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176-216

# Record No. 2183

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**WASHINGTON COUNTY NATIONAL BANK**

v.

**WASHINGTON COUNTY, VIRGINIA, ET AL.**

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FROM THE CIRCUIT COURT OF WASHINGTON COUNTY.

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## RULE 14.

¶5. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

¶6. SIZE AND TYPE. Briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records. The record number of the case shall be printed on all briefs.

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The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

176 VA 216

## **NOTICE TO COUNSEL**

**This case probably will be called at the session of court to be held JAN - 1940**

**You will be advised later more definitely as to the date.**

**M. B. WATTS, Clerk.**



IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 2183**

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WASHINGTON COUNTY NATIONAL BANK, Plaintiff,

*versus*

WASHINGTON COUNTY, VIRGINIA, AND THE TOWN  
OF ABINGDON, VIRGINIA, Defendants.

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PETITION FOR WRIT OF ERROR.

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*To the Honorable Justices of the Supreme Court of Appeals  
of Virginia:*

Washington County National Bank of Abingdon, Virginia, respectfully shows unto the Court that it is aggrieved by a final judgment entered against it in the Circuit Court of Washington County, Virginia, on the 18th day of February, 1939.

Judgment was entered on a petition by the Washington County National Bank in the Circuit Court of Washington County, Virginia, for the correction of erroneous assessments of county levies and local taxes for the year 1938, under the provisions of Chapter 97 of the Acts of the General Assembly, 1938, page 163.

STATEMENT OF FACTS.

The Washington County National Bank is located in the main part of the business section of the Town of Abingdon, Washington County, Virginia, and is situate on the northeast

corner of the intersection of Main and Wall Streets in said town, said property fronts 44 feet and 3 inches on Wall Street, and 80 feet and 3 inches on Main Street, and on which there is located two buildings, one a five-story building, and one is a two-story building. The five-story building fronts on both Wall and Main Streets and the two-story building fronts on Main Street. The lower story of the five-story

building is used for the banking \*room by the petitioner, 2\* and three stories of the building are used for offices, and the fifth floor is a roof garden or public hall. The first floor of the two-story building is used for a jewelry store and the second floor is used for offices. There is no basement under the five-story building and the furnace which heats the five-story building is located under the two-story building, it, therefore, becomes necessary that both buildings belong to the same owner.

The Washington County National Bank purchased the real estate and the buildings on the 13th day of February, 1937, from the West Abingdon Realty Company for the sum of \$35,000.00. (See deed, transcript of record, page 75.)

The main building (the five-story building) located on this property was constructed in 1922 or 1923, at a cost, including fixtures, estimated between \$60,000.00 and \$90,000.00, and was then owned by the Peoples National Bank of Abingdon, Virginia. The Peoples National Bank ceased to do business in 1927, and the *real and both the buildings* and the fixtures were sold at that time to the West Abingdon Realty Company for \$70,000.00, and in 1937, West Abingdon Realty Company sold the real estate and both of the buildings to petitioner for \$35,000.00, the fixtures were bought separately.

At the time petitioner purchased said property the real estate was assessed at \$2,500.00 and the buildings at \$22,500.00 for the year 1937, and were assessed the same amounts for the year 1938.

The petitioner filed a petition for correction of the erroneous assessments in the year 1937, immediately after it acquired the property, and the Circuit Court of Washington County, Virginia, which heard the case, held that the assessed value of other properties in Abingdon ranged from twenty to thirty per cent of their fair market value, and 3\* that the assessed value of \*petitioner's property was sixty-two and one-half per cent, and that:

“My opinion from the evidence before me is, that the assessment of petitioner's property, based on present day values, is ununiform and unequal as compared with the other properties described in the evidence, but my further opinion

is that this court is powerless to do anything about it." (See exhibit "Opinion of Court, W. H. R., Judge, 5-27-37" at bottom of page 82 and top of page 83 of the transcript of the record.)

Relief was denied the petitioner in the proceedings instituted in 1937, however, at the 1938 session of the General Assembly of Virginia, an act was passed which provided, among other things, that in any county where there had been no general reassessment of real estate or no board of equalization to equalize assessments since 1930, that any person aggrieved might apply to the circuit court of the county in which said property was located for relief, and that if the court was satisfied that the assessment complained of was out of line with other comparable real estate in the same magisterial district the court should reduce or increase the assessment so as to make the assessment of the property complained of uniform with other comparable property in the same magisterial district.

After this Act had become law the petitioner then filed its petition under the provisions of this act for the correction of erroneous assessment of county taxes and local levies for the year 1938. Washington County and the Town of Abingdon were made parties to this petition, the evidence was heard orally before the court, transcribed and made a part of the record.

The court reduced the assessment from \$25,000.00 to \$18,750.00, and held that an assessment of \$18,750.00 against the petitioner's property would be an equal and uniform assessment with other comparable property situate in the same magisterial district. The court also held that under the 4\* evidence other \*property situate in the Abingdon Magisterial District comparable to the petitioner's property was assessed from twenty to thirty per cent of its fair market value, and fixed the average assessment of other comparable property at twenty-five per cent of its fair market value, *and held that the assessment on petitioner's property, in order to be uniform and in line with the assessment of other comparable property, should be assessed at twenty-five per cent of its fair market value.*

The court then fixed the fair market value of petitioner's real estate at \$10,000.00 and the buildings on the petitioner's real estate at \$65,000.00, a total assessment of \$75,000.00, and then assessed the same at twenty-five per cent of that amount, to-wit, \$18,750.00.

## ASSIGNMENT OF ERROR.

*The Court erred in fixing the fair market value of Petitioner's property at \$75,000.00, as there is no evidence upon which to fix such a valuation, and all the evidence introduced at the hearing as to the fair market value of petitioner's property as to the effect that the fair market value of the same was from \$35,000.00 to \$40,000.00, and the Court erred in not reducing the assessment against petitioner's property to twenty-five per cent of the fair market value, as determined by the evidence, to-wit, twenty-five per cent of \$40,000.00.*

It was proven at the hearing of the case that there has been no reassessment of real estate and no meeting of the board of equalization to consider real estate assessments in Washington County, since 1930, and it was also shown that petitioner's property was assessed at \$25,000.00 for the year 1938, and that the rate of taxation was \$2.15 for the county and \$1.85 for the Town of Abingdon, a total assessment of \$4.00 per \$1,000.00 or a total tax of \$1,000.00.

5\* \*It was shown by the Commissioner of Revenue that the property in the Town of Abingdon was assessed as a general rule from twenty to thirty per cent of its market value, and to substantiate the testimony of the Commissioner of Revenue petitioner introduced evidence as to the assessed value and the fair market value of other comparable property in the immediate vicinity of the location of the petitioner's property, and it was shown by this testimony that the other comparable property was assessed from seventeen to twenty-nine per cent of its fair market value.

Neither Washington County nor the Town of Abingdon filed any pleadings denying that petitioner's property was assessed too high, and Washington County introduced no testimony and the Town of Abingdon introduced two witnesses, both of whom admitted that petitioner's property was assessed at a higher rate than other comparable property was assessed.

There remained nothing for the court to decide except to determine how much the assessment against the petitioner's property should be reduced, so as to be uniform and in line with other comparable property in Abingdon Magisterial District, and it having been proven that other comparable property was assessed from seventeen to twenty-nine per cent of its fair market value, and the court in deciding the case having fixed twenty-five per cent of the fair market value as the average rate of assessment, there remained nothing further for the Court to do but determine the fair market value of petitioner's property from the evidence before it.

The following is a quotation from the decree of the court, transcript page 109:

“That the evidence of all of the witnesses who testified as to the fair market value of petitioner’s property is to the effect that the fair market value of its real \*estate and 6\* buildings is between \$35,000.00 and \$40,000.00, however, the court is of the opinion that the reasons set forth in written opinion dated 1-19-39 and made a part of the record in this proceeding, that the fair market value of the Washington County National Bank property is \$75,000.00, and that the average assessment in the Abingdon Magisterial District is twenty-five per cent of the fair market value of the property, and that the assessment against the property of Washington County National Bank is out of line with the assessment of other comparable property in Abingdon Magisterial District, and that in order to make the assessment against the petitioner’s property uniform and in line with other comparable property in Abingdon Magisterial District said property should be assessed at twenty-five per cent of \$75,000.00, its fair market value, to-wit, an assessment of \$18,750.00.”

It will clearly appear from the above quotation from the final decree in this proceeding that all of the evidence is to the effect that the fair market value of petitioner’s property was between \$35,000.00 and \$40,000.00. The Court so stated, and notwithstanding this fact the court disregarded this evidence and fixed the fair market value of petitioner’s property at \$75,000.00.

The fair market value was definitely established not to be in excess of \$40,000.00 by the following:

(a) All of the evidence as to the fair market value was to the effect that it was between \$35,000.00 and \$40,000.00.

(b) The exhibit “J. S. B.” on page 74 of the record as to the income and expenses shows that with every office space in both buildings rented that the net income for 1937 from said buildings was \$503.17, or 1.4% return on a \$35,000.00 investment.

(c) The actual purchase price, which is the best evidence of the fair market value, was \$35,000.00 as shown by exhibit “Deed” on page 75 of the record.

There is no evidence that petitioner’s property is worth more than \$40,000.00, and there is no evidence on which the court could base a fair market value of \$75,000.00.

7\* \*The final order of the court sets forth the facts proven at the trial of the case, and a reading of that order will show that the lower court was clearly wrong in fixing the

## Supreme Court of Appeals of Virginia.

fair market value of petitioner's property at \$75,000.00, and it will appear from the order that there was absolutely no evidence upon which such a valuation could be based.

Petitioner would probably suffer indefinitely by this excessive valuation, as any board of assessors would have to be appointed by the court and they would be reluctant to reduce an assessment which had been fixed by the court that appointed them, and for that reason, even though there might be a general reassessment of property in the near future, in all probability an assessment fixed on petitioner's property would remain.

For the error assigned it is respectfully submitted that petitioner is entitled to have the judgment of the lower court set aside and final judgment entered in the Supreme Court of Appeals on the evidence before it.

A certified copy of the record in the court below is attached hereto and made a part of this petition.

Counsel for petitioner adopts this petition as his brief, and desires to argue the same orally.

A copy of this petition was delivered to James M. Barker, counsel for Washington County, Virginia, and to Fred C. Parks, counsel for the Town of Abingdon, Virginia, on the 12th day of June, 1939.

WASHINGTON COUNTY NATIONAL BANK  
OF ABINGDON, VIRGINIA,

By ROBY C. THOMPSON, Counsel.

ROBY C. THOMPSON, Counsel.

8\* \*I, Roby C. Thompson, Attorney, practicing in the Supreme Court of Appeals of Virginia, certify that in my opinion the order complained of in the foregoing petition for a writ of error is erroneous, and that the same should be reviewed and reversed.

Given under my hand this 12th day of June, 1939.

ROBY C. THOMPSON.

Received June 13, 1939.

M. B. WATTS, Clerk.

Appeal allowed. Bond \$300. If *supersedeas* asked for Bond \$600.

PRESTON W. CAMPBELL..

To the Clerk at Richmond.

Received June 30, 1939.

M. B. W.



RECORD

VIRGINIA,

In the Circuit Court of Washington County.

Washington County National Bank, Plaintiff

v.

Washington County, Virginia, and the Town of Abingdon,  
Virginia, Defendants.

Be it remembered that on the 10th day of October, 1938, the Washington County National Bank filed in the Clerk's Office of the Circuit Court of Washington County, State of Virginia, its petition or application for correction of erroneous assessment of county levies and local taxes for the year 1938, which petition or application and further proceedings had in the trial thereof are as follows, to-wit:

page 2 } In the Circuit Court of Washington County, Virginia.

Washington County National Bank

v.

Washington County, Virginia, and the Town of Abingdon,  
Virginia.

PETITION FILED OCT. 10, 1938.

Notice of application of Washington County National Bank of Abingdon, Virginia, to the Circuit Court of Washington County, Virginia, for correction of erroneous assessments of county levies and local taxes for the year 1938.

You Washington County, Virginia, and the Town of Abingdon, Virginia, are hereby notified that the undersigned, Washington County National Bank of Abingdon, Virginia, will, on the 29th day of September, 1938, apply to the Circuit Court of Washington County, Virginia, for relief from erroneous assessments of taxes and local levies on the hereinafter described property for the year 1938.

The undersigned alleges that the property sought to be relieved from erroneous assessments of taxes and local levies is situate in the Town of Abingdon, Abingdon Magisterial District of Washington County, Virginia, in the northeast

corner of Wall Street in the Town of Abingdon, Virginia, and is the property occupied by the Washington County National Bank of Abingdon, Virginia, which said property fronts on Wall Street and Main Street in the Town of Abingdon, Virginia, and is owned by the Washington County National Bank, a deed to which is of record in the Clerk's Office of Washington County, Virginia, in Deed Book 164 at page 3 } page 17.

The undersigned alleges that there has been no general reassessment of real estate in the Town of Abingdon, Abingdon Magisterial District of Washington County, Virginia, since 1930, and that there has been no board of equalization of real estate assessments appointed in Washington County since 1930.

That the aforesaid property is assessed for the year 1938 as follows:

County Land Book 1938 page 354 line 33	
Washington County National Bank, value of lot	\$ 2,500.00
Value of building	22,500.00
	<hr/>
Total	\$25,000.00.

That the rate of taxes for the Abingdon Magisterial District of Washington County is \$2.15 and the undersigned is assessed at that rate or with the sum of \$537.50 for county and district levies; that the rate for the Town of Abingdon is \$1.85 per \$100.00, and the undersigned is assessed for the Town tax the sum of \$462.50.

That the assessed value for the year 1938 against said property is \$25,000.00, and that the total tax levied against said property for the year 1938 is \$1,000.00.

The undersigned alleges that the aforesaid assessment of \$25,000.00 against the property herein described is out of line with the assessment against other comparable real estate in the Town of Abingdon, Abingdon Magisterial District of Washington County, Virginia, and that the said assessment of \$25,000.00 against the property herein described is not uniform in its application with other assessments in the page 4 } Town of Abingdon and the Abingdon Magisterial District.

That said assessment is out of line with other comparable real estate and is not uniform in its application with other property in Abingdon Magisterial District of Washington County, Virginia, and that it is assessed at a sum grossly in excess of assessments against other comparable real estate in said Abingdon Magisterial District of Washington County,

Virginia, and the assessment against the property involved is not uniform in its application as the assessment against the property involved in this proceeding is greatly in excess of the assessment against other property situate in the Abingdon Magisterial District.

That the undersigned is entitled to be exonerated from the payment of so much of the taxes and local levies assessed against it for the year 1938 as are erroneously charged against it.

That the undersigned will apply to the Circuit Court of Washington County, Virginia, to correct the erroneous assessment of taxes and local levies against the property hereinbefore described, and to reduce the assessment against said property so that the assessments against the property herein involved will be in line with the assessments against other comparable property in Abingdon Magisterial District of Washington County, Virginia, and so that the assessments against the property herein involved will be uniform with the assessments against other property in Abingdon Magisterial District, and will also apply to said court to be exonerated from the payment of so much of the taxes and local levies for the year 1938 as is erroneously charged against it.

page 5 } Wherefore, you Washington County, Virginia, and you the Town of Abingdon, Virginia, are hereby notified that the undersigned will apply to the Circuit Court of Washington County, Virginia, on the date aforesaid for the relief herein stated, and you Washington County, Virginia, are notified to have the Commonwealth's Attorney present on the date aforesaid to defend this application, and to have the Commissioner of Revenue, who made the aforesaid assessment, present to be examined as a witness touching the matters and things pertaining to the relief sought in this application; and you the Town of Abingdon, Virginia, are notified to have your Town Attorney present to defend this application, and each of you are notified to have present such other parties or officials of Washington County or the Town of Abingdon as may be interested or who may be necessary parties for the court to make proper judicial determination of the merits of the allegations contained in this application.

WASHINGTON COUNTY NATIONAL BANK  
By ROBY C. THOMPSON, Attorney.

ROBY C. THOMPSON,  
Counsel.

*George I. Miller.*

page 6 } Filed Oct. 10, 1938.

J. N. HILLMAN, JR., D. C.

Service accepted:

A. A. Mock, Chairman, Board of Supervisors for Washington County, Va.

T. H. Crabtree, Mayor, Town of Abingdon, Va.

John A. Blakemore, Commonwealth's Attorney for Washington County, Va.

page 7 } TESTIMONY BEFORE COURT, JANUARY  
13, 1939.

Present: R. C. Thompson, Counsel for Washington County National Bank.

J. M. Barker, Counsel for Washington County, Virginia.

Fred C. Parks, Counsel for the Town of Abingdon, Virginia.

The first witness,

GEORGE I. MILLER,

after first being duly sworn, deposes and says:

By R. C. Thompson:

Q. Your name is George I. Miller?

A. Yes, sir.

Q. You are Commissioner of Revenue for Washington County, Virginia?

A. Yes, sir.

Q. How long have you been Commissioner, Mr. Miller?

A. A little over four years, I reckon.

Q. Do you have land books for Washington County in which property would be assessed in Abingdon Magisterial District in your custody?

A. Yes, sir.

Q. Mr. Miller, what is the property situated on the corner of Main and Wall Streets in the Town of Abingdon, and owned by Washington County National Bank assessed at for the year 1938?

page 8 } A. \$25,000.00.

Q. Mr. Miller, has there been a general reassessment of property in this county since 1930?

*George I. Miller.*

A. No, sir.

Q. Has there been an equalization board to equalize the assessment in this county since 1930?

A. No, sir, the last one was 1930.

Q. Mr. Miller, what would you say—what percentage of the fair market value is the property in Abingdon assessed at?

A. I can say as to about what I try to assess new property at, and about what it was assessed at at the time of the last assessment, but due to depreciation and various other things the ratio will not hold good on all property as it is assessed at present. At the time of assessment we tried to assess it at about twenty or thirty per cent of the cost.

Q. Of course the assessments originally made have been carried through, you make no change on real estate?

A. No, sir.

Q. When you are assessing new properties you try to apply from twenty to thirty per cent of the fair market value?

A. Yes, sir.

Q. I will ask you from your knowledge of the property in the Town of Abingdon and the assessment thereof, as a general rule, if it is not assessed at from twenty to page 9 } thirty per cent?

A. As a general rule it is, but some of the property since the last assessment has depreciated in value until it is over assessed and it is assessed at more than thirty per cent.

By F. C. Parks:

Q. Mr. Miller, is there any other property in the town that is comparable with the Washington County National Bank building?

A. I think not now, since the acquisition by the county of the First National Bank building I do not know of any other property that could be compared to it.

Q. It really could not be compared with the old First National Bank could it?

A. It might, but that bank building is non-taxable now. It might have been at one time.

Q. When both were used for banking purposes that was about the only similarity?

A. Some similarity, the cost and material used and construction.

Q. There has been no change in the assessed value of the



*George I. Miller.*

Washington County National Bank building since it was built  
has it?

page 10 } A. No, sir.

Q. When was that?

A. I do not know what year it was built, but it was assessed in 1925, but I do not recall whether it was assessed before that or not.

By J. M. Barker:

Q. Mr. Miller, is it not a fact that since that assessment the value of that property has depreciated?

A. It seems that the value has depreciated, I cannot say that the building has depreciated.

Q. What I mean is, the property is not worth as much as it was in 1925, the fair market value is nothing like it was then?

A. No, sir, I do not think it would have brought at that time what it cost even.

By Fred C. Parks:

Q. The building cost \$75,000.00 fifteen or sixteen years ago, \$25,000.00 assessment would be in line, would it not?

A. Yes, sir.

Q. You do not examine the property each year as they are assessed, do you?

A. No, sir, I have no authority to make any  
page 11 } change, therefore, it is not necessary.

By J. M. Barker:

Q. Were you not on the board that made those assessments?

A. Yes, sir.

By F. C. Parks:

Q. At the time you made that assessment it was occupied, the lower floor, for banking purposes?

A. Yes, sir.

Q. And in arriving at the assessment figure did you examine the property and see for what purposes they were used?

A. Yes, sir.

Q. Did you take into consideration the possible income from the property?

A. Yes, sir.

*George I. Miller.*

Q. Did you also take into consideration the location in the town?

A. Yes, sir.

Q. There are other tenants in this building besides the Washington County National Bank?

A. Yes, sir.

Q. And they were at the time you made the original assessment?

A. I think so. Not as many occupied it then  
page 12 } as there are now, my recollection is not as many  
rooms occupied.

By R. C. Thompson:

Q. I will ask you to refer to your land books and state what the building owned by Bradley & Hines known as Peoples Drug Store is assessed at for the year 1938?

A. \$5,500.00 total assessment.

Q. And what is the assessment against the Farmers Exchange Bank in the year 1938?

A. Same thing \$5,500.00.

Q. I will ask you what is the assessment against the property owned by H. H. Scott known as the Piggly-Wiggly for the year 1938?

A. \$5,400.00.

Q. Mr. Miller, what is the property opposite the bank building, facing on Wall Street and also Main Street, known as the hotel property assessed at?

A. \$16,500.00.

By F. C. Parks:

Q. The property occupied by the Peoples Drug Store is a two story structure, is it not?

A. Yes, sir.

Q. The lower floor occupied by the drug store and the upper floor by two doctors' offices.  
page 13 }

A. Yes, sir.

Q. Only two offices on the second floor, is that right?

A. Yes, that is all that I know of.

Q. And the Farmers Exchange Bank building is also a two story structure, is it not?

A. Yes, sir.

Q. And the frontage of the Farmers Exchange Bank is very much less than that of the Washington County National Bank building, is it not?

*George I. Miller.*

A. That is right, it is.

Q. Could you give us a guess of the difference in frontage?

A. You mean the frontage on Main Street of both buildings?

Q. Yes.

A. I would say the frontage of the bank building is at least 20 feet more than the frontage of the Farmers Bank, that is a guess, of course.

Q. The Washington County National Bank is on the corner of Wall and Main Streets?

A. Yes, sir.

Q. It fronts on Wall Street and then has a large frontage on Main Street?

A. Yes, sir. Of course there is no entrance on page 14 } Main Street.

Q. Is that the most valuable location in the town of Abingdon for business property?

A. I think so, with the possible exception of the other corner, it would be just as valuable.

Q. Is there any thing included in this assessment other than the bank building?

A. No, sir. The lot—real estate.

Q. The store occupied by McChesney & Lester does not come in that?

A. That is a part of that, yes, sir.

Q. That has a frontage of about twenty feet, does it not?

A. I think so, near that.

Q. And that is a two story structure?

A. I believe it is.

Q. And is occupied by tenants on both floors?

A. I think so, yes.

Q. Now, the property on the opposite corner owned by H. H. Scott, which is assessed at \$16,500.00 is very old property, isn't it?

A. Yes, sir, most of it is, I think some additions and repairs.

Q. Do you know, Mr. Miller, whether or not that item on page 351 of the land books on line 1, H. H. Scott designated as one-half lot near Depot assessed at \$16,500.00 page 15 } includes the building occupied by A. & P. and Johnson's Grocery?

A. Yes, sir, I think it does.

Q. How long have you been acquainted with the building

*A. L. Cumbow.*

on the corner owned by H. H. Scott, known as Hotel Belmont.

A. As long as I can remember, from boyhood on up

Q. When you were almost a young man, that was forty-five or fifty years ago?

A. Depends on when you want to start the years.

Q. All the buildings included on the lot fronting on Wall Street are of about equal age?

A. There have been some new fronts put on them. As long as I can remember that building has existed where it is.

Q. You are familiar and acquainted with the buildings on the Scott lot?

A. Yes, sir.

Q. Are those buildings of cheap construction?

A. Yes, sir.

Q. Those buildings are assessed at \$10,000.00?

A. Yes, sir.

Q. The buildings themselves assessed at \$10,000.00?

A. Yes.

page 16 } The next witness,

A. L. CUMBOW,

after being duly sworn deposes and says:

By R. C. Thompson:

Q. Your name is A. L. Cumbow?

A. Yes, sir.

Q. I believe you are a real estate broker?

A. Yes, sir.

Q. How long have you been in the real estate business?

A. A little more than twenty years, except about fifteen months of that time I was appraising for the Federal Land Bank of Baltimore.

Q. Where do you live?

A. Abingdon.

Q. Have you dealt in real estate in and around Abingdon?

A. Yes, sir.

Q. Are you familiar with real estate values in Abingdon?

A. Very well I think.

Q. Mr. Cumbow, are you familiar with the location and construction of the building of the Washington County National Bank?

A. Yes, sir.

*A. L. Cumbow:*

Q. Mr. Cumbow, what would you say is the fair market value of that building in the year 1938, last year?  
page 17 } A. That is including the fixtures?

Q. No, talking about the real estate and building that does not include the vaults and fixtures. What would you think would be the fair market value of it?

A. It is hard to determine on account of it just including the real estate. It would be \$35,000.00.

By the Court: Mr. Thompson in assessing that you have to take the real fixtures as a part of the building.

By R. C. Thompson: Yes, sir. I think what he meant—

By J. M. Barker: I thought he meant the grille work.

By the Court: Including the fixtures, that would go ordinarily with real estate.

Witness: A. I then consider it worth \$40,000.00.

By R. C. Thompson:

Q. Are you familiar with the property that is  
page 18 } owned by Mr. Scott which fronts on Main Street  
and generally known as Piggly-Wiggly and College Inn. What would you say would be the fair market value of these buildings?

A. I would consider them together \$100,000.00.

Q. I am talking about the property East of the Washington County Bank that is occupied by Piggly-Wiggly and College Inn?

A. I saw that offered at auction once, I consider it worth \$20,000.00.

Q. In arriving at your opinion of the fair market value of Washington County National Bank have you taken into consideration the income from that building?

A. Yes, sir, and have taken into consideration the several stories it has, and I do not consider more than the second story.

Q. Have you been advised of the income from that building?

A. Yes, sir.

Q. And you have had that in mind in fixing the value?

A. Yes, sir.

Q. Mr. Cumbow, do you know the property that is owned by Hines & Bradley known as the Peoples Drug Store?

A. Yes, sir.

Q. What would you say is the fair market value  
page 19 } of that property.

A. I would think it would be worth \$20,000.00.



*A. L. Cumbow.*

Q. Have you looked at it with a view of putting a value on it?

A. Yes, sir.

Q. Have you likewise looked at the Farmers Exchange Bank with a view of valuing it?

A. Yes, sir.

Q. And in your opinion what would you say is the fair market value of it?

A. I figure \$19,000.00.

Q. What, in your opinion, would you say is the fair market value of the entire square opposite the Washington County National Bank, which fronts on Wall Street from Main Street to Depot Street and fronts on Main Street all the way west to the lot owned by Mrs. Bell, the vacant lot there?

A. That is the Hotel property?

Q. Yes, known as Hotel square?

A. I would figure it is worth \$100,000.00.

Q. Do you have any interest in this matter?

A. No, sir, not at all.

By F. C. Parks:

Q. What did you say the value was, I did not get it?

A. \$100,000.00.

Q. For that block?

page 20 } A. Yes, sir.

Q. What would you say the building is worth?

A. In that block?

Q. Yes.

A. I had not figured it that way. I just estimated the entire property, and considered it on its income.

Q. The type of each of the buildings would enter into it? And the earnings from the buildings?

A. Yes, it would be \$1,000.00 a month, I do not know it to be that but if I am correctly informed it is.

Q. The buildings known as Piggly-Wiggly and College Inn owned by H. H. Scott I believe you said is worth—?

A. \$20,000.00.

Q. Those two buildings are of brick construction?

A. Yes, sir.

Q. Two story buildings?

A. Yes, sir.

Q. They are occupied for business, grocery store on the lower floor?

A. Yes, sir.

*A. L. Cumbow.*

Q. And the upper floor occupied as a dwelling and beauty parlor?

A. I think so.

Q. Only two tenants on the upper floor?

A. I do not know how many there are now.

page 21 } Q. The building occupied by McChesney & Lester Jewelry store is the same type building as the Piggly-Wiggly and College Inn?

A. Looks to be.

Q. There is the same number of stories?

A. Yes, sir.

Q. In that case it is worth about \$10,000.00?

A. I do not know, I figured both together.

Q. It is about the same building, and the others are worth \$20,000.00?

A. I suppose it would.

Q. It is in the center of business in the Town of Abingdon?

A. Yes, sir.

Q. The Farmers Exchange Bank building you said is worth \$19,000.00?

A. \$19,000.00.

Q. That has much less frontage on the street than the other building? Washington County National Bank?

A. Yes, sir, good deal less.

Q. It does not have more frontage on Main Street than the brick building occupied by McChesney & Lester, does it?

A. No, sir.

Q. It is a two story structure, is it not?

A. Yes, sir.

page 22 } Q. The building of the Peoples Drug Store is also about the same width, has about the same frontage on Main Street as McChesney & Lester Jewelry Store owned by the bank?

A. About the same, I suppose.

Q. Also a two story structure?

A. Yes, sir.

Q. What would you say that building was worth, the Peoples Drug Store?

A. Somewhere around \$20,000.00.

Q. That building and the other buildings mentioned are two story buildings?

A. Yes, I would consider the Washington County National Bank building would be worth more if it was only a two story building. They would not have the expense of heating it and all the other expenses. It is top heavy.

*A. L. Cumbow.*

Q. At the present all the floors are occupied?

A. Practically at present, I guess it is. To consider the market value of the building you must figure the income over a period of years.

Q. Take it for granted that that building is occupied all except the roof garden, it is producing about all the income it can?

A. Yes, sir, and I understand that the income from the building is just 1.4% income on the investment.

Q. On the \$25,000.00?

page 23 } A. Yes, sir.

Q. You do not take into consideration the rental the Washington County National Bank would have to pay if it did not own the building?

A. That has been put in.

Q. The buildings owned by H. H. Scott are of cheap construction and old, all except Johnson's Grocery, Kroger and A. & P. I mean?

A. They have all been there a considerable time most of them, except frontage.

Q. The buildings are practically all about forty or fifty years old?

A. I do not know the age of those buildings.

Q. They have been there a long time, except fronts?

A. Yes, sir, except fronts.

Q. The Washington County National Bank is modern constructed building, and is adapted for banking purposes and office building?

A. Yes, it is fairly modern, I think it has been built about fifteen years.

Q. It is built out of some kind of stone?

A. Yes, sir. I do not think a new building would be built on that order now.

Q. It is actually better constructed than either the Farmers Exchange Bank or the Peoples Drug Store buildings?

page 24 } A. I do not think it is better constructed than the Farmers Exchange Bank. The Farmers Exchange Bank fronts on Main Street, and the Washington County National Bank does not, and the frontage on Main Street you might say is lost.

Q. This building has one entrance on Main Street, to the jewelry store?

A. Yes, sir.

Q. And one entrance to the bank on Wall Street?

*A. L. Cumbow.*

A. Yes, sir.

Q. You have more space in this building than in the Farmers Exchange Bank?

A. Considerable difference on account of the stories.

Q. Would be about ten times as much floor space?

A. I think so.

Q. Not considering the building occupied by McChesney & Lester?

A. Yes.

By R. C. Thompson:

Q. How do you arrive at that, that there would be ten times as much floor space in the Washington County National Bank than in Farmers Exchange Bank?

A. The Washington County National Bank has several more stories.

Q. It has five and the Farmers Exchange Bank page 25 { has two, that would not make ten times as much floor space?

A. That is the trouble it has too much floor space, it is too large, it is just top heavy.

By J. M. Barker:

Q. Mr. Cumbow, as I understand you, it is your idea that this bank was constructed at considerable expense and is a good building, it has been over built?

A. I consider it over built for this town, in a big city it would be different.

Q. Have you made any figures where you think if it were a two story building it would be better, did you attempt to do that?

A. Nothing except my experience in selling property. If you could rent all of these offices, but it has been empty so much, I have been there, had an office there several years and many of the offices were empty. An empty room does not pay you anything.

By F. C. Parks:

Q. You say you took into consideration the income, and you rather think it is top heavy?

A. I consider it top heavy, and you cannot get your money out of it. When you consider the market value it is what you can get from a willing purchaser. You cannot page 26 { get the value out of a top heavy building. The market value of property is what a willing seller

*Julian S. Brown.*

can get from a willing purchaser, what I am trying to get at is if that building was put on the market what it would bring.

By the Court:

Q. Could you say what would be the comparative cost of constructing the Farmers Exchange Bank and The Washington County National Bank building?

A. I do not know much about that. All experience I have had is from sight, judging what a thing is worth.

By F. C. Parks:

Q. Do you not know what the Washington County Bank building cost?

A. I do not know the figures.

The next witness,

**JULIAN S. BROWN,**

after being duly sworn deposes and says:

By R. C. Thompson:

Q. Mr. Brown, your name is Julian S. Brown?

A. Yes, sir.

page 27 } Q. What official position do you hold at Washington County National Bank?

A. Cashier.

Q. Mr. Brown, while you are on the stand I hand you Deed Book 164, page 1, and ask you if that is the deed from the West Abingdon Realty Company to Washington County National Bank for the property therein described?

A. Yes, sir, it is.

Q. That is the property occupied by the bank now?

A. Yes, sir.

Q. What is the purchase price as shown in that deed?

A. \$35,000.00.

Q. Will you introduce this deed as an exhibit to your evidence?

A. Yes, sir.

Q. Mr. Brown, how many stories are there to the Washington County National Bank Building?

A. Five stories in the main building.

Q. Does that include the roof garden?

A. Yes, sir.

Q. Four stories not including the roof garden?

A. Yes, sir.



*Julian S. Brown.*

Q The first floor is occupied by the bank and three stories occupied by offices. Is that right?

A. Yes, sir.

page 28 } Q. Tell the court something about the construction of that building on the inside as to convenience?

A. It is not very well constructed, it is poorly arranged I think for banking arrangements, for a banking room. We are going to make some change down there. It is very poorly arranged.

Q. What about the offices?

A. The offices are very small, the elevator takes up right much of the space.

Q. Do you have steps going around the elevator?

A. Yes, sir.

Q. What kind of material is in the offices?

A. Very ordinary material. The main banking room as well as the roof garden are split up on account of steel beams.

Q. Is there any basement under that building?

A. No, sir.

Q. Is it possible to put a basement under there without considerable expense?

A. No, I do not know how you would make an entrance to it without going down from the street.

Q. How do you heat this building?

A. There is a basement under the McChesney & Lester building, the furnace is in there.

Q. The furnace that heats the McChesney & Lester building also heats the bank building?

page 29 } A. Yes, sir.

Q. That is the only way to heat the bank building?

A. Yes, sir.

Q. And for that reason you had to own the McChesney & Lester building?

A. Yes, sir.

Q. What kind of a building is the McChesney & Lester building?

A. An old building, it has been there a long time. It has a new front but the rest of the building is old, I do not know how long it has been there.

Q. Mr. Brown, do you keep the income and disbursements on that building separate from the income and disbursements of the bank?

A. Yes, sir.

*Julian S. Brown.*

Q. Do you keep those records?

A. Yes, sir.

Q. Have you made up a statement of the income and disbursements on that property for the year 1937?

A. Yes, sir.

Q. I wish you would read that statement to the court and file it?

A. Rent collected from offices in Washington County National Bank building and annex—year 1937 \$3,390.56.

Q. What do you mean by annex?

A. McChesney & Lester building.

page 30 } Allowance for rent of banking room @ \$125.00  
per month \$1,500.00. Total \$4,890.56.

Q. Had the Washington County Bank rented the banking room from anybody before purchasing it?

A. Yes, sir, rented it from First National Bank.

Q. What rent did you pay?

A. \$125.00.

Q. And you charged that amount here?

A. Yes, sir.

#### Disbursements:

Wages,—janitor and elevator girl	\$900.13
Fuel	393.12
Insurance	441.81
Real estate taxes	967.50
Janitor supplies	211.64
Plumbing repairs	29.23
Water & lights and Power	568.96
Allowance for depreciation	875.00
Total	<u>\$4,387.39</u>

\$503.17 annual income on an investment of \$35,000.00 or 1.4% return or income.

Q. Mr. Brown, you have to furnish a janitor or elevator girl, or someone to run the elevator in order to rent those rooms?

A. Yes, sir.

page 31 } Q. Do you have to furnish fuel and heat the building?

A. Yes, sir.

Q. Do you have to furnish water and lights to them?

A. Yes, sir.

*Julian S. Brown.*

Q. Out of the rent you collect from them you have to pay for elevator girl, janitor, fuel, water, lights and everything?

A. Yes, sir.

Q. Mr. Brown, for the year 1937, was all that building occupied?

A. Yes, sir.

Q. Every room in it?

A. Yes, sir. All the stories that have offices were rented. The roof garden we get small amount from that.

Q. Whatever it was is it included in that statement?

A. Yes, sir.

Q. All the space you had to rent for the year 1937 was rented?

A. Yes, sir.

Q. I believe this statement was made up last fall?

A. Yes, sir.

Q. You made it up for me last fall?

A. Yes, sir.

Q. Was the income for 1938 as much as 1937?

A. No, sir, not as much.

Q. Are some of the offices vacant?

A. Yes, sir, one office been vacant since in the  
page 32 } spring. Since Fred Davis's death, I do not know  
when it was. It will reduce the income \$144.00  
a year.

Q. Are you charging all the rent that you can get from the property, from the ones who occupy those offices?

A. Yes, sir, charging the maximum. Some of them are kicking about the rent now.

Q. Were some of those offices occupied at the time you bought this building?

A. Yes, sir, some of them were.

Q. When did you buy it?

A. As of January 1, 1937, I believe it was.

Q. Are the rents the same they were then or have you raised the rent since that time?

A. Raised the rents since we purchased the building.

Q. Are those raises in your statement of 1937?

A. Yes, sir, these figures were taken after the rent was increased.

Q. In your opinion did the building produce all the income in 1937 possible for it to produce?

A. Yes, sir. No vacant space. We have had some additional expenses in 1938. The Department of Labor come along

*Julian S. Brown.*

and required us to put up a fire escape, \$900.00 come out of the earnings for 1938.

Q. Will you file this statement which you read here as Exhibit "J. S. B." to your testimony?  
page 33 } A. Yes, sir.

By F. C. Parks:

Q. Mr. Brown, you allow for rent \$125.00 per month. That is really less than it is worth?

A. I think that is plenty.

Q. Was that at one time used as a branch bank?

A. No, sir, that was rented from the Trustees after we moved down there after the new bank opened.

Q. The new bank rented rooms from the Trustees?

A. Yes, sir.

Q. Had it been rented by the First National Bank?

A. No, sir, it was owned by the First National Bank.

Q. I thought it was rented for awhile before they owned it?

A. They owned the West Abingdon Realty Company that owned it.

Q. Do you know what rent they paid for it?

A. I do not recall what they paid.

Q. Is that not the best location in the Town of Abingdon for the purposes for which the building is used?

A. It is a very good location, except it opens on the wrong street.

Q. It could open on the other street, could it not?

A. Well, I think it would be dangerous to cut  
page 34 } an opening over there as heavy as the building is,  
the way it is constructed.

Q. Every room in the building is rented except one and the roof garden, the top floor?

A. Yes, sir.

Q. Are those rooms suitable for dentist's offices and any kind of ordinary offices, are they not?

A. Yes, sir, they are very small, the WPA are talking about moving out, the offices are too small.

Q. WPA occupy one floor?

A. They have part of two floors, they have nine rooms I believe.

Q. What rental do you get from WPA?

A. \$75.00 per month.

Q. That is paid by the County and Town?

A. Yes, sir

Q. The County pays \$35.00 and the Town \$40.00?

*Julian S. Brown.*

A. Yes, sir.

Q. The Town is paying \$480.00 a year for the rooms that are occupied and the County is paying the balance?

A. Yes, sir.

Q. The bank is paying the Town \$462.62 taxes?

A. Real estate tax, but we pay them about \$780.00 in capital stock taxes, something like that. The town gets \$1,200.00 taxes from the bank.

Q. But the real estate taxes are \$462.50, is that page 35 } right?

A. Yes, sir, I think that is correct.

Q. You say you don't expect as much income from it in the year 1939 as you got last year?

A. Not quite.

Q. All the difference is one room, unless some one moves out?

A. Yes, at present, to start with, \$144.00 a year less unless some more move out.

Q. Do you know approximately what that building cost?

A. I do not. I never had access to the books of the Peoples Bank.

Q. It is the best bank and office building in the town?

A. Possibly for office building, not any office buildings in town that are very desirable.

Q. Do you know what this building sold for when sold by the Peoples Bank?

A. It sold for \$70,000.00.

Q. That was about 1927?

A. 1926, I believe.

Q. The building is worth more than the purchase price, is it not?

A. I cannot say it is. From the income standpoint, that is what we figured it on, when we purchased the building some of our people were opposed paying that much for it.

Q. You have depreciation here of  $2\frac{1}{2}\%$ , is that on the \$35,000.00?

page 36 } A. Yes, sir, you are allowed to take off I believe ten per cent, to be conservative we only took off two and one-half per cent.

By J. M. Barker:

Q. Mr. Brown, do you know of your own knowledge why Mr. Bell bought that bank building down there?

A. No, I cannot say that I do.

*J. A. Johnson.*

Q. As I understand it he bid it in for a corporation and paid \$70,000.00 for it?

A. Yes, sir.

Q. And the corporation was owned by the First National Bank?

A. Yes, sir. Issued \$60,000.00 in bonds and the bank put in \$10,000.00. The First National Bank controlled the whole issue.

Q. Was there any competitive bidding at that time, any one else interested in the bank?

A. I could not say.

Q. Mr. Brown, if you run that bank and did not own the building, rather than have somebody else have that site, how much would you pay for rental?

A. We would be willing to pay what we paid the Trustees of the bank, \$125.00.

Q. You would not pay them any more?

A. I think not.

page 37 } Q. You would rather go on some other corner than pay more, and lose this location?

A. Yes, sir, that was considered when we bought the building, it was talked about doing that.

By R. C. Thompson:

Q. Mr. Brown, you have been asked if you cannot make an entrance from the banking room to Main Street. Please state why you cannot do this?

A. The first place the street is about two feet higher than the floor in the banking room. If you cut a door there you would weaken the building, it is very heavy.

Q. If you made an entrance from Main Street you would have to go down steps?

A. Yes, sir, the floor to the building is lower than the street.

The next witness,

J. A. JOHNSON,

after first being duly sworn, deposes and says:

By R. C. Thompson:

Q. Mr. Johnson, your name is J. A. Johnson?

A. Yes, sir.

page 38 } Q. You are a real estate broker in Abingdon?

A. Yes, sir.

Q. Mr. Johnson, are you familiar with the property owned by the Washington County National Bank?

*J. A. Johnson.*

A. Yes, sir.

Q. What, in your opinion, is the fair market value of it?

A. I placed a value on it of \$40,000.00.

Q. Have you been in the building and looked at it with an idea of valuing it?

A. Yes, sir.

Q. Mr. Johnson, do you know where the property known as the Piggly-Wiggly property and College Inn property, owned by Mr. Scott, are located?

A. Yes, sir.

Q. What would you say those two buildings are worth?

A. I believe about two years ago I sold that property at auction, and there was only \$18,500.00 bid on it at that time.

Q. Later did you get a higher bid than that, was he offered more than that for it?

A. I do not know.

Q. I will ask you, if after that sale he was not offered \$20,000.00 for it?

A. I understand that Mr. Scott was, but I was never offered more than \$18,500.00 at auction.  
page 39 { Q. Do you know the building occupied by the Peoples Drug store?

A. Yes, sir.

Q. What would you say is the fair market value of that property?

A. I believe I placed a value on that property at \$20,000.00 or \$21,000.00.

Q. What would you value the Farmers Exchange Bank building at?

A. \$20,000.00.

Q. What, in your opinion, would be the fair market value of the hotel property owned by Mr. Scott extending from Main Street to Depot Street on Wall and from Wall Street to Mr. Bell's vacant lot on Main Street?

A. I placed a value on it of \$90,000.00.

Q. I believe that property is located on the opposite corner west of Washington County National Bank building?

A. Yes, sir.

Q. It also has a good frontage on Main Street and runs the entire block on Wall and has a frontage on Depot Street?

A. Yes.

Q. I do not guess you have measured it, but what would you state the frontage is on Wall Street?

A. The entire block, that is 200 to 250 feet.

*J. A. Johnson.*

Q. What would you say is the frontage on Main page 40 } Street?

A. Must be 100 to 125 feet, there are three or four stores along there and entrance to the hotel.

Q. Is the frontage not considerably more than 125 feet on Main Street?

A. I would think the stores would be 25 to 30 feet to the store, it would be a half block and I would think approximately 150 to 200 feet. I have never measured it, there are four stores and I believe a little jewelry shop and the entrance to the hotel there.

Q. There is a restaurant there?

A. Yes, sir, there must be around 200 feet of it.

By F. C. Parks:

Q. Mr. Johnson, you say that is worth \$90,000.00?

A. That is what I placed the value at.

Q. The Washington County National Bank has a frontage on Main Street of 76 feet. That is about two-thirds as much as the Scott building fronts on Main Street?

A. Yes, sir, there is more entrance, more stores on that street, I think four or five.

Q. Mr. Scott is using his building for the purposes that he can use it for and the Washington County National Bank is using its building for the purposes it can use it for?

A. Yes, I suppose Mr. Scott owns it for an in- page 41 } vestment income, rental.

Q. The Washington County Bank fronts 41 feet on Wall Street, that makes about 115 feet on Wall and Main Streets?

A. I suppose around 100 feet.

Q. There is no comparison between the construction of the property owned by Mr. Scott and that owned by Washington County Bank?

A. No, sir, it is a better building, not near as large, I expect Mr. Scott has fifteen to twenty stores in addition to his hotel.

By J. M. Barker:

Q. Mr. Johnson, you state the bank building is much better constructed, on what do you base the fact that the Scott building is worth \$90,000.00?

A. From the income on the building, Mr. Barker, and the additional frontage on those streets and location of it makes it very valuable.



*J. A. Johnson.*

Q. What would that whole Scott block be worth if all the buildings were off?

A. I expect it would bring as much or more if it was vacant.

Q. If those buildings were off it would be worth as much?

A. Yes.

page 42 } Q. I am sorry to have to agree with you.

By F. C. Parks:

Q. Mr. Johnson, this McChesney & Lester building is about the same size as the Peoples Drug Store, is it not?

A. No, sir.

Q. I mean the McChesney & Lester property?

A. Yes, sir, that property, I do not remember the frontage.

Q. Is it about the same size, same frontage as the College Inn and Piggly-Wiggly property?

A. I would think the other buildings would have a little more frontage than the Peoples Drug Store.

Q. I mean the College Inn has the same frontage as the McChesney & Lester building has?

A. Yes, sir, I suppose so.

Q. Both are store buildings?

A. Yes, sir.

Q. Would you say the College Inn and the Piggly-Wiggly are worth \$18,000.00?

A. I had \$18,500.00 bid on them at the time I sold them at auction, it was not confirmed, but I figure the value of the property is \$20,000.00.

Q. For business purposes the other building is worth just as much as either of those?

page 43 } A. Which building is it?

Q. McChesney & Lester building is as good for business purposes as either one of the other buildings?

A. Well, I would think so if used for business.

By R. C. Thompson:

Q. Do you know how deep the McChesney & Lester Building is, how far it runs back?

A. Just the lot?

Q. I mean compared with College Inn and Piggly-Wiggly. It is just about half as deep as the Piggly-Wiggly and College Inn, is it not?

A. Not hardly, the College Inn runs back quite a distance, used to be used as a garage, used as a storage room by Piggly-Wiggly.

*J. A. Johnson.*

Q. How far would you say the Piggly-Wiggly and College Inn run back?

A. About 100 to 125 feet is my recollection.

Q. I will ask you to look at this deed and map, which has been introduced in evidence, and state how far the store of McChesney & Lester building runs back from Main Street?

A. 40.4 feet.

Q. I will ask you if this shows the adjoining building, which is the College Inn building?

A. Yes, sir.

Q. What is the depth of that?

page 44 } A. 82.9 feet.

Q. So the jewelry store is not quite half as deep as the College Inn?

A. No, sir, not quite half.

Q. I believe that that map shows that the jewelry store fronts 27.2 feet on Main Street?

A. Yes, sir.

Q. And runs back 41.4 feet.

A. Yes, sir.

Q. Did I understand you to say awhile ago that the jewelry store had as much frontage on Main Street as the Peoples Drug Store had?

A. No, sir, that was on the adjoining building, which was the College Inn, has approximately the same frontage. The Peoples Drug Store has quite a bit more frontage than the McChesney & Lester building has.

By F. C. Parks:

Q. Mr. Johnson, the dimensions here of Piggly-Wiggly map shown in the deed, do you know whether that covers the lot or just the building. The building does not cover all the lot?

A. It runs back, I believe, the distance of the jewelry store then an alley and another building back there, but at the time I sold it it was in the same plat to sell.

Q. Mr. Johnson, the Washington County National Bank property, on which erroneous assessment is claimed, the real estate is assessed at \$2,500.00, that is the lot on page 45 } which the bank building stands?

A. Yes, sir.

Q. What would you say the McChesney & Lester building is worth?

A. It is hard to place a value on it. As well as I remember it is an old building, been remodeled, you know how they fix

*J. A. Johnson.*

up the fronts. At the time I sold this property the complaint was those old buildings there.

Q. Never did have any complaint on this old building?

A. That they were fire traps.

Q. That was the hotel property?

A. No, sir, the Piggly-Wiggly and College Inn.

Q. It is worth \$5,000.00?

A. Yes, sir.

Q. Not considering the lot?

A. No.

Q. How much would you say?

A. I am not familiar with cost of the building, Mr. Parks, it is just a very cheap building in there, as well as I remember it is framed up and tin on the outside of that building. I was there when it was overhauled a few years ago, and as well as I remember that is the way it is.

Q. It is brick now?

A. Has brick front. I do more about the others, I do not guess I have been in that store for ten or fifteen  
page 46 } years.

Q. You do not feel that you could give an estimate of the value of it now?

A. I do not know what shape it is in.

By R. C. Thompson:

Q. Mr. Parks asked you about this building on Mr. Scott's lot. I want to ask you if the alley is not shown on the map, and the building does extend 82 feet back to the alley. Is that not the alley you were talking about and is not included in the 82 feet?

A. No, I reckon this building must come back here.

Q. That is what I am asking you, if this is not the alley back here?

A. I could not answer that Mr. Thompson, because I believe there is a walkway or driveway between this building on the corner and Piggly Wiggly property, there is a building on this lot, a driveway comes in back here. I was under the impression that a driveway runs in there.

By the Court:

Q. I do not believe that Mr. Johnson stated his judgment as to the market value of the Piggly-Wiggly and College Inn?

A. \$20,000.00. I was only bid \$18,500.00, but I place a value of \$20,000.00 on them. Mr. Scott refused \$18,500.00.

*S. A. Carson.*

By R. C. Thompson:

I understand that Mr. Scott refused \$20,000.00.

page 47 } By the Court:

Q. You do think \$20,000.00 is the value?

A. Yes, sir, a fair price for it.

The next witness,

S. A. CARSON,

after first being duly sworn, deposes and says:

By R. C. Thompson:

Q. Your name is S. A. Carson?

A. Yes, sir.

Q. How long have you lived in Abingdon?

A. I have lived in Abingdon or vicinity about seventy-three years.

Q. You are a property owner in Abingdon?

A. Yes, sir.

Q. I believe you own a farm known as Halls Bottom, near Abingdon, do you not?

A. Yes, sir.

Q. Are you familiar with real estate values in the Town of Abingdon, Mr. Carson?

A. Well, to a certain extent I am.

Q. Do you know where the Washington County Bank building is located?

A. Yes, sir.

page 48 } Q. What, in your opinion, is the fair market value of that building?

A. I figure it from \$35,000.00 to \$40,000.00, that includes the jewelry store, the entire building.

Q. What, in your opinion, is the fair market value of the property owned by Hines & Bradley known as the Peoples Drug Store?

A. \$20,000.00. I know right much about that property, and we had a price on it, The First National Bank, of \$20,000.00.

Q. Were you formerly a director in the First National Bank?

A. Yes, sir, and I was offered right close to \$20,000.00 for it and we did not make the deal. This property was built by the Citizens Bank & Trust Company, that property runs back to Plum Alley 165 feet deep.

*S. A. Carson.*

Q. Do you know what the frontage is?

A. No, sir, I do not know the frontage, I remember when the house was built, it was built with the very best material that could be put in it.

Q. It has at least a 50 foot frontage on Main Street?

A. Yes, sir, I would think so.

Q. It is 165 feet deep?

A. Yes, sir, 165 feet, runs back to Plum Alley.

Q. And it is a two story building?

A. Yes, sir.

page 49 } Q. Mr. Carson, you were Vice President of the  
First National Bank?

A. Yes, sir.

Q. And they owned the building that is now owned by Washington County National Bank?

A. Yes, sir.

Q. Do you know anything about the experience the First National Bank had in the operation of that bank and the building down there, whether they could make any money or not?

A. Yes, I know right much about it. I know the building when bought by the First National Bank was bought over my protest, the price paid for it I figured they never could come out on it.

Q. What did they pay for it?

A. \$70,000.00.

Q. When was that?

A. That was when the Peoples National Bank closed, I do not remember when. It was put in a real estate company, the banking department advised us to carry it that way and not carry it as banking property, and Abingdon Realty Company was organized to take charge of it.

Q. Can you state why it was not profitable in its operation?

page 50 } A. In the first place we paid entirely too much for it. It  
has a good outside and it is a very poorly constructed building on the inside in my opinion. It was never suitable for a bank, never did like it. We had trouble renting those offices. I think when we first bought that bank it was heated from the Belmont Hotel. I think it ran through the street over there, I do not remember when that was changed. Had trouble in renting the offices, never made any money on it, always brought us out in debt.

Q. Did you have to furnish the tenants heat, light and water?

*S. A. Carson.*

A. Had to furnish the tenants heat, light and water and furnished the elevator and had right much trouble. We rented that property of McChesney & Lester, I do not remember how much we did rent it for the first year, each year they wanted to reduce the rent and we did reduce the rent several times.

Q. Do you know where the Farmers Exchange Bank is located?

A. Yes, sir.

Q. What would you say is the fair market value of that building?

A. I would figure that building worth \$20,000.00, something like that.

Q. What, in your opinion, would the building now occupied by the College Inn and Piggly-Wiggly, owned by Mr. Scott, be worth?

A. I figure the Piggly-Wiggly property more  
page 51 } valuable than the College Inn because the Piggly-Wiggly lot is a corner lot on an alley, and the Piggly-Wiggly as well as the College Inn runs back and takes in part of the Hurt lot. The Piggly-Wiggly and College Inn property, my understanding is, run back much further than these other lots.

Q. The McChesney & Lester and the bank lot?

A. Yes, sir, how far I do not know.

Q. I do not believe you placed your value on them?

A. I placed it at \$20,000.00. I figure the Piggly-Wiggly more valuable than the College Inn on account of it being on the corner lot, you can get to it from the side of it, but the two together I figure about \$20,000.00.

Q. What, in your opinion, is the property that we have been referring to in this proceeding as the Hotel Belmont property, owned by Mr. Scott, which property fronts on Wall Street immediately west of the Washington County Bank and fronts on Main Street, worth?

A. From what I understand, I think the best way in the world to get the value on property is to get the income from property. I understand there are a good many buildings and has a good rental value, and I put a value on it of something like \$100,000.00, that is the building, lot and all.

By F. C. Parks:

Q. Mr. Carson, would you have any idea what the building occupied by McChesney & Lester is worth?

*J. A. Blakemore.*

page 52 } A. Well, the way I figure that, I figured the corner lot—those three buildings—

Q. I am not talking about the land I am talking about the building.

A. I do not know, that lot I imagine it is worth something like \$2,500.00.

Q. And what would you say the building on it is worth?

A. I would say the building would be worth anywhere from \$6,000.00 to \$8,000.00, that building being in the center, the Piggly-Wiggly is next to the alley, a more valuable lot, and then comes the College Inn and then that building in between there. I do not figure an inside lot is worth near so much as a corner lot up where the Piggly-Wiggly is, and that is the way I get my estimate on it, putting those two properties \$20,000.00, and I put the other property at \$8,000.00 to \$10,000.00.

Q. I do not know whether you understand me or not, the real estate on which this correction is asked is assessed at \$2,500.00. That is the lot the bank and McChesney & Lester Building are on?

A. Lot assessed at \$2,500.00.

Q. That is a reasonable assessment?

A. I think for the lot it is a reasonable assessment.

Q. What would you say the building is worth,  
page 53 } the McChesney & Lester building, just the building?

A. Not over \$7,500.00, something like that, I put the two around \$8,000.00 to \$10,000.00.

By R. C. Thompson:

Q. What do you mean by the two?

A. I mean the building and lot.

The next witness,

**J. A. BLAKEMORE,**

after first being duly sworn deposes and says:

By R. C. Thompson:

Q. Mr. Blakemore, you are an attorney at law?

A. Yes, sir.

Q. Did you examine the title to the property that is owned by Washington County National Bank?

A. I did.

Q. Have a survey made?

A. Yes, sir.

*J. A. Blakemore.*

Q. I hand you Deed Book 164 at page 3. There appears to be a map, I will ask you if that is the map showing the property of Washington County National Bank and the adjoining property?

A. That appears to be a copy of the map that was made by Mr. J. W. Hortenstine, Surveyor for the bank.  
page 54 }

Q. I will ask you to state how much frontage the Washington County National Bank proper has on Main Street?

A. It appears to have 49 feet and 1 inch.

Q. And how much frontage on Main Street does the building known as McChesney & Lester have?

A. 72 feet and 2 inches. I am taking these figures from the map and that is my recollection of it.

Q. How much frontage does the building immediately East of that building and occupied by the College Inn and Piggly Wiggly have on Main Street?

A. Between the jewelry store now occupied by McChesney & Lester there is a four foot stairway between the wall of the property owned by Mr. H. H. Scott in which the College Inn is now located and the Piggly-Wiggly. Those two pieces of property, two buildings, have a frontage on Main Street 61 feet and 10 inches.

Q. Mr. Blakemore, how deep are the buildings on the lots that you have just referred to, the buildings occupied by College Inn and Piggly-Wiggly?

A. Runs back in a southerly direction bearing S 21 02 E from Main Street 71 feet and 3 inches to the south wall of the two buildings, then there is an alley supposed to be 10 feet in width, the survey shows 9 feet and 6 inches.

Q. The buildings on those lots run back to the alley?

A. That is correct.

page 55 } Q. How far South does the building known as McChesney & Lester building extend?

A. 40 feet and 4 inches. The walls of the bank building and the McChesney & Lester building and the building occupied by College Inn and Piggly-Wiggly run back from Main Street parallel. The jewelry store building runs back on a parallel line 40 feet and 4 inches, and Washington County National Bank fronts on Wall Street 40 feet and 3 inches proper. Then South of that is a four foot square between the wall of the main bank building and the building now occupied by W. F. Large, which is the property of the bank, and back of the McChesney & Lester building there is an old vault which is at the west end, four feet in width.



## JULIAN BROWN

recalled.

By R. C. Thompson:

Q. Mr. Brown, did you go into the Clerk's Office and look up the dimensions of Peoples Drug Store?

A. Yes, sir.

Q. What were they?

A. It fronts 46 feet and runs back 165 feet.

Q. Mr. Brown, I will ask you, in your experience in the operation of that bank building down there page 56 } whether or not it would be more profitable if it were a two story building?

A. Yes, sir. We would prefer a one story building. If we had those top stories off it would eliminate the elevator expense, expense of operation, high insurance premiums, public liability insurance, light and power caused by the elevator, janitor service, and water, which goes to make up the income from all those offices up there, besides all the inconvenience and worry.

Q. If somebody would offer to take the three top stories off and leave a roof on this bank building, would you let them do it?

A. Yes, sir, would let them do it if they would take it away.

By F. C. Parks:

Q. The McChesney & Lester Building, what rent do you get on that?

A. For the McChesney & Lester building?

Q. The whole building.

A. \$65.00 a month for the McChesney & Lester store and we get \$20.00 a month from Dr. Wolfe, that includes water and lights and heat.

Q. You pay for water, lights and heat?

A. Yes, sir.

Q. In other words, how does the second floor correspond with the bank building? page 57 }

A. They are larger rooms, they are not as nice.

Q. Are they higher priced rooms or lower priced rooms in the bank building upstairs?

A. As compared with other offices on second floor they are about the same.

Q. What floor is W. P. A. on?

A. Most of their rooms are on third floor, five rooms on third floor and four on second floor.

*George F. Grant.*

Q. You get \$900.00 a year from that?

A. Yes, sir.

Q. On the first floor Dr. Moore and Dr. Cline have their offices?

A. First office floor—second floor Dr. Moore and Dr. Cline, Mr. Clifton on third floor.

Q. The Peoples Drug Store has a frontage of 60 feet you say?

A. 46 feet frontage, the building does not cover the whole lot. I think there is a little space between the drug store and police station.

Q. Six or eight feet in there?

A. Yes, sir, several feet in there.

page 58 } The next witness,

GEORGE F. GRANT,

after being duly sworn, deposes and says:

By F. C. Parks:

Q. Dr. Grant, are you Treasurer of the Town of Abingdon?

A. Yes, sir.

Q. Are you familiar with the assessment by the town of this property?

A. Yes, sir.

Q. You have heard mentioned here the values of the bank building, and the McChesney & Lester building, and the Piggly-Wiggly and College Inn, and others, have you not?

A. Yes, sir.

Q. What would you consider a fair assessment of that McChesney & Lester building, supposing it was assessed separately?

A. Assessed for taxation purposes?

Q. Yes, sir.

A. I would say around \$3,000.00 to \$3,500.00.

Q. Do you know approximately what the bank building itself cost? I believe you were town official at the time it was bought?

A. Yes, sir, but I would not necessarily know what the building cost by reason of that fact. I always understood, of course it was hearsay, that the building and possibly the vault therein cost in the neighborhood of \$90,-  
page 59 } 000.00.

Q. That is the best building in town unless it would be the old First National Bank over here?

*George F. Grant.*

A. It certainly is among one of the best buildings in town.

Q. That building occupies the best or at least second best place in the town for business purposes?

A. I would so consider it in a valuable location.

Q. This property is assessed at \$25,000.00. \$2,500.00 for the real estate. Do you think that is a fair assessment of real estate compared to other property in Abingdon?

A. That includes both the banking house and the jewelry store?

Q. Yes, sir.

A. Considering the cost of the property, cost of the original land and erection of building, I would say that is not far out of line with most other properties.

Q. In fact there is no other property in town that could be said to compare to the property on this corner?

A. No, sir.

Q. The opposite corner has a building that is not of the same character?

A. No, sir, no comparison. You mean the H. H. Scott property?

Q. Yes, sir, the H. H. Scott property. Considering the type of building on Mr. Scott's lot and assessed at page 60 { \$10,000.00 would you think that was about what those buildings are worth, the hotel block?

A. Take that block as a whole there is more than \$10,000.00 assessment on the buildings, really \$12,500.00. The Johnson storehouse and A. & P. storehouse are not a part of the original one-half lot near the depot.

Q. Johnson's store and A. & P. are not included in the \$16,500.00?

A. No, sir, total of \$20,000.00 on that entire block. At least that is my best judgment, my information. The building occupied by Johnson's store and A. & P. Grocery store was originally a residence, and for a long time occupied as such, and afterwards these two storerooms were built on and designated on the assessment books as next the depot. There is a little space in between these two stores occupied by George Moore as a little confectionery stand.

Q. The two buildings occupied by Piggly-Wiggly and College Inn are assessed at \$5,400.00, \$1,800.00 for the land and \$3,600 for the buildings. Would you think half of that assessment would be fair for the McChesney & Lester building, or less?

A. I would think half of it, as I said in the neighborhood of \$3,000.00 total assessment would be in my opinion fair. I

*George F. Grant.*

will state that the McChesney & Lester building is a very much better building than either of the other page 61 } two. As I remember the College Inn building has only a brick front and the balance is frame covered with brick tin, whereas the McChesney & Lester building is a brick wall.

Q. When it was first built there?

A. I think so, I am not sure about it, but in my opinion it is better building than the College Inn or Piggly-Wiggly either.

Q. Taking into consideration the location of this property, the extent of frontage on Wall and Main Street and income from rental purposes, do you think the assessment of \$25,000.00 is reasonable?

A. As I stated awhile ago, based on cost of the property I thought it would be in line, but from a standpoint of income it is perhaps not in line, I will say it is just a little bit excessive.

Q. As a basis for fixing a correction of alleged erroneous assessment, is there any other property adjoining or in the town that might be made comparable to this property?

A. No, sir.

By R. C. Thompson:

Q. The Piggly-Wiggly is a brick building? Don't I see brick when I drive down the street?

A. The East wall maybe is, I am thinking about the wall next to McChesney & Lester, I am not sure as to page 62 } that, that is my recollection.

Q. Those buildings are much larger, the real estate on which they are situate is much deeper, about twice as deep?

A. Those two of Mr. Scott's are considerably deeper than McChesney & Lester building, I would say at least half again as deep. My idea would be that the McChesney & Lester building is about 40 feet, and my original idea was the other buildings were around 60 feet, but I understand they are a little deeper than that, but they are considerably deeper than McChesney & Lester building.

Q. Do you have any idea what rentals Mr. Scott gets from those two buildings, Piggly-Wiggly and College Inn?

A. Only hearsay, I do not know positively.

Q. Dr. Grant, you were, I believe, Secretary to the Trustees of the old First National Bank at the time this sale was made to Washington County National Bank?

A. Yes, sir, that is correct.

*George F. Grant.*

Q. In that capacity, did you have charge of renting that building of Washington County National Bank and collected the rents?

A. Yes, sir, I did.

Q. I will ask, do you recall whether or not you were able to make the income from the building take care of the operating expenses?

page 63 } A. Well, it has been some time, nearly two years, has been two years, but my recollection is that rents collected from that property paid all expenses, including taxes but paid no interest on the bonds except a few hundred dollars that was from time to time credited on a note on the property of Abingdon Realty Corporation carried by the First National Bank. There was a small amount I would say paid on those notes, and my recollection is that we were able to pay taxes and the actual running expenses of the building from rentals, in addition to paying something on those notes. While I do not know it to be true, I understand that those notes made by West Realty Corporation—in order to carry on that building they had to borrow money to pay expenses.

Q. Do you know of your own personal knowledge, that it is not a profitable building from an income standpoint?

A. It is certainly not on the present rental basis. I would not consider it a good investment unless the rental could be very materially increased, there would be a very little interest to be applied on the purchase price or the capital invested therein.

Q. While it may have cost a lot of money to put those top stories on there they are a detriment to the present owner instead of being an asset?

A. I have heard people say that, but I do not know whether it is true—I am not able to say that.

page 64 } Q. Suppose the rooms were unoccupied?

A. At a time like that it would, I would certainly say that is true. You could eliminate heat and other expenses necessary to carry on those upper stories.

By F. C. Parks:

Q. The banking room is worth more than any other part of the building, is it not?

A. Yes, sir, I think so.

Q. If there was only one bank in the town, and you wanted to put a bank up that would be the very place you would want to put it?

*George F. Grant.*

A. I believe that is perhaps the best location in town for any business.

Q. Is the lower floor there really worth more than \$125.00 rental?

A. If I owned the building I would say so.

By R. C. Thompson:

Q. If you were renting it from some one else, what would you say?

A. Well, if I had a bank I believe I would be willing to pay a little more rent than that for my place of business.

Q. Assuming you could get the same space on the opposite corner where the hotel is, the same kind  
page 65 } of building for \$125.00, would you pay more? In the same kind of building?

A. I think the same kind of building on the opposite corner would be just as good and perhaps a little better location than where the present building is, I would think it would be worth more than \$125.00 a month. I would be willing to pay more than that for it.

By F. C. Parks:

Q. That \$125.00 was an emergency proposition when the Trustees rented it to the Washington County National Bank?

A. I do not remember just how the original amount was agreed upon, I do not know.

Q. Well, if the income from the whole building pays a profit, more than two stories is no actual injury in dollars and cents to the building is it?

A. No, I think it is good for the building, because if it was unoccupied it would go to the bad much quicker than if it was occupied, would be my judgment.

By R. C. Thompson:

Q. But you would rather have that building, Dr. Grant, would you not if at least three stories were knocked off and the roof on it. It would eliminate the power to run the elevator, janitor, heat and water for the upper  
page 66 } stories?

A. Yes, I would, but I think, as it has been stated here by several others, the building is top heavy, and a portion of it is occupied by an emergency organization that might go out of business any minute.

*T. H. Crabtree.*

By the Court:

Q. What does the bank charge itself for its banking space?

A. \$125.00.

Q. I understood Mr. Brown to say they made a little net income on the entire building. Does that mean the bank is getting its banking site free or not?

A. I think they are getting banking facilities very cheap.

By F. C. Parks:

Q. According to figures by getting about \$50.00 a month, nearly \$600.00 profit, and you say it is \$125.00 a month. You would have \$70.00 a month?

By R. C. Thompson:

In order for us to make 1.4% on \$35,000.00 we have to go into the bank from another source and take out \$1,500.00 for rent on the lower floor. If we do not put any rent in there, the \$1,500.00, then we do not take in enough money to pay our expenses. We have to take \$1,500.00 out of the income of the bank to put into the building account to pay page 67 } rents.

The next witness,

T. H. CRABTREE,

after first being duly sworn deposes and says:

By F. C. Parks:

Q. Mr. Crabtree, I believe you are Mayor of the Town of Abingdon?

A. Yes, sir.

Q. You have been Mayor of the Town off and on for many years?

A. Yes, for a good while.

Q. You are acquainted with the properties that have been mentioned in the testimony here, Washington County National Bank, Piggly-Wiggly, College Inn, McChesney & Lester, Peoples Drug Store, Farmers Exchange Bank and lot known as the Scott block?

A. Yes, sir.

Q. Taking the real estate of the Washington County National Bank assessed at \$2,500.00 and the building at \$22,500.00, would you say that was a fair assessment on the worth of the property?

A. Taking into consideration the valuation on other prop-

*T. H. Crabtree.*

erty down there I would say it is a little excessive. Comparing it with values of other property for instance page 68 } the Scott property, it pays a much better per cent than the bank does, then the fact that the bank building is occupied by some people that are not likely to stay and the chance that those upper rooms would not be rented.

Q. What would you believe a fair assessment would be?

A. I do not know what the assessment should be. I do think it is slightly excessive compared to other property.

Q. What do you think the property is worth then?

A. I am no authority on values. I sold it once for \$70,000.00, but it sold since that for \$35,000.00.

Q. \$2,500.00 for real estate is certainly not excessive, is it?

A. No.

Q. To have a two-story brick structure, tenant on both<sup>e</sup> floors of that property, how would that compare in value to the Hop Scott property East of it occupied by the College Inn?

A. You mean the rental value?

Q. No, I mean the value of it?

A. I would think all of those buildings are about the same size, with the exception of the Piggly-Wiggly, maybe a little larger. They are all good business properties I page 69 } would consider them all worth as much as the other, except the Piggly-Wiggly it might be worth more money, it being on the corner.

Q. Is the town paying more rent for rooms in this property than they are getting in taxes from the property?

By R. C. Thompson:

I object to that question, I do not see the materiality of that question, it would be paid to some one else if not there.

By the Court:

I sustain the objection.

A. I do not know just what is paid in taxes.

By the Court:

The most important thing in my mind would be the market value of these properties.

By F. C. Parks:

Q. Can you give the Court the market value of that brick structure and the bank building?



*T. H. Crabtree.*

A. No, as I said awhile ago I am no authority on valuation. I could not fix a value on it. It cost considerable money, my understanding \$80,000.00 or \$90,000.00 but what it page 70 } is worth now I would not want to say.

By R. C. Thompson:

Q. Mr. Crabtree, you are familiar with that bank building, are you not?

A. Yes, sir.

Q. In your opinion, is it not operated as profitably as it could be?

A. I think so.

Q. Producing all the revenue it could?

A. I think so. I know that the town was asked to increase the rent, that they were losing money. We are now paying \$40.00 a month, \$480.00 a year, that is what the town is paying, I do not know what we were paying prior to that, maybe \$30.00 or \$35.00.

Q. Those buildings used as banking building, jewelry store and office, is it possible for them to bring in a greater revenue than is now being produced?

A. No, sir, I do not think it is possible.

By F. C. Parks:

Q. I do not know how many rooms there are, but they are all occupied but one?

A. Yes, sir.

Q. I believe at one time the WPA did not occupy any offices in there?

page 71 } A. No, sir, and some time ago a likelihood of the WPA moving out.

Q. And at one time the State Health offices were not in there?

A. That is a fact.

Q. But the possibilities of income are all there?

A. Yes, sir.

Q. The WPA is the only temporary, or what you would call temporary, tenant there?

A. Yes, sir.

Q. The State Health, as far as you know, is a permanent proposition?

A. As far as I know. I do not know about the WPA, PWA whatever it is.

*T. H. Crabtree.*

By the Court:

Is that or not the only five-story building in town?

A. Yes, sir, the only one.

Q. Has there ever been a five-story building in town?

A. Never.

Q. Do you remember who was the first occupant of that building?

A. The Peoples National Bank. I do not remember, but I do not think they ever had all those offices filled.

Q. What became of the Peoples National Bank.

A. Went broke.

page 72 } Q. Who was the next?

A. First National Bank.

Q. What happened to it?

A. It went the same way. That building was sold at auction and bought by the First National Bank, or some company, it was knocked off to the company, I forget the name. I know I sold it.

Q. When was it built, about when?

By R. C. Thompson:

About 1922 or 1923, about the time I came here.

By the Court:

Q. The assessment that is now on it is the only assessment that has been on it?

A. Yes, sir. There has been no other assessment on the property since that building was built.

By F. C. Parks:

Q. In other words, the assessment was put on it at the time it was built?

A. Yes, sir.

Q. It has been estimated since that time until now?

A. Yes, sir.

Q. And the equalization board met in 1930 adopted the same figures that has been used before?

page 73 } A. That is my recollection of it.

(Evidence concluded.)

It is agreed by counsel for all parties that the opinion of the court dated May 27, 1937, rendered in a proceeding in which the same parties were before the court seeking the relief as in

this proceeding, may be used and considered in this case, and the same is hereby made Exhibit "Opinion of Court, W. H. R., Judge, 5-27-37".

page 74 { STATEMENT EXHIBIT "J. S. B."

# INCOME AND EXPENSES ON WASHINGTON COUNTY NATIONAL BANK BUILDING FOR YEAR 1937.

Rent collected from offices in Washington County	
National Bank Building and annex year 1937	\$3,390.56
Allowance for rent on banking room @ \$125.00 per month	1,500.00
	<hr/>
	\$4,890.56

## Disbursements.

Wages—Janitor and elevator girl	900.13
Fuel	393.12
Insurance	441.81
Real estate taxes	967.50
Janitor supplies	211.64
Plumbing repairs	29.23
Water & lights and power	568.96
	<hr/>
	\$3,512.39
Allowance for depreciation 2½%	875.00
	<hr/>
	\$4,387.39

\$503.17 return or income annually on an investment of \$35,000.00 or 1.4% return or income.

page 75 { EXHIBIT "DEED".

This deed made this 13th day of February, 1937, by and between WEST ABINGDON REALTY COMPANY, INCORPORATED, a Virginia corporation, party of the first part and THE WASHINGTON COUNTY NATIONAL BANK OF ABINGDON, Abingdon, Virginia, party of the second part,

## WITNESSETH:

That for and in consideration of the sum of THIRTY FIVE THOUSAND (\$35,000.00) DOLLARS cash in hand paid, receipt of which is hereby acknowledged, the first party hereby

grants, bargains, sells, transfers and conveys unto The Washington County National Bank of Abingdon, second party, in fee simple and with general warranty of title and free from liens and encumbrances, that certain lot or parcel of land situated in the West end of Abingdon, Washington County, Virginia, in the southeast corner of the intersection of Main Street with Wall Street, formerly known as the Peoples National Bank building, and being the office building, the ground floor of which is now occupied by the second party, and including the store building on Main Street now occupied by McChesney and Lester Jewelry Store, and area back of said store building, and more particularly bounded and described as follows:

BEGINNING at the northwest corner of the bank building now occupied by the party of the second part hereto and the southeast corner of the intersection of Main Street and Wall Street in the Town of Abingdon, Washington County, Virginia, and 33 feet from the center line of said Main Street and 29 feet 3 inches from the center line of said Wall  
page 76 } Street; thence with the said Main Street and 33 feet from the center line thereof North sixty-eight degrees thirty-five minutes East 80 feet 3 inches to the northwest corner of a certain lot or parcel of land conveyed by the Peoples National Bank to H. H. Scott by deed dated the 15th day of January, 1912, and recorded in the Clerk's Office of the Circuit Court of Washington County in Deed Book 128, page 451; thence leaving said Main Street and with the western line of said H. H. Scott south twenty-one degrees two minutes east 72 feet and 9 inches to a ten foot alley; thence leaving the line of said H. H. Scott and with the northern line of a 10 foot alley south sixty-eight degrees thirty-five minutes west 20 feet 6 inches to the east line of W. F. Large and 60 feet from the eastern edge of said Wall Street; thence with the eastern line of said W. F. Large North twenty degrees thirty-two minutes West 28 feet 6 inches to the northeast corner of said W. F. Large; thence with the northern line of said W. F. Large south sixty-eight degrees thirty-five minutes west 60 feet to the eastern edge of said Wall Street and the northwestern corner of said W. F. Large; and thence with the eastern edge of said Wall Street and 29 feet 3 inches from the center line thereof north twenty degrees thirty-two minutes west 44 feet 3 inches to the BEGINNING. Being the same property conveyed to The Peoples National Bank by George Keller by deed dated the 2nd day of September, 1907, and

excluding therefrom conveyances by the *the* said page 77 } The Peoples National Bank to H. H. Scott dated the 7th day of January, 1910, and the 15th day of January, 1912, and recorded respectively in the said Clerk's Office in Deed Book 74, page 20, and in Deed Book 128, at page 451. The 10 foot alley herein designated having been reserved in said last mentioned deed for the benefit of said H. H. Scott and the said The Peoples National Bank and by said bank to its successive grantees. The said description being made from a map or plat made by J. W. Hortenstine, surveyor, dated the 4th day of February, 1937, and recorded herewith as a part hereof.

It is expressly understood and agreed that the second party is to pay taxes on the property hereby conveyed for 1937, and receive the rents from said property from January 1, 1937.

IN TESTIMONY WHEREOF the first party has caused its corporate name to be hereunto signed by W. W. Webb, its President, and its corporate seal to be hereunto affixed, attested by D. E. Roberts, its Secretary, all done pursuant to the resolution of the stockholders and directors.

WEST ABINGDON REALTY COM-  
PANY, INC.,  
By W. W. WEBB, President.

(35.00 U. S. Documentary Stamps.)

(The West Abingdon Realty Company, Incorporated,  
1928.)

Attest:

D. E. ROBERTS, Secretary.

page 78 } State of Virginia,  
County of Washington, to-wit:

I, Sara Ward, a notary public in and for the County and State aforesaid, do hereby certify that W. W. Webb, President, and D. E. Roberts, Secretary, respectively, of The West Abingdon Realty Company, Incorporated, whose names as such are signed to the foregoing deed bearing date the 13th day of February, 1937, have this day acknowledged the same before me in my county aforesaid.

Given under my hand this 13th day of February, 1937.

My commission expires March 30, 1940.

SARA WARD,  
Notary Public.

Virginia:

In the Clerk's Office of the Circuit Court of Washington County, the 13th day of February, 1937.

The foregoing writing was delivered to the Clerk of the Circuit Court aforesaid, on the day above mentioned, and admitted to record at 4 o'clock P. M. in Deed Book No. 164, page 1.

Teste:

BERTHA HARDIN,  
Deputy Clerk.

page 79 } EXHIBIT—"OPINION OF COURT, W. H. R.,  
JUDGE, 5-27-37."

*May 24th, 1937.*

Re: Washington County National Bank—  
Motion for Correction Erroneous Assessment.

R. C. Thompson, for Plaintiff.  
J. M. Barker, Special Commonwealth's Attorney.  
R. W. Bell, for Town of Abingdon.

Witnesses:

Geo. I. Miller, Commissioner of Revenue  
W. N. Neff  
Mr. S. A. Carson  
Keys S. Bordwine  
J. A. Blakemore  
A. Leon Cumbow  
C. A. Johnston  
Mr. H. M. Elliott  
I. B. Wells  
A. T. Buchanan.

No evidence offered by County or Town.

East End Bank Building assessed at \$22,000.00.  
Lot at \$2,000.00, Building at \$20,000.00.

page 80 } The Washington County National Bank moves  
to correct the assessment on its building located

on Wall and Main Streets in the town of Abingdon. The Washington County National Bank became the owner of the building by deed dated February 13, 1937 (Washington County Deed Book 164, page 1) from West Abingdon Realty Company.

It was formerly owned and occupied by The Peoples National Bank, now out of business. There was evidence to the effect that the cost of construction of the building was \$60,000.00 or more. Some of the witnesses were of opinion that the construction of so commodious a building was a mistake from the beginning, and that the building had probably never earned a fair return upon the amount of money invested in it.

The witnesses, prominent business men of Abingdon and Washington County, were exceptionally well qualified to testify as to real estate values in the town of Abingdon. Neither the town nor the county introduced any evidence.

The witnesses for petitioner were:

G. I. Miller, Commissioner of Revenue, W. N. Neff, S. A. Carson, Keys S. Bordwine, John A. Blakemore, A. Leon Cumbow, C. A. Johnston, H. M. Elliott, I. B. Wells and A. T. Buchanan.

Whole the ideas and opinions of the witnesses were not always exactly the same, it may be stated that there was no conflict in the evidence, and that the question presented to the Court is, therefore, almost entirely a question of law.

Petitioner's property, the assessment on which is sought to be corrected, as well as the other properties about which the witnesses testified, was assessed at the general re-assessment in 1930. Those assessments have been extended or carried forward ever since, and the assessment which Petitioner now seeks to correct is the assessment that was fixed upon the property in 1930.

It is not in evidence that the Board of Equalization ever considered the assessment or the assessment of any of the other properties described in the record. It must, therefore, be considered that the assessments, as extended, were considered and approved by said Board.

The local Board of Equalization on its own motion is charged with equalization of real estate assessments, and so must have passed upon the assessment in judgment in the instant case.

*Norfolk v. Penn. Mut. L. Ins. Co.*, 162 Va. 101.

For the purpose of showing that the assessment on the property in question is not uniform in its application to other property in the town of Abingdon and that the assessment against said building is particularly excessive as compared with assessments against other business property situate adjacent to and near said building, Petitioner introduced evidence to prove the market value of and assessments against the following properties in the town:

page 82 } H. H. Scott—Housing the Piggly-Wiggly, The  
College Inn, and Fred Large Store;  
J. H. Mongle—Crosswhite & Elliott Store;  
Farmers Exchange Bank;  
Hines & Bradley—Peoples Drug Store;  
R. P. Cummings—Edmondson Electric Company and  
Pruner Store;  
Mrs. Paul Hayter—B. E. Hayter Store  
H. H. Scott—Washington-Chevrolet, Western Union, Shoe-  
Shop, & Pliskins;  
H. H. Scott—Hotel Square and all stores therein on Wall  
and Main Street;  
Edgar Rambo—Rambo-Caplin-Thayer;  
Mrs. Lillias P. Withers—Withers Hardware Store and  
Vance's Mill;  
Bernard Vann Co.—Warehouse, Packing House, and Vir-  
ginia Warehouse;  
Neal-Dixon Bane Warehouse;  
Mrs. Sarah Cosby—Rose Furniture Store and Farmers  
Hardware.

The assessment of these properties ranged from twenty to thirty per cent of the fair market values as testified to by said witnesses. According to their opinion and testimony the fair market value of Petitioner's property is \$40,000.00, while its assessed value is \$25,000.00, which is to say that, according to the evidence, the Petitioner's property is assessed at sixty-two and one-half per cent of its fair market value.

My opinion, from the evidence before me, is that  
page 83 } the assessment of Petitioner's property, based on  
present day values, is ununiform and unequal as  
compared with the other properties described in the evidence,  
but my further opinion is that this Court is powerless to do  
anything about it.

Under the Constitution and laws of Virginia, real estate is to be assessed at its fair market value.



(Const. of Va., Sec. 169; Tax Code, Sec. 244.)

And taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

(Const. of Va., Sec. 168.)

For the purpose of taxation, market values are determined by assessors appointed at stated intervals for the general assessment or re-assessment of real estate.

(Tax Code, Sec. 242.)

Uniformity in taxation is attained by the appointment of boards of equalization, whose duties are to reconcile the very sort of discrepancies disclosed by this record.

(Tax Code, Sec. 344.)

There has been no general reassessment of real estate in Washington County since 1930, nor has there been any board of equalization appointed since the appointment of such board in that year. And so far as this record discloses, and so far as I am informed, there has never been any objection to the assessment here in question until now.

Petitioner does not complain that its property page 84 } is assessed above its market value, and accordingly cannot complain that it is assessed too high. Its complaint, in its last analysis, is that adjacent, adjoining and neighboring properties are assessed too low and that Petitioner is thus deprived of the uniformity guaranteed it by the Constitution. It seems, therefore, that the Court is not really asked to correct an erroneous assessment, but, rather, is asked to equalize an assessment which is alleged to be ununiform as to this Petitioner when compared with other assessments of neighboring and adjacent properties in the same town. But, so far as I know, the Court *has* no power or authority to exercise such a function. To do so the Court would have to, in effect, convert itself into an assessing or equalization board and in assuming to act as such would assume the powers lodged elsewhere by the lawmaking branch of government, and would thereby exceed its authority and jurisdiction.

(*Norfolk v. Holland*, 163 Va. 342, 345.)

But if the Court had the power, how would it exercise it? It could not increase the assessments on the properties of

the other persons referred to in the proceedings. They are not before the Court. Would it, then, decrease the assessment against the property of Petitioner? That assessment is already below the market value as required by the Constitution. Can one error be corrected by committing another?

And are we not bound to consider that an order of Court decreasing Petitioner's assessment in the instant  
page 85 } case might have an almost disastrous effect upon Washington County and the town of Abingdon? It may fairly be assumed that all real estate in the County is assessed below its fair market value.

In practice it has been the general custom in this State to undervalue property and to advance the rate, and so to a corresponding extent the letter of Section 169 of the Constitution has not been observed.

*(Roanoke v. Gibson, 161 Va. 342.)*

If, then, in any locality a piece of property, although assessed below its market value, has been assessed at a higher percentage of its market value than other properties in that locality, the owner of that particular piece of property could have the Court reduce the assessment thereon so as to equalize it with the other assessments. The Court would, in effect, become an equalization board, the total assessed value in the County might be greatly reduced, the deliberations of the Board of Supervisors might be practically voided, their plans frustrated and their appropriations rendered invalid, to the great inconvenience of the Board of Supervisors, and, perhaps, the town councils, and to the detriment of the County and every town within its borders.

And even though the assessment complained of may be unequal or ununiform with others as of today, there is no evidence that it was so when the assessment was made in the  
page 86 } year 1930. There is no evidence that the assessors or the equalization board adopted different methods in arriving at their conclusions with reference to Petitioner's property from the methods pursued in reaching their conclusions as to all other property in the County. If the proper methods were pursued in making the assessment the assessment stands until changed in the manner prescribed by law.

"There is no statute in Virginia providing a rule by which assessors should be guided in ascertaining the fair market value of property. It is common knowledge that different

persons, equally well qualified, use different methods of fixing a value on property.”

*Norfolk v. Holland*, 163 Va. 342, 344.

“The value of property is a matter of opinion, and there must necessarily be left a wide room for the exercise of opinion, otherwise courts will be converted into assessing boards, and, in assuming to act as such, would assume the powers lodged elsewhere by the lawmaking branch of government.”

*Norfolk v. Holland*, 163 Va. 342, 345.

“Conclusions of a board of commissioners will not be disturbed unless it appears that there has been a manifest error in the manner of making the estimate, or that evidence which should be controlling has been disregarded.”

*Norfolk v. Holland*, 163 Va. 342, 345-6.

“In a proceeding to correct an erroneous assessment of taxes, it is not enough to show that the assessment is excessive as compared with an assessment against A or against B. It must plainly appear that it is out of line with methods of valuation adopted in the taxing district as a whole.”

*Roanoke v. Gibson*, 161 Va. 342.

*Roanoke v. Williams*, 161 Va. 351.

page 87 } . “Tax assessors have no power to make an assessment except in the manner prescribed by law and if the statute prescribes a method of assessment which is invalid, the assessor has no power or authority to adopt a method of his own which would have been legal if it had been prescribed by the legislature.”

*Woodward v. Staunton*, 161 Va. 671.

This limitation upon the power of the assessors applies, it seems to me, with equal force to the courts, and their judges in vacation.

Section 414 of the Tax Code, as amended in 1936 (Acts 1936, page 253) provides that in proceedings of this kind “the

burden of proof shall be upon the taxpayer to show that the property in question is assessed at *more than its fair market value*, or

That said assessment is not uniform in its application." The statute, as amended, provides that for the purpose of increasing or decreasing the assessment the Court shall have all the power of the authority making the original assessment. But the statute does not ignore the Constitution: It does not expressly authorize the Court to reduce an assessment below, or increase it above, the Market value. Rather does it expressly prohibit it from doing either. Says the statute (Page 254, Acts 1936):

"If, in the opinion of the Court, the assessment exceeds the proper amount, the Court may reduce the assessment to what in its opinion based on the evidence is a fair market value of the property involved . . . If, in the opinion of the Court, the assessment be less than the proper amount, the Court shall order the assessment increased to what in its opinion is a fair market value of the property involved and shall order that the applicant pay the proper taxes."

page 88 } Petitioner does not claim that the property is assessed above its fair market value, and, as I see it, the statute does not authorize the Court to change the assessment in this case unless to increase it to the undisputed fair market value.

The real purpose of Section 414 (Tax Code) is to limit the time within which a proceeding to correct an assessment may be brought to two years from the last day of the year in which the assessment is made, and I do not find anything in the statute which takes the instant case out of its terms, or remove the two years' limitation as to this proceeding.

Under Section 242 of the Virginia Code there was a general re-assessment of real estate in Washington County in 1930.

Section 344 of the Tax Code as it stood in 1930 provided that the Circuit Court, or the Judge thereof in vacation, should in the year 1930 appoint a board of equalization of real estate assessments.

Section 344 of the Tax Code was amended by the 1934 General Assembly and now provides that "the Circuit Court of any County, or the judge thereof in vacation, may, in the year nineteen hundred and thirty-four and every fourth year thereafter, if the board of supervisors or other governing body thereof shall so direct by a resolution approved by a majority of all of its members by a recorded yea and nay vote,

create and appoint for such county a board of equalization of real estate assessments". (Acts 1934, pp. 509, 510.)

Likewise, Section 242 of the Tax Code was page 89 } amended in 1934 and again in 1936. So far as the question now under consideration is concerned the 1934 Act provided that:

"There may also be a general re-assessment of real estate in any county in this state in *the year nineteen hundred and thirty-four*, and every fourth year thereafter, if the board of supervisors shall so direct by a resolution approved by a majority of all the members thereof, by a recorded yea and nay vote."

(Acts 1934, pp. 24, 25.)

The 1936 Act provides that:

"There may also be a general re-assessment of real estate in any county in this state *in any year* if the board of supervisors or other governing body shall so direct by a resolution approved by a majority of all the members thereof, by a recorded yea and nay vote, provided, however, that no such general re-assessment shall be had oftener than once in every four years except as hereinafter provided," &c., &c.

It appears to me that the only remedy for a situation such as that presented in this case rests in a general re-assessment and equalization of assessed values. Whether or not there shall be such general reassessment and equalization is a matter for the Board of Supervisors to decide, and, as already stated, in my opinion the Court is powerless in this proceeding to grant to Petitioner the relief prayed for.

W. H. R., Judge.  
5-27-37.

page 90 } "OPINION IN THIS PROCEEDING," DATED  
1-19-39.

In the Circuit Court of Washington County, Friday, Jan. 13, 1939.

PETITION FOR CORRECTION OF ERRONEOUS  
ASSESSMENT.

Washington County National Bank

v.

Washington County, Virginia, Town of Abingdon, Virginia.

Roby C. Thompson for Petitioner.

Jas. M. Barker for the County, in place of Jno. A. Blake-  
more, Atty. for the Commonwealth.

Fred C. Parks for the Town of Abingdon.

OPINION.

The Washington County National Bank makes application to this court to correct the assessment against its Bank Building & lot on the ground: (a) that the assessment is out of line with the assessment of other comparable property in the taxing district. (b) that by such comparison the assessment is too high & is, therefore, (c) not uniform within the meaning of the constitution.

This is the second time this application has been made to this court. The former application was denied on the ground that the court was powerless in that proceeding to grant to Petitioner the relief prayed for. See written opinion dated 5-27-37 filed with the papers in this cause. But the General Assembly of 1938 passed an act that seems to have been intended to remove the obstacles to relief stated in the foregoing opinion—See

Acts 1938, p. 163.

That Act authorizes Petitioner to institute this proceeding if there has been no reassessment or equalization page 91 } of real estate taxes since 1930. It provides, *inter alia* that

The burden of proof shall be upon the taxpayer to show that the assessment against the real estate involved is out of line with the assessments against other comparable real estate in the same magisterial district, but it shall not be necessary for the taxpayer to show that intentional systematic and wilful discrimination has been made.

And that

If the court be satisfied from the evidence that the assessment complained of is out of line with other assessments of comparable real estate in the same magisterial district the

*Geo. I. Miller.*

court shall reduce or increase the assessment so that the assessment complained of shall be in line with other assessments against comparable real estate in the same magisterial district. If, in the opinion of the court the assessment exceeds the proper amount the court shall order that the applicant be exonerated from the payment of so much as is erroneously charged for the year in which the petition for relief is filed, if not already paid, and if paid refunded so much as is erroneously charged for the year in which the petition is filed.

In support of the petition, Petitioner introduced the following witnesses :

1. Geo. I. Miller, Commissioner of the Revenue.
2. Leon Cumbow.
- page 92 } 3. Julian S. Brown, Cashier of Petitioner Bank.
4. C. A. Johnson.
5. Sam'l A. Carson.
6. John A. Blakemore.

The County of Washington introduced no witnesses and the Town of Abingdon introduced only two, viz.

1. George F. Grant, Treasurer.
2. T. H. Crabtree, Mayor.

Without attempting to use the exact language of the witnesses, they testified, in substance, as follows :

GEO. I. MILLER:

That the property of petitioner, in question here, is assessed at \$25,000.00; that there has been no general reassessment of real estate since 1925 & no board of equalization since 1930; that, generally speaking, property is assessed in Abingdon & Washington County at from 20% to 30% of its fair market value; that because of depreciation in value some property in Abingdon (in his opinion) is assessed at more than from 20 to 30 per cent of its fair market value; that the fair market value of Petitioner's property, in question here, is not as much today (in his opinion) as it was in 1925; that Bradley & Hines property, known as Peoples Drug Store, is assessed at \$5,500.00; that Farmers Exchange Bank is assessed at \$5,500.00; that the property of H. H. Scott, known

*Leon Cumbow. Julian S. Brown. C. A. Johnson.  
Saml. A. Carson.*

as Piggly-Wiggly & College Inn is assessed at \$5,400.00; that the property of H. H. Scott consisting of Belmont Hotel & all of the *building* in that block (except perhaps page 93 } two bldgs) is assessed at \$16,500.00; and that the county rate is \$2.15 & town rate \$1.85.

LEON CUMBOW:  
(Experienced Realtor):

Fair market value of Washington County National Bank's (Petitioner's) property is \$40,000.00, including vault, or \$35,000.00 excluding vault; that fair market value of Piggly-Wiggly & College Inn is \$30,000.00; of Peoples Drug Store, \$20,000.00; Farmers Exch'g Bank \$19,000.00; Belmont Hotel & bldgs in that Block owned by H. H. Scott, \$100,000.00; & that in his opinion the stories above the second story of Washington County National Bank Bld'g., add nothing to its value.

JULIAN S. BROWN  
(Cashier Wash. Co. Nat'l Bank):

Purchase price paid by Petitioner for the property in question \$35,000.00; five stories in main bldg., including roof garden; no basement under the main bldg. the furnace being under the McChesney & Lester bldg.; that the net income on the property for 1937, was 1.4% of investment of \$35,000.00 & will be less for 1938. Peoples Natl. Bank, former owner sold the property in 1926 for \$70,000.00. Recalled, stated that main bldg. would be more profitable if it were a 1 or 2 story bldg. instead of 5 stories.

C. A. JOHNSON  
(Experienced Realtor):

Fair market val. Wash. Co. Natl. Bk. property	\$40,000.00
Fair market val. Pig.-Wig, College Inn property	20,000.00
Fair market val. Peoples Drug Store property	21,000.00
Fair market val. Farmers Exchg. Bk. property	20,000.00
Fair market val. Belmont Hotel & Block property	90,000.00

page 94 } SAML. A. CARSON  
(Lifelong resident of Abingdon, Experienced business man Large property owner):



*Geo. F. Grant. T. H. Crabtree.*

Fair market val. Wash. Co. Natl. Bk. property	\$35,000.00
	40,000.00
Fair market val. Peoples Drug Store	21,000.00
Fair market val. Farmers Exchg. Bank	20,000.00
Fair market val. Belmont Hotel & Block	100,000.00
First Natl. pd. Peoples Natl. for the property	70,000.00 in 1936.
First Natl. operated property at a loss.	

John A. Blakemore's testimony dealt more with dimensions than market value and need not be quoted for the purpose of the opinion.

GEO. F. GRANT,

Town Treas. & witness for the Town of Abingdon:

Wash. Co. Natl. Bk. Bldg. & vault to have cost about \$90,000.00; considering cost of building & lot assessment at \$25,000.00 not far out of line; Hotel Belmont & building in Block of H. H. Scott assessed at \$20,000.00, including Johnson & A. & P. stores; based on income, assessment of Washington County National Bank property at \$25,000.00 may be a little excessive; on present rental basis would not consider the building a profitable investment; the location, however, probably the best location in town for any business; and because of the location \$125.00 per month is cheap rent for the bank to pay for its banking business.

(For its banking quarters, the testimony of J. S. Brown shows that the Bank charges itself \$125.00 per month & puts that amount in in arriving at the gross income from the bldg.)

page 95 }

T. H. CRABTREE,

Mayor (Witness for the Town):

Does not claim to be an authority on market values. However he is & for a long time has been familiar with the properties testified about in this case. Comparing the assessments of Washington County National Bank with the assessment of the other properties mentioned the Bank assessment is perhaps a little excessive.

The Washington County National Bank building is the .

only five-story building in the Town of Abingdon. However, in my judgment, it is comparable, within the meaning of the statute (Acts 1938 p. 163), for assessment purposes with the other real estate in this record, viz.

The Piggly-Wiggly & College Inn, Peoples Drug Store, Farmers Exchange Bank and Hotel Belmont properties, though I do not think the *comparison* are by any means ideal.

From the foregoing evidence introduced by Petitioner it will appear that Mr. H. H. Scott's Hotel Belmont & other bldgs. in that block are assessed at about 16½% of their fair market value; that his Piggly-Wiggly & College Inn properties are assessed at about 18% of their fair market values; that the Peoples Drug Store property of Bradley & Hines is assessed at about 27½% of its fair market value; that the Farmers Exchange Bank is assessed at about 29% of its fair market value and that Petitioner, Washington County National Bank is assessed at about 62½% of its fair market value & thus Petitioner's own evidence seems to have brought Petitioner literally within the 1938 Act by showing that the assessment complained of is out of line with other assessments of comparable real estate in the same taxing district.

Does it follow as a matter of law that the court must reduce the assessment complained of? To my mind that is a big question and a difficult one.

The County did not question the validity of the 1938 Act, nor did the Town except in the argument of its attorney, Mr. Fred C. Parks, who seemed to me to manifest considerable doubt as to the validity of said Act.

The Virginia Constitution, Sec. 168, provides that:

"All property, except as hereinafter provided, shall be taxed; all taxes whether state or local or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general law \* \* \*."

The constitution contains no exception to the foregoing rule that is applicable to the case at bar.

The Virginia Constitution, Sec. 169, provides:

"Except as hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair

market value, to be ascertained as prescribed by law. \* \* \*," and to this rule the constitution contains no exception that is applicable to the case at bar.

As a rule, the land assessors in Virginia have page 97 } not literally observed Sec. 169 of the Constitution.

They have preferred, it seems, to assess real estate below its fair market value. Accordingly the rate of taxation in the counties & cities is higher than it would be if property were assessed at its actual fair market value.

In *City of Roanoke v. Gibson*, 161 Va. 342, 170 S. E. 733, it was said (p. 725 of 170 S. E.):

"A municipality cannot function unless it can meet its necessary expenses, and that it can do only through taxation. If in its ratable distribution it be fair that a certain lot should pay \$100.00, it makes little difference to the owner if the lot be assessed at \$5,000.00 with a 2 per cent rate, or at \$10,000.00 with a 1 per cent rate. In practice it has been the general custom in this state to undervalue property and to advance the rate, and so to a corresponding extent the letter of 169 of the constitution has not been observed; property has not been assessed at its market value, and an assessment in excess of market value would be no greater departure from its mandate provided these assessments were, as they must be in any case, ratable."

Petitioner does not complain that the assessment of its property violates Sec. 169 of the Constitution, but, in substance, it does complain that, in effect, the assessment violates Sec. 168 of the Constitution.

It is not for this court to consider the wisdom of the 1938 Act, nor whether or not it is a good policy to empower the courts to correct an assessment in instances of the page 98 } kind under consideration here. It is my duty, as

I see it, to take cognizance of the Act &, by virtue of it, to take jurisdiction of this case, unless, to do so would in some way do violence to the constitution.

An analysis of the evidence in this case shows that it is & has been, the custom in this taxing district to assess properties—or attempt to do so—at from 20 to 30 per cent of the fair market values, and that the properties considered in this hearing are now assessed at values ranging from 16½ to 62½ per cent of the market values, as heretofore shown in this opinion, but, according to the evidence, the only property that goes over 30% of its market value is the property of Petitioner.

It will be observed, however, that the properties considered are all in the West end of the Town of Abingdon. That they are within an area that constitutes a very small part of the entire area of said Town, a yet smaller part of the entire area of the Abingdon Magisterial District, and an almost infinitesimal part of the entire area of Washington County.

In the small area selected for the test the properties of only six owners have been considered & yet according to Petitioner's evidence, those six owners are assessed at from  $16\frac{1}{2}$  to  $62\frac{1}{2}$  per cent of the market values of their properties. Is it fair to assume that the discrepancies in the small area selected are any greater than throughout the entire area of Abingdon, or the entire area of Abingdon Magisterial District or the entire area of Washington County?

According to Petitioner's evidence, Farmers Exchange Bank is assessed at 29% of its market value; Bradley & Hines at  $27\frac{1}{2}$  of the market value of Peoples Drug Store, and Mr. H. H. Scott at  $16\frac{1}{2}$  & 18 per cent, respectively, of the market value of his properties—Suppose that Farmers Exchange Bank and Bradley & Hines file petitions to reduce their assessments until they are "in line" with the assessments of H. H. Scott & possibly others who may be said to be assessed even lower than he—And suppose that other taxpayers throughout Abingdon, and Abingdon Magisterial District and throughout Washington County file similar petitions—What time would the court have for other matters? But the court is not authorized to consider that phase of the question. The only question for the court, as I see it, is whether or not the assessment complained of is "out of line" with other assessments within the meaning of Sec. 168 of the Constitution. In order to bring the assessment "in line" with others, the court may raise or lower the assessment complained of, but cannot do anything with the other assessments whether they are too low or too high until they are brought before the court in a direct proceeding for the purpose. If, then, in pursuance of the 1938 Act a great many petitions are filed and in pursuance to the petitions of a great many assessments are reduced, and no general scheme of tax equalization is observed, what will be the condition of the tax "set-up" & what will be the condition of the finances of the town & county?

page 100 } It can easily be imagined that if such a course is followed the public finances will soon be reduced to a state of chaos. This again may be a phase of the question that the court cannot consider, but it may be that the Board of Supervisors ought to give it very earnest consideration.

From the evidence before me I think that the assessment of petitioner's property, as of today, may be slightly out of line with the other assessments in evidence in this case. According to petitioner's evidence the highest of those other assessments is 29% of the market value, while petitioner's assessment is 62½% of the market value.

The witnesses for petitioner on "market value" were certainly abundantly qualified & competent to testify on that subject. Yet, after all, they could only give their opinion. The court cannot take their opinion as being absolutely final but must form its own opinion from all the facts and circumstances disclosed by all of the evidence in the case.

The fair market value of property is the price it will bring when offered for sale by one who desires but is not obliged to sell, and is bought by one, who is under no necessity of having it.

*Norfolk v. Snyder*, 161 Va. 288, 170 S. E. 721.

That test is hardly applicable to the last sale and purchase of the property here in question. The former  
page 101 } owner had failed. There must have been some necessity—if not an absolute necessity for the sale. The purchaser, the present owner, was a newly organized banking corporation and there is no reason to suppose or assume that it did not consider a purchase at \$35,000.00 as a fairly good bargain.

Market value can only be ascertained by putting property to the test of a market. *City of Roanoke v. Gibson*, 161 Va. 342, 170 S. E. 723-725, where such a test is absent the market value must be ascertained in some other way, and assessors are justified in considering more than one factor in fixing values. (See *Norfolk & Western R. Co. v. Board of Public Works*, W. Va. 3 Fed. Supp. 791, 794). Clearly when a test of the market is not available numerous factors are to be considered, and if a sale on the market is a fair test in this case, the sale in 1926 at \$70,000.00 is as relevant and informative as the sale to petitioner at \$35,000.00. It will not suffice to say that because of natural conditions the property is not as valuable today as it was in 1926, because that might be said of the other properties herein considered, and it does not follow that its relative value is less today than it was in 1926. And see 26 R. C. L., p. 365-6.

According to all of the evidence, the location of petitioner's property is one of the best—if not the best in the town of Abingdon, for any business.

There was some evidence that it cost in the neighborhood of \$90,000.00 to erect the building, less than 20 years ago, or that it was commonly understood at the time that it cost about that amount to build it. It was sold in 1927 for \$70,000.00 and there is no evidence that there was ever any complaint that the assessment was too high, ununiform or unequal until petitioner filed its first petition.

Considering all of the evidence, that offered by petitioner & that offered by the Town, and the just inferences to be drawn therefrom, my own opinion is that any board of assessors would probably fix the fair market value of petitioner's lot of land with any appropriate building or buildings thereon, whether one story high or five—under present conditions and at the present time is at least \$75,000.00.

There is no statute in Virginia providing a rule by which assessors should be guided in ascertaining the fair market value of property. It is common knowledge that different persons, equally well qualified, use different methods of fixing a value on property.

*Norfolk v. Holland*, 163 Va. 342, 175 S. E. 737.

*Norfolk v. Snyder*, 161 Va. 288, 170 S. E. 721.

The presumption—both as to value & uniformity—is in favor of the assessment heretofore made by the assessors, and the burden is on petitioner to show that the assessment is excessive or out of proportion to the valuation of other like surrounding property.

page 103 } *City of Roanoke v. Gibson*, 161 Va. 342, 170 S. E. 723.

*Griffin v. Norfolk*, 170 Va. 370, 375.

By the very terms of the statute of 1938—the burden is on the petitioner. The language of the court in this last cited case is almost as pertinent today as it was before the 1938 Act was enacted, viz. that “the value of property is a matter of opinion and there must necessarily be left a wide room for the exercise of opinion otherwise courts will be converted into assessing boards, and in assuming to act as such would assume the *poert* lodged elsewhere by the law-making branch of government”.

The location of a Bank is certainly of great importance in determining the value of the bank's property. Dr. Grant testified that petitioner's location was one of the best—if not the very best—in town and that \$125.00 per month rent is

very low rent for petitioner to pay; it is no doubt true, as some of the witnesses testified, that a five-story building in a town of the size of Abingdon is not a profitable investment. Yet the cost of constructing the building is an almost necessary element of construction in determining, from opinion, its fair market value, if it was unwise to erect a five-story building instead of a one or two-story building, it would seem fair that the builder or owner, rather than the County & Town should suffer for the folly; and the potential income as well as the actual is, I think, another proper element to be considered in arriving at an opinion of the fair market value.

page 104 } Another thing to consider is that we have tried to arrive at the market value of the properties of Farmers Exchange Bank, Bradley & Hines, & H. H. Scott, and yet none of those owners were witnesses. No one can say what the situation would have been had these owners given their own opinion as to the relative values of their own & petitioner's properties.

All things considered, I do not believe that any body of men, assessing this property for purposes of taxation, would likely fix its fair market value, at this time & under present conditions, at less than \$75,000.00.

According to Mr. George I. Miller, Comr. of Revenue, properties are assessed in Washington County at from 20 to 30 per cent of fair market value which is equivalent to saying that the average assessment in the county is 25% of the market value. It is proper to infer, I think, that the assessors ascertained, as best they could the fair market values and then assessed at 25% of the values so ascertained. If this was the method adopted then the Peoples Drug Store (Bradley & Hines) was valued at \$22,000.00 and assessed at \$5,500.00; Farmers Exchange Bank was valued at \$2,200.00 and assessed at \$5,500.00; Piggly-Wiggly & College Inn (H. H. Scott) valued at \$21,600.00 & assessed at \$5,400.00; Belmont Hotel & other bldgs. of H. H. Scott in the same block valued at \$66,000.00 & assessed at \$16,500.00; Washington County National Bank valued at \$100,000.00 & assessed at \$25,000.00.

Petitioner's witnesses fixed the market value of all of these properties, except H. H. Scott's, at lower figures than the above, but there is a much greater difference in respect to petitioner's property than as to any of the others.

The intrinsic value of the property cannot be of a great deal less today than it was in 1926 when it sold for \$70,000.00 and when all the elements are considered that a board of

assessors would have to consider, as heretofore, pointed out, my opinion is that the fair market value cannot be justly fixed at less than \$75,000.00, and that the assessment should be 25% of that amount which would be \$18,750.00 & it will be so ordered.

W. H. R., Judge.  
1-19-39.

Notify—Roby C. Thompson, Jas. M. Barker  
Fred C. Parks, Geo. I. Miller &  
Geo. F. Grant.

page 106 } FINAL ORDER.

Virginia:

Circuit Court of the County of Washington, on Saturday, the eighteenth day of February, in the year of our Lord, nineteen hundred thirty-nine.

Present: The Honorable Walter H. Robertson, Judge.

The Washington County National Bank,

v.

Washington County, Virginia, and the Town of Abingdon,  
Virginia.

PETITION FOR THE CORRECTION OF ERRONEOUS  
ASSESSMENTS OF COUNTY LEVIES AND LO-  
CAL TAXES FOR THE YEAR 1938.

This day came the petitioner, The Washington County National Bank of Abingdon, Virginia, by its attorney, and came also the defendant, the County of Washington, by James M. Barker, its attorney, and the defendant, the Town of Abingdon, by Fred C. Parks, its attorney. The petition in this proceeding having been filed on October 10, 1938, and by agreement of the parties, by counsel, the hearing thereon was continued from time to time until January 13, 1939, at which time the evidence was heard *ore tenus* before the court, and the court having considered the pleadings, exhibits and testimony of the witnesses doth, for reasons set forth in a written opinion and filed as a part of the record in this proceeding, finds as follows:



It is

page 107 }

ORDERED

that the evidence heard by the court *ore tenus* in this proceeding be transcribed and made a part of the record in this proceeding.

The court doth hereby certify that G. I. Miller, Commissioner of the Revenue for Washington County testified before the court relative to the assessment against the property involved in this proceeding.

The court doth further certify that John A. Blakemore, Commonwealth's Attorney for Washington County, Virginia, disqualified himself to act in this case, and that James M. Barker, an attorney, was appointed by the court to represent the county, and that James M. Barker did defend said petition; and that Fred C. Parks appeared as special attorney on behalf of the Town of Abingdon and defended said petition.

The court doth further certify that the facts proven in said case are as follows:

That there has been no general reassessment of property in Washington County, and no equalization of assessment by a board of assessors since the year 1930; that The Washington County National Bank property situate on the corner of Main and Wall Streets in the Town of Abingdon, Abingdon Magisterial District, was assessed for the year 1938, at the sum of \$25,000.00; that the rate of taxation for the Abingdon Magisterial District is \$2.15, and for the Town of Abingdon \$1.85, making a total levy of \$4.00 for each \$1,000.00 assessed value; that as a general rule other property in the

Abingdon Magisterial District and the Town of  
page 108 } Abingdon comparable to the property of the petitioner is assessed from twenty to thirty per cent of the fair market value (although there are some isolated exceptions to this rule); that the Farmers Exchange Bank, a two-story brick building situate on the North side of Main Street in the Town of Abingdon and opposite petitioner's property, is assessed at \$5,500.00, and that in the opinion of perfectly competent witnesses the fair market value of said property is from \$19,000.00 to \$20,000.00; that the Peoples Drug Store, a two-story brick building, owned by Bradley & Hines situate on the North side of Main Street and practically opposite petitioner's property, is assessed at \$5,500.00, and that in the opinion of said witnesses its fair market value is from \$20,000.00 to \$21,000.00; that the two-story brick building owned by H. H. Scott and situate on the same side of

the street and immediately East of petitioner's property and known as the Piggly-Wiggly and the College Inn property, is assessed at \$5,400.00, and that in the opinion of said witnesses the fair market value of the same is from \$18,000.00 to \$20,000.00; that the property on the West side of Wall Street, on which there is situate several two-story brick buildings, opposite petitioner's property and fronting the entire block on Wall Street and fronting 200 feet on Main Street, in which block there is located several stores, hotel, restaurant and other places of business and generally known as the H. H. Scott Hotel block, is assessed at \$20,000.00 and that in the opinion of said witnesses, the fair market value of

page 109 } the same is from \$90,000.00 to \$100,000.00.

That the evidence of all the witnesses who testified as to the fair market value of petitioner's property is to the effect that the fair market value of its real estate and building is between \$35,000.00 and \$40,000.00. However, the court is of the opinion for the reasons set forth in written opinion dated 1-19-39, and made a part of the record in this proceeding, that the fair market value of the Washington County National Bank property is \$75,000.00, and that the average assessment in the Abingdon Magisterial District is twenty-five per cent of the fair market value of the property, and that the assessment against the property of the Washington County National Bank is out of line with the assessment of other comparable property in Abingdon Magisterial District, and that in order to make the assessment against the petitioner's property uniform and in line with other comparable property in Abingdon Magisterial District said property should be assessed at twenty-five per cent of \$75,000.00, its fair market value, to-wit, an assessment of \$18,750.

The petitioner having been erroneously assessed in the sum of \$6,250.00 for the year 1938, it is ORDERED that said petitioner be, and it is hereby, exonerated from the payment of all taxes assessed against all of its property situate on the corner of Main and Wall Streets in the Town of Abingdon, Virginia, either by Washington County, Virginia, or the Town of Abingdon, Virginia, on the said sum of \$6,250.00 so erroneously assessed against it for the year 1938.

page 110 } It is further

### ORDERED

that W. Y. C. White, Clerk of this court, certify a copy of this order to W. W. Webb, Treasurer of Washington County, Virginia, which will be his authority for exonerating the pe-

tioner from the payment of \$134.37½ county taxes and local levy assessed against it in Abingdon Magisterial District for the year 1938; and also certify a copy of this order to George F. Grant, Treasurer of the Town of Abingdon, Virginia, which will be his authority for exonerating petitioner from the payment of \$115.62½ town taxes erroneously assessed against it for the year 1938.

It is likewise

### ORDERED

that the Clerk of this court certify a copy of this order to George I. Miller, Commissioner of Revenue for Washington County, Virginia, which shall be his authority for reducing the assessment against The Washington County National Bank property situate on the corner of Main and Wall Streets in the Town of Abingdon, Washington County, Virginia, from \$25,000.00 to \$18,750.00.

The petitioner's real estate involved in this proceeding is assessed at \$2,500.00, and the court being of the opinion that the fair market value of the real estate is \$10,000.00 it is

### ORDERED

that said real estate continue to be assessed at \$2,500.00, and the court is of the opinion that the fair market value of the buildings on the real estate involved in this proceeding is \$65,000.00, and that the *building* should be assessed at twenty-five per cent of their fair market value, to-wit, \$16,250.00.

All of which is ADJUDGED, ORDERED and DECREED.

And the petitioner having excepted to the action of the court in finding that the fair market value of the buildings on the property involved in this proceeding to be \$65,000.00, and having excepted to the action of the court in its refusal to reduce the assessment against the petitioner's property involved in this proceeding in a greater sum than \$6,250.00, and petitioner having indicated its intention to apply to the Supreme Court of Appeals for a writ of error in this proceeding, it is

### ORDERED

that the execution of this order be, and the same is hereby, suspended for a period of sixty days.

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STIPULATION.

It is stipulated and agreed by attorney for the petitioner, and the attorneys for Washington County, Virginia, and the Town of Abingdon, Virginia, that the foregoing stenographic report of testimony and other incidents of the trial therein shall be considered in lieu of formal Bills of Exceptions; and that all questions raised, all rulings thereon, all exceptions thereto, respectively, as shown by said report of testimony and other incidents of the trial therein, may be relied upon by either or all parties in the Supreme Court of Appeals without taking separate bills of exceptions for each point raised and excepted to.

This the 15th day of April, 1939.

ROBY C. THOMPSON,  
Counsel for Washington County National Bank.  
J. M. BARKER,  
Counsel for Washington County, Virginia.  
FRED C. PARKS,  
Counsel for the Town of Abingdon, Virginia.

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COURT'S CERTIFICATE.

The undersigned Judge of the Circuit Court of Washington County, Virginia, hereby certifies that the foregoing stenographic report and transcript of the testimony and other incidents of the trial in this case, embracing, as it does, all the testimony adduced at the trial, exhibits filed therewith, exceptions to testimony and exceptions to rulings thereon, and all the pleadings and orders filed and entered in the trial of said proceeding was this day presented to the undersigned Judge of said court for authentication, and it appearing that counsel for the Town of Abingdon, Virginia, and Washington County, Virginia, have had due and timely notice of this application, and the said transcript appearing to be correct, full and complete in all respects, is hereby certified and authenticated as a true transcript of all of the proceedings had at the trial of this case, and the same is transmitted to the Clerk of said Court to be filed with and made a part of the record in said case.

Signed and authenticated by the undersigned Judge of said Court within sixty days from the date of final judgment in said case.

## Supreme Court of Appeals of Virginia.

This the 15th day of April, 1939.

WALTER H. ROBERTSON,  
Judge of the Circuit Court of Washington  
County, Virginia.

Approved:

ROBY C. THOMPSON,  
Counsel for Washington County.  
page 114 } National Bank.  
J. M. BARKER,  
Counsel for Washington County, Virginia.  
FRED C. PARKS,  
Counsel for the Town of Abingdon, Virginia.

page 115 } Virginia:

In the Circuit Court of Washington County.

I, Walter H. Robertson, Judge of the Circuit Court of Washington County, Virginia, do hereby certify that the foregoing is an accurate copy of the transcript of the testimony and certificate of exceptions this day signed by me, and this day filed.

Given under my hand this the 15th day of April, 1939.

WALTER H. ROBERTSON, Judge.

page 116 } Virginia:

In the Circuit Court of Washington County.

I, W. Y. C. White, Clerk of the Circuit Court of Washington County, Virginia, do hereby certify that the foregoing is a true transcript in the case of Washington County National Bank, plaintiff, v. Washington County, Virginia, and the Town of Abingdon, Virginia, and I further certify that James M. Barker, counsel for Washington County, Virginia, and Fred C. Parks, counsel for the Town of Abingdon, Virginia, have had notice of the application of the petitioner for a transcript of the record in said case.

Given under my hand this 15th day of April, 1939.

W. Y. C. WHITE, Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

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CLERK  
SUPREME COURT OF APPEALS

