise the full market value of the stock in the above-entitled matter, having fixed the sum that in their judgment represents the fair value of the said stock at the sum of $183 per share for the preferred stock and $73.20 per share for the common stock, and having reported the same,

It is on this May, 24, 1927, ordered that Friday the 10th day of June, 1927, at ten-thirty o'clock in the forenoon (Daylight Saving Time) at the State House in Trenton, be and the same is hereby fixed as the time and place when and where I will proceed to review the findings of said commission.

And it is further ordered that notice of this order be served by delivering copies thereof to the attorneys who appeared before the said commission, within five days from this date.

THOMAS W. TRENCHARD,
Justice of the Supreme Court.

## GROUNDS OF APPEAL.

Filed September 6, 1927.

# New Jersey Court of Errors and Appeals

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| In the matter of the condemnation of capital stock of Marion D. Hallowell, in the Morris Canal and Banking Company. | *Grounds of Appeal.* |

Marion D. Hallowell appeals from the determination, order and judgment entered in the above-entitled matter on the following grounds and for the following reasons:

I. Because the Honorable Thomas W. Trenchard, Justice of the Supreme Court, erred in confirming the report of the commissioners

A. Because said report omits to find and fails to accord any weight to the fact admitted by the State, and nowhere contradicted, that the water rights alone owned by the Morris Canal and Banking Company were worth at least Thirty-three Million Dollars ($33,000,000), and that the Lehigh Valley Railroad Company had so represented to the State in negotiating the agreement with the State out of which these condemnation proceedings arose.

B. Because said report finds as facts the following matters, which, whether true or not, are wholly immaterial and irrelevant; namely,



Page 2.

"The financial situation of the Canal Company as shown by Statement of Operation, Page 129 of Three Governors Report, shows net earnings of Canal Company in 1864 to have been $353,936. Decreasing each year to $107,003 in 1870 and showing a deficit of $176,257.33 in 1871.

There was an aggregate deficit amounting to $8,489,393.59 during the 32 years from 1871 to 1902, inclusive, or an average of $265,290.73 per annum, which deficit was met by the Railroad Company under the terms of lease.

The evolution in transportation methods rendered the canal unprofitable for more than fifty years past. This brings us to the consideration of what were the physical assets at the time of abandonment."

Page 4.

"It appears by the testimony of Henry B. Kummel, Director of the Department of Conservation and Development, and general manager of the Morris Canal and Banking Company, that over $750,000 has been spent on dismantlement work, in addition to the cost of engineering and overhead, or a total of over one and a quarter million dollars since taking over the canal by the State, and is still expending large amounts in care and dismantlement."

and because the said report accords weight to these irrelevant facts by including them as elements in describing "the situation above set forth" upon which the commissioners form the "opinion that the stockholders are entitled to"

certain amounts as the value of the shares being condemned; whereas said irrelevant and immaterial circumstances ought not to have been taken into consideration or given any weight in the ascertainment of the value of the stock being condemned.

C. Because said report finds and states as follows:

Page 3.

"The next claim by the stockholders to be an asset was the so-called Large Basin, consisting approximately of 40 acres of land under water in Jersey City. It was leased by the State to the Canal Company in 1867 for an annual rental of $25,000 per year and never used. The lease was sold by the Canal Company to the Lehigh Valley Railroad in 1889 for $500,000, then converted to a grant by the Railroad Company and developed by it. We do not consider that the Canal Company has any equity therein."

whereas the commissioners should have found and reported:

1. That the Canal Company had an equity in said Big Basin.

2. Regardless of whether or not the Canal Company had an equity in said Big Basin, the Lehigh Valley Railroad Company, in its bargain with the State acquired valuable rights in said Big Basin in respect of which the minority stockholders of the Morris Canal Company were entitled to an amount representing their proportionate share of the value acquired by the Lehigh Valley Railroad Company.



D. Because said report erroneously finds that the minority stockholders are bound by reason of themselves or their predecessors, as owners, in having failed to make any protest in connection with the lease of the Canal Company's property to the Lehigh Valley Railroad Company made in 1871 under authority of an Act of the Legislature passed in 1871; whereas it should have found that the rights of the minority stockholders (whether their stock was acquired prior to or since 1871) were protected by constitutional provisions existing at the time that the Legislature by special Act in 1824, granted to the Morris Canal and Banking Company, its charter; and that because of the constitutional guarantees said stockholders were not prejudiced by the fact that they or their predecessors in ownership failed to make any protest in connection with the lease of 1871.

E. Because said report erroneously adopts as the basis for finding the value of said shares and, consequently the compensation to which the owners are entitled, the income which would have accrued upon said shares down to the year 1974, admitting the State and the Lehigh Valley Railroad Company entered into the agreement out of which this condemnation proceeding arises; whereas said report should have found, as the basis for determining the value of said stock and the compensation to be paid its owners, the total net value of all of the assets of the Morris Canal and Banking Company, taken by and divided between the State and the Lehigh Valley Railroad Company, pursuant to the agreement between them out of which this condemnation proceeding arises.

EDGAR W. HUNT,
Attorney of Marion D. Hallowell.

## EXHIBIT P. 1.

CHARTER OF

THE MORRIS CANAL AND BANKING COMPANY.

*AN ACT to Incorporate a Company to form an Artificial Navigation between the Passaic and Delaware Rivers.*

Passed 31st December, 1824 (P. L. 158).

Whereas, the construction of a Canal, to unite the river Delaware, near Easton, with the tide waters of the Passaic, will be of great public benefit and advantages to the people of New Jersey; *now, therefore,* in order to secure to the state the results of this public work, and also as an inducement to a company to engage in this important undertaking, and in consideration of the risks and expenditures which they may encounter in its execution and operations; *Therefore,—*

*Be it enacted by the Council and General Assembly of this State, and it is hereby enacted, by the authority of the same.*

I. *Incorporation, Name and General Powers.* That Jacob S. Thompson, of Sussex; Silas Cook, of Morris; John Dow, of Essex; Charles Board, of Bergen, and all and every other person or persons, who may become subscribers, according to the mode hereinafter prescribed, their successors and assigns, shall be, and are hereby incorporated by the name of the "MORRIS CANAL AND BANKING COMPANY," for the purposes and with the privileges and immunities hereinafter described, defined and granted; and by that





name shall be a body corporate and politic in law, and shall and may sue and be sued, implead and be impleaded, in courts of justice, or in any other place whatsoever; and the said Company shall have power and authority, at any time after the passage of this act, to purchase, receive in donation, possess, enjoy and retain, demise, grant, alien, and sell, all such lands, tenements, hereditaments, water streams, and water privileges, rights, goods, chattels and effects of every description whatsoever, as may be necessary for carrying into effect any of the provisions of this act, and under the restrictions and limitations therein mentioned; and that the said company shall have perpetual succession, and power to make and use a common seal, and the same to renew and change at pleasure; and also to adopt, establish, and carry into execution, such by-laws, ordinances and regulations, as shall by its president and directors be judged necessary or convenient for the said corporation, in respect to its canal and banking operations hereinafter mentioned, and the same to change, alter, repeal, annul, and re-enact: *Provided,* the same be not contrary to the constitution or laws of the United States or the state of New Jersey.

II. *Commissioners, Capital, Shares.* George P. M'Culloch and John Scott, of the county of Morris; Israel Crane, of the county of Essex, and Joseph G. Swift, Henry Eckford and David B. Ogden of the city of New York, be and they are hereby appointed commissioners for receiving subscriptions for the sum of one million of dollars to constitute the capital stock for the canal aforesaid, in shares of one hundred dollars, each; and that the said commissioners, or a majority of them, shall and do open books for that

purpose, at such time and in such place or places within this state, as they shall designate by public advertisements to be previously inserted for at least three weeks in a public newspaper printed in Morristown, Newark, and the city of New York respectively; and shall continue the same open until the said capital stock shall be subscribed, or at their discretion close the same, after they shall have remained opened two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid. And the sum of ten per cent. upon each share so subscribed shall be paid in specie, or in bills of banks which redeem their bills with specie, by each subscriber, at the time of subscription, to the said commissioners or a majority of them; and the amount so received at the time of subscription, shall by the said commissioners or a majority of them, be deposited in such bank or banks, as the said commissioners or a majority of them, may elect in their joint names, there to remain until the same shall be by them paid over to the directors of the said company, to be appointed as hereinafter directed; that the said directors, when so appointed, shall have power, and they are hereby authorized, to call upon said subscribers for the payment of further installments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount of the said shares so subscribed shall have been fully paid.

III. *Directors, President, Meetings, Vacancies, Voting Power.* The management of the concern of the said company shall be and the same is hereby vested in fifteen directors, to be selected from the stockholders; and that the said directors shall





choose, by plurality of votes, a President from among themselves; and as soon as conveniently may be, after the said stock of one million of dollars shall have been subscribed, the before named commissioners, or a majority of them, shall convene the said stockholders by public notice to be given as aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the first Monday of April, eighteen hundred and twenty-six. And if, for any cause whatsoever, an election of directors should not be made on the day whereon in pursuance of this act it ought to be made, the said corporation shall not for that cause be deemed dissolved, but it may be lawful at any other time to hold such election, public notice of the time and place being previously given as aforesaid; and until such election be made, the president and directors for the time being, shall continue in office: *Provided* such election be held before the first day of January next ensuing the said day of election. And in case of the death, resignation, incapacity, or removal of the president, or one or more of the directors, the vacancy thereby occasioned may be supplied by appointments to be made by the board of directors; and at all elections of directors, each stockholder shall be entitled to one vote for every share of stock by him or her held.

IV. *Exemption from Taxation.* No state, county, township, or other public assessments, taxes or charges whatsoever, shall at any time be laid or imposed upon the said Canal Company, or upon the stocks and estates which may become vested in them under this act; but this exemption shall not extend to any other estate or property of the

company, than such as is possessed, occupied and used by the said company for the actual and necessary purposes of said canal navigation under this act, according to the true intent and meaning thereof; and no tax shall be imposed upon any property of said company, or of other persons transported or used upon or about said canal, of greater amount, according to the value of the article taxed, than shall at the same time be imposed upon the property of the same or similar kinds in the state of New Jersey.

V. *Power to build Canal from the Delaware to the Passaic.* It shall be lawful for the said company to construct, make and execute a canal, or artificial navigation, to connect the waters of the Delaware river, near Easton, with the tide waters of the Passaic river, and passing through the county of Morris, with all the locks, works, devices, wharves, toll-houses, and offices necessary for the use of said canal. And it shall and may be lawful for the said company, by its president and directors, and by any agent, engineer, superintendent, or contractor, or any other person or persons employed in the service of said company, to enter from time to time, and at all times, and upon all lands, whether covered with water or not, for the purposes of exploring or surveying the route or routes for said canal, and locating the several works above specified, doing thereunto no unnecessary damage. And when the said route or routes shall have been fixed upon, and its several works located by the president and directors, or a majority of them, and a survey thereof deposited in the office of the Secretary of State, then it may be lawful for them, and for any agent, superintendent, engineer, contractor, or any person or persons employed in the



service of said corporation, at any time to enter upon, take possession of, and use, all and singular such lands, water, and streams, subject to such compensation to be made therefor as is hereafter directed.

VI. *Condemnation Proceedings.* Where lands, water, and streams, that may be useful for said canal, shall not be made a free gift by their owner or owners to the said company, then the company shall pay to the owner or owners such compensation as shall be mutually agreed upon. And in case of disagreement in relation to the value of such lands, waters and streams, or in case the owner or owners thereof be *feme covert,* under age, *non compos mentis,* or reside out of the state, then it shall be lawful to and for the aforesaid president and directors, from time to time, and at all times, to cause a survey or surveys, and a map or maps, to be made, of any of the lands, waters and streams, in their estimation requisite, and not given as aforesaid, and which they are authorised by this act to take for the uses aforesaid; in the field book of which a map and survey, or maps and surveys, shall be distinguished the land or waters of each of the several owners and occupants appropriated, or intended to be appropriated, as aforesaid, and the quantity thereof, and shall exhibit the same to one of the justices of the Supreme Court in this State, not being a stockholder (having, given at least ten days' previous notice in writing to the parties concerned, if resident in the state, and by publication in at least two gazettes, published in the counties to be traversed by the canal, of the time and place of such exhibition), such book and map being accompanied by the oath or affirmation of

one of the engineers employed by said company, that the premises therein described are required to be occupied by the company for the purpose of carrying into effect the object set forth by this act, and are not more than is requisite for the said uses; and thereupon it shall be the duty of said justice to certify such map and book under his hand and seal, and to cause the same to be filed in the office of the clerk of the county where such water or stream may be situated, there to remain a public record. And it shall also be the duty of the said justice, at the time and place aforesaid, by a writing under his hand and seal, to appoint three discreet and disinterested freeholders, chosen from some county or counties not interested by the canal, as appraisers, who shall, before they enter upon the duties of their appointments, severally take and subscribe an oath or affirmation, before some person authorised to administer oaths, faithfully and impartially to perform the duties required of them by this act, and shall receive such compensation, to be paid by said company, as the justice by whom they are appointed shall determine. And it shall be the duty of said appraisers, or a majority of them, if requested so to do by the owner or owners, or by the company, to make a just and equitable estimate and appraisal of the value of the lands, and damages to the several owners, proprietors, or parties interested in the premises so re-required for the purposes aforesaid—the said appraisers having given ten days' previous notice of the time and place of meeting, to make such appraisements to the owner or owners resident in this state. And the appraisers or a majority of them, shall make regular entries of their determination and appraisal, in a book or



books, to be by them kept for that purpose, and shall certify the same under their hands and seals, acknowledging the same before some person authorized to take the acknowledgments of deeds, and shall cause such book or books to be filed in the office of the clerk of the county in which the lands may be situated, there to remain a public record. And the company shall pay, or tender the damages so assessed to the person or persons entitled thereto; or in case such owner or owners shall be *feme covert,* under age, *non compos mentis,* or reside out of the state of New Jersey, the said company shall pay the same into the Court of Chancery of this state, to be disposed of under the order of the Chancellor, according to the laws of this state; and immediately thereupon, the estate, right, property and interest, in and to the premises so appropriated, described and appraised, shall be vested in the company, to be by them held so long as they shall be used for the purposes of said canal.

VII. *Power to enter on adjacent lands and take materials.* It shall be lawful for the president and directors of said company, and their superintendents, engineers, workmen, and laborers, with carts, wagons, and other carriages, and with their beasts of draught and burden, and all necessary materials, tools and implements, to enter upon all lands contiguous or near to the route or tract of the canal, doing as little damage thereto as possible, and repairing any breaches they may make in the enclosures thereof, and to take and carry away any stone, gravel, clay, sand, or earth, there being most conveniently situated, and being most suitable for making or repairing said canal, the locks and other devices before mentioned, thereto belonging—the said owners

or occupants being entitled to a fair compensation or remuneration for the materials taken, or damages done, if claimed within twelve months from the time of such damage sustained, or materials taken away. And in case of disagreement as to the amount of such damage, then it shall be lawful for the clerk of common pleas of the county, upon the application of the company, to appoint three judicious disinterested freeholders as appraisers, who, having given at least fifteen days' notice to the owners, occupants or persons having charge of such lands, and having been previously sworn fairly and impartially to inquire into, and report the amount of the said damages, shall deliver to each party, or deposit in the clerk's office of the county for their use, a copy of their appraisal, under their hands and seals; which appraisal shall be conclusive evidence of the amount of damages in any suit to be brought therefor, deducting therefrom, on such suit, all cost and charges of the appraisement, if the amount so appraised shall not exceed one dollar, nor be less than what the company offered to pay before the appointment of appraisers.

VIII. *Powers of Directors. Tolls. Increase of Stock.* The president and directors of a majority of them, shall have power to elect all engineers, treasurers, collectors, cashiers, tollmen, clerks, agents, artificers, workmen, laborers, servants and officers whatsoever, necessary in their judgment, for conducting the affairs of the company, and to dismiss and elect others at their pleasure; and also shall have power to charge and collect tolls and rates for the passage of all boats, goods, draught cattle, wares, passengers, produce, and merchandise whatsoever upon the canal, or upon





its banks, and to make, enact, and at pleasure change and re-enact, such tolls and rates, and also regulations and rules for the collection and levying of the same, as to them may seem proper: *Provided* the company shall at no time charge more than three cents per tons per mile, on the passage of coal, lime, gypsum, iron, iron ore, and stone, and a proportionable charge upon other articles, contemplating their bulk, weight and value, and a card thereof to be put up in a conspicuous place at every lock or other point on said canal where toll shall be required to be paid. And if at any time hereafter, the said president and directors shall deem it expedient to increase their capital stock for the canal aforesaid, it shall be lawful for them so to do, and to obtain subscriptions for the same, and to manage and to direct the same agreeably to the provisions, true intent, and meaning of this act; and all stockholders of such additional shares, and their assigns, shall be thenceforward incorporated into the same company. *Provided always,* that a preference of subscription shall always be given to actual stockholders, in proportion to the shares they shall respectively hold, and that such additional stock shall not exceed five hundred thousand dollars.

IX. *Annual Statements. Dividends.* At the general meetings of the stockholders, to be held annually, agreeably to the second section of this act, a general statement of the affairs of the company shall be made out, and exhibited by the president and directors; and the president and directors, or a majority of them, shall at that meeting, or as often as to them may appear expedient, declare such dividends of the net profits of the Company as they may think proper.

*Exhibit P. 1.*

X. *Shares transferable.* The capital stock of said Company shall be deemed proper personal property; and that all shares of the capital stock at any time owned by any stockholder, shall be transferable on the books of the company in such manner as the by-laws shall ordain; but all debts due or payable to the company, and also all outstanding engagements with it, shall be satisfied previously out of said stock, before such transfer can be made, and before any dividend or dividends shall be paid upon such shares, unless by the consent of the president and directors.

XI. *Route may be altered. Green Pond. Hopatcong.* Under the powers and conditions stipulated in the foregoing enactments, it shall be lawful for the company to alter at any time, any part or parts of the route of the canal, making compensation for damages to owners as herein before directed; and that it shall not be lawful for any person or persons, or any body politic or corporate whatsoever, to construct any canal within ten miles of any point of the main trunk of the Morris canal, without the consent of the said company, expressed in writing, under their common seal; but this prohibition shall not extend to the construction of any canal of less than ten miles in length, and which does not approach within two miles of the canal to be constructed under this charter, and saving to any person or persons, or body corporate, any of their just and legal rights already vested, to the contrary of such prohibition. And it shall be the duty of the Chancellor of this State, upon application made therefor by the solicitor of the company in due form, to issue his injunction to stay and prevent the construction of any such canal; and also, it shall be lawful for the said company to raise the



*Exhibit P. 1.*

waters in the Green Pond, and Lake Hopatcong commonly called the Great Pond, by damming the same, and to use the surplus waters thus saved, and so much water of said ponds as shall be necessary for said canal, to take and convey said waters unto said canal, all loss and damages to the owners, of said ponds, and the lands flowed or otherwise used in obtaining water for the same as aforesaid, being paid for agreeably to the previous provisions of this act.

XII. *Bridges for Roads and Farms.* When the said canal shall cross any public road or farm, it shall be the duty of the company at their proper expense, to make good and sufficient bridges across said canal, and to keep the same in repair, so as to prevent any inconvenience in the usage of the said road, or farm, by reason of the said canal crossing the same.

XIII. *Injuries to Canal.* If any person or persons, shall in any manner, wilfully or maliciously destroy, injure, or obstruct said canal, or any of its parts, or works therewith connected, or unnecessarily and maliciously open any gates thereon, or otherwise let off and waste water to the detriment of said company, he, she, or they, shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by fine or imprisonment, or both, at the discretion of the Court in which such conviction shall take place: *Provided,* such fine shall not exceed the sum of twenty-five dollars, nor the imprisonment the term of two years; and such criminal prosecution shall in no wise impair the right of action for damages by a civil suit to be brought by the company.

*Exhibit P. 1.*

XIV. *Banking Powers and Capital.* For the encouragement of so great an undertaking as the erection of said canal, and in some measure to induce capitalists and others to subscribe to the same, it shall be lawful for the said company to increase the capital stock of said company for the purpose of banking operations, but under the following conditions, limitations, and restrictions, namely: that as soon as the said company shall have actually paid, paid out, and expended, the sum of two hundred thousand dollars in the purchase of lands, waters, and water privileges, necessary for the construction and uses of said canal, and in constructing, making, and building the same, it shall and may be lawful for the president and directors aforesaid to call from the stockholders respectively of said canal company, for the time being, in proportion to their respective shares, the sum of two hundred thousand dollars, or any less sum, in the discretion of said president and directors, toward a capital, for banking purposes as aforesaid, and so often thereafter as the said company shall have paid, laid out, and expended, other like sums of two hundred thousand dollars in the purchase of lands, as foresaid, and in constructing, making and building the said canal as aforesaid, it shall be lawful for the president and directors aforesaid, to increase the capital stock of said company, for banking purposes, to such further amount of two hundred thousand dollars: *Provided,* that the said increased capital of the company for banking purposes, shall not exceed in the whole, one million of dollars; and the president and directors shall and may upon any increase of the capital of said company, for banking purposes as aforesaid, call for the same from the stockholders respectively,



*Exhibit P. 1.*

at such times, and in such installments in proportion to their respective shares, and upon such notice, and under such forfeitures, as they shall prescribe: *Provided always,* that no such increase of stock for banking purposes as aforesaid, shall at any time be made, by reason of an alleged expenditure of any of the respective sums of two hundred thousand dollars as aforesaid, until the president and directors aforesaid shall have first caused to be exhibited to the Governor, or person administering the government of this state, a just and full statement and account, showing that such expenditure of two hundred thousand dollars hath actually been made in and about the purchases necessary for the construction of, and in the various works as aforesaid of said canal; and the president and cashier, or person keeping the accounts of said company, shall severally certify the said account of expenditures to be just and true, and subscribe their names thereto, and, moreover, make, subscribe, and annex to the same their respective oath or affirmation, taken before one of the justices of the Supreme Court of this state, that the said account is just and true to the best of their knowledge and belief; and shall otherwise, if required by the said Governor, or person administering the government, prove to the satisfaction that the same is true, and further obtain from said Governor, or person administering the government, a certificate under his hand, and the seal of the state, certifying that it hath appeared to him that the said sum of two hundred thousand dollars has been actually expended upon and towards the said canal, according to the provisions of this act, and that the said company is entitled to increase its capital stock for banking purposes, to that

amount; which certificate the said Governor, or person administering the government, upon his being satisfied of the truth and fairness of said account, is hereby authorized and required to grant. And the said president and directors, before any increase of the said capital for banking purposes, to such additional amount of two hundred thousand dollars as aforesaid, shall cause the account and statement exhibited and sworn to as aforesaid, to be filed in the office of the secretary of state, and the certificate of the Governor, or person administering the government as aforesaid, to be recorded in the same office; a certified copy of which certificate and account, by the secretary of state under the great seal of the state, shall be received in all courts in this state as evidence that such expenditures of two hundred thousand dollars was made on or towards the said canal, at the exhibition of the account aforesaid.

XV. *Penalty for false statements.* If the person acting as president, and the person acting as cashier or accountant of the said company, and who shall have made or exhibited any such accounts as aforesaid, or either of them, shall wilfully and knowingly make a false oath to the same, such person shall be deemed guilty of perjury, and on conviction of the same, shall be subject to the pains and penalties of wilful and corrupt perjury.

XVI. *Annual account of expenditures on the canal.* Within one year after the first increase of the capital stock of the said company for banking purposes as aforesaid shall have been made, and so annually thereafter, until the said canal shall have been completed, the said company shall





cause to be made out of a just and true account of their expenditures upon said canal, within each of the said years respectively, which account shall be certified and sworn to by the acting president and cashier, or accountant, in manner as directed in the fourteenth section of this act; and the said account shall be filed within such year in the secretary's office of this state. And whensoever it shall appear, by such annual account in any year, that the said company have not actually expended on said canal at least the sum of one hundred thousand dollars within such year, or if the said company shall neglect to file said account in manner aforesaid in any year, then and in either case, the said company shall wholly cease from and discontinue all banking discounts and operations upon their said increased capital for banking purposes, and shall not resume the same until the said account shall have been proved and filed as aforesaid, and showing such annual expenditure.

XVII. *False oath, perjury.* If the said acting president and cashier, or accountant, or either of them, shall wilfully make a false oath to any such account as is mentioned in the foregoing section, such person shall be deemed guilty of perjury, and on conviction of the same, be subject to the pains and penalties of wilful and corrupt perjury.

XVIII. *Banking house to be in Jersey City and banking operations to be conducted there.* The banking house of the said company shall be situated, and their banking operations be conducted, in the city of Jersey, in the county of Bergen; and it shall be the duty of the president and cashier of the said corporation, for the time being,

once in two years, to make a full return to the Secretary of State, under oath, of the stock of said company, used in banking operations, where the same is employed, how much specie is in the vault or vaults of their banking house or banking houses, what amount of notes of said company are in circulation, and the amount of debts due from and owing to said company; and in case the said president and cashier shall neglect or refuse so to do for the space of ninety days, the legislature may, at any time thereafter, in their discretion, suspend banking operations.

XIX. *Funds not to be diverted.* The funds of the said company shall never be employed in any other operations, nor for any other purposes, than those provided for in this act.

XX. *Rights of action reserved.* Nothing in this act shall be taken to impair the right of any person to an action against the said company, for damages to his or her water rights, lands, tenements, or hereditaments, by the erection of said canal, where such person hath not been agreed with by the said company, or his or her damages, right, and estate satisfied, and vested in the said company, under the previous provisions of this act.

XXI. *After eleven years to pay a bonus.* In eleven years after the passing of this act, and annually thereafter, the president and directors of said company shall be, and they are hereby required to pay or cause to be paid into the treasury of this state, the one-half of one per cent. on the whole amount of such capital actually subscribed and in, and which shall thereafter be paid in to such company for banking purposes as aforesaid; and upon neglect or refusal so to do by said president and directors, the said tax shall and may be recovered in such manner as is directed in an act entitled "An act to tax bank stock," passed November second, one thousand eight hundred and ten, or any other act or acts of the Legislature for the time being, for the recovery of tax on bank stock; and the said tax, when collected, shall be appropriated as other bank tax is, or shall by law be directed to be appropriated.





XXII. *Bank for thirty-one years.* So much of this act as relates to banking rights and privileges upon the increased capital of the company for banking purposes as aforesaid, shall continue and be in force for and during the term of thirty-one years from the passage of this act.

XXIII. *Fifteen years to open canal.* Unless one million of dollars shall be subscribed as aforesaid, on or before the first day of November next, and also, unless the said canal shall be completed and opened for the passage of boats within fifteen years from the passage of this act, then the same shall be, and is hereby declared to be null and void.

XXIV. *Further powers as to employment of banking capital.* The said company shall and may be, and are hereby made capable of using any part of their capital which shall be paid in for banking purposes, as aforesaid, for the following additional purposes, that is to say, in buying and selling bills of exchange, or the stock of any body or bodies corporate and politic, and in loans upon bonds and mortgages; and they may bind themselves by contract not under seal, and receive and take by deed or devise any effects and property, both real and personal, which may be left or conveyed to said company, in trust, and

to assume, perform, and execute any trust which has been or may be created by any deed, bequest, or devise, as aforesaid. And the said company is hereby authorized and empowered to receive, take, possess and stand seized of, and to execute any and all such trust or trusts in their corporate capacity and name, in the same manner and to the same extent as any private trustee or trustees might or could lawfully do, and no further; but it is hereby expressly declared, that the privileges hereby granted to the said company for receiving and executing trusts are solely for the purpose of the protection of property so conveyed to them, and not for the purpose of aiding or promoting any traffic in any kind of stocks, or in any kind of goods, wares and merchandise; and in case any kind of goods, wares or merchandises, shall be so conveyed or bequeathed in trust as aforesaid; the said company shall dispose of the same as soon as it conveniently can be done, and the avails thereof shall be invested in stocks, or in bonds and mortgages, or other permanent securities, for the sole use of the person or persons beneficially interested therein; and the said privileges shall not be so construed, as legally to empower the said company to take any other kind of trusts than such as are usual with other trustees: *Provided always,* that this act shall not extend to create any entailment, trust, or perpetuity; contrary to any existing provision or law.

XXV. *Canal to be a public highway. Tolls.* The said canal when completed shall forever thereafter be esteemed a public highway, free for the transportation of any goods, commodities, or produce whatsoever, on payment of the tolls,



and conforming to the regulations made or authorized by this act. And it shall be lawful for the legislature of this state at any time hereafter to appoint three commissioners, for the purpose of fixing and regulating the tolls to be taken on said canal, which shall be done by the said commissioners in conjunction with two commissioners to be appointed by the company, unless the said company should refuse or neglect, upon due notice, to appoint any commissioners on their part, in which case the said commissioners, on the part of the state, or a majority of them shall fix and regulate the tolls with due regard to the interest of the company and of the citizens of this state: *Provided always,* that they shall not have power to reduce said tolls lower than one half of the greatest amount allowed by the ninth section of this act, without the consent of the president and directors of said company.

XXVI. *State may take the Canal.* At the end of ninety-nine years from the passing of this act, it shall and may be lawful for this state to take to itself and on its own account, the said canal and its appurtenances, paying to the said company the fair value thereof, to be estimated and fixed upon by ten commissioners, or a majority of them, to be mutually chosen by this state and the said company; or, in case that it shall not be done at that time, or within one year thereafter, this charter shall continue, so far as it respects its canal operations and privileges for the further term of fifty years, when it shall cease and the said canal with its appurtenances, become the sole property of this state.

XXVII. *Can only take lands or waters necessary for navigation.* The first, fifth, six, and

eleventh sections, and every other part of this act, shall be so construed, as that the said corporation shall not be authorized to take or appropriate to the use of said canal, or under color or pretence that the same are necessary therefor, any lands, waters, or streams of water, but such only as are actually necessary for the erection and use of said canal, for the purposes of navigation only and its necessary towing paths and works, as specified in the fifth section of this act; and that the said corporation shall not be authorized to demise, grant, alien, or sell any such lands, waters, or streams taken, or pretended to be taken, or required, for the use of said canal as aforesaid, or any part thereof, to any person or persons whomsoever (excepting only such lands as may be received by them by donation, or acquired of them by private contract), and that the said corporation, or any other person, shall not be authorized to use or appropriate any part of said waters for mills, or any other purpose than the mere navigation of said canal; and all waters not used for that purpose, shall be permitted, without unnecessary interruption, to flow into their ancient and natural courses and channels: and that the twentieth section of this act shall be so construed, as to extend to damages sustained not only by the erection of the said canal in the first instance, but also by the subsequent operations of the company, from time to time, as the same may arise; anything in this act before contained to the contrary notwithstanding.

XXVIII. *The Charter is a Public Act.* This shall be a public act, and shall be judicially referred to by all judges, justices and others, without being specially pleaded.



## SUPPLEMENT TO CHARTER.

Passed 31st December, 1824 (P. L., 157).

Sec. 1. *Must call in and expend $100,000.* Any time after one million of dollars shall be subscribed towards the capital stock of said company, and ten per cent. thereon paid to the commissioners and directors appointed as mentioned in said act, it shall be lawful for the said company to call in from the stockholders respectively the sum of one hundred thousand dollars, to be used for banking purposes, as directed in said act, but they shall not call in any more money for said purposes, except in conformity to the provisions of said act. And if the said company shall omit, for the space of one year after the passing of this supplement, to expend the sum of one hundred thousand dollars on said canal, and file an account thereof, agreeably to the sixteenth section of said act, the banking privileges hereby given shall cease.

## *AN ACT to authorize the Morris Canal and Banking Company, to extend the Morris Canal to the Waters of the Hudson.*

Passed January 26, 1928 (P. L., 34).

Sec. 1. *Extension of Canal to Hudson River authorized.* It shall and may be lawful for the Morris Canal and Banking Company, incorporated by an act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," passed December thirty-first, one thousand eight hundred and twenty-four, to continue the Morris Canal to the waters of the Hudson, at or near

the city of Jersey; and for that purpose, said company shall have all the rights, powers and privileges given and granted by the said act, and shall be subject to all the restrictions, limitations, conditions, and provisions in the said act contained, in the same manner, and to the same effect, as if the said company had been originally authorized by said act, to construct a canal or artificial navigation to connect the waters of the Delaware river, near Easton, with the waters of the Hudson, at or near the city of Jersey: *Provided,* that the canal shall be connected with the Passaic river at the village of Newark, so that the boats used on the said canal, can at all proper times pass from the same into the river, and from the said river into the canal: *Provided also,* that nothing herein or in the act of incorporation herein before mentioned, contained, shall be taken or construed to hinder or prevent the legislature from authorizing a deep cut or canal, for sloop navigation between the Newark and New York bays: *And provided further,* that the said company, unless it be with the consent of the owner or owners, shall not take any lands for extending the said Morris Canal, pursuant to the provisions of this act, until the said lands shall have been surveyed and appraised, pursuant to the sixth section of the said act of incorporation, and until the said company shall have first paid, or tendered to the person entitled thereto, the amount of such appraisement; or in case such person shall be *feme covert,* under age, *non compos mentis,* or out of the state, the said company shall pay the same into the Court of Chancery of this state, and in all other respects the provision of the said act of incorporation shall be taken as applicable to lands to be taken for the purpose





of extending the said canal, pursuant to the provision of this act, in the same manner as they apply to lands which may be taken pursuant to the said original act of incorporation.

SEC. 2. *Canal may be conducted through the streets of Newark and Jersey City.* It shall and may be lawful for the said company to make and construct the said canal through, upon, or along any street, road or public highway; but if the said canal shall be made or constructed through, upon, or along any street or streets in the town of Newark and Jersey City, or either of them, in such case, the land occupied by said canal, and for its towing path, shall not exceed a space of thirty-two feet.

SEC. 3. *Company to erect and keep in repair all necessary bridges, &c.* It shall be the duty of the said company, at their proper expense, to make good and sufficient bridges, and to keep the same in repair, across any part of the said canal which may be extended, pursuant to this act, so that it shall be convenient to the inhabitants at all times to pass to and from their lands and meadows, and to the waters and landing places of the said bays and rivers.

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*Exhibit P. 1.*

## Amendatory Act of 1829.

*AN ACT to authorize the Morris Canal and Banking Company to borrow money, and for other purposes.*

Passed February 23, 1829 (P. L., 86).

SEC. 1. *Company authorized to borrow money.* It shall and may be lawful for the said the Morris Canal and Banking Company to borrow the sum of five hundred thousand dollars, and to issue therefor their post notes, bearing an interest of six per cent. per annum, payable to the owners or *bona fide* holders thereof: *Provided,* that no such post note shall be issued of a less denomination than three hundred dollars.

SEC. 2. *Authorized to mortgage the canal.* For the purpose of securing the punctual payment of the interest and the redemption and payment of the principal sums so to be borrowed as aforesaid, the Morris Canal and Banking Company be, and they are hereby authorized to execute and deilver to any person or persons, body corporate or politic, an assignment, coveyance, or transfer of the said Morris Canal, with its appendages and appurtenances, and of all the lands, teneements and premises belonging to the said company and of the charter, chartered rights, and privileges of the same, and conditioned for the purpose aforesaid; which assignment, conveyance, or transfer, shall be entered on record in the office of the secretary of this state, and shall be valid and effectual as a collateral security for the payment of the principal and interest of the said post notes, according to the tenor and effect thereof.



*Exhibit P. 1.*

SEC. 3. *Penalty for non-payment of post notes.* If the said company shall neglect or refuse to pay to any person or persons, being the owners or *bona fide* holders or assignees of any post note or post notes so to be issued by the said company for said loan of five hundred thousand dollars, the interest due thereon as the same may become due, or the principal amount of such post note or post notes, when the principal thereof shall become due, at the banking house and other office of the said company in this state, the same having been presented for payment, then, and in either of the cases aforesaid, upon such failure and defalcation being proved, or otherwise made to appear to the satisfaction of the chancellor of this state, the said Morris Canal, with all its appendages and appurtenances, and all its chartered rights and privileges, shall become the property of the said assignees or transferees, for the use and benefit of the *bona fide* owners of the post notes that may have been issued by the said company under the provisions of this act; and thereafter the said assignees or transferees shall hold, use, and enjoy the said canal, with its appendages and appurtenances, and take and receive the tolls, rents, issues and profits thereof, in trust for the owners, as aforesaid, of the said post notes in proportion to their respective interest therein, during the whole of the residue of the term for which the said company was chartered, in as full and ample a manner as the stockholders of the said company could or might have used and enjoyed the same, subject, nevertheless, to all the restrictions, limitations, and conditions contained in the said charter.

SEC. 4. *Interest to be punctually paid.* If the said Morris Canal and Banking Company shall

pay to the owners or *bona fide* holders of the post notes so to be issued by them for the said loan, the interest to become due thereon in manner aforesaid, and the principal sums due thereon, when the same shall become payable, according to the tenor and effect of such post notes, then and from thenceforth the said Morris Canal and Banking Company shall stand seized and possessed of said canal, with all its appendages and appurtenances, and of and with all the rights, immunities and privileges contained in and guaranteed to them by their original charter, in as full and ample a manner as if this act had not been passed, and the grant, conveyance, or assignment of the said canal, with the lands appendages, and appurtenances herein before provided for, shall cease and be utterly null and void, and as if the same had never been made.

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**Amendment to the Charter.**

Passed January 28, 1830 (P. L., 17).

WHEREAS, the Morris Canal and Banking Company, have petitioned for certain amendments, modifications, and alterations of the acts, incorporating and affecting the said company—

SEC. 1. *Appraiser to fill vacancy.* Where any freeholder who may have been, or hereafter may be appointed, as an appraiser, pursuant to the sixth section of the act, entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," shall die, remove from the state, refuse to act, or his place or office otherwise become vacant, it shall be lawful for any justice of the Supreme





Court in this state, not being a stockholder, to appoint in the manner prescribed by the said last mentioned act, some other discreet or disinterested freeholder, as appraiser, to fill such vacancy, and so as often as such vacancy shall happen as aforesaid; and the justice of the Supreme Court, to whom application shall be made in this behalf, shall determine and decide upon such testimony as may be presented to him before he makes any new appointment as aforesaid, that such vacancy has happened within the true intent and meaning of this act; and when such new appointment shall be duly made, the appraisers, for the time being, shall proceed according to the provisions of the last mentioned act, and shall in all things conform thereto, in the same manner as if the freeholders, then being appraisers, had been the persons originally appointed as appraisers, pursuant to the said act incorporating the said company.

SEC. 2. *Power to Mortgage the Canal.* The Morris Canal and Banking Company may, from time to time, borrow all such sum and sums of money as to the board of directors of the said company shall appear necessary and proper, and for securing the due payment of the sums so borrowed, with the interest thereof, it shall and may be lawful for the said company to pledge or hypothecate, by way of mortgage, trust or otherwise, howsoever, the Morris Canal with all its privileges, appendages and appurtenances, and all the property and chartered rights of the said company; and such pledge, hypothecation, mortgage or trust, may be valid for the due payment of any sum or sums of money, with the interest thereof, which the same may be given to secure; and in case default shall be made in the payment

*Exhibit P. 1.*

of any sum or sums of money so borrowed as aforesaid, or the interest thereof, the person or persons, body politic or corporate, or their legal representatives or assigns, claiming under such pledge, hypothecation, mortgage or trust, may, by due process of law acquire and have, and hold, use and enjoy, the said canal with its appendages and appurtenances, and the property of the said company, and to take and receive the tolls, rents, issues and profits thereof, during the whole residue of the term, for which the said company is chartered or incorporated, in as full and ample a manner as the stockholders of the said company could or might have had used and enjoyed the same, subject nevertheless to all the restrictions, limitations, and conditions contained, in the said first mentioned act or charter of the said company: *Provided,* that any deed by which any pledge, hypothecation, mortgage, or trust, shall be created by virtue of this act, shall be entered of record in the office of the secretary of State, of this State: *Provided also,* that nothing herein contained shall be taken or construed to effect or impair any prior liens that there may be on the said canal, or on the rights or property of the said company; and that all person or persons, bodies politic or corporate, claiming by virtue of any pledge, hypothecation, mortgage, or trust, made pursuant to this act shall have no right or title otherwise than according to the priority of their respective incumbrances, or of the pledge, hypothecation, mortgage, or trust, which may have been given or created for his or their benefit.

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*Exhibit P. 1.*

## Act of 1832.

*AN ACT for the better protection of the Morris Canal, its works and appendages.*

Passed March 10, 1832 (P. L. 146).

Sec. 1. *Injuries to the Canal or its Works.* If any person or persons, shall, in any manner, wilfully or maliciously destroy, injure or obstruct the Morris Canal, or any of its parts, or any of the works therewith connected, or thereunto appertaining, or shall wilfully or maliciously injure or obstruct the passage of any boat therein, or navigating the same; or if any person or persons shall against the will or consent of the person who may be by the said company appointed to have charge of, or to attend any lock or inclined plane on the said canal, open any gate of such lock or plane, or shall work or attempt to work such plane, or to pass a boat, raft, or other floating thing through or over such lock or plane; or if any person shall wilfully or maliciously let off or discharge water from the said canal, through or by any waste-wier, or waste-gate, or otherwise, or shall shut down or close, either in part or in whole, any feed-gate, or water-wier, or water-gate, which may have been opened to feed the said canal or any part thereof, or to discharge water for the safety thereof; the person or persons so offending, shall forfeit and pay to the said company the sum of twenty-five dollars, to be recovered by, and in the name of, the president and directors of the Morris Canal and Banking Company, in any Court having competent jurisdiction: *Provided* that nothing herein contained shall be taken or construed to prevent the said company from proceeding, if they shall elect

so to do, under and pursuant to the provisions of the thirteenth section of the act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," against the person or persons so offending, as in the said act is specified, and saving to the said company the right also to prosecute a civil suit, as it is given to them by the said act; but there shall, nevertheless, be no more than one penalty imposed upon any person or persons, in virtue of this act and the last mentioned act for the same offence.

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**A Further Supplement to the Charter.**

Passed 19th January, 1835 (P. L. 17).

*Capital Stock Increased.* The capital stock of the Morris Canal and Banking Company be increased, for the purpose of completing the said canal, and paying the debts and claims already incurred by reason of the construction thereof, ten thousand shares; and the president and directors of said company are hereby authorized and empowered to obtain subscriptions for said shares, in the manner directed by the act to which this is a supplement, and to issue certificates for the same, giving preference to original stockholders still holding their stock; and all stockholders of such additional shares, and their assigns, shall thenceforward be incorporated into the said company; and that from and after the passing of this act, the par value of each and every of the shares in said company; as well those heretofore authorized, as those created by this act, shall be one hundred dollars; and that all holders of existing shares, representing two hundred dollars each, may surrender the same, and shall thereupon be entitled to receive new certificates to double the number of shares by them surrendered: *Provided,* that no part of the moneys arising from the subscription hereby authorized, be applied to the exercise of any banking or trust powers whatsoever, but solely and exclusively to the completion of said canal, and the payment of its debts, as above stated.





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**A Further Amendment to the Charter.**

Passed 5th March, 1836 (P. L. 262).

Sec. 1. *Tolls on Feeders.* Upon such navigable feeder or feeders, as in virtue of this act, or the act of original incorporation, may be constructed by the Morris Canal and Banking Company, for the purpose of conducting into the Morris Canal the waters of Long Pond, or other waters that may be requisite for the supply of the said canal, the said company shall be and are hereby authorized to charge and receive the same rates of toll as are now lawfully chargeable upon the said canal.

Sec. 2. *May let the Waters to Use.* The twenty-seventh section of the act to which this is a supplement, shall not be so construed as to prohibit or prevent the said Morris Canal and Banking Company from letting to use the water necessary for the purposes of the canal, in working other machinery than that requisite for the planes, between Boonton, in the County of Morris, and the Passaic at Newark; but no other person or persons shall so appropriate the water of said canal, without the consent of said company: *Provided,*

that nothing in this act contained shall be construed to authorize the said company to interfere with the rights or privileges of other persons, in the use of the waters of this State, for the said purposes, without their consent; and *Provided* also, that the said company shall not carry on or engage in any manufacturing business, and *Provided* further, that nothing in this act contained shall be construed to authorize the said company to use as much of the waters of the Musconetcong Creek, for the said purposes, as to deprive the owners of mills or manufactories on said creek, below the dam at Saxon's Falls, of sufficient water to turn one wheel as at present used to drive two run of millstones, with the necessary fixtures for the same, during eight weeks in the year, and at least two wheels, each of the same power, during the residue of the year, without the consent of the owners.

Sec. 3. *Capital stock may be increased for procuring lands, &c.* In order to enable the said company to procure the requisite lands and premises, and to construct the several basins, reservoirs and feeders, authorized by the said act of incorporation, and the amendments thereto, the said Morris Canal and Banking Company shall be and they are hereby authorized to increase the capital stock thereof, to an amount not exceeding six hundred thousand dollars, in shares of one hundred dollars each, for which they may obtain subscriptions and issue certificates, in the manner prescribed in the said act of incorporation, and all holders of such additional shares shall thenceforward be incorporated into the said company: *Provided,* that no part of the said sum of six hundred thousand dollars shall be





used for banking purposes, but shall be applied exclusively to the objects set forth in this section.

Sec. 4. *Number of directors increased.* The corporate powers of the said Morris Canal and Banking Company shall be exercised by a board of directors, to consist of twenty-three persons, who shall elect a president annually from their body, and possess the other privileges and power already conferred by law.

Sec. 5. *Directors, terms, classes, removal.* Within one month after the passing of this act, the board of directors shall be divided into five classes, one consisting of three, and the remaining four, of five persons each, and so arranged that the terms of service of one of said classes shall expire at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years; that three directors shall be elected at the end of the first year, and five directors at the end of the second, third, fourth and fifth years, by the stockholders, in the manner now prescribed by law, and in like manner until the expiration of the charter; but the Supreme Court of this state shall have power to remove a director for misconduct, to be heard on such notice as they shall deem reasonable, on the application of a stockholder or any person interested.

Sec. 6. *List of Directors, etc.* The following persons shall constitute the first board of directors: that is to say, Louis McLane, John S. Crary, James Parker, George Griswold, John Haggerty, Garret D. Wall, Samuel R. Brooks, Washington Irving, John S. Darcy, Henry Yates, Peter M. Ryerson, Christian B. Zabriskie, Edwin Lord, Joseph L. Joseph, Isaac H. Williamson,

Daniel Jackson, Jonathan Goodhue, John Travers, Henry W. Hicks, James B. Murray, John Moss, Stephen Whitney, and Philemon Dickerson; that their authority and power as directors under this act shall commence from the time it shall take effect as a law, and that so much of the aforesaid charter, and no more, as is inconsistent with the foregoing provisions, be and the same is hereby repealed: *Provided, however,* that the change in the mode of appointing directors, as pointed out in the present act, shall not be obligatory on the stockholders, unless within one month after the passing of this act, at least there-fourths of the stockholders, in number and amount shall cause to be filed in the office of the secretary of state, a writing signed by the said stockholders, setting forth the number of shares by them held, and duly attested by the president and cashier of the said Morris Canal and Banking Company, signifying their assent to such change, and also their assent to the persons named in this section as directors.

Sec. 7. *Circulating Bank Notes.* Nothing in this act contained shall be construed to authorize the said company to issue their bank notes to such an extent as to create a circulation of said notes of more than two millions of dollars at any one time; and that the said company, after the fourth day of July next, shall issue no bills of a less denomination than five dollars, unless the legislature should hereafter repeal the act entitled "An act to prevent the issuing and circulation of small notes for the payment of money," passed the fourth day of March, eighteen hundred and thirty-five.





Sec 8. *Legislative Commission.* The *legislature* of this State shall have it in their power at any time hereafter (whenever in their opinion it may become necessary), to appoint three commissioners with full power to examine into the proceedings of the said corporation and report the same to the legislature.

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**Lease to Lehigh Valley Railroad Company.**

This indenture, made this Fourth day of May Anno Domini, eighteen hundred and seventy-one, by and between the Morris Canal and Banking Company, a corporation created by, and existing under, the laws of the State of New Jersey, of the first part, and the Lehigh Valley Railroad Company, a corporation created by, and existing under, the laws of the State of Pennsylvania, of the second part,

Witnesseth: That for and in consideration of the covenants and agreements hereinafter contained, by the party of the second part to be kept and performed, and of the sum of One dollar in hand paid by the party of the second part, the receipt whereof is hereby acknowledged (1), the party of the first part doth hereby let and demise unto the party of the second part, its successors and assigns, the entire canal and navigation works of the party of the first part, as the same are now located and constructed, from the river Delaware, at Phillipsburg, in the County of Warren, in the State of New Jersey, to the river Hudson, at Jersey City, in the County of Hudson, in the same State, or as the same may hereafter be constructed, in pursuance of any and every

lawful authority now existing, or which may hereafter exist, with all the branches and extensions thereof, made and to be made; also all the land and water-rights, privileges and easements, dams, basins, pools, reservoirs, feeders, locks, gates, machinery, fixtures, railroads, tracks, wharves, docks, piers, landings, water-rents, ground-rents lands, tenements and hereditaments, with the appurtenances, reversions, remainders, rents, issues and profits thereof, now belonging, or in any wise appertaining, to the party of the first part, or which, for any purpose incident to, or connected with, the business which the party of the second part, its successors or assigns, may, as lessee of the party of the first part, lawfully carry on, may hereafter be acquired by the party of the first part; and, also, all the corporate franchises, rights and privileges, other than that of being a corporation, now held, or hereafter to be acquired, of the party of the first part: To have and to hold the premises thus leased and demised as aforesaid, or intended so to be, unto the party of the second part, its successors and assigns, perpetually hereafter. And (2) the party of the first part doth hereby grant, bargain and sell, assign, transfer and set over unto the party of the second part, all cars, trucks, boats, tugs, scows, dredging-machines, tools implements, apparatus, furniture, mules, horses, cattle, harness, supplies, stores, and movable property of every kind and description; and, also, all the right, title, interest, claim, property and demand whatsoever of the party of the first part in and to all leases, bills of sale, or contracts relating to boats or vessels heretofore leased, hired or sold by it; all bonds, stocks, claims, demands, beneficial interests in contracts, choses in action, maps, plans,



surveys, and generally, all personal property whatever, of every kind and description, whether hereinbefore specially referred to or not, to which the party of the first part is now, in any manner or way, entitled, excepting only the furniture of the principal office of the party of the first part at Jersey City, its corporate seal, and its business books, papers and records: To have and to hold the same unto the said party of the second part, its successors and assigns, to and for its and their only proper use and behoof forever. And in consideration of the premises, the parties hereto have mutually covenanted and agreed, and do hereby, for themselves, their successors and assigns, covenant and agree, to and with each other as follows:

First. That the party of the second part shall advance to the party of the first part a sum sufficient to pay off and discharge the debts and liabilities of the party of the first part, enumerated in the schedule marked A, hereto annexed, and identified by the signatures thereto of the presidents of the respective parties, or shall itself pay off, satisfy and discharge the said debts.

Second. That the party of the second part shall pay the interest, when and as the same shall hereafter become due and payable, on the debt secured or evidenced by the following series of obligations of the party of the first part, or by any obligations that may be given in extension, renewal or substitution of or for the same, viz.:

1. The bonds of the said party of the first part, amounting to the sum of five hundred thousand dollars ($500,000), secured, or intended to be secured, by the mortgage bearing the date

the first day of October, A. D. 1855, executed by the party of the first part to Jacob D. Vermile; the interest on the said bonds being payable at the rate of six per cent. per annum semi-annually, on the first day of October and April, and the principal thereof being payable on the first day of April A. D. 1876.

2. The bonds of the party of the first part, amounting to the sum of two hundred and eighty-five thousand dollars ($285,000), secured, or intended to be secured, by the mortgage bearing date the thirtieth day of June, A. D. 1860, executed by the party of the first part to Jacob D. Vermile; the interest on the said bonds being payable at the rate of six per cent. per annum, semi-annually, on the first day of October and April, and the principal thereof being payable on the first day of April, A. D. 1876.

3. The obligations of the party of the first part, amounting to the sum of two hundred and thirty-six thousand nine hundred and sixty-five dollars ($236,965), known as the "boat loan," and secured or intended to be secured, by a deed of trust of the boats of the party of the first part, dated January 1st, 1866, to William H. Talcott, John D. Ward and John Rodgers, as trustees; the interest on the certificates of the said loan being payable at the rate of seven per cent. per annum, semi-annually, on the first day of October and April, and the principal thereof on the first day of October, A. D. 1885.

4. The obligations of the party of the first part, known as the preferred dividend scrip, amounting in the aggregate to the sum of one hundred and three thousand one hundred and sixty-four dollars and fifty cents ($103,164.50); the interest on the said scrip certificates being



payable at the rate of seven per cent. per annum, semi-annually, on the first Tuesday of August and February, and the principal thereof on the first day of February, 1889.

Third. That the party of the second part shall provide for the payment, or extension, or renewal, from time to time, of the principal of the aforesaid series of obligations,—namely, first mortgage bonds, amounting to five hundred thousand dollars ($500,000), second mortgage bonds, amounting to two hundred and eighty-five thousand dollars ($285,000), boat loan, amounting to the sum of two hundred and thirty-six thousand nine hundred and sixty-five dollars ($236,965), and preferred dividend scrip, amounting to the sum of one hundred and three thousand one hundred and sixty-four dollars and fifty cents ($103,164.50); the party of the first part hereby agreeing to execute and deliver to the party of the second part, or its appointees,—but at the expense of the party of the second part,—such bonds, obligations, certificates, agreements, mortgages, or other securities as it may lawfully execute and deliver, as may be required by the party of the second part for from time to time extending, renewing, replacing or providing means for paying the debt, or any part thereof, secured or evidenced by the four above-mentioned series of obligations; it being understood and expressly agreed, however, that the party of the first part shall not be required to execute and deliver obligations representing a debt of a greater amount than that now existing under and by virtue of the above-mentioned four series of obligations; that, contemporaneously with the issue by the party of the second part of any new obligations, executed as aforesaid by the party

of the first part, or as soon as practicable thereafter, the party of the second part shall retire, cancel and surrender to the party of the first part outstanding obligations of the party of the first part to an equal amount; that any money realized by the party of the second part, by the issue to purchasers or subscribers of such new obligations of the party of the first part as shall not have been directly exchanged for then outstanding obligations, of the party of the first part, shall be held in trust, and be appropriated by the party of the second part for and to the purchase or payment, cancellation and surrender as aforesaid of such outstanding obligations; and that the liability of the party of the second part to pay the interest and provide as hereinbefore stated for renewing, extending or paying the principal of the four series of obligations hereinbefore specifically mentioned, shall extend and apply to the interest and principal of the debt evidenced or created by the aforesaid new obligations of the party of the first part, as the same shall from time to time be issued by the party of the second part.

Fourth. That if the party of the second part shall pay off, and finally discharge and satisfy, either in whole or in part, the principal of any obligation of the party of the first part, for the payment, renewal or extension of which the party of the second part has herein agreed to provide, the liability of the party of the second part for the payment of interest on the principal sum thus paid off, discharged and satisfied shall cease and determine; but if the party of the second part shall prefer to purchase, and shall purchase, any such obligation, or, if unable to purchase, shall pay off the same, and then elect to succeed



and be subrogated to all the rights and securities resulting therefrom or incident thereto before and at the time of the said purchase or payment the said party of the second part shall, as to the said obligation, stand in the same position as any other holder thereof would, and the interest thereon, payable as hereinbefore provided, shall be retained by the party of the second part while and so long as the said obligation shall be held by the party of the second part: Provided, however, that such subrogation or succession shall not be allowed as to any obligation which under the terms of the preceding article of this agreement, should be cancelled and surrendered to the party of the first part.

Fifth. That the party of the second part shall pay the sum of Seventy-nine thousand two hundred and fifty dollars ($79,250), like lawful money of the United States of America, on the first Tuesday of the months of August and February hereafter, as follows, viz: the first payment of Seventy-nine thousand two hundred and fifty dollars ($79,250), viz., that falling due on the first Tuesday of August, A. D. 1871, to be made directly to the party of the first part; and each successive payment of Seventy-nine thousand two hundred and fifty dollars ($79,250) thereafter, to be distributed by the party of the second part in paying a semi-annual dividend of five per cent. on the eleven thousand seven hundred and fifty (11,750) shares of preferred stock, and a semi-annual dividend of two per cent. on the ten thousand two hundred and fifty (10,250) shares of common or so-called consolidated stock now constituting the entire capital stock of the party of the first part, the said dividends to be payable to the holders of the said shares of stock

as they stand registered on the books of the party of the first part, on the fifteenth day of the month preceding the said first Tuesday of February and August, respectively; the said party of the first part hereby agreeing to furnish the party of the second part, at least ten days before the said first Tuesday of February or August, as the case may be, with a correct list or schedule of the holders of the said shares of stock as they stand thus registered.

Sixth. That so much of the sum of Seventy-nine thousand two hundred and fifty dollars ($79,250) hereinbefore agreed to be paid semi-annually by the party of the first part as shall be apportionable, by way of dividend, to any shares of the preferred or common stock of the party of the first part owned by the party of the second part, shall be deducted from the said sum of Seventy-nine thousand two hundred and fifty dollars ($79,250) and be retained by the party of the second part: Provided, however, That no such deduction shall be made from the sum of Seventy-nine thousand two hundred and fifty dollars ($79,250) to be paid directly, as hereinbefore provided, to the party of the first part on the first Tuesday of August, 1871; but any dividend from that sum to which the party of the second part may be entitled as owner of the shares of stock of the party of the first part shall be paid to the party of the second part by the party of the first part.

Seventh. That the party of the second part shall punctually and faithfully pay all taxes, charges and assessments of any and every kind which shall hereafter be lawfully assessed or imposed upon the premises hereby demised, or any





part thereof, or on the business, or any of the business done thereon or therewith, or on the receipts, gross or net, of the said business, or on the present capital stock of the party of the first part, or on any corporate right, franchise or privilege of the party of the first part hereinbefore granted and demised to the party of the second part; but nothing herein contained shall be construed as rendering the party of the second part liable for any tax, charge or assessment which may be assessed, or become in any way chargeable, on the sums hereinbefore agreed to be paid by the party of the second part to the party of the first part, its creditors or stockholders, or for any tax, charge or assessment chargeable against, or collectible from, the said party of the first part, its creditors or stockholders, for or on account of the payment to, or receipt by, them of the said sums, or any part thereof.

Eighth: That the obligation of the party of the first part to pay the State of New Jersey the sum of Twenty-five thousand dollars ($25,000) yearly, and all other conditions and obligations imposed upon, or assumed by, the party of the first part, under or by virtue of the first section of the Act of the Legislature of the State of New Jersey, approved the 14th of March, A. D. 1867, entitled "A further supplement to the Act entitled 'An Act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers,'" passed December thirty-first, eighteen hundred and twenty-four, and "the promise and undertaking" of the party of the first part, made under and in pursuance of the said section, shall be kept, performed and discharged by the party of the second part.

*Exhibit P. 1.*

Ninth. That the party of the second part shall from time to time, and all times, save harmless and indemnify the party of the first part from and against all loss and damage resulting from, or occasioned by, any failure or neglect of the party of the second part to comply with the covenants, stipulations and conditions herein contained, on the part of the party of the second part to be kept and performed, or from any failure of the party of the second part to do or omit whatever it may lawfully be required to do or omit in the use, management and control of the demised premises.

Tenth. That the party of the second part shall and may avail itself of every franchise, right, and privilege in regard to the use, maintenance, extension, improvement or alteration of the canal, navigation works and other property herein demised, conferred and granted by any present or future law; the party of the first part hereby agreeing, that nothing in this indenture contained shall restrict or impair the right of the party of the second part to do or omit anything in the premises which it might otherwise lawfully do or omit.

Eleventh. That the party of the first part shall and will maintain its corporate existence and organization, and shall and will from time to time, and at all times, when requested by the party of the second part, its successors or assigns, put in force and exercise each and every corporate power, and do each and every corporate act, which the party of the first part might now, or may at any time hereafter, lawfully put in force and exercised, to enable the party of the second part, its successors or assigns to enjoy and exercise every right, franchise and privilege which may lawfully be enjoyed or exercised in respect to the use, maintenance, management, renewal, extension, alteration or improvement of the premises hereby demised, or intended so to be, or the business thereon or therewith to be carried on; the party of the second part hereby agreeing to pay to the said party of the first part the yearly sum of fifteen hundred dollars ($1,500), in lawful money of the United States of America, in equal semi-annual payments, for the purpose of defraying the expense of maintaining the corporate organization of the party of the first part; the first payment to be made on the first day of September next, and semi-annually thereafter; and the party of the second part further agreeing to indemnify and save harmless the party of the first part against all expense, loss, damage or liability resulting from, or occasioned by, any exercise of corporate powers, or performance of corporate acts, by the party of the first part, when exercised or performed at the request of the party of the second part.



*Exhibit P. 1.*

Twelfth. That the party of the first part shall and will from time to time at the request of the party of the second part, issue to the party of the second part shares of the capital stock of the party of the first part, of the same par value, and entitled to the same rate of dividend, and to the same priority over the common stock, as the present preferred shares of capital stock of the party of the first part, to an amount equal, at the par value thereof, to the sums expended from time to time by the party of the second part in the construction of permanent improvements and additions to the premises hereby demised; on which shares of stock, when so issued, the party

of the second part shall be liable to pay, and shall pay, a semi-annual dividend of five per cent., in the same manner and at the same time as the said dividend is payable, as hereinbefore provided, on the present outstanding shares of the preferred stock of the party of the first part; and the said party of the second part shall also pay all expenses, whether in the shape of increased taxation, or otherwise howsoever, to which the party of the first part may be subjected, for or by reason of the issue of the said additional shares of stock: *Provided, however,* and it is hereby understood and expressly agreed, that nothing herein contained shall be construed as requiring the party of the first part to issue any shares of stock which it may not at the time be legally authorized to issue, and that the obligation of the party of the first part to issue such shares is thus qualified and conditioned.

Thirteenth. That the party of the second part shall be, and it is, hereby authorized and empowered to sell from time to time, either at public or private sale, and upon such terms as it may deem expedient, and real estate herein demised, or intended so to be, possession of which may not be necessary for the performance of the public duties and obligations resulting from, or incident to, the occupancy by the party of the second part of the canal and navigation works hereby demised, and the enjoyment of the franchises therewith connected, and to convey the property thus sold to the purchaser or purchasers in fee simple, or for any less estate, without any liability on the part of the said purchaser or purchasers to see to the application of the purchase money; it being understood and expressly agreed, however, that the purchase-money





of any portion of the demised premises thus sold shall be held in trust by the party of the second part, to be applied, and shall be by it applied to the purchase, at or below par, of any of the then outstanding obligations of the party of the first part, for the payment of the principal or interest of which the party of the second part may, under the terms and conditions of this indenture, be liable, or, at the option of the party of the second part, to the payment of any of the said obligations then matured, or thereafter maturing; the said obligations thus purchased or paid to be cancelled, and neither of the parties hereto to be subject to any further liabilities in regard to the same.

Fourteenth. That the said party of the second part, its successors and assigns, keeping and performing the covenants herein contained, on its and their part to be kept and performed, shall and may from time to time, and at all times, peaceably and quietly have, hold, use and enjoy the demised premises, and every part and parcel thereof, with the appurtenances, without any manner of let, suit, trouble or hindrance from the party of the first part, its successors or assigns; and that the said party of the first part shall and will at any time hereafter execute and deliver, at the expense of the party of the second part, such other and further deeds, assurances and instruments of writing as may be reasonably required for fully effectuating and carrying out the objects and purposes of this agreement, and the more fully granting, securing and assuring unto the party of the second part the estates, franchises, rights and privileges hereinbefore granted, leased or demised, or intended so to be.

Fifteenth. That it shall be lawful for the said party of the second part to use the name of the party of the first part in all suits or actions and in all proceedings, whether at law, in equity or otherwise, instituted or taken by the party of the second part to assert, maintain or defend the estate, franchises, rights, liberties and privileges hereby demised, or intended so to be, whenever the party of the second part shall be advised by counsel that the use of the said name will be either necessary or convenient for the purposes in view. And the party of the first part does hereby constitute and appoint the president, for the time being, of the party of the second part, its true and lawful attorney, for it, the party of the first part, and in its name, but for the use and benefit of the party of the second part, to do and perform whatever act, and to sign, seal, acknowledge and deliver whatever deed, instrument or assurance may be required, to fully perform and carry out each and all of the covenants and agreements hereinbefore contained, on the part of the party of the first part to be performed and carried out, according to their true intent and meaning.

Sixteenth. That the party of the first part hereby covenants that the premises hereby demised are absolutely free and clear from any and every charge, lien or incumbrance whatever, excepting the mortgages and deed of trust securing the boat loan hereinbefore mentioned.

Seventeenth. That in case the said party of the second part shall at any time refuse or neglect, for the period of six months, to make any of the payments by them in this indenture agreed to be made, then, and in that case the said party of the





first part, may, at its option, at any time within ninety days thereafter, but not afterwards, for that default, treat this lease as at an end, and at once resume, and take, and hold full possession and control of, all the property by these presents leased and demised, free and clear of all right and control of the party of the second part, the same as if this lease had not been made: PROVIDED, That the repossession of said property by the said party of the first part, under the option hereinbefore named, shall in no manner vitiate or discharge any legal claim, or demand the party of the first part may have against the party of the second part by reason of any breach of these presents occurring at or before the time when the said party of the first part shall repossess themselves of said property: AND PROVIDED, ALSO, That the party of the first part shall, during the period of at least thirty days before taking the possession of said property, publish in two newspapers, printed in each of the cities of New York and Philadelphia, a notice to the stockholders of the party of the second part of such default, and intention to resume possession of said property; and the party of the second part may, at any time before the expiration of the thirty days' notice above mentioned, stay all further proceedings by the payment of the amount then due.

Eighteenth. That in the event of the party of the first part resuming possession of the demised premises as hereinbefore provided, the party of the second part shall make good to the party of the first part any depreciation in the then aggregate value of the demised premises from their present value, and shall immediately deliver to the party of the first part, personal property of the same character, and of equal value, as that

*Exhibit P. 1.*

hereby assigned and transferred to the party of the second part, or, in default thereof, shall pay to the party of the first part a full equivalent therefor in cash; and that, for the better securing to the party of the first part the full performance of this covenant, an inventory of the personal property hereby assigned and transferred shall be forthwith made; and the said personal property shall be appraised at its fair market value by three appraisers; one to be selected by each of the parties hereto, and the third by the two thus selected; and the said inventory and appraisement shall be identified, for future reference, by the respective signatures of the presidents of the parties hereto.

In Witness Whereof, the parties hereto have caused to be hereunto affixed their corporate seals, duly attested by the signatures of their respective president and secretary, this the day and year first above written.

JACOB F. RANDOLPH, President.

THE MORRIS CANAL & BANKING Co.

Attest:

JNO. R. BURNETT, Secretary (SEAL).

ASA PACKER, Prest. of
the LEHIGH VALLEY RAILROAD Co.

Attest:

JNO. R. FANSHAWE, Secretary (SEAL).



*Exhibit P. 1.*

Sealed and delivered in the presence of

As to the execution by Asa Packer, President, and Jno. R. Fanshawe, Secretary,
EDW. ARMSTRONG,
WM. W. LONGSTRETH.

As to the execution by Jacob F. Randolph, President, and Jno. R. Burnett, Secretary,

OSCAR KEEN,
ELWOOD C. HARRIS,

(A schedule of miscellaneous debts of the Morris Canal & Banking Company amounting to $166,686.70 is appended to the lease.)

## EXHIBIT S. 8.

## MORRIS CANAL.

*Statement of Operation.*

| | Earnings. | Expenses. & Taxes. | Net Earnings. | Dividends & Interest. | *Deficit.* |
|---|---|---|---|---|---|
| 1864 .... | $590,393.00 | $236,457.00 | $353,936.00 | ..... | ..... |
| 1865 .... | 600,584.00 | 272,864.00 | 327,720.00 | ..... | ..... |
| 1866 .... | 616,350.00 | 340.380.00 | 275,970.00 | ..... | ..... |
| 1867 .... | 449,652.00 | 286,680.00 | 162,972.00 | ..... | ..... |
| 1868 .... | 423,767.00 | 236,376.00 | 187,381.00 | ..... | ..... |
| 1869 .... | 431,245.00 | 246,397.00 | 184,848.00 | ..... | ..... |
| 1870 .... | 391,549.00 | 284,546.00 | 107,003.00 | ..... | ..... |
| 1871 .... | 283,725.34 | 371,021.81 | *87,296.47* | $ 88,960.86 | *$176,257.33* |
| 1872 .... | 397,181.72 | 398,138.30 | *956.58* | 221,280.81 | *222,257.39* |
| 1873 .... | 323,631.51 | 284,864.11 | 38,767.40 | 230,434.66 | *191,667.26* |
| 1874 .... | 271,436.17 | 257,834.18 | 13,601.99 | 230,110.04 | *216,508.05* |
| 1875 .... | 270,216.62 | 198,619.35 | 71,597.27 | 230,518.54 | *158,921.27* |
| 1876 .... | 217,982.59 | 196,197.32 | 21,785.27 | 238,359.07 | *216,573.80* |
| 1877 .... | 170,855.11 | 227,715.71 | *56,860.60* | 235,721.52 | *292,582.12* |
| 1878 .... | 156,156.46 | 175,499.75 | *19,343.29* | 233,264.52 | *252,607.81* |
| 1879 .... | 137,553.11 | 176,955.41 | *39,402.30* | 235,721.52 | *275,123.82* |
| 1880 .... | 215,677.21 | 217,176.00 | *1,498.79* | 235,721.51 | *237,220.30* |
| 1881 .... | 221,016.59 | 223,630.92 | *2,614.33* | 235,721.50 | *238,335.83* |
| 1882 .... | 193,789.25 | 247,140.91 | *53,351.66* | 235,721.50 | *289,073.16* |
| 1883 .... | 158,167.49 | 221,204.48 | *63,036.99* | 235,721.50 | *298,758.49* |
| 1884 .... | 148,602.01 | 252,493.67 | *103,891.66* | 235,721.50 | *339,613.16* |
| 1885 .... | 101,487.41 | 200,764.27 | *99,276.86* | 235,721.50 | *334,998.36* |
| 1886 .... | 87,166.61 | 204,501.09 | *117,334.48* | 235,721.50 | *353,055.98* |
| 1887 .... | 109,364.98 | 217,597.06 | *108,232.08* | 235,721.50 | *343,953.58* |
| 1888 .... | 101,476.20 | 168,416.23 | *66,940.03* | 233,644.66 | *300,584.69* |
| 1889 .... | 134,608.66 | 231,506.45 | *96,897.79* | 231,072.50 | *327,970.29* |
| 1890 .... | 120,283.00 | 302,905.27 | *182,622.27* | 208,500.00 | *391,122.27* |
| 1891 .... | 315,200.40 | 378,707.09 | *63,506.60* | 188,500.00 | *252,006.60* |
| 1892 .... | 247,724.31 | 280,467.83 | *32,743.52* | 188,500.00 | *221,243.52* |
| 1893 .... | 196,052.53 | 244,665.62 | *48,613.09* | 188,500.00 | *237,113.09* |
| 1894 .... | 228,564.76 | 294,707.10 | *66,142.34* | 188,500.00 | *254,642.34* |
| 1895 .... | 208,557.71 | 286,278.67 | *77,720.96* | 188,500.00 | *266,220.96* |
| 1896 .... | 167,254.74 | 247,754.02 | *80,499.28* | 188,500.00 | *268,999.28* |
| 1897 .... | 167,411.70 | 245,152.16 | *77,740.46* | 188,500.00 | *266,240.46* |
| 1898 .... | 136,924.01 | 184,290.50 | *47,366.49* | 188,500.00 | *235,866.49* |
| 1899 .... | 137,626.21 | 187,145.09 | *49,518.88* | 188,500.00 | *238,018.88* |
| 1900 .... | 111,072.10 | 178,899.70 | *67,827.60* | 188,500.00 | *256,327.60* |
| 1901 .... | 105,502.66 | 182,041.36 | *76,538.70* | 188,500.00 | *265,038.70* |
| 1902 .... | 52,076.31 | 134,087.02 | *82,010.71* | 188,500.00 | *270,510.71* |

N. B.—Italics indicate deficits.

*Exhibit S. 9*

No. 6426 11 Shares

# NEW JERSEY

PREFERRED STOCK
OF THE

# Morris Canal & Banking Company

OF 1844

This Certifies *that* CLARISSA E. LANDELL *is entitled to* Eleven *Shares of* One Hundred Dollars *each of the* Preferred Capital Stock of 1849, *of the MORRIS CANAL & BANKING COMPANY OF 1844. Transferable on the Books of the said Company by the said* CLARISSA E. LANDELL, *or her Attorney, on the surrender of this Certificate.*

THIS STOCK is issued as a PREFERRED STOCK, and is entitled to Dividends at the rate of Ten per cent. per annum, payable semi-annually, on the first Tuesday of February and August in each year, in pursuance of the Articles of Subscription dated February 1st, 1850.

*Jersey City,* April 11th, *One Thousand Nine Hundred and* Eighteen.

D. G. BAIRD, *Secretary.* J. WM. ROBBINS, *for President.*

E. C. MANN, *Treasurer.*



## EXHIBIT S. 9.

THE PENNSYLVANIA COMPANY

For Insurance On Lives and Granting Annuities
S. E. Corner 15th & Chestnut Streets

PHILADELPHIA

October 20, 1926

We hereby certify that the attached is a true photostatic copy of stock certificate No. 6426 for eleven (11) shares of Preferred stock of the Morris Canal & Banking Company standing in the name of Clarissa E. Landell.

THE PENNSYLVANIA COMPANY
FOR INSURANCES ON LIVES
AND GRANTING ANNUITIES

By Wm M. David
Asst. Trust Officer

## EXHIBIT S. 10

WHEREAS, Under agreement entered into between Frank H. Sommer, Louis Focht and Edward L. Young, Commissioners acting in behalf of the State of New Jersey under and by virtue of an act of the Legislature of the State of New Jersey known as Chapter 212 of the Laws of 1922, and the Morris Canal and Banking Co., a corporation of the State of New Jersey, and the Lehigh Valley Railroad Company a corporation of the State of Pennsylvania, made and entered into on November 29, 1922, it is provided that the Lehigh Valley Railroad Company will acquire and assign, transfer and set over to the

State of New Jersey all of the remaining outstanding stock, consolidated and preferred, of the Morris Canal and Banking Company not then owned by said Lehigh Valley Railroad Company, and if the said Lehigh Valley Railroad Company cannot on or before March 1, 1923, purchase such remaining outstanding stock at a price satisfactory to it and it therefore becomes necessary to condemn such shares of capital stock in order to acquire the same, said Company shall request the Board of Conservation and Development of the State of New Jersey to bring proceedings in the name of the State to condemn said stock; and

WHEREAS, The said Lehigh Valley Railroad Company has acquired certain shares of the consolidated and preferred stock of the said Morris Canal and Banking Company which it has transferred and assigned to the State of New Jersey; and

WHEREAS, Certain shares of said stock, consolidated and preferred at this time remain outstanding and said Company is unable to acquire the same; and

WHEREAS, The said Company has this day requested this Board to institute proceedings in the name of the State of New Jersey to condemn said outstanding stock as specified on the certified list hereto appended; now therefore

BE IT RESOLVED, THAT this Board does hereby accede to said request of the Lehigh Valley Railroad Company, and does hereby authorize and direct the Secretary and Director of this Board to advise the Attorney General of this State that it is desirous of having instituted in the name of the State of New Jersey proceedings to condemn all of such outstanding stock on the list appended hereto, so as to acquire and





vest the title thereto in the Board of Conservation and Development in trust for the State of New Jersey; provided, however, that the cost and expense of such condemnation proceedings shall be undertaken and paid by the said Lehigh Valley Railroad Company.

BE IT FURTHER RESOLVED, The Secretary and Director of this Board, on behalf of this Board file in the Office of the Secretary of State a list or statement of the capital stock to be so acquired under this resolution, which list or statement shall contain the name and address of the owner or holder of such capital stock of said corporation as the same appear on the stock books of said corporation, the number of shares of such capital stock so held or owned by such person or persons and the numbers of the certificates representing said shares of capital stock.

BE IT FURTHER RESOLVED that the said Secretary and Director of this Board shall also on behalf of this Board file with the registered agent of the Morris Canal and Banking Company at the principal office of said company a duplicate copy of said statement.

BE IT FURTHER RESOLVED that to such lists or statements so to be field in the office of the Secretary of State and with the registered agent of the Morris Canal and Banking Company there shall be appended a copy of this resolution.

*Exhibit S. 10.*

List of stockholders of MORRIS CANAL AND BANKING COMPANY whose stock is to be acquired by virtue of resolution of Board of Conservation and Development of June 5, 1924.

| Name and Address | Total Pfd. | Shares Consol. | Certificate No. | Shares |
|---|---|---|---|---|
| George M. Flint<br>37 Mt. Vernon St.,<br>Boston, Mass. | 3 | | 6443 | 3 |
| Bethayres, Pa. | 9 | | 6420 | 9 |
| Marion D. Hallowell<br>Clarissa E. Landell<br>5814 Drexel Road<br>Philadelphia, Pa. | 11 | | 6426 | 11 |
| Morris F. Miller<br>2931 N. Broad St.,<br>Philadelphia, Pa. | | 50 | 3190 | 50 |
| M. Estelle Richards<br>6600 Lawnton Ave.,<br>Philadelphia, Pa. | 3 | | 6437 | 3 |
| Safe Deposit and Trust Co.<br>Baltimore, Md. Trustee under will of Elizabeth Fort, deceased, subject to the order of the Circuit Court No. 2 of Baltimore City, 13 South St., Baltimore, Md. | 5 | | 6435 | 5 |
| Frederic Sefton<br>c/o The Pines<br>Auburn, N. Y. | 10 | | 5610 | 10 |
| Ada M. Stearns<br>103 Asylum St.<br>Hartford, Conn. | 21 | | 6441 | 21 |

CERTIFICATION

I hereby certify that the above is a true copy of Resolution adopted by the Board of Conservation and Development at the regular meeting held June 5, 1924, and that the above list of stockholders is a true copy of the list of stock-



*Exhibit S. 10.*

holders whose stock is to be acquired by virtue of said resolution.

June 23, 1924

(Signed)—HENRY B. KUMMEL,
Secretary and Director of
Board of Conservation and Development
Registered Agent of the
Morris Canal and Banking Company

ENDORSED:

"FILED June 27 1924

Thomas F. Martin
Secretary of State."

STATE OF NEW JERSEY

(STATE SEAL)

Department of State.

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY, That the foregoing is a true copy of the Agreement and List of Stockholders of the MORRIS CANAL AND BANKING COMPANY, filed in my office on the twenty-seventh day of June, A. D., nineteen hundred twenty-four.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at Trenton, this fourth day of November, A. D., nineteen hundred twenty-six.

JOSEPH F. S. FITZPATRICK,
(SEAL) SECRETARY OF STATE.

## EXHIBIT S. 11.

| Name of Person | Certificate No. | Date of Certificate |
|---|---|---|
| Frederic Sefton | 5610 | Oct. 24, 1895 |
| Marion D. Hallowell | 6420 | Aug. 26, 1914 |
| Clarissa E. Landell | 6426 | Apr. 11, 1918 |
| Est. of Elizabeth Fort | 6435 | Oct. 21, 1921 |
| Morris F. Miller | 3190 | Dec. 28, 1920 |
| E. Estelle Richards | 6437 | Feb. 11, 1922 |
| Ada M. Stearns | 6441 | Feb. 14, 1922 |
| George M. Flint | 6443 | Apr. 29, 1922 |



## EXHIBIT S. 12.

### LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Preferred Stock purchased Jan. 1st 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Rate Per Share | Amount Paid |
|---|---|---|---|---|
| Jan. 1871 | Edward H. Trotter | 51 | 75. + | $ 3,838.00 |
| May " | Gaw Bacon & Company | 16 | 120.25 | 1,924.25 |
| Oct. " | Dr. Wm. Thomson | 8 | 120. | 960.00 |
| Jan. 1873 | Gaw Bacon & Company | 20 | 120.25 | 2,405.00 |
| Feb. " | " " " " | 27 | 120.25 | 3,246.75 |
| Mar. " | " " " " | 145 | 121.25 | 17,581.25 |
| Aug. " | John R. Burnett | 1 | 120. | 120.00 |
| Mar. 1874 | George D. Leaver | 2 | 122.50 | 245.00 |
| " " | M. Thomas & Sons | 20 | 122.50 | 2,450.00 |
| May " | H. L. Gaw & Co. | 40 | 122.50 | 4,900.00 |
| Mar. 1875 | Chas. Hartshorne | 160 | 127.25 | 20,360.00 |
| Nov. " | R. B. Brinton, Jr. | 70 | 128.62+ | 9,003.75 |
| Oct. 1876 | John C. Tidball | 2 | 135. | 270.00 |
| June 1877 | H. L. Gaw & Co. | 43 | 119.25 | 5,127.75 |
| " " | Bowen & Fox | 75 | 120. | 9,000.00 |
| Nov. " | M. L. Hallowell | 2 | 120. | 240.00 |
| " " | Harriet E. Meylert | 2 | 120. | 240.00 |
| " " | C. P. Bayard | 14 | 120. | 1,680.00 |
| Feb. 1878 | H. L. Gaw & Co. | 157 | 123.75 | 19,428.75 |
| Mar. " | " " " | 100 | 123.75 | 12,375.00 |
| Apr. " | Glendinning Davis & Co. | 90 | 123.50 | 11,115.00 |
| May " | H. L. Gaw & Co. | 80 | 125. | 10,000.00 |
| " " | C. P. Bayard | 41 | 124. | 5,084.00 |
| Sept. " | H. L. Gaw & Co. | 10 | 125.25 | 1,252.50 |
| Nov. " | " " " | 135 | 127.25 | 17,178.75 |
| Apr. 1880 | D. G. Baird | 1 | 150. | 150.00 |
| Feb. 1881 | M. Thomas & Sons | 65 | 170. | 11,050.00 |
| " " | H. L. Gaw & Co. | 13 | 170.25 | 2,213.25 |
| Mar. 1881 | M. Thomas & Sons | 2 | 173. | 346.00 |
| " " | W. C. Alderson | 2 | 173. | 346.00 |
| May 1882 | H. L. Gaw & Co. | 22 | 170.25 | 3,745.50 |
| June " | " " " | 40 | 174. | 6,960.00 |
| Dec. " | Wm. Uhlor | 8 | 175. | 1,400.00 |
| Mar. 1884 | M. Thomas & Sons | 5 | 170.50 | 852.50 |
| June " | Chas. P. Bayard | 9 | 170.25 | 1,532.25 |
| July " | " " | 35 | 170.25 | 5,958.75 |
| May 1885 | " " | 1 | 171. | 171.00 |
| Aug. " | H. L. Gaw & Co. | 7 | 172.25 | 1,205.75 |
| Nov. 1887 | M. Thomas & Sons | 5 | 203. | 1,015.00 |
| " " | Maris & Smith | 30 | 200. | 6,000.00 |

*Exhibit S. 12.*

| | | | | | |
|---|---|---|---|---|---|
| " | " | C. D. Barney & Co. | 9 | 201.88+ | 1,817.00 |
| Dec. | " | M. Thomas & Sons | 1 | 203. | 203.00 |
| " | " | Chas. Hartshorne | 160 | 203.50 | 32,560.00 |
| Feb. | 1888 | " " | 35 | 200. | 7,000.00 |
| " | " | Jos. Trotter & Co. | 85 | 200. | 17,000.00 |
| Mar. | " | H. L. Gaw & Co. | 36 | 201. | 7,236.00 |
| Aug. | " | " " | 54 | 196.17+ | 10,593.50 |
| " | " | K. H. Chandler | 3 | 201. | 603.00 |
| Feb. | 1889 | J. B. Garrett | 1 | 190. | 190.00 |
| Mar. | " | Elliott Sons & Co. | 30 | 191.25 | 5,737.50 |
| July | " | H. L. Gaw & Co. | 5 | 200. | 1,000.00 |
| Nov. | " | M. Thomas & Sons | 33 | 201. | 6,633.00 |
| Jan. | 1890 | J. M. Shoemaker & Co. | 49 | 196. | 9,604.00 |
| " | " | T. A. Biddle & Co. | 14 | 197. | 2,758.00 |
| Apr. | " | Chas. Hartshorne | 70 | 202.16+ | 14,151.67 |
| Aug. | " | H. L. Gaw & Co. | 61 | 202.25 | 12,337.25 |
| Nov. | " | Chas. Hartshorne | 100 | 203.33 | 20,333.33 |
| | | Total | 2,302 | | $352,729.00 |

Figures in bold face appear in red ink.

LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Preferred Stock purchased Jan. 1st 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Rate Per Share | Amount Paid |
|---|---|---|---|---|
| Dec. 1890 | Chas. Hartshorne | 122 | 203.44 | $ 24,820.22 |
| Mar. 1891 | Annie E. Kellog | 1 | 201.16 | 201.16 |
| Apr. " | M. Thomas & Sons | 50 | 196.25 | 9,812.50 |
| May " | " " | 1 | 196. | 196.00 |
| " " | H. L. Gaw & Co. | 65 | 197.75 | 12,853.75 |
| Dec. " | T. A. Biddle & Co. | 100 | 200.25 | 20,025.00 |
| " " | Chas. Hartshorne | 34 | 200.25 | 6,808.50 |
| Feb. 1892 | " " | 150 | 200. | 30,000.00 |
| Mar. 1892 | " " | 21 | 201.50 | 4,231.50 |
| Apr. " | " " | 5 | 201.66 | 1,008.33 |
| Apr. 1894 | " " | 9 | 191.50 | 1,723.50 |
| May " | Wm. Budler | 2 | 190. | 380.00 |
| Mar. 1895 | Wm. C. Alderson, Surviving Trustee | 44 | 180. | 7,920.00 |
| May " | Chas. Hartshorne | 60 | 190. | 11,400.00 |
| Mar. 1896 | " " | 130 | 185. | 24,050.00 |
| Apr. " | Barnes & Lofland | 16 | 180. | 2,880.00 |
| June " | H. L. Gaw & Co. | 40 | 175.75 | 7,030.00 |
| Aug. " | not available | 100 | 185. | 18,500.00 |
| " " | " " | 43 | 172.12+ | 7,401.37 |
| Sept. " | H. L. Gaw & Co. | 20 | 172.12+ | 3,502.50 |
| Dec. " | " " | 38 | 172.62+ | 6,559.75 |



*Exhibit S. 12.*

| | | | | | | |
|---|---|---|---|---|---|---|
| Apr. | 1911 | A. M. Kidder & Co. | 639 | 170. | | 108,630.00 |
| " | " | Drexel & Co. | 4,501 | 170. | + | 765,663.13 |
| May | " | not available | 577 | 170. | + | 98,134.87 |
| June | " | Drexel & Co. | 2 | 170. | + | 340.25 |
| July | " | " " | 56 | 169.76 | | 9,506.51 |
| Aug. | " | " " | 3 | 167.13 | | 501.38 |
| " | " | Frank Pardee, Guardian Augustine Van Wickle | 30 | 170. | | 5,100.00 |
| Sept. | " | Drexel & Co. | 10 | 169.12+ | | 1,691.25 |
| Oct. | " | Henrietta M. Doughten | 10 | 170. | | 1,700.00 |
| " | " | Frederick Frelinghuysen | 51 | 170. | | 8,670.00 |
| " | " | Est. of Frdk. T. Frelinghuysen | 10 | 170. | | 1,700.00 |
| " | " | Anna H. Scofield | 27 | 170. | | 4,590.00 |
| " | " | Adelaide Joly | 3 | 170. | | 510.00 |
| " | " | Bertha Volimer | 4 | 170. | | 680.00 |
| " | " | A. Haywood Mason | 3 | 170. | | 510.00 |
| " | " | Est. of John H. Watkinson | 28 | 170. | | 4,760.00 |
| " | " | " " Mary J. Brown | 5 | 170. | | 850.00 |
| " | " | Parkinson & Burr a/c Margaret H. Shepherd | 4 | 170. | | 680.00 |
| " | " | Parkinson & Burr a/c Est. of Truman Heminway | 3 | 170. | | 510.00 |
| " | " | Gustavus Benson, Jr. | 7 | 170. | | 1,190.00 |
| " | " | Emilie Saalmann | 7 | 170. | | 1,190.00 |
| " | " | Maria Palmer | 3 | 170. | | 510.00 |
| " | " | Paul A. Davis, Jr. | 3 | 170. | | 510.00 |
| " | " | Alex. E. Orr | 16 | 170. | | 2,720.00 |
| " | " | S. Burns Weston | 4 | 170. | | 680.00 |
| " | " | Est. of W. G. Hoskins | 14 | 170. | | 2,380.00 |
| " | " | Edgar G. Miller, Jr. | 15 | 170. | | 2,550.00 |
| " | " | Maria Haskell | 1 | 170. | | 170.00 |
| " | " | Edward Y. Hartshorne | 18 | 170. | | 3,060.00 |
| " | " | Isaac W. Jeanes | 50 | 170. | | 8,500.00 |
| " | " | Chas. Fearon & Co. | 28 | 170. | | 4,760.00 |
| " | " | Abner E. Wills | 18 | 170. | | 3,060.00 |
| " | " | not available | 230 | 170. | | 39,100.00 |
| " | " | Drexel & Co. | 55 | 169. | + | 9,306.88 |
| Nov. | " | Mellor & Petry | 20 | 170. | | 3,400.00 |
| " | " | Fannie McC Baylis | 20 | 170. | | 3,400.00 |
| " | " | Eliza N. McCarter | 21 | 170. | | 3,570.00 |
| | | Total | 7,547 | | | $1,306,088.35 |

Figures in bold face appear in red ink.

*Exhibit S. 12.*

LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Preferred Stock purchased Jan. 1st 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Rate Per Share | Amount Paid |
|---|---|---|---|---|
| Nov. 1911 | Jane H. Williamson | 21 | 170. | $ 3,570.00 |
| " " | Robert H. McCarter | 42 | 170. | 7,140.00 |
| " " | Alice Maud Miller | 4 | " | 680.00 |
| " " | Jonas S. Harley | 30 | " | 5,100.00 |
| " " | Mrs. Jane Maxwell | 5 | " | 850.00 |
| " " | Francis S. Manderson | 18 | " | 3,060.00 |
| " " | Amelia E. Botta | 5 | " | 850.00 |
| " " | Justus P. Jones | 10 | " | 1,700.00 |
| " " | Emma M. Anderson | 20 | " | 3,400.00 |
| " " | Mary P. Goheen | 4 | " | 680.00 |
| " " | Jos. G. H. Miller, Abraham H. Miller and James T. H. Miller in trust for Margaret M. Miller | 16 | " | 2,720.00 |
| " " | Jos. G. H. Miller, Abraham H. Miller and James T. H. Miller in trust for Jennie R. Miller | 16 | " | 2,720.00 |
| " " | Wm. Manderson | 27 | " | 4,590.00 |
| " " | Joseph T. Heston | 15 | " | 2,500.50 |
| " " | John P. Hutchinson | 63 | " | 10,710.00 |
| " " | Mary Bulkley | 10 | " | 1,700.00 |
| " " | Julia A. Treadwell | 13 | " | 2,210.00 |
| " " | John L. Riker | 50 | " | 8,500.00 |
| " " | Jane Manderson | 17 | " | 2,890.00 |
| " " | Sarah E. Wright | 5 | " | 850.00 |
| " " | Caroline Darrach | 8 | " | 1,360.00 |
| " " | Mary J. Grissim | 1 | " | 170.00 |
| " " | Susie N. Palmquist | 8 | " | 1,360.00 |
| " " | Harris E. Sproat | 8 | " | 1,360.00 |
| " " | Jane M. Hook | 15 | " | 2,550.00 |
| " " | Mary I. McMeans | 7 | " | 1,190.00 |
| " " | Mary F. Noble | 10 | " | 1,700.00 |
| " " | Andrew Manderson | 21 | " | 3,570.00 |
| " " | Trustees of Germantown Preparative Meeting of Friends | 2 | " | 340.00 |
| " " | Samuel Biddle | 20 | " | 3,400.00 |
| " " | John Morgan Brainard | 10 | " | 1,700.00 |
| " " | Sarah H. Hoffman, Matilda H. Hoffman and Maria L. Hoffman | 10 | " | 1,700.00 |
| " " | Rebecca L. Peacock | 5 | " | 850.00 |
| " " | Edward Potts | 4 | " | 680.00 |
| " " | Arthur Malcom | 2 | " | 340.00 |
| " " | Wm. Bailey | 13 | " | 2,210.00 |



*Exhibit S. 12.*

| | | | | | |
|---|---|---|---|---|---|
| " " | Thos. M. Montgomery & Edw. T. Sayres Trs. U/W of of Thos. Manderson | 73 | " | | 12,410.00 |
| " " | Annie E. Wilcox | 7 | " | | 1,190.00 |
| " " | Jos. G. H. Miller | 16 | " | | 2,720.00 |
| " " | Eliz. N. Brown | 100 | " | | 17,000.00 |
| " " | Chas. F. Corbin | 10 | " | | 1,700.00 |
| " " | Wm. G. Porter | 28 | " | | 4,760.00 |
| " " | not available | 56 | " | | 9,520.00 |
| " " | Drexel & Co. | 20 | 170. | + | 3,402.50 |
| Dec. " | Annie F. Thorn | 17 | 170. | | 2,890.00 |
| " " | Margaret I. Sloan | 8 | " | | 1,360.00 |
| " " | Sophie P. Eastburn | 4 | " | | 680.00 |
| " " | Rodman F. Pugh | 4 | " | | 680.00 |
| " " | William W. Moss | 10 | " | | 1,700.00 |
| Jan. 1912 | Benj. J. Taylor & Edw. W. Taylor, Trs. u/d of Trust by Esther B. Taylor dated 4/1/78 | 20 | " | | 3,400.00 |
| " " | Henry S. Bulkley | 10 | " | | 1,700.00 |
| " " | Edmund Roebling | 50 | " | | 8,500.00 |
| " " | not available | 23 | " | | 3,910.00 |
| | Total | 991 | | | $168,472.50 |

Figures in bold face appear in red ink.

LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Preferred Stock purchased Jan. 1st 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Rate Per Share | | Amount Paid |
|---|---|---|---|---|---|
| Jan. 1912 | Sarah C. Brewer | 9 | 170. | | $ 1,530.00 |
| " " | Rosalie Wilson Kirkland | 9 | " | | 1,530.00 |
| Feb. " | Friendly Institution of Burlington, N. J. | 2 | " | | 340.00 |
| " " | Drexel & Co. | 7 | 170. | + | 1,190.88 |
| " " | Northern Tr. Co. depository under protective agreement by stockholders of M. C. & B. Co. dated 4/25/11 | 1,171 | 170. | | 199,070.00 |
| Dec. 1922 | The Presbyterian Hospital, Phila., Pa. | 41 | 125. | | 5,125.00 |
| Jan. 1923 | E. Winslow Taylor | 2 | 125. | | 250.00 |
| " " | Commercial Trust Co. of N. J., Trustee, Residuary Estate u/w Geo. A. Vroom, Dec'd. | 1 | 125. | | 125.00 |
| " " | A. M. Kidder & Co. (Edith Pardee) | 20 | 125. | | 2,500.00 |
| Feb. " | Mary Hitchcock | 1 | 125. | | 125.00 |
| " " | Sarah E. Beenken, Surviving Executrix u/w of Wm. H. Miller, Dec'd. registered in name of Elizabeth E. Miller & Sarah E. Beenken | 37 | " | | 4,625.00 |

*Exhibit S. 12.*

| | | | | | |
|---|---|---|---|---|---|
| Mar. | " | Hannah McKean Rudolph | 10 | " | 1,250.00 |
| May | " | Treacy & Milton, (Clara A. Price) | 25 | " | 3,125.00 |
| June | " | " " (Bucks Co. Trust Co. of Doylestown, Pa.) | 1 | " | 125.00 |
| | | Total | 1,336 | | $220,910.88 |

RECAPITULATION

| | | |
|---|---|---|
| Page 1 | 2,302 | $ 352,729.00 |
| " 2 | 7,547 | 1,306,088.35 |
| " 3 | 991 | 168,472.50 |
| " 4 | 1,336 | 220,910.88 |
| Total Preferred Stock.. | 12,176 | $2,048,200.73 |

**Figures in bold face appear in red ink.**

LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Consolidated stock purchased from Jan. 1, 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Amount Paid | Rate Per Share |
|---|---|---|---|---|
| Oct. 1871 | Dr. Wm. Thomson | 20 | $ 960.00 | 48. |
| " " | Gaw Bacon & Co. | 574 | 27,222.00 | 47. + |
| Dec. " | " " " | 4 | 201.00 | 51. |
| Jan. 1873 | " " " | 15 | 753.75 | 50.25 |
| Feb. " | " " " | 183 | 8,845.37 | 48. + |
| Mar. " | W. L. Dickinson | 2 | 96.00 | 48. |
| May " | M. Thomas & Sons | 20 | 1,000.00 | 50. |
| " " | Mary T. Buckman | 4 | 192.00 | 48. |
| Aug. " | John R. Burnett | 1 | 48.00 | 48. |
| " " | no record | 5 | 233.26 | 46. + |
| Feb. 1874 | I. W. Morris | 6 | 297.00 | 49. + |
| " " | C. Emory & Co. | 25 | 1,237.50 | 49.50 |
| Mar. " | M. Thomas & Sons | 80 | 4,000.00 | 50. |
| Apr. " | E. T. Burroughs | 1 | 50.00 | 50. |
| May " | H. L. Gaw & Co. | 134 | 6,633.00 | 49.50 |
| Aug. " | Vermilyo & Co. | 1 | 50.00 | 50. |
| " " | Mark Devine | 140 | 6,790.00 | 48.50 |
| Sept. " | H. L. Gaw & Co. | 10 | 482.50 | 48.25 |
| Nov. " | Chas. Hartshorne | 80 | 3,920.00 | 49. |
| Dec. " | H. L. Gaw & Co. | 50 | 2,537.50 | 50.75 |
| Jan. 1875 | " " | 25 | 1,268.75 | 50.75 |



*Exhibit S. 12.*

| | | | | | |
|---|---|---|---|---|---|
| Feb. | " | John B. Garrett | 2 | 100.00 | 50. |
| June | " | Chas. Hartshorne (exchange for 2 shares pfd. stock) | 5 | 256.00 | 51.20 |
| May | 1876 | H. L. Gaw & Co. | 11 | 607.75 | 55.25 |
| Aug. | " | James Hopkins | 73 | 3,723.00 | 51.00 |
| Nov. | " | Chas. Hartshorne (exchange for 10 shares pfd. stock) | 25 | 1,350.00 | 54. |
| Feb. | 1877 | Chas. Hartshorne | 7 | 350.00 | 50. |
| Apr. | " | W. C. Alderson, Trustee | 28 | 1,400.00 | 50. |
| May | " | Samuel C. Mount, Atty. | 10 | 500.00 | 50. |
| Nov. | " | C. P. Bayard | 5 | 250.00 | 50. |
| " | " | Chas. Hartshorne | 6 | 300.00 | 50. |
| Feb. | 1878 | Chas. Hartshorne | 15 | 752.00 | 50.+ |
| " | " | H. L. Gaw & Co. | 40 | 2,010.00 | 50.25 |
| Mar. | " | " " | 10 | 502.50 | 50.25 |
| June | " | not available (exchange for 5 shs. pfd. stock) | 12 | 600.00 | 50. |
| Aug. | " | Margaret McCredy | 10 | 502.50 | 50.25 |
| Nov. | " | H. L. Gaw & Co. | 1 | 51,25 | 51.25 |
| Jan. | 1879 | John B. Garrett | 10 | 535.00 | 53.50 |
| May | " | H. L. Gaw & Co. | 20 | 1,065.00 | 53.25 |
| Sept. | " | " " | 6 | 266.25 | 44. + |
| Feb. | 1880 | M. Thomas & Sons | 350 | 21,350.00 | 61. |
| Apr. | " | Chas. Hartshorne | 133 | 8,113.00 | 61. |
| " | " | Est. John W. Patten | 220 | 13,445.00 | 61. + |
| July | " | Thomas Shoemaker | 60 | 3,660.00 | 61. |
| " | " | H. L. Gaw & Co. | 57 | 3,462.75 | 60.75 |
| Jan. | 1881 | Chas. Hartshorne | 35 | 2,450.00 | 70. |
| Mar. | " | Wm. Uhlor (exchange for 8 shs. Pfd. Stock) | 20 | 1,400.00 | 70. |
| " | " | Chas. Hartshorne (exchange for 6 shs. pfd. stock) | 15 | 1,050.00 | 70. |
| Apr. | " | Chas. Hartshorne | 10 | 700.00 | 70. |
| " | 1882 | A. H. Miller & Son | 33 | 2,310.00 | 70. |
| " | " | Gordon Monges & Co. | 10 | 700.00 | 70. |
| May | " | H. L. Gaw & Co. | 34 | 2,388.50 | 70.25 |
| Sept. | " | M. Thomas & Sons | 52 | 3,640.00 | 70. |
| Feb. | 1883 | Chas. Hartshorne | 4 | 280.00 | 70. |
| " | " | C. B. Keen | 20 | 1,400.00 | 70. |
| July | " | H. L. Gaw & Co. | 129 | 9,449.25 | 73.25 |
| Sept. | 1884 | Jos. H. Trotter | 18 | 1,278.00 | 71. |
| Aug. | 1886 | Edw. Potts, Exr. Est. of Jas. K. Potts (exchange for 18 shares pfd. stock) | 45 | 3,600.00 | 80. |
| " | " | Wm. Uhlor (exchange for 4 shares pfd. stock) | 10 | 800.00 | 80. |
| | | Total | 2,931 | $163,415.88 | |

Figures in bold face appear in red ink.

*Exhibit S. 12.*

LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Consolidated stock purchased from Jan. 1, 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Amount Paid | Rate Per Share |
|---|---|---|---|---|
| Feb. 1888 | Chas. Hartshorne | 3 | $ 240.00 | 80. |
| " " | H. L. Gaw & Co. | 20 | 1,605.00 | 80.25 |
| Aug. " | Chas. Hartshorne (exchange for 12 shares pfd. stock) | 30 | 2,400.00 | 80. |
| Dec. " | Chas. Hartshorne (exchange for 10 shares pfd. stock) | 25 | 1,900.00 | 76. |
| " " | H. L. Gaw & Co. | 15 | 1,143.75 | 76.25 |
| Feb. 1889 | J. B. Barrett | 3 | 228.00 | 76. |
| Jan. 1890 | J. M. Shoemaker & Co. | 20 | 1,570.00 | 78.50 |
| Feb. " | T. A. Biddle & Co. | 25 | 1,975.00 | 79. |
| Mar. " | Winthrop & Percy Smith | 7 | 560.00 | 80. |
| " 1891 | W. H. George | 3 | 231.00 | 77. |
| May " | Chas. Hartshorne (exchange for 40 shares pfd. stock) | 100 | 7,910.00 | 79.10 |
| July " | W. R. Howell | 6 | 468.00 | 78. |
| Feb. 1892 | Wm. H. George | 2 | 152.00 | 76. |
| Apr. " | M. Thomas | 16 | 1,280.00 | 80. |
| Oct. " | Wm. H. George | 1 | 78.00 | 78. |
| Mar. 1894 | " " | 3 | 228.00 | 76. |
| Apr. " | Chas. Hartshorne | 3 | 229.80 | 76.60 |
| Mar. 1895 | Florence S. Wetherill | 3 | 228.00 | 76. |
| June 1896 | H. L. Gaw & Co. | 18 | 1,262.25 | 70. + |
| Aug. " | not available | 5 | 340.63 | 68. + |
| Apr. 1911 | A. M. Kidder & Co. | 380 | 26,600.00 | 70. |
| " " | Drexel & Co. | 3,399 | 238,285.37 | 70. + |
| May " | " " | 100 | 7,012.50 | 70 + |
| Sept. " | " " | 1 | 69.25 | 69.25 |
| Oct. " | Alexander S. Larned | 16 | 1,120.00 | 70. |
| " " | A. Haywood Mason | 5 | 350.00 | 70. |
| " " | Eliz. L. Devine | 95 | 6,650.00 | 70. |
| " " | Emilie Saalmann | 34 | 2,380.00 | 70. |
| " " | Isacc W. Jeanes | 20 | 1,400.00 | 70. |
| " " | Sarah A. Fanshawe, Trustee for J. E. J. Fanshawe | 1 | 70.00 | 70. |
| " " | Albert Pancoast | 2 | 140.00 | 70. |
| " " | Chas. Fearon & Co. | 21 | 1,470.00 | 70. |
| " " | Mary E. Osman | 10 | 700.00 | 70. |
| " " | Abner E. Wills | 20 | 1,400.00 | 70. |
| " " | not available | 29 | 2,030.00 | 70. |
| Nov. 1911 | Francis S. Manderson | 12 | 840.00 | 70. |
| " " | Lewis A. Balz | 11 | 770.00 | 70. |
| " " | Wm. Manderson | 10 | 700.00 | 70. |

Figures in bold face appear in red ink.



*Exhibit S. 12.*

| | | | | | |
|---|---|---|---|---|---|
| " | " | John P. Hutchinson | 9 | 630.00 | 70. |
| " | " | Marion Lea Mitchell | 13 | 910.00 | 70. |
| " | " | Andrew Little | 50 | 3,500.00 | 70. |
| " | " | Lucia B. Tunis | 32 | 2,240.00 | 70. |
| " | " | Jane Manderson | 14 | 980.00 | 70. |
| " | " | Rachael S. J. Randolph | 40 | 2,800.00 | 70. |
| " | " | Lee F. Clapp | 1 | 70.00 | 70. |
| " | " | Saliie H. Potts | 15 | 1,050.00 | 70. |
| " | " | Caroline McIntyre | 25 | 1,750.00 | 70. |
| " | " | John Morgan Brainard | 25 | 1,750.00 | 70. |
| " | " | St. Mary's Orphan Asylum, Lancaster, Pa. | 10 | 700.00 | 70. |
| " | " | Margaret M. Miller | 12 | 840.00 | 70. |
| " | " | Jane M. Dent | 12 | 840.00 | 70. |
| " | " | Wm. P. Jenks | 6 | 420.00 | 70. |
| | | Total | 4,744 | 334,916.55 | |

LEHIGH VALLEY RAILROAD COMPANY

Statement of Morris Canal and Banking Company Consolidated stock purchased from Jan. 1, 1871 to Sept. 30th, 1926.

| Date | From Whom Purchased | No. of Shares | Amount Paid | Rate Per Share |
|---|---|---|---|---|
| Nov. 1911 | Alexander Henry & J. W. Bayard, Trustee u/w of Anna M. Bayard, Dec'd. | 72 | $ 5,040.00 | 70. |
| " " | Edith S. B. Wright | 9 | 630.00 | " |
| " " | Jos. G. H. Miller | 16 | 1,120.00 | " |
| " " | Anna Harkness | 10 | 700.00 | " |
| " " | Theodosia M. Hodge | 10 | 700.00 | " |
| " " | not available | 87 | 6,090.00 | " |
| Dec. " | Julia F. Steelman | 5 | 350.00 | " |
| Jan. 1912 | Benj. J. & Edw. Winslow Taylor, Trs. U/D of Tr. by Esther B. Taylor | 38 | 2,660.00 | " |
| " " | Rosalie Wilson Kirkland | 3 | 210.00 | " |
| " " | not available | 4 | 280.00 | " |
| Feb. " | Northern Tr. Co., depository under agreement by Morris Canal & Banking Co. stockholders dated 4/25/11 | 2,040 | 42,800.00 | " |
| Mar. 1914 | Tifft & Co. | 8 | 560.00 | " |
| Dec. 1922 | E. T. Stotesbury | 85 | 4,250.00 | 50. |
| " " | Provident Trust Co., Trustee, under will of Carolina D. Paxson, Dec'd. | 3 | 150.00 | 50. |
| " " | T. Ellis Barnes | 6 | 300.00 | 50. |
| " " | Bertha Lea Low | 6 | 300.00 | 50. |
| Jan. 1923 | E. Winslow Taylor | 4 | 200.00 | 50. |

*Exhibit S. 12.*

| | | | | | |
|---|---|---|---|---|---|
| " | " | A. M. Kidder & Co. (Edith Pardee) ..... | 10 | 500.00 | 50. |
| Sept. | " | Treacy & Milton (Josephine Wray Fisher) ..... | 2 | 100.00 | 50. |
| | | Total ..... | 2,418 | $166,940.00 | |

RECAPITULATION

| | | |
|---|---|---|
| Page 1 ..... | 2,931 | $163,415.88 |
| " 2 ..... | 4,744 | 334,916.55 |
| " 3 ..... | 2,418 | 166,940.00 |
| Total Consolidated Stock | 10,093 | $665,272.43 |

Figures in bold face appear in red ink.



## EXHIBIT S. 13.

LIST OF HOLDERS OF PREFERRED STOCK OF MORRIS CANAL & BANKING COMPANY TO WHOM ATTACHED LETTER OF JANUARY 11, 1923, WAS WRITTEN

| *Names and Addresses* | *Shares* |
|---|---|
| Margaret Agnew,<br>31 Smith St.,<br>Paterson, N. J. | 6 |
| Mary M. Agnew,<br>28 Church St.,<br>Paterson, N. J. | 6 |
| Susan Agnew,<br>31 Smith St.,<br>Paterson, N. J. | 6 |
| Commercial Trust Company of N. J.,<br>Trustee Residuary Estate u/will<br>George A. Vroom, decd.,<br>15 Exchange Place,<br>Jersey City, N. J. | 1 |
| George M. Flint,<br>37 Mt. Vernon St.,<br>Boston, Mass. | 3 |
| Ethel I. Fogarty,<br>1824 Shunk St.,<br>Phila., Pa. | 6 |
| Mary Agnew Haley,<br>31 Smith St.,<br>Paterson, N. J. | 6 |
| Marian D. Hallowell,<br>Bethayres, Pa. | 9 |
| Mary Hitchcock,<br>c/o Miller, King, Lane & Trafford,<br>80 Broadway,<br>New York, N. Y. | 1 |

*Exhibit S. 13.*

| *Names and Addresses* | *Shares* |
|---|---|
| Annie E. Kellogg,<br>122 S. Main St.,<br>Phillipsburg, N. J. | 37 |
| Clarissa E. Landell,<br>5814 Drexel Road,<br>Phila., Pa. | 11 |
| Elizabeth E. Miller & *Sarah E. Beenken,* Executrices u/w of William H. Miller, decd.,<br>c/o Guarantee Tr. & S. D. Co.,<br>316 Chestnut St.,<br>Phila., Pa. | 37 |
| Clara A. Price,<br>The Cairo,<br>Washington, D. C. | 25 |
| M. Estelle Richards,<br>6600 Lawnton Ave.,<br>Phila., Pa. | 3 |
| Hannah McKean Rudolph,<br>129 W. Weaver St.,<br>Gtn., Phila., Pa. | 10 |
| Safe Deposit & Trust Co. of Baltimore, Trustee u/w Elizabeth Fort, decd., subject to the Order of the Circuit Court No. 2 of Batlimore City,<br>13 South St.,<br>Baltimore, Md. | 5 |
| Frederic Sefton,<br>c/o The Pines,<br>Auburn, N. Y. | 10 |
| Mary J. Smith Estate,<br>Sarah R. Johnson,<br>c/o Bucks Co. Trust Co.,<br>Doylestown, Pa. | 1 |



*Exhibit S. 13.*

| | |
|---|---|
| Ada M. Stearns,<br>103 Asylum St.,<br>Hartford, Conn. | 21 |
| Jane Agnew Synot,<br>34 S. Fullerton Ave.,<br>Montclair, N. J. | 6 |

January 11, 1923.

Dear Sir:—

The Lehigh Valley Railroad Company recently negotiated an agreement with the State of New Jersey under which the old Morris Canal is to be abandoned. In accordance with the agreement we have turned over to the State authorities all of the stock of the Canal Company in our possession.

According to the records you are the owner of shares of the Preferred Stock of the Morris Canal & Banking Company, which leased the canal to this railroad, for which we will pay you $125. a share. As you undoubtedly are aware, the stock represents no actual value and its earning power furthermore is only for a limited period, because of the expiration of the canal company charter.

This offer is made to you now because our only other alternative is to begin condemnation proceedings, which we will have to do if you are not disposed to accept this proposition.

If further information is desired, I shall be glad to furnish it.

Yours very truly,

Secretary.

*Exhibit S. 13.*

LIST OF HOLDERS OF CONSOLIDATED STOCK OF MORRIS CANAL & BANKING COMPANY TO WHOM ATTACHED LETTER OF JANUARY 11, 1923, WAS WRITTEN

| *Names and Addresses* | *Shares* |
|---|---|
| Morris F. Miller,<br>2931 N. Broad St.,<br>Phila., Pa. | 50 |
| William R. Ward,<br>c/o Anna Day Ward and<br>Henry L. Poinier, Gdns.,<br>21 S. Munn Ave.,<br>E. Orange, N. J. | 9 |
| Elias Wineland,<br>1435 Diamond St.,<br>Phila., Pa. | 100 |
| Alfred B. Wray,<br>111 Orchard St.,<br>Ithaca, N. Y. | 3 |
| Josephine Wray,<br>c/o Alfred B. Wray,<br>111 Orchard Place,<br>Ithaca, N. Y. | 2 |

January 11, 1923.

Dear Sir:—

The Lehigh Valley Railroad Company recently negotiated an agreement with the State of New Jersey under which the old Morris Canal is to be abandoned. In accordance with the agreement we have turned over to the State authorities all of the stock of the Canal Company in our possession.

According to the records you are the owner of shares of the Consolidated stock of the



*Exhibit S. 13.*

Morris Canal & Banking Company, which leased the canal to this railroad, for which we will pay you $50. a share. As you undoubtedly are aware, the stock represents no actual value and its earning power furthermore is only for a limited period, because of the expiration of the Canal Company charter.

This offer is made to yon now because our only other alternative is to begin condemnation proceedings, which we will have to do if you are not disposed to accept this proposition.

If further information is desired, I shall be glad to furnish it.

Yours very truly,

Secretary.

LIST OF HOLDERS OF PREFERRED AND CONSOLIDATED STOCK OF MORRIS CANAL & BANKING COMPANY TO WHOM ATTACHED LETTED OF JANUARY 11, 1923, WAS WRITTEN

| | *Shares* | |
|---|---|---|
| *Names and Addresses* | *Preferred* | *Consolidated* |
| Edith Pardee,<br>Hazelton, Pa. | 20 | 10 |
| John H. Pratt,<br>209 W. Heather Road,<br>Wildwood Crest, N. J. | 25 | 26 |
| E. Winslow Taylor,<br>Falls of Schuylkill,<br>Phila., Pa. | 2 | 4 |
| Annie M. D. White,<br>Newton,<br>Pa. | 48 | 25 |

*Exhibit S. 13.*

January 11, 1923.

Dear Sir:—

The Lehigh Valley Railroad Company recently negotiated an agreement with the State of New Jersey under which the old Morris Canal is to be abandoned. In accordance with the agreement we have turned over to the State authorities all of the stock of the Canal Company in our possession.

According to the records you are the owner of shares of the Preferred Stock of the Morris Canal & Banking Company, which leased the canal to this railroad, for which we will pay you $125. a share. You are also the owner of shares of Consolidated Stock, for which we will pay you $50. a share. As you undoubtedly are aware, the stock represents no actual value and its earning power furthermore is only for a limited period, because of the expiration of the canal company charter.

This offer is made to you now because our only other alternative is to begin condemnation proceedings, which we will have to do if you are not disposed to accept this proposition.

If further information is desired, I shall be glad to furnish it.

Yours very truly,

Secretary.



**EXHIBIT D. 3.**

April 18, 1923

Clara A. Price
"The Cairo"
Washington, D. C.

Dear Madam:

As you are perhaps aware, a contract was made on November 30, 1922 between certain commissioners acting on behalf of the State of New Jersey, and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, regarding the acquisition by the State of New Jersey of certain property of the Canal Company. That agreement contemplates that all of the stock of the Morris Canal and Banking Company shall be acquired by the Railroad Company and turned over to the State. In the event of the Railroad Company being unable to purchase the stock at a price satisfactory to it, power is given by legislation enacted in 1922 and further legislation enacted in 1923 to condemn said stock in the name of the State of New Jersey.

I am acting on behalf of the Attorney General of the State of New Jersey, who has been directed by the Board of Conservation and Development of the State to proceed to condemn the stock held by you, which, according to the records of the Company, is twenty-five shares of preferred. At the suggestion of the Attorney General, I am writing to ascertain whether or not you care to sell your stock at the price offered you heretofore by the Company, which is **$125.00** per share. If you do not desire to accept the price so offered, it is the intention of the Attorney General to proceed to acquire the stock through condemnation.

*Exhibit D. 3.*

I would appreciate a reply to this communication on or before April 25.

Very truly yours,

JM:GW

## EXHIBIT D. 5.

### THE MORRIS CANAL

*A statement to the people of New Jersey outlining the position of the Lehigh Valley Railroad Company in regard to the proposed abandonment of a century-old waterway which has long since outlived its usefulness.*

One of New Jersey's foremost papers, discussing the problems involved in the abandonment of the Morris Canal, a few months ago said:

> "It should be the aim of the friends of the plan to present clearly, early and often between now and next winter the proof that their program is not only legally sound but that it will mean that the State can acquire the property on the right terms, that the Lehigh Valley shall not unduly profit by being divorced from an unprofitable investment, that the water rights will revert to the State, that no public interest will suffer, and that the offensive ditch will be transformed into a rapid transit asset owned exclusively by the public.
>
> "This will be no easy task, as past history has shown, but it can be accomplished if the officials representing the people whose interests are vitally affected keep up an effective educational campaign instead of waiting for the approach of another legislative session



*Exhibit D. 5.*

> before announcing their program. *And if the Lehigh is consulted in any move to bring about a compromise, then these consultations should be so open that there could be no successful charge of the use of underhanded methods.* If this is done, then some of the waste of a year of time may be retrieved."

The statement in italics was not so emphasized originally, but it is at once the inspiration and the subject of this pamphlet.

*Why Negotiations Are Urged at This Time*

The reason for negotiations of any sort at this time may be puzzling to those unfamiliar with the facts. The answer is a simple one. When a charter was granted the builders of the canal on December 31, 1824, the State was given authority, after the lapse of ninety-nine years, to take possession of the canal and its appurtenances, if it saw fit, paying a fair value, the price to be determined and fixed by a board of ten commissioners, or a majority of them "mutually chosen" by the State and the Company. It was further provided that if the State did not purchase the canal at that time or within the period of a year thereafter, the charter should continue in effect for a further term of fifty years, when the canal and its appurtenanes were to become the sole property of the State. Ninety-nine years after December 31, 1824, is December 31, 1923, which means that on that date or in the year following, if the provision is still valid, New Jersey must determine whether it will buy the canal now or by waiting until 1973, acquire it without cost.

There is, however, some doubt whether the provision as to "recapture" in either 1923 or

1973 still exists. In 1871 the State Legislature authorized a lease of all the Morris Canal property to the Lehigh Valley Railroad Company "in perpetuity," and a lease on the faith of this authority was accordingly made in perpetuity, and the State has since dealt with the Lehigh Valley Railroad Company as the owner of the property. While an issue on this question has not been decided by the highest court in New Jersey, decisions in which the point was collaterally in question afford strong reasons for believing that a contest would result in a decision affirming the Railroad Company's absolute and perpetual ownership.

The Railroad Company realizes that the Canal property, however, should be put to other public uses, and it has no desire to stand in the way of the State's taking over on equitable terms the major part of the canal property with its water rights, the latter being the most valuable asset. A small part of the canal property is particularly suited for steam railroad development, and the people of the State will desire to see this small part dedicated to that use. It will be to the general public good that this be so developed, and it is only as to this part that the Lehigh Valley desires to preserve its ownership and undertake an appropriate railroad development.

*Lehigh Valley's Interest in the Matter*

The Lehigh Valley Railroad Company is not only the lessor (in perpetuity, it is confidently believed) of the canal property and water rights, but also is the owner of practically all of the stock of the Morris Canal & Banking Company. It is a familiar and oft-repeated charge that the Lehigh Valley obtained control of



the canal to stifle competition—for that reason an explanation of why it leased the canal seems to warrant space here.

In 1871 the rails of the Lehigh Valley, then as now an important anthracite carrier, terminated at Easton, Pa. The Central Railroad of New Jersey, also greatly interested in the transportation of anthracite, and an active competitor of the Lehigh Valley, was believed to be preventing the Lehigh Valley from getting fair treatment in the handling of its traffic to the seaboard and the management of the Lehigh Valley conceived the idea that by leasing the canal it would have a regulator which would insure an equitable arrangement from its competitors. Accordingly the canal was leased in 1871. Subsequent events proved this act unnecessary. Only a year later the Company was able to begin the construction of its own line in New Jersey, which was soon built to Perth Amboy and afterwards extended to Jersey City.

*Noted as a Mountain Climber Morris Canal*

The canal is 102.23 miles long, or with its feeders 106.69 miles. It extends from the Delaware River at Phillipsburg, N. J., to the Hudson at Jersey City and climbs en route the mountain ridge which bisects the northern portion of the State. Every boat traversing its length in addition is raised and lowered a total of about 2,000 feet, or more than a third of a mile.

To accomplish this there are thirty-two canal locks and twenty-two inclined planes of exceptional construction. The builders of this waterway introduced the system of inclined planes for mountain climbing canals, the boats being drawn

up long steep slopes in wheeled cradles running on rails. As a result transportation over the Morris Canal is not all by water by any means. More than five miles is by rail over these inclined planes, and a primitive, slow and inefficient sort of railroading it is.

As water must be used for generating the power for drawing the canal-boats up the long inclined planes and lowering them down again, and for the operation of the thirty locks, it is obvious that a far greater quantity of water is necessary for the operation of the Morris Canal than is necessary to operate canals running along practically level ground, as is usually the case. The loss of water by seepage and leaking also is enormously greater from canals winding, as does the Morris Canal, around side hills, than from those traversing level country.

*Railroads Soon Put End to Builders' Hopes*

The canal was never financially successful, except for a few years following 1852. It paid dividends during that period but even some of those were not in cash but in scrip—mere promises to pay—the scrip becoming a debt of the Canal Company which had to be paid by the Lessee long afterwards. The reason for the canal's failure is an interesting story of railroad development. Even while the charter was under consideration, George Stephenson was completing the invention of the locomotive. The Stockton & Darlington Railroad, in England, with steam transportation, began operation only nine months after the Canal was chartered. Railroad development became so rapid within a short while that in 1830, a year before the Canal was opened for use, the State of New Jersey had



chartered the Camden & Amboy Railroad Company, and soon afterward chartered several others. The Morris & Essex Railroad, now operated by the Delaware, Lackawanna & Western Railroad, paralleling the canal from one end to the other, was chartered in 1835, one year before the canal was opened to Jersey City. Within ten years after the chartering of the Canal Company the bright expectations with which the charter had been taken began to disappear as a result of this new and better method of transportation. The canal was, in fact, already out of date. The Directors' Annual Reports show the constantly growing stress of this competition. After steel rails were invented and put into use in the sixties, when the Lackawanna Railroad had been completed through to tidewater, and the Central Railroad of New Jersey built, freights fell to a point which rendered impossible the financial success of the canal.

Commissions, always popular in the political history of New Jersey, when investigating the Morris Canal have not always sought a way to bring its life to an end. One commission, at least, appointed by the legislature, devoted its efforts to show why it should be constructed. A naive reason is offered, and one which must be of particular interest to Jersey men today, appears in the report of the Commission of 1823, which reads:

> "We may here mention as a large increase of freight to the canal, of profit to the farmer, and of good morals to the community, that apples and cider would be exported instead of being converted into arden spirits. The land carriage renders it at present necessary to have recourse to distilling as the only means

of conveying the produce of our orchards to market."

Certainly, in this day and time, this would be a curious argument for the continuation of the canal.

In the days of its greatest success, however, the largest boat on the canal carried but seventy tons, the capacity of one modern coal car. This boat was made up of two sections which had to be separated when taken over the planes. The trip over the entire canal occupied five days. Against this a single locomotive will take two thousand tons of coal over the same distance in five hours. The result of such competition is perfectly obvious. Moreover, the Canal Company had to receive and trans-ship the coal at the Delaware River from cars, and the coal had to be again lifted out of the canal boats and put into cars or other boats when it reached tide-water, adding another costly burden. Against these heavy odds the canal had no chance of success and finally succumbed.

*Water Shortage Would Stop Rehabilitation*

Rehabilitation of the canal as a cargo carrier has several times been agitated, but realization of the impossibility of making it an economic success as it is at present constructed or providing the necessary water to make an enlarge canal capable of meeting modern day demands, has quickly put a quietus upon the dreams of those who have paused to investigate. Various New Jersey communities are urgently in need of increased water supplies for potable purposes and this water must necessarily come from the streams and rivers which are now supplying the canal.



The canal has the first legal right to the waters in the sections to which these communities must look for a supply, but the continued use of these waters for canal purposes undoubtedly will work much hardship. As a matter of fact they could be used to excellent advantage by cities in the eastern part of the State if the canal's rights are waived or the requirement that the canal is kept in navigable condition be abolished. Jersey City and Bayonne now have applications pending for additional water rights and should their requests be granted and the supplies be taken without controversy, the Morris Canal would have to be abandoned for lack of water with which to operate.

With this situation existing it would seem as if the settlement of this problem would be easy. Other complications, however, enter into the matter.

In 1867 the State of New Jersey granted to the Canal Company a tract of land under water, adjacent to the Hudson River in Jersey City. This is known as the "Big Basin," which extends back some 1,765 feet from the Hudson River. This grant was made during the term of the Canal Company's charter, but the laws of the State purported to permit the title thereafter to be secured upon application to the Riparian Commission and payment of the compensation fixed by that body. Application was accordingly made, a permanent title was granted to the Lehigh Valley Railroad Company as the lessee of the canal property, and the company entered into possession, having complied with all the terms of the Act of 1867, and upon the faith of the permanent grant by the Riparian Commission on behalf of the State. The Company erected large freight

piers to accommodate expected canal traffic and likewise to expand its Jersey City railroad terminal, from which it now serves Jersey City and the metropolitan district.

In 1907, long after the completion of the piers and buildings, an attack on the right of the Riparian Commission to sell this property to the Lehigh Valley was begun in the New Jersey courts, with the result that the deed was declared null and void. The basin is no longer necessary for the maintenance or operation of the canal itself, although this is not generally understood. It has played an important part in negotiations toward the settlement of the whole canal problem. The Lehigh Valley has a valuable investment in this basin and the management of the company naturally has sought to safeguard its interests.

*Lehigh Valley's Position in Abandonment Plans*

It is not the purpose of this pamphlet to discuss the various efforts which have been made to settle this problem. It has been written solely with a view to tell the story of the Canal and setting forth the position of the Lehigh Valley in any future negotiations looking to a solution of the problem.

Last winter a Committee, including the Corporation Counsel of Jersey City, the Corporation Counsel of Newark and Attorneys for the North Jersey District Water Supply Commission, as well as Special Counsel representing these interests, was authorized to prepare a plan for the abandonment of the Canal and draft a bill embodying this plan. This Committee asked the Lehigh Valley upon what terms it would be willing to consent to the abandonment of the Canal.



In reply the Vice-President and General Counsel of the Lehigh Valley Railroad Company expressed the willingness of this Company to cooperate in the matter and said:

> "As to your specific inquiries, I beg to say that the Company wishes to retain the following properties:
>
> (a) The property and right of way in Hudson County;
>
> (b) The right of way in Phillipsburg between Greens Bridge and the Delaware River.
>
> "In consideration of the retention of and the deeds for these properties, the Railroad Company will turn over to the State all its other canal property, rights, titles, and interests, and the securities of the Canal Company which it owns."

*Valuable Rights and Properties Offered to State*

"The Company does not feel that it should be called upon to pay anything to the State if the canal problems should be settled upon these terms, for the following reasons, among others:

"The value of the property to be retained, according to its valuation by Mr. Louis Focht, the engineer of the State Board of Assessors, in his report of October 27, 1913, is as follows:

| | | |
|---|---|---|
| (1) | Value of the 'Big Basin' | $2,362,800 |
| (2) | Value of the 'Little Basin' | 1,211,425 |
| (3) | Value of other property in Hudson County | 603,200 |
| (4) | Value of Property in Phillipsburg | 49,100 |
| | | $4,226,525 |

"These figures represent the result of the highest appraisal methods used by Mr. Focht, and also disregard the pres-

ent title of the Railroad Company. In effect, all the Company will obtain will be the value of a remainder based upon the extent of its title under the lease executed by the Canal Company to the Railroad Company in 1871, under an Act of the Legislature passed that year. It has already been indicated by the courts that the title obtained under the lease is in perpetuity. Consequently any concession now made by the State would result in nothing more than a confirmation of the Company's title. These facts should be borne in mind in respect of any hesitation toward accepting the figures herein stated as a fair basis of comparison concerning the exchange of values in carrying out the plan of settlement.

"As to the value of the property to be taken over by the State, I beg to advise that the lands between the Hackensack River and Paterson were valued by Mr. Focht, in his report above referred to, at $1,874,017. The water rights of the company were not specifically valued by Mr. Focht, as far as I know, but the water rights and lands of the Company west of Paterson have been valued by Mr. Morris Sherrerd at the sum of $3,000,000. The value of the lands and water rights passing to the State, therefore, will be not less than $4,874,017."

*Drinking Water Adds to Values of Canal Rights*

"The above valuation of the water rights, however, is much too low. In 1913 Mr. Focht, in estimating the probable income from these rights at $1 per million gallons, placed it at $15,227 per annum. Raw water, unfit for potable purposes, is sold in northern New Jersey



at $15 per million gallons, and therefore the Morris Canal waters if used solely for non-potable purposes, would yield an income which if capitalized at 5%, would make the water alone worth $4,678,100, instead of $3,000,000 for both land and water. If used for potable purposes, of which it is all capable, a very much larger income, establishing a much higher value, would be obtainable.

"The capital stock of the Morris Canal & Banking Company, owned by the Lehigh Valley Railroad Company, consists of 9,921 shares of consolidated stock and 11,399 shares of preferred stock, each having a par value of $100, or a total par value for both issues of $2,132,000. There are in the hands of the public 329 shares of consolidated stock and 351 shares of preferred stock.

"There is an outstanding bond issue of $500,000, all owned by the Lehigh Valley Railroad Company.

"There is also outstanding $42,080.50 perferred scrip, all owned by the Lehigh Valley Railroad Company.

"The Railroad Company will turn over to the State without cost all of the shares of stock, bonds and scrip which it owns as above mentioned, and shall expect the State to acquire by condemnation the outstanding stock amounting to 680 shares. The ownership of the stock will enable the State to preserve the title to the lands under water in Greenwood Lake, in the State of New York, and to use the charter and privileges of the Canal Company for such other purposes as the State may find desirable."

This letter sets forth in detail the position of the Lehigh Valley. Briefly stated, New Jersey wants to be rid of a useless ditch, to convert its

*Exhibit D. 5.*

right of way to more useful purposes, and most important of all, to obtain possession of a valuable and necessary water supply for its peoples. For its part, the Lehigh Valley is perfectly willing to transfer the charter of the Morris Canal Banking Company, return to the State the property extending from the Hackensack River, through Newark, Paterson, etc., to the Delaware River, together with the great water rights, the extent of which is shown in the territory shaded in green on the map, reserving only to itself the nine and a half miles of right of way in Hudson County and two miles in Warren County in the vicinity of Phillipsburg, colored in red on the map, which together amount to less than twelve miles of the 102 miles of the canal's length, the value of which the State's engineers have agreed is far less than the property it will surrender.

It would seem, in the light of the facts set forth in this brief review, that when the people of New Jersey realize the situation there should be no difficulty in securing legislation necessary to provide a settlement of this question which will be fair to all the parties concerned.

E. E. LOOMIS,
President Lehigh Valley Railroad Company.

October 1, 1921.

MacCrellish & Quigley Co., Printers, Trenton, N. J

# NEW JERSEY
# Court of Errors and Appeals.

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IN THE MATTER OF THE CONDEMNATION OF CAPITAL STOCK OF MARION D. HALLOWELL, IN THE MORRIS CANAL AND BANKING COMPANY.

## BRIEF OF APPELLANT

### STATEMENT.

This is an appeal from the determination and judgment of the Honorable Thomas W. Trenchard, Justice of the Supreme Court, confirming the report of an advisory commission appointed to determine the value of the shares of stock in the Morris Canal and Banking Company, owned by appellant. The proceedings were instituted in pursuance of Chapter 212, P. L. 1922, and in pursuance of agreement between Frank H. Sommer, Louis Focht and Edward L. Young, commissioners acting on behalf of the State of New Jersey under said act, of the one part, and Morris Canal and Banking Company and Lehigh Valley Railroad Company, of the other part, and also in pursuance of Chapter 112, P. L. 1923. These laws, together with the agreement, are compiled in a pamphlet published by the Department of Conservation and Development, entitled "Laws Providing for the Acquisition of the Morris Canal by the State of New Jersey and its Final Disposition." A copy

of this compilation is inserted in and supplied with this brief.

By Chapter 212, P. L. 1922, commissioners are appointed on behalf of the State to negotiate with the said companies for the acquisition by the State of the Morris Canal in whole or in part, and all the stock of the Morris Canal and Banking Company, and the rights of all stockholders in said company and in the said canal property, and water rights; and also for the acquisition by the State of all or any part of the right, title and interest of the Lehigh Valley Railroad Company in the canal property, and the water rights of the said Canal and Banking Company. This statute is printed in full in the pamphlet compilation on page 3 *et seq.*

In pursuance of authority given, commissioners acting on behalf of the State made and entered into the agreement with the said companies set forth on page 8 *et seq.* of the said pamphlet compilation. By paragraph 5 of their agreement (p. 9 of pamphlet), the commissioners agree on behalf of the State to institute and prosecute to completion, when requested in writing by the Railroad Company, proceedings for the condemnation of any stock, consolidated or preferred, of the Canal Company, at the expense of the Railroad Company. In order to carry out this paragraph of the agreement Chapter 112, P. L. 1923 (p. 23 of pamphlet) was enacted. By this enactment authority and power are given to the Board of Conservation and Development, or other agency, to initiate proceedings for the acquisition by condemnation of any or all of the capital stock of the Canal Company, not owned by the State. By paragraph 3 (p. 24 of pamphlet) the agency designates by resolution the capital stock to be acquired.

[Under paragraph 8 of its agreement (pp. 13, 14 of pamphlet) the Railroad Company had agreed to assign, transfer and set over to the State, or its nominees, on or before December 30, 1922, all shares of capital stock of the Canal Company owned by it, the Railroad Company, the same being 9,921 shares of consolidated or common



stock, and 11,399 shares of preferred stock. Under paragraph 9 (p. 14 of pamphlet) the Railroad Company had agreed to acquire and assign, transfer and set over to the State all the remaining outstanding stock of the Canal Company, consolidated (329 shares) and preferred (351 shares), and also had agreed to continue to pay dividends on such stock, pending the acquisition thereof, in accordance with its existing guaranty. This scheme, erected by the agreement, was superseded by Chapter 112, P. L. 1923, except as to the payment of dividends.]

Paragraph 4 of the 1923 statute (p. 24 of pamphlet) provides for the giving and serving of notice. Paragraph 5 (p. 27 of pamphlet) requires the owner to answer within twenty days after service of the notice, and paragraph 6 (p. 27 of pamphlet) provides that the State of New Jersey shall, or any stockholder may, within twenty days after time for filing the answer shall have expired, apply to either the Chief Justice of the Supreme Court or the Justice thereof holding the Circuit for the county in which the principal office of the Canal Company is situated, for leave to bring before him a hearing upon the claim filed, or in case no claim is filed, to fix the amount to be paid for the stock. Paragraph 7 (p. 28 of pamphlet) provides that the said Justice may appoint three commissioners or appraisers to appraise the full market value of the stock and what damages, if any, should be assessed for the taking of the same. This paragraph of the statute gives the Justice power to review the findings of the advisory commission, with or without further hearing, and the ultimate determination of all the facts. The same paragraph provides an appeal from the determination of the Justice to the Court of Errors and Appeals upon any question of law involved in the proceedings. In pursuance of the 1923 Act, notice was given to the appellant of the intention of the State to acquire her nine shares of preferred stock (R. p. 8). After answer filed application was made to Justice Trenchard of the Supreme Court (as the principal office of

the Canal Company had then been removed to the Department of Conservation and Development in the City of Trenton, county of Mercer) to appoint three commissioners to appraise the value of appellants' stock, and the damages of taking (R. p. 14).

At or about the time notice was served upon this appellant, similar notices were given to and served upon Morris F. Miller, holder of fifty shares of consolidated or common stock, E. Estelle Richards, holder of three shares of preferred stock, Safe Deposit & Trust Company of Baltimore, Maryland, holder of five shares of preferred stock; George M. Flint, holder of three shares of preferred stock; Clarissa E. Landell, holder of eleven shares of preferred stock; Frederick Sefton, holder of ten shares of preferred stock, and Anna M. Stearns, holder of twenty-one shares of preferred stock. Answers were filed on behalf of all the above shareholders, counsel for appellant herein appearing also for Morris F. Miller, E. Estelle Richards and Safe Deposit & Trust Company of Baltimore, Maryland. Henry F. Stockwell, Esq., of Bleakly, Stockwell and Burling, of Camden, New Jersey, appeared on behalf of the other four shareholders. The hearings of the facts on the eight applications were consolidated before the advisory commission, and the commission reported and filed one set of reasons covering the eight applications. The shareholders represented by Henry F. Stockwell, Esq., are not interested or involved in this appeal. All the shareholders represented by counsel for the appellant herein have appealed to this Court, and it has been stipulated that the disposition of the instant case shall govern the other cases.

The Morris Canal and Banking Company was chartered December 31, 1824. P. L. 1824, p. 158. Section 26 of the Statute Charter provides:

> "26. *And be it enacted,* That at the end of 99 years from the passing of this act, it shall and may be lawful for this State, to take to itself, and on its own account the said canal and its appurtenances, paying to the said company the fair value thereof, to be estimated and fixed upon by 10 commissioners, or a majority of them, to be mutually chosen by this State and the said company; or in case that shall not be done at that time, or within one year thereafter, this charter shall continue so far as respects its canal operations and privileges for the further term of 50 years, when it shall cease, and the said canal with its appurtenances become the sole property of the State." (R. p. 211.)



The case of *Landell* v. *State,* 101 *N. J. L.* 294, 128 *Atl.* 380 (affirmed by this court in 102 *Atl.* 922), holds that the proceedings here in question under Chapter 112, P. L. 1923, are in lieu, and in substitution, of the method provided by section 26 of the Charter. (Clarissa E. Landell, prosecutrix in that case, was one of the shareholders represented by Mr. Stockwell, as stated above.) This was the theory presented to the commission and to Justice Trenchard below on behalf of appellant. The State took a different attitude and exploited a different theory.

> "That is objected to. Mr. Hunt's questions are predicated upon the assumption that the State would have elected to exercise the option conferred upon it by section of the charter of the Morris Canal and Banking Company to which he refers, when that right didn't accrue to us in 1924. That is just pure speculation. The State did not do that. No intimation in the case that the State wanted to do it. Quite a different story is presented to this commission, and it seems to me it is just a pure waste of time to speculate what might have been the rights of stockholders if the State had elected to exercise an option in 1924." (R. p. 92.)

The cross-examination of Mr. Boles, Vice-President of the Lehigh Valley, who appeared for that company and conducted negotiations on its behalf with the State, shows the same attitude.

"Q. Mr. Boles, in the negotiations that you in behalf of the Lehigh Valley Railroad Company carried on with the State, did you ever request those representing the State to proceed according to section 26 of the 1824 charter of the Morris Canal and Banking Company? (R. p. 94.)

Chairman Joline—Is that charter in the book?

Mr. Hunt—Yes.

A. I don't think so. I am fairly sure we never did. I don't think the subject was ever mentioned.

Q. No suggestion of that kind is mentioned in the letter of Mr. Loomis, in the writing of which you had a hand, I believe?

A. No suggestion of that kind is made.

Q. Yes.

A. I don't believe so.

Q. Why didn't you, instead of endeavoring to induce the State to follow the plan set forth in your letter, try to induce it to follow the plan set forth in the 1824 charter?

A. We didn't want them to do so.

Q. You didn't what?

A. We didn't want the State to take that course.

Q. Who didn't want the State to take that course?

A. The Lehigh Valley Railroad Company.

Q. Did the Lehigh Valley Railroad Company ever consult the owners of the minority stock of the Morris Canal and Banking Company as to what course they might wish the State to follow?

A. No, sir; there wasn't the slightest legal, moral, ethical or any other ground for doing so." (R. pp. 94, 95.)

It was also the theory of appellant below that under section 26 of the charter, each shareholder was entitled



to his or her *pro rata* of the net assets of the Canal Company, upon their liquidation or appraisement at full market value. This theory was not acceded to by the advisory commission or by Justice Trenchard (see conclusions of commissioners, R. p. 179, and Order Confirming Report of Commissioners, R. p. 2).

The State took the position that the stock of appellant should be evaluated upon a different basis. Evidence was permitted to be introduced by the State, over objection (R. p. 29 *et seq.;* p. 54 *et seq.*), showing prices paid for other shares of stock after the passage of the 1922 act (p. 3 *et seq.* of pamphlet). Evidence was also introduced by the State (R. p. 176; *Ex-S.* 12 p. 251), showing prices paid for stock prior to the erection of the statutory condemnation scheme. The State contended that the prices paid for such stock were evidence tending to establish the market value of the stock of appellant.

The State also presented another theory of value. It contended that since the lease of 1871 (*Exhibit P-1,* R. p. 227 *et seq.*) the only interest which any of the shareholders had in the Canal Company was the right to receive annual dividends, as in said lease provided, until the termination of the Charter in 1974. By that lease to the Lehigh Valley Railroad that company guaranteed the payment of four dollars ($4.00) per year on each share of the consolidated or common stock, and ten dollars ($10.00) per year on each share of the preferred stock, during the life of the charter. (R. pp. 233, 234.) Mr. Boles, witness for the State, and Vice-President of the Lehigh Valley, testified to the present day value of the consolidated and preferred shares respectively on the basis of dividends to be paid on each class down to 1974 (R. p. 56 et seq). The commission in its conclusions accepted this last theory as the proper basis of value, using the Inwood Tables, 30th Edition (1920), as its authority and basis of computation (R. pp. 183, 184). By that method the commission found each consolidated or common share to have a value of

$73.20, and each preferred share to have a value of $183.00 (R. p. 184).

The right to receive dividends was the only element of value that was considered by the advisory commission and by Justice Trenchard as attaching to the stock in question, and both the commission and the justice gave no consideration to the claim of appellant that the net market value of the assets of the Canal Company was to be taken into consideration in computing the value of the stock.

Appellant has appealed to this Court from the Order and Determination of Justice Trenchard in confirming the report of the commissioners:

> A. Because said report omits to find and fails to accord any weight to the fact admitted by the State, and nowhere contradicted, that the water rights alone owned by the Morris Canal and Banking Company were worth at least thirty-three million dollars ($33,000,000), and that the Lehigh Valley Railroad Company had so represented to the State in negotiating the agreement with the State out of which these condemnation proceedings arose.
>
> B. Because said report finds as facts the following matters, which, whether true or not, are wholly immaterial and irrelevant; namely,
>
> "The financial situation of the Canal Company as shown by Statement of Operation, page 129 of Three Governors Report, shows net earnings of Canal Company in 1864 to have been $353,-936. Decreasing each year to 107,003 in 1870 and showing a deficit of 176,257.33 in 1871.
>
> There was an aggregate deficit amounting to $8,489,393.59 during the 32 years from 1871 to 1902, inclusive, or an average of $265,290.73 per annum, which deficit was met by the Railroad Company under the terms of lease.



> The evolution in transportation methods rendered the canal unprofitable for more than fifty years past. This brings us to the consideration of what were the physical assets at the time of abandonment.
>
> It appears by the testimony of Henry B. Kummel, Director of the Department of Conservation and Development, and general manager of the Morris Canal and Banking Company, that over $750,000 has been spent on dismantlement work, in addition to cost of engineering and overhead, or a total of over one and a quarter million dollars since taking over the canal by the State, and is still expending large amounts in care and dismantlement."

and because the said report accords weight to these irrelevant facts by including them as elements in describing "the situation above set forth" upon which the commissioners form the "opinion that the stockholders are entitled to" certain amounts as the value of the shares being condemned; whereas said irrelevant and immaterial circumstances ought not to have been taken into consideration or given any weight in the ascertainment of the value of the stock being condemned.

C. Because said report finds and states as follows:

"The next claim by the stockholders to be an asset was the so-called Large Basin, consisting approximately of 40 acres of land under water in Jersey City. It was leased by the State to the Canal Company in 1867 for an annual rental of $25,000 per year and never used. The lease was sold by the Canal Company to the Lehigh Valley Railroad in 1889 for $500,000, then converted to a grant by the Railroad Company and

developed by it. We do not consider that the Canal Company has any equity therein."

whereas the commissioners should have found and reported:

1. That the Canal Company had an equity in said Big Basin.

2. Regardless of whether or not the Canal Company had an equity in said Big Basin, the Lehigh Valley Railroad Company, in its bargain with the State acquired valuable rights in said Big Basin in respect of which the minority stockholders of the Morris Canal Company were entitled to an amount representing their proportionate share of the value acquired by the Lehigh Valley Railroad Company.

D. Because said report erroneously finds that the minority stockholders are bound by reason of themselves or their predecessors, as owners, in having failed to make any protest in connection with the lease of the Canal Company's property to the Lehigh Valley Railroad Company made in 1871 under the authority of an act of the Legislature passed in 1871; whereas it should have found that the rights of the minority stockholders (whether their stock was acquired prior to or since 1871) were protected by constitutional provisions existing at the time that the Legislature by special act in 1824, granted to the Morris Canal and Banking Company, its charter; and that because of the constitutional guarantees said stockholders were not prejudiced by the fact that they or their predecessors in ownership failed to make any protest in connection with the lease of 1871.

E. Because said report erroneously adopts as the basis for finding the value of said shares and, consequently the compensation to which the owners are entitled, the income which would have



accrued upon said shares down to the year 1974, admitting the State and the Lehigh Valley Railroad Company entered into the agreement out of which this condemnation proceeding arises; whereas said report should have found, as the basis for determining the value of said stock and the compensation to be paid its owners, the total net value of all of the assets of the Morris Canal and Banking Company, taken by and divided between the State and the Lehigh Valley Railroad Company, pursuant to the agreement between them out of which this condemnation proceeding arises.

## ARGUMENT.

### A. Water Rights.

The Advisory Commissioners stated in their conclusions (R. p. 183):

> ". . . , we are of the opinion that the charter did not give the right of use or sale of water for potable purposes but only carried the right of use, for maintenance and operation of the canal."

And it appears that for the reason just stated the commissioners refused to give any consideration to the value of the water rights. It is true that Section 27 of the original charter (R. p. 211) gave no such authority. It is also admitted that Section 2 of the amended charter under the Act of March 5, 1836 (R. p. 223) gave the company no such authority. Mr. Boles in his testimony expressed the opinion that the Canal Company could not avail itself of its opportunities for selling a potable supply.

> "Q. Well, you had never made any effort to realize any money from the water rights, had you?
>
> A. We have no right to sell water. We had no charter right to sell water." (R. p. 125.)

By the Act of March 14, 1871 (P. L. 444), supplementing the charter, it was provided by Section 3:

> 3. *Surplus water may be used for supply of city, etc.* It shall be lawful for the said company, or its lessee or lessees, to use the surplus water of the canal of said company, or any of its feeders, not needed for the purposes of navigation, in furnishing and supplying the inhabitants of any city, town or village along the line of said canal, or in the vicinity thereof, with a sufficient quantity of pure and wholesome water for manufacturing or domestic or other uses; and to make contracts with the corporate authorities of any such city, town or village, or with individuals, for such supply of water, for such compensation as may be mutually agreed upon, and to erect such works, and make such alterations in the said canal as may be necessary or proper to enable said company, or its lessee or lessees, to furnish such supply of water from the said canal; *provided,* that nothing herein contained shall be held to authorize the diversion of the said canal from the purposes of navigation; . . .

There are two other provisos following the above which have no application to the question at issue.

Here, of course, is a supplement to the original charter directly authorizing the company to do which Mr. Boles said it had no right to do, and which the Advisory Commission said it had no right to do.

The commission following the Vermeule Report stated that "the water rights for potable purposes were worth in excess of $12,500,000". (R. p. 183.)

Mr. Boles in his testimony places the value of the water rights at a much higher figure.

> "Q. What did he call this $33,000,000?
>
> A. Immediately available value.
>
> Q. Immediately available value he calls that. All right. Additional potential value, he says?



> A. To Jersey City on account of the full use of the Rockaway watershed.
>
> Q. Yes.
>
> A. $10,925,000.
>
> Q. $10,925,000. Now, any other additional potential values?
>
> A. To other communities, $26,688,000.
>
> Q. Yes.
>
> Commissioner Joline—What was that?
>
> The Witness—$26,688,000. Then to the State Treasury on account of license fees, $1,616,000.
>
> Q. All would be capitalized values?
>
> A. Oh, yes; these are all capitalized values.
>
> Q. Any others, Mr. Boles?
>
> A. That is all.
>
> Q. Well, now, the $33,000,000 was arrived at by Mr. Vermeule as a current then existing value, was it not?
>
> A. Yes; about half under the Pequannock contract which Newark was already working under, and the other half immediately available value." (R. p. 115.)

In the foregoing testimony Mr. Boles built up a value of $72,000,000 for the water rights alone, based on the Vermeule Report.

In the article printed in the Newark Evening News of August 10, 1920, Mr. Boles stated that the water rights conserved and preserved by the maintenance of the canal ran into many millions of dollars (R. pp. 119, 120). Mr. Boles admitted in his testimony that he was the author of the article and affirmed its correctness on the stand. (R. p. 120.) The value of the water rights as stated in the News article is given as $12,500,000.

> "Q. . . Now, which is correct, the $12,500,000 stated in the Newark News, or the $26,000,000 of present day value, plus some possible additional potential values stated in the Vermeule report?

A. Both.

Q. Both are correct?

A. Yes, sir.

Q. I don't understand how $12,500,000 can be correct if the immediately available value as found by Mr. Vermeule is really $33,000,000. How do you explain that?

A. Because depending upon water rights which the Canal Company drew upon and used, there were additional watershed rights which were available to the State and municipalities.

Q. You mean $12,500,000 represented value that the Morris Canal was presently drawing upon and using?

A. Yes." (R. p. 121.)

Mr. Boles stated in his testimony that the water rights had no value to the Railroad Company or the Canal Company.

> "A. . . . Now, we had a valuable keystone in this arch of water rights that I have spoken about, with other water rights and other water passages depending upon it which were, as Mr. Vermeule reported, worth some thirty million dollars. To us they were worth nothing. They represented a liability so far as the railroad was concerned, and the Morris Canal & Banking Company." (R. pp. 130, 131.)

The fact, of course, that the companies did not or could not use those water rights and privileges did not deprive those rights and privileges of value. In *Mississippi and Rum River Boom Co.* v. *Patterson*, 98 *U. S.* 403, 25 *L. Ed.* 206, the U. S. Supreme Court held as follows:

> "Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated."



The United States Supreme Court used this language in a case in which it upheld a special verdict finding the value of Patterson's land, aside from its value for boom purposes, to be $300.00; and its value, "in view of its adaptability for those purposes" $5,500.00; and this verdict was found, and thus upheld, in the face of the fact that Patterson's islands could not be used for a boom except in connection with the west bank, which was already owned by the Boom Company, which had the right of eminent domain while Patterson did not.

The same principle is enunciated in the New Jersey Court of Errors and Appeals in the case of *Currie* v. *The Waverly Railroad Co.* (1890), 52 *N. J. L.* 381, wherein it was held that a land owner in a condemnation proceeding was entitled to prove that his land, because of its situation and surroundings, had a special value for railroad purposes and was entitled to reap the benefit of this special value in the condemnation proceeding. Naturally Mr. Currie, the owner, was himself unable to devote his land to railroad purposes, as he had never a railroad franchise nor a right of way to build a railroad from his own property to terminals at either end. Nevertheless, he was held entitled to be paid on a railroad use value.

### B. Financial Situation of Canal Co.

The conclusions of the commissioners set forth a compendious statement of the financial situation of the Canal Company from 1864 to 1902 inclusive; they also set forth operating deficits for certain years and state that evolution in transportation methods rendered the canal unprofitable for more than fifty years past; they also detail an item of $750,000 spent for dismantlement work since taken over by the Department of Conservation and Development together with the cost of engineering and overhead. (R. pp. 181, 183.) The conclusions of the

commissioners accord weight to these facts which form one of the bases upon which their opinion of the value of the stock is founded. It is the contention of the appellant that these matters are wholly immaterial and irrelevant to the question at issue, viz; what was the value of each share of stock at the date of the institution of the condemnation proceedings? These statements deal only with cost of operation and costs of dismantlement. Surely what it cost to operate a canal in the past is no criterion of the value of its assets when put to their most profitable present day use. If this canal had been operated at a tremendous profit in the past that fact surely could not make its assets any more valuable today after the plant has discontinued operation as a canal and its assets and property devoted to other purposes. It is submitted that the only test of value is what those assets are worth when devoted to other uses and purposes, and when no longer needed for the uses and purposes of a canal. The fact that the system was a liability when used for canal purposes only does not at all mean that the capital assets have no value.

Neither does the fact that a large sum of money has been spent on dismantlement work, and for engineering and overhead, prove that the thing dismantled has no value on the market. It is not an unusual thing to raze and dismantle structures which have great value. Furthermore, premises after dismantlement are often worth more than they were before. The inquiry is not what it has cost to dismantle the Morris Canal and Banking Company but what its net assets were worth the day its property was taken over and condemned.

The fact that the canal was operated at a loss is simply proof that the franchise to operate the canal as a canal has no value. In other words it simply shows that the enterprise was not a going concern; but this is not the only element to be taken into consideration upon the winding up and dissolution of a business.

> "The most approved method of valuing the plant is, however, to find the value of the franchise, and the value of the tangible property separately, and to add to these items a certain sum which represents the additional value arising from the fact that the company is a going concern." 1 Nichols on Eminent Domain (2d Ed.) p. 682.



Of course if the Canal Company had availed itself of its charter rights to exploit its privileges to sell water for potable and other purposes it would have been a successful going concern and its franchise down to the date of condemnation would have had great value.

Inasmuch, however, as the franchise of the company was terminated in these proceedings under section 26 of the statute charter, it would be improper and irrelevant to take into consideration its value for any purpose.

### C. The Big Basin.

The property of the Canal Company, leased by the Lehigh Valley, consisted of terminal properties in Jersey City and in Phillipsburg, and of the canal stem running across the north part of the State from the Delaware River to tidewater. The properties known as the Big Basin and the Little Basin are situated side by side in Jersey City. In the negotiations with the State Commissioners the Lehigh Valley endeavored to get title to and control of both basins (R. pp. 62, 121, 122). It was successful, however, in getting only the Big Basin. By the first paragraph of their agreement, the commissioners agreed on behalf of the State, to cause to be executed and delivered to the Railroad Company all the right, title and interest, present and reversionary, of the State of, in and to the Big Basin, excepting therefrom a strip for a public waterway (p. 8 of pamphlet). The strip retained for public waterway is defined in paragraph 4 of the undertakings of the Railroad and Canal Companies (p. 11 of pamphlet). The railroad also procured the Phillipsburg terminal (p. 9 of pamphlet). By paragraph 1 of the undertakings

of the company (p. 10 of pamphlet), the Railroad Company agreed to pay to the State the sum of $875,000.00 in five equal annual installments, with interest at five per cent per annum on the unpaid principal. This agreement further provides:

> "(15) It is the intent of this agreement to vest in the Lehigh Valley Railroad Company all present and reversionary rights of the State of New Jersey in the properties referred to in section 1 hereof, and to vest in the State of New Jersey all other property and rights of every description acquired by the Morris Canal and Banking Company and by the Lehigh Valley Railroad Company as its lessee, with the exceptions herein specifically provided."

According to the testimony (R. p. 84 and p. 169 *et seq.*) the intent and purport of this agreement was carried out in its entirety.

In the Loomis Circular (*Exhibit D*-5, R. p. 277), the Big Basin is valued at $2,362,800.00, and is referred to as one of the items of "the property to be retained."

It is quite evident from Mr. Boles' testimony, that whatever property rights the Lehigh Valley Company and the Canal Company may have had in the Big Basin were used as a basis for bargaining with the State representatives.

> "Q. . . . Now, Mr. Boles, explain to this commission why you handed over your rights in property which included as one item $12,500,000 as the value of the water actually currently used for canal purposes, and as another item the Little Basin, which you had valued at $1,200,000 and you paid in addition $875,000. Why did you do that against the delivery to you only of the Big Basin, the Phillipsburg property and the line of the canal through Hudson county—the reversion in the Big Basin, I should have said. Now what value did you see in this reversion that caused you on the one hand to pay the



> State $875,000 and on the other hand to give the State, amongst other things, water rights measured at your own current use valuation of $12,500,000?" (R. p. 128.)
>
> "A. . . These negotiations continued, I should say, almost annually, until the termination in November, 1922. Now, we had a valuable keystone in this arch of water rights that I have spoken about, with other water rights and other water privileges depending upon it which were, as Mr. Vermeule reported, worth some thirty million dollars. To us they were worth nothing. They represented a liability so far as the railroad was concerned, and the Morris Canal and Banking Company. The Big Basin property was worth something to us, and the Little Basin property would have been, but the State very naturally said, 'If you want these rights you pay us. If you want these rights in this property, these two pieces of real estate, you pay us the fair valuation on this, and then it is only fair that you should pay us something on account of the fact that we are relieving you from an annual obligation.' And after the course of many days and weeks of negotiation, we considered that that was a necessary adjustment to the final settlement of the thing, and agreed to pay the $875,000. . . ." (R. pp. 130, 131.)
>
> "Q. Would the lessee have suffered any damage by being deprived of the use of the property?
>
> A. It certainly would.
>
> Q. Then it is not true, as I thought was suggested in this circular of Mr. Loomis, that the property was a burden and not a benefit to the Lehigh Valley?
>
> A. Keeping it up was a burden.
>
> Q. Where did the neck of the matter lie, on the side of burden or the side of advantage?

A. I think perhaps it was on the side of advantage, if you take into consideration the use that was made of the Big Basin property." (R. pp. 88, 89.)

"Q. I just want to get a certain thing straightened out beyond any possibility of doubt. When I spoke of the question of burden or advantage, in the first case that I put, you said if the use of the Big Basin was taken into account, it would be an advantage to the railroad. In the second case I put, you said it was an advantage to the railroad, without any such qualification, leaving the Big Basin out.

A. You cannot leave the Big Basin out. I will not sit here and answer hypothetical questions for you. You cannot leave it out.

Q. When you answered my first question you left it out, or rather you took it in?

A. Yes, that is different; you have to take it in. The use of the Big Basin property to the Railroad Company was worth the manifold disadvantages it had in retaining the rights of the canal.

Q. And how much per annum, in addition?

A. I don't know." (R. pp. 89, 90.)

There is no doubt, after reading Mr. Boles' testimony, that the directors and officials of the Lehigh Valley absolutely dominated and controlled the Morris Canal and Banking Company at the time the agreement with the State was effected.

"Q. The signatures to that contract appear on page 18. I ask you whether it is not true that Mr. Loomis, as President, signs in behalf of the Morris Canal and Banking Company?

A. Yes, sir.

Q. And you, as Vice-President of the Lehigh Valley, signed on its behalf?

A. Yes, sir.



Q. And at that the time what office did Mr. Loomis hold in the Lehigh Valley?

A. President.

Q. At that time who was Secretary of the Morris Canal and Banking Company, do you know?

A. I can't tell you definitely. I am pretty sure it was Mr. D. G. Baird.

Q. He was also Secretary of the Lehigh Valley?

A. The officers were largely in common. They were practically the same officers throughout.

Q. There is no dispute that at the time this contract was entered into, and for a long time before, the Lehigh Valley, by virtue of its ownership of almost all the capital stock of the Morris Canal and Banking Company, had absolutely dominated the policies and managed the affairs of the Morris Canal and Banking Company?

A. We think so.

Q. You think there is no question?

A. I think there is no question. If it wasn't true, it should have been." (R. pp. 109, 110.)

"Q. Now, the Morris Canal and Banking Company was a party to that contract, wasn't it, and signs it?

A. Yes, sir.

Q. Who represented it in those negotiations with the State?

A. Well, I suppose the real representation was by myself.

Q. Well, it does not have to be a matter of supposition. You were present at all of the negotiations, were you not?

A. I think so.

Q. Who appeared at the negotiations for the Morris Canal and Banking Company?

A. I did.

Q. Who appeared for the Lehigh Valley Railroad Company?

A. I did." (R. pp. 110, 111.)

The case at bar seems analogous on its facts to the case of *Goodin* v. *Cincinnati and White Water Canal Company, and others,* 18 *Ohio State* 169. There the Railroad Company bought up the majority stock of the Canal Company with the object of controlling the Canal and converting it to the use of a railroad line. The officers and directors of the Railroad Company constituted in large part the officers and directors of the Canal Company. Proceedings were instituted by the Railroad Company to condemn the property of the Canal Company and damages were fixed, without a jury, at $55,000. The Canal Company was largely in debt and had executed three mortgages on its property. The Railroad Company bought up a controlling amount of these mortgages, and the President of the Railroad Company became the receiver in the proceedings to foreclose the mortgages. He thereupon gave a check, as President of the Railroad Company, to himself, as Receiver in the foreclosure proceedings, for $55,000 in payment of the lands condemned. The Railroad thereupon went ahead and laid its tracks, etc. The plaintiffs were the owners of some stock of the Canal Company, and brought proceedings, among other things, for an accounting.

The Supreme Court of Ohio says at page 181:

> "True, the evidence shows that the property was of little value AS A CANAL. As such in the language of defendants' witnesses, it was 'played out.' It seems to have been as such that it was appraised, upon the interlocutory order of sale, and as such it must have been valued by the two boards of directors, at the time of its sale or PRO FORMA condemnation. This was no fair method of estimating the value of the property. The true value of any thing is what it is worth when applied to its natural and legitimate uses—



> its best and most valuable uses. The estimate should have been of its value generally—for any and all uses—and not for any particular, and especially not for any inferior or inappropriate use. It is in vain to say that the property is worth little to the Canal Company because they had no power, as such, to convert it into a railroad. The stockholders and creditors of the Canal Company could organize THEMSELVES into a railroad company at any time, and thus realize the full value of the easement. But even if they could not, there is no good reason why their property should be taken from them at less than its real value. The Railroad Company should pay SOMEBODY for this property."

The Court continues on pages 182 and 183:

> "If it was desired or intended to make such a purchase of the property as would bind the stockholders and creditors of the Canal Company, ALL of them should have either been consulted or bought out. That would have been a fair way to accomplish the object. To undertake, by getting control of the company, and then, under pretense of acting as AGENTS AND TRUSTEES FOR ALL the stockholders and creditors, deliberately to trample under foot the right of the minority, is rather a sharp practice, and one which a Court of Equity will never tolerate."

The Ohio Supreme Court proceeded to declare that the Railroad Company was liable to the Canal Company for the full value of the property taken.

The same principle was enunciated in *Pennsylvania Canal Company* v. *Brown,* 235 *Fed.* 669 (on appeal from 229 *Fed.* 444), a case involving the dealings of the Pennsylvania Railroad Company with the Pennsylvania Canal Company. See also *Geddes* v. *Anaconda Copper Mining Company,* 197 Fed. 860; *Sage et al.* v. *Culver et al.,* 147 *N. Y.* 241, 41 *N. E.* 513.

The Lehigh Valley Railroad Company has emerged from the agreement with the State as the owner of the Big Basin, the ownership of which, as Mr. Boles stated in his testimony, is worth the manifold disadvantages of maintaining the canal, and it emerged as such owner simply by reason of its dominant position of managing the affairs and conducting the business of the Canal Company. The officers and agents of the Railroad Company were trustees of the stockholders of the Canal Company no less than of the Railroad Company. As such it was their duty to preserve and conserve the interests of the canal shareholders as much as the interests of the holders of the railroad stock. This they did not do. They used their position to the advantage of the holders of the railroad stock, and to the detriment of the holders of the Canal Company stock. The right to have an accounting from the Lehigh Valley is a property right inhering in the shares of stock owned by this appellant, and that right passes with the change of ownership of her stock. When her stock is acquired by the State of New Jersey that right to demand an accounting is taken away from her. In a proceeding of this kind, by which appellant's stock is taken away, she must be paid for this right. And she must be paid not merely the price at which she could have sold her stock before the liquidation of the Canal Company, but the value of the right that she possesses by virtue of her stock ownership since the liquidation. Mr. Boles, who represented both the Railroad Company and the Canal Company in the negotiations with the State Commissioners, was her agent and trustee and should have looked after her interests as carefully as he looked after the interests of any shareholder in the Railroad Company.

This appellant is therefore entitled to an accounting for her proportionate share of the advantage which accrued to all persons for whom Mr. Boles was purporting to be acting as agent and trustee. She is entitled to have the net benefits arising from the acquisition of



the Big Basin allocated to her stock in proportion to her holdings.

### D. The 1871 Lease.

In pursuance of the Act of March 14, 1871 (P. L. 444), the lease set forth beginning on page 227 of the record was entered into under date of May 4, 1871, between the Morris Canal & Banking Company and the Lehigh Valley Railroad Company. By the second section of the Statute authorizing the lease any dissatisfied stockholder could give written notice of his dissatisfaction and procure payment for his stock. Relying upon that provision of the statute the Advisory Commission concluded that the appellant, being the successor in interest of a minority stockholder at the date of the lease, was bound thereby, and was entitled to receive in compensation for her stock the value given to it by reason of guaranteed dividends under paragraph five of the lease. It seems that the commission acceded to the contention of the State that after the execution of the lease the Morris Canal and Banking Company no longer had any interest in the canal and the canal assets and that the stockholders in the Canal Company no longer had any interest in that company or its assets, but simply acquired the right to receive dividends from the Lehigh Valley for a certain number of years. There is nothing in the lease to indicate or suggest that the Lehigh Valley was to become the owner of a single asset of the Canal Company. The operative words are "the party of the first part doth hereby let and demise unto the party of the second part, its successors and assigns, the entire canal and navigation works of the party of the first part, . . . : To have and to hold the premises thus leased and demised as aforesaid, or intended so to be, unto the party of the second part, its successors and assigns, perpetually hereafter." In construing this very lease Stevens, V. C., in *McCarter, Attorney-General,* v. *Lehigh Valley Railroad Company et al.,* 78 *N. J. Eq.* 346,

defined the word "perpetually" as used herein to mean (p. 359 *et seq.*) until the termination of the Canal Company's charter. By the 17th clause of the lease it is agreed that, if the Lehigh Valley shall at any time refuse or neglect for a period of six months to make any agreed payments, the Canal Company may, at its option, at any time within ninety days thereafter "treat this lease as at an end, and at once resume, and take, and hold full possession and control of, all the property by these presents, leased and demised, free and clear of all right and control of the party of the second part, the same as if this lease had not been made:" By the 18th clause of the lease it is provided that if the Canal Company does resume possession as provided, the Lehigh Valley shall make good to the Canal Company "any depreciation in the then aggregate value of the demised premises from their present value, and shall immediately deliver to the party of the first part, personal property of the same character, and of equal value, as that hereby assigned and transferred to the party of the second part, or, in default thereof, shall pay to the party of the first part a full equivalent therefor in cash;".

It is apparent, therefore, that, looking to the plain wording of the instrument and to the construction given to the period and duration of the lease by Stevens V. C., in the above cited case, the interest of the Lehigh Valley therein ceased when the State elected to proceed under section 26 of the Charter. In other words when the State instituted these proceedings (which are, as decided in *Landell* v. *State*, 101 *N. J. L.* 294, 128 *Atl.* 380, affirmed by this court in 122 *Atl.* 922, in lieu and in substitution of the method provided by section 26 of the Charter) the Lehigh Valley no longer held any interest in the leased property. It simply retained its interest as shareholder the same as any other stockholder. Whatever interest it then held, it had by virtue of its being the owner of so many shares of stock. No share of stock it owned was or could be worth more, or have any



greater value, than any share of stock owned by any other person or individual.

Furthermore it was impossible for the Legislature or for any party or individual to alter or impair the rights of any shareholder, without that shareholder's consent. The 10th section of the first article of the Constitution of the United States provides:

> "No State shall pass any Bill of Attainer *ex post facto* Law, or Law impairing the obligation of contracts."

Article IV, section VII, par. 3 of the New Jersey State Constitution of 1844 provides as follows:

> "3. Bills of attainder; *ex post facto* laws: laws impairing obligation of contracts or depriving of remedy for enforcing contract—The Legislature shall not pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made."

The Charter of the Canal Company was granted in 1824. New Jersey had not at that time and did not until twenty years thereafter permit the Legislature to alter, amend or repeal corporate charters. Article IV, section VII, par. 11 of the New Jersey Constitution of 1844 provides:

> "The Legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature."

Article X of the same Constitution provides, however, as follows:

> ". . . and all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters of incorporation, shall

> continue, . . . as if no change had taken place."

In 1846 the Legislature of New Jersey for the first time passed an act providing for the alteration, suspension or repeal of a corporate charter. See Corporation Act of February 14, 1846, P. L. 1846, p. 16. Section 6 of that act reads as follows:

> "6. And be it enacted, that the charter of every corporation which shall hereafter be granted by the Legislature, shall be subject to alteration, suspension, and repeal, in the discretion of the Legislature."

It will be observed that the provisions in this act as to alteration, suspension and repeal applied only to corporations created after the passage of the act.

The charter of a corporation is a contract. No question is better settled. *7 Fletcher's Encyclopædia of Corporations, par.* 4290, *et seq.* And it is a contract not only between the State and the corporation, but binding and running to the advantage of, the shareholders. "It is a contract between the State and the corporation, between the corporation and the stockholders and between the stockholders and the State." 14 *C. J.* pp. 161-162. "It is a well recognized principle of law that 'the charter of a corporation having a capital stock is a contract between three parties and forms the basis of three distinct contracts. The charter is a contract between the State and the corporation; second, it is a contract between the corporation and the stockholders and the State.'" *Garey* v. *St. Joe Min. Co., 32 Utah,* 497; 91 *Pacific* 369. See also 2 Cook on Corporations (5th Ed.), par 492.

Prior to the granting of the charter in 1824 the Supreme Court of the United States had, in 1819, decided the great case of *Dartmouth College* v. *Woodward,* 4 *Wheat.* 518, 4 *L. Ed.* 629, holding that the charter of a private corporation was a contract, within the meaning of the above quoted clause of the Federal Constitution,



and that no State could pass a law impairing its obligations.

Chief Justice Marshall, in delivering the principal opinion in the case cited, said of the charter of the college (at p. 650 of 4 *Wheat.,* p. 662 of 4 *L. Ed.*):

> "The opinion of the court, after mature deliberation, is, that this is a contract, the obligation of which cannot be impaired without violating the Constitution of the United States."

Justice Story, in his concurring opinion (p. 712 of 4 *Wheat,* p. 677 of 4 *L. Ed.*) said:

> "In my judgment it is perfectly clear that any act of a Legislature which takes away any powers or franchises vested by its charter in a private corporation or its corporate officers, or which restrains or controls the legitimate exercise of them, or transfers them to other persons, without its assent, is a violation of the obligations of that charter. If the Legislature mean to claim such an authority, it must be reserved in the grant. The charter of Dartmouth College contains no such reservation; and I am therefore bound to declare that the acts of the Legislature of New Hampshire now in question, do impair the obligations of that charter, and are, consequently, unconstitutional and void."

The judgment entered by the court, appearing on the last page of the opinion, is that certain acts of the Legislature of New Hampshire "are repugnant to the Constitution of the United States, and so not valid;" for which reasons a certain judgment rendered by the Superior Court of New Hampshire, based upon said statutes, "is reversed and annulled."

The doctrine of the Dartmouth College case has been followed and affirmed several times in the State of New Jersey. In *Zabriskie* v. *Railroad Company,* 18 *N. J. Eq.* 178, complainant, a minority stockholder, sought an injunction to restrain the defendant company from extend-

ing its lines beyond the charter limitations, the extension being permitted by law. The Chancellor says, on p. 183:

> "Since the Dartmouth College case, in the Supreme Court of the United States, the doctrine has been considered firmly established, and been confirmed by repeated decisions, both in that court and the State courts, that a charter, granted by the Legislature to a corporation, is a contract between the State and the corporators, and that the State can pass no act to take away or impair any of the franchises or privileges granted by it. The company, or artificial person thus created, and its property, is subject to all general laws and police regulations made by the Legislature after such grant, in the same manner as natural persons and their property are; *provided*, they are not such as to take away or impair any of the franchises plainly granted by the charter. This doctrine did not prevent the Legislature from conferring new privileges upon any corporation, to be accepted at its own election."
>
> "It is also settled, upon the principles of the common law, in this State, and most of the States of the Union, that when a number of persons associate themselves as partners, for a business and time specified in the agreement between them, or become members of a corporation for definite purposes and objects specified in their charter, which in such case is their contract, and for a time settled by it, that the objects and business of the partnership or corporation cannot be changed, or abandoned, or sold out, within the time specified; one partner or corporator, however small his interest, can prevent it. And this is so, although by law a majority in either case can control or manage the business against the will and interest of the minority, so long as it is within the scope of the partnership or charter."



The Chancellor adds that the rule is founded on "the great principle of protecting every man and his property by contracts entered into, a guiding principle in all right legislation, and incorporated into the constitution of the United States, and of almost every State in the Union."

The Chancellor further holds that while the Legislature may give to a corporation already in existence additional powers and authority, the corporation itself has no right to assume the exercise of such additional powers and authority without the consent of all shareholders. He accordingly allowed an injunction to issue restraining the defendant from extending its terminus at the suit of complainant, one minority shareholder.

The same principles were applied in *Society, etc.*, v *The Morris Canal and Banking Co.*, 1 *N. J. Eq.* 157, and in *Black* v. *Del. and Raritan Canal Co.*, 24 *N. J. Eq.* 455.

Moreover, the Court of Errors and Appeals of this State, speaking by Mr. Justice Depue, in 1879, in the case of *Lehigh Valley Railroad Co.* and *Morris Canal and Banking Co.* v. *McFarlan*, 31 *N. J. Eq.* 706, applying the doctrine of the Dartmouth College case to this very charter of the Morris Canal and Banking Company, said (at p. *722*):

> "The charter of the company was granted in 1824. . . . This charter is irrepealable and created a contract which is incapable of alteration or repeal by the Legislature, except by mutual consent."

The meaning of the phrase "except by mutual consent" has, fortunately, been clearly defined by our own Court of Errors and Appeals, which, in *Einstein* v. *Raritan Woolen Mills*, 74 *N. J. Eq.* 624, has held that the contract embodied in a corporate charter is not one for the benefit of the corporation alone, but one for the benefit of every stockholder, and that the fundamental provisions of the corporate structure cannot, in view of the provision of the Federal Constitution above set forth, be "abrogated or avoided by the corporation or

by its directors, or by any majority, however large, of its stockholders, *against the objection of the holder of a single share.*" (Italics are counsel's.)

It appears therefore that upon one ground only could the Lehigh Lalley have a claim paramount to any shareholder by reason of its lease and that is because of the termination of the lease it had suffered damage. Such a claim would be groundless. First and fundamentally, because it took its lease with notice afforded by the charter that this very thing might occur at this very time; second, because it admits (testimony of Mr. Boles, R. pp. 89, 130, 131) that the lease had been a burden and not a benefit. So that, even if the Lehigh Valley were entitled to any damages for termination prior to 1974, which appellant denies, it could recover nominal damages only.

## E. Basis of Value.

As above indicated the Advisory Commission found the only element of value attaching to appellant's stock to be the right to receive dividends from the Lehigh Valley Railroad to the year 1974 (R. p. 183).

The title of Chapter 212, P. L. 1922 (p. 3 of pamphlet compilation), is important. It is to be observed that it labels the act as one to authorize the acquisition by the State of the Morris Canal *in whole or in part* and *all the stock* of the Morris Canal and Banking Company, and the *rights of all stockholders* in said company and *in said canal property and water rights,* as well as the right, title and interest of the Lehigh Valley in the said canal property and water rights by virtue of the 1871 lease or otherwise. Unmistakably, the title of this act recognizes that the minority stockholders have rights separate and distinct from the rights possessed by the Lehigh Valley. And the State's representatives in negotiating the agreement (p. 8 of pamphlet compilation) were careful to conserve the rights of the minority stockholders by requiring the Lehigh Valley to acquire for



the State all the outstanding stock not owned by it and in lending it the State's power of condemnation to be employed for that purpose if necessary.

By Section 6, of Chapter 112, P. L. 1923, the Supreme Court Justice "shall settle the interests of all the parties claiming any interest in any of said shares of capital stock, the amount of damages to be paid therefor and the amounts to be apportioned among the claims thereof according to their interest in such capital stock" (p. 27 of pamphlet compilation). By Section 7 the Justice is authorized to appoint "three commissioners or appraisers to appraise the full market value of said stock and what damages, if any, should be assessed for the taking of same. Such commissioners or appraisers shall proceed under such directions or rules as shall from time to time be fixed by the said Justice to hear such evidence as they may desire and to fix such sum, if any, that in their judgment will represent the fair value of the stock so taken and report the same." (p. 28 of pamphlet compilation.) These sections speak of compensation to be paid in several different phraseologies, *i. e.,* "the amount of damages to be paid"; "the full market value and what damages, if any, should be assessed"; "the fair value of the stock so taken." These phrases all mean the same thing. The Constitution of New Jersey (Art. I, par. 16) makes them mean the same thing when it declares that "Private property shall not be taken for public use without just compensation; . . . ." "Just compensation" has been declared by the Supreme Court of the United States to mean "a full and perfect equivalent for the property taken." *Monongahela Nav. Co.* v. *U. S.,* 148 *U. S.* 312, 37 *L. Ed.* 463.

Article IV, Section VII, par. 8, of the New Jersey Constitution of 1844 says:

> "Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first being made to the owners."

again making just compensation the measure of damages.

Of course, if there is any conflict between the Constitutional measure of damages and the measure provided for by the statute in question, the Constitution must prevail. It requires no argument to prove that the Legislature has no right to deprive any individual of his constitutional rights. If the meaning of the Constitution is clear, and it undoubtedly is, what the Legislature may have said or have meant to say by its statute is of no importance. The important fact is that the Constitution in clear, unmistakable language defines the measure of damages and is the only standard by which proceedings of this nature can be governed.

It is not amiss to point out in this connection that the Fourteenth Amendment to the United States Constitution provides that no State shall deprive any person of his property without due process of law. See 1 *Nichols on Eminent Domain (2d Ed.) p.* 623.

It is well settled that the amount of compensation to be awarded is a judicial question and cannot be determined or decided by the Legislature. *2 Nichols on Eminent Domain, (2d. Ed.) p.* 946.

In the case of *Monongahela Navigation Company* v. *U. S., supra,* Congress, for the purpose of improving navigation in the Monongahela river, authorized the condemnation of certain lands and a dam and lock belonging to the Monongahela Navigation Company. The Act of Congress contains the following provision: "that in estimating the sum to be paid by the United States, the franchise of said corporation to collect tolls shall not be considered or estimated." The U. S. Supreme Court held that the franchise (granted by the State of Pennsylvania) was property and that it had to be paid for no less than the tangible physical property, and that the way to find its value was to ascertain what could be earned by its use.

It is well settled that when the life of a corporation terminates, title to all its assets, including real estate,



vests in the stockholders as tenants in common. And this is the law no matter what the cause of termination. 8 *Fletcher's Encyclopædia of Corporations, p.* 9189. And it is also well settled that the stockholders are entitled to participate in the assets after payment of debts in proportion to the number of shares held by each. 8 *Fletcher, Ibid. p.* 9260.

And preferred stock has no preference over common stock in distribution without special stipulation.

> "Holders of preferred stock are entitled to no priority in distribution of the assets, unless otherwise agreed. They are not creditors so as to be entitled to a preference, nor are the dividends as to which they may be preferred to be regarded as interest upon a loan." 8 *Fletcher, Ibid, p.* 9262.

In *Lloyd* v. *Pennsylvania Electric Vehicle Co., 75 N. J. Eq.* 363, *Swayze, J.*, holds that upon the winding up of a corporation, preferred stockholders are entitled only to the preference given in the certificate of incorporation and are not to be paid on account of the par value of their shares in preference to the common stockholders. The shares held by appellant are preferred shares and the only preference given is as to dividends. (See *Ex.* S-9, R. p. 245.)

It is quite evident that the market value of the capital stock of a corporation is not the measure of the value of that same stock upon condemnation. Before dissolution the value of the stock is measured, almost entirely, by the success or failure of the corporation as a going concern. Upon dissolution, either voluntary or involuntary, stockholders, as above indicated, are entitled to the net proceeds of the sale of the assets.

The case of *Douglas* v. *Merceles, 25 N. J. E.* 144, shows this distinction very clearly. (The facts of this case are set out more fully in *23 N. J. E.* 331.) The company in question was dissolved on July 17, 1872. The Master was expressly directed to ascertain the "real market value" of the stock of the company on November

1, 1867, nearly five years before the company's dissolution. The Chancellor says on page 146,

> "But the order in this case called for his report as to the market value, a term deliberately employed as being exactly expressive of the meaning of the court."

Certain shares of stock in the company were purchased November 1, 1867, by certain of the incorporators, they using not their own funds but the money of the association. It was for that reason that the Chancellor directed the Master to find the market value of those shares *as of that date*, so that the amount to which complainant was entitled could be ascertained. They were the shares of a going concern that did not dissolve until almost five years later. The Chancellor says, near the top of page 146:

> "The market value and the intrinsic value are by no means necessarily the same; the terms are not convertible. The intrinsic value of a stock is not only not an infallible guide to its price in the market, but is, in fact, no guide at all. A stock intrinsically worthless, may bring a good price, while on the other hand, one of great intrinsic value, may be greatly depreciated."

Now comes the question, what elements of value should the commissioners have considered in determining the worth of appellant's stock? The several values derivable from the evidence drawn exclusively from Lehigh Valley sources, and the value per share of the 22,000 shares (upon the theory that common and preferred are to be treated alike in this proceeding), are as follows:

I.

| | |
|---|---|
| Value of entire property as stated by President Loomis in *Exhibit D*-5 (R. p. 277 *et seq.*) ..... | $9,100,000.00 |



or at the rate of about $415.00 per share.

(Mr. Boles in his testimony stated:

"; . . . we both composed it, but I will stand responsible for any statement in it." (R. p. 64.)

II.

| | |
|---|---|
| Minimum value of terminals as per Loomis Circular .... | $4,226,525.00 |
| Value of water rights as found by Advisory Commission (R. p. 183) ..... | 12,500,000.00 |
| | $16,726,525.00 |

or at the rate of about $760.00 per share.

Mr. Boles answered "Yes" to the following question:

"You mean $12,500,000 represented value that the Morris Canal was presently drawing upon and using?" (R. p. 121.)

III.

| | |
|---|---|
| Minimum value of terminals, as per Loomis Circular .... | $4,226,525.00 |
| "Immediately available value" of water rights (Boles' testimony, R. p. 115) ..... | 33,000,000.00 |
| | $37,226,525.00 |

or at the rate of about $1,690.00 per share.

(Q. Well, now, the $33,000,000 was arrived at by Mr. Vermeule as a current then existing value, was it not?

A. Yes; about half under the Pequannock contract which Newark was already working

under, and the other half immediately available value." (R. p. 115.)

**IV.**

| | |
|---|---|
| Minimum value of terminals, as per Loomis Circular .... | $4,226,525.00 |
| "Immediately available value" of water rights (Boles' testimony, R. p. 115) ..... | 33,000,000.00 |
| Value "To Jersey City on account of the full use of the Rockaway Water Shed" (Boles' testimony, R. p. 115) | 10,925,000.00 |
| "Other additional potential values" of water rights (Boles' testimony, R. p. 115) ..... | 26,688,000.00 |
| Value "to the State Treasurer of account of License Fees," (Boles' testimony, R. p. 115) | 1,616,000.00 |
| | $76,455,525.00 |

or at the rate of about $3,475.00 per share.

It was the duty of petitioner, of course, to present to the Advisory Commission evidence of value in order that "just compensation" might be made to this appellant and all other stockholders in interest. This appellant was entitled to rely upon representations of value presented, and was under no obligation to present independent testimony of value if she was satisfied with the items of value adduced.

If the values of the minority shares, as found by the Advisory Commission, be applied to *all* the shares, the result is as follows:

10,250 shares consolidated or common at $73.20 per share, ..... $740,300.00



11,750 shares preferred at $183.00 per share, ..... 2,150,250.00

Total value of 22,000 shares, ..... $2,890,550.00

(For figures as to share holdings see R. pp. 132, 133.)

Applying the same values to the shares held by the Lehigh Valley, the result is as follows:

9,921 shares consolidated or common, at $73.20 per share, ..... $724,431.20

11,398 shares preferred at $183.00 per share, ..... 2,086,017.00

Total value of Lehigh Valley shares, $2,810,448.20

But according to the figures set forth in President Loomis' circular (said by him to have been obtained from State Board of Taxes sources), the *terminals* alone were worth $4,226,525. Therefore, if the minority stockholders be paid on the basis recommended by the advisory commission, *they get only about 68 per cent of their ratable share of the Lehigh Valley's minimum estimate of the value of the terminals, and nothing whatever to represent their ratable share of the value of the property intermediate the terminals, including the water rights, whether that be great or small.*

In this connection it is interesting to read the testimony on p. 143 *et seq.* of the Record. Mr. Boles' attention is there called to the case of *Lehigh Valley R. R. Co. et al.* v. *State Board of Taxes,* 4 *A. R.* 1559, relating to assessments on the Little Basin. Assessments by Jersey City upon this *one property alone* prior to its acquisition totaled $2,046,350 (wrongly stated as $2,044,050 on R. p. 144). In other words, the property valued at $1,200,000 in the Loomis letter was assessed for $2,046,350 the year before its acquisition and this assessment was affirmed in the New Jersey Supreme Court.

Making due allowance for the fact that the Lehigh Valley paid $875,000 "to boot" to the State, it is ap-

parent that the State and Lehigh Valley got enormous values in which the minority do not share, if the report of the Advisory Commission be affirmed. The $875,000 is little more than half the difference between the Lehigh Valley's valuation of the terminals alone and the value of the entire 22,000 shares of common and preferred stock figured by Advisory Commission methods! Again we repeat that it makes no difference to the minority in what proportion State and Lehigh Valley divide between themselves the values taken from the Company. The Constitution, operating by means of the "Non-impairment of Contract" clause, applied to section 26 of the charter of 1824, protects the minority against either or both taking unto themselves a single dollar's worth of the canal property without the minority being paid their ratable share. And when the Lehigh Valley agreed to acquire the minority shares for the State, and the State agreed to lend its power of eminent domain if necessary to effect their acquisition, both these parties must be considered as having made these engagements in the light of the constitutional rights of the shareholders. The law can recognize no other theory. The rights of shareholders are none the less constitutional rights by reason of the fact that the State was a party.

Respectfully submitted,

EDGAR W. HUNT,
*Attorney for, and of Counsel with, Appellant.*

33 to 36

# New Jersey Court of Errors and Appeals

IN THE MATTER
*of*
The Condemnation of Capital Stock of MARION D. HALLOWELL, in the Morris Canal and Banking Company.

## BRIEF OF RESPONDENT.

This appeal brings to the attention of the Court a decision of Mr. Justice Trenchard fixing the value of shares of Stock of the appellant and others in the Morris Canal and Banking Company under the provisions of Chapter 112 of the Laws of 1923 (210).

### Facts.

The proceedings are the result of an agreement dated November 29th, 1922, pursuant to Chapter 212 of the Laws of 1922 (367) under which commissioners acting on behalf of the State, of the one party, of the Morris Canal and Banking Company and Lehigh Valley Railroad Company (its lessee) of the other party agreed to the abandonment of the Morris Canal and the cession of certain portions thereof to the Lehigh Valley Railroad. As part of the agreement the Railroad Company agreed to pay the State $875,000 in cash, conveyance of all personal property used in connection with the canal, all outstanding bonds and scrip of the Canal Company and all the outstanding capital stock of the Canal Company including

approximate each other. One method is that disclosed by Exhibit S. 12 actual purchases and the prices paid, down to the institution of these proceedings. The second method, the more logical under the circumstances, is to calculate the present value of the income on each share to 1973, the time of the expiration of the Canal Company charter, guaranteed in the 1871 lease by the Railroad Company.

The stockholders contend that the value of the stock is expressed by the value of the assets covered by the 1923 agreement and that each share has a value proportionate to the total. This method is not justified either in law or in the circumstances.

## I.

**The market value was proven.**

It does not require a great number of sales to establish market value in a particular locality and it has been held that even a single sale may be shown where the time is sufficiently near and the conditions sufficiently similar to render the evidence helpful.

> 22 C. J. 188, Sec. 151;
> *St. Louis & Co.* v. *Drodgi,* 132 S. W. 946;
> *Blanchard* v. *N. J. Steamboat Co.,* 59 N. Y. 292.

This is so even though the stock may not be recorded on the exchanges, if there was actually a market, though inactive.

> *In re Woolsey,* 180 N. W. 215, 24 A. L. R. 1038 N. Y., etc.;



> *R. R. Co.* v. *Offield,* 77 Conn. 417, 78 Conn. I; 59 Atl. 510, 60 Atl. 740; 203 U. S. 372. 51 L. Ed. 231.

In *Douglas* v. *Merceles,* 25 J. Eq. 144, the question was the market value of an inactive stock as of November 1, 1867. The Chancellor found a value of $100 a share based on four sales made February 18, 1868, to September 10, 1869. He overruled a master's report finding $211.30, based on the same method contended for by the stockholders here.

In the present case the testimony on this line consists of Exhibit S. 12, which shows purchases of both classes of stock from 1871 down to 1923, the most active period being in 1911 and 1912. With characteristic disingenuousness the stockholders refrain from offering evidence of any prices, even of their own stock purchased in 1920, 1921 and 1922. Exhibit S. 12 discloses uniform prices of $70 and $170 in 1911 and 1912, and in 1922 $50 and $125, respectively.

## II.

**The present value of the future dividends is the true criterion.**

The real question for solution is the actual value at the present time of stock in a corporation whose charter expires 48 years hence, upon which there is guaranteed semi-annual dividends for the life of the charter.

There can be no question that all that the stockholders of the Morris Canal and Banking Company could have since (and under the terms of) the lease of 1871 was the semi-annual dividends of

five and two per cent., respectively, during the life of that company—to wit, until 1873. By that lease the Canal Company conveyed to the Railroad Company all its present and *future* assets, subject only to the payments provided for, all of which have been made as they accrued. Significant of the extent to which this grant was intended are the provisions of the second and fourth clauses of the lease. In the second clause the Railroad Company agrees to meet the interest charges on three mortgage liens and on one Preferred Dividend Scrip issue. By the fourth clause the Railroad Company may pay the principal of these liens; it is to be subrogated to the rights of the mortgagees. It did pay this principal, and thereby, in case of default by the Canal Company under the lease, occupied the position of mortgagees in possession.

Furthermore, in the agreement of 1923, it is provided that pending the acquisition of the outstanding stock the Railroad Company will pay the dividends in accordance with the guaranty in the lease of 1871.

So that from any point of view the utmost value of this stock is derived solely from its income producing power until 1973, when that power expires by reason of the expiration of the corporation from which the stock issued.

Evidence of this commuted value was offered by the State in the shape of figures prepared by actuaries from tables of recognized authority. The *method* was adopted by the commission, but they made their own calculations, arriving at figures in excess of those submitted and of the average prices paid.



## III.

**The theory of the stockholders is unsound in law and fact.**

The theory of the stockholders, as stated through page after page to the commissioners, is that "we are entitled as stockholders to our proportionate share of the value of the net assets at the time this scheme was instituted". Counsel follows this unsound premise with a fallacious assumption that the assets (if any) of the Canal Company were held for distribution among its stockholders, and that they are entitled to be paid in cash a proportionate part of the value of the entire assets embraced in the 1922 agreement.

The fallacy of this position is twofold. First, it assumes the Canal Company had assets at the time of the 1922 agreement; and, secondly, it assumes that if there were any assets the stockholders are entitled to have distribution thereof, or be paid their value in cash.

In the first place it is clear that by the lease of 1871 the Canal Company divested itself of every asset it had, and vested title thereto in the Railroad Company. True, the lease contains a forfeiture clause in case of default in payment, but that is of no moment, because no default has occurred nor is there any likelihood of such. The only asset (if it may be called so) in which the Canal Company or its stockholders had an interest is the undertaking by the Railroad Company to pay the semi-annual dividends. And this would cease to exist in 1974.

Secondly, the stockholders assume that by the agreement of 1922 the Canal Company acquired some property or rights which in some inscrut-

able fashion became transmuted into assets ripe for distribution. It is difficult to discern any chain or logical reasoning by which this result is reached no change in the situation created by the lease of 1871 was effected by the agreement of 1922. That agreement did not, under the constitution it could not, change the relation existing between the Railroad Company and the Canal Company, its stockholders.

On the oral argument counsel for the stockholders suggested that if the State had taken over the entire property and paid for it in cash, that cash would be available for distribution to the stockholders. They carefully avoid any show of reasoning in jumping to this conclusion, however.

Page after page is written and the air is kept warm with reference to the constitutional prohibition against the impairment of the obligation of contracts. No effort is made to disclose just what contract of the stockholders is impaired. But we insist that under their contention the very clause of the constitution they so vociferously invoke would be atrociously violated as to the Railroad Company. The reasoning is plain. Following the language of the Landell case "The State is availing itself of the sovereign right reserved in the charter of the company in 1924". In asserting that right the State cannot ignore those who by contract or conveyance acquired vested rights in the property of the Canal Company, and in any proceeding (whether under the legislation of 1922 or under the Charter of 1824) it is under legal and constitutional obligation to make compensation for those rights.

Hence it is that when the State determined to acquire this property, whether in whole or in part,



agreement: it was also bound to notice the lease of 1871 and the terms thereof.

Out of the award (whatever it might be) the principal and interest of the mortgages would be paid, and the value of the lease determined and paid to the lessee and the balance only would be left to the Canal Company for distribution to the stockholders.

The question which then naturally suggests itself at this point is, what would be the amount of that balance? The answer is found in the answer to the next natural question, what is the value of a lease of the entire property of a corporation covering a period coterminous with the life of the corporation? The answer is mathematically plain—That it is the value of the property, subject to the obligations of the lease, which in this case is the payment of the dividends to the stockholders.

Instead of a proceeding under the Charter of 1824, the State enacted the legislation of 1922 and 1923, which in no wise effected the relations of the parties with the State or with each other. The mortgage indebtedness has been paid and the Railroad Company (lessee) has undertaken to discharge its only other obligation under the lease—the payment of the dividends, which is all the Canal Company or its stockholders can claim.

The statutes and the 1922 contract provisions for condemnation are merely for the purpose of expediting the discharge of this obligation, permitting to be exercised at once a function which in ordinary course would extend over a period of 46 years.

The contention of the stockholders is the creature of a confused state of mind which persists in treating the Railroad Company as a mere majority stockholder whose interest was merely that of any stockholder. This utterly ignores its in-

terest as lessee. As a matter of fact the Railroad Company holdings did not begin to approach a majority until after 1911 (Exhibit S. 12). The confusion as to the legal situation would be clarified if the subject were treated as if the Lehigh Valley Railroad Company did not own a share of stock, and had only its interest as lessee.

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